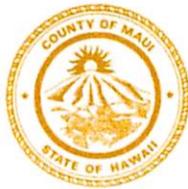


MICHAEL P. VICTORINO  
Mayor  
MICHELE CHOUTEAU MCLEAN, AICP  
Director  
JORDAN E. HART  
Deputy Director



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

RECEIVED  
2020 DEC -4 PM 3:00  
OFFICE OF THE MAYOR

December 4, 2020

Honorable Michael P. Victorino  
Mayor, County of Maui  
200 South High Street  
Wailuku, Hawaii 96793

APPROVED FOR TRANSMITTAL

Michael P Victorino 12-5-20  
Mayor Date

RECEIVED  
2020 DEC -7 AM 10:31  
OFFICE OF THE  
COUNTY CLERK

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 AMENDING THE  
COMPREHENSIVE ZONING ORDINANCE RELATING TO  
ZIPLINE, CANOPY AND BUNGEE JUMPING TOUR  
OPERATIONS**

The Department of Planning (Department) received Resolution 20-90, adopted on June 19, 2020, transmitting a proposed bill to require a conditional permit for canopy tour and zipline operations to enable the Council to evaluate the appropriateness of the uses in various zoning districts.

The proposed bill was presented to the planning commissions on Maui, Molokai, and Lanai in September, with the following revisions recommended by the Department:

- Move the definitions proposed for Section 19.97.020 to Section 19.04.040 of the Maui County Code
- Move the criteria, restrictions and standards proposed for Sections 19.97.030 and 19.97.040 to Chapter 19.40
- In addition to ziplines and canopy tours, include bungee jumping on the proposed list of excluded activities for Sections 19.30A.050.B.10 and 19.30A.060.A.7

On September 16, the Lanai Planning Commission reviewed and voted unanimously to recommend approval of the Department's recommended revisions to the proposed bill.

The Maui Planning Commission discussed the proposed bill on September 22 and recommended requiring third party inspections annually, consideration of updating the Building Code to require

Honorable Michael P. Victorino  
For Transmittal to:  
Honorable Alice Lee  
December 4, 2020  
Page 2

building permits for zipline structures, and requiring that these operations avoid streams and other drinking water sources. The Maui Planning Commission also suggested that Mr. Daniel Boren of Skyline Eco-Adventures be considered a resource person for the Council to consult when it considers this matter.

The Molokai Planning Commission discussed the bill on September 23. They would like to see no ziplines, bungee jumping, or canopy tours on the island of Molokai, and expressed concern about the lack of adequate emergency resources in the event of a serious accident at one of these operations. The Commission also requested that if the County Council is unable to include this condition for the island of Molokai, then the Commission would like their comments forwarded to the Council as summarized by the Department.

Here is a summary of the planning commissions' recommendations:

<u>Planning Commission</u>	<u>Date of Vote</u>	<u>Recommendation</u>	<u>Vote Count</u>
Lanai	Sept. 16, 2020	Recommended approval with revisions	9-0
Maui	Sept. 22, 2020	Recommended approval with revisions	8-0
Molokai	Sept. 23, 2020	Recommended approval with revisions	6-0

A revised proposed bill and the Department's memorandum to the commissions are attached for your consideration. The verbatim minutes are also attached, and the summary minutes of the meetings on the proposed bill are available online:

- Lanai Planning Commission, September 16, 2020:  
<https://www.mauicounty.gov/ArchiveCenter/ViewFile/Item/27673>
- Maui Planning Commission, September 22, 2020:  
<https://www.mauicounty.gov/ArchiveCenter/ViewFile/Item/27649>
- Molokai Planning Commission, September 23, 2020:  
<https://www.mauicounty.gov/ArchiveCenter/ViewFile/Item/27790>

Thank you for your attention and consideration. Should further clarification be necessary, please feel free to contact me.

Sincerely,      ✉



MICHELE CHOUTEAU MCLEAN, AICP  
Planning Director

ORDINANCE NO. \_\_\_\_\_

BILL NO. \_\_\_\_\_ (2020)

A BILL FOR AN ORDINANCE AMENDING THE COMPREHENSIVE ZONING  
ORDINANCE RELATING TO ZIPLINE, CANOPY, AND BUNGEE JUMPING TOUR  
OPERATIONS

BE IT ORDAINED BY THE PEOPLE OF THE COUNTY OF MAUI:

SECTION 1. Purpose. The purpose of this ordinance is to require a conditional permit pursuant to Chapter 19.40, Maui County Code, for zipline, canopy, and bungee jumping tour operations in the County agricultural district to enable the council to evaluate the appropriateness of these uses in relation to permitted uses.

SECTION 2. Section 19.04.040, Maui County Code, is amended to add new definitions to be appropriately inserted and to read as follows:

“Bungee jumping” means a commercial activity in which a participant jumps from a great height, such as from a tall building, crane, bridge or cliff, while connected to a large elastic cord.

“Canopy tour” means a supervised or guided educational or recreational activity or other aerial adventure course that may include beams, bridges, cable traverses, climbing walls, nets, platforms, ropes, swings, seat harnesses, towers, or ziplines that may be installed on or in, or in combination with, trees, poles, portable structures, or buildings, or be part of self-supporting structures.

“Rappelling” means a controlled descent off a vertical drop, such as a rock face, by using fixed anchors and a doubled rope fixed at a higher point.

“Zipline” means a commercial activity in which a participant traverses from one point to another by use of a cable or rope line suspended between support structures.”

SECTION 3. Section 19.30A.050, Maui County Code, is amended to read

as follows:

**“19.30A.050 Permitted uses.** The following uses and structures are permitted in the agricultural district, provided they also comply with all other applicable laws: A. Principal uses.

1. Agriculture.
2. Agricultural land conservation.
3. Agricultural parks, pursuant to chapter 171, Hawaii Revised Statutes.
4. Animal and livestock raising, including animal feed lots, and sales yards.
5. Private agricultural parks as defined herein.
6. Minor utility facilities as defined in section 19.04.040 of this [code.] title.
7. Retention, restoration, rehabilitation, or improvement of buildings, sites, or cultural landscapes of historical or archaeological significance.
8. Solar energy facilities, as defined in section 19.04.040 of this [code] title, and subject to the restrictions of chapter 205, Hawaii Revised Statutes, that are less than fifteen acres, occupy no more than 35 percent of the lot, and are compatible with existing agricultural uses; except that land with soil classified by the land study bureau's detailed land classification as overall (master) productivity rating class D or E need not be compatible with existing agricultural uses.

B. Accessory uses. Uses that are incidental or subordinate to, or customarily used in conjunction with, a permitted principal use, as follows:

1. Two farm dwellings per lot, one of which shall not exceed one thousand square feet of developable area.
2. One farm labor dwelling per five acres of lot area. On the island of Maui, the owner or lessee of the lot shall meet at least two of the following three criteria:
  - a. Provide proof of at least \$35,000 of gross sales of agricultural products per year, for the preceding two consecutive years, for each farm labor dwelling on the lot, as shown by [State] state general excise tax forms and federal form 1040 Schedule F filings.
  - b. Provide certification by the department of water supply that agricultural water rates are being paid if the subject lot is served by the County water system.

c. Provide a farm plan that demonstrates the feasibility of commercial agricultural production.

On the islands of Molokai and Lanai, the owner or lessee of the lot shall meet both of the criteria provided by subsections 19.30A.050(B)(2)(a) and 19.30A.050(B)(2)(b).

3. A maximum of two commercial agricultural structures per lot, subject to parking requirements of chapter 19.36B of this [code.] title.

4. Storage, wholesale and distribution, including barns; greenhouses; storage facilities for agricultural supplies, products and irrigation water; farmer's cooperatives; and similar structures that are customarily associated with one or more of the permitted principal uses or, for the purpose of this section, are associated with agriculture in the County.

5. Processing of agricultural products, the majority of which are grown in the County; this includes the burning of bagasse as part of an agricultural operation.

6. Energy systems, small-scale.

7. Small-scale animal-keeping.

8. Animal hospitals and animal board facilities; if conducted on the island of Molokai, such uses shall have been approved by the Molokai planning commission as conforming to the intent of this chapter.

9. Riding academies; if conducted on the island of Molokai, such uses shall have been approved by the Molokai planning commission as conforming to the intent of this chapter.

10. Open land recreation as follows: hiking; noncommercial camping; fishing; hunting; equestrian activities; rodeo arenas; arboretums; greenways; botanical gardens; guided tours that are accessory to principal uses, such as farm or plantation tours, petting zoos, and garden tours[;], excluding zipline, canopy, and bungee jumping tours; hang gliding; paragliding; mountain biking; and accessory restroom facilities. If hiking, fishing, hunting, equestrian activities, rodeo arenas, hang gliding, paragliding, or mountain biking are conducted for commercial purposes on the island of Molokai, such uses shall have been approved by the Molokai planning commission as conforming to the intent of this chapter. Open land recreation uses or structures not specifically permitted by this subsection, [or by] subsection 19.30A.060(A)(7), or chapter 19.40 of this title, shall be prohibited; certain open land recreation uses or structures may also be required to obtain a special permit pursuant to chapter 205, Hawaii Revised Statutes.

11. Except on Molokai, bed and breakfast homes permitted under chapter 19.64 of this [code] title that are:

a. Operated in conjunction with a bona fide agricultural operation that produced \$35,000 of gross sales of agricultural products for each of the preceding two years, as shown by [State] state general excise tax forms and federal form 1040 Schedule F filings; or

b. In compliance with all of the following criteria, provided that the bed and breakfast home is not subject to a condominium property regime pursuant to chapter 514A or chapter 514B, Hawaii Revised Statutes:

i. The lot was created prior to November 1, 2008.

ii. The lot is comprised of five acres or less.

iii. An approved farm plan has been fully implemented and is consistent with chapter 205, Hawaii Revised Statutes; or

c. Located in sites listed on the State of Hawaii Register of Historic Places or the National Register of Historic Places.

12. Short-term rental homes permitted under chapter 19.65 of this [code,] title, provided that an approved farm plan has been fully implemented and is consistent with chapter 205, Hawaii Revised Statutes.

13. Parks for public use, not including golf courses, and not including commercial uses, except when under the supervision of a government agency in charge of parks and playgrounds.

14. Family child care homes as defined in section 46-15.35(b), Hawaii Revised Statutes, that are registered pursuant to chapter 346, Hawaii Revised Statutes, and located in a legally permitted farm dwelling.

15. Other uses that primarily support a permitted principal use; however, such uses shall be approved by the appropriate planning commission as conforming to the intent of this chapter.”

SECTION 4. Section 19.30A.060, Maui County Code, is amended by amending subsection A to read as follows:

“A. The following uses and structures are permitted in the agricultural district if a special use permit, as provided in section 19.510.070 of this title, is obtained; except that if a use described in this section also requires a special permit as provided in chapter

205, Hawaii Revised Statutes, and if the land area of the subject parcel is fifteen acres or less, the [State] state special permit shall fulfill the requirements of this section:

1. Additional farm dwellings beyond those permitted by subsection 19.30A.050(B)(1).
2. Farm labor dwellings that do not meet the criteria of subsection 19.30A.050(B)(2).
3. Commercial agricultural structures that do not meet the standards and restrictions of this chapter.
4. Public and quasi-public institutions that are necessary for agricultural practices.
5. Major utility facilities as defined in section 19.04.040 of this title.
6. Telecommunications and broadcasting antenna.
7. Open land recreation uses, structures, or facilities that do not meet the criteria of subsection 19.30A.050(B)(10), including commercial camping, gun or firing ranges, archery ranges, skeet shooting, paint ball, [bungee jumping,] skateboarding, rollerblading, playing fields, rappelling, and accessory buildings and structures. Certain open land recreation uses or structures may also be required to obtain a special permit as provided in section 205-6, Hawaii Revised Statutes. The following uses or structures are prohibited: airports, heliports, drive-in theaters, country clubs, drag strips, motor sports facilities, golf courses, [and] golf driving ranges[.], zipline, canopy, and bungee jumping tours.
8. Cemeteries, crematories, and mausoleums.
9. Churches and religious institutions.
10. Mining and resource extraction.
11. Landfills.
12. Solar energy facilities that are greater than fifteen acres.”

SECTION 5. Section 19.40.070, Maui County Code, is amended to read as follows:

**“19.40.070 Establishment.** A. Upon finding by the appropriate planning commission that reasons justifying granting of a conditional permit exist, and that the proposed use would not be significantly detrimental to the public interest, convenience, and welfare, and will be in harmony with the area in which it is to be located; issuance of a conditional permit may be recommended, subject to such terms and conditions and for such period of time as the facts may warrant.

B. Should the commission determine that the permit requested is for a use which is substantially different from those uses permitted in the use zone, the commission shall recommend denial of the request and may instruct the applicant to seek a change of zoning should the facts warrant such an application.

C. Every conditional permit shall be conditioned upon the proposed development fully complying with all requirements of this title and other applicable governmental requirements.

D. Approval of a conditional permit application shall be through enactment of an ordinance by the council, in accordance with the provisions of the charter.

E. A conditional permit is required for the operation of a zipline, canopy, or bungee jumping tour in any district where zipline, canopy, or bungee jumping tours are not permitted uses.

1. Ordinances for conditional permits for zipline, canopy, or bungee jumping tours may be enacted only for parcels on Maui and Lanai of at least fifty acres or multiple contiguous parcels that together are at least fifty acres; except that the council may enact ordinances for conditional permits for zipline, canopy, or bungee jumping tours on parcels or multiple contiguous parcels smaller than fifty acres only by a two-thirds vote of its entire membership on two readings.

2. No more than fifteen conditional permits for zipline, canopy, or bungee jumping tours may be in effect at any time.

3. Any zipline, canopy, or bungee jumping tour in the state agricultural district must obtain a state special permit as provided in section 205-6, Hawaii Revised Statutes."

SECTION 6. Section 19.40.080, Maui County Code, is amended by adding a new subsection to read as follows:

**"19.40.080 Conditions, amendments, modifications.** A. Conditional permits may be issued subject to such terms and conditions deemed reasonable and necessary to fulfill the intent and purposes of this title. All changes in the use or appearance of land or buildings allowed by the permit shall be in accordance with the specified conditions and the proposal as approved. Such permit shall be issued subject to compliance with and/or fulfillment of such terms and conditions and shall so state.

B. Any person who has been issued a conditional permit may request the commission to review a request to amend or delete any terms and conditions imposed upon such permit.

C. The commission on request or on its own initiative may recommend action to revoke any conditional permit or amend or delete any terms, conditions, and time stipulations of such conditional permit if such action is deemed necessary to effectuate the purpose and intent of this chapter. The commission shall provide due notice in writing to the applicant/permittee and an opportunity for a hearing.

D. The planning director may approve amendments to the conditional permit if the amendments are not substantive and do not result in significant impacts above what would result from the approved conditional permit. Before approving any such amendments, the planning director shall notify the respective planning commission of the proposed non-substantive amendments. The commission may review the proposed non-substantive amendments and take action or waive review.

E. Conditional permits may be issued for zipline, canopy, and bungee jumping tours on Maui and Lanai provided the following criteria are met:

1. Each permit holder who operates a zipline, canopy, or bungee jumping tour must name the County as an additional insured in a general liability insurance policy of \$1,000,000 per occurrence and \$2,000,000 in the aggregate, which insurance must include a duty to defend, indemnify, and hold harmless the County if the County is sued as a result of the operation of the zipline or canopy tour.

2. A zipline, canopy, or bungee jumping tour may not operate before 8:00 a.m. or after 5:00 p.m.

3. No person may consume any intoxicating substance while at the location of a zipline, canopy, or bungee jumping tour while it is open for business. No person may hold a conditional permit under this chapter and a liquor license at the same time.

4. Each operator of a zipline, canopy, or bungee jumping tour must have the equipment and facility inspected at least annually by a qualified third party.

5. Each operator of a zipline, canopy, or bungee jumping tour must maintain the following records and make them available to the director or the council upon request:

a. Proof of the insurance required by the conditional permit.

b. Inspection reports.

c. Maintenance records.

d. Signed participant acknowledgments of risks and rules of conduct.

SECTION 7. Material to be repealed is bracketed. New material is underscored. In printing this bill, the County Clerk need not include the brackets, the bracketed material, or the underscoring.

SECTION 8. A zipline or canopy tour in the County Agricultural District that received approval from the County as an accessory use as of the effective date of this ordinance and that is operated on a parcel or multiple contiguous parcels of at least 50 acres must meet the requirements of section 19.40.080.E within 30 days of the effective date of this ordinance, but may otherwise continue as a nonconforming use in accordance with section 19.500.110(C) without obtaining a conditional permit.

A zipline or canopy tour in the County agricultural district that received approval from the County as an accessory use as of the effective date of this ordinance and that is operated on a parcel or multiple contiguous parcels smaller than 50 acres must meet the requirements of section 19.40.080.E within 30 days of the effective date of this ordinance but may otherwise continue as a nonconforming use in accordance with section 19.500.110(C); except that no later than one year from the effective date of this ordinance, the owner or operator of the zipline or canopy tour must either obtain a conditional permit or cease operation of the nonconforming use.

SECTION 9. This ordinance takes effect upon its approval.

APPROVED AS TO FORM AND LEGALITY

/s/ Stephanie M. Chen

STEPHANIE M. CHEN  
Department of the Corporation Counsel  
County of Maui  
LF2020-1800  
Ord Amd 19.04, 19.30A, 19.40 zipline and canopy tours

MICHAEL P. VICTORINO  
Mayor

MICHELE CHOUTEAU MCLEAN, AICP  
Director

JORDAN E. HART  
Deputy Director



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

September 16, 2020

**MEMORANDUM**

**TO:** MAUI PLANNING COMMISSION  
MOLOKAI PLANNING COMMISSION  
LANA'I PLANNING COMMISSION

**FROM:** MICHELE CHOUTEAU MCLEAN, AICP   
PLANNING DIRECTOR

**SUBJECT: A BILL FOR AN ORDINANCE AMENDING THE COMPREHENSIVE  
ZONING CODE RELATING TO CANOPY TOUR AND ZIPLINE  
OPERATIONS**

The attached Resolution 20-90 from the Maui County Council transmits a proposed bill to amend Chapter 19.30A, Maui County Code, to require a Conditional Permit for canopy tour and zipline operations, and add a new chapter specifically to regulate ziplines and canopy tours.

The Department of Planning (Department) is aware of nine zipline operations at ten locations in Maui County, with nine on Maui and one on Lana'i. Details of these operations were provided to the County Council via letter dated May 18, 2020 (attached).

The Department fully supports clarifying and establishing standards for these uses, and offers the following recommendations on the proposed bill:

The same effect could be achieved by amending Chapters 19.30A and 19.40 rather than creating a new chapter.

In Section 2 of the proposed bill, the definitions should be added to Sec. 19.04.040 instead of 19.97.020.

The following definitions should be revised:

“Amusement park” means a park, operated for a commercial purpose, having various devices for entertainment, such as machines to ride, activities, and usually concessions for the sale of food and drink.

"Carnival" means a traveling show having various devices for entertainment, such as machines to ride, activities, and usually concessions for the sale of food and drink.

"Zipline" means a commercial activity in which a participant traverses from one point to another by use of a cable or rope line suspended between support structures."

In Sections 3 and 4 of the proposed bill, the zipline language could be clarified in 19.30A.050.B.10 (permitted accessory uses) and added to 19.30A.060.A.7 (special uses) as follows:

Accessory uses, 19.30A.050.B.10. Open land recreation as follows: hiking; noncommercial camping; fishing; hunting; equestrian activities; rodeo arenas; arboretums; greenways; botanical gardens; guided tours that are accessory to principal uses, such as farm or plantation tours, petting zoos, and garden tours excluding zipines and canopy tours; hang gliding; paragliding; mountain biking; and accessory restroom facilities. If hiking, fishing, hunting, equestrian activities, rodeo arenas, hang gliding, paragliding, or mountain biking are conducted for commercial purposes on the island of Moloka'i, such uses shall have been approved by the Moloka'i planning commission as conforming to the intent of this chapter. Open land recreation uses or structures not specifically permitted by this subsection, [or by] subsection 19.30A.060(A)(7), or chapter 19.40 shall be prohibited; certain open land recreation uses or structures may also be required to obtain a special permit pursuant to chapter 205, Hawaii Revised Statutes.

Special uses, 19.30A.060.A.7. Open land recreation uses, structures, or facilities that do not meet the criteria of subsection 19.30A.050(B)(10), including commercial camping, gun or firing ranges, archery ranges, skeet shooting, paint ball, bungee jumping, skateboarding, rollerblading, rappelling, playing fields, and accessory buildings and structures. Certain open land recreation uses or structures may also be required to obtain a special permit as provided in section 205-6, Hawaii Revised Statutes. The following uses or structures are prohibited: airports, heliports, drive-in theaters, country clubs, drag strips, motor sports facilities, golf courses, [and] golf driving ranges, ziplines and canopy tours.

The standards and conditions should be added to Chapter 19.40, conditional permits, so that they are applied consistently.

Establishment 19.40.070, new section E:

E. Conditional permits for ziplines and canopy tours shall not be issued if a property on which a proposed zipline or canopy tour is to be located is within one thousand feet of any R-0, R-1, R-2, R-3, A-1, A-2, Rural, RU-0.5, RU-1, RU-2, RU-5 or RU-10 district or any farm dwelling or farm labor dwelling.

Conditions, amendments, modifications 19.40.080, new section E:

E. The following conditions shall apply to all conditional permits for ziplines or canopy tours.

1. The hours of operation shall be limited to no earlier than 8:00 a.m. and no later than 5:00 p.m.

2. It is unlawful for any person to consume an intoxicating liquor on or within 1,000 feet of any bungee jumping, zipline, canopy tour or similar thrill activity.
3. The operator shall maintain proof of insurance, inspection reports, maintenance records, and acknowledgements of risks and rules of conduct signed by all participants during the conditional permit's duration, and such records shall be made available to the director upon request.

The Department's administrative rules for the Agricultural District currently require a County Special Use Permit for ziplines and similar "thrill" activities. Should the proposed bill be adopted, then the Department would seek to amend its administrative rules accordingly.

The State Land Use Commission did not have any comments regarding Resolution 20-90. The State Department of Land and Natural Resources Engineering Division shared comments regarding Flood Hazard Zone designation requirements.

#### **Recommendation and Options**

The Department is recommending approval of the proposed bill with the amendments described above. 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.
2. 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.

KATHY L. KAOHU  
County Clerk



JAMES G.M. KRUEGER  
Deputy County Clerk

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'20 JUN 25 P12:20

COUNTY OF MAUI

OFFICE OF THE COUNTY CLERK OFFICE OF THE MAYOR  
COUNTY OF MAUI  
200 SOUTH HIGH STREET  
WAILUKU, MAUI, HAWAII 96793  
www.mauicounty.gov/county/clerk

June 22, 2020

Honorable Michael P. Victorino  
Mayor, County of Maui  
200 South High Street  
Wailuku, Hawaii 96793

APPROVED FOR TRANSMITTAL

*Michael P Victorino* 6/24/20  
\_\_\_\_\_  
Mayor Date

For transmittal to:

Ms. Michele McLean  
Planning Director  
County of Maui  
Wailuku, Hawaii 96793

Dear Ms. McLean:

Transmitted herewith is a certified copy of Resolution No. 20-90,  
which was adopted by the Council of the County of Maui, State of Hawaii,  
on June 19, 2020. Also attached is a copy of Committee Report  
No. 20-66.

Respectfully,

*Kathy L. KaoHu*

KATHY L. KAOHU  
County Clerk

/lks

Enclosure

# Resolution

No. 20-90

REFERRING TO THE LANAI, MAUI, AND MOLOKAI  
PLANNING COMMISSIONS A PROPOSED BILL TO AMEND  
THE COMPREHENSIVE ZONING ORDINANCE RELATING TO  
CANOPY TOUR AND ZIPLINE OPERATIONS

WHEREAS, the Council is considering a proposed bill to amend Chapter 19.30A, Maui County Code, to require a Conditional Permit for canopy tour and zipline operations; and

WHEREAS, Sections 8-8.4 and 8-8.6 of the Revised Charter of the County of Maui (1983), as amended, require that the appropriate planning commissions review proposed land use ordinances and amendments, and provide findings and recommendations to the Council; now, therefore,

BE IT RESOLVED by the Council of the County of Maui:

1. That it refers the proposed bill, entitled "A BILL FOR AN ORDINANCE AMENDING THE COMPREHENSIVE ZONING ORDINANCE RELATING TO CANOPY TOUR AND ZIPLINE OPERATIONS," a copy of which is attached as Exhibit "1," to the Lanai, Maui, and Molokai planning commissions for appropriate action, in accordance with Sections 8-8.4 and 8-8.6 of the Revised Charter of the County of Maui (1983), as amended;
2. That it respectfully requests the Lanai, Maui, and Molokai Planning Commissions transmit their findings and recommendations to the Council as expeditiously as possible; and

3. That certified copies of this resolution be transmitted to the Mayor, the Planning Director, the Lanai Planning Commission, the Maui Planning Commission, and the Molokai Planning Commission.

APPROVED AS TO FORM AND LEGALITY

/s/ Michael J. Hopper

Department of the Corporation Counsel  
County of Maui

pslu:misc:029areso03

**EXHIBIT "1"**

ORDINANCE NO. \_\_\_\_\_

BILL NO. \_\_\_\_\_ (2020)

**A BILL FOR AN ORDINANCE AMENDING THE COMPREHENSIVE ZONING  
ORDINANCE RELATING TO CANOPY TOUR AND ZIPLINE OPERATIONS**

**BE IT ORDAINED BY THE PEOPLE OF THE COUNTY OF MAUI:**

**SECTION 1. Purpose.** The purpose of this ordinance is to require a Conditional Permit for canopy tour and zipline operations to enable the Council to evaluate the appropriateness of the uses in various zoning districts.

**SECTION 2.** Title 19, Maui County Code, is amended by adding a new chapter to be appropriately inserted and to read as follows:

**"Chapter 19.97**

**ZIPLINES AND CANOPY TOURS**

Sections:

- 19.97.010 Purpose.
- 19.97.020 Definitions
- 19.97.030 Districts in which permitted.
- 19.97.040 Restrictions and standards.
- 19.97.050 Administrative rules.
- 19.97.060 Council review.

**19.97.010 Purpose.** The purpose of this chapter is to establish procedures for the regulation of ziplines and canopy tours.

**19.97.020 Definitions.** Whenever used in this chapter, unless the context otherwise requires:

"Canopy tour" means a supervised or guided educational or recreational activity or other aerial adventure course that includes beams, bridges, cable traverses, climbing walls, nets, platforms,

**EXHIBIT "1"**

ropes, swings, seat harnesses, towers, or ziplines that may be installed on or in, or in combination with, trees, poles, portable structures, or buildings, or be part of self-supporting structures.

"Zipline" means a commercial activity in which a participant traverses from one point to another by use of a cable or rope line suspended between support structures.

**19.97.030 Districts in which permitted.** A. Ziplines and canopy tours are permitted in accordance with the provisions established in each zoning district and as provided in this chapter.

B. A conditional permit is required for the operation of a zipline or canopy tour in any district where ziplines and canopy tours are not permitted uses.

C. Ordinances for conditional permits for ziplines or canopy tours may be enacted only for parcels of at least fifty acres or multiple contiguous parcels that together are at least fifty acres; except that the council may enact ordinances for conditional permits for ziplines or canopy tours on parcels or multiple contiguous parcels smaller than fifty acres only by a two-thirds vote of its entire membership on two readings.

D. No more than fifteen conditional permits for ziplines and canopy tours may be in effect at any time.

E. Any zipline or canopy tour in the State agricultural district must obtain a State special permit as provided in section 205-6, Hawaii Revised Statutes.

**19.97.040 Restrictions and standards.** A. Each operator of a zipline or canopy tour permit must name the County as an additional insured in a general liability insurance policy of \$1,000,000 per occurrence and \$2,000,000 in the aggregate, which insurance must include a duty to defend, indemnify, and hold harmless the County if the County is sued as the result of the operation of the zipline or canopy tour.

B. A zipline or canopy tour may not operate before 8:00 a.m. or after 5:00 p.m.

C. No person may consume any intoxicating substance while at the location of a zipline or canopy tour while it is open for business. No person may hold a conditional permit under this chapter and a liquor license at the same time.

D. Each operator of a zipline or canopy must maintain the following records and make them available to the director or the council upon request:

1. Proof of the insurance required by the conditional permit.
2. Inspection reports.
3. Maintenance records.

**EXHIBIT "1"**

4. Signed participant acknowledgments of risks and rules of conduct.

**19.97.050 Administrative rules.** The director may adopt administrative rules to implement the provisions of this chapter.

**19.97.060 Council review.** The council or one of its standing committees must review this chapter within two years of its enactment or at least every two years thereafter."

SECTION 3. Section 19.30A.050, Maui County Code, is amended to read as follows:

**"19.30A.050 Permitted uses.** The following uses and structures are permitted in the agricultural district, provided they also comply with all other applicable laws:

A. Principal uses.

1. Agriculture.

2. Agricultural land conservation.

3. Agricultural parks, pursuant to chapter 171, Hawaii Revised Statutes.

4. Animal and livestock raising, including animal feed lots, and sales yards.

5. Private agricultural parks as defined herein.

6. Minor utility facilities as defined in section 19.04.040 [of this code].

7. Retention, restoration, rehabilitation, or improvement of buildings, sites, or cultural landscapes of historical or archaeological significance.

8. Solar energy facilities, as defined in section 19.04.040, [of this code] and subject to the restrictions of chapter 205, Hawaii Revised Statutes, that are less than fifteen acres, occupy no more than 35 percent of the lot, and are compatible with existing agricultural uses; except that land with soil classified by the land study bureau's detailed land classification as overall (master) productivity rating class D or E need not be compatible with existing agricultural uses.

B. Accessory uses. Uses that are incidental or subordinate to, or customarily used in conjunction with, a permitted principal use, as follows:

1. Two farm dwellings per lot, one of which shall not exceed one thousand square feet of developable area.

**EXHIBIT "1"**

2. One farm labor dwelling per five acres of lot area. On the island of Maui, the owner or lessee of the lot shall meet at least two of the following three criteria:

a. Provide proof of at least \$35,000 of gross sales of agricultural products per year, for the preceding two consecutive years, for each farm labor dwelling on the lot, as shown by State general excise tax forms and federal form 1040 Schedule F filings.

b. Provide certification by the department of water supply that agricultural water rates are being paid if the subject lot is served by the County water system.

c. Provide a farm plan that demonstrates the feasibility of commercial agricultural production.

On the islands of Molokai and Lanai, the owner or lessee of the lot shall meet both of the criteria provided by subsections 19.30A.050(B)(2)(a) and 19.30A.050(B)(2)(b).

3. A maximum of two commercial agricultural structures per lot, subject to parking requirements of chapter 19.36B [of this code].

4. Storage, wholesale and distribution, including barns; greenhouses; storage facilities for agricultural supplies, products and irrigation water; farmer's cooperatives; and similar structures that are customarily associated with one or more of the permitted principal uses or, for the purpose of this section, are associated with agriculture in the County.

5. Processing of agricultural products, the majority of which are grown in the County; this includes the burning of bagasse as part of an agricultural operation.

6. Energy systems, small-scale.

7. Small-scale animal-keeping.

8. Animal hospitals and animal board facilities; if conducted on the island of Molokai, such uses shall have been approved by the Molokai planning commission as conforming to the intent of this chapter.

9. Riding academies; if conducted on the island of Molokai, such uses shall have been approved by the Molokai planning commission as conforming to the intent of this chapter.

10. Open land recreation as follows: hiking; noncommercial camping; fishing; hunting; equestrian activities; rodeo arenas; arboretums; greenways; botanical gardens; guided tours that are accessory to principal uses, such as farm or plantation tours, petting zoos, and garden tours, excluding ziplines and canopy tours; hang gliding; paragliding; mountain biking; and accessory restroom

**EXHIBIT "1"**

facilities. If hiking, fishing, hunting, equestrian activities, rodeo arenas, hang gliding, paragliding, or mountain biking are conducted for commercial purposes on the island of Molokai, such uses shall have been approved by the Molokai planning commission as conforming to the intent of this chapter. Open land recreation uses or structures not specifically permitted by this subsection, [or by] subsection 19.30A.060(A)(7), or chapter 19.40 shall be prohibited; certain open land recreation uses or structures may also be required to obtain a special permit pursuant to chapter 205, Hawaii Revised Statutes.

11. Except on Molokai, bed and breakfast homes permitted under chapter 19.64 [of this code] that are:

a. Operated in conjunction with a bona fide agricultural operation that produced \$35,000 of gross sales of agricultural products for each of the preceding two years, as shown by State general excise tax forms and federal form 1040 Schedule F filings; or

b. In compliance with all of the following criteria, provided that the bed and breakfast home is not subject to a condominium property regime pursuant to chapter 514A or chapter 514B, Hawaii Revised Statutes:

i. The lot was created prior to November 1, 2008.

ii. The lot is comprised of five acres or less.

iii. An approved farm plan has been fully implemented and is consistent with chapter 205, Hawaii Revised Statutes; or

c. Located in sites listed on the State of Hawaii Register of Historic Places or the National Register of Historic Places.

12. Short-term rental homes permitted under chapter 19.65, [of this code,] provided that an approved farm plan has been fully implemented and is consistent with chapter 205, Hawaii Revised Statutes.

13. Parks for public use, not including golf courses, and not including commercial uses, except when under the supervision of a government agency in charge of parks and playgrounds.

14. Family child care homes as defined in section 46-15.35(b), Hawaii Revised Statutes, that are registered pursuant to chapter 346, Hawaii Revised Statutes, and located in a legally permitted farm dwelling.

15. Other uses that primarily support a permitted principal use; however, such uses shall be approved by the

**EXHIBIT "1"**

appropriate planning commission as conforming to the intent of this chapter."

SECTION 4. Section 19.30A.060, Maui County Code, is amended by amending Subsection (A) to read as follows:

"A. The following uses and structures are permitted in the agricultural district if a special use permit, as provided in section 19.510.070, [of this title,] is obtained; except that if a use described in this section also requires a special permit as provided in chapter 205, Hawaii Revised Statutes, and if the land area of the subject parcel is fifteen acres or less, the State special permit shall fulfill the requirements of this section:

1. Additional farm dwellings beyond those permitted by subsection 19.30A.050(B)(1).
2. Farm labor dwellings that do not meet the criteria of subsection 19.30A.050(B)(2).
3. Commercial agricultural structures that do not meet the standards and restrictions of this chapter.
4. Public and quasi-public institutions that are necessary for agricultural practices.
5. Major utility facilities as defined in section 19.04.040 [of this title].
6. Telecommunications and broadcasting antenna.
7. Open land recreation uses, structures, or facilities that do not meet the criteria of subsection 19.30A.050(B)(10), including commercial camping, gun or firing ranges, archery ranges, skeet shooting, paint ball, bungee jumping, skateboarding, rollerblading, playing fields, and accessory buildings and structures. Certain open land recreation uses or structures may also be required to obtain a special permit as provided in section 205-6, Hawaii Revised Statutes. The following uses or structures are prohibited: airports, heliports, drive-in theaters, country clubs, drag strips, motor sports facilities, golf courses, [and] golf driving ranges, ziplines. and canopy tours.
8. Cemeteries, crematories, and mausoleums.
9. Churches and religious institutions.
10. Mining and resource extraction.
11. Landfills.
12. Solar energy facilities that are greater than fifteen acres."

**EXHIBIT "1"**

SECTION 5. Material to be repealed is bracketed. New material is underscored. In printing this bill, the County Clerk need not include the brackets, the bracketed material, or the underscoring.

SECTION 6. A zipline or canopy tour in the County Agricultural District that received approval from the County as an accessory use as of the effective date of this ordinance and that is operated on a parcel or multiple contiguous parcels of at least 50 acres must meet the requirements of Code Section 19.97.040 within 30 days of the effective date of this ordinance, but may otherwise continue as a nonconforming use in accordance with Code Section 19.500.110(C) without obtaining a Conditional Permit.

A zipline or canopy tour in the County Agricultural District that received approval from the County as an accessory use as of the effective date of this ordinance and that is operated on a parcel or multiple contiguous parcels smaller than 50 acres must meet the requirements of Code Section 19.97.040 within 30 days of the effective date of this ordinance but may otherwise continue as a nonconforming use in accordance with Code Section 19.500.110(C); except that no later than one year from the effective date of this ordinance, the owner or operator of the zipline or canopy tour must either obtain a Conditional Permit or cease operation of the nonconforming use. The Conditional Permit need not comply with the application requirements of the following subsections of Code Section 19.510.010(D): 9-17, 20, 21(c), 21(d), 21(e), 21(g), 23, and 24.

SECTION 7. This ordinance takes effect upon its approval.

**EXHIBIT "1"**

APPROVED AS TO FORM AND LEGALITY

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Department of the Corporation Counsel  
County of Maui

pslu:misc:029abil03

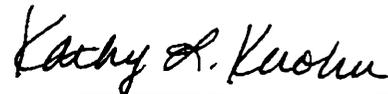
**COUNCIL OF THE COUNTY OF MAUI**

**WAILUKU, HAWAII 96793**

**CERTIFICATION OF ADOPTION**

**It is HEREBY CERTIFIED that RESOLUTION NO. 20-90 was adopted by the Council of the County of Maui, State of Hawaii, on the 19th day of June, 2020, by the following vote:**

<b>MEMBERS</b>	<b>Alice L. LEE Chair</b>	<b>Keari N. W. RAWLINS- FERNANDEZ Vice-Chair</b>	<b>G. Riki HOKAMA</b>	<b>Natalie A. KAMA</b>	<b>Kelly T. KING</b>	<b>Michael J. MOLINA</b>	<b>Tamara A. M. PALTIN</b>	<b>Shane M. SINENCI</b>	<b>Yuki Lei K. SUGIMURA</b>
<b>ROLL CALL</b>	<b>Aye</b>	<b>Aye</b>	<b>Aye</b>	<b>Aye</b>	<b>Aye</b>	<b>Aye</b>	<b>Aye</b>	<b>Aye</b>	<b>Aye</b>



\_\_\_\_\_  
COUNTY CLERK

**COUNCIL OF THE COUNTY OF MAUI**  
**PLANNING AND SUSTAINABLE LAND**  
**USE COMMITTEE**

June 19, 2020

**Committee**  
**Report No. 20-66**

Honorable Chair and Members  
of the County Council  
County of Maui  
Wailuku, Maui, Hawaii

Chair and Members:

Your Planning and Sustainable Land Use Committee, having met on May 4, 2020, and May 20, 2020, makes reference to County Communication 19-94, from Councilmember Yuki Lei K. Sugimura, relating to canopy tour and zipline operations in the agricultural district.

By correspondence dated May 13, 2020, Councilmember Sugimura transmitted a proposed resolution entitled "REFERRING TO THE LANAI, MAUI, AND MOLOKAI PLANNING COMMISSIONS A PROPOSED BILL TO AMEND FOR THE COMPREHENSIVE ZONING ORDINANCE RELATING TO CANOPY TOUR AND ZIPLINE OPERATIONS."

The purpose of the proposed resolution is to transmit to the Planning Commissions a proposed bill entitled "A BILL FOR AN ORDINANCE AMENDING THE COMPREHENSIVE ZONING ORDINANCE RELATING TO CANOPY TOUR AND ZIPLINE OPERATIONS."

The purpose of the proposed bill is to establish regulatory standards for canopy tours and ziplines.

Your Committee notes ziplining is an increasingly popular visitor attraction, and it is not specifically referenced in the Comprehensive Zoning Ordinance. Your Committee further notes eight canopy tour and zipline operations have been formally recognized by the County as accessory uses on property located in the Agricultural Zoning District, making them lawful without the need for permitting or public review.

The bill would establish the following definitions:

**COUNCIL OF THE COUNTY OF MAUI**  
**PLANNING AND SUSTAINABLE LAND**  
**USE COMMITTEE**

Page 2

**Committee**  
**Report No. 20-66**

“Canopy tour’ means a supervised or guided educational or recreational activity or other aerial adventure course that includes beams, bridges, cable traverses, climbing walls, nets, platforms, ropes, swings, seat harnesses, towers, or ziplines that may be installed on or in, or in combination with, trees, poles, portable structures, or buildings, or be part of self-supporting structures.”

“Zipline’ means a commercial activity in which a participant traverses from one point to another by use of a cable or rope line suspended between support structures.”

The bill would also state that canopy tour and zipline operations are not accessory uses in the Agriculture Zoning District and that a Conditional Permit, approved by ordinance, would be required for canopy tour and zipline operations in any zoning district.

Your Committee received oral and written testimony generally supporting the proposed resolution. Supporters stated the negative impacts from ziplines and canopy tours cause a burden to surrounding properties’ permitted agricultural uses, including livestock raising and farm dwellings.

The new chapter to be established by the bill requires insurance, limits operating hours, and bans the ingestion of intoxicating substances.

The Planning Director stated support for the intent of the proposed resolution.

Your Committee voted 6-0 to recommend adoption of the proposed resolution and filing of the communication. Committee Chair Paltin, Vice-Chair Sinenci, and members King, Molina, Rawlins-Fernandez, and Sugimura voted “aye.” Committee member Lee was excused.

Your Committee is in receipt of a revised proposed resolution, entitled “REFERRING TO THE LANAI, MAUI, AND MOLOKAI PLANNING

COUNCIL OF THE COUNTY OF MAUI  
**PLANNING AND SUSTAINABLE LAND  
USE COMMITTEE**

Page 3

Committee  
Report No. 20-66

COMMISSIONS A PROPOSED BILL TO AMEND THE COMPREHENSIVE ZONING ORDINANCE RELATING TO CANOPY TOUR AND ZIPLINE OPERATIONS," approved as to form and legality by the Department of the Corporation Counsel, incorporating nonsubstantive revisions.

Your Planning and Sustainable Land Use Committee  
RECOMMENDS the following:

1. That Resolution 20-90, attached hereto, entitled "REFERRING TO THE LANAI, MAUI, AND MOLOKAI PLANNING COMMISSIONS A PROPOSED BILL TO AMEND THE COMPREHENSIVE ZONING ORDINANCE RELATING TO CANOPY TOUR AND ZIPLINE OPERATIONS," be ADOPTED; and
2. That County Communication 19-94 be FILED.

This report is submitted in accordance with Rule 8 of the Rules of the Council.

*Tamara M. Paltin*

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TAMARA PALTIN, Chair

**COUNCIL OF THE COUNTY OF MAUI**

**WAILUKU, HAWAII 96793**

**CERTIFICATION OF ADOPTION**

**It is HEREBY CERTIFIED that the recommendations contained in COMMITTEE REPORT NO. 20-66 were adopted by the Council of the County of Maui, State of Hawaii, on the 19th day of June, 2020, by the following vote:**

<b>MEMBERS</b>	<b>Alice L. LEE Chair</b>	<b>Keani N. W. RAWLINS-FERNANDEZ Vice-Chair</b>	<b>G. Riki HOKAMA</b>	<b>Natalie A. KAMA</b>	<b>Kelly T. KING</b>	<b>Michael J. MOLINA</b>	<b>Tamara A. M. PALTIN</b>	<b>Shane M. SINENCI</b>	<b>Yuki Lei K. SUGIMURA</b>
<b>ROLL CALL</b>	<b>Aye</b>	<b>Aye</b>	<b>Aye</b>	<b>Aye</b>	<b>Aye</b>	<b>Aye</b>	<b>Aye</b>	<b>Aye</b>	<b>Aye</b>



\_\_\_\_\_  
COUNTY CLERK

MICHAEL P. VICTORINO  
 Mayor  
 MICHELE CHOUTEAU MCLEAN, AICP  
 Director  
 JORDAN E. HART  
 Deputy Director



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

May 18, 2020

Honorable Michael P. Victorino  
 Mayor, County of Maui  
 200 South High Street  
 Wailuku, HI 96793

**APPROVED FOR TRANSMITTAL**

*Michael P. Victorino*  
 Mayor  
 5/19/20  
 Date

For Transmittal to:

Honorable Tamara Paltin  
 County Council, County of Maui  
 200 South High Street  
 Wailuku, HI 96793

Dear Councilmember Paltin:

**SUBJECT: ZONING STANDARDS FOR CANOPY TOUR AND ZIPLINE OPERATIONS IN THE AGRICULTURE DISTRICT (PSLU-29)**

Thank you for your letter dated May 8, 2020 regarding canopy tours and zipline operations in Maui County. In the past, the county allowed canopy tour and zipline operations as accessory uses, usually when they were proposed as guided tours of an ongoing principal agricultural use.

Currently, it appears that there are a total of nine zipline operations at ten locations in Maui County, with nine on Maui and one on Lana'i..

Name of Zipline	Location/Address	TMK	State District	County Zoning	Approval
Skyline Eco-Adventures "Skyline Hawai'i" - Ka'anapali Location	Kahoma Valley 2580 Keka'a Drive Ka'anapali	245021002	Conservation Agriculture	Agriculture	05/26/2006  Ex. 1
Skyline Eco-Adventures "Skyline Hawai'i" - Haleakalā Location	Near Crater Rd, Haleakalā  18303 Haleakalā Hwy, Kula	223005004	Conservation Agriculture	Agriculture Interim	07/29/2002, 08/21/2012  Ex. 2

Name of Zipline	Location/Address	TMK	State Zoning	County Zoning	Approval
Kapalua Zipline	Honolua 500 Office Road, Lāhainā (Check in Location)	243001001	Conservation Agriculture	Agriculture Interim	06/29/2007  Ex. 3
Maui Zipline Company	Maui Tropical Plantation  1670 Honoapiilani Hwy, Wailuku	236005007 (Makai)	Agriculture Urban	Waikapu Country Town (Ord. 4998)	08/25/2010  Ex. 4
Paradise Eco- Adventures	Maui Dragon Fruit Farm  833 Punakca Lp Lāhainā	247001044	Agriculture	Agriculture	10/15/2010  Ex. 5
NorthShore Zipline	Camp Maui  2065 Kauhikoa Rd. Ha'ikū	227012086	Agriculture	Agriculture	12/06/2018 (Approval has been appealed to BVA)  Ex. 6
Lāna'i Adventure Park	Four Seasons -- Koele  478 Lauhala Pl Lāna'i City	249018003	Agriculture	Project District -- Koele Interim	04/02/2019  Ex. 7
Pi'iholo Ranch Zipline	Pi'iholo Ranch  799 Pi'iholo Rd, Makawao	224012080	Agriculture	Agriculture	No approval found.
Flyin Hawaiian Zipline	Maui Tropical Plantation  1670 Honoapiilani Hwy, Wailuku	236005007 (Mauka)	Agriculture Urban	Waikapu Country Town (Ord. 4998)	No approval found for this operation.
Jungle Zipline Maui	50 East Waipio Rd, Ha'ikū	229005039	Agriculture SMA	Agriculture	No Approval. Violation is on appeal.

Figure 1. Table of canopy tour/zipline businesses and locations in the County of Maui (2006-2019).

Honorable Tamara Paltin  
May 18, 2020  
Page 3

Between 2006 and 2019, the Department issued seven zipline operation approval letters, and the Lānaʻi Planning Commission issued one in 2019 (Exhibits 1-7). Previous approval letters allowed canopy tours and zipline operations on properties with the County zoning designation of Agriculture as an accessory use to the principle permitted agricultural use on the lot: guided tours of agricultural operations.

The approval letter from the Department dated 02/17/2012 for Waihe'e Valley Farm - TMK: (2) 3-2-004:001, marked as Exhibit 8, is not listed in this chart as the owner has not pursued canopy tour and zipline operations on the lot.

We hope that this letter provides the information that you were seeking. If you have any questions or need additional information, please feel free to contact me.

Sincerely,



MICHELE MCLEAN, AICP  
Planning Director

Attachments

MCM:JSR:JMCT:CIR:ATW

S:\ALL\APOV\Zipline\200518\_Response\_to\_PSLU\_Ziplines.docx

ALAN M. ARAKAWA  
iLayou

MICHAEL W. FOLEY  
Director

WAYNE A. BOTEILHO  
Deputy Director



COUNTY OF MAUI  
**DEPARTMENT OF PLANNING**

May 26, 2006

Mr. Daniel Boren  
Skyline Eco-Adventures  
P.O. Box 880518  
Pukalani, Hawaii 96788

Dear Mr. Boren:

RE: PROPOSED HIKING AND ZIPLINE TOURS WITHIN THE AGRICULTURAL DISTRICT LOCATED OFF OF HONOAPIILANI HIGHWAY IN THE VICINITY OF KAHOMA STREAM, LAHAINA, MAUI, HAWAII; TMK'S: (2) 4-5-021:002, 006 AND 024

Thank you for your re-submittals of January 24, and February 22, 2006.

Based on of the information provided, more than half of the aggregate area will be in agricultural uses. A recent inspection by Ms. Tammy Osurman, Zoning Inspector, verified the agricultural use of the property (i.e. raising of cattle and agricultural land conservation).

Therefore, your proposed open recreational use will be permitted provided that copies of the access easements over the State and private lands to the subject parcels are submitted for our files.

Furthermore, this is confirming your discussion with us that our concerns relative to parking will be addressed by opening an office at the Kaanapali Fairway Shops for "drop-in" participants and that you will be transporting your clients to and from the staging area for your tours.

Should you have any questions regarding this letter, please contact Francis Cerizo, Staff Planner, at 270-7253.

Sincerely,

Handwritten signature of Michael W. Foley in black ink.

MICHAEL W. FOLEY  
Planning Director

JAMES "KIMO" APANA  
Mayor

JOHN E. MIN  
Director

CLAYTON I. YOSHIDA  
Deputy Director



COUNTY OF MAUI  
**DEPARTMENT OF PLANNING**

July 29, 2002

Mr. Daniel Boren  
P. O. Box 790369  
Paia, Hawaii 96779

Dear Mr. Boren:

RE: PROPOSED HIKING TOUR WITHIN THE AGRICULTURE DISTRICT  
TMK:2-3-005:004

Thank you for your June 17, 2002 letter.

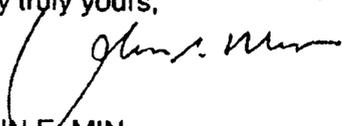
The proposed project provides hiking tours using hiking trails and Skylines, also known as "ziplines", to traverse impassable areas in the identical manner as a swinging bridge. You state that these "ziplines" will account for about ten percent (10%) of the total ground hike with the existing eucalyptus trees used as the connecting points for the "ziplines". Also, there should be minimal visual impact with the small size of the apparatus and no impact on surrounding vegetation.

You also state that the tours will begin and end at the Haleakala Ranch Outpost. Please note that adequate parking and landscaping for the parking area will be required.

Based on your representations, we find that the proposed use will be permitted as an open land recreation use.

If you have any further questions, please contact Francis Cerizo, Staff Planner, of this office at 270-7253.

Very truly yours,

  
JOHN E. MIN  
Planning Director

**EXHIBIT 2**

250 SOUTH HIGH STREET, WAILUKU, MAUI, HAWAII 96793  
PLANNING DIVISION (808) 270-7735; ZONING DIVISION (808) 270-7253; FACSIMILE (808) 270-7634

*Quality Seamless Service - Now and for the Future*

Mr. Daniel Boren  
July 29, 2002  
Page 2

JAA:nsg

xc: Clayton I. Yoshida, AICP, Deputy Planning Director  
Francis Cerizo, Staff Planner  
Charley Villalon, Zoning Inspector  
Jay Arakawa, Zoning Inspector  
02/ZAED TMK File  
02/ZAED General File  
s:\zoning\reply\02reply\boren.ziplines

EXHIBIT 2

ALAN M. ARAKAWA  
Mayor

WILLIAM R. SPENCE  
Director

MICHELE CHOUTEAU McLEAN  
Deputy Director



COUNTY OF MAUI

## DEPARTMENT OF PLANNING

August 21, 2012

Mr. Rory Frampton  
340 Napoko Place  
Kula, Hawaii 96790

Dear Mr. Frampton:

**SUBJECT: SKYLINE ECO-ADVENTURE GUIDED FARM TOUR  
301 HOSMER GROVE ROAD, KULA, HAWAII; TMK: (2) 2-3-005:004**

Thank you for your letter dated July 30, 2012. This letter included representations on how the guided tour will be operated, a sample of the information that will be shared on the existing permitted uses, and your request to confirm that the operation of a zip line as part of a guided farm tour at the Skyline Exo-Adventure, would be an approved accessory use in the agricultural district under Maui County Code MCC 19.30A.050(B)(11).

Based on the representations made in your July 30, 2012 letter, we find that your proposed guided tour would be in compliance with Chapter 205 Hawaii Revised Statutes and Chapter 19.30A of the Maui County Code, and that the proposed guided tour is a permitted accessory use with no additional land use permit requirements. However, the following conditions shall apply:

1. All other Federal, State and County rules and regulations shall be met.
2. The tour shall be guided and be a tour of the existing principal permitted uses being conducted on the land. The principal permitted uses for this property are listed under Chapter 19.30A.050(A) of the Maui County Code.
3. Unless a County Special Use Permit is obtained, buildings built for the use of the guided tour are not allowed.
4. A total of six (6) parking stalls shall be provided. Five (5) of the stalls may be graveled and one (1) stall shall be paved with asphalt, a concrete surface, or equivalent.

Should you have any questions or concerns, you may contact Paul Critchlow, Staff Planner at [paul.critchlow@mauicounty.gov](mailto:paul.critchlow@mauicounty.gov) or 270-5795.

Sincerely,

A handwritten signature in black ink, appearing to read "William Spence".

WILLIAM SPENCE  
Planning Director

xc: Development Services Administration  
ZAED Planners and Inspectors (PDF)  
TMK (2) 2-3-005:004 (KIVA Related Documents & Project File)  
12/General File

### EXHIBIT 2

WRS:AHS:FAC:PBC:ckk  
K:\WP\_DOCS\PLANNING\LTR\2011\GuidedTourZiplineKula\Response.doc

250 SOUTH HIGH STREET, WAILUKU, MAUI, HAWAII 96793  
MAIN LINE (808) 270-7735; FACSIMILE (808) 270-7634

CURRENT DIVISION (808) 270-8205; LONG RANGE DIVISION (808) 270-7214; ZONING DIVISION (808) 270-7253

CHARMAINE TAVARES  
Mayor  
JEFFREY S. HUNT  
Director  
COLLEEN M. SUYAMA  
Deputy Director



RECEIVED  
JUL 09 2007

COUNTY OF MAUI  
DEPARTMENT OF PLANNING

June 29, 2007

Mr. Ryan Churchill  
Maui Land & Pineapple Company, Inc.  
P.O. Box 187  
Kahului, Hawaii 96733

Dear Mr. Churchill:

RE: PROPOSED ACCESSORY STRUCTURES WITHIN THE  
AGRICULTURAL DISTRICT FOR PROPERTY LOCATED OFF OF  
HONOAPIILANI HIGHWAY NEXT TO KAHANANUI STREAM,  
MAILEPAI, LAHAINA, MAUI, HAWAII; TMK (2) 4-3-001:001

By letter dated January 24, 2007, the Department confirmed that a zipline was a permitted accessory use, incidental to the agricultural uses occurring on the subject property. Based on the representations made at our meeting on May 1, 2007, and the additional submittal of your map and project layout on the same day, your additional accessory structures will be permitted, without obtaining any land use permits.

Should you have any questions regarding this letter, you may contact Trisha Kapua'ala, Staff Planner, at [Trisha.Kapuaala@mauicounty.gov](mailto:Trisha.Kapuaala@mauicounty.gov) or 270-8008.

Sincerely,

Handwritten signature of Jeffrey S. Hunt in black ink.

JEFFREY S. HUNT, AICP  
Planning Director

xc: Trisha Kapua'ala, Staff Planner

JSH:AHS:TMK.gen

07/General File  
07/ZAED TMK File

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250 SOUTH HIGH STREET, WAILUKU, MAUI, HAWAII 96793  
MAIN LINE (808) 270-7735; FACSIMILE (808) 270-7634  
CURRENT DIVISION (808) 270-8205, LONG RANGE DIVISION (808) 270-7214, ZONING DIVISION (808) 270-7253

EXHIBIT 3

CHARMAINE TAVARES  
Mayor

KATHLEEN ROSS AOKI  
Director

ANN T. CUA  
Deputy Director



COUNTY OF MAUI  
**DEPARTMENT OF PLANNING**

August 25, 2010

Mr. Duane Ting  
Flying Hawaiian Zipline, LLC  
1962 Wells Street  
Wailuku, Hawaii 96793

Dear Mr. Ting:

**RE: GUIDED PLANTATION CANOPY TOUR LOCATED AT THE MAUI TROPICAL PLANTATION AT 1670 HONOAPIILANI HIGHWAY, WAIKAPU, WAILUKU, MAUI, HAWAII; TMK: (2) 3-6-005:007**

We apologize for our delayed response, and any inconvenience this may have caused.

In your letter of June 21, 2010, you made the following representations in accordance with Maui County Code (MCC), §19.86.010 "Purpose and intent" of the Wailuku-Kahului Project District 5 (Maui Tropical Plantation):

1. A plantation canopy tour will bring excitement from the visitor industry to Hawaiian Tropical Agriculture and aquaculture by offering a different perspective of agriculture fields, settings, and operations while in a tropical agricultural setting. [MCC, §19.86.010(A)]
2. This product is responding to customer demands of fun, new and unique ways to experience Hawaii's agriculture and will ensure the financial viability of the Maui Tropical Plantation and will allow it to continue operating as a first-class theme park. [MCC, §19.86.010(B)]
3. This will provide an additional 25 job opportunities to residents of Maui County while insuring the continued employment of the current Maui Tropical Plantation (MTP) employees. [MCC, §19.86.010(C)]

250 SOUTH HIGH STREET, WAILUKU, MAUI, HAWAII 96793  
MAIN LINE (808) 270-7735; FACSIMILE (808) 270-7634  
CURRENT DIVISION (808) 270-8205. LONG RANGE DIVISION (808) 270-7214; ZONING DIVISION (808) 270-7253

EXHIBIT 4

Mr. Duane Ting  
August 25, 2010  
Page 2

4. A guided plantation canopy tour will provide physical stimulation and will open a gateway for educational experiences and inspiration by supplying a different opportunity to view agricultural sites, products, operations, birds and fish. With educational placards and informative briefings being part of the tour, each participant will leave with a better understanding and appreciation of the history of tropical agriculture, the animals, and people of Hawaii. Participants will also actively engage in agriculture research by helping to identify and locate newly introduced and invasive crop damaging species from our unique aerial perspective. [MCC, §19.86.010(D)]

Secondly, you made the following representations in accordance with MCC, §§19.86.020(B)(7) and (B)(10) "Agricultural District" [Wailuku-Kahului Project District 5 (Maui Tropical Plantation)]:

1. With the advantage of having an above ground perspective, this canopy tour will enable us to have facilities that can better monitor and research crop damaging birds and other invasive species such as the Parrot Billed Finch and their effects towards Hawaii's agriculture. The tour will provide educational information and the opportunity for many more individuals to see an up-close and personal look at harmful behaviors and actions that lead to Maui's agriculture crops being damaged.
2. Throughout this canopy tour, we will have educational information presented by placards and guide lectures about the variety of plants, animals, and fish that can be seen in this extremely unique fashion. Our last line will give a bird's eye view of tilapiine cichlids, the third most important fish in aquaculture after carps and salmonids. In concurrence, Section 19.86.20 Subsection B-2, allows the raising of livestock including, but not limited to, poultry, bees, fish and other animal or aquatic life that are propagated for economic or personal use. Each participant will have the opportunity to contribute to the raising and development of tilapiine cichlids by participating in daily feedings.

Lastly, you made the following representations in accordance with MCC, §§19.86.030(A)(1) and (A)(2) "Commercial District" [Wailuku-Kahului Project District 5 (Maui Tropical Plantation)]:

1. This will be a tour of the plantation fields and its daily operation.

EXHIBIT 4

Mr. Duane Ting  
August 25, 2010  
Page 3

2. Each guided tour will have the opportunity to see firsthand how Hawaii's crops are cultivated and produced, while helping to monitor and record daily changes, damages, improvements and other actions that only an aerial view can provide.

Based on the above mentioned representations, the Department finds that your proposed project is in compliance with MCC, §19.86 and will be permitted, and no land use permits will be required.

Should you have any questions or concerns, you may contact Trisha Kapua'ala, Staff Planner, at [Trisha.Kapuaala@mauicounty.gov](mailto:Trisha.Kapuaala@mauicounty.gov) or 270-8008.

Sincerely,



FRANCIS CERIZO  
Planner VI

For AARON SHINMOTO  
Planning Program Administrator

xc: Development Services Administration  
ZAED Planners (via e-mail)  
Inspectors (via e-mail)  
TMK 2360050070000 (KIVA Land System Related Document, Project File)  
10/General File  
FAC:TMLK  
K:\WP\_DOCS\PLANNING\LTR\2010\1645\_GuidedCanpyTourMauTropPlan\Response.doc

EXHIBIT 4

CHARMAINE TAVARES  
Mayor

KATHLEEN ROSS AOKI  
Director

ANN T. CUA  
Deputy Director



COUNTY OF MAUI  
**DEPARTMENT OF PLANNING**

October 15, 2010

Ms. Crystal Schmitt  
Maui Dragon Fruit Farm, LLC  
100 Waipuhia Place  
Haiku, Hawaii 96708

Dear Ms. Schmitt:

**SUBJECT: GUIDED FARM TOUR (ZIPLINE TOUR) LOCATED AT THE MAUI DRAGON FRUIT FARM, 833 PUNAKEA LOOP, LAHAINA, HAWAII, TMK: (2) 4-7-001:044**

In your letter dated September 30, 2010, you made the following representations to seek confirmation that the use of a zipline operation, as part of a guided farm tour at the Maui Dragon Fruit Farm would be an approved accessory use in the agricultural district, Maui County Code MCC 19.30A.050(B)(11).

1. The Maui Dragon Fruit Farm occupies about 27.5 acres. The main commercial crop will be dragon fruit, there will be other types of fruits, vegetables, melons, tropical flowers, plants grown on the farm, and a variety of value-added products derived from the crops.
2. A USDA grant has been acquired to build the first commercial aquaponic farm on site, raising organic fish and vegetables together.
3. One of the primary missions of the Maui Dragon Fruit Farm is to introduce dragon fruit as a new commercial agricultural crop for Maui, as an ideal replacement crop for pineapple. The belief is that commercial dragon fruit cultivation will help Maui to preserve its agricultural activities since pineapple is being phased out as one of the main crops on the island.
4. The zip line farm tour would help in promoting dragon fruit as a new commercial crop as it will offer visitors an in-depth educational tour about agricultural activities on West Maui, its history, its future, and your vision of the commercially viable and sustainable organic farming communities on the island.

The following representations were made regarding the proposed operation of the Maui Dragon Fruit Farm zipline tour.

1. The departure platforms for the zipline tour will also be used as educational stations. Each zipline section will offer different educational topics, to include educational placards, informative briefings, and hand-on farming activities will be offered to all participants as part of the tour. The plan is to build a total of six educational stations.
  - A. The first educational station will focus on dragon fruit cultivation and will be located close to the dragon fruit fields. In this area of the tour, there will be a total of 16 varieties of the dragon fruit cultivated in those fields. People will be able to learn about dragon fruits, its growth patterns, its nutritional and medicinal benefits, and its diverse varieties. People will have a chance to participate in tending the fields, plantings, harvesting, and tasting the fruit.

**EXHIBIT 5**

Ms. Crystal Schmitt  
October 15, 2010  
Page 2

- B. The second education station will focus on Hawaiian flora and fauna, Hawaiian native plants, and agricultural history in that region. This area will allow visitors to participate in native tree planting projects.
  - C. The third educational station will focus on traditional organic soil farming and will be located near the pumpkin and melon fields. In this area, visitors will have an opportunity to learn about organic soil farming, from soil building, insect control, to organic fertilizing, and be able to participate in activities like weeding, planting, harvesting, and tasting.
  - D. The fourth educational station will focus on aquaponic farming and be located on the aquaponic side of the farm, where fish and vegetables are raised together. In this area visitors will have a chance to tour the USDA's prize winning aquaponic farm design.
  - E. The fifth educational station will focus on forest restoration and will be located near the Native Hawaiian plant trail. In this area visitors will learn about Hawaii forestry, including forest restoration, new habitat establishment, nurturing new pollinators, and have a chance to participate in forest tree planting activities.
  - F. The sixth educational station will focus on sustainability and be located right above the "Maui Sustainability Learning Center", a non-for-profit agricultural learning center where educational sessions will be offered regularly about aquaponics, organic farming, sustainability, permaculture, Hawaiian culture, ecology, and renewable energy, etc.
2. This tour is in response to customer demands of fun, new, and unique ways to experience Hawaii and to learn about Hawaii's agriculture, aquaculture, and forestry. The operation of this tour will provide approximately 20 job opportunities for Maui residents. The aerial view will also help to monitor and observe the fields, its changes, its characteristics, improvements, and damages that look different from the ground view.

Based on the above mentioned representations, the Department finds that your proposed project is in compliance with Chapter 205, Hawaii Revised Statutes and §19.30A, and will be a permitted accessory use with no land use permits required.

Should you have any questions or concerns, you may contact Paul Critchlow, Staff Planner, at [paul.critchlow@mauicounty.gov](mailto:paul.critchlow@mauicounty.gov) or 270-5795.

Sincerely,

  
AARON SHINMOTO  
Planning Program Administrator

For: KATHLEEN ROSS AOKI  
Planning Director

cc: Development Services Administration  
ZAEO Planners (via e-mail)  
inspectors (via e-mail)  
TMK 2470010440000 (KIVA Land System Related Document, Project File)  
10/General File  
AHS:FAC:PBC:dkk  
K:\WP\_DOCS\PLANNING\LTR\2010\GuidedFarmZipLineTour\_MauiDragonFruitFarmResponse.doc

EXHIBIT 5

ALAN M. ARAKAWA  
Mayor

MICHELE CHOUTEAU MCLEAN  
Director

JOSEPH W. ALUETA  
Deputy Director



COUNTY OF MAUI  
DEPARTMENT OF PLANNING

December 6, 2018

Ms. Kimi Yuen, Principal  
PBR Hawaii  
1001 Bishop St., Ste. 650  
Honolulu, HI 96813-3484

Dear Ms. Yuen,

**SUBJECT: ON BEHALF OF D&S VENTURES, LLC; USE DETERMINATION FOR  
PROPERTY LOCATED AT 2065 KAHIKOA ROAD, HAIKU, MAUI,  
HAWAII; TMK: (2) 2-7-012:086-0000 (PORTION)**

We are writing in response to your letter dated December 5, 2018 (attached hereto), by which you ask whether particular uses and activities are permitted as of right, or whether land use permits or approvals may be required, for the property at 2065 Kauhikoa Rd Haiku, County of Maui, Hawai'i and identified by Tax Map Key: (2) 2-7-012:086-0000 (the "Property"). In short, if you conduct the proposed uses and activities as represented in your letter, you will not need County or State land use approvals.

The property's relevant use designations are as follows: 1) State: Agriculture; and 2) Maui County Zoning: Agriculture. Those designations allow the proposed uses as follows: 1) State: HRS 205-4.5(a)(8) allows "Retention, restoration, rehabilitation, or improvement of buildings or sites of historic or scenic interest"; and 2) Zoning: MCC 19.30A.050.A.2 allows "Agricultural land conservation"; and MCC19.30A.050.A.7 allows "Retention, restoration, rehabilitation, or improvement of buildings, sites or cultural landscapes of historical or archaeological significance." As for the particular use of "challenge course" (including zip-lines, rope bridges, and related facilities): those activities are a re-creation of training facilities of the type that existed at Marine bases that were active when Camp Maui was, and it is part of the A.7 principal use.

If you conduct uses or activities that differ from those represented in your request letter, those differing uses or activities might not be permitted uses, and could be violations of state and county land use regulations, subject to fines and injunctive relief.

Thank you for your inquiry. Should you have any questions or concerns, you may contact Paul Critchlow, Staff Planner, at [paul.critchlow@co.maui.hi.us](mailto:paul.critchlow@co.maui.hi.us) or (808) 270-5795.

Sincerely,

JOHN S. RAPACZ  
Planning Program Administrator

For: MICHELE C. McLEAN  
Planning Director

EXHIBIT 6

MICHAEL P. VICTORINO  
Mayor

MICHELE CHOUTEAU MCLEAN, AICP  
Director

JORDAN E. HART  
Deputy Director



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

April 2, 2019

Ms. Karlynn Fukuda  
Executive Vice President  
Munekiyo Hiraga  
305 High Street, Suite 104  
Wailuku, Hawaii 96793

Dear Ms. Fukuda:

**SUBJECT: APPROVAL BY THE LANAI PLANNING COMMISSION OF A PROJECT DISTRICT PHASE 2 APPROVAL (PH2) AND COUNTY SPECIAL USE PERMIT (CUP) APPLICATION FOR THE ADVENTURE CENTER AT KOELE ON APPROXIMATELY 30 ACRES OF LAND, LANAI, HAWAII; TMK 4-9-018:003 (POR.) (CUP 2018/0001) (PH2 2018/0001)**

At its regular meeting on November 28, 2018, the Lanai Planning Commission (Commission) voted to defer action on the above applications and subsequently at its regular meeting on March 20, 2019, the Commission voted to approve County Special Use Permit (CUP 2018/0001) and Project District Phase 2 Approval (PH2 2018/0001) subject to the following conditions:

1. That the Project District Phase 2 Approval and County Special Use Permit shall be valid until **November 30, 2023**, subject to extension by the Planning Director (Director) upon a timely request for extension filed within 90 days prior to its expiration. The Director shall forward the time extension request to the Commission for review and approval and shall require a public hearing on the time extension by the Commission.
2. That the Project District Phase 2 Approval and County Special Use Permit shall not be transferred without the prior written approval of the Director.
3. That the applicant, its successors and permitted assigns shall exercise reasonable due care as to third parties with respect to all areas affected by subject County Special Use Permit and shall procure at its own cost and expense, and shall maintain during the entire period of this

County Special Use Permit, a policy or policies of comprehensive liability insurance in the minimum amount of ONE MILLION AND NO/100 DOLLARS (1,000,000.00) naming the County of Maui as an additional named insured, insuring and defending the applicant and County of Maui against any and all claims or demands for property damage, personal injury and/or death arising out of this permit, including but not limited to: (1) claims from any accident in connection with the permitted use, or occasioned by any act or nuisance made or suffered in connection with the permitted use in the exercise by the applicant of said rights; and (2) all actions, suits, damages and claims by whomsoever brought or made by reason of the non-observance or non-performance of any of the terms and conditions of this permit. Proof of a policy naming the County of Maui as an additional named insured shall be submitted to the Department within 90 calendar days from the date of transmittal of the Decision and Order. The insurance policy shall remain in full force and effect until the permitted work has been completed and accepted by the County.

4. That full compliance with all applicable governmental requirements shall be rendered.
5. That the applicant shall submit to the Department a detailed report addressing its compliance with the conditions established with the subject Project District Phase 2 Approval and County Special Use Permit. The Compliance Report shall be submitted to the Department with the request for time extension.
6. That the applicant shall develop the property in substantial compliance with the representations made to the Commission in obtaining the Project District Phase 2 Approval and County Special Use Permit. Failure to so develop the property may result in the revocation of the permit.
7. That all exterior illumination shall consist of fully shielded downward lighting throughout the project.
8. That appropriate measures shall be taken during construction to mitigate the short-term impacts of the project relative to soil erosion from wind and water, ambient noise levels, and traffic disruptions.

9. That in the event historic resources, including human skeletal remains, are identified during routine construction activities, all work shall cease in the immediate vicinity of the find, the find shall be protected from additional disturbance, and the Department of Land and Natural Resources-State Historic Preservation Division (DLNR-SHPD), Maui Section, shall be contacted immediately.
10. That to the satisfaction of the Department, construction of the proposed project shall be initiated by **November 30, 2019**. Initiation of construction shall be determined to be construction of offsite improvements, issuance of any applicable foundation permit and initiation of construction of the foundation, issuance of a grading permit and initiation of grading, or issuance of any applicable building permit whichever occurs first. Failure to comply within this one year period will automatically terminate this Project District Phase 2 Approval and County Special Use Permit unless a time extension is requested no later than 90 days prior to the expiration of said one year period. The Director shall review and approve a time-extension request but may forward said request to the Commission for review and approval.
11. That to the satisfaction of the Department, the construction of the project shall be completed within one year after the date of its initiation. Evidence of the date of the completion of construction shall be submitted to the Department. Failure to complete construction of this project will automatically terminate the subject Project District Phase 2 Approval and County Special Use Permit, unless a time extension request is filed with the Department. A time extension shall be requested no later than 90 days prior to the completion deadline. The Director shall review and approve the time-extension request but may forward said request to the Commission for review and approval.
12. That unrestricted access shall be provided to the Koloiki Ridge Trail and the Kaiholena Trail from the Welcome Center to the original trail heads.

The conditions of the Project District Phase 2 Development Approval shall be enforced pursuant to Project District Standards. Further, the County Special Use Permit conditions will be enforced pursuant to the provisions of Chapter 19.530, §19.530.030 of the Maui County Code, as amended, 1980; and the *Rules for Administrative Procedures and Civil Fines for Violations of Titles 12, 14, 16, 19, and 20 of the Maui County Code*.

Ms. Karlynn Fukuda  
April 2, 2019  
Page 4

Thank you for your cooperation. If additional clarification is required, please contact Current Planning Supervisor Ann Cua at [ann.cua@mauicounty.gov](mailto:ann.cua@mauicounty.gov) or at (808) 270-7521 or Staff Planner Kurt Wollenhaupt at [kurt.wollenhaupt@mauicounty.gov](mailto:kurt.wollenhaupt@mauicounty.gov) or at (808) 270-8205.

Sincerely,



MICHELE MCLEAN, AICP  
Planning Director

xc: Clayton I. Yoshida, AICP, Planning Program Administrator (PDF)  
John S. Rapacz, Planning Program Administrator (PDF)  
Ann Cua, Current Planning Supervisor  
Kurt F. Wollenhaupt, Staff Planner (PDF)  
Lynn McCrory, Pulama Lanai (PDF)  
Karlynn Fukuda, Munekiyo Hiraga (PDF)  
Project File

MCM:KFW:lak

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EXHIBIT 7

ALAN M. ARAKAWA  
Mayor  
WILLIAM R. SPENCE  
Director  
MICHELE CHOUTEAU McLEAN  
Deputy Director



COUNTY OF MAUI  
**DEPARTMENT OF PLANNING**

February 17, 2012

Mr. Joshua Chavez  
P.O. Box 6240  
Kahului, Hawaii 96733

Dear Mr. Chavez:

**SUBJECT: GUIDED FARM TOUR WITH A ZIPLINE, LOCATED AT WAIHEE VALLEY,  
WAIHEE, HAWAII, TMK: (2) 3-2-004:001**

Thank you for your letter dated December 8, 2011, regarding the use of a zipline operation, as part of a guided tour at the Waihee Valley Farm, would be an approved accessory use in the agricultural district.

The following general representations were made regarding the property and guided tour.

1. The Waihee Valley Farm occupies about 9.3 acres of a 24.5 acre parcel (approximately, 14 acres of which are zoned agriculture and not located within the stream area). The main commercial crop is taro. There are other types of plants such as coconuts, bananas, mango, papaya, and other fresh fruits grown on the property. The areas that will be toured are already planted with the above crops.
2. This project will provide guests with a way to experience the Hawaiian culture in a fun way the whole family will enjoy together.

The following representations were also made regarding the proposed operation of the guided farm tour.

1. The guided tour will provide a stimulating way to educate guests on the Hawaiian way of living and farming taro, and this will be the closest thing to a Hawaiian village they will see on their trip. There will be various areas to stop where the guides will give informative briefings on the history, cultural ways of life, and farming of the Hawaiian culture. The canopy tour ziplines will allow guest to see things from a birds eye view and access areas that would be inaccessible otherwise. Each station will allow guest to be educated on the agricultural and cultural significance of that area of the land.
2. People will be educated on some of the major existing agricultural crops on the property and they are grouped in six existing main areas as indicated on the submitted site plan as A, B, C, D and F, respectively.
  - A. Educational Area A will focus on the taro. The guided tour begins at the upper level of ancient loi that terrace down to Waihee River. Guest will see taro patches in active production, and a dry river bed that used to flow with water before water was taken into water ditches.
  - B. Educational Area B will focus on taro patches, banana, papaya, mango, avocado, and coconut cultivation. Education will be given on how taro was a major part of the Hawaiian diet, and the significance in all areas of life.
  - C. Educational Area C will focus on ti leaf. Guest will be educated on the varieties of tropical plants such as the ti leaf's life and its use in lei making, Lauae and

250 SOUTH HIGH STREET, WAILUKU, MAUI, HAWAII 96793  
MAIN LINE (808) 270-7735; FACSIMILE (808) 270-7634  
CURRENT DIVISION (808) 270-8205; LONG RANGE DIVISION (808) 270-7214, ZONING DIVISION (808) 270-7253

Mr. Joshua Chavez  
February 17, 2012  
Page 2 of 2

what locals use it for, and awapuhi used for shampoos, ginger, bamboo and other tropical flowers and plants. Guest will be shown the top of an auwai water ditch that feed taro patches all down the valley.

- D. Educational Area D will focus on the auwai ditches. Guest will be taken to the water dam built to divert the water to auwai ditches. These ditches run along the banks of the valley to provide water from one side of the valley to the other. Education will be given on how water is diverted to be used in farming the taro.
  - E. Educational Area E will focus on the animal life in the river and fresh water prawns. They will be alongside the auwai water ditch and see how the water is transported down the valley to support the taro cultivation.
  - F. Educational Area F will focus on the reuse of water. This is where the water from some of the taro patches runs off and back into the river. Guest will be educated on how the Hawaiians used the water for their farming and returned it back to the river for the users downstream. They will also learn how the whole taro plant is used from the leaf to how it is harvested, cut, and replanted.
3. This guided tour is expected to consist of an average of eight (8) guests per tour with each tour having two (2) tour guides with them from the time of guest arrival until departure.

Based on the above mentioned representations, we find that your proposed project is in compliance with Chapter 205, Hawaii Revised Statutes and §19.30A of the Maui County Code, and will be a permitted accessory use with no land use permits required. However, the following conditions shall apply:

- 1. All other government rules and regulations shall be followed.
- 2. The tour shall be guided and cover existing principal permitted uses on the property.
- 3. Unless a County Special Use Permit is obtained, buildings for the guided tour are not allowed.
- 4. A total of six (6) parking stalls shall be provided. Five (5) of the stalls may be graveled and one (1) stall shall be paved with asphalt, a concrete surface, or equivalent.

Should you have any questions or concerns, you may contact Paul Critchlow, Staff Planner at [paul.critchlow@mauicounty.gov](mailto:paul.critchlow@mauicounty.gov) or 270-5795.

Sincerely,



WILLIAM SPENCE  
Planning Director

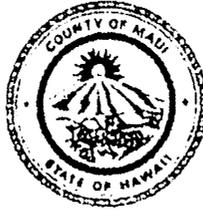
xc: Development Services Administration  
ZAED Planners and Inspectors (via e-mail)  
TMK (2) 3-2-001:001 (KIVA Land System Related Document, Project File)  
12/General File  
WRS:AHS:FAC:PBC:ckk  
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20/2973

MICHAEL P. VICTORINO  
Mayor

MICHELE CHOUTEAU MCLEAN, AICP  
Director

JORDAN E. HART  
Deputy Director



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

June 25, 2020  
**TRANSMITTAL**

STATE AGENCIES	
X	Dept of Agriculture
X	Office of Planning
X	DLNR-Planning
X	Land Use Commission
X	HIOSH
X	DBEDT
OTHER	

COUNTY AGENCIES	
X	Dept of Public Works
X	Fire & Public Safety
X	OED
FEDERAL AGENCIES	

**PROJECT NAME:** MAUI COUNTY CODE TITLE 19 UPDATE RELATING TO CANOPY TOUR AND ZIPLINE OPERATIONS

**SUBJECT:** Creation of a new chapter in the comprehensive zoning code specifically related to Ziplines and Canopy Tours; Revisions to Chapter 19.30A Agricultural District to require a special use permit for ziplines and canopy tours.

**PREPARED BY:** Maui County Council and transmitted to Department of Planning

**TRANSMITTED TO YOU ARE THE FOLLOWING:**

<input checked="" type="checkbox"/>	Resolution 20-90
-------------------------------------	------------------

**THESE ARE TRANSMITTED AS CHECKED BELOW:**

<input checked="" type="checkbox"/>	For your Comment and Recommendation
-------------------------------------	-------------------------------------

Please provide any comments and recommendations you would like the Department of Planning to consider. Submit your comments directly to me by July 15, 2020. If no comment, please sign the bottom and return. For additional clarification, please contact me via email at jacky.takakura@mauicounty.gov or by phone at (808) 270-7743. Thank you.

Sincerely,

Jacky Takakura, Administrative Planning Officer  
For: Michele C. McLean, AICP, Planning Director

<b>We have no comment:</b>	<b>Signed:</b>	<b>Dated:</b> 7/2/2020
<b>Print Name:</b> Daniel Orodenter	<b>Title:</b> LUCO	Land Use Commission

DAVID Y. IGE  
GOVERNOR OF HAWAII



SUZANNE D. CASE  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE  
MANAGEMENT

**STATE OF HAWAII**  
**DEPARTMENT OF LAND AND NATURAL RESOURCES**  
**LAND DIVISION**

POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

July 14, 2020

County of Maui  
Department of Planning  
Attn: Ms. Jacky Takakura  
2200 Main Street, Suite 315  
Wailuku, Hawaii 96793

via email: [jacky.takakura@mauicounty.gov](mailto:jacky.takakura@mauicounty.gov)

Dear Ms. Takakura:

**SUBJECT: Maui County Code Title 19 Update Relating to Canopy Tours and Zipline Operations** – Island of Maui: Various TMKs on behalf of County of Maui, Department of Planning

Thank you for the opportunity to review and comment on the subject matter. The Land Division of the Department of Land and Natural Resources (DLNR) distributed or made available a copy of your request pertaining to the subject matter to DLNR's Divisions for their review and comments.

At this time, enclosed are comments from the (a) Division of Aquatic Resources, (b) Division of Boating & Ocean Recreation, and (c) Engineering Division on the subject matter. Should you have any questions, please feel free to contact Darlene Nakamura at (808) 587-0417 or email: [darlene.k.nakamura@hawaii.gov](mailto:darlene.k.nakamura@hawaii.gov). Thank you.

Sincerely,

*Russell Tsuji*

Russell Y. Tsuji  
Land Administrator

Enclosures  
cc: Central Files



DAVID Y. IGE  
GOVERNOR OF  
HAWAII



STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
DIVISION OF AQUATIC RESOURCES  
1151 PUNCHBOWL STREET, ROOM 330  
HONOLULU, HAWAII 96813

Date: 7/9/20  
DAR # R4C

SUZANNE D. CASE  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSIONER OF WATER RESOURCE MANAGEMENT

ROBERT K. MASUDA  
FIRST DEPUTY

M. KALEO MANUEL  
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES  
RECREATION AND OCEAN RECREATION  
HURDLER CORPORATION  
COMMISSIONER OF WATER RESOURCE MANAGEMENT  
CONSERVATION AND COASTAL LABS  
CONSERVATION AND RESOURCES ENFORCEMENT  
ENGINEERING

FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
KAHOOLAWE ISLAND RESERVE COMMISSIONER  
LAND  
STATE PARKS

MEMORANDUM

TO: Brian J. Neilson  
DAR Administrator

FROM: Russell Sparks *R. Sparks*, Aquatic Biologist

SUBJECT: Maui County Code Title 19 Update RELating to Canopy Tours and Zipline Operations.

Request Submitted by: Russel Y. Tsuji, Land Administrator  
Island of Maui; Various TMKS

Location of Project: \_\_\_\_\_

Brief Description of Project:

The creation of a new chapter in the comprehensive zoning code relating to ziplines and canopy tours. This would be a revision to Chapter 19.3A relating to agricultural districts and would require special use permits for ziplines and canopy tours.

Comments:

No Comments     Comments Attached

Thank you for providing DAR the opportunity to review and comment on the proposed project. Should there be any changes to the project plan, DAR requests the opportunity to review and comment on those changes.

Comments Approved: *Brian J. Neilson* Date: Jul 9, 2020  
Brian J. Neilson  
DAR Administrator

DAVID Y. IGE  
GOVERNOR OF HAWAII



SUZANNE D. CASE  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE  
MANAGEMENT

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
LAND DIVISION

POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

June 30, 2020

MEMORANDUM

TO:

**DLNR Agencies:**

- Div. of Aquatic Resources ([kendall.i.tucker@hawaii.gov](mailto:kendall.i.tucker@hawaii.gov))
- Div. of Boating & Ocean Recreation ([richard.t.howard@hawaii.gov](mailto:richard.t.howard@hawaii.gov))
- Engineering Division ([DLNR.ENGR@hawaii.gov](mailto:DLNR.ENGR@hawaii.gov))
- Div. of Forestry & Wildlife ([rubyrosa.t.terrago@hawaii.gov](mailto:rubyrosa.t.terrago@hawaii.gov))
- Div. of State Parks ([curt.a.cottrell@hawaii.gov](mailto:curt.a.cottrell@hawaii.gov))
- Commission on Water Resource Management ([DLNR.CWRM@hawaii.gov](mailto:DLNR.CWRM@hawaii.gov))
- Office of Conservation & Coastal Lands ([sharleen.k.kuba@hawaii.gov](mailto:sharleen.k.kuba@hawaii.gov))
- Land Division – Maui District ([daniel.i.ornellas@hawaii.gov](mailto:daniel.i.ornellas@hawaii.gov))
- Historic Preservation ([DLNR.Intake.SHPD@hawaii.gov](mailto:DLNR.Intake.SHPD@hawaii.gov))

FROM:

Russell Y. Tsuji, Land Administrator *Russell Tsuji*

SUBJECT:

**Maui County Code Title 19 Update Relating to Canopy Tours and Zipline Operations**

LOCATION:

Island of Maui; Various TMKs

APPLICANT:

County of Maui, Department of Planning

Transmitted for your review and comment is information on the above-referenced subject matter. Please submit any comments by **July 14, 2020**.

If no response is received by this date, we will assume your agency has no comments. If you have any questions about this request, please contact Darlene Nakamura at 587-0417 or by email at [darlene.k.nakamura@hawaii.gov](mailto:darlene.k.nakamura@hawaii.gov). Thank you.

- We have no objections.
- We have no comments.
- Comments are attached.

Signed:

*Richard T. Howard*

Print Name:

Richard T. Howard

Date:

7/2/20

Attachments

cc: Central Files

2020 JUN 30 AM 10:33  
RECEIVED  
LAND DIVISION

DAVID Y. IGE  
GOVERNOR OF HAWAII



SUZANNE D. CASE  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE  
MANAGEMENT

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
LAND DIVISION

POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

June 30, 2020

**MEMORANDUM**

FROM:

~~TO:~~

**DLNR Agencies:**

- Div. of Aquatic Resources ([kendall.i.tucker@hawaii.gov](mailto:kendall.i.tucker@hawaii.gov))
- Div. of Boating & Ocean Recreation ([richard.t.howard@hawaii.gov](mailto:richard.t.howard@hawaii.gov))
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- Div. of State Parks ([curt.a.cottrell@hawaii.gov](mailto:curt.a.cottrell@hawaii.gov))
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- Office of Conservation & Coastal Lands ([sharleen.k.kuba@hawaii.gov](mailto:sharleen.k.kuba@hawaii.gov))
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- Historic Preservation ([DLNR.Intake.SHPD@hawaii.gov](mailto:DLNR.Intake.SHPD@hawaii.gov))

TO:

~~FROM:~~

SUBJECT:

LOCATION:

APPLICANT:

Russell Y. Tsuji, Land Administrator *Russell Tsuji*  
**Maui County Code Title 19 Update Relating to Canopy Tours and Zipline Operations**  
 Island of Maui; Various TMKs  
 County of Maui, Department of Planning

Transmitted for your review and comment is information on the above-referenced subject matter. Please submit any comments by **July 14, 2020**.

If no response is received by this date, we will assume your agency has no comments. If you have any questions about this request, please contact Darlene Nakamura at 587-0417 or by email at [darlene.k.nakamura@hawaii.gov](mailto:darlene.k.nakamura@hawaii.gov). Thank you.

- We have no objections.
- We have no comments.
- Comments are attached.

Signed: *CS*

Print Name: Carty S. Chang, Chief Engineer

Date: Jul 13, 2020

Attachments

cc: Central Files

**DEPARTMENT OF LAND AND NATURAL RESOURCES  
ENGINEERING DIVISION**

**LD/Russell Y. Tsuji**

**Ref: Maui County Code Title 19 Update Relating to Canopy Tours and Zipline Operations**

**TMK(s): Various**

**Location: Island of Maui**

**Applicant: County of Maui, Department of Planning**

**COMMENTS**

The rules and regulations of the National Flood Insurance Program (NFIP), Title 44 of the Code of Federal Regulations (44CFR), are in effect when development falls within a Special Flood Hazard Area (high risk areas). State projects are required to comply with 44CFR regulations as stipulated in Section 60.12. Be advised that 44CFR reflects the minimum standards as set forth by the NFIP. Local community flood ordinances may stipulate higher standards that can be more restrictive and would take precedence over the minimum NFIP standards.

The owner of the project property and/or their representative is responsible to research the Flood Hazard Zone designation for the project. Flood Hazard Zones are designated on FEMA's Flood Insurance Rate Maps (FIRM), which can be viewed on our Flood Hazard Assessment Tool (FHAT) (<http://gis.hawaiiinfip.org/FHAT>).

If there are questions regarding the local flood ordinances, please contact the applicable County NFIP coordinating agency below:

- o Oahu: City and County of Honolulu, Department of Planning and Permitting (808) 768-8098.
- o Hawaii Island: County of Hawaii, Department of Public Works (808) 961-8327.
- o Maui/Molokai/Lanai County of Maui, Department of Planning (808) 270-7253.
- o Kauai: County of Kauai, Department of Public Works (808) 241-4896.

Signed: \_\_\_\_\_

  
CARTY S. CHANG, CHIEF ENGINEER

Date: Jul 13, 2020

Ms. Preza: Thank you. Roxanne? Sorry, you were mute. Sorry, did you say, yes, Roxanne? Sorry, I can't hear you. Thumbs up. Can you hear us? Okay, that's a yes. Chelsea?

Ms. Trevino: Aye.

Ms. Preza: Thank you. Sally?

Ms. Kaye: Aye.

Ms. Preza: Thank you. Shirley?

Ms. Samonte: Aye.

Ms. Preza: John Ornellas?

Mr. Ornellas: Aye.

**It was moved by Ms. Sally Kaye, seconded by Mr. John Ornellas, then unanimously**

**VOTED: to recommend to County Council to approve the bill for an ordinance amending the three chapters as presented by the Planning Department with the addition that the notification specific to Lanai be retained.**

*(Assenting: R. Catiel, J. Delacruz S. Kaye, S. Menze, J. Ornellas, S. Preza, N. Ropa, S. Samonte, C. Trevino)*

Ms. Preza: Thank you. So I also vote yes so it passes unanimously. Thank you very much. And thank you Jacky and Michele for answering all of our questions.

Ms. McLean: Thank you Commissioners.

**2. A BILL FOR AN ORDINANCE AMENDING THE COMPREHENSIVE ZONING ORDINANCE RELATING TO CANOPY TOURS AND ZIPLINE OPERATIONS**

**MS. MICHELE COUTEAU MCLEAN, AICP, Planning Director, transmitting County Council Resolution 20-90 referring to the Lanai Planning Commission a Proposed Bill to Amend the Comprehensive Zoning Ordinance Relating to Canopy Tours and Zipline Operations.**

**MEMORANDUM**

**The entire text of the proposed bill for ordinance is available at <https://www.mauicounty.gov/1127/Legislation---Proposed> and is summarized as follows:**

**Per Council Resolution No. 20-90, adopted on June 19, 2020, transmitting the proposed bill, the Council proposes to amend Chapter 19.30A and establish Chapter 19.97, Maui County Code, to require a Conditional Permit for canopy tour and zipline operations to enable the Council to evaluate the appropriateness of the uses in various zoning districts. (Jacky Takakura)**

Ms. Preza: So we'll move on to Item B.2. which is a bill for an ordinance amending the comprehensive zoning ordinance relating to canopy tours and zipline operations. I do believe we have another presentation maybe from Jacky or --. Okay, great. So if anyone has just recently joined us on Bluejeans if you would like to testify on this agenda item if you could directly message Leilani and let her know that you would like to and then we'll call you after the presentation is over. Thank you. Sorry, go ahead Jacky when you're ready.

Ms. Takakura: Thank you Chair, Commission members. Again, this one is also short. So this one is regarding zipline and canopy tour operations. And so this came to us part of Resolution 20-90 from the Maui County Council. It's a bill for ordinance amending the Maui County Code relating to canopy tour and zipline operations.

So before we talk about the bill itself and the proposed changes, I just wanted to cover where are we right now, like, what is the status quo, what are we doing right now? And the County is allowed canopy tours and zipline operations.

Ms. Preza: Sorry Jacky to interrupt you. I think you meant to share your screen. Did you?

Ms. Takakura: So sorry. Yes.

Ms. Preza: Sorry, I just wanted to let you know. I didn't meant to interrupt, but just before you went any further.

Ms. Takakura: No, no, no. I'm so glad you did. Okay, thank you for your patience. So as I've said, this is about zipline and canopy tour operations.

Ms. Preza: Jacky, you're muted.

Ms. Takakura: Okay, now can you see the screen and you can hear me?

Ms. Preza: We can see the screen and we can hear you.

Ms. Takakura: Third time is a charm. Okay. So yeah, canopy tours and zipline operations have been allowed as accessory uses, usually when they're proposed as guided tours of an ongoing agricultural use. Over the years we've issued seven zipline approval letters, and the Lanai Planning Commission has approved one.

And why the proposed change? What has brought this about? It's because zipline can have potential impacts to neighbors, potential impacts to or compatibility with agriculture which is where they're typically located. It's an opportunity to review these operations for safety and any other concerns. And it also provides a cap of 15 to prevent saturation.

Ms. Preza: Jacky, you're muted again.

Ms. Takakura: Okay, so this is the list of the ziplines in Maui County. You can see there is one in Lanai. We have them all over. Some in Kula, Kaanapali, Lahaina, Waikapu which is Central Maui, Makawao, Haiku, and then as you know, the Lanai Adventure Park. Some have received approvals, but not all. I'm going to -- so this will --

Ms. Preza: Sorry, Jacky, you're muted again. I don't know what's happening.

Ms. Takakura: Oh yeah, okay. So you can hear me now?

Ms. Preza: Yes.

Ms. Takakura: Okay, so in case you lose me, this information is in the packet in the memo to commission as an attachment. Back in May, one of the planners did a lot of research and so this was pulled from there. And we can always come back to this slide if you have questions about particular properties. But you can see they're all over the place. Mostly agriculture zoning. The one in the bottom is the Lanai Adventure Park in Koele. And that one is on 30 acres, and that one received approval from last year.

As mentioned in the previous slide, you know, not all of them have approvals. You can see the ones kind in the middle that have italics on the side, Flying Hawaiian Zipline, there's no specific approval for that one. They're probably piggy backing on the one that's right above it, the Maui Zipline Company because it's on the same lot. Piihola Ranch also doesn't have an approval. And then the other two, Jungle Zipline and North Shore Zipline in Haiku are both going through the appeal process. The Jungle Zipline one we're working with Corporation Counsel about scheduling that with the Board of Variance and Appeals. And also same with the North Shore Zipline, we're working with Corporation Counsel to go before the BVA.

And like I mentioned, if we want to look at more specific details we can always come back to this slide. One thing that I put on here is the acres because the acres is going to -- it's part of the proposed bill, the size of the lot.

Ms. McLean: Jacky, you're muted again.

Ms. Takakura: Okay, and I'm not touching my --. Well, okay, thank you. So the County Council wants to create a new chapter with a maximum with of 15 conditional permits to be issued. Also make some revisions to the Ag District to make it clear that zipline and canopy tours are neither accessory uses nor special uses. Existing operations with approvals like we saw, the one have approvals from us or the Lanai Planning Commission, can continue. The ones that are on greater than 50 acres can continue as nonconforming use, and then the ones that are less than 50 acres must apply for a conditional permit.

Ms. Preza: Sorry, you're muted again. Oh, now you're good.

Ms. Takakura: I know. Now I know to look at that little icon. Okay, so in the memo to Commissions, I, you know, just like I made a mistake in the other bill, this one I have a mistake too so I'm very sorry. I included some proposed definitions that they were in previous versions of the bill, but they're no longer needed because they're not included here so please disregard those. Even the definition for zipline is already in the bill so we don't need to propose to revise that.

So this is the part that we're revising, we're proposing to revise. The Agricultural District, which is 19.30A, and then the chapter on Conditional Permit. For the Ag District we clarify the accessory uses excludes ziplines and canopy tours, but that they may be approved by Conditional Permit. Also, to clarify that special uses excludes rappelling, ziplines and canopy tours. And then for the chapter on Conditional Permits, 19.40, I put the language in there that the permits for ziplines and canopy tours may be issued but not if they're near residential, apartment, rural, or near farm or farm labor dwellings. And also in the memo to Commissions you can see we have some specific conditions for operations including that they be limited to hours of 8:00 a.m. to 5:00 p.m., no intoxicating liquor within -- on or within 1,000 feet, and that the operator has proof insurance, inspection report and maintenance records, and acknowledgement of risk and rules of conduct. So that's what we're proposing is to have it in the Conditional Permit chapter.

So that's basically it. It's kind of just a rearrangement of what is in the resolution to put in it into these two chapters and not creating that new 19.97.

Ms. Preza: Thank you Jacky.

Ms. Takakura: So just like with the other one you have some options. You can recommend approval. You can recommend with some amendments like what we have here, or you can deny, or you can defer if you need further information. Okay, I'm going to stop screen sharing and that's it.

Ms. Preza: Thank you Jacky. So sorry, when you said, when you had the bold for recommend with amendments, it's with the amendments that you just presented to us, correct?

Ms. Takakura: Yes, please.

Ms. Preza: Okay, thank you.

Ms. Takakura: But you're welcome to make proposed changes if you would like to. Sorry.

Ms. Preza: Okay, thank you. So Commissioners while you think about that, I'll ask Leilani if anyone has signed up with you to testify.

Ms. Ramoran-Quemado: Thank you Chair. No one has signed up to testify.

Ms. Preza: Okay, great. I mean just chance if anyone who is calling in via Bluejeans would like to testify please unmute and let me know. Okay if not, please make sure that you're muted if you are joining us on Bluejeans. And for those of you who are calling in would anyone like to testify? Okay, if not then I'll close public testimony. So Commissioners do you have questions regarding what was just presented to us? Feels pretty straight forward to me. Oh, yes, Sally.

Ms. Kaye: I want to make sure I understand this correctly. The Council wants to do an entirely new chapter, but you guys are recommending that you just make these few changes to existing parts of the code, and that would be sufficient. Is that the bottom line here?

Ms. McLean: Yeah, thank you Commissioner. That summarizes it. Rather than creating a new chapter, put the same language and restrictions into two other sections of the code. It just seems a little bit more clean to do it that way.

Ms. Kaye: Okay so then I don't --. That was one of the questions I had. If, if that route is followed where is the -- doesn't that eliminate the cap of 15. Where does that still appear?

Ms. McLean: That would be in Chapter 19.40 in the Conditional Permit Chapter to put the, put the cap in there.

Ms. Kaye: Okay. So it's already in there is what you're saying because I don't see it in, in what you put . . .(inaudible) . . .

Ms. Preza: Go ahead Jacky.

Ms. Takakura: I apologize. I'm looking at the memo to Commissions, and I agree with commission member. I don't see it here, but this would be included and so we can make sure it's included in the 19.40.

Ms. Kaye: Okay, and then, and then also --

Ms. Preza: . . . (Inaudible) . . . Never mind. Sorry. Go on Sally.

Ms. Kaye: Okay so the 15 is in there somewhere or you're going to make sure it's in there. But what about the, the new chapter that was proposed by Council also requires a Special Use Permit under Chapter 205. That goes away too?

Ms. Preza: Sorry, I'm not sure if Jacky you could answer or Michele. I'm sorry, I think you're muted.

Ms. Takakura: We would revise our administrative rules for the agricultural district so that it's in all in parallel and those requirements are in there.

Ms. Kaye: I'm sorry, I don't under the answer. So the Special Use Permit under -- the State Special Use Permit would still be required or not.

Ms. McLean: Yes, the State Special Permit would still be required. That needs to address the property that's in the State Agricultural District. And then the Conditional Permit addresses the use under County Zoning. So permits at two levels, State and County, are both needed.

Ms. Kaye: Okay. Thank you. And the only other question I have is does any of this impact the Special Use Permit that the zipline here on Lanai already has?

Ms. McLean: Under the Council's bill that would be considered a nonconforming use and would be allowed to operate. But if it operates on less than 50 acres, then it would need a Conditional Permit. With the Department's proposed revisions then that would remain as is and wouldn't be affected.

Ms. Preza: Thank you for answering our questions. Commissioners, do you other questions or comments? Sorry, also Jacky, you know the slide that you showed us with the acreage. So that wasn't included in our what was sent to us right, or was it? I don't see it.

Ms. Menze: I didn't see that on our handout either.

Mr. Delacruz: It came in today's mail.

Ms. Menze: Right, but it doesn't have the acreage on it.

Ms. Takakura: I added recently. Sorry about that Chair.

Ms. Preza: Okay.

Ms. Takakura: So I will post that online.

Ms. Preza: Okay. Do you know how many acres the one on Lanai is? Sorry, just going back to the question.

Ms. Takakura: It's 30 acres. Three, zero.

Ms. Preza: Okay. Commissioners, do you have other thoughts or comments about this?

Ms. Menze: Could Jacky show that slide one more time just the acreage?

Ms. Takakura: I'll do that right now if that's okay Chair.

Ms. Preza: Thank you Jacky.

Ms. Menze: Thank you.

Ms. Preza: Thank you. Yeah, I think it's just that column that we're missing. But Jacky, you'll upload the updated version onto the website for others to see as well? Thank you.

Ms. Takakura: I guess you can let me know . . . (inaudible) . . .

Ms. Preza: Sherry, do you want to take a screen shot of it maybe or is that possible? Sorry Sherry if you're talking you're on mute.

Ms. Menze: Sorry, thank you so much. Perfect idea.

Ms. Preza: Thank you.

Ms. Menze: Thank you for letting me see that again.

Ms. Preza: So is it okay if she takes it away now?

Ms. Menze: Yes. Thank you Jacky.

Ms. Preza: Thank you. So Commissioners, we have the same options on the table. Jacky is recommending or the County is recommending that we approve with amendments. So the amendments would be the changes that she had just presented to us. Does anyone like to make a motion or should there be further discussion? Hi Sherry, go ahead.

Ms. Menze: I'll make a motion to recommend that Council approves the bill with amendments making sure that the language in there has the cap of 15.

Ms. Preza: Okay. Well, I think that the cap of 15 is going to be placed in a different section, so I'm not sure if we need to say that.

Ms. Menze: Okay, never mind. Okay.

Ms. Preza: Sorry Richelle you can clarify that if you'd like.

Ms. Richelle Thomson: Chair, this is Richelle. Commissioner Menze, I just wanted to make sure that what your motion is is that you're requesting that the Council adopts the Planning Department's recommendations and incorporate them. So you're basically recommending that they go the Planning Department's not the Council's version. Is that correct?

Ms. Menze: Recommend that the Council approve the bill with amendments.

Ms. Preza: So she's asking for which amendment is the Planning Department's amendment correct.

Ms. Menze: Yes.

Ms. Preza: Okay. So that's the motion. Would anyone like to --? Richelle, is that enough clarification?

Ms. Thomson: Yes it is. Thanks.

Ms. Preza: Okay, thank you. Would anyone like to second?

Ms. Samonte: Second.

Ms. Preza: Okay, thank you. So I'm going to go through again for asking your vote. So Natalie.

Ms. Ropa: Aye.

Ms. Preza: Thank you. Sherry Menze?

Ms. Menze: Aye.

Ms. Preza: Thank you. Roxanne?

Ms. Catiel: Aye.

Ms. Preza: Shirley Samonte?

Ms. Samonte: Aye.

Ms. Preza: Thank you. John Delacruz?

Mr. Delacruz: Aye.

Ms. Preza: Sally Kaye?

Ms. Kaye: Aye.

Ms. Preza: Chelsea?

Ms. Trevino: Aye.

Ms. Preza: John Ornellas?

Mr. Ornellas: Aye.

**It was moved by Ms. Sherry Menze, seconded by Ms. Shirley Samonte, then unanimously**

**VOTED: to request that the County Council adopts the bill with the amendments as presented by the Planning Department.**  
(Assenting: R. Catiel, J. Delacruz S. Kaye, S. Menze, J. Ornellas, S. Preza, N. Ropa, S. Samonte, C. Trevino)

Ms. Preza: And I also vote yes, so that passes unanimously. Thank you all very much. Before we move on I would like to take a short break, so maybe five minutes we can return at 6:15 p.m. That's okay with everyone? Okay, see you all in five. Thank you.

*(The Lanai Planning Commission recessed at 6:09 p.m. and reconvened at 6:15 p.m.)*

## **C. COMMUNICATIONS**

- 1. August 7, 2020 Q1 through Q2 2020 Semi-Annual Report (Condition 14) submitted by MS. KEIKI-PUA S. DANCIL, Ph.D., Senior Vice-President of Governmental Affairs, PULAMA LANAI 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.**

- 2. August 7, 2020 Second quarter of 2020 Report from mid-February through mid-June (Condition 15) water usage reports for the project site submitted by MS. KEIKI-PUA S. DANCIL, Ph.D., Senior Vice-President of Governmental Affairs, PULAMA LANAI for Project District Phase II**

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**MAUI PLANNING COMMISSION  
PORTION OF REGULAR MINUTES  
ITEM B.1  
SEPTEMBER 22, 2020**

Ms. McLean: Thank you, Chair. There are three public hearings on the agenda today. The first one is from myself transmitting County Council Resolution 20-90, referring to the Commission, a proposed bill to amend the comprehensive zoning ordinance relating to canopy tours and zipline operations. So, this is a council-initiated bill that all three commissions will be asked to review and provide comments that will then be transmitted back to the County Council. Would you like to do that PowerPoint presentation first before testimony, Chair?

Mr. Carnicelli: Yeah, I think that that's appropriate so people know what it is and what it isn't before they testify.

Ms. McLean: Okay.

Mr. Carnicelli: And they can give better testimony, I guess.

**B. PUBLIC HEARINGS (Action to be taken after each public hearing.)**

1. **MS. MICHELE CHOUTEAU MCLEAN, AICP, Planning Director, transmitting County Council Resolution 20-90 referring to the Maui Planning Commission a Proposed Bill to Amend the Comprehensive Zoning Ordinance Relating to Canopy Tours and Zipline Operations. (J. Takakura)**

The entire text of the proposed bill for ordinance is available at <https://www.mauicounty.gov/1127/Legislation---Proposed> and is summarized as follows:

**Per Council Resolution No. 20-90, adopted on June 19, 2020, transmitting the proposed bill, the Council proposes to amend Chapter 19.30A and establish Chapter 19.97, Maui County Code, to require a Conditional Permit for canopy tour and zipline operations to enable the Council to evaluate the appropriateness of the uses in various zoning districts.**

Ms. McLean: Okay, great. Jacky Takakura, our Administrative Planning Officer will do the PowerPoint and she'll probably be sharing her screen.

Mr. Carnicelli: Great. Thank you, Director. Jacky.

Ms. Takakura: Thank you, Chair. Good morning, everyone, Commission Members. I'm going to share screen just to go over this presentation briefly give everybody understanding of what we're proposing here or what's being proposed here, I'm going to share screen. Can you give me a thumbs up if you can see the screen? Okay, thank you. So, it's regarding, as the Director mentioned, zipline and canopy tour operations. And this came to us from the County Council via Resolution 20-90, and it's relating to canopy tours and zipline operations.

So, some of you might wonder why, why are we talking about this now? Well, because ziplines can have potential impacts to neighbors, potential impacts to or compatibility with agriculture,

1 which is the zoning district in which these are located, it's an opportunity to review for safety and  
2 other concerns, and it also proposes a permit cap to prevent saturation.

3  
4 So, before we talk about the bill, let's look at how things are now. So, the County has allowed  
5 canopy tours and zipline operations as accessory uses. Usually when the proposed...it's  
6 proposed as a guided tour of an ongoing principal agricultural use. So far, we've issued seven  
7 zipline approval letters and the Lanai Planning Commission has approved one, and in the memo  
8 to Commissioners, all of those are in that packet that you received.

9  
10 So, this is a list of the ziplines that are in Maui County, and they're all over, Kula, Kaanapali,  
11 Honolua, which is West Maui, Lahaina, two in Waikapu, and then we have some Upcountry,  
12 Makawao, Haiku, and then the one on Lanai. ...on the bottom, some have received approvals,  
13 but not all, and like I mentioned, those letters, those approval letters are in that packet that you  
14 ... (inaudible)...

15  
16 So now, I just want to go over a little bit more detail about each of these operations, and I can  
17 come back to this screen if needed if anybody has any specific questions. So these are the  
18 different ones, Skyline Kapalua, Paradise Eco Adventures, Maui Zipline, Flyin Hawaiian, Piihola  
19 Ranch, Jungle Zipline and NorthShore Zipline and then on Lanai, the Lanai, the Lanai Adventures.  
20 And so, you can see most of the zoning is Agriculture. I have the acreage listed, but I just want  
21 to point out that this acreage is based on the tax map key parcel numbers that are on those letters.  
22 It doesn't have...you know, say it's part of a...or bigger area like that has contiguous parcels. It  
23 just has the acreage of the TMKs listed on the letters. You can see that there's some on the  
24 bottom where the approval, there's some comments like none found or there's violations, those  
25 like say, for the Flyin Hawaiian, it's probably because they have the other letter from Maui Zipline  
26 Company and it's on the same lot. Piihola Ranch we don't have a letter for them. Then the two,  
27 Jungle Zipline and NorthShore Zipline, those are going before the BVA, the Board of Variance  
28 and Appeals, and so the Planning Department is working with Corporation Counsel on that. Like  
29 I said, we can come back to this slide if you have specific question.

30  
31 So, in the Resolution, the County Council is proposing to create a new chapter, Chapter 19.97,  
32 and that's specifically for ziplines, and they're proposing a maximum of 15 conditional permits and  
33 some specific criteria and restrictions and standards. They also want to revise the Ag District,  
34 Chapter 19.30A to make it clear that these operations, ziplines and canopy tours are neither  
35 accessories nor special use. The proposal also includes that existing operations with approval  
36 as accessory use can continue. Those are that are on greater than 50 acres may continue as  
37 nonconforming, and those that are less have to apply for a conditional permit. And like I  
38 mentioned in the proposal, the acreage includes parcels or multiple contiguous parcels, which I  
39 like said I don't have that in that big chart.

40  
41 Okay, so what we're proposing, and you saw in our memo, I do have some revisions to the memo  
42 that went to you folks, we had it initially included amusement park and carnival, but that was based  
43 on some previous versions of the bill and they're not needed anymore. So that's not applicable.  
44 There are definitions for zipline and canopy tour. We're proposing to move those to where we  
45 have all of our Title 19 definitions and that's in Chapter 19.04.040.

1  
2 For the Agricultural District, we're proposing to revise the special uses to add these things to our  
3 list of prohibited uses, and those would be rappelling, bungee jumping, ziplines, and canopy tours.  
4 And then the revisions we're proposing to...the chapter on conditional permits, which is Chapter  
5 19.40, it's just moving the things that they had for 19.97, put them in this chapter, Chapter 19.40,  
6 Conditional Permits. So, we would be moving the restrictions and standards to here, to the  
7 Conditional Permit Chapter. In the memo, we had also included some language about if the  
8 property is located within 1,000 feet of residential, apartment or rural or farm dwellings, again, this  
9 was from previous versions and it's no longer needed so you can disregard that.

10  
11 So, in a summary, in a nutshell, we propose, the Department's proposing to keep the purpose  
12 and intent of the resolution and the proposed bill from the County Council, but just move things  
13 around, move the definitions into Chapter 19.04, which is general provisions and definitions, add  
14 some changes to 19.30A, which is Ag District, and then move the criteria and restrictions to 19.40  
15 Conditional Permits. And so, we're recommending approval of the proposed bill with some of  
16 these amendments, and then the Commission it's up to you what you folks would like to do. You  
17 can prove approve, approve with amendments, recommend denial or vote to defer. So that's it.  
18 I'm going to stop sharing and then we can take it from there, and like I mentioned, I can always  
19 bring up these screens if needed. Thank you.

20  
21 Mr. Carnicelli: Thank you, Jacky. Director and/or Mr. Hopper, do you have anything to add before  
22 we open it up for public testimony?

23  
24 Ms. McLean: Thank you, Chair, I don't have anything to add at this time.

25  
26 Mr. Carnicelli: Okay.

27  
28 Mr. Hopper: ...(inaudible)...Chair.

29  
30 Mr. Carnicelli: Thank you, Mr. Hopper. So, again, if you would like to testify on this particular  
31 item, you can use the chat function to let the Director know that you would like to testify on this  
32 item. With that being said, Director, has anyone indicated that they would like to testify?

33  
34 Ms. McLean: Yes, Chair, so far we have three people signed up to testify. The first is  
35 Gina Flammer, and she'll be followed by Adam Burnett.

36  
37 Mr. Carnicelli: Great. Please on mute your audio, and if you also wish to, unmute your video,  
38 state your name for the record,

39  
40 Ms. Gina Flammer: Hello, I'm Gina Flammer. Good morning.

41  
42 Mr. Carnicelli: Good morning.

43  
44 Ms. Flammer: I'm testifying on behalf of Councilmember Shane Sinenci, who represents  
45 East Maui, I'm his Executive Assistant. I did submit some testimony in writing.

1 Councilmember Sinenci does support the bill, the intent of the bill and I think if any government  
2 body knows about the problems with ziplines it be the Commission. It's pretty obvious that  
3 regulations are needed. The bill's a common-sense approach. It has some basic guidelines and  
4 a requirement that operators obtain a conditional permit. Our office also supports the Planning  
5 Department's recommendations. This is why we have Council referral to the Planning Department  
6 and to the Planning Commission. You folks are the experts on Title 19, and we're very grateful  
7 to have your expertise. We agree that whenever possible you don't need to create a new chapter  
8 in the code. It's also always better to have all your regulations under one place. So, for conditional  
9 permits, by moving it 19.40 you'd have everything in one place. It makes it easier for the planner,  
10 for the operator and the public to find everything.

11  
12 We also support the Department's recommendation to add in repelling, and I just see bungee  
13 jumping activities. These activities also have no current County oversight, and as we mentioned  
14 in our written testimony, East Maui has had problems with rappelling on waterfalls so folding it  
15 into this bill makes sense rather than doing something separately. We like the Department's most  
16 recent recommendation to go ahead and put it as a special use but also prohibit these two items,  
17 which really technically just means you need the conditional permit, and that again, it makes  
18 sense to have everything all in one spot so all the activities require all the same regulations. So,  
19 in closing, thank you for your review of this bill and for all your service to Maui, and we look forward  
20 to seeing your comments and the report when it comes back to Council. Thank you.

21  
22 Mr. Carnicelli: Thank you, Gina. Good to see you back to the Planning Commission under a  
23 different, under a different, I guess, title. Any need to clarify the testifier's testimony? Seeing  
24 none, again, thank you, Gina. And also, I forgot to mention to everybody that testimony is limited  
25 to three minutes. Just so everybody also knows that. So, thank you, Gina. Director.

26  
27 Ms. McLean: Thank you, Chair. I misspoke when I said that Adam Burnett was next, he wishes  
28 to testify on a different item. So, the next testifier on this would be Danny Boren. Danny if you're  
29 ready, can you—

30  
31 Mr. Danny Boren: Yes.

32  
33 Ms. McLean: Okay, there you go.

34  
35 Mr. Boren: Hi Commission. Yeah, my name is Danny Boren. Thank you for, for being here and  
36 listening to the testimony and everything. So, I'm the founder of Skyline Eco Adventures. When  
37 you saw that list, you notice we have two different locations, one on Haleakala Ranch, it's on a  
38 9,000 acre parcel, and one over in Kaanapali that is on a 450-acre parcel. We're actually the first  
39 commercial zipline operation in the United States. We started in 2002. So, I met with John Min,  
40 who was Planning Director at that point, got a approval from him at that time. Prior to opening  
41 Kaanapali, we met with Mike Foley, got approval from him, and has since gotten approvals for  
42 expansion at our Haleakala location.

43  
44 I'm in, I'm supportive of the bill, as was approved by the County Council. I think it does a great  
45 job of requiring insurance, which I believe operators have but is obviously an important thing to

1 have limiting the hours of operation. And also, you know, restricts operations to appropriately  
2 sized parcels. When we first started this operation on Haleakala Ranch, our goal was to use  
3 valleys there which we do that are unusable for cattle ranching. They still run cattle in the area  
4 that we operate so it's an active agriculture operation, but we supplement income because as  
5 everyone knows, agriculture is difficult to make money here on Maui.

6  
7 Since 2002, in the last 18 years, things have changed a lot in the industry and we've had a few  
8 operations come in that's caused a lot of problems. If you guys live in Haiku, I'm sure you've  
9 become aware of some of the operations. The way that the Council approved it with the 50-acre  
10 minimum for operations does it really clean job of isolating operations like Skyline, like Flyin  
11 Hawaiian, like Maui Tropical Plantation, Kapalua that have been in good standing with the  
12 community for over a decade in most cases, and really limiting the issues to the folks that have  
13 created issues that we've all heard about. There's only a few bad apples, but like anything, you  
14 get one or two operations cause problems and everybody else, you know, can get thrown in with  
15 it, but this as written from the Council does a great job of separating that.

16  
17 The recommendations from the Planning Department, I'm concerned, as they were written to you,  
18 I'm not sure how they were just presented, but the thousand feet from residents would shut down  
19 about half of the good operations. So that now apparently is not part of what they're  
20 recommending, which is good. Also it says that not having alcohol within a thousand feet of a  
21 zipline is one of the recommendations as written to you guys, but I don't believe it's presented.  
22 The Council modified that to say alcohol cannot be on zipline premises during business hours.  
23 Now perfect example, Maui Tropical Plantation has a zipline right next to the Mill House which  
24 has a liquor license. If it was approved as it was written to guys by the Planning Department, and  
25 I don't believe that's what's intended at this point, but it would shut down the Mill House's ability  
26 to serve alcohol. That's not the intent. The goal, of course, is to not have people drinking and  
27 then going ziplining which I think as the Council—

28  
29 Ms. Takayama-Corden: Three minutes.

30  
31 Mr. Boren: ...does a good job of that. So, I'd recommend approval—

32  
33 Mr. Carnicelli: Thank you, Mr. Boren.

34  
35 Mr. Boren: Thank you.

36  
37 Mr. Carnicelli: Any need for clarification from the testifier? Mr. Boren, I'm just...I'd like to just  
38 clarification on the thousand foot of residential.

39  
40 Mr. Boren: Yes.

41  
42 Mr. Carnicelli: You're in opposition to that?

43  
44 Mr. Boren: I'm an opposition. That's not...that was actually a first version that was heard by the  
45 Council, and there is a lot of other operators that have come out and voiced their opinions against

1 it. I just found out about this meeting today, so I think I'm the only operation on the phone. The  
2 50 acres does the same thing. Our operation at Haleakala Ranch is part of the Haleakala Ranch  
3 Visitor Center. The visitor center itself was...has gone through special use permits and what have  
4 you, and it's, you know, it kind been in a holding pattern for years, but that's within about a  
5 thousand feet of residences in Upper Kula. I've got a great relationship with all our neighbors.  
6 Two of our neighbors' kids have worked for us and again, this is 18 years of operation. It's not a,  
7 it's not an issue for our operation, but we locate ourselves there because that's when, where  
8 multiple other operations of ATVs, horseback riding and things were located. So that was the  
9 center for activity, but it would conflict with this issue, the thousand feet which is part of why it was  
10 taken out and was modified to be it must be a large agricultural parcel. Now any conditional use  
11 that is looked out for approval in the future, so if another questionable location comes up, it's  
12 gonna go before the Planning Department, everybody, and then conditions to be placed on them  
13 to say, hey, the ziplines need to be located X distance from the property line. But if it was adopted  
14 at the thousand-foot regulation as is, all you'd be doing is penalizing a number of operations that  
15 have never had any complaints.

16  
17 Mr. Carnicelli: Okay, thank you for, thank you for clarifying cause yeah, I mean, I don't, I don't  
18 see it in the current version that was given to us by the Planning Department—

19  
20 Mr. Boren: It's not.

21  
22 Mr. Carnicelli: So, okay.

23  
24 Mr. Boren: It was only in the original memo, so I just was making sure it wasn't included as one  
25 of the recommendations.

26  
27 Mr. Carnicelli: Okay. Commissioner Freitas has a clarifying question for you.

28  
29 Mr. Freitas: Chair, I have a question regarding operation. Should that wait for another time  
30 because it doesn't pertain to anything he said?

31  
32 Mr. Carnicelli: Is it, is it, is it an operation for...is I mean, is it a question for an operator, I guess  
33 is the question.

34  
35 Mr. Freitas: Yes.

36  
37 Mr. Carnicelli: Why don't you go ahead and ask him then. Why don't you go ahead and ask him.

38  
39 Mr. Freitas: Okay, thank you, Chair. Mr. Boren, I was looking at one of the definitions and it says  
40 that ziplines may be installed in combination with trees, poles, portable structures, buildings. My  
41 question is, when would you ever use a tree as part of a structure?

42  
43 Mr. Boren: Oh, our first zipline course, our Haleakala Ranch one is actually based off of trees.  
44 So originally it says, based off of large eucalyptus trees up there, so they're like six-foot diameter  
45 trees and the ziplines only a few hundred pounds of pressure on those, on those trees a few like

1 ten to fifteen feet up, so it doesn't create any kind of negative impact. We have regular arborists  
2 check them out, and we have them monitored for health continually. So, there's very few places  
3 you can do that, and I obviously would not advocate for doing on native trees and certainly not in  
4 the native forest, but an invasive forest like a eucalyptus forest it works, mostly people use poles  
5 because it's a lot more, it's a lot easier to engineer, but 150-foot tall, six-foot diameter eucalyptus  
6 trees is pretty sturdy, too.

7  
8 Mr. Freitas: Thank you for your answer.

9  
10 Mr. Carnicelli: Any other needed clarified testimony? Seeing none, thank you, Mr. Boren,  
11 appreciate you coming forward.

12  
13 Mr. Boren: Thanks.

14  
15 Mr. Carnicelli: Director.

16  
17 Ms. McLean: Chair, the last person who's indicated they wish to testify on this item is  
18 Mr. Tom Croly.

19  
20 Mr. Tom Croly: Aloha, Commissioners.

21  
22 Mr. Carnicelli: Good morning Mr. Croly.

23  
24 Mr. Croly: I had to chime in here because this was so deja vu, seeing Gina there and seeing the  
25 promulgation of new rules for an industry within you know, Maui County. Sorry, this is this was  
26 very similar to the promulgation of the bed and breakfast rules initially, and later the short-term  
27 rental rules where prior to them being there, everything had to be a conditional permit, and a  
28 conditional permit allows you to look at each operation separately and make conditions specific  
29 to that, whereas we're looking kind of broader and saying what are the, what are the conditions  
30 and the rules that we want to apply to everyone? And if these rules are properly enforced, then  
31 you have an industry that can operate efficiently without creating impacts that, that, that one would  
32 fear. And, you know, again, when we started the bed and breakfast thing, we had about twelve  
33 more meetings until we actually came up with the law. And the short-term rental one was about  
34 15 more meetings before we finally came up with the law. And that's essentially where you are  
35 right now with the start of this.

36  
37 I heard some discussion about the thousand-foot thing, and I did want to chime in if that was still  
38 a possibility. If there is a thousand foot, if there is a distance that these are to be kept away from,  
39 from other homes, and that might be a reasonable condition, it should be from where the zipline  
40 is located and not where the border of the property is. You know, many of the bed and breakfast  
41 and short-term rentals, we send notice to people within 500 feet, but it's from the edge of the  
42 property which sometimes is on the other side of a gulch, and the person gets the notice that says  
43 this house is nowhere near me. So, I would just caution you, if you are making any kind of distance  
44 type regulations, it should be from where the zipline operations are, are being conducted and not  
45 the, not the lots themselves. Thank you, Chair.

1  
2 Mr. Carnicelli: Thank you, Mr. Croly. And you need to testify...or any need to clarify Mr. Croly's  
3 testimony? Seeing none, thank you, Mr. Croly. Director, anybody else?  
4

5 Ms. McLean: Chair, at this time no one else has indicated they wish to testify.  
6

7 Mr. Carnicelli: Okay, so at this point in time, this is going to be your last chance if you would like  
8 to testify on this particular item please unmute yourself, and if you also wish to unmute your video.  
9 Unmute yourself, if you wish to testify on this. Going once, going twice, okay so if there are no  
10 objections, we're gonna go ahead and close public testimony on this item. Seeing no objections,  
11 public testimony is now closed.  
12

13 I guess what we can do now is let's just go ahead and start with Q&A from the Commissioners  
14 either, I guess, for the Director and/or Jacky. So, Commissioner Pali we'll go ahead and start with  
15 you, and what I'll do, is I'll just go around, right, everybody gets a couple of questions, we'll go  
16 around, and if you got additional questions, we'll do additional rounds. So, since we got eight of  
17 us now, we'll go ahead and do it that way. So, Commissioner Pali go ahead and start us off.  
18

19 Ms. Pali: Yeah, I just got really one clarifying question. It might be for staff planner or might be  
20 for the Director. It says that the new regulation says a max total of 15 conditional approvals. It  
21 looks like based off of the presentation and the information we have we've got ten already. So,  
22 actually I suppose it's two questions, so the first question is, assuming the ten fall into the 15, am  
23 I standing it that it would allow for five more that's question one, and question two, which can be  
24 answered in the same, at the same time, now that we're taking these other things like bungee  
25 jumping and these other activities and we're throwing it there so now we're saying out of all those  
26 other types of activities, is that also now limited to the extra, the total of 15? So that's my question.  
27

28 Ms. McLean: Thank you, Commissioner Pali. Of the permitted operations there are a few that  
29 would not require the conditional permit because of the acreage, as the bill's written now, there's  
30 that difference in acreage so it's only the ones on the smaller parcels, even though they're still  
31 quite large parcels, only the ones on the smaller parcels, would be the conditional permit. So,  
32 yes, the existing operations, including bungee and any of those other activities, would all fall under  
33 that cap requirement. But as far as we know, that would still allow space for a few more permits  
34 to be issued if all of those actually received their permits.  
35

36 Mr. Carnicelli: Thank you. Commissioner Edlao, do you have any questions or need any  
37 clarification from the Director or Jacky?  
38

39 Mr. Edlao: Yeah. Yeah, I do. You know, I yesterday I contacted Jacky. One of my concerns is  
40 the safety issue. You know, because back in 2012, when I was on the Land Board, there was an  
41 accident on the Big Island that a person died, and you know, it's, it's something, you know, I was  
42 real, real concerned about. But that said, anyway, Jacky did some research with the State and  
43 did a wonderful job, thank you, Jacky, but what it really boils down to, I mean, the State cannot  
44 regulate because of the costs to implement a program. It would be just phenomenal, and also to  
45 maintain, what it boils down to basically is the insurance that really you know, comes into play,

1 and my question would be, I mean, for instance, for the guys here on Maui or in Hawaii are they  
2 working with local insurance companies or insurance companies from up in the mainland, how  
3 did they do their inspection? If it's somebody, if it's an insurance company up in the mainland, do  
4 they have somebody here that will do the inspections or is it just a paper? If it's just a paper  
5 inspection, I'm not too cool about that, you know. I would prefer somebody physically that's  
6 qualified, whether engineer or, or whoever, a contractor that is qualified to do these inspections,  
7 number one. Number two, do they report to the Department of Labor Industrial Resources or  
8 they'd reply to the County. I would assume, I would hope that some sort of report would come to  
9 the County when these inspections are done. Those are my concerns.

10  
11 But like I said, I guess you know this whole thing, I mean, all we're doing is making rules. We're  
12 not regulating these guys cause we can't, you know, it's up to the State if they want to do it, but  
13 because there are cost that's not going to happen not in my lifetime anyway. So my concern is  
14 to make sure that they're working with reputable insurance companies, with reputable inspectors  
15 and constant reporting, not only to the State, but also to the County. That's my, that's my play.

16  
17 Mr. Carnicelli: Great. Thank you, Commissioner. Great points. Actually, great points, actually  
18 great points. Commissioner Tackett, do you have anything that you would like to add or questions  
19 that you need? Oh, oh, Christian hit the wrong button. Commissioner Thompson, do you have  
20 anything that you'd like to add or questions? Okay. Commissioner Castro?

21  
22 Mr. Castro: Yes, I do have...I also do have concern about safety, you know, as well as Ed, and I  
23 remember that accident back then, and I remember one of the companies coming before us, and  
24 I wasn't really quite happy with the responses, and what I mean by that is when it came down to  
25 the inspections and who did the inspections, and they said, oh, we do the inspections. So I was  
26 like...my other question to them was, okay, if you do your own inspections, are you certified to do  
27 those inspections, and where did they go to for training, to get certified to do those inspections?

28  
29 You know, and never really got a really good answer, they a little evasive. And one of the  
30 concerns...the other concerns I have, especially when they are erecting towers that you really  
31 need to get some kind of a expert, a engineer in there because a lot of it has to do with the soil  
32 condition, so if you're gonna, you're gonna go vertical the bottom got to be stabilized to erect  
33 anything that's going up, and that as well was not really ever answered. And again, the other  
34 concern is how often do they inspect the cables, the ladders, the ropes, you know, on all of that,  
35 all the mechanical parts? So that's, that's the only concerns that I really have and it still bothers  
36 me because it looks like it's accidents waiting to happen. That's all I have, thank you.

37  
38 Mr. Carnicelli: Great. Thank you, Commissioner. Commissioner Freitas comments, questions?

39  
40 Mr. Freitas: Yes, thank you, Chair. I was going to ask because I heard they operate...one of the  
41 operators say that they tend to put ziplines over gulches. Is it ever a possibility that these gulches  
42 have water that would be used for consumption, and is there a possibility of contamination? Is  
43 there any rules over not going over water, fresh water?

1 Ms. McLean: Commissioner Freitas in the, in that bill as it's drafted there are no such  
2 regulate...there, there is no language relating to that the way that the bill was drafted right now.

3  
4 Mr. Freitas: These zipline and tours, they, they sometimes go over conservation lands or  
5 not...they cannot go over conservation land?

6  
7 Ms. McLean: The...if they do go over conservation lands, then that would fall under the State  
8 Department of Land and Natural Resources. The County doesn't have zoning authority on  
9 conservation lands. So that would be a Conservation District Use Permit. I mean, as the  
10 presentation showed, there are some operators here who didn't ever get County approval so I'm  
11 not aware of any that are in the Conservation District now, but certainly there could be some  
12 illegally operating without CDUP, but not that we're aware of.

13  
14 Mr. Freitas: Could we put a condition that says if the plans for their construction goes over, a  
15 water source that feeds in to public water system, that it not be allowed.

16  
17 Ms. McLean: You can make whatever recommendation you want. We'd need to be careful about  
18 the language, 'cause when you talk about water source, I mean, there's you know a  
19 groundwater...

20  
21  
22 Mr. Freitas: Open water, open surface.

23  
24 Ms. McLean: Yeah, if it's, you know, we can say a stream or waterway would probably be clearer,  
25 but the Commission can make whatever recommendation it wants. We rely on Mike Hopper to  
26 advise if that's under the County's authority, but that's up to you to make your recommendations.

27  
28 Mr. Freitas: Okay. All right.

29  
30 Mr. Carnicelli: Yeah, and just so people that are on the call understand what it is that we're doing  
31 here, this is a bill that or a resolution that was started at County Council amending Chapter 19.  
32 Anytime something's amended in Chapter 19, it has to go to the planning commissions, plural, for  
33 our input and recommendations, and then it goes back to them. They're ultimately, you know,  
34 who's going to make the decision on what's in there and what's not. I see that Gina Flammer  
35 representing Councilmember Sinenci is still on the line, and I also see that Councilmember  
36 Sugimura, Yuki Lei Sugimura is on the call as well. So when this gets remanded back to them,  
37 they just, you know, they listen to what it is or read what it is that we recommend, and then they  
38 make the call from there. So that's just how the ball bounces, and that's also true with the next  
39 item on the agenda as well. So with that being said, Commissioner Hipolito, do you have any  
40 questions or comments that you'd like to provide?

41  
42 Mr. Hipolito: Thank you, Chair. My clarifying question was addressed by the Director McLean  
43 and also Commissioner Pali, but I do want to state that I want to make this statement as far as  
44 safety is concerned also, inspections, certified inspectors, you know, doing their due diligence,  
45 you know, and as Commissioner Edlao said, you know, we can make the rules, how are we going

1 to enforce it? You know, and Commissioner Castro, in what he mentioned about soil conditions,  
2 and any time when you go vertical, you know, proper testing needs to be done prior to construction  
3 to ensure that the area that they planned to place this new zipline or bungee jumping that, that all  
4 of the due diligence on the safety side needs to be considered, and so I support Commissioner  
5 Edlao and Commissioner Castro very wholeheartedly about the safety, about construction, about  
6 ongoing maintenance, you know, it states yearly inspections I feel in this area I think you've gotta  
7 really consider semi-annual inspections on some of the key components and even monthly  
8 inspections on some of the more critical components, you know, so it needs to be stepped out for  
9 the owners and operators of the ziplines or even the consideration of the new developments that  
10 we're gonna be, that are gonna be coming before the Maui County that, that needs to be take  
11 place. Thank you, Chair.

12  
13 Mr. Carnicelli: Thank you. Yeah, great questions. So, Commissioner Tackett, do you have any  
14 questions and/or comments?

15  
16 Mr. Tackett: Seems like you covered pretty well. I have, I have no questions or comments. I  
17 think what everybody else brought up were were key points to the safety of the people that use  
18 the ziplines, and I think that that's the most important thing, is that everybody that that tries to use  
19 that type of recreation that, that they're a safe place to enjoy it. So I have no other questions  
20 besides the ones that were already brought up. Thank you.

21  
22 Mr. Carnicelli: Thank you, Commissioner Tackett. So, Director, I have a couple of clarifying  
23 questions. So one, it was sort of addressed, but Conservation, right? Like 'cause we're talking  
24 about Ag. but you know, one of the things for me, like when you start talking about specifically  
25 rappelling, right, and this almost goes to what you know, Commissioner Freitas was talking about  
26 rappelling and ... (inaudible)... waterfall most likely, and a lot of that is going to be in Conservation  
27 areas. So if we're suddenly doing that, you know, like what exactly is, how does this affect these  
28 operations that would potentially be in the Conservation area?

29  
30 Ms. McLean: I'd ask for clarification from Mike Hopper, but I don't think they will have any effect  
31 on operations in Conservation, in State Conservation.

32  
33 Mr. Carnicelli: So if, let's just say, if you want to do a zipline in State Conservation, then this bill  
34 doesn't cover you. I guess maybe I'll ask that question to you, Mr. Hopper.

35  
36 Mr. Hopper: Well, you would need whatever permits you would need from the State in addition  
37 to, I think, what you would need from the County. I mean, unless you were exclusively on  
38 Conservation District lands. So I think that if you're going to use those lands for that purpose, just  
39 like if you were going to do anything else on lands that are Conservation, you would need to  
40 get that approval from the State in addition to County approval 'cause presumably you're also  
41 using land that's outside of the Conservation District probably it's designated Ag by the State,  
42 State District. Also, if you're, you're going to have a County, you're probably going to have land  
43 in those County, County areas anyway, so you'd probably need a Conditional Permit and, you  
44 know, I don't want to speak for the State maybe you don't need a Conservation District Permit of

1 any kind to do a zipline, but I think that's the State's jurisdiction so they would need to determine  
2 what approvals you would need or that area.

3  
4 Mr. Carnicelli: Okay, stay on Mr. Hopper 'cause we're also talking about bungee, right? I've  
5 bungeed a bunch of times and 'cause your answer is kind of making the assumption that there's  
6 probably Ag, too. What if we're in an area that's across a ravine, they build a bridge and they  
7 want to do bungee and it's solely in Conservation, right. Like, I mean, and I get that that's not us  
8 but that's State, but is there a way with which this is written or like the definition of say bungee  
9 repelling, zipline, canopy tours is that, that operation is just prohibited in the County?

10  
11 Mr. Hopper: I don't want to play the, the, what if game without seeing a specific set of facts. It's  
12 hard to give a give a general... a specific answer to that if I don't know exactly what's happening—

13  
14 Mr. Carnicelli: Fair enough.

15  
16 Mr. Hopper: --but in general, within the State Conservation District, the County doesn't have the  
17 ability to...the zoning ordinances wouldn't apply from the County, so that's the general answer.  
18 And you know, you may need to go to the State, and I mean, sometimes that's an interesting  
19 situation because you could argue the State's more permissive than the County even though the  
20 intent of the Conservation District is to take away the County's authority to zone because the State  
21 wants to have exclusive jurisdiction and potentially be more restrictive. But sometimes, you know,  
22 the State may be less restrictive than the counties if they if they want to.

23  
24 Mr. Carnicelli: Okay.

25  
26 Mr. Hopper: But generally speaking, inside the Conservation District, it's the State's jurisdiction if  
27 there's, there's no zoned property whatsoever there.

28  
29 Mr. Carnicelli: Great. Commissioner Tackett has a question for you, I believe. Go ahead,  
30 Christian.

31  
32 Mr. Tackett: My question isn't...I mean, my question isn't necessarily for Michael, but I do have  
33 a question. When, when, when you guys are finished.

34  
35 Mr. Carnicelli: Okay. So, Director, I then have another just clarification. When I'm looking at the  
36 conditions and modifications on the, what I guess would be the third page of the report that was  
37 given to us. It says, that it is unlawful for any person to consume intoxicating liquor on or within  
38 a thousand feet of any bungee jumping, zipline, canopy tour or similar thrill activity. So I'm going  
39 okay, what if I'm the neighbor having a beer in my backyard?

40  
41 Ms. McLean: We're gonna come get you. As I believe Jacky mentioned, those were comments  
42 on a previous version of the bill, an earlier version of the Council bill had that language in it and  
43 we were proposing modifications to that. Now that that language has been taken out of the  
44 Council bill, we are not proposing to add it back in.

45

1 Mr. Carnicelli: Okay, so...

2

3 Ms. McLean: So it got a little bit confusing because there were different versions of the bill that  
4 we had commented on in the past. So I apologize for that.

5

6 Mr. Carnicelli: Right, and that's what's hard for us as well because there's not like a, okay, here's  
7 the version with which we're given right now to be able to make, you know, it's kind of like the  
8 presentation was like, oh, we're kind of doing this and then that and now we're not. And so it's  
9 kind of hard to say, okay, this is where we stand on it. Commissioner Edlao, I see your hand up  
10 there.

11

12 Mr. Edlao: Yeah. You know, because the insurance will play a big part in this. I was wondering  
13 if Mr. Boren is still available and maybe you can ask him, you know, who's his insurance inspectors  
14 are.

15

16 Mr. Carnicelli: Right. Are there any objections—

17

18 Mr. Edlao: Or how does it work?

19

20 Mr. Carnicelli: Are there any objections to bringing Mr. Boren up as an expert on bungee jumping  
21 or even on ziplines I guess you'd say, sorry, not bungee jumping, but on ziplines. Seeing no  
22 objections. Mr. Boren, thank you for unmuting your audio or your video, unmute your audio. In  
23 regards to insurance, my first question, kind of just to piggyback on Mr.....Commissioner Edlao  
24 is, are you allowed to self-insure?

25

26 Mr. Boren: No, no. I can...I can definitely fill in on all of the questions that have been made. I  
27 can also tell you about the two major accidents that have happened in Hawaii in the last 18 years  
28 to color the situation. So first off, we were briefly insured by a local company just because we  
29 want to keep everything local and ...(inaudible)..., but basically there's two large insurance  
30 companies on the mainland that do all the insurance for ziplines across the country. They're  
31 experts at it. They know exactly what they're looking for.

32

33 And as far as the inspections go, what's required is in order to have insurance with either of those  
34 two major vendors, which I believe everyone on Maui has, you have to have an independent third  
35 party inspection annually, and they do a full report and submit it to the insurance company and  
36 everything like that. They cover all the structures, they cover training, they cover the whole nine  
37 yards about the operation. Independent of that, you also as pretty much a standard throughout  
38 the industry is you do a daily inspection of everything, equipment, the course typically takes about  
39 hour, hour and a half before the start of the day. You go through every single element. You also,  
40 we also do quarterly tactile inspections, which means that we physically get on every line and roll  
41 hand over hand for you know, thousand feet and check for wires with our eyes which takes a  
42 couple of days to do. So that happens every quarter. So daily we're checking every anchor,  
43 we're checking pole, we're checking all the lines, quarterly we're hand over hand rolling every  
44 line, of course, ...(inaudible)..., and then once a year, an independent expert that's been certified  
45 to do it, comes in and checks it out, and that's what you need in order to have insurance. So it's

1 pretty well regulated. I will say, I think the safety and everybody has absolutely...what...the  
2 questions you guys have is exactly what I think that most people would have.

3  
4 Ziplines kind of thrive on the perceived danger when there is an accident it's a sensational thing.  
5 It's like a shark attack. I mean, we all know, out there ...(inaudible)... whatever happened in  
6 South Maui recently, you know, shark attacks are really rare, it's pretty safe to get into the water,  
7 but as soon as somebody gets bit in Florida, it's all over the national news. If somebody falls off  
8 a zipline, it's all over the national news, but the reality is in 18 years with 22 operations across the  
9 State, there's only been two deaths and there's been easily two or three million people that have  
10 gone ziplines and both of those deaths were staff members. And one case is the Big Island that  
11 was mentioned earlier, and that actually was a soil issue. So prior to the course opening at  
12 Kapohokine over there they installed a tower, had not done soil studies which of course, they  
13 should have done, and...and the line tipped over while a guide was on it. So that tragically, the  
14 staff member died. It wasn't open to the public at the time, and they obviously didn't do proper  
15 engineering on the course. Every other course I'm aware of has done proper engineering and  
16 particularly since then anchor testing has become a major part of every insurance policy. So even  
17 if you didn't do it initially, you've had to go back through and load test all your anchors. The  
18 second death occurred here on Maui at the Piiholo and that was a staff member, and basically  
19 there were new, as I understand it, if somebody from Piiholo happens to be on the call, they could  
20 clarify more, but they were new on the job, had gone through training, but they apparently  
21 for...didn't hook themselves into the platform. So a guest came in, they tried to catch the guest,  
22 and the guest started to roll back out and because the staff member had not clipped themselves  
23 in, they rolled out with the person, and I can't even imagine how horrific that was for everybody  
24 involved. But those were the only two deaths that occurred in Hawaii in 18 years with easily two  
25 million people that have zipped.

26  
27 So the perception because of how horrific those situations are when they do happen is that it's  
28 unsafe, but the reality is it's everything's engineered, there's constant inspections, and there's  
29 never been a major guest injury that I'm aware of. I mean, you get broken ankle here or there,  
30 but honestly, I'm sure that snorkeling is far, far more dangerous.

31  
32 Mr. Carnicelli: Commissioner Edlao.

33  
34 Mr. Edlao: Mr. Boren, I like the idea of a third party inspector. Now because most of the zipline  
35 tour guys are using these one of two of these insurance companies up in the mainland. So when  
36 they do the inspection is this somebody that they fly in or they have somebody here that they work  
37 with to do these inspections?

38  
39 Mr. Boren: So, good question. So if they're, there I think might be one or two inspectors in Hawaii,  
40 but most of us fly people in from the mainland to do them. It's not the actual insurance company  
41 that has the inspector. There's an association called ACCT or the Association for Challenge  
42 Course Technology.

43  
44 Mr. Edlao: Yes.

45

1 Mr. Boren: They certify inspectors, and so there's a handful of these guys that are certified. So  
2 you basically pick any certified person that has gone through that training and what have you, and  
3 they can come out and do the inspection of the course. So it's probably like an elevator safety  
4 inspection, like that was...people are looking at elevator inspectors originally when that state law  
5 was trying to go through, I think someone had mentioned a while ago, but there's a huge backlog  
6 of elevator inspections, apparently so they didn't do that. But I think like to be an elevator  
7 inspector, you don't have to be the insurance person, you have to be certified to inspect elevators,  
8 and that's the same thing as ziplines, there's people certified to inspect these and that's who  
9 comes out to do it.

10  
11 Mr. Edlao: So they do have people here or not?

12  
13 Mr. Boren: There's, there are, I think, are two local companies that are certified to do third party  
14 inspections.

15  
16 Mr. Edlao: Okay.

17  
18 Mr. Boren: I don't know of anybody that uses either of them locally. So, you know, one of them  
19 is a builder that I think does most of his work on the mainland but happens to live here and the  
20 other one has operations in Tennessee, and here they go back and forth ...(inaudible)...I'm  
21 actually not sure if they're...if they're certified as a third party inspector or not. But generally, we  
22 all fly people in that that's what they do for a living.

23  
24 Mr. Edlao: So when these inspections are done—

25  
26 Mr. Boren: Yeah.

27  
28 Mr. Edlao: You get a copy of the inspection as well as the insurance company?

29  
30 Mr. Boren: Yes, we have to—

31  
32 Mr. Edlao: Would you be opposed to—

33  
34 Mr. Boren: --provide that.

35  
36 Mr. Edlao: Would you be opposed to submitting that copy to the County as well.

37  
38 Mr. Boren: Not necessarily, no. I mean, the insurance company requires it, so if we have  
39 insurance, then we have that on file every year. So I mean I'm happy to submit our copies, and  
40 they typically will include recommendations. So you'll get like a fail, pass or a pass with  
41 recommendations like, you know, something or other with inventory or something. So it's...they're  
42 lengthy documents.

43  
44 Mr. Edlao: Okay. Thank you very much. That's very informative.

45

1 Mr. Boren: Yep, you're welcome.

2

3 Mr. Carnicelli: Any other questions for Mr. Boren while he's here? Thank you, Danny, appreciate  
4 you giving us the clarification that, that actually was very, very helpful because it kind of felt like,  
5 okay, we're trying to put rules on an unregulated industry when you know, it seems like that there  
6 is inherent regulations through the private sector and insurance rather than through government,  
7 you know, putting in rules and everything like that that's at least the perception that I get.

8

9 Mr. Boren: Yes, I totally...(inaudible)...I totally get it, yeah. You're welcome.

10

11 Mr. Carnicelli: Great. Thank you. Any other questions or comments for the Department?  
12 Commissioner Tackett.

13

14 Mr. Tackett: Yes. Thank you. Thank you, Chair. My question was, as far as anchorage points,  
15 not so much for the zipline for, but for the repelling and things of that nature, is there anything in  
16 place to, to dictate where and who puts in anchorage...(inaudible)...and the reason for the  
17 question is for the repelling, and you are saying that people were repelling down waterfalls is there  
18 anything in place to, to stop somebody from coming up with a...with a three-quarter inch battery  
19 driven hammer drill and drilling a big hole, three-quarter inch hole into the ground and putting their  
20 own anchors in to these kinds of natural features and then just tying up to them and repelling  
21 down these types of places. So I was wondering if there is anything in regards to that, because  
22 it seems like some of that stuff would be kinda inappropriate.

23

24 Mr. Carnicelli: Director and/or Jacky.

25

26 Ms. McLean: Chair, right now, there's no language in the bill that addresses that, and that might  
27 be something we can bring Danny back to ask him 'cause we...the bill doesn't go into the detailed  
28 regulations about the structures or the inspections. The County, just for your information, doesn't  
29 require building permits for the towers whether they're freestanding towers or towers using trees.  
30 The County doesn't do inspections. So getting into the details of that kind of regulation, I'm not  
31 sure how we would regulate it since we don't have those standards anyway. That's not to say  
32 you can't make the recommendation, we'll forward whatever recommendation you'd like to make  
33 to the Council. But right now, the bill doesn't have that, and I'm not quite sure how the County  
34 would, would enforce that.

35

36 Mr. Carnicelli: Well is, we could make it a condition of the permit. I mean, if they come to us for  
37 a Conditional Permit, we can make it a condition of the permit that that doesn't happen, I mean,  
38 'cause, and ziplines is going to be different than, than repelling, right? I mean, repelling. I ziplines  
39 not going to be drilling into the side of a waterfall, but repelling might as Christian said. So,  
40 Commissioner Tackett you said you had another question.

41

42 Mr. Tackett: I just wanted to make sure that that was clear. I just, I just thought that that should  
43 be addressed because a whole bunch of people going into our natural features and, and drilling  
44 holes in the rocks with hammer drills, I think would be, would be inappropriate.

45

1 Mr. Carnicelli: Right. Commissioner Freitas.

2

3 Mr. Freitas: Thank you, Chair. If we pass this bill, would any of the current operators be in  
4 violation, and would they be not allowed to operate, and what would their timeframe be to meet  
5 any of the changes that we are passing?

6

7 Mr. Carnicelli: Well, it would be the Council would be passing, but Director?

8

9 Ms. McLean: Well, we would, at the time that they apply for permits, we would need to verify their  
10 insurance and their inspection and maintenance to see that they are in compliance or would be  
11 in compliance by the time the permit is issued. As you mentioned before, there are a few  
12 operations that would not require a Conditional Permit, but yeah, that actually...what, what's that's  
13 bringing to mind is is an interesting way to structure the bill that whether or not you need a  
14 Conditional Permit, you have to comply with those requirements. But you need the Conditional  
15 Permits just based on the acreage. So that's, that might be a better way to structure the bill, you  
16 know, whether it's the form we recommend or the Council's form of creating the new chapter to  
17 make sure that all ziplines comply with those requirements, but only the ones on the smaller  
18 parcels need the Conditional Permit.

19

20 So right now, back to your main question, Commissioner Freitas, sorry for my train of thought, we  
21 don't know if all of them would be in compliance. I would imagine they would be that would be a  
22 really risky thing for an operator to not have insurance and inspections. But I can't say for sure  
23 there are a few questionable operators. So, but we would, this would be a mechanism to find out.

24

25 Mr. Freitas: Thank you.

26

27 Mr. Carnicelli: Thank you. Commissioner Edlao.

28

29 Mr. Edlao: Michele, question...couple...two questions. Number one, maybe perhaps we could  
30 structure something in the condition that during some sort of certification of the construction that  
31 was done by...reviewed by an engineer or somehow prior to approval number one. Number two,  
32 because it seems like the insurance is a big part and you know, been watching these guys  
33 because we're talking about bungee jumping and all these other things would that insurance  
34 requirement also apply to them as well as to...because, right here, we were just talking about  
35 ziplines, but, you know, we bundling everything in there so would this also apply to them, bungee  
36 jumping and all of that?

37

38 Ms. McLean: Yeah, as the amendments that we're proposing would also include bungee jumping  
39 and repelling into that category.

40

41 Mr. Edlao: Oh, okay, okay.

42

43 Ms. McLean: So the conditions would apply to all of those.

44

1 Mr. Edlao: Okay, just wanted to make sure, but again maybe you could structure something to  
2 say that when you build these structures, get some kind of certification from engineers, that it's  
3 been soil tested or safe for during the construction or whatever it may be would be great.

4  
5 Mr. Carnicelli: Thank you, Commissioner. So, Director, is it possible to put in the bill that...well,  
6 at least we can recommend that they put it in the bill that these permits are only one year? I mean  
7 'cause what that would do is saying, like okay, you have to come back every year and we want to  
8 make sure your insurance is up and that you've done your inspections, as you know, as Mr. Boren  
9 talked about and everything like that. So, these are one-year permits, not okay, a five-year  
10 conditional permit, and what if you just kind of let it lapse and you are one of these dodgy guys?  
11 And again, this is you know, we're talking... I like the shark attack analogy, you know, millions of  
12 people swim, one person gets it and we all freak out, you know it is horrific. But is it possible to  
13 make these only one-year by ordinance?

14  
15 Ms. McLean: Yes, that is possible.

16  
17 Mr. Carnicelli: Okay, would anybody else like that as a recommendation? Commissioner Pali  
18 and then I'll go to Commissioner Freitas. Okay wait, we'll let Mr. Hopper chime in because he's  
19 probably going to just squelch this whole thing for us.

20  
21 Mr. Hopper: Well, I raised this issue with the Council, too. It's extremely odd and unprecedented  
22 to have lists of requirements for conditional permits because the County Council grants those and  
23 the County Council passes this ordinance. So, it's very odd in a case for the County Council to  
24 say we can only grant permits for a certain period of time by their own regulations, and yet the  
25 conditional permit they pass is actually an ordinance. So, to me, it is questionable whether or not  
26 the County Council would have to abide by these requirements if, if they put them on. Now, I  
27 suppose that it's similar to the processing requirements of conditional permits that are supposed  
28 to be followed, but it's just highly irregular to have a conditional permit list of requirements. In one  
29 case, there's a requirement for a two-thirds vote for passing the ordinance, and it's not even in  
30 the conditional permit section, so we may need to, upon legal review, make edits to this to deal  
31 with those issues. So, that's the only odd thing with this ordinance as proposed, is you know,  
32 originally it was going to be special permits, which the Council putting special permit requirements  
33 on it would make a little more sense. Of course, you as the commission would have to review  
34 them, but that would be the Council placing limits on the Commission's review and approval of  
35 the permits. Now you're talking about the Council placing limits on future ordinances that it may  
36 pass, and I suppose it does that with changes in zoning and things like that, but it's just very odd  
37 to do that with conditional permits because normally it's up to the Council to put whatever  
38 conditions on it that they would like.

39  
40 Mr. Carnicelli: Okay, so I'll withdraw my, I withdraw my recommendation then. I get it. That's  
41 fine.

42  
43 Mr. Hopper: You can put it on there, but it's questionable to me whether or not the Council would  
44 have to be held to that is all I'm saying.

45

1 Mr. Carnicelli: Great. Thank you, Mr. Hopper. Commissioner Pali then Commissioner Freitas.

2  
3 Ms. Pali: Yeah. Thank you. I'm glad he went first. I was just saying that I think we're getting  
4 confused as to what we're discussing here. And so, we have to kind of compartmentalize all of  
5 it, and I was just going to say that this is the ordinance which is the bigger picture, and then as  
6 the applicants come through to apply for those 15, then we'll be able to make it specific and then  
7 have the generic conditions like follow all, you know, regulatory state, federal requirements,  
8 including insurances, and things like that. So, I don't know, I was just going to try to separate the  
9 two, but anyway, non-issue now.

10  
11 Mr. Carnicelli: Commissioner Freitas.

12  
13 Mr. Freitas: Thank you, Chair. One of the limits put on this bill was 15 operations or 15 tours.  
14 What if the operators are not in an area of ziplining that would allow rappelling and bungee then  
15 another company would, would have to come in. So, we got to look at leaving this only with  
16 ziplining and canopy tours, and make bungee and rappelling a separate bill because the areas  
17 that you do these two things, I think is very different. And if that's the case, if you are going to  
18 bundle them, I don't think 15 is fair because if Mr. Boren doesn't want to do that it takes away one  
19 spot of an opportunity like the bill was intended to accommodate. Thank you.

20  
21 Mr. Carnicelli: So is your suggestion that that the number be moved from 15 or that your  
22 recommendation is that bungee and repelling be separated from canopy and zipline?

23  
24 Mr. Freitas: One or the other. I would lean more to separating those because those rules about  
25 the water, fresh water, surface water would apply more to the other two than the bungee...than  
26 the zip, the ziplining.

27  
28 Mr. Carnicelli: Okay. So, Michele and/or Jacky, how do you want to package...I mean, we've  
29 had a lot of discussion about different things, regulations, oversight, numbers of tours, things like  
30 that, how do you want to package what it is that we're gonna to forward to the Council? Do you  
31 want to just say, oh okay, these are the things that were discussed and do that in a transmission  
32 or do you want us to actually make a motion on something that we then formally adopt and give?

33  
34 Ms. McLean: Formal motions would be preferred because then it's very clear and straightforward.  
35 Usually we send a summary of the discussion if, if there's not a clear recommendation or you can  
36 for example, you can recommend approval of the proposed bill, either the Council version or the  
37 Department's amended, amended version or amended approach, and then add a few comments  
38 or you can make specific recommendations. I mean, if you want to say you recommend that  
39 conditional permits be granted for no more than a year, you can make that specific  
40 recommendation. You can make a recommendation that a restriction be added, that ziplines not  
41 cross dreams or waterways that provide drinking water. You can add a condition about the  
42 frequency of inspections. You know, there's those are things that you talked about, but it would  
43 be better if you have a specific motion because otherwise it's what Jacky and I understand your  
44 discussion was intended to convey, but you know, if you can make a motion that would be better.

45

1 Mr. Carnicelli: Okay, so for clarification purposes, Jacky, can you pull your PowerPoint back up  
2 so we know exactly what the Department's recommendation is, please, so we'll use that as our  
3 base.

4

5 Ms. Takakura: Can you see my screen? I just have to get to the page.

6

7 Mr. Carnicelli: Yeah. Yeah, we can.

8

9 Ms. Takakura: It takes a minute to change... So, the first thing we were proposing is to move the  
10 definitions, keep them, but move them for zipline and canopy tour, not amusement park we're  
11 forgetting that part, and then don't worry about the thousand feet, and then moving the criteria  
12 and restrictions and standards to conditional permits. And then for the Agricultural District, it was  
13 adding rappelling, bungee jumping, ziplines and canopy tours to the list of prohibited uses or  
14 structures.

15

16 Mr. Carnicelli: Okay, so my, my first recommendation is going to be that if we have rappelling  
17 and bungee jumping now in 19.30A.060.7 that we also then have a definition for them at the  
18 beginning, right. We have, we've defined ziplines, we've defined canopy tours, but we didn't  
19 define repelling, we didn't define bungee jumping. Does anybody have an objection to that  
20 recommendation? Okay, hearing none, we'll go ahead and adopt that one. Does anybody else  
21 have a recommendation that they would like to add over and above what the Department's  
22 proposed revisions are? Go ahead and unmute yourself 'cause Jacky's doing screen share so I  
23 can't see yourself. Just go ahead and unmute yourself and chime in.

24

25 Mr. Edlao: For me, it's the insurance thing to make sure that, you know, that there's inspections  
26 done by a third party and reports done you know periodically and submitted to County which I  
27 think it's already pretty much in here, yeah. The records shall be made available to the Director  
28 upon request. And, you know, just some sort of assurance that or knowing that this will not...the  
29 insurance requirements, not only apply to the zipline, but to the bungee jumping and the rappelling  
30 as well to be fair.

31

32 Mr. Carnicelli: Right so, if we go...

33

34 Ms. McLean: Chair?

35

36 Mr. Carnicelli: Oh, go ahead. Go ahead, Director.

37

38 Ms. McLean: This is Michele, if I can jump in?

39

40 Mr. Carnicelli: Yeah.

41

42 Ms. McLean: Right now the language is, proof of insurance and inspection reports, maybe you  
43 might want to clarify that there should be third party inspections?

44

45 Mr. Edlao: Oh yeah, yeah.

1  
2 Ms. McLean: At least annually because that's not specified or if you want a greater frequency,  
3 you can recommend greater frequency.  
4  
5 Mr. Edlao: Yeah, yeah, I want something to say that a third party inspector and I like the idea of  
6 Commissioner Hipolito about maybe very six months as opposed to once a year.  
7  
8 Mr. Carnicelli: Are there any objections to that language? Commissioner Pali.  
9  
10 Ms. Pali: The inspection is every six months or the requirement to provide insurance what was  
11 the clarification on that?  
12  
13 Mr. Edlao: Both of them. They need to require. Yeah, so proof of insurance and have a third  
14 party inspector doing the inspections and not, you know, have them do their own.  
15  
16 Ms. Pali: So just for clarification, insurance usually is issued on a year to year basis so I feel like  
17 that might be excessive once they've done it once for the 12-month period. And in regards to the  
18 inspection, is it because you believe soil and the environment would change rapidly enough to  
19 additionally burden the small business owner with having another inspector every six months  
20 versus once a year?  
21  
22 Mr. Edlao: No, I think the fact that things change periodically, you know, this is Hawaii, the  
23 weather is weird sometimes so soil conditions can change. So you know, if you wait one year,  
24 you know, something could change in three, four months. So, having it you know, a six-month  
25 period of twice a year would be great, I mean, you know, as opposed to, you know, waiting.  
26  
27 Ms. Pali: So that, I respect your position, but just to, just to give some founding to your position,  
28 is it because you have personal knowledge that this is the case or this is just an idea that it could  
29 be changing because we know things are changing?  
30  
31 Mr. Edlao: No, because where back in, you know, 2012, when they had their accident, I was  
32 involved with that on the State Land Board, and it really, really hit me. You know, and I know  
33 ziplines, you know, accidents are far and few like Mr. Boren had said, but when it happens, it  
34 happens, and this is something that I don't want to see happen. And by having these inspections,  
35 you know, will help, you know, hopefully to prevent these accidents. I mean, might be a poor  
36 analogy, though. Why put wires up on a Pali Highway, you know, because all it takes is one rock,  
37 so you don't want something to happen, you know, and you don't know when it's going to happen  
38 so that's why I think I would like to see that.  
39  
40 Mr. Carnicelli: Commissioner Pali.  
41  
42 Ms. Pali: Yeah, so just, you know, I'm just trying to find a balance. I think in what we do, we have  
43 an obligation to find a healthy balance. So, I don't disagree with you that we want it safe. We're  
44 in the same canoe boat per se on that, but excessively overburdening is also the line we have to  
45 balance, and so there was an incident in 2012. I can't imagine how tragic that was, but you're

1 saying since then there's been no inspections and no regulations. It's been eight years and we  
2 haven't had anything since, but you feel like we want to mandate now every six months. I just  
3 feel like that doesn't seem like it's a healthy balance. Anyway, no sense beat the dead horse.  
4 Just my opinion.

5

6 Mr. Carnicelli: Okay, so...and that's, and that's fair. So, I appreciate you both having, you know  
7 sharing your opinions. So essentially, we don't have consensus on every six months, so what we  
8 can do is just say like, okay, those of you in favor of doing inspections and proof of insurance  
9 every six months as a recommendation to the Council, right, that's all this is a recommendation  
10 that they possibly adopt that all of those you in favor of that amendment to our recommendation,  
11 please raise your hand. One, two, three. Opposed? One, two, three, four. So, motion fails.

12

13 So, do we want to amend it to say, once a year? Once every twelve months? Okay, is there any  
14 opposition to saying that third party inspections and proof of insurance have to be provided at  
15 least annually? Any objections to that? No objections to that. So, then we'll go ahead and take  
16 that as consensus, and Jacky and Michele, if you could go ahead and add that to our  
17 recommendations.

18

19 Any other recommendation, anything else that you guys would like to add to our recommendation  
20 to the Council? I'm just going to ask the question, and I don't...I'm not necessarily on board with  
21 it, but do we want to add some kind of building inspection or something like that to new structures?  
22 You know, you've got to get a building permit, you know, I mean, I put it this way, Jacky, why don't  
23 you just add that as something we discussed because it kinda, we discussed it sort of in a  
24 roundabout way, it's not necessarily a formal part of what our recommendation is but, but it is  
25 something that we discussed that maybe the Council should consider.

26

27 Ms. McLean: Chair, if I could jump in. I believe Public Works is on the call and they might want  
28 to chime in on that because they're the agency that oversees building permits—

29

30 Mr. Carnicelli: Right.

31

32 Ms. McLean: --and they might be able to give more background on why they currently don't  
33 require building permits and—

34

35 Mr. Carnicelli: Okay, Mr. Molina is he...is that who it is? Who's on the call?

36

37 Mr. Jordan Molina: Yes, Jordan is here.

38

39 Mr. Carnicelli: Great, if you want to go ahead and chime in on that then please?

40

41 Mr. Molina: I apologize, I was multi-tasking a bit, could you repeat the question?

42

43 Mr. Carnicelli: Why is it that we currently don't require building permits for ziplines, canopy tours,  
44 bungee jumping?

45

1 Mr. Molina: Yeah, unfortunately I have to get back to you on the specifics of why but just thinking  
2 of out loud, you know, the building permit functions a lot to allow people to buy insurance on  
3 property and to, for insurance companies to have a reliable means of insuring that you know  
4 structures are built to certain standards. Given that the zipline operation is somewhat different,  
5 and it's not really a habitable structure which falls under the purviews of building code I would  
6 suspect that was one of the reasons why it's not, but—  
7

8 Mr. Carnicelli: Fair enough.  
9

10 Mr. Molina: But we can look into it further.  
11

12 Mr. Carnicelli: It's okay.  
13

14 Mr. Molina: To find out if there was any other specifics why we never wrote in ziplines under the  
15 Building Code.  
16

17 Mr. Carnicelli: Okay, I mean, just be prepared for then Council to possibly ask you about that  
18 when you get to Council then. So...which is fine. Mr. Hopper.  
19

20 Mr. Hopper: Yeah, I think in addition to that, I think you would need to amend the Building Code  
21 or make that clear in the Building Code itself rather than have that as part of Title 19 since that  
22 that dicates when you need a permit. I mean, if this says you need to get a building permit.  
23

24 Mr. Carnicelli: Right.  
25

26 Mr. Hopper: But they don't otherwise have a basis in the Building Code to review and approve a  
27 permit that could be problematic. So, I'm not saying the County couldn't eventually decide we  
28 want all of these to get building permits after that discussion, but I don't think that's something  
29 that could be done as part of this ordinance without amending the Building Code, saying this is  
30 the type of structure that needs a building permit. So, just thinking about that issue in general,  
31 that's something I would want to—  
32

33 Mr. Carnicelli: Right  
34

35 Mr. Hopper: To let you know.  
36

37 Mr. Carnicelli: Great. Yeah, and I personally, you know, I'm really okay with and like the fact that  
38 this is actually being regulated by the private sector, by insurance companies coming in and  
39 saying, hey, listen, they're being more stringent than the government is right now. I have no  
40 problem with that and I actually think that that's great. I just know that there was concern amongst  
41 the conversation here with my fellow Commissioners about that so I just thought that I would just  
42 broach the subject as we're trying to come up with a recommendation to the Council.  
43

44 So, is there anything else that we want to go ahead and add formally to our recommendation  
45 other than the discussion? Commissioner Edlao.

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Mr. Edlao: Yeah, Michele, I guess what I'd like to probably include when you submit this to the Council, Mr. Boren's comments and in terms of insurance and how they do it and the inspections and et cetera, et cetera, just as a side note so they have something to look at when you're talking about insurance. Would that be...it would be included with that?

Ms. McLean: Yes, we do send them the minutes of the meeting, so they will have the written transcription of today's meeting with all this morning's comments.

Mr. Edlao: Yeah, okay. Thank you.

Mr. Carnicelli: And maybe along those same lines, is what he's saying is the part of our discussion, it's not just the minutes 'cause they're not going to read the minutes most likely is to maybe recommend that Mr. Boren be used as a resource, you know as an expert resource.

Mr. Edlao: That's even better, yeah.

Mr. Carnicelli: Okay. I guess, any objections to that? We want to make that a formal part of our...okay, let's go ahead and make that as part of our formal recommendation as well then. Anything else, Commissioners?

Ms. McLean: If I could ask Commissioner Freitas, did you want to bring up crossing the streams or waterways issue at all?

Mr. Freitas: Yes, sounds like we're going to just leave the rappelling and the bungee, so I guess surface water streams should be avoided. Is that simple enough?

Mr. Carnicelli: You mean avoided, I mean, what if it's, I mean, I'm just trying to...what if it's a thousand feet over, you know, a zipline? You know, I mean, you're saying you just don't want it to cross any, I guess, stream, potable water or I guess that wouldn't be potable, it be nonpotable if it's in a stream. So how do we want to work—

Mr. Freitas: Yes.

Mr. Carnicelli: You know, how do we...

Mr. Freitas: Can it be worded so that if it's a stream that feeds into potable water?

Mr. Carnicelli: Well, I mean it would it...it would have to go to a treatment plant then, right. Director.

Ms. McLean: Yeah. I think, again, we're talking about the County would review that, we could ask the Department of Water Supply for their review, we'd have a site plan, and so they would be able to say whether it involves a water source for the County water system or another public water

1 system, even though they don't regulate it, they would be able to know which ones may feed into  
2 a private system.

3  
4 Mr. Freitas: Yeah, so what would stop a tour to put together a zipline right in Lao Valley? So, yes,  
5 that that's what I'm afraid of, something like that. A real high, high producing water source, and  
6 over on the west side which is very limited, let's try to protect the water as much as can. Thank  
7 you.

8  
9 Mr. Carnicelli: Okay, thank you, Commissioner. Anybody else have something that they would  
10 like to add? Okay, Jacky and Michele, do you guys have enough to forward a communication  
11 onto the Council?

12  
13 Ms. McLean: I'll just go over them really quickly and Jacky can jump in if I missed anything.

14  
15 Mr. Carnicelli: Great.

16  
17 Ms. McLean: I'm not clear if you want to recommend the Council's version of the bill or our  
18 proposed change. So that's one thing.

19  
20 Mr. Carnicelli: I think, I think we started from, the Department's version. Department's version.

21  
22 Ms. McLean: Okay, great. So, you wanted to define rappelling and bungee jumping, you want to  
23 require third party inspections and proof of insurance annually, you want to prohibit crossing or  
24 operating in a stream or waterway that provides drinking water, and you suggested they further  
25 discuss building permits, and if the County would play a role in inspections and also suggest that  
26 they use Mr. Boren as a resource. Does that cover everything?

27  
28 Mr. Carnicelli: Jacky, do you have anything? Jacky's giving the thumbs up, let the record show  
29 that. Are there any objections to go ahead, and then forwarding that recommendation onto the  
30 Council? Hearing no objections, we'll go ahead and take that as consensus, and we are done  
31 with item number one.

32  
33  
34 **The recommendation to recommend approval of the proposed bill with the recommended**  
35 **amendments by the Department and the Commission's recommendations of defining**  
36 **rappelling and bungee jumping, require third party inspections and proof of insurance**  
37 **annually, prohibit crossing or operating in a stream or waterway that provides drinking**  
38 **water, and suggest that the Council further discuss building permits and if the County**  
39 **would play a role in inspections, and also suggest that the Council use Mr. Daniel Boren**  
40 **as a resource was approved by consensus of the Commission.**

41  
42 Respectfully Submitted by,

43  
44  
45 CAROLYN TAKAYAMA-CORDEN

Maui Planning Commission  
Portion of Regular Minutes  
Item B.1 – September 22, 2020  
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Secretary to Boards and Commissions II

MOLOKAI PLANNING COMMISSION  
REGULAR MINUTES  
SEPTEMBER 23, 2020

**A. CALL TO ORDER**

The regular meeting of the Molokai Planning Commission was called to order by Chairperson Lori Buchanan at approximately 11:06 a.m., Wednesday, September 23, 2020, via BlueJeans Meeting No. 594210156.

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

Chair Buchanan: Everyone, welcome to the September 23, 2020 meeting of the Molokai Planning Commission via online, and you can go online to review all the housekeeping types of what numbers you can call, and if you want to sign up for testimony, it's all on the agenda, so we don't have to go through all of that right now except I will say that public testimony will be taken when each agenda item is discussed, and testimony will be limited to a maximum of three minutes with 30 seconds to conclude unless the Chair makes other provisions for return type of testimony, and if there's no amendments or anything that the Commissioners need to disclose at this time, then we will commence with the agenda as printed.

**B. Open Testimony Limited to Only Non-Application Agenda Items That Could Be Placed on Future Agendas**

Chair Buchanan: On item B, after calling to order, is the open testimony, public testimony, that is limited to only non-application agenda items if you're here to testify or an item that is already on the agenda, we'll ask you to wait till that agenda item comes up, but there's -- if there's any other planning issues that the public wants to bring forth to the Commission at this time, you can do so now, and it's also going include anything placed on future agendas. With that, is there anyone in the public wishing to testify at this time? Suzie, I don't --

Ms. Esmeralda: This is Suzie.

Chair Buchanan: Yeah, go ahead.

Ms. Esmeralda: No, I -- I did not receive any request.

Chair Buchanan: Okay, awesome. So, seeing none, we will close that portion of item B, Public Testimony, and we will move right into item C. Public Hearing, item no. 1:

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

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

1. **MS. MICHELE CHOUTEAU MCLEAN, AICP, Planning Director, transmitting County Council Resolution 20-90 referring to the Molokai Planning Commission a Proposed Bill to Amend the Comprehensive Zoning Ordinance Relating to Canopy Tours and Zipline Operations**

**The entire text of the proposed bill for ordinance is available at <https://www.mauicounty.gov/1127/Legislation---Proposed> and is summarized as follows:**

**Per Council Resolution No. 20-90, adopted on June 19, 2020, transmitting the proposed bill, the Council proposes to amend Chapter 19.30A and establish Chapter 19.97, Maui County Code, to require a Conditional Permit for canopy tour and zipline operations to enable the Council to evaluate the appropriateness of the uses in various zoning districts.**

Chair Buchanan: Thank you, staff or whoever presenting.

Ms. McLean: Thank you, Chair. This is Michele McClean, and, Chair, as you read on the agenda, this was a Council-initiated bill; because it amends Title 19, the zoning ordinance, it has to be reviewed by all three planning commissions, and then we will take your recommendations and comments and transmit them back to the Council. We have already taken it to the Lanai and Maui Planning Commissions just the way the schedule worked out, and if you're interested, we can let you know the comments they have on the bill, but they did ultimately recommend to move it forward.

We think this is very needed. I don't think this kind of use has been an issue for Molokai, but it has been for Maui, hasn't been an issue yet on Lanai either, so that's great news for those islands, but it is very much needed for Maui Island at this time. And our Administrative Planning Officer, Jacky Takakura, has prepared a PowerPoint, so if there aren't any question that this time, then Jacky can take it over and give the PowerPoint. Thank you, Chair.

Chair Buchanan: Thank you, Director. Any Commissioners have questions at this time before we see the presentation? Seeing none, thank you. We'll have the presentation.

Ms. Takakura: Good morning, Commissioners and Chair Buchanan, so I'm just --

Chair Buchanan: Good morning, Jacky.

Ms. Takakura: Going to give you a short PowerPoint presentation just to go over where we're at now, what the resolution is about, and what the Department's proposal is, so I'm going to share screen. Can everyone see the screen that says ziplining and canopy tour

operations? Thumbs up if you can hear and see everything okay. Okay, and this isn't too long. It's just an overview.

Okay, so, as was mentioned, this is from the County Council. It's a bill for ordinance that came to us via a resolution, and so we're taking it to the commissions, and it's amending the Maui County Code relating to canopy tour and zipline operations. So, these operations have been going on for a little while and, you know, we don't really have regulations and so that's why this is before us now because ziplines can have potential impacts to neighbors, potential impacts to or compatibility with agriculture, which is usually where they're located, and it's an opportunity for review, for safety and other concerns, and it also proposes a permit cap to prevent saturation.

So before we go into the provisions of the resolution and the proposed ordinance, this is how we -- how they're regulated now. The County has allowed canopy tour and zipline operations as accessory uses, usually when proposed as guided tours of an ongoing principal agricultural use. Over the years, the Planning Department has issued seven letters and the Lanai Planning Commission has approved one. And I have a chart, or this is the list of all of the operations that we know of as of this past May, and I think in your packet you got a letter, a copy of the letter that we sent to the Council that had more details and copies of all the letters that went out to these operations, and you can see there aren't any on Molokai, but, you know, this certainly, you know, this will affect Molokai if one were to try to apply. But anyways, on Maui, they're all over. We have them in Kula, Skyline Eco Adventures, and then a couple in West Maui, Skyline Eco Adventures Kapalua, Paradise Eco Adventures, two in Central Maui, in Waipahu, Maui Zipline and Flying Hawaiian, and then one in Makawao, Piihola Ranch, two in Haiku, and then one, as I mentioned before, on Lanai, and you can see on the bottom, some have received approvals, but not all. So this is a little bit more details here on this chart, and I can come back to this chart if you have questions, but it just shows the different properties and when they got their approvals, and there are a couple that you can see towards the bottom under the approval column where they don't have letters, but they're operating anyway. There are two that are before the Board of Variances and Appeals that we're working with Corporation Counsel on, the Jungle Zipline and the Northshore Zipline, both in Haiku 'cause of violations and appeals. Then on the bottom, the Lanai Adventure Park. And I have in this chart the acres because that will come into play, you'll see in the proposal, because one of the conditions that's being proposed is requiring a conditional permit based on the acreage. I just want to point out though that this acres here is based on the tax map key numbers that are either on their letters or, you know, based on their addresses on their website, so it doesn't necessarily include site contiguous parcels if they weren't listed on the letters. And like I said, I can always come back to this slide if you have questions about a particular one.

Okay, so this is what the County Council is proposing. First of all, to create a new chapter specifically for ziplines and canopy tours, a maximum of 15 conditional permits, and they

have in there criteria, restrictions, and standards, you know, like starting at eight and ending at five and having insurance. All of that is in the resolution, in the memo report. It also proposes revising our chapter on agriculture, the agricultural district, which is Chapter 19.30A, they make it clear that ziplines and canopy tours are neither accessory uses nor special uses, and then also to add this provision that existing operations with approvals as accessory use may continue. The ones that are on the bigger lots, greater than 50 acres, may continue as nonconforming. The ones that are on smaller lots, less than 50 acres, would have to apply for a conditional permit. And then, like I mentioned, the acreage includes parcels or multiple contiguous parcels.

So we have just a few minor changes. In the report that we sent you, we had some other definitions, amusement park and carnival, but those were based on some previous versions of the bill and they're not in the current bill, so those aren't needed, so we don't have to talk about those. Also, in the resolution, there are definitions for ziplines and canopy tours, and they have them in that proposed new chapter, Chapter 19.97; we would like to see those moved to Chapter 19.04 'cause that's where we keep all of the definitions for Title 19 so it would just make sense to have them with all the other definitions that we go to when we look up things in the zoning code. And then the other change that we're proposing for the ag district is to revise the part about special uses to add repelling, bungee jumping, ziplines, and canopy tours to the list of prohibited uses or structures. And then the criteria, and restrictions, and standards that are proposed in the resolution for that new Chapter 19.97, we would like to see those under the chapter for conditional permits, Chapter 19.40, it's just cleaner and less confusing to put the language, you know, where we would look for those types of permits, and those restrictions and standards are the ones that are listed in the resolution, you know, like the hours of operation and no liquor and, you know, having insurance. We had previously mentioned about location within a thousand feet of residential and so forth, but that, like the definitions, was from a previous version of the bill and it's not applicable because we're looking at the size of the lots, so that one you can also disregard.

So that's it. We proposed to keep the purpose and intent of the resolution but we just want to move things around a little bit, move the definitions to Chapter 19.04, which is the general provisions and definitions, add some changes to 19.30A, which is agricultural district, include repelling and bungee jumping to the list of prohibited uses, and then move the criteria and restrictions to 19.40, conditional permits.

So the Commission can recommend approval with amendments, or approve as is, or recommend denial, or vote to defer action. That's the presentation. If you have any questions, I can answer your questions for you. So I'm going to stop screen sharing but like I said, if you have any questions about any of the particulars, we can always screen share again.

Chair Buchanan: Thank you, Jacky. Oh boy, interesting. Commissioners, any questions for Jacky? Commissioner John Sprinzel.

Mr. Sprinzel: Happy to approve for Maui; never on Molokai.

Chair Buchanan: Okay, did you say happy to improve on Maui, but not on Molokai?

Mr. Sprinzel: Never on Molokai.

Chair Buchanan: Never. Oh --

Mr. Sprinzel: It just doesn't -- it just doesn't fit here.

Chair Buchanan: Okay. I hear never. Okay. Thank you, John. Commissioner Bridget.

Ms. Mowat: I kind of feel like because we don't have any here, why am I -- why am I going to approve or, you know, do anything for Maui because we don't have it here and I don't want to make any decisions, but if it's just moving things around, like it's in place but we're moving it around, then it's not really making any decisions for Maui right?

Mr. Sprinzel: Bridget, it's one of the things that we're asked to do and the four items include approving it, all the -- all the planning commissions are asked this. It's been done for years and years that we approve stuff for Maui. All I'm saying is not on Molokai. Thank you.

Ms. Mowat: Yeah. Thank you, John. I get that. What were you going to say, Jacky?

Ms. Takakura: If I may, Chair?

Chair Buchanan: Okay.

Ms. Takakura: I think this could affect Molokai. If, say, you had an applicant that, you know, someone who wanted to start this on Molokai, then it could affect.

Chair Buchanan: Thank you, Jacky. Oh, I sorry. Commissioner Bridget, Title 19 applies to the entire County. Whatever is in Title 19 includes Molokai, so any rules and regulations within Title 19 applies to us, and so, you know, you approve stuff for Maui, but it, inadvertently, is also approving it for Molokai so -- unless Stephanie or Michele wants to chime in on that, if you have any more questions.

Ms. Mowat: No, that's good. I got it. I just didn't want nobody -- Maui get mad at us, but I'm just trying to play good friends but -- but you're saying that, basically, it's all in here

already, but we're just moving things around, putting the definitions where the definitions go and -- okay. Thank you.

Chair Buchanan: Commissioners, any more questions for Jacky? Okay, on my screen, I don't see any questions right now but -- but, Jacky, I had a few questions 'cause I think it's a little bit more than just moving the definitions into the definition category within 19. I think my questions and I think of got lost where the -- on the lot size, you said greater than 50 acres is what kind of approval?

Ms. Takakura: Thank you, Chair. Right now, it's in the resolution under the proposed 19.97.030, ordinances for conditional permits for ziplines or canopy tours may be enacted only for parcels of at least 50 acres or multiple contiguous parcels that together are at least 50 acres; that -- that the Council may enact ordinances for conditional permits for ziplines or canopy tours on parcels or multiple contiguous parcels smaller than 50 acres only by a two-thirds vote of its entire membership on two readings. And then the draft, the proposed ordinance, at the end, in section -- Section 6, which is Exhibit 1, page 7, a zipline or canopy tour in the County agricultural district that received approval from the County as an accessory use as of the effective date of this ordinance and that is operated on a parcel or multiple contiguous parcels of at least 50 acres must meet the criteria -- must meet the requirements within 30 days of the effective date, but may otherwise continue as nonconforming without obtaining a conditional permit, and then the next paragraph says if they received approval, partial or multiple contiguous parcels smaller than 50 acres must meet the requirements within 30 days, but that no later than one year from the effective date of this ordinance, the owner operator of the zipline or canopy tour must either obtain a conditional permit or cease operation, so that's where the acreage size kicks in. It seems like the bigger ones, if you're on bigger than 50 acres, then they can continue as nonconforming. Does that answer the question?

Chair Buchanan: Yeah, except when you say "contiguous," would contiguous mean that it would have to be the same landowner or it would be with permission of multiple landowners?

Ms. McLean: Chair, the way that the bill is written, it doesn't say it has to be the same landowner but --

Chair Buchanan: Yeah. Okay.

Ms. McLean: Or the application, we do require authorization from landowners, so the permission of multiple landowners would be needed for them to be able to apply.

Chair Buchanan: Okay, so this Commission today cannot say that, for zipline and canopy tours, except on Molokai in order for us to opt out of the -- the rules and regulations for zipline and canopy tours?

Ms. McLean: Well, Stephanie can chime in on this. We had a similar discussion with the Maui Planning Commission that, in any zoning district, you could say a use is prohibited, but someone can always apply for a conditional permit for that use.

Chair Buchanan: Okay.

Ms. McLean: It's the same like on Molokai, with STRHs, as of the end of the year, Molokai has zero STRHs, that doesn't stop someone from applying for a conditional permit for that use. The Commission and the Council still have the opportunity to deny it, but there isn't a way to stop someone from applying if the process allows them to apply.

Chair Buchanan: Okay. So at this point, for what I heard was repelling and other recreational type of uses, now a zipline, all of those will not go into accessory uses or special uses, it would all fall under conditional permit, and the conditional permits all have to go through the planning commissions and then the County Council? Yes? Okay.

Ms. McLean: Yes, Chair, that's correct.

Chair Buchanan: Okay. But the verbiage at the end about can continue if you don't respond within a certain time, it'll continue as a accessory use. Why -- why did this come about? What was the issue?

Ms. McLean: The language at the end about existing operations --

Chair Buchanan: Yeah.

Ms. McLean: Makes the distinction between 50 acres and -- or less than 50 acres or more than 50 acres. Ones that have received some kind of County approval before, if they're on greater than 50 acres, they can continue operating and not have to do anything but they would have to comply with the requirements of insurance and inspections and so forth.

Chair Buchanan: Okay.

Ms. McLean: Existing operations that got approvals that are on less than 50 acres but continue operating but they have to come in and apply for a conditional permit, so there will be an opportunity for those to be reviewed and possibly be denied, so the Council, you know, saw a distinction between existing operations and those on larger parcels and those on smaller parcels, and the ones on the smaller parcels they want to see. The other ones they're saying they got approval, we're going to let them continue, but the other ones, they -- they want to be able to review.

Chair Buchanan: Okay. But you cannot write law just for those that you like and not for those that you no like, but I guess I have a question then with -- if, Jacky, you can go back to the slide that was the spreadsheet on all of the zipline tours that are permitted and are operating that are not permitted. That's the slide.

Ms. Takakura: Can you see that? Yes.

Chair Buchanan: Yeah. So my question is this if the approval was not found for the Waikapu, Makawao, Haiku, and I don't know what happened to the other Haiku, Northshore Zipline, Camp Maui, so if they are up and running, why are they up and running?

Ms. McLean: Chair, this is Michele.

Chair Buchanan: Michele.

Ms. McLean: Probably because we haven't gotten complaints about them --

Chair Buchanan: Oh.

Ms. McLean: And had a reason to enforce. The one at Maui Tropical Plantation did get approval, as you can see, in 2010. The other one, we're guessing, sort of snuck under that umbrella, but they never formally got an approval. And the other ones, you know, one is a violation has been issued, The Jungle, and then Piiholo we've never gotten a complaint so we haven't had a reason to take enforcement action.

Chair Buchanan: Okay. Planning -- my fellow Commissioners, this is a point I wanted to point out. We all know that enforcement is complaint driven so -- and that's a whole process within itself because we get calls, as Commissioners, about possible people doing nonconforming uses in zoned lands, and I wanted to point this out that people continue to operate without a permit, without enforcement, and this is why it's hard is that, you know, people talk about the foot in the door, but it's true, and so I'm disappointed because, let me ask this question, in one of -- in this list, without singling out any one business, one of these business had a death related while somebody was on the zipline, is that correct?

Ms. McLean: Jacky, do you know? I don't know the answer to that.

Ms. Takakura: There was a death of an employee in 2011 that was on the Big Island, and there was a death of another employee and I think that was on Maui, probably somewhere Upcountry, I vaguely remember, but yes, those -- those -- there are two, yes, in the history of the zipline operations in Hawaii.

Chair Buchanan: Okay, so I'm aware, I seldom ask questions that I don't actually know the answer for first, so that's not nice, but I know that there was a death and -- and if that -- and if the death occurred in a non-permitted current operating business where the County did not step in and issue violations or enforcement because we never have whatever, I don't know what the enforcement was for an accessory use. Ziplines in ag zoned lands are simply a nonconforming use, we know that, and we know we get into trouble when we start allowing uses that are nonconforming. So that's all I wanted to point out in this discussion on the record was the lack of enforcement, the lack of oversight for safety, I'm glad we moving forward, and I'm glad the County Council has taken this up, but for Molokai, I don't want to be stuck when somebody comes in and wants to put in a zipline, or they wanna repel, they wanna do some extreme sport type because we've had requests from people from the movies to do extreme stuff and I want to make sure we protected from this, that this Planning Commission is included in looking at those permits outright making them, like Commissioner Sprinzel says, never. My grandma always said never say never. But I think in this kind of extreme stuff where people actually end up dying and then families are left to pick up the pieces, I really wanna see something really more restrictive, taking the precautionary principle, because we don't know all of what is encompassed within this, and that's why I said if the Molokai Planning Commission can outright prohibit these uses, and yeah, go ahead and spin your wheels and you can apply for one conditional use permit, at least it provides oversight. It's almost like you need one environmental assessment to do all of these kind of extreme things that are tourism related, and we all suffering right now, our tourism is suffering, so we know that we gotta move forward more wisely, so, with that, Commissioners, you guys get any feedback? Yeah, I'm not thrilled with -- I think the improvements need to be little bit more restrictive, Jacky.

Ms. McLean: Chair, may I make a suggestion?

Chair Buchanan: Okay.

Ms. McLean: Back to the earlier discussion about prohibiting them on Molokai, as Jacky read that section of the bill that said a two-thirds vote of the Council is needed for a zipline on less than 50 acres, you could make a recommendation that a two-thirds vote is needed for any zipline on Molokai, regardless of the acreage that's -- that makes it more restrictive; that would be one way to get closer to -- to that objective.

Chair Buchanan: And why we cannot just --

Mr. Sprinzel: I'd --

Chair Buchanan: Go ahead.

Mr. Sprinzel: I'd certainly go along with that as long as we can ban it Molokai. There's just no place for it. We have no supervisors, we have just no oversight of any of this stuff, so we'd be risking whatever.

Chair Buchanan: Thank you. I see you, John Pele, Commissioner Pele.

Mr. Pele: Yeah, so my question is, I was just wondering, so a two-thirds vote of the Council, even if you put that way, that still means that the Council has the final say and could override any kind of decision that this Planning Commission would make. I mean I look at these kinda things and I kinda -- I kinda -- kinda put it in the backburner because I know, and unless I'm wrong, I know that no matter what the language says in that bill, they need to come before us, so I kinda don't stress too much about it because I believe that they are going to have to come and sit and talk to us first and that's where -- that's where we stop anything, that's where we direct what we want to see on Molokai. As far as workplace incidents, I mean you could scan the board as far as workplace accidents and what divisions they happen in, it happens in construction, it happens, you know, across the board so that's -- that's a subject that I wouldn't want to hold, but I'm just wondering, this -- is this language is something that the County could ultimately, the Council could ultimately, no matter what we decide, can ultimately overrule us even if it's for Molokai?

Ms. McLean: Yes, Commissioner Pele, the Council could -- could not go with a recommendation. I did think of something else. It seems counterintuitive in a way, but if you want the Molokai Planning Commission to have the final say, you could say that a County special permit is required for ziplines on Molokai, which, in general, is more permissive than requiring a conditional permit but that leaves the final decision-making authority with the Molokai Commission, so that would be a way for you to control it, it -- it is more permissive, but that would be a way for the Molokai Commission to have the final say and not leave it with the Council, it's backwards, but that might work.

Mr. Pele: Okay, in using that -- and using that logic in that that kind of approach, will it spin us into a point where our conditions or a finding of fact and conclusions might lead us down the road of a lawsuit or a contested case, which we -- we went through on another issue recently with the Molokai Planning Commission, which, you know, there's always everybody always -- it's like putting the language like, oh, you know, they'll never sue us; well, we all know that anybody can sue anybody for anything at any time, so that kinda language is hard to put in, and I feel like it's hard to put in the language like never on Molokai 'cause some -- somehow people find a way in this world today to -- find ways too, I even have cautions about enforcement because, as we know, no matter what language we put in, people who are gonna break the law, we have a lot of drunk driving laws, people still drive drunk, so I don't know if that's the best way to -- to minimize or mitigate the solution. I'm just kind of worried that if we use that approach that you're talking about,

Michele, it's -- is it -- is there room for legal action, legal recourse, and -- and could that leave us in a more precarious situation by -- by going that route?

Ms. McLean: Yeah, you're absolutely right, Commissioner Pele, that would make it a contested case, which a conditional permit is not. And yes, if you were to deny an operation, you'd have to have your findings of fact. Your reason for denial would have to follow the criteria. And as we've seen, and not just on Molokai, on Maui as well, we've seen, when the commission has final decision-making authority, that it's not uncommon for denials to be challenged in court. So, yes, you're absolutely right. It's very rare that you see a Council denial challenged. I think that's a very valid point.

Mr. Pele: Yeah, and, as a Commissioner, I just -- the Commissioner, that's catch-22, that I'm -- and I feel is that we want total say but when we have the County looming over us and they're not in line with Molokai's -- maybe they're not all in line with Molokai's view of what we want, and this is, I think, what Commissioner Mowat was talking about when we talk about, and Chairman Buchanan, when we talk about Molokai and Maui, they're so different, they're so different, and their goals and what they need, I'm glad that Maui has ziplines and they can have all the ziplines they want, and it's probably the best thing for them, for their tourist industry, for their workers, whatever, but, you know, I worked at the ranch when they had a zipline. I didn't understand it. But we put one in, and I wasn't all for it, and it ultimately didn't go well. So I just -- I'm in favor of not having them, you know. I just don't know.

Chair Buchanan: Okay.

Mr. Sprinzel: Lori?

Chair Buchanan: Thank you, Commissioner Pele. I going have Commissioner Poepoe followed by Commissioner Sprinzel.

Mr. Poepoe: Yeah, I remember that, the ziplines down at Polo Camp, I think so, in the '90s that I was just going to mention that we did have a zipline and I think it was before any type of restrictions, or I not sure, but I wanted to ask if there's a basis for dimensions or specs or size, size-wise, height, length, or, yeah, if that's one of the requirements for - for a -- a permit?

Ms. McLean: Thank you for that question, Commissioner Poepoe. Right now, the bill doesn't have those requirements in it, and right now ziplines are, and this is true around the country, they're largely self-regulated. There are a couple of main insurance companies that insure all of them so -- because not many insurance companies do. What the Maui Planning Commission recommended yesterday was to require third-party annual inspections and also for the Council to further discuss whether the County should be more involved in building permits and inspections. Right now, the County does not require

building permits, even if it's a freestanding tower or if it's a tower built around a tree, the County does not require building permits for those and it seems like the reason is because the County follows the International Building Code, which doesn't have provisions for ziplines, so there's not a code to follow, but the Maui Planning Commission, yesterday, recommended that the County -- that the Council pursue that a little bit more to see if the County could require building permits and conduct inspections in addition to the required third-party annual inspections.

Mr. Poepoe: I would assume that in order to issue a permit, the entirety of the situation would -- would have to be known 'cause my niece had like a 20-foot zipline with a little rope, and I broke it, but what is the limit to where we stop and where -- at what point do we begin to consider it? Is it commercial against recreational personal-type use or just getting to the bottom of that before you even get to issuing any permits, like, prior to that, maybe hold off on -- figure it out before you even get to that point?

Ms. McLean: If an applicant were to apply for a conditional permit, they would have to have a site plan and -- and specs and -- and details. Under the proposed bill for the Commission and the Council to review it, they would want to know those things, so those would have to be provided by the applicant but there, currently, isn't a County standard against which those would be analyzed, you know. We don't have a zipline expert in the County to say, oh, that's -- that's a -- that's good construction, or that's bad construction, or that's good equipment, or that's faulty equipment.

Mr. Poepoe: I figure with the --

Ms. McLean: That's where the insurance requirement comes in.

Ms. Poepoe: It might be best to create a standard and have a moratorium on ziplines before we issue approvals for them.

Chair Buchanan: Okay. Thank you, Commissioner Poepoe. Commissioner Sprinzel?

Mr. Sprinzel: Instead of never, I'm quite happy if we make clear that the Molokai Planning Commission has sole authority to pass or reject applications for these things. Thank you.

Chair Buchanan: Thank you, John. And with that, Michele, maybe you can briefly explain what -- what authority and what powers the Molokai Planning Commission has in final says, like the SMA permits, and what and what we don't have final say on, such as conditional use permits, that kinda stuff. Thank you.

Ms. McLean: Yeah, and I'd ask Stephanie to jump in too, and this ties back to the points that Commissioner Pele was making. Applications that where the Commission is the final authority, so SMA majors, county special use, state special use on smaller properties,

those are contested cases. The Commission's decision is the final decision, so it doesn't need to go to the Council, but because it's a contested case, those deliberations need to be conducted in a certain way. Denials have to be spelled out in a decision and order, and those can be appealed to court, and we've seen that happening more and more frequently countywide. Conditional permits, changes of zoning, community plan amendments, those are all final authority of the council with a recommendation from the Commission and those are not contested cases, your proceedings are very different and those decisions are rarely challenged. I don't know. I mean, here's another approach to what it seems you folks want. I don't know if it can be written that if the Molokai Planning Commission recommends denial of a conditional permit on Molokai, that the application dies there and doesn't get forwarded to the Council. I don't know if that -- if that jives with how Title 19 functions or, as I said, if the commission recommends denial, you could say that the Council needs a two-thirds majority to approve. Those might be options. I mean, I -- maybe you don't need to be specific. You could just say you want to prohibit them on Molokai, and if that can't be done, you want the process to be as restrictive as possible and to give the Commission as much authority as possible, something like that, and then we can try to figure out the best way to make that happen.

Ms. Lopez: Chair, this is Sybil. I just wanted to add to the Director that you guys also have the bed and breakfast as well, permit, that comes to you.

Chair Buchanan: Thank you, Sybil, and we going ask all the same questions. Stephanie.

Ms. Chen: Thanks, Chair. And I'll just note that -- that I think you guys have 120 days from today, from the date of the public hearing, to review and the transmittal and get back to Council too, so just keep that in mind.

Chair Buchanan: Thank you, Stephanie. No, I think we can -- we can do this today because we going have to deal with the bed and breakfast, which going have all the same similar questions we asking right now but, hopefully, that'll move quicker. Commissioners, you guys get any more questions? I have two more. Okay, seeing none, my question is we still on track to overhaul Title 19, Director? Okay.

Ms. McLean: Yes, Chair.

Chair Buchanan: So I'm not a big fan of making changes to Title 19 when we supposed to be overhauling Title 19 but -- especially with the next one coming up, so that's my first question is why we continuing to do this? And I have not heard anything on the movement to overhaul Title 19 with those people that you brought over some meetings ago. And then my second question is where in the world is Chapter 343 in all of this? And you want to provide feedback on that, Director?

Ms. McLean: Sure. Yes, the Title 19 rewrite project is proceeding. From the beginning, we knew it would be a multi-year process, so estimating about four years, and we're not even -- I don't think we're even one year into that yet, and it could take longer, you know. It's going to depend on the feedback they get and how many changes need to be made along the way. And whether this should wait until then, I'll just be honest, I think that Council is very enthusiastic about passing this bill and so I -- I think it would be worth giving your comments even if you disagree with it and all that. If you do want to see changes, I suggest that you -- you can let them know you don't think this should proceed but if it were to proceed, what your comments are because I do think that you're anxious to move forward. Regarding 343, there are specific triggers in State law for what requires the preparation of environmental assessment and ziplines, all by themselves, aren't one of the triggers. If there are related actions to the zipline that could hit a trigger like using state or county lands and other triggers, then EIS or EA might have to be prepared -- prepared but all by itself, a zipline wouldn't currently trigger an EA.

Chair Buchanan: Thank you Director. I guess because I look at the cumulative impacts of a zipline. They're, obviously, designed and targeted for tourists. Tourists would come to a area that is either appropriately zoned or not appropriately zoned for commercial tourism, which would mean people, cars, buses and the like, and so the use in itself may not trigger Chapter 343 but the associated uses and cumulative impacts of the use, so I, for myself, I'm kind of mad that they would put the onus on the County to permit something without looking at the cumulative impacts of the use, such as a zipline or any tourism related sport, hang-gliding or whatever, whatever extreme sport, parasailing, without looking at the cumulative impacts because we only need look to Kihei or Makena to look at what the natural area reserves and what other conservation zone lands, and these ziplines, if you, Jacky, in your -- in your slide, are those -- is that spreadsheet, does it say what kind of zone lands they're in? Most of them are in ag or conservation. I think that, in itself, is a trigger, conservation, ag, conservation, ag, ag, ag, ag, ag, ag. So all nonconforming uses, if it's in conservation, it should have triggered a conservation district use permit. How does that work, Director? So for Skyline Eco Adventures at Haleakala, they would have had to gotten two permits or both permits? I mean --

Ms. McLean: Yeah.

Chair Buchanan: Yeah.

Ms. McLean: The -- so if you look at the acreage on that first one, you know, 9900 acres, the zipline itself doesn't span across 9900 acres, that's the size of the parcel on which it operates, and the parcel itself is split designated with conservation and ag; my guess is that the actual zipline is not in the conservation district, but if it were, and you're correct, they would need be a conservation district use permit, and that can be an EA trigger unless they fall under an exemption, which I think would be unlikely. So, yeah, but my -- my guess is that, I'm familiar with the Haleakala zipline, and that's right off -- it starts right

off the road, so my -- my guess is that a portion of that parcel is in State conservation but that the zipline itself is in the ag portion.

Chair Buchanan: Okay, thank you, Director. Thank you, Jacky. My last comment for the record is, 'cause I'm a member of also other cultural organizations, and we do have a culture of person on this Commission, because I'm aware that, culturally, native Hawaiians use the eight realms of decision-making in their decision-making thoughts on impacts to aina, this would fall into the realm, one of the realms of decision-making, and I don't see how that the native Hawaiian culture aspect of effects to their decision-making realms where they would have the due process to come in and chime in on this type of permit, you know, unless it's to the County Council as a conditional permit, so I think -- I think the Council needs to invoke the precautionary principle similar to what the water commission would have to do when the impacts are unknown because it doesn't seem that any of these ziplines or repelling commercial businesses had to do an EA or an EIS in order to have the due process for native Hawaiians to consult, and so just that alone should be enough for this Commission to convey to my County Council that it should be a prohibited use until exactly what Commissioner Sprinzel, Commissioner Poepoe, and Commissioner Pele have also commented on, and Commissioner Mowat and myself that we don't know all the impacts from the zipline. It definitely is affecting one of the realms of decision-making for Native Hawaiians who are not consulted because there is no process to consult, and for those reasons, we would like to deny that on the island of Molokai, and would also encourage the Council to deny it unless the State of Hawaii, because they set the zoning for all of us to follow, would like to open up a Section 106 or -- or go to the Environmental Council and say, hey, you guys want to do this, then you're going to have to do an environmental impact study because it triggers due process for Native Hawaiians, and that would be my feedback. Thank you very much. So I'll be in favor if any Commissioners want to make a motion, but we're going to open for public testimony. Stephanie, you have something?

Ms. Chen: Thank you. I was just going to remind you to take public testimony. You're already ahead of me.

Chair Buchanan: Thank you. Okay, Commissioners, you can come back with questions after, but if there's anyone in the public wishing to testify on this matter of ziplines, please state your name for the record and go ahead.

Ms. Esmeralda: This is Suzie. I haven't gotten any requests.

Chair Buchanan: Okay. Okay. Okay, very good. So if there's no one in the public wishing to testify at this time, then we'll go back to the Commission. Commissioners, any last questions for staff? I like what Director said, but I'd also like to even go further to suggest to the Council that, by moving this along as is, it be posing a due diligence issue with Native Hawaiians and due process. I think there's a due process issue myself and

that there's no process for anybody else other than the restrictive here, Planning Commission and County Council to chime in on potential impacts to Native Hawaiians. Thank you. Okay, seeing none, questions for staff -- oh, go ahead. Director.

Ms. McLean: I, once the Commissioner's comments and questions are finished, I just wanted to summarize my notes to make sure that I have --

Chair Buchanan: Okay.

Ms. McLean: Your response; that I have it accurately.

Chair Buchanan: Awesome. Thank you. Go -- go right ahead, Director, thank you very much.

Ms. McLean: Okay, so your comments are you recommend waiting until the Title 19 rewrite is completed before ziplines are addressed. If -- if they're going to proceed with a bill, you want there to be no ziplines allowed on Molokai. If that's not possible, to make it as restrictive as possible, for example, if the Commission denies a permit, then it doesn't proceed to the Council, or if the Commission denies a permit, then it requires a two-thirds majority of the Council. You recommend that the County create standards for ziplines so that County building permits and inspections are required. And that you have concerns that the impacts are unknown, including cumulative impacts. That there isn't Native Hawaiian consultation on the decision-making. And that there's no EA or Section 106 consultation requirement.

Chair Buchanan: No EA or EIS for the zipline use.

Ms. McLean: Right.

Chair Buchanan: Can we also -- this doesn't include the rappelling and all of that too, yeah?

Ms. McLean: The Planning Department is recommending that rappelling and bungee jumping be included under the same time.

Chair Buchanan: Okay. Okay. We also want to include bungee jumping.

Ms. McLean: Okay.

Chair Buchanan: You know, this might be way out there, but because I'm in the business, from extreme sports, the danger that comes with extreme sports for a small island like Molokai is also similar to COVID, if we are in dire need of emergency services for people that are hiking, which we've had in the past, we did have hikers from a foreign country

that could not speak English, that fell off a trail that was not a sanctioned trail in Molokai had to be airlifted out and eventually it was fatal and they passed away. It was very difficult for Molokai to respond because we didn't -- we don't have the resources, and so if you don't have the resources to support obviously extreme type of behavior, then you shouldn't be having the behavior because we just cannot respond. In that case, it was difficult for me, I had to find an interpreter to talk with the families because we -- nobody spoke Italian, and at the time, we had to have emergency services come from Maui, similar to a fire, so I want the Council to know this because it's not that we just hate everything. There's a reason. We don't have the resources. Our roads are falling into the ocean. We don't have great response. In the case of a fire a long time ago, which was a gasoline fire, many, many moons ago, we had to wait two days for specialized people to come in and put the fire out. So, that's our reason why we sometimes are anti so I don't want anybody to take it as we activists, we hate business, and we not support of commercial people making money. That's not it. We're a rural -- we're a rural island, with rural resources, and we cannot respond to certain stuff so, with that, I just wanted to get that on the record for my County Council. I not necessarily saying wait for Title 19, which you said on number one. I just thinking that piecemealing Title 19 as we move along, unless it's extremely important, we should, you know, press for the overhaul first because I don't think it's fair for the County to have to develop and create guidelines or to have a zipline expert now unless the Hawaii Tourism Authority is paying for the expert, so you asking my tax dollars to now pay for extreme sport oversight. I no think that's fair because it's part of tourism, I no think that's fair, so that's -- that's what I like get to the County Council, why we say no. Sorry. I should have wait for the motion and discuss, but thank you, Michele. I appreciate it. I know you guys understand. I see something in the chat. Okay. No. Oh, I have a direct message. Okay, that's it. That's all you gotta do, Michele? You need to go on more? Sorry.

Ms. McLean: No, no. I just wanted to go over those notes and I'll make those clarifications. Thank you for those. So, yeah, I just wanted to make sure I had them accurately, and if the Commission is comfortable with that, then you could make a motion to forward those comments to the Council, if that's what -- if that reflects what you wish.

Chair Buchanan: Okay, thank you for that. So at this time, I will open up the floor for a motion as you heard the Director. Stephanie?

Ms. Chen: Chair, did you, I might have missed it, did you close public testimony?

Chair Buchanan: Yeah, I thought I did, didn't I? Suzy, I did.

Ms. Esmeralda: This is Susie. I just recall you saying there was none. I don't recall you actually closing.

Chair Buchanan: Oh. I'm sorry. For the record, public testimony is closed. Okay, thank you. Thank you. Stephanie. Commissioners, any motion to forward those comments to the County Council on this? Commissioner Sprinzel.

Mr. Sprinzel: Same motion as before, number two on the list, with the suggestions that Director Michele has outlined, and no on Molokai.

Chair Buchanan: Okay, thank you very much. Is there any second that motion? Commissioner Mowat, was you seconding that motion? No. You have a question?

Mr. Poepoe: I'll second.

Ms. Mowat: Is that saying it -- what did he say? He -- he's -- he's making a motion to approve with that recommendations? Is that what he's saying?

Mr. Sprinzel: With.

Ms. Mowat: What?

Chair Buchanan: Hang on, Bridget. John, you're muted.

Mr. Sprinzel: To approve -- sorry. To approve as outlined with the modifications and alterations that we discussed, but not on Molokai.

Chair Buchanan: Thank you. I know that John was off for a little bit. I wrote it down. He said to -- is to not have ziplines on Molokai and the other conditions as read by Director McLean. And so, Commissioner Poepoe, did you second that motion?

Mr. Poepoe: Yeah.

Chair Buchanan: Okay, it's been moved and seconded to move the motion to deny ziplines and rappelling and bungee jumping, whatever it says on the -- and then with conditions as read by Commissioner -- Michele. Any discussion? Commissioner Mowat, we're in discussion.

Ms. Mowat: I confused. I'm confused. Sorry. I thought I heard John say he -- to approve, and then you're saying to deny that. So what is the motion again, please? The motion -

Chair Buchanan: Okay, let me -- let me -- I'll restate the motion, and, John, if I don't have it, please jump in. John's motion that was seconded was to convey to the County Council that we wanted to deny ziplines, bungee jumping, and rappelling on the island of Molokai and, if not, if they proceeding forward, they cannot make that condition for Molokai, then we proceeding forward with what Director McLean has in her comments to the County

Council about Title 19, waiting for Title 19 to be done. And if we cannot decide -- deny, then the procedure is to -- to move forward - I got it written down - with making it as restrictive as possible. And then she's to convey everything else about our concerns and for impacts and that an environmental assessment should be done. And it's not fair to native Hawaiians. And everything that she read. Would you like the Director to restate all of that, Bridget? No? That's what we asking for approval. Okay.

Ms. Mowat: Okay. Okay.

Chair Buchanan: Yeah.

Ms. Mowat: Got it. Thank you very much.

Chair Buchanan: Okay we -- you're welcome. So we still in discussion. Commissioners, any more discussion on the motion? Okay, seeing none, I'll call for the motion by rollcall. Commissioner Moore?

Mr. Moore: I vote yes.

Chair Buchanan: Commissioner Pele?

Mr. Pele: Aye.

Chair Buchanan: Commissioner Pele -- Sprinzel?

Mr. Sprinzel: Aye.

Chair Buchanan: Commissioner Poepoe?

Mr. Poepoe: Aye.

Chair Buchanan: And Commissioner Mowat?

Ms. Mowat: Aye.

Chair Buchanan: And Chair votes aye. Motion carried. Unanimous. Thank you very much.

**It was moved by Commissioner John Sprinzel, seconded by Commissioner Laakea Poepoe, then**

**VOTED: to convey to the County Council that the Commission wants to deny ziplines, bungee jumping, and rappelling on the island of Molokai. If**

**the County Council is unable to make that condition for Molokai, then the Commission would like to forward the comments of the Commission as summarized by Director McLean.**

(Assenting: L. Buchanan; W. Moore; B. Mowat; J. Pele; L. Poepoe; J. Sprinzel)  
(Absent: J. Perez, III)  
(Excused: J. Bicoy; L. Espaniola)

Chair Buchanan: Oh, you thought that was going be simple. Nah. Okay, I going move on --

Ms. McLean: Truly, I had -- I had no idea how you folks were going to react to this. Sometimes I make assumptions that I shouldn't, but I had no idea what your feelings were going to be on this one.

Chair Buchanan: I know we're different. We love being different. We're so proud of being different. But I hope I explained why. Okay, if anybody needs to take a break, you know, five-minute Zoom break, whatever, let me know. Raise your hand, and if not, we're going to power on to the next agenda item. Hang on. Okay, which is item C, no. 2:

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

2. **MS. MICHELE CHOUTEAU MCLEAN, AICP, Planning Director, referring to the Molokai Planning Commission a Proposed Bill to Amend Chapters 19.35, 19.64 and 19.65, Maui County Code, Relating to Accessory Dwellings, Bed and Breakfast Home Permits and Short-Term Rental Home Permits. (J. Takakura)**

**The entire text of the proposed bill for ordinance is available at <https://www.mauicounty.gov/1127/Legislation---Proposed> and is summarized as follows:**

**Chapters 19.35, 19.64, and 19.65 are proposed to be amended to allow bed and breakfast and short-term rental home operations in accessory dwellings, subject to restrictions that encourage long-term occupancy; limit short-term rental homes to one per property and per applicant; clarify trusts and ownership requirements; expand notification requirements to neighbors of the property; and other minor revisions.**

Chair Buchanan: I guess staff would be Jacky. Director, you want to say something?