



**OFFICE OF THE COUNTY CLERK**

COUNTY OF MAUI  
200 SOUTH HIGH STREET  
WAILUKU, MAUI, HAWAII 96793  
[www.mauicounty.gov/county/clerk](http://www.mauicounty.gov/county/clerk)

June 8, 2022

RECEIVED  
2022 JUN -8 PM 2:25  
OFFICE OF THE  
COUNTY COUNCIL

Honorable Tamara Paltin, Chair  
Planning and Sustainable Land Use Committee  
Council of the County of Maui  
Wailuku, Hawaii 96793

Dear Chair Paltin:

Respectfully transmitted are copies of the following documents that were referred to your Committee by the Council of the County of Maui at its meeting of June 8, 2022:

RESOLUTION:

No. 22-149 - "REFERRING TO THE MAUI PLANNING COMMISSION PROPOSED BILLS TO AMEND THE KIHAI-MAKENA COMMUNITY PLAN LAND USE DESIGNATION TO MF MULTI-FAMILY AND OPEN SPACE AND CHANGE THE ZONING TO A-1 APARTMENT DISTRICT FOR REAL PROPERTY SITUATED AT KIHAI, MAUI, HAWAII, TAX MAP KEYS (2) 2-1-023:004, (2) 2-1-023:005, AND (2) 2-1-023:006 (WAILEA POINT VILLAGE)"

BILL:

No. 97 (2022) - "A BILL FOR AN ORDINANCE AMENDING CHAPTERS 19.04 AND 19.08, MAUI COUNTY CODE, RELATING TO RESIDENTIAL DISTRICTS"

Also transmitted for your convenience is a copy of a communication received from the Planning Director pertaining to Bill No. 97 (2022).

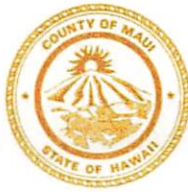
Respectfully,

A handwritten signature in cursive script that reads "Kathy L. KaoHu".

KATHY L. KAOHU  
County Clerk

/jym  
Enclosures  
cc: Director of Council Services

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  
2022 MAY 20 AM 9:36  
OFFICE OF THE  
COUNTY CLERK

May 18, 2022

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

**APPROVED FOR TRANSMITTAL**

*Michael P. Victorino* 5/19/22  
\_\_\_\_\_  
Mayor Date

For Transmittal to:

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

Dear Council Chair Lee and Councilmembers:

**SUBJECT: A BILL FOR AN ORDINANCE AMENDING CHAPTERS 19.04 AND 19.08  
OF THE MAUI COUNTY CODE, RELATING TO RESIDENTIAL  
DISTRICTS**

With 19,641 parcels countywide, the Residential Districts encompass nearly half the parcels in Maui County; however, area, height and yard regulations have not been updated since at least 1974. The Department of Planning ("Department") proposes to update Chapters 19.04 and 19.08 of the Maui County Code to clarify definitions and terms that are subject to misinterpretation, codify existing practices, and consider climate change and the chronic housing shortage in future residential development.

**Proposed Revisions to 19.04.020 – Compliance**

The proposed revisions to this part of the code are minor and do not change the substance of the section. Compliance criteria for buildings and structures are separated from compliance for subdivisions because they are different. The revisions to permitted uses are intended to simplify the wording without changing the meaning.

**Proposed Revisions to 19.04.040 – Definitions**

All but one of the proposed revisions to definitions refer to the setback area, which is generally the open area extending inward from the property line. The width of the setback varies by zoning district. Updates include:

Honorable Michael P. Victorino, Mayor  
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- Front of lot/Front lot line means every lot line bordering a public or private street, through which a driveway provides access to the “lot area.”
- Setback area means the area between the setback line established in the applicable zoning district and the lot line, which includes the boundary of public or private streets. The setback area must remain unoccupied and unobstructed from the ground upward by any structure including above or below ground swimming pools, except as specifically allowed in each zoning district. The term “setback area” replaces “yard.”
- Setback line means the line beyond which no wall of a building or structure may project. Each zoning district specifies the distance from a lot line to a setback line.
- Private street means the open passage land, easement or right-of-way not less than twelve feet in width suitable or intended for pedestrians and vehicles; the existing language “fee of which is vested in the owner(s) of land abutting such open passage land or right-of-way” is proposed to be removed since it is often impossible for staff to research historical fee payments and is usually not relevant.
- Access setback area means the same as front setback area.
- Front setback area means a setback area extending inward from the front lot line to the front setback line.
- Rear setback area means setback area extending inward from the rear lot line to the rear setback line.
- Side setback area means a setback area extending inward from the side lot line to the side setback line.

In addition, a new definition is proposed for impervious surfaces, to mean a surface covering or pavement of a developed parcel of land that prevents the land’s natural ability to absorb and infiltrate rainfall or storm water. Impervious surfaces can include, but are not limited to rooftops, walkways, patios, pools, driveways, parking lots, impermeable concrete and asphalt, and any other continuous watertight pavement or covering. The bill proposes to include a limit on impervious surfaces to mitigate damage from increased coastal flooding, hurricanes, and tropical cyclones resulting from a warming planet. Existing structures and impervious surfaces would not be affected.

#### **Proposed Revisions to 19.08.020 – Residential Districts Permitted Uses**

Most of the changes are grammatical in nature or for clarity purposes. Two changes are substantive:

1. Property owners often build walls prior to building a dwelling unit, or build the accessory dwelling unit before the main dwelling, so we are including language to allow these types of accessory uses prior to the development of the primary use.
2. Reference to Hawaii Revised Statutes Chapter 46 is added to items 19.08.020.H and

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19.08.020.L regarding day care nurseries and care homes. This part of state law regulates adult family boarding homes and care homes, family child care homes, hospice homes and similar facilities in residential areas.

### **Proposed Revisions to 19.08.030 – Residential Districts Special Uses**

Special uses require a county special use permit, approved by the appropriate planning commission. Again, many of the revisions are grammatical in nature and non-substantive. The following changes are proposed to provide more opportunities for housing and increase walkability within neighborhoods:

1. Housing for aged and housing for low and moderate income families operated by governmental or nonprofit organizations if the normal unit density is increased by more than 25 percent. The current percentage which triggers commission review is 10 percent. By increasing the percentage, the development of more units will be encouraged.
2. Two-family dwelling units or duplexes. Unlike an accessory dwelling, the size of the two dwelling units in a duplex would be limited only by the size of the parcel and the required setbacks. Accessory dwelling sizes are limited by Chapter 19.35 and maximum floor area ranges from 500 to 1,200 square feet, depending on the size of the lot. A duplex would allow two families to live independently of each other on the same parcel, each in a home that could potentially be larger than an accessory dwelling. The Moloka'i Planning Commission did not support this proposal; however, the addition is proposed to apply countywide.
3. Retail food and beverage establishments excluding liquor stores not to exceed two thousand square feet of gross covered floor area. This proposed addition is to promote walkability in neighborhoods and reduce vehicle miles traveled. For comparison purposes, Kaohu Store in Wailuku is approximately 1,800 square feet in size. The Moloka'i Planning Commission did not support this proposal; however, the proposal is recommended to apply countywide.
4. To further encourage affordable housing, 19.08.030.L. is proposed to be added, to replace 19.08.040.B which to our knowledge has never been used to develop affordable housing:  
Modification of the minimum lot area development standard of section 19.08.040 may be reduced to no less than four thousand square feet subject to the following requirements:
  - i. The project is designed to meet the needs of low, below moderate and/or moderate income families, and adequate provisions are recorded to ensure owner-occupancy and the prevention or limitation of speculation;



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ii. Shared use paths crossing through the subdivision are provided for bicycles and pedestrians to connect to adjacent lands on all sides of the project, such as existing shared use paths, roadways, parks, commercial areas, and vacant land that may be developed or further subdivided; and

iii. The commission may increase the impervious surface requirement to no more than 75 percent of the total lot area.

Moloka'i Planning Commission did not want this for Moloka'i but we recommend it apply countywide.

### **Proposed Revisions to 19.08.040 – Residential Districts Development Standards**

Sections 19.08.040, 19.08.050 and 19.08.060 have not changed since at least 1974. The proposed bill would consolidate the area regulations, height regulations and yards into one section, and use a table similar to other zoning chapters. Here is a summary of the proposed updates:

<u>Subsection</u>	<u>Summary of change</u>	<u>Rationale</u>
19.08.040.A – Area regulations, lot area	No changes proposed for minimum lot area	
19.08.040.B – Area regulations, criteria for reduced lot sizes	Move this regulation to 19.08.030.4, Special Uses and revise criteria	Like other Special Uses, requires approval by planning commission. This option has been revised to allow for smaller lots to meet the needs of low, below moderate and/or moderate income families. New criteria also requires connectivity to encourage multi-modal transportation.
19.08.050 – Height regulations	Building height must not exceed 30 feet.	Remove reference to stories. Allowing a dwelling unit to be 3 stories could provide more housing; height is limited to 30 feet regardless of stories.
19.08.060 – Yards	Replace the word “yard” with “setback area”	General trend of Title 19 to use the term “setback”
19.08.060 – Setback lines	Replace “Side and rear yards for two-story buildings shall be ten feet in all residential districts.” New wording: “For any portion of a building up to and including 15 feet/more than 15 feet...”	Current language has been inconsistently interpreted to mean 6 feet setback for lower floor and 10 feet for upper height, or 10 feet for all stories. A 2008 policy memo interprets setbacks as 6 feet for lower floor and 10 feet for upper floor. Setbacks based on exterior height is clear, consistent, and easier to administer.
New development standard -	Add: “For dwellings constructed pursuant to	This means that no more than 65 percent of total lot area can be covered by

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Surfaces	building permits applied for after January 1, 2023, the impervious surface area of a zoning lot must not exceed 65 percent of the total zoning lot area.”	impervious surfaces. Impervious surfaces prevent the land from naturally absorbing and infiltrating rainfall or storm water. Impervious surfaces include, but are not limited to, all buildings, driveways, access paths, patios, lanais, swimming pools, roof overhangs/eaves and most walkways. For existing lots with more than 65 percent impervious surfaces, they are nonconforming. The amount of impervious surfaces on the site may be redistributed, but the total amount of impervious surfaces cannot be increased.
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**Proposed Revisions to 19.08.040 – Residential Districts Permitted Structures in the Setback Area**

The following list of proposed permitted structures in the setback comes from policy memos adopted over the years. They are more appropriate to be listed in the zoning code and include:

- Walls and fences, no taller than seven feet unless approved by Director
- Roof eaves including those used for PV and carports, no more than three feet into the setback
- Porches/lanai, decks, and walkways that are uncovered or under roof eaves, and associated with steps, railings and landings.
- Mail boxes and trash enclosures
- Minor utility equipment and their enclosures on lots 7,500 square feet or smaller
- Existing greenhouses may continue to comply with code at time of construction; new greenhouses must comply with setback limitations.

The proposed bill was reviewed by Departments of Housing and Human Concerns, Fire and Public Safety and Public Works, and extensively by Department personnel.

All three planning commissions supported approval of the bill to the County Council. Modifications proposed by the commissions are mostly included in the attached bill, except for the Moloka`i Planning Commission’s request that the 16 Residential Districts parcels on the island of Moloka`i be excluded from many of the proposed changes. The Lāna`i Planning Commission’s comments were about impervious surface limitations for smaller lots. Members of the Maui Planning Commission commented on encouraging live-work housing options, parking, and

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ensuring against vacation rentals. Here is a summary of the planning commissions' recommendations:

<u>Planning Commission</u>	<u>Date of Vote</u>	<u>Recommendations</u>	<u>Vote Count</u>
Lānaʻi	Nov. 17, 2021	Pass the bill with comments	6-0
Maui	Nov. 23, 2021	Pass the bill with comments	8-0
Molokaʻi	Dec 8, 2021	Deferred	No vote
Molokaʻi	Jan. 12, 2022	Deferred	No vote
Molokaʻi	Jan. 26, 2022	Support the bill with revisions	No vote

The proposed bill is consistent with the goals, policies and actions of the 2010 Countywide Policy Plan (as amended September 21, 2021), the 2012 Maui Island Plan, the 2018 Molokaʻi Island Community Plan, and the 2016 Lānaʻi Island Community Plan which include the following:

- Countywide Policy Plan, page 46, Policy A.1.c: Restore and protect forests, wetlands, watersheds, and stream flows, and guard against wildfires, flooding, and erosion.
- Countywide Policy Plan, page 55, Policy D.1.c: Support expanded long-term-care options, both in institutions and at home, for patients requiring ongoing assistance and medical attention.
- Countywide Policy Plan, page 56, Policy D.2.d: Promote the development of continuum-of-care facilities that provide assisted-living, hospice, home-care, and skilled-nursing options allowing the individual to be cared for in a manner congruent with his or her needs and desires.
- Countywide Policy Plan, page 56, Policy D.2.f: Plan for the needs of an aging population and the resulting impacts on social services, housing and healthcare delivery.
- Countywide Policy Plan Core Theme E. Expand housing opportunities for residents.
- Countywide Policy Plan, page 57, Objective E.1: Reduce the affordable housing deficit for residents.
- Countywide Policy Plan, page 57, Policy E.1.a: Ensure that an adequate and permanent supply of affordable housing, both new and existing units, be made available for purchase or rental to our resident and/or workforce population, with special emphasis on providing housing for low- to moderate-income families, and ensure that all affordable housing remains affordable in perpetuity.
- Countywide Policy Plan, page 57, Policy E.1.b: Seek innovative way to lower housing costs without compromising the quality of our island lifestyle.
- Countywide Policy Plan, page 58, Policy E.1.q: Support the opportunity to age in place by providing accessible and appropriately designed residential units.
- Countywide Policy Plan, page 58, Policy E.2d: Promote infill housing in urban areas at scales that capitalize on existing infrastructure, lower development costs, and are consistent with existing or desired patterns of development.

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- Countywide Policy Plan, page 59, Policy E.3g: Minimize the intrusion of housing on prime, productive, and potentially productive agricultural lands and regionally valuable agricultural lands.
- Countywide Policy Plan, page 60, Policy F.1.g: Support home-based businesses that are appropriate for and in character with the community.
- Countywide Policy Plan, page 69, Policy H.5a: Encourage progressive community design and development that will reduce transportation trips.
- Countywide Policy Plan, page 71, Objective I.3: Direct growth in a way that makes efficient use of existing infrastructure and to areas where there is available infrastructure capacity.
- Countywide Policy Plan, page 73, Policy J.1e: Encourage redevelopment and infill in existing communities on lands intended for urban use to protect productive farm land and open-space resources.
- Maui Island Plan Chapter 2, Policy 2.2.3.a: Reduce the amount of impervious surface and devise site plan standards that aim to minimize storm runoff and NPS pollution.
- Maui Island Plan Chapter 5, Objective 5.1.1: More livable communities that provide for a mix of housing types, land uses, income levels, and age.
- Maui Island Plan Chapter 5, Policy 5.1.1.e: Use planning and regulatory approaches to provide higher housing densities.
- Maui Island Plan Chapter 5, Implementing Action 5.1.1-Action 1: Amend development codes to facilitate different types of housing, including mixed use, mixed housing types, clustering, and conservation subdivisions.
- Maui Island Plan Chapter 5, Policy 5.1.2.b.(1): Ensure that the future housing stock is composed of a mix of housing types (multifamily, small lots, ohana units, co-housing, cottage houses, etc.)
- Maui Island Plan, Chapter 5, Implementing Action 5.1.5-Action 6: Amend the Zoning/Subdivision Codes to streamline and facilitate the development of elder care/assisted living facilities, as well as housing/facilities that are Americans with Disabilities Act-compliant.
- Maui Island Plan, Chapter 5, Implementing Action 5.1.6-Action 1: Develop a comprehensive, flexible system of incentives to develop affordable housing, including:
  - (1) Reduction or waiver of impact, assessment, and permit fees;
  - (2) Density bonuses;
  - (3) Exemptions from subdivision and zoning standards;
  - (4) Building code modifications while maintaining health and safety; and
  - (5) Possible use of publicly owned lands.
- Maui Island Plan Chapter 7, Policy 7.1.1e: Focus urban growth, to the extent practicable, away from productive and important agricultural lands.
- Maui Island Plan Chapter 7, Objective 7.2.1: Reduce the proliferation and impact of residential development outside of urban, small town, and rural growth boundaries.



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- Maui Island Plan Chapter 7, Policy 7.3.1.a: Ensure higher-density compact urban communities, infill, and redevelopment of underutilized urban lots within Urban Growth Boundaries.
- Maui Island Plan, Chapter 7, Policy 7.3.2.c: Facilitate self-sufficient communities and shorten commutes by:
  - (1) Directing residential development to job-rich areas;
  - (2) Allowing for appropriate commercial development and community services to shorten commutes; and
  - (3) Allowing home occupations or home-based businesses that are compatible with surrounding neighborhoods and lifestyles.
- Maui Island Plan Chapter 7, Policy 7.3.2.f: Facilitate the development of housing by focusing projects in locations where land and infrastructure costs facilitate the development of affordably-priced housing.
- Maui Island Plan Chapter 7, Implementing Action 7.3.2-Action 2: Amend the zoning ordinance to:
  - (1) Reduce minimum lot sizes in urban areas;
  - (2) Encourage a mix of single-family and multifamily lots within the same development; and
  - (3) Facilitate the establishment of mixed-use towns/village centers.
- Maui Island Plan Chapter 7, Implementing Action 7.3.2-Action 6: Revise the zoning ordinance to allow for mixed-use development that is appropriate and in character with the existing community.
- Moloka'i Island Community Plan, page 83, Land Use Action No. 6.1.02: Amend the zoning code to facilitate the development of mixed-use, pedestrian-oriented communities.
- Moloka'i Island Community Plan, page 90, Policy 4: Encourage development of a range of lot sizes and housing types (e.g. single family, ohana units, duplexes, multi-family, and live-work units) to expand housing choices and price points.
- Moloka'i Island Community Plan, page 90, Policy 10: Address senior services and increase diversified economic development.
- Moloka'i Island Community Plan, page 91, Land Use Action No. 6.2.03: Amend the zoning code to allow a greater variety of housing types to address affordability, including mixed-use, mixed housing types, co-housing, prefabricated homes, and small lots.
- Moloka'i Island Community Plan, page 109, Policy 8: Support policies that encourage private landowners to decrease impervious surfaces on private property to reduce surface water runoff.
- Lāna'i Community Plan, page 9-13, Land Use Action No. 9.02: Amend the zoning code to facilitate the development of mixed-use, pedestrian-oriented communities.
- Lāna'i Community Plan, page 11-4, Strategies 3: Encourage new development to include a variety of lot sizes, housing types, tenures, and price points that accommodate the full spectrum of household compositions, life stages and income levels. Ensuring housing

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variety on Lanai will increase residents' ability to remain on the island when family or economic circumstances change. Housing types including small and large single-family detached homes, 'ohana dwelling units, duplexes, town homes, multifamily buildings, and live-work units.

In addition, the proposed bill for ordinance is consistent with the State of Hawai'i 2050 Sustainability Plan, Strategy 23 (Action #160), "Expand and integrate permeable pavement and concrete opportunities."

Therefore, pursuant to Sections 8-8.3(6) and 8-8.4 of the Revised Charter of the County of Maui (1983), as amended, the Department respectfully recommends the Council's consideration of the attached proposed bill, "A BILL FOR AN ORDINANCE AMENDING CHAPTERS 19.04 AND 19.08, MAUI COUNTY CODE, RELATING TO RESIDENTIAL DISTRICTS."

Please see the referenced minutes of the commission meetings on the bill:

- Lāna'i Planning Commission, November 17, 2021:  
<https://www.mauicounty.gov/ArchiveCenter/ViewFile/Item/28773>
- Maui Planning Commission, November 23, 2021:  
<https://www.mauicounty.gov/ArchiveCenter/ViewFile/Item/28753>
- Moloka'i Planning Commission, December 8, 2021:  
<https://www.mauicounty.gov/ArchiveCenter/ViewFile/Item/28932>
- Moloka'i Planning Commission, January 12, 2022:  
<https://www.mauicounty.gov/ArchiveCenter/ViewFile/Item/28952>
- Moloka'i Planning Commission, January 26, 2022:  
<https://www.mauicounty.gov/ArchiveCenter/ViewFile/Item/29045>

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

Sincerely,



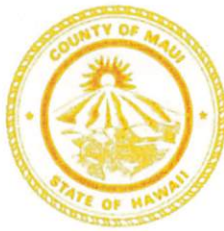
MICHELE CHOUTEAU MCLEAN, AICP  
Planning Director

Attachments

MCM:JEH:JMCT

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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**

November 17, 2021

**MEMORANDUM**

TO: MAUI PLANNING COMMISSION  
MOLOKAI PLANNING COMMISSION  
LANAI PLANNING COMMISSION

FROM: MICHELE CHOUTEAU MCLEAN, AICP   
PLANNING DIRECTOR

SUBJECT: **A BILL FOR AN ORDINANCE AMENDING CHAPTER 19.04 -  
GENERAL PROVISIONS AND DEFINITIONS, AND CHAPTER  
19.08 - RESIDENTIAL DISTRICTS OF THE MAUI COUNTY CODE**

The Department of Planning is proposing to revise Maui County Code Chapter 19.04 – General Provisions and Definitions, and Chapter 19.08 – Residential Districts. The proposed changes were initiated by the Department to redefine terms that are commonly misunderstood, codify long-standing internal policies, and consider climate change and the chronic housing shortage in future residential development. Throughout the county, there are approximately 19,641 parcels in the R-1, R-2, and R-3 Residential zoning districts.

**Proposed Revisions to 19.04.020 – Compliance**

The proposed revisions to this part of the code are minor and do not change the substance of the section. Compliance criteria for buildings and structures are separated from compliance for subdivisions because they are different. The revisions to permitted uses are intended to simplify the wording without changing the meaning.

**Proposed Revisions to 19.04.040 – Definitions**

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through which a driveway provides access to the “lot area”

- Setback area means the area between the setback line established in the applicable zoning district and the lot line, which includes the boundary of public or private streets. The setback area must remain unoccupied and unobstructed from the ground upward by any structure or swimming pool, except as specifically allowed in each zoning district
- Setback line the line beyond which no wall of a building or structure may project. Each zoning district specifies the distance from a lot line to a setback line.
- Private street means the open passage land, easement or right-of-way not less than twelve feet in width suitable or intended for pedestrians and vehicles
- Access setback area means the same as front setback area
- Front setback area means a setback area extending inward from the front lot line to the front setback line
- Rear setback area means setback area extending inward from the rear lot line to the rear setback line
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In addition, a new definition is proposed for impervious surfaces, to mean a surface covering or pavement of a developed parcel of land that prevents the land’s natural ability to absorb and infiltrate rainfall or storm water. Impervious surfaces can include, but are not limited to rooftops, walkways, patios, driveways, parking lots, impermeable concrete and asphalt, and any other continuous watertight pavement or covering. The bill proposes to include a limit on impervious surfaces to mitigate damage from increased coastal flooding, hurricanes, and tropical cyclones resulting from a warming planet. Existing structures and impervious surfaces would not be affected.

#### **Proposed Revisions to 19.08.020 – Residential Districts Permitted Uses**

Most of the changes are grammatical in nature or for clarity purposes. Two changes are substantive:

1. Property owners often build walls prior to building a dwelling unit, or build the ohana unit before the main dwelling, so we are including language to allow these types of accessory use prior to the development of the primary use.
2. Reference to Hawaii Revised Statutes Chapter 46 is added to items 19.08.020.H and 19.08.020.L regarding day care nurseries and care homes. This part of state law regulates adult family boarding homes and care homes, family child care homes, hospice homes and similar facilities in residential areas.

#### **Proposed Revisions to 19.08.030 – Residential Districts Special Uses**

Special uses require a county special use permit, approved by the appropriate planning commission. Again, many of the revisions are grammatical in nature and non-substantive. The following changes are proposed to provide more opportunities for housing and increase walkability



within neighborhoods:

1. Housing for aged and housing for low and moderate income families operated by governmental or nonprofit organizations if the normal unit density is increased by more than 25 percent. The current percentage which triggers commission review is 10 percent. By increasing the percentage, the development of more units will be encouraged.
2. Two-family dwelling units or duplexes. Unlike an accessory dwelling, the size of the two dwelling units in a duplex would be limited only by the size of the parcel and the required setbacks. Accessory dwelling sizes are limited by Chapter 19.35 and maximum floor area ranges from 500 to 1,200 square feet, depending on the size of the lot. A duplex would allow two families to live independently of each other on the same parcel, each in a home that could potentially be larger than an accessory dwelling.
3. Retail food and beverage establishments excluding liquor stores not to exceed two thousand square feet of gross covered floor area. This proposed addition is to promote walkability in neighborhoods and reduce vehicle miles traveled. For comparison purposes, Kaohu Store in Wailuku is approximately 1,800 square feet in size.
4. To further encourage affordable housing, 19.08.030.L. is proposed to be added, to replace 19.08.040.B which to our knowledge has never been used to develop affordable housing:

Modification of the minimum lot area development standard of section 19.08.040 may be reduced to no less than four thousand square feet subject to the following requirements:

- i. The project is designed to meet the needs of low, below moderate and/or moderate income families, and adequate provisions are recorded to ensure owner-occupancy and the prevention or limitation of speculation;
- ii. Shared use paths crossing through the subdivision are provided for bicycles and pedestrians to connect to adjacent lands on all sides of the project, such as existing shared use paths, roadways, parks, commercial areas, and vacant land that may be developed or further subdivided; and
- iii. The commission may increase the impervious surface requirement to no more than 75 percent of the total lot area. (Note: this was initially proposed as 90 percent).

### **Proposed Revisions to 19.08.040 – Residential Districts Development Standards**

Sections 19.08.040, 19.08.050 and 19.08.060 have not changed since at least 1974. The proposed bill would consolidate the area regulations, height regulations and yards into one section, and use a table similar to other zoning chapters.

<u>Subsection</u>	<u>Summary of change</u>	<u>Rationale</u>
19.08.040.A – Area regulations, lot area	No changes proposed for minimum lot area	
19.08.040.B –	Move this regulation to	Like other Special Uses, requires approval

Area regulations, criteria for reduced lot sizes	19.08.030.4, Special Uses and revise criteria	by planning commission. This option has been revised to allow for smaller lots to meet the needs of low, below moderate and/or moderate income families. New criteria also requires connectivity to encourage multi-modal transportation.
19.08.050 – Height regulations	Building height must not exceed 30 feet.	Remove reference to stories. Allowing a dwelling unit to be 3 stories could provide more housing; height is limited to 30 feet regardless of stories.
19.08.060 – Yards	Replace the word “yard” with “setback area”	General trend of Title 19 to use the term “setback”
19.08.060 – Setback lines	Replace “Side and rear yards for two-story buildings shall be ten feet in all residential districts.” New wording: “For any portion of a building up to and including 15 feet/more than 15 feet...”	Current language has been inconsistently interpreted to mean 6 feet setback for lower floor and 10 feet for upper height, or 10 feet for all stories. A 2008 policy memo interprets setbacks as 6 feet for lower floor and 10 feet for upper floor. Setbacks based on exterior height is clear, consistent, and easier to administer.
New development standard - Surfaces	Add: “For dwellings constructed pursuant to building permits applied for after January 1, 2023, the impervious surface area of a zoning lot must not exceed 65 percent of the total zoning lot area.”	This means that no more than 65 percent of total lot area can be covered by impervious surfaces. Impervious surfaces prevent the land from naturally absorbing and infiltrating rainfall or storm water. Impervious surfaces include, but are not limited to, all buildings, driveways, access paths, patios, lanais, swimming pools, roof overhangs/eaves and most walkways. For existing lots with more than 65 percent impervious surfaces, they are nonconforming. The amount of impervious surfaces on the site may be redistributed, but the total amount of impervious surfaces cannot be increased. (Note: this was initially proposed as 75 percent)

**Proposed Revisions to 19.08.040 – Residential Districts Permitted Structures in the Setback Area**

The following list of proposed permitted structures in the setback comes from policy memos over the years. They are more appropriate to be listed in the zoning code and include:

- Walls and fences, no taller than 7 feet unless approved by Director

- Roof eaves including those used for PV and carports, no more than 3 feet into the setback
- Porches/lanai, decks, and walkways that are uncovered or under roof eaves, and associated with steps, railings and landings.
- Mail boxes and trash enclosures
- Minor utility equipment and their enclosures on lots 7,500 square feet or smaller
- Existing greenhouses may continue to comply with code at time of construction; new greenhouses must comply with setback limitations.

The proposed bill was reviewed by Departments of Housing and Human Concerns, Fire and Public Safety and Public Works, and extensively by Department staff.

### **Recommendation and Options**

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

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

Attachment

MCM:JEH:JMCT

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

BILL NO. \_\_\_\_\_ (2021)

A BILL FOR AN ORDINANCE AMENDING THE COMPREHENSIVE ZONING  
ORDINANCE RELATING TO CHAPTER 19.04 GENERAL PROVISIONS AND  
DEFINITIONS, AND CHAPTER 19.08 RESIDENTIAL DISTRICTS OF THE MAUI  
COUNTY CODE

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

SECTION 1. Purpose. The purposes of this bill for ordinance are to: clarify code provisions regarding yards and setbacks; define terms that are subject to misinterpretation; increase housing options and sustainability, and codify practices regarding the residential zoning districts.

SECTION 2. Section 19.04.020, Maui County Code, is amended to read as follows:

**19.04.020 – COMPLIANCE**

- A. Buildings and structures [subdivisions]. No building or structure shall be erected, structurally enlarged, or maintained unless it complies with [the requirements of] this title and the building code of the County. [No land shall be subdivided unless the subdivision complies with the provisions of this title.]
- B. Subdivisions. No land shall be subdivided unless the subdivision complies with this title.
- [B]C. Permitted uses in each district. [There may be permitted in] In the zoning districts, three categories of uses are permitted: principal, accessory, and special. Any use that is not expressly listed as a permitted principal, accessory, or special use is prohibited. Unless otherwise expressly prohibited elsewhere in this title, restricted use lots and the uses allowed thereon are permitted in all districts.



SECTION 3. Section 19.04.040, Maui County Code, is amended by updating and adding new definitions to be appropriately inserted and to read as follows:

#### **19.04.040 - DEFINITIONS**

"Front of lot" or "Front lot line" means [the front boundary line of a lot bordering the street or closest to the street, and in the case of a corner lot, may be either frontage] every lot line bordering a public or private street, through which a driveway provides access to the "lot area".

"Impervious surface" means a surface covering or pavement of a developed parcel of land that prevents the land's natural ability to absorb and infiltrate rainfall or storm water. Impervious surfaces can include, but are not limited to rooftops, walkways, patios, driveways, parking lots, impermeable concrete and asphalt, and any other continuous watertight pavement or covering.

Lot line, front. See "Front of lot" ["Front lot line" means a line separating the lot from the streets or place, and in the case of a corner lot, a line separating the narrowest street frontage of the lot from the street.]

"Setback area" means the area between the setback line established in the applicable zoning district and the lot line, which includes the boundary of public or private streets. The setback area must remain unoccupied and unobstructed from the ground upward by any structure or swimming pool, except as specifically allowed in each zoning district.

"Setback line" means the line beyond which [the main] no wall of a building or structure [shall not] may project. Each zoning district specifies the distance from a lot line to a setback line.

Street, private. "Private street" means open passage land, easement or right-of-way not less than twelve feet in width suitable or intended for pedestrians and vehicles [, the fee of which is vested in the owner or owners of land abutting such open passage land or right-of-way].

["Yard" means an open space on a lot unoccupied and unobstructed from the ground upward by any structure except as otherwise provided in this article. Wherever in this article an access yard, front yard, rear yard, or side yard of a stated number of feet is required, such expression shall be deemed to mean that the yard shall have a minimum depth of the number of feet so specified.]

[Yard] Setback, access. "[Access yard] Access setback area" means the [yard on which a driveway is located] same as front setback area.

[Yard] Setback area, front. "Front [yard] setback area" means a [yard] setback area extending [across the full width of the lot, the depth of which shall be the least distance between the front lot line and the front of the main building] inward from the front lot line to the front setback line.

[Yard] Setback area, rear. "Rear [yard] setback area" means a [yard extending across the full width of the lot between the main building and the rear lot line. The depth of the required rear yard shall be measured from the nearest part of a main building at a ninety-degree angle from the building to the nearest point of the rear lot line] setback area extending inward from the rear lot line to the rear setback line.

[Yard] Setback area, side. "Side [yard] setback area" means a [yard between the main building and the side lot line, extending from the front yard or front lot line where no front yard is required, to the rear yard or rear lot line. The width of the required side yard shall be measured from the nearest point of the side lot line toward the nearest part of the main building] setback area extending inward from the side lot line to the side setback line.

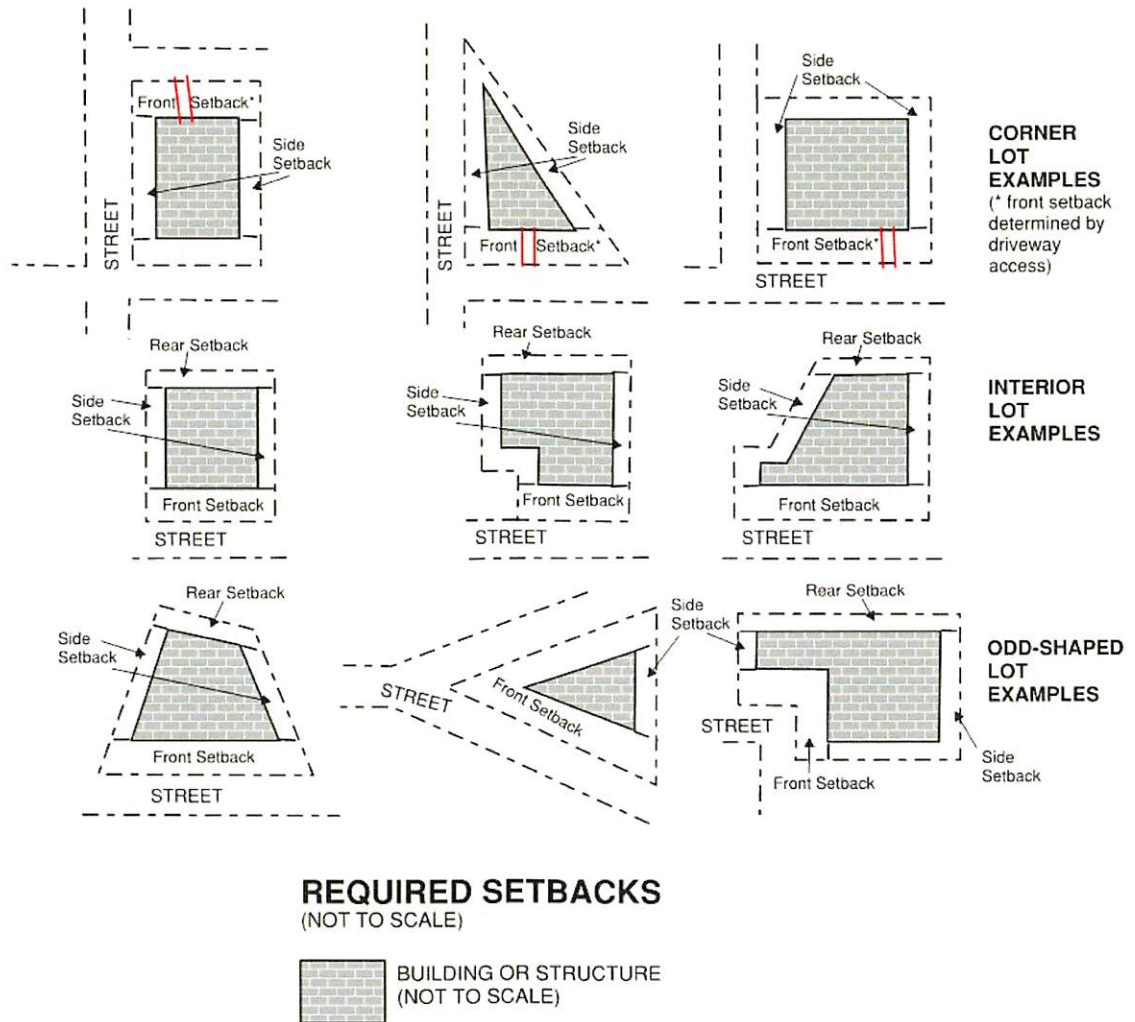


Figure 1 Examples of different front setback areas

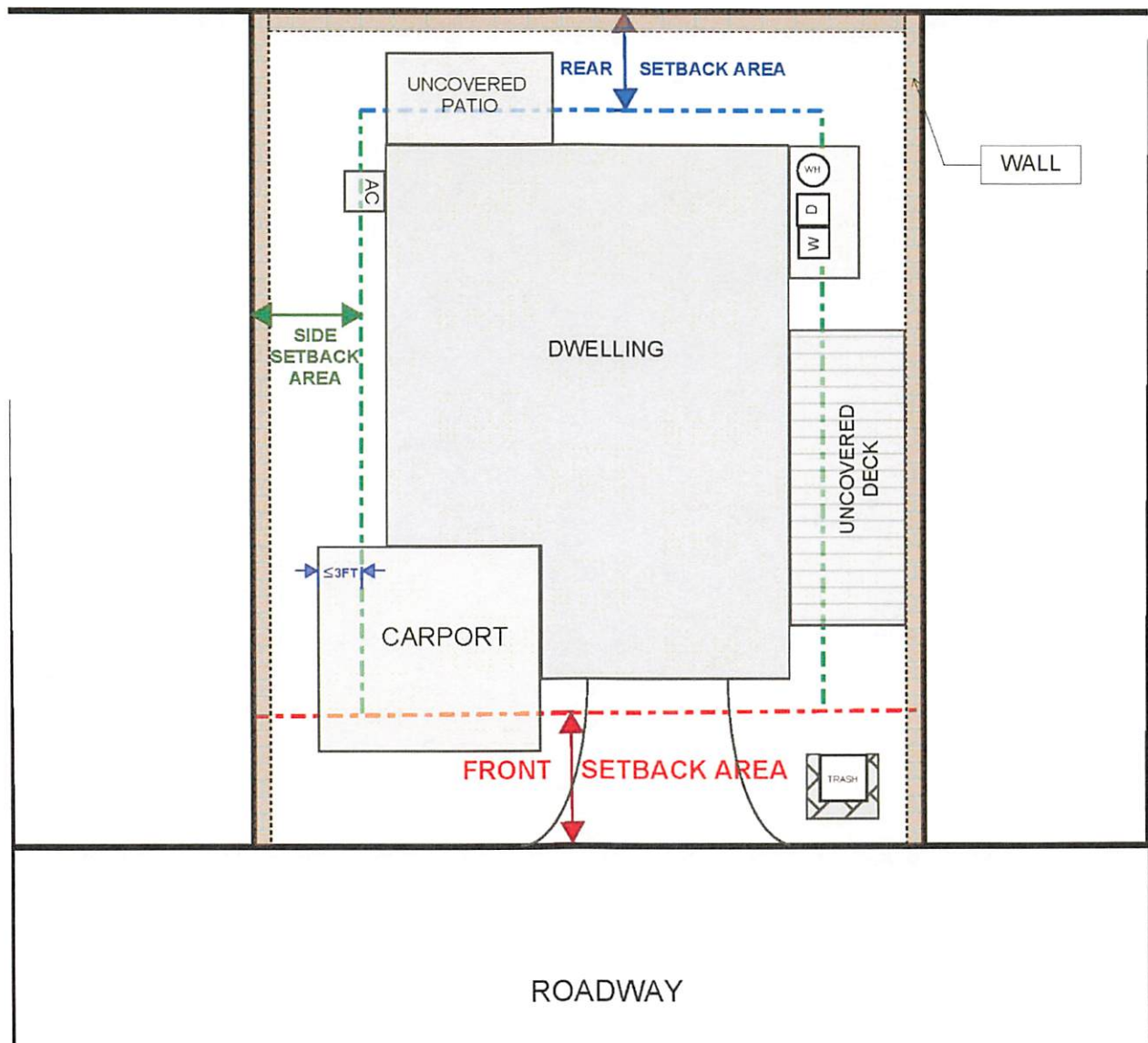


Figure 2 Examples of front, side and rear setback areas for a single-family dwelling



SECTION 4. Chapter 19.08, Maui County Code, is amended to read as follows:

**Chapter 19.08 – RESIDENTIAL DISTRICTS**

**19.08.010 - Generally.**

Areas for single-family dwellings are established to provide for harmonious residential neighborhood without the detracting of commercial and industrial activities.

**19.08.020 - Permitted uses.**

Within residential districts, the following principal uses [shall be] and structures are permitted:

- A. Single-family dwellings.
- B. Greenhouses, [flower and truck gardens, and] plant nurseries, and the raising of plants, flowers, fruits or vegetables for subsistence or commercial purposes; [provided that there shall be no] except for retailing or transacting of business on the premises, unless allowed by [except as provided in] chapter 19.67 of this title.
- C. Parks and playgrounds, noncommercial; certain commercial amusement and refreshment sale activities may be permitted when under supervision of the government agency in charge of the park or playground.
- D. Publicly or privately owned and operated elementary [Elementary,] intermediate, and high schools, and colleges, [publicly or privately owned,] which may include on-campus dormitories.
- E. Buildings or premises used by the federal, state, or county governments for public purposes.
- F. Accessory [buildings] uses and structures located on the same lot, the use of which is customary, incidental, usual, and subordinate [necessary] to that of the main building or to the use of the land. The initiation of accessory uses and the erection of accessory structures are not contingent on the existence, and may be in advance, of the main building or use of the land, as approved by the planning director.
- G. Accessory dwellings pursuant to chapter 19.35 of this title.
- H. Day care nurseries, kindergartens, nursery schools, child care homes, day care homes, day care centers, nurseries, preschool kindergartens, babysitting services, and other like facilities located in private homes used for child care services. These facilities shall serve six or fewer children at any one time on lot sizes of less than seven thousand five hundred square feet, eight or fewer children at any one time on lot sizes

of seven thousand five hundred or more square feet but less than ten thousand square feet, or twelve or fewer children at any one time on lot sizes of ten thousand or more square feet, or as otherwise required pursuant to Chapter 46, Hawaii Revised Statutes.

- I. Bed and breakfast homes, subject to the provisions of chapter 19.64 of this title.
- J. Home businesses[, subject to the provisions] that meet the requirements of chapter 19.67 of this title.
- K. Short-term rental homes, subject to the provisions of chapter 19.65 of this title.
- L. Family child care homes, hospice homes, adult residential care homes and adult family care homes, as required pursuant to Chapter 46, Hawaii Revised Statutes.

#### **19.08.030 - Special uses.**

The following uses and structures [shall be permitted in the residential districts provided that] require a [County] county special use permit, obtained pursuant to [as provided in] section 19.510.070 of this title[, has first been obtained]:

- A. Churches, including any accessory buildings such as a parsonage, Sunday school, nursery school, thrift shop, or office.
- B. Day care nurseries, kindergartens, nursery schools, child care homes, day care homes, day care centers, nurseries, preschool kindergartens, babysitting services, and other like facilities located in private homes used for child care services serving more than the number of children defined in section 19.08.020(H).
- C. Hospitals; provided that written consent of seventy-five percent of the property owners within five hundred feet of the property to be used for such purpose, has been obtained.
- D. Nursing or convalescent homes and domiciliary facilities operated and maintained to provide nursing or supporting care that do not meet the criteria of section 19.08.020.L.
- E. Housing for the aged, operated by governmental or nonprofit organizations[; provided that the normal population density is not increased more than ten percent.] if the normal unit density is increased by more than twenty-five percent.
- F. Housing for low and moderate income families, operated by governmental or nonprofit organizations[; provided that the normal dwelling unit density is not increased more than ten percent.] that do

not meet the criteria of section 19.08.020.L, or if the normal unit density is increased by more than twenty-five percent.

- G. Public utilities substations, which are not and will not be hazardous or a nuisance to the surrounding areas.
- H. Domestic-type businesses in the home that do not meet the definition of home business or home occupation, including group instruction of traditional Hawaiian practices, such as lei making, ukulele classes, hula classes, and lomi lomi, provided that there will be no detrimental or nuisance effect upon the neighbors, and further, provided that off-street parking is available to participants.
- I. Home businesses[, subject to] that do not meet the [provisions] requirements of chapter 19.67 of this title.
- J. Two-family dwelling units or duplexes.
- K. Retail food and beverage establishments excluding liquor stores not to exceed two thousand square feet of gross covered floor area.
- L. Modification of the minimum lot area development standard of section 19.08.040 may be reduced to no less than four thousand square feet subject to the following requirements:
  - i. The project is designed to meet the needs of low, below moderate and/or moderate income families, and adequate provisions are recorded to ensure owner-occupancy and the prevention or limitation of speculation;
  - ii. Shared use paths crossing through the subdivision are provided for bicycles and pedestrians to connect to adjacent lands on all sides of the project, such as existing shared use paths, roadways, parks, commercial areas, and vacant land that may be developed or further subdivided; and
  - iii. The commission may increase the impervious surface requirement to no more than 75 percent of the total lot area.

#### **19.08.040 – [Area regulations.**

A. The minimum lot area shall be six thousand square feet in R-1 residential districts, seven thousand five hundred square feet in R-2 residential districts, and ten thousand square feet in R-3 residential districts. The minimum lot width shall be sixty feet for R-1, sixty-five feet for R-2, and seventy feet for R-3. There may be more than one single-family dwelling on any lot when the minimum lot area of six thousand square feet in R-1, seven thousand five hundred square feet in R-2, and ten thousand square feet in R-3 is provided for each dwelling unit.

B. Subject to approval of the commission, mixture of lot sizes may be permitted within any residential district; provided, however, that the minimum lot size shall not be less than six thousand square feet, and that the overall project density shall not exceed that permitted within the district. Where the subdivision or project is designed to meet the needs of low or moderate income families, and adequate provisions are provided to insure owner-occupancy and the control or limitation of speculation, the commission may permit an increase in density not to exceed ten percent.

19.08.050 - Height regulations.

No building shall exceed two stories nor thirty feet in height.

19.08.060 - Yards.

A. There shall be a front yard of fifteen feet, side yard of six feet, and rear yard of six feet for all residential districts. Side and rear yards for two-story buildings shall be ten feet in all residential districts.

B. Greenhouses may be constructed along the rear or side lot lines, provided, the entire roof is constructed of laths or screen to permit passage of light and air; the clear distance to the front lot line is not less than thirty feet; and that no portion of the greenhouse shall overhang into the next property. If the greenhouse is not constructed on the lot lines, then it must conform to the side and rear yard spacing of six feet.]

**Development Standards, Height Regulations and Setback Lines**

	<u>R-1</u>	<u>R-2</u>	<u>R-3</u>	<u>Notes and exceptions</u>
<u>Minimum lot area (square feet)</u>	<u>6,000</u>	<u>7,500</u>	<u>10,000</u>	
<u>Minimum lot width (in feet)</u>	<u>60</u>	<u>65</u>	<u>70</u>	
<u>Maximum building height</u>	<u>Building height must not exceed 30 feet</u>			
<u>Setback lines</u> <u>(for any portion of a building up to and including 15 feet in height as measured from the natural or finish grade, whichever is lower)</u>				
<u>Front</u>	<u>15</u>			

<u>(in feet)</u>	
<u>Side/Rear</u> <u>(in feet)</u>	<u>6</u>
<u>Setback lines</u> <u>(for any portion of a building more than 15 feet in height as measured from</u> <u>the natural or finish grade, whichever is lower)</u>	
<u>Front</u> <u>(in feet)</u>	<u>15</u>
<u>Side/Rear (in</u> <u>feet)</u>	<u>10</u>
<u>Surfaces</u>	<u>For dwellings constructed pursuant to building permits</u> <u>applied for after January 1, 2023, the impervious surface</u> <u>area of a zoning lot must not exceed 65 percent of the total</u> <u>zoning lot area.</u>

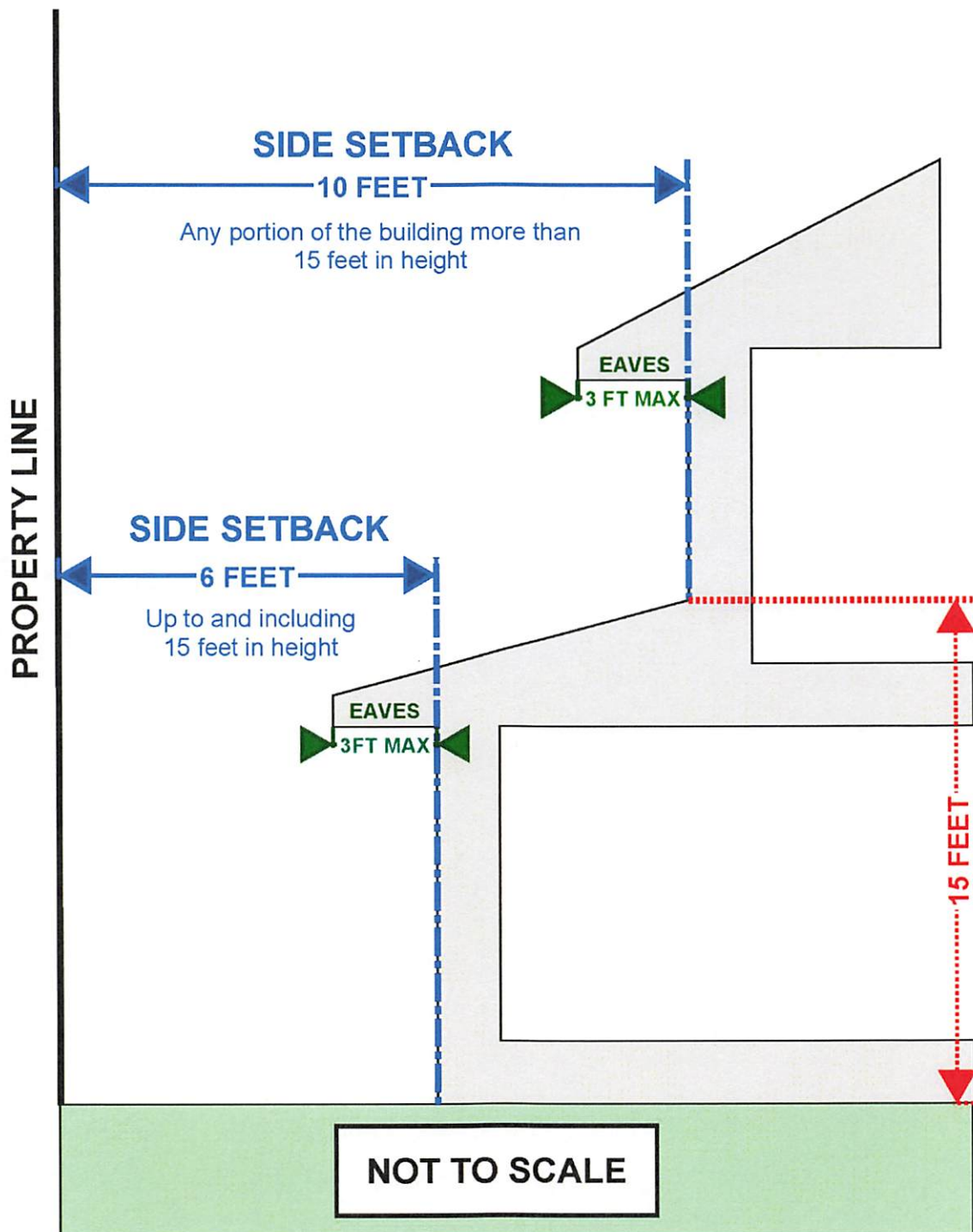


Figure 3 Example of rear and side setback areas for single-family dwelling >15 feet in height (not to scale)

### **Permitted Structures in the Setback Area**

<u>Description</u>	<u>Measurement</u>	<u>Notes and exceptions</u>
<u>Walls and fences</u>	<u>May not exceed 7 feet in height</u>	<u>The director may allow greater heights of walls with appropriate justification, such as to retain earth, water, or both for health and safety purposes</u>
<u>Roof eaves, including those used for photo-voltaic, carports and dwellings, and other roof-like structures</u>	<u>May extend or overhang no more than 3 feet into the setback area at no less than 8 feet in height at their lowest point</u>	
<u>Porches/lanai, decks, and walkways that are uncovered or under roof eaves, and associated with steps, railings and landings.</u>	<u>Must be at finished or natural grade, whichever is lower; may extend no more than 3 feet into the setback area.</u>	<u>Cannot be used to extend the building floor area in the setback area</u>
<u>Mail boxes and trash enclosures</u>		
<u>Minor utility equipment and their enclosures on lots 7,500 square feet or smaller</u>	<u>A. Equipment 7 feet in height or less and are accessory to a principal use, such as water heaters, pool pumps, gas tanks, laundry machines, clotheslines, dryers and air-conditioning units.</u> <u>B. Wall enclosures for the equipment are allowed, and are limited to the lesser of the height of the equipment or 4 feet.</u> <u>C. A minimum of 3 feet from the equipment and wall enclosure to the property line must be unobstructed from the ground upward.</u>	
<u>Existing greenhouses</u>	<u>May continue to comply with the code in existence at the time the greenhouse was built</u>	

SECTION 5. Existing setbacks and permit applications submitted prior to the effective date of this ordinance are not subject to this ordinance; new

applications for building permits submitted after the effective date of this ordinance must comply with this ordinance.

SECTION 6. 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 7. This ordinance takes effect upon its approval.

APPROVED AS TO FORM AND LEGALITY

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Department of the Corporation Counsel  
County of Maui



**LANA'I PLANNING COMMISSION  
REGULAR MEETING  
NOVEMBER 17, 2021**

**A. CALL TO ORDER**

The regular meeting of the Lanai Planning Commission (Commission) was called to order by Ms. Shelly Preza, Chair, at approximately 5:00 p.m., Wednesday, November 17, 2021, online via BlueJeans Meeting No. 589 607 544.

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

Ms. Shelly Preza: I do think we have quorum, but I'm just going to take a quick roll call just to make sure everyone who said was going to here is here. So if you're here just unmute yourself and let me know you're on the call. Sally Kaye?

Ms. Sally Kaye: Here.

Ms. Preza: Thank you. John de la Cruz? John, are you here? I see a John D, but I don't know if that's de la Cruz. But we can't hear you if you are here. I'll circle back. Zane de la Cruz?

Mr. Zane de la Cruz: Here.

Ms. Preza: Thank you. Lisa Grove?

Ms. Elisabeth Grove: Here.

Ms. Preza: Thank you. Sherry, I don't think is coming. Sherry, you're not here, right? Natalie Ropa?

Ms. Natalie Ropa: Here.

Ms. Preza: Thank you. Shirley Samonte? You're not here. Chelsea Trevino? I think might be coming late. Okay, with that there's five us so we still do have quorum. I just want to follow up, John, are you here? John de la Cruz?

Mr. John de la Cruz: I'm here.

Ms. Preza: Oh, okay, thank you. We can hear you. Great. So we definitely have quorum, so we'll get started. And thank you, everyone who is joining us. We -- I'm just going to go over the rules real quick, which is, you know, we'll take public testimony at each agenda item when it's discussed and testimony will be limited to a maximum of three minutes. I'll call anyone to offer testimony that's calling in via BlueJeans and then I'll offer anyone who's calling in via phone. And if you're not a commission member or presenting we ask that you continue to mute your audio and video just so it's a little easier for everyone to stay organized. And we are not going to be checking the chat function. So if you have specific questions, you can, you know, directly message Leilani and she'll try to relay those to us, but thank you. So thanks everyone for being here.

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

**1. A BILL FOR AN ORDINANCE AMENDING MAUI COUNTY CODE CHAPTERS 19.04 – GENERAL PROVISIONS AND DEFINITIONS, AND 19.08 – RESIDENTIAL DISTRICTS**

**MS. MICHELE CHOUTEAU MCLEAN, AICP, Planning Director, referring to the Maui, Molokai, and Lanai Planning Commissions a proposed bill to amend Maui County Code Chapter 19.04 – General Provisions and Definitions, and Chapter 19.08 Residential Districts, to revise definitions and clarify code provisions regarding yards and setbacks; increase housing options and sustainability, and codify practices regarding the uses and standards of residential zoning districts. (J. Takakura)**

**The entire text of the proposed bill for ordinance is available at <https://www.mauicounty.gov/DocumentCenter/View/129345/Draft-Bill-for-Ordinance-amending-1904---General-Provisions--Definitions-1908-Residential-Districts-09282021>**

We'll get started on Item B.1. which is a bill for an ordinance amending Maui County Code Chapters 19.04 on resident -- and 19.08 on residential district. So I do believe there -- we received a slide deck, so I think there is presentation. I don't know if that's you, Jordan or Jacky. Hi Jacky, you're on mute if you're talking.

Ms. Jacky Takakura: Good evening, everyone. I guess I'll get started. So just to give you some background. This is the residential zoning district and the motivation for this update was really -- it came from within internally and it's to try to help our staff in making some fixes to this code, which if it makes it easier for staff, it will be easier for the community. And hopefully I can kind of explain that as I go through. So it's just a short presentation. I'm going to share screen, if that's okay Chair Preza?

Ms. Preza: Yes, please. Thank you.

Ms. Takakura: So as you can see, it's two parts of Title 19 that we're looking at making some updates to. One is 19.04 which is the general provisions. And then the other one is 19.08, which is the residential district. And I know that a lot of the things that I bring before the Lanai Planning Commission are not always related to Lanai, but this one, it does relate to Lanai because there is residential zoning on all three, the main islands of the county. But I'm happy to say it does and your input is really important because it does affect you.

So let me just get started. Next one. Oh, what we're trying to do here is kind of fix some terms that have kind of become outdated over time and need some clarification and other minor fixes. We're proposing some options that will hopefully increase housing opportunities, trying

to include sustainability and climate change in our zoning code, and then codifying policies that we have, that have accumulated over the years. And really because the appropriate place should be in the zoning code. And just for some background information, with residential zoning district, there's 19,641 parcels and that's either R-1, R-2, or R-3 and those different categories are based on the lot size. But generally speaking, it's residential zoning district. And I was kind of surprised to see that number, 19,000, because I believe we have about 41,000 parcels in the County so this is almost half of our parcels. I mean, they might be smaller parcels, but still the quantity is it's quite significant for Maui County.

Okay, so let's go through the changes in order of the chapters starting with Chapter 19.04 and then going to the actual residential chapter, which is 19.08. For this first part compliance, these are just minor revisions and they don't change the substance of the section. For this first part that you see, items A and B, all it's really doing is taking out the part about subdivisions and putting it in its own section because subdivisions are different from building and structures and, you know, they, they have their own criteria for compliance. It's different from buildings and structures. So that was the purpose of those two, A and B, is to separate those two out. So the building and structures is one thing and that, like it says, that it has to comply with the building code and so forth, and that subdivisions have to have their own criteria for compliance.

And then the third one item C, it's just rewording it a little bit to simplify the wording without changing the meaning. Instead of being passive, you know, they may be permitted in the zoning districts. It's simply that in the zoning districts these categories are permitted.

So that's it for that part of 19.04, compliance.

Now we move to definitions and these are setbacks. Within the proposed changes to definitions, all of the proposed revisions refer to setback area, and that is generally the open area extending inward from the property line. And the width of that setback varies by zoning district. And so what we're proposing is to make some updates for front of line, replacing the word yard with the term setback area, clarifying the definition of the setback line, and that also just updating the definition for private street. So, you know, in an ideal world, a lot would be like a perfect square or a rectangle with a straight line. But that's not how it is in the real world. Usually the lines can kind of curve depending on the topography of the land. So what we're proposing is that the front of lot or front lot line meaning -- means every lot line bordering a public or private street for which a driveway provides access to the lot area. And you can see from these examples here that the front is going to be determined by the driveway. And that's if you look at this front row, I have the driveway just in red. So like these examples, especially in the top row, you've got like for this one here, three streets. This one, you have two streets and you also have two streets. And so -- I mean, the setback could be either one but we're going to define it based on where the driveway is. This has been a point of confusion for a long time. So setback is going to be, the front setback will be determined by . . . (inaudible) . . . And I think on Lanai there are some properties that are like this where they have three

streets or a front and back street. So this will add some clarity about which one is going to be the front. And it will be determined by the driveway access.

Ms. Kaye: Jacky, I have to ask you a question about that because there are some properties here where the driveway is in the back. And if the, if the setback area is different from the front or the back then does that switch it? We have shared driveways and standalone garages. It doesn't neatly fit into this.

Ms. Takakura: Anything that's already been determined is going to be, is going to stay okay, you know, it will be like nonconforming. But for new developments, the property owner is going to have to make that decision of where that setback is going to be. Like say they have three streets here, a lot of times we usually go with the narrowest of, of sides to determine the front. And then that actually allows them more developable area because the front setback is usually bigger than the side and the rear setbacks. But yeah, so by having these definitions, it will hopefully provide a little bit of clarity because we, we have seen that where, you know, it's not clear where the setbacks should be. But for existing, they would stay the same as wherever they, they already are. Does that answer your question Commissioner Kaye?

Ms. Kaye: Yes, thank you.

Ms. Takakura: For setback area, that would be the area between the setback line established in the zoning district and the lot line which includes the boundary of the public or private streets. The setback area would have to remain unoccupied and unobstructed from the ground upward by any structure or swimming pool except if specifically allowed in each zoning district. And we'll go over that when we get into the residential zoning because there are some things that would be allowed.

Setback line is simply the line beyond which no wall of a building or structure may project. And each zoning district specifies the distance from a lot line to a setback line. And then private street, we just modified the definition a little bit; open passage of land, easement, or right of way.

Now this is just a little bit of a diagram to explain which one of these different setbacks would be what, and this is for a typical residential lot. Like I said, in an ideal world, these lines are all straight. But you can see a driveway here going into the carport, so this would be the front setback area. The green would be the sides. Rear is this here in . . . (inaudible) . . . And you'll see that eaves are allowed up to three feet in the setback. So that's why the line goes out a little bit more than what you see this gray structure area. So hopefully a simple diagram like this provides some clarity what those setback areas are in. I'm trying to put more images and graphics into the code just because it's easier to see rather than trying to read and interpret all those words.

And the other definition that I mentioned that's not related to setbacks is this impervious surfaces. And this is similar to the definition than the City and County of Honolulu land use

ordinance. And that's a surface covering a pavement of a developed parcel of land that prevents the land natural ability to absorb and infiltrate rainfall or storm water. It can including but not limited to rooftops, walkways, patios, driveways, parking lots, impermeable concrete and asphalt, any other continuous watertight pavement or covering. So the bill proposes to include a limit on impervious surfaces to mitigate damage from increased coastal flooding, hurricanes, and tropical cyclones resulting from a warming climate. Existing structures and impervious surfaces would not be affected. And this is just the definition because right now there we don't have a definition for impervious surfaces at all in Title 19. And I'm going to refer to this definition when we get to the residential standards.

And I just want to show you, this is a, an aerial image of just somewhere in Kahului. And you can kind of see like say, say, this parcel in the middle, you can see the structure and you can see this paved area, the driveway. So you can see that quite a bit of impervious surface in this middle parcel. This one next to it across the street it's, it's, there's a lot of impervious surface too. There's a little bit of grass here so that's also drainage here. But you can kind of see from these aerial images like this one here, you've got impervious here and then the driveway, then the house, and then the rest probably standard grass, and so that is pervious. Existing impervious surfaces are -- can continue. Proposed revision would be for anything new. And like I said, it's to try to mitigate the flooding drainage as we know these things are changing.

Okay so moving to Chapter 19.08, the actual chapter regarding residential districts. For permitted uses, most of the changes we're proposing are grammatical in nature or to clarify - for clarity purposes. We do have two changes that we would like to have in the code. And one is about allowing walls and ohanas to be built before the main dwelling. Because a lot of times property owners build walls prior to building the dwelling unit, or they might build the ohana unit before the main dwelling. So we would like to include language that clearly allows that type of accessory use prior to the development of the primary use. And then the other part that we're adding in for day care, nurseries, and care homes, is reference to Hawaii Revised Statutes, Chapter 46. Because that's the state law that regulates adult family boarding homes, care homes and family child care homes, hospice homes, and similar facilities in residential areas.

The next part is the special uses, and these are the uses that require a County Special Use permit. And those will be approved by the appropriate planning commission. So those would be the things that would come before the Lanai Planning Commission. A lot of the revisions are grammatical in nature and non-substantive. But we do have a few that are proposed to provide more opportunities for housing and increase walkability within neighborhoods.

First of all, allowing for housing, housing for aged and housing for low and moderate income families operated by a governmental or non-profit organization. If the normal unit density is increased by more than 25 percent, the current percentage which triggers commission review is ten percent. And we're hoping that by increasing the percentage, the development of more units would be incurred.

We're proposing to allow duplexes, which is two family dwelling units. And this is different from an accessory dwelling unit because with the accessory dwelling units the size is limited by Chapter 19.35. And the maximum floor area ranges from 500 to 1,200 square feet depending on the size of the lot. With a duplex, it would, it could allow two families to live independently of each other on the same lot. And each home could be potentially larger than an accessory dwelling.

We're proposing also to allow small, very small retail, food and beverage establishments excluding liquor stores. The size limit would be 2,000 square feet of gross covered floor area. And this proposed addition is to promote walkability in neighborhoods and to reduce vehicle miles traveled. So you don't have to get into your car because you forgot to get milk or eggs or something. You know, in Wailuku we have some small stores like Kaohu Store down the street which is approximately 1,800 square feet in size and so it would be limited to that. One thing I want to mention that I learned today that Honolulu has a similar provision of allowing small retail, and they actually have time limits. It can only be open from 6:00 a.m. to 10:00 p.m. That's something if you would want to have these if you wanted to impose hour limitations too, that would be . . . (inaudible) . . .

Also to further encourage affordable housing. We're proposing to replace the current language about affordable housing because as far as we know, it's never been used to develop affordable housing. And we'd like to modify it and have the criteria to meet the needs of low, below moderate, and or moderate income families, and ensure owner occupancy, and the prevention of limitation -- for limitation of speculation. Have shared use, shared use paths so that there's some connectivity especially for bicycling and for walking. And as kind of a carrot or a way to motivate or encourage this is to allow the imperviousness requirements to be increased to no more than 75 percent of the total lot area.

Ms. Kaye: Jacky, before you move on, can I ask you a question, please?

Ms. Takakura: Yes.

Ms. Kaye: How to ensure owner occupancy --. Okay, prevention . . . (inaudible) . . .

Ms. Preza: Sally, sorry, is it okay if we --? Can we -- I kind of want to get through the presentation first before we start discussion. If you could hold your question.

Ms. Kaye: Certainly.

Ms. Preza: Thank you. Jacky, go on.

Ms. Takakura: We'll talk more, some more about that one. Okay, now comes the part that I spent a lot of time with, with staff to get this clarified because this part of the Code has not changed since at least 1974. And first and foremost, everyone I talked to said put it in table

format so it's easier to follow. So that's what I have proposed. And we're proposing to consolidate and put everything in there; the area regulation, the height regulations, and the setback information into one section. And that's consistent with some other chapters in the zoning district. You can see from this little image here, you know, that's what we had to follow regarding setbacks. It's from a 2008 policy memo. And we'd like to have some clarity for that about the increased setback for the second floor. And so we have a newer drawing, which we're hoping provides a little bit more clarity. And the setbacks would be based on the exterior height, which is easy to measure. And we -- you know, for planning we don't go inside, so we don't, you know, exterior, it's just clear, easy to see, and there's no question about that's where the 15 foot mark would be. And that's where, that's where it would trigger the, the ten foot setback for the upper part of the structure. So we're hoping by having a diagram like this, it'll be easier for the public and for our staff when they review permits.

And so now back to the part of our impervious surfaces, which I mentioned back in the definition. This would be the development standard for residential. And this would mean that no more than 65 percent of the total lot area can be covered by impervious surfaces. Impervious surfaces prevent the land from naturally absorbing and infiltrating rainfall or storm water. And impervious surfaces would include but are not limited to all buildings, driveways, access paths, patios, lanais, swimming pools, roof overhangs, eaves and most walkways. For existing lots with more than 65 percent impervious surfaces, they would be nonconforming and can continue. The amount of impervious surface on those lots may be redistributed, but the total amount of imperviousness surfaces can't be increased. And we know that with a changing climate, rainfall events are likely to have more consequences, so we need to start somewhere.

So this is the last part of the changes and these are the permitted structures in the setbacks. And the following list of what is permitted structures in the setback comes from policy memos that have accumulated over the years. And really, they should be in the zoning code. That's where that the public can see it, and this is the criteria, and it's really clear and easy to understand for everyone. This would include walls and fences; no taller than seven feet. That's approved by the Director. Roof eaves, as I mentioned, no more than three feet to the setback. Porches, lanais, decks, and walkways that are uncovered or under roof. Mailboxes and trash enclosures, minor utility equipment and their enclosures. And then one proposed change is existing greenhouses. For some reason since 1974 greenhouses have been allowed to be in the setback, and proposing that they would be following the rules like other structures that they would have to comply with setback limitations, at least for new ones. Existing greenhouses can stay where they are, but new ones would have to be following the setback limitations.

So that's it. I know it's a lot, but this is really important. So take our time and go through each item and questions. But that's it in a nutshell. I'm going to stop sharing, if that's okay. And we can always come back too.

Ms. Preza: Thank you, Jacky. So, Commissioners, before we get to our questions and discussions, I did want to open up public testimony. Leilani, has anyone contacted you to testify?

Ms. Ramoran-Quemado: Chair, no one signed up to testify.

Ms. Preza: Okay, thanks. I'll just open up one more time. If anyone is here who would like to testify, you can unmute. Is anyone calling via phone would like to testify? If not, then we'll close public testimony. And Commissioners, you can ask Jacky any questions or comments.

Ms. Kaye: Alright, okay. Well, then, I'll go back. Jacky, we're on page-8, letter L, if anybody wants to turn back to that. Limitation of speculation, how would that be accomplished?

Ms. Takakura: I'm going to that page. I think the biggest thing we can do to limit speculation is making sure that there's no vacation rentals. I think that's the one thing that causes speculation, at least from what I've seen.

Ms. Kaye: Wait. Okay, so adequate provisions, it means that when the properties develop there would have to be conditions recorded with the property, right? So no short term rentals can be controlled otherwise. So what kind of limitations would be recorded with the, with the property? I'm not, I'm not following how that would work.

Ms. Takakura: I think that can be -- and I'm not sure if Jordan has more information on this one -- but that could be recorded when the, in the subdivision and also with the, in the, in the CCRs. But, yeah, the main thing would be to prohibit the short term rental home and allowing those.

Ms. Kaye: But that's -- that would be insured by owner occupancy. That doesn't -- that's not the same thing as preventing or limiting speculation which would, which speaks to resale.

Ms. Takakura: You know, actually Vice Chair Kaye that is in the existing language and so I'm not sure of the history of where that came from. But it's in the existing language now, and we just we didn't -- we left that part in. If you look at the top of page-nine, B, it has that in there.

Ms. Kaye: Okay, got it. Got it. Okay.

Ms. Takakura: I'm sorry. I'm not sure of the history of how it got in there, but we didn't take it out.

Ms. Kaye: Okay. That -- I realize it was left in, but I figured it must have been left in for a reason, which meant that originally it had a purpose. So, okay, if that's --. Okay, thank you.

Ms. Preza: Jordan, did you have something to add or good?



Mr. Jordan Hart: I was just going to add that our Maui County Code Chapter 2.96 regarding affordable housing has provision, provisions in it to limit resale of affordable units as well. Where that had been an issue in the past where there was like a shorter time period. I think it was -- had been ten years and even lower than ten years at times where people would come into affordable developments and then resell shortly thereafter.

Ms. Preza: Go ahead Jacky.

Ms. Takakura: If I may Chair Preza. We did consult with Department of Housing and Human Concerns, and yeah, especially on this part. And so, yeah, we got their blessings about . . . (inaudible) . . .

Ms. Preza: Thank you. Commissioners, other questions, comments? Yes, Lisa, go ahead.

Ms. Grove: Going back to that point you made, Jacky, about putting in some provisions for the hours around the retail food and beverage. Can you provide a little bit more about that? Are other commissions considering that as well? Seems like a good idea.

Ms. Takakura: Commissioner Grove, Lanai Planning Commission is the first of all the commission.

Ms. Grove: Okay, thank you.

Ms. Takakura: So Maui is next week and then Molokai is actually in December.

Ms. Preza: Thank you. I actually, I had a comment on that just for discussion for commission members. But I mean, I could see like where in Wailuku maybe this makes sense. They're trying to encourage more walkable neighborhoods. But I mean, in Lanai City, you know, everything's, everything is pretty much walkable. And we've concentrated our, our businesses to the Lanai town business district. So do we want to consider, like, adding, like maybe it's like allowable in other places? Like I don't want to limit Maui if this is a need that they designate for their neighborhood. But I personally don't think I would want like a retail shop or like a beverage, you know, food and beverage like in our neighborhoods. And I know that Jacky said it would be like those are special uses that they would come to individual planning commissions anyway. But I just don't think I foresee like a time when I would want those like things to be happening. But I'm not -- but that's just my opinion. I wanted to gather your feedback too. Commissioners, your thoughts on that. Or if you don't have thoughts, I mean, we could just leave it in and I guess leave it up to future planning commissions if there is ever a request for special use on that.

Ms. Grove: That's where I go. Like, we don't know, what we don't know. And let's say there's some kupuna housing and there could be a physical therapy that's quote unquote retail or something that is specific to the need of that particular place at that particular time. So I'm a little reluctant to want to throw something in there. But I defer to others.

Ms. Preza: Thanks. I think I'm not speaking necessarily about potential housing for the elderly, but I think like the food and beverage is kind of what I'm thinking about, you know.

Ms. Grove: Right. But what if there is sort of like a kupuna, cultural food, little nook or something, you know. I think about like a . . . (inaudible) . . . that might be serving our kupuna in a particular way or, you know, a smoothie, a little smoothie shop or something. Again, I'm with you. I just worry about a specific circumstance that's coming up that we would go, oh, that might be, that might make some sense.

Ms. Preza: Okay. Thank you. Commissioners, other thoughts or --? I mean fine leaving it too. I mean, I just thought I would bring it up because Lanai . . . (inaudible) . . .

Ms. Kaye: I'm thinking that the BCT guidelines that that we have and the zoning that we already have in place for residential areas would control that problem. I don't, I don't think we need to carve out . . . (inaudible) . . .

Ms. Grove: . . . (inaudible) . . .

Ms. Kaye: Oh, that's, that's where I thought you were going with this, Lisa, yeah.

Ms. Grove: That is where I was going. Yeah. Yeah. And I wouldn't even go six. I'd say like seven to nine, or seven to eight or something, but I defer to others.

Ms. Kaye: Yeah, and it really would apply from what I'm understanding, Jacky to be saying mostly to those areas in Maui, not necessarily us anyway. So if Honolulu did it and the other commissions who are more directly impacted, I think it's a good idea. We -- were -- I don't know why we wouldn't recommend that there would be limited hours for special establishments so they're not open 24/7.

Ms. Preza: Yeah. So I'm hearing maybe just leave as is. And I mean, Jacky, like if there were special, special use permits, when you apply for those you can also put conditions on like the opening hours and stuff, right? So I mean, there's room for that, like depending on the situation.

Ms. Takakura: Yes, that is correct, Chair.

Ms. Preza: Thank you. My other thought and sorry I'm opening up for anyone else who has thoughts, but on the impervious surface requirement for future homes being built, I guess my only concern specifically for Lanai is that some of these home lots are very small. So, you know, like I mean, we, we, like, we haven't had new homes in quite a while. And a lot of these, like some of the older homes, those are plantation homes, right. So their square footage is so small. And so I think like if people, like, if they've been in the house for generations, but maybe there's, like, they want to expand beyond just their little plantation house. I mean, and their

square footage of the lot is already so small, I guess I'm wondering if the 65 percent like impervious surface thing might hinder them from like --. You know, they might have other options, right, to purchase other lots if this is what they have and, you know, I guess that's my only concern with that, for in particular those kind of smaller lots. As long as they're still abiding by all the setbacks and everything. But, you know, some of the lots are very small. So I'm not sure if commissioners have other thoughts on that. That was just something that crossed my mind because, you know, there's not a lot of options for housing. And, you know, especially if you're you have a growing family, you want to expand a little, but maybe your percentage wise of your lot is going to be over the 65, which I think it would be for a lot of these older plantation lots. That's my concerns on that.

Ms. Takakura: Chair Preza, I have just two thoughts on that. I don't know what the general a lot size is, and especially in Lanai City, but maybe for a lot size and smaller, it can be more or they may not be included, or maybe take something into consideration for a smaller size. And then just, you know, for City and County of Honolulu, their, their percentage is 75 percent. So just for discussion purposes, I'm putting those two thoughts out there.

Ms. Preza: Thank you. Yeah. I think that, I think that's an interesting idea about like if it's under a certain size, then maybe the, the percentage is a little higher because I think also the impact, right? Like if you have an incredibly small lot. Like I was -- I mean it really varies. But I was looking at like the, you know, the . . . (inaudible) . . . and stuff, like some of these lots are like point, zero six acres. It's very small, so I don't think their impact would, you know --. I can see the 65 percent working for like a much bigger lot where, you know, showed on that aerial, like, it's a huge house with pavement. And like I can see where that's kind of more of an impact, but maybe not so for these smaller ones. But I also don't feel I'm equipped enough to be like recommending like a certain acreage at which like the percentage goes up. So I don't know if it's possible, like, if that's just a comment that's provided to the Maui County Council for someone with better understanding of these things to propose like a certain -- like consider that as a like a range kind of what you what you said.

Ms. Grove: I think it's a really good point.

Mr. Hart: So what might be some of the, you know, lot sizes that you would consider to set a cap on? Because, because the origin of it, I think, is the concern. We do have larger lots in other areas in the County, and some people just pour concrete over their entire parcel. And it's a, I mean, it's a, an issue, especially if a lot of people do it. Especially in hotter areas or areas that are prone to flooding. You can have the heat island effect or you can have storm water issues. But there are --. It is a unique situation in Lanai City and there are quite a few smaller lots. You know, do you have any suggestions or guidance for the Council on how they might set the cut off?

Ms. Preza: I'm not sure. I, I -- sorry, I'm just looking into this now, like on the map, so I don't think I'm, like, well equipped enough to recommend, like, a specific acreage because I'm just kind of clicking on some of these lot sizes. And I mean, they range from like point zero, six

acres to point one, seven. So I don't, I don't know how that compares to Maui. But I also think Lanai is kind of different too, right, because our town is so small compared to --. You know, I think on Maui it's a very big concern because you folks are pretty much at, I mean, like at least in Wailuku and Kahului, like at sea level, there's like a high concentration of homes that are maybe creating that heat effect. But on Lanai, I don't -- I mean, not --. You know, global warming is real and of all these considerations I'm glad there's sustainability thoughts of going into the Code. But I guess I'm just wondering how applicable it is to Lanai. But, sorry, to answer your question, Jordan, I'm not sure, if off the top of my head right now, I can give you, like, a good idea about the acreage. Commissioners, do you have other thoughts? I don't know. Sorry, that's not very helpful, Jordan.

Mr. Hart: That's fine.

Ms. Kaye: Okay, so I have -- to follow up on that for purposes of L, just the modification of the minimum lot development to encourage low or moderate income families. It seems counter - - this is just separate from what was just said -- it seems counterintuitive to say that there is an impervious problem for storm drainage. But yet if you're going to do low income housing on a smaller lot, you're going to allow it to be more impervious. So I, I disagree with that approach, but I do totally agree with, with Shelly that on Lanai, it's, it's, it's going to be an issue because our, you know, we have 3,000, 4,000 square foot lots with the house. That, that's the smallest that I'm aware of. Some, some I think are even 2,500. But it, but it says the Commission can increase it. So does that mean that if somebody wanted to avoid this and it isn't low income that the Commission could approve it? That's unclear.

Ms. Takakura: I mean, yeah, this would be something that the Commission has to approve to allow the lot size to be 4,000 square feet, which is smaller than R-1. But yeah, it has to meet all of those criteria. And they could still go with the proposed 65 percent. But I guess as to, like you know, I mentioned as a carrot, letting them a little bit more, ten percent more.

Mr. Hart: It does seem like it's similar to what the Chair is discussing. It's just that we weren't necessarily considering the situation of Lanai. We were considering a situation where smaller lots were proposed. But, but it sounds kind of comparable with the sentiments that are being raised as well as the, the proposal that was put forward.

The reason I had asked if you had any suggestions is because I would assume that the Council is going to ask the Planning Department for an opinion on, on where to set the cap. So if you had wanted to give us any guidance. Otherwise, we should probably put some thought into it and come up with some recommendations for Council. But I don't think we can do that with you here now. So if you wanted to give us some guidance or just kind of acknowledge that we're going to be trying to use a methodology and come up with a recommendation. Probably how it will unfold as far as Council will have comparable questions that you do, and we would be the agency to respond to those.

Ms. Preza: Yes. Thank you, Jordan. Maybe I can follow up with you since I had a little time to think. Sorry, I was just thinking about this like as we were meeting so maybe I can follow up.

Mr. Hart: Just a procedural note on that. Maybe if you were going to do that, maybe you provide your testimony to Council outside of a meeting. Otherwise, if this was going to be re-agendized or something like that. But I think we have to take the body's input and the individuals might --they could testify to Council directly, but I don't think we could correspond with individual commissioners on their separate opinions.

Ms. Preza: I see. I will follow up, but I think yeah, sorry. I should have been better prepared for thinking about, like, the size in particular. Yeah, but I think you folks will do -- but, you know, you'll, you'll do your due diligence to look into the, the varying lot sizes, especially on Lanai. Anyway, sorry, I wish I could be more helpful on that.

Mr. Hart: You do establish the 4,000 square feet as the, as the kind of lower limit. What if we were to say something like for existing lots, 4,000 square feet and below that they could pursue the larger 75 percent coverage.

Ms. Preza: Yes. Actually, sorry, let me just do some quick math. So fewer than 4,000 square feet?

Mr. Hart: Just as an opening proposal that's comparable to what was already being recommended by the department.

Ms. Preza: Yeah, I think that makes sense. I just put in --. So I mean, I just, I was clicking on some of the plantation homes and what their square footage, right, it's like 2,600, 3,000, so maybe that's a good number. Sorry Commissioners, I don't mean to drag this out, but does that sound kind of fair?

Ms. Grove: He was saying below 4,000, right which still covers that same territory, right?

Ms. Preza: Yeah. I think so.

Mr. Hart: It would be saying those one would be, those below 4,000 would outright have the opportunity to pursue 75 percent impervious surface.

Ms. Preza: That sounds good. I think just as a good starting point at least. Then maybe the County, maybe they'll have other thoughts too about number ranges. But I think that that seems fair.

Mr. Hart: We can point out that you discussed this issue and were considering how it should be addressed for Lanai City.

Ms. Preza: Thank you. I think that that would be great. Yeah. Okay. Commissioners, other thoughts on this or ready to take some action? Oh, Richelle, hello.

Ms. Richelle Thomson: Hi. I was just listening to the discussion. Maybe because Lanai City is such a unique place, there could be another category of special permit. You know, such that increases in the impervious surface may be granted by the Planning Commission, you know, just as outright, not tied to whether they're . . . (inaudible) . . .

Ms. Preza: Sorry, your audio cut out for like a second at the end.

Ms. Thomson: Okay, just so they're not part of an affordable housing project, so they may not meet all three criteria. But in those areas, I think Hana town may also have some really small lot sizes that the appropriate planning commission would grant a special permit that would allow a larger impervious surface. So it would just be a standalone.

Ms. Preza: Thank you. So you're saying that like the special use requests would be -- or not special use. Sorry, are we talking about special use requests or just residents, residential homes in general?

Mr. Hart: Let me -- if I could clarify. What I had been suggesting is that we, we propose to add for, for Lanai under the development standards an additional section for parcels, existing parcels under 4,000 square feet could pursue the 75 percent. And then I believe Richelle is proposing also adding an item in the special use categories where somebody could petition the commission for more than that.

Ms. Preza: Is that what you're saying Richelle?

Ms. Thomson: . . . (inaudible) . . .

Ms. Preza: Okay. I think that makes sense.

Ms. Grove: Somebody could petition for that if they were under the 4,000 square foot threshold, or could it be anyone? Because I worry about the anyone part.

Mr. Hart: That's something to consider. I think, I think -- mine, mines was, was anybody who's under 4,000 that they would be allowed to do it. I think that Richelle proposed an option for, for or a special, special use permit line item. But I mean, I think that that's, it's for discussion with the Commission.

Ms. Kaye: I agree with Richelle. I think that's a, that's a good solution to the problem.

Ms. Preza: Thank you. Okay, any other comments on this? Or, it kind of sounds like we're, you know, we have a few options. What would our comments that we're sharing right now, would that be considered like amendments or are those just, you know, if we wanted to

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recommend approval? Which sounds like we're leaning towards that. But would these comments be considered amendments or just, just we approve with our comments provided to you?

Mr. Hart: By the way the process unfolds, I would prefer that we, we provide line item kind of bullet points of the, of the issues that you raised, and then we consolidate them into a proposed final draft rather than providing a draft that would be a revised version for the Commission. Because that would need to be concurrent with a draft that's, that's provided by the department. So I think it'd be cleanest for the department to be able to consolidate all the comments that we hear from all the commissions in a draft ordinance, but also specifically point out what the comments of each commission were because there may be overlap and need to interpret when you consolidate all of them. And then we also have the, the -- we also have a need to provide our comments to the Council as well.

Ms. Preza: Thank you. So, I mean, with that, would anyone like to make a motion and maybe that could be part of the motion, Jordan, is, you know, that our comments are consolidated and presented to the County Council? Is that, sorry, is that not what you were saying?

Mr. Hart: I don't think that you need to make a comment that -- it's up to you. I don't think that you need to make a motion that we will consolidate your comments. I think that if you agree on what your comments are, then we'll provide them. Here's the issue is that sometimes if you consolidate all of them into an ordinance, there's no way to say, and this came from --. I mean, sometimes if you say for Lanai or for Molokai, but there's no way for the Council to know who said what. It's much easier for them to read a letter that says, Lanai said this, this, this, Molokai said this, this, this. And then they see a draft ordinance that reflects the consolidation interpretation of all those things together.

Ms. Preza: Right. No, that really makes sense. I just was wondering, as we vote, if we should just say like and we're okay with the Planning Department, you know, submitting these comments as, as we stated.

Mr. Hart: I think that that would be appropriate; the comments as stated.

Ms. Preza: Okay. Would anyone like to make motion so we can move on? Our options are to recommend approval of the proposed bill, recommend approval with amendments, or recommend denial, or to defer. Or is there further discussion to be had on this? Yes, Zane.

Mr. Z. de la Cruz: For me, I guess the big thing is I want to know where this 65 percent comes from because I'm assuming it has to do with the infiltration rate of the property as in to prevent surface runoff. And like that, that could be a very important number because I know we're like we don't really want to limit people's ability to, like, have houses on their lots. But the entire point of this language is to prevent flooding. And you know, if we continuously allow for exemptions to this rule what does that lead to? So I would like to know what that 65 percent is based on. I'm not sure if it has -- I mean, I highly doubt it has like a strong basis in, like,

infiltration rates of certain land types. But getting, I think pushing away from it without knowing why it's there is going to lead to complications that it's trying to prevent just basically just surface runoff and flooding. And, yeah, so I --

Ms. Preza: Thank you. Oh yeah, go ahead.

Mr. Z. de la Cruz: Yeah. I just I don't feel super comfortable trying to allow for all of these exemptions without knowing what the impacts of that are. Because I'm assuming that, you know, this department has a good reason for that 65 percent. That's it.

Ms. Preza: Thank you, Zane. And I don't know Jacky or Jordan if you know off the top of your head, why?

Ms. Takakura: Chair Preza, I can start. So, you know, in my research, I found that our zoning code doesn't have a lot of provisions for sustainability and climate change. And this is one of those things that I noticed Honolulu had added in 2019, and they had used the percentage of 75 as their criteria. And their goal actually was twofold for having this new criteria about limiting impervious surface. One is about the drainage and the runoff and flooding. And the second which is a much bigger issue there, but it's an issue in some places on Maui too is controlling the monster homes. And when you have limitations in impervious surfaces, it really makes the developer think about the layout of when they are going to develop that lot, and how they're going to put the dwelling unit and the driveway. And it has been effective because I talked to somebody in Honolulu about that, that it has helped with the problem of the monster homes over there. But we didn't want to have the numbers so low that it affects development of the lot. A 75 percent, it seems like a good number, at least from Honolulu. It might be a little bit different, you know, a less urban area like, you know, Maui County. But, you know, say you have a 6,000 square foot lot, you know, you can still develop 75 percent. And, you know, so that would still give you adequate developable area for, for your, your house. And, you know, if you want to patio and a driveway. So we didn't want to overdo it and make it onerous on a developer, you know, somebody who wants to build a house and have adequate housing in there. But at the same time allow for the flooding, that drainage in there. I don't think if that specifically answers, but we didn't do any scientific studies about the percentage or anything. Initially we wanted to make sure there was still -- you can build a house on the lot.

Ms. Preza: Right. And actually Zane brought up a good point because I just had assumed there were, like, it is based on some sort of scientific understanding of like this will allow for flooding to be controlled or something. So I wonder how Honolulu got their number or maybe they did. I'm not sure if, you know, if they did do any research about how they landed on 75.

Ms. Takakura: I didn't ask them.



Ms. Preza: Okay. So I mean, there is an option to defer and, you know, to gather more information Commissioners, if you know folks feel more comfortable with that. That is an option.

Mr. Hart: I want to point out that they have the ability to go to a second story. So we're talking about, you know, in an impervious surface on a second story isn't detracting from the total percentage. You still -- you would have it in a single story structure. And if you build another story above that, you're not changing that percentage. So I think that there is capacity to develop. But, you know, Jacky's right, we didn't, you know, conduct engineering studies in order to propose this. We were doing an overhaul of the residential zoning district, and, you know, these were one of the things to address that we saw was going on so we added it. But we weren't trying to make this the, the hitch that would derail the rest of the initiative.

Ms. Preza: Okay. Thank you, Jordan, for sharing. Okay, Commissioners, time to make a decision or discuss further.

Ms. Trevino: Just for clarity's sake. It's actually 65 and if they want 75, they'd have to come to the Commission, correct?

Mr. Hart: Clarify though, unless they were on a parcel that was less than 4,000 square feet on the island of Lanai.

Ms. Trevino: Oh, I thought Sally's comment was redirecting that.

Mr. Hart: Okay. Perhaps it was.

Ms. Trevino: I don't know. Maybe I misunderstood.

Ms. Preza: Sally, do you want to clarify your comment again, just so we're on the same page?

Ms. Kaye: My original comment was, it seems counterintuitive and counterproductive to lesson a lot size for a low income, moderate income development, housing development. But on the other hand, allow them more imperv-ability, if you will, when the core root of the issue is drainage and storm runoff. As Zane pointed out, I assumed that the 65 percent had some sort of scientific basis. So, I'm not sure whether --. I mean, I think they are two separate issues. The one issue is what I just said. And the other issue is the fact that we have 2,500 to 4,000 square foot lots on Lanai. If somebody wanted to tear down their house and rebuild, then would -- and it's not low income, it's, it's just they want to do it -- does this provision, does the 65 percent apply to them? And if so, and they wanted to increase it, could they come to the Commission for approval. I guess that kind of summarizes where I think we're at right now. I don't know.

Ms. Preza: Yes. And I think we had some discussion about maybe recommending if there is a lot size under 4,000, like what you're saying, if they're not affordable housing or whatever,

they just want to rebuild their house for more space. Maybe there's a provision that says if you're under 4,000, then you can just go to 75. You don't have to go to the Planning Commission.

Ms. Kaye: Well, but I think that's the opposite of what we discussed and what Richelle was recommending was that if you wanted to do that, you would have to come to the Commission for approval. Perhaps I misunderstood that.

Ms. Trevino: Right. That's what I was understanding too.

Ms. Preza: I think we're kind of getting to --. Yeah, go ahead.

Mr. Hart: So, there is two separate things that were discussed. Commissioner Kaye had raised that concern, and I had pointed out that that we thought that our proposal was, was comparable, but was not considering Lanai City. And so I had suggested that we could add in the, the development standards that there would be a standard situation for Lanai that if you're under 4,000 square feet that you could automatically pursue the 75. And it seemed that the Commissioners had said that that was a good idea.

And then Richelle, separately also suggested that there be another Special Use Permit line item for parcels that may be greater than 4,000 square feet on Lanai so that they could come to the Planning Commission and ask for that consideration.

Ms. Preza: I see. Thank you, Jordan. So Commissioners, so let's break that down. So one is if it's under 4,000 square feet, you know the 75, like, they could just -- they wouldn't have to go to the Planning Commission. Is that something we're in favor of?

Ms. Grove: So listening, I think they should have to because I think our goal should still be to try to get as much impervious areas, as little imperviousness as possible. Once that happens. Forgive me. So coming to explain why they want the extra ten percent seems to make sense to me.

Ms. Preza: Okay. And then secondly, on the Special Use Permit, if they're over 4,000 feet they could still seek out the extra ten percent by coming to the Planning Commission. So it sounds like we kind of want them to take that extra step to come to the whatever existing planning commission there is at the time. But I still don't know if this is addresses, you know, Zane's question about why those numbers, you know. So I don't know, do you folks feel comfortable with those numbers, just, you know, based on the effort to try to, you know, improve the drainage situation or I, I don't know.

Ms. Grove: May I ask one more question? Jacky, do you know if the Office of Climate Resiliency or whatever it's called, Resiliency Office, weighed in or set those percentages? Because we a huge amount of faith in the, the work that those folks are doing. Not to say

anything against the planning commission in Honolulu, but I know that they have been thoughtful about all of their other climate related proposals.

Ms. Takakura: Commissioner Grove, I'm not sure. But it is consistent with, you know, that one O'ahu one climate document that really encourages, you know, the increase density. And they didn't specifically say if it is, but I know that this is consistent with the goals of that.

Ms. Grove: Thank you.

Ms. Preza: Thank you. So based on that, how do you folks feel about moving forward? Sally, I see you're unmuting.

Ms. Kaye: I apologize.

Ms. Preza: Oh, okay. I mean, if you folks don't feel comfortable making a decision we could defer action. But if, you know, we could also recommend approval. I guess, I'm not sure. If we deferred, could we ask for advice from the Office of -- ? Lisa, what were you suggesting?

Ms. Grove: I was going to make a motion to move to approve with the comments we've already suggested, and if people vote it down, that's fine.

Ms. Preza: Would you like to make that motion then?

Ms. Grove: Yes, I move that we approve with the comments that we've already stated and stipulations.

Ms. Preza: Thank you, Lisa. Is there anyone who would like to second that?

Ms. Kaye: I'll second.

Ms. Preza: Okay, Sally seconds. Is there any discussion? If not, then we can vote. And since I can see you all, we can just go by raising hands. So if you're in favor, please raise your hand. Okay, any nays or abstentions?

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

<b>VOTED:</b>	<b>To approve with the comments as discussed.</b>
(Assenting:	J. de la Cruz, Z. de la Cruz, E. Grove, S. Kaye, N. Ropa, C. Trevino)
(Excused:	S. Menze, S. Samonte)

Ms. Preza: That passes unanimously. So thank you, Lisa. I think, you know -- and thank you, Jordan and Jacky, for hearing out our comments. I think hopefully that will be helpful for the County Council when they, when they look at this again. And like you said, Jordan, we can still individually testify when that comes before them, right? So, I mean, if you folks have other

thoughts like the one that, when that comes up, we can kind of -- you guys can do that individually.

**2. A BILL FOR AN ORDINANCE AMENDING CHAPTER 19.26, MAUI COUNTY CODE, RELATING TO M-2 HEAVY INDUSTRIAL DISTRICT**

**MS. MICHELE CHOUTEAU MCLEAN, AICP, Planning Director, referring to the Maui, Molokai, and Lanai Planning Commissions a proposed bill to amend Maui County Code Chapter 19.26 – M-2 Heavy Industrial District, to allow apartments when located on the same lot as business or industrial uses, and when the property is located within 500 feet of any property with existing residential use; transient vacation rental use is prohibited. (J. Takakura)**

**The entire text of the proposed bill for ordinance is available at <https://www.mauicounty.gov/DocumentCenter/View/129722/Bill-for-Ordinance-updating-Chapter-1926---M-2-Heavy-Industrial>**

Ms. Preza: Great. Moving on. The next item is B.2. which is a bill for ordinance amending Chapter 19.26, Maui County Code, relating to the M-2 Heavy Industrial District. And I do believe we also have a presentation for that. Is that, is that you again, Jacky?

Ms. Takakura: Chair Preza, it's me again.

Ms. Preza: Thank you.

Ms. Takakura: So I'm going to share screen again. So now we're talking about Chapter 19.26 and this one doesn't --. Well, you do have this zoning district on the Island of Lanai, but those parcels are not, would not be eligible to take advantage of these proposed changes. But we'll go through this, though.

So what this bill is about -- and this is proposed by the department -- is to amend this chapter, which is the heavy industrial district, and to allow for apartments as a permitted use in certain situations. And so the heavy industrial district is normally reserved for manufacture or treatment of goods from raw materials like the former pineapple cannery in Kahului. These are some pictures from the 60s. Lanai being the Pineapple Island, these probably look somewhat familiar. But anyway, this is Kahului back in the day. It was heavy industrial back then. But now, as you know, it's a shopping mall. There's some warehouse businesses and it's part of this Transient, Transient Oriented Development (TOD) corridor of Kaahumanu Avenue. So it's not quite the heavy industrial that it used to be.

A similar area is what was previously the Wailuku Sugar Mill, which is now the Millyard. And now it's got businesses and services, so forth in there. So what the department is proposing

**MAUI PLANNING COMMISSION  
PORTION OF REGULAR MINUTES  
ITEM B.2  
NOVEMBER 23, 2021**

**B. PUBLIC HEARINGS**

Mr. Hart: The next item on the agenda is Item B.2, Michele Chouteau McLean, AICP, Planning Director, referring to the Maui Planning Commission, a proposed bill to amend Maui County Code, Chapter 19.04, General Provisions and Definitions, and Chapter 19.08, Residential Districts to revise definitions and clarify code provisions regarding yards and setbacks, increase housing options and sustainability, and codify practices regarding the use and standards of residential zoning districts. The Planning Department Staff, Jacky Takakura is here with the presentation.

Mr. Tackett: Thank you.

2. **MICHELE CHOUREAU MCLEAN, AICP, Planning Director, referring to the Maui Planning Commission a proposed bill to amend Maui County Code Chapter 19.04 – General Provisions and Definitions, and Chapter 19.08 – Residential Districts, to revise definitions and clarify code provisions regarding yards and setbacks, increase housing options and sustainability, and codify practices regarding the uses and standards of residential zoning districts. (J. Takakura)**

The entire text of the proposed bill for ordinance is available at  
<https://www.mauicounty.gov/DocumentCenter/View/129345/Draft-Bill-for-Ordinance-amending-1904---General-Provisions--Definitions-1908-Residential-Districts-09282021>

Ms. Jacky Takakura: Good morning, Maui Planning Commission, Chair Tackett. So, I'm going to share my screen. I get a thumbs up if you can see? Is that okay?

Mr. Tackett: Yeah.

Ms. Takakura: Okay. So, I'll just go through this and then it's not that long. So, this is a bill updating two parts of Title, 19, the Zoning Code 19.04, is General Provisions, and 19.08, which is the Residential Districts.

So, just some background information about Residential Zoning District. There's about 19,640 parcels, and so, that's almost half of the number of parcels that we have in the County. We have about 41,000. There's about 19,600 parcels that are Residential Zoning District. And what we're trying to do here is just make some updates, some terms that are kinda outdated, and make clarification, other minor fixes. We're also proposing some options to increase housing. Also taking into consideration sustainability and climate change, and you know, ...(inaudible)...changes in weather patterns. And also, because we have a lot of internal policy memos that have accumulated over the years that our staff rely on, and really the best place for them is in the Zoning Code where it's clear and everyone can see them. So, actually this proposal,

it was initiated by the Department for our staff. It's not, you know, one of those resolutions that comes from County Council, it's actually, for us, our staff here at the Department.

So, I'm gonna go down just the changes in numerical order, starting with 19.04.020, and this is Compliance. And this is just some minor revisions and they change the substance of the section. And the reason we're...what we're doing here is moving subdivisions out to its own section, Item B here because the compliance criteria for buildings and structures is different from the compliance criteria for subdivisions and so it's just simply breaking them out. And then the bottom part about the permitted uses in each district is just simplifying the wording without changing the meaning. Right now, it's kind of passive tone and now, not it's just kind of in standard language that these are the three categories of uses that are permitted.

The next part is Definitions, 19.04.040. The first part is setbacks, and the changes are...there's a few changes. First of all, being front of line or front lot line. And that means every lot line bordering a public or private street through which a driveway provides access to the lot area. You can see from the examples in the image here that the front is determined by the driveway, which are these little red lines here, front, that's where the driveway would be. And the reason it's different is because the front setback is bigger than the side and rear setbacks. The front step back for residential is 15 feet side, the side and rear is...so, it's important to determine which one is going to be the front. If you see this odd ball here in the bottom row in the center where there's two fronts because there's two driveways, and that could be because, you know, maybe there's two structures on this property. But if there's going to be a driveway access, then that's going to be the front. You can see in these top ones here where there is more than one street, there might be only one front because of only one driveway. So, that's really going to be up to the, the property owner and how they're going to determine their access.

Setback area, we're replacing the word, yard, with the word's setback area, and that's basically the area between the setback line established in the zoning district and the lot line, which includes the boundary of the public or private streets. And that area is to remain unoccupied, and unobstructed from the ground, upward by any structure or swimming pool except as specifically allowed in each zoning district. Setback line are defined as the line beyond which no wall of a building or structure may project, and it's going to vary depending on the zoning district. Then there's just some minor revisions to the definition of private street and that's basically the open passage of land, easement or right-of-way, not less than 12 feet in width, suitable or intended for pedestrians and vehicles. Here's another image just to simplify. We find that images are just a lot easier to understand. So, front setback, you can imagine like, you know, in a perfect world, the lots are all perfect squares or rectangles, right? But here's the roadway at the bottom, then the driveway. And so, this is the front setback area. You can see this in red, and then the green, this is the side, the rear setback. And, you can have a few...certain things in the setback and that's going to be determined by the...each zoning district. But for Residential, which will get into a little more in detail later, that, you know, we are allowing, say, eaves, a few other things. But generally, this is what the set up would be. And right now, there isn't any image in the Code. So, by having hopefully images, it's going to be easier to understand that's the intent...

So, the other definition that we're adding is regarding impervious surfaces, and this is similar to on Oahu, and that's a surface covering or pavement of a developed parcel of land that prevents

the land's natural ability to absorb and infiltrate rainfall or storm stormwater. Impervious surfaces can include but are not limited to rooftops, walkways, patios, driveways, parking lots, impermeable concrete and asphalt, and any other continuous water type pavement or covering.

So, the bill proposes to include a limit on impervious surfaces to mitigate damage from increased cost of coastal flooding, hurricanes, tropical cyclones resulting from a warming planet. Now, keep in mind, the existing structures and impervious surfaces would not be affected and right here, this is just the definition, and we're going to cover this again when we go over residential development standards. So, you can see in this image here, this is just from our aerial imagery. Say this lot here in the center, you can see the structure, you can see pavement, so you can see a lot of this lot is impervious or across the street, you can see the structure mostly impervious, and there's a little bit of a driveway here. And then the one next to it, you see a lot more open. You can tell that this is grass and trees where...and you can see the structures. So, we can kind of see using Pictometry, what's pervious and what's impervious. Just to show you, that's what the definition would be. This is, you know, of course, where the house is and where it's paved, you know, rainfall, any water cannot flow down.

Okay, so now let's move onto to Chapter 19.08.020, and this the Residential Districts. First part is permitted uses, and a lot of these are minor grammatical changes for clarity. The two changes that we are...that including that are substantive is first about allowing accessory structures like walls and accessory dwellings to be built before the main dwelling and right now that's not clear in the language that you can do the accessory use before the primary use. We would like to include the language to allow these types of accessory use prior to the development of the primary unit. And then the other thing we're adding is just referring to the Hawaii Revised Statutes, Chapter 46 regarding daycare nurseries and care homes 'cause this part of state law regulates adult family boarding homes and care homes and family childcare homes, hospice, and other kind of similar facilities in the residential area. That's the permitted uses.

Now comes the special uses, and these are the uses that require a County Special Use Permit and these would be approved by the appropriate planning commission. Again, many of the revisions are grammatical in nature and non-substantive. The following changes that you see on this list are proposed to provide more opportunities for housing and increase walkability within...(inaudible)...First, is housing for elderly and housing for low income, moderate families operated by governmental or non-profit organizations. Increasing the exception for density from ten to twenty five percent. By increasing the percentage, the development of more units will be encouraged. Proposing to allow two family dwelling units or duplexes. Unlike accessory dwellings the size of the two dwelling units in a duplex would be limited only by the size of the parcel and the required setbacks as compared to accessory dwellings, those are limited by Chapter 19.35, and the maximum floor area ranges from 500 to 1,200 square feet depending on the size of the lot. A duplex would allow two families to live independently of each other on the same parcel each in a home that could potentially be larger than an accessory dwelling. We're proposing to allow retail, food and beverage establishments, excluding liquor stores, not to exceed 2,000 square feet of gross floor, covered floor area. This proposed addition is to promote walkability in neighborhoods and reduce vehicle miles traveled. Just for comparison purposes, Kaohu Store in Wailuku is approximately 1,800 square feet in size, so this would be real small stores that could be allowed.

To further encourage affordable housing, we're proposing to replace the existing language on this subject, which to our knowledge has never been used to develop affordable housing and to allow modification of lot area development to no less than 4,000 square feet, subject to the following requirements. One, be designed to meet the needs of low, below moderate and/or moderate-income families, shared use paths so that there can be bicycle and walking paths from this area to the next, and then also allowing increasing impervious surface requirement to no more than 75 percent of lot area. Hopefully that will encourage more development of affordable housing.

Okay, so next part is the development standards. And as far as we know, they have not changed since 1974, so I think it's about time to update this part. The first thing, and this is what every person in the Department that I've talked to have said is put it in table format so that it's easier to follow. And if you've ever looked at Title 19, you see a lot of tables in a lot of the other chapters that were more recently updated, so we're proposing to put this part in table standard too. It would consolidate the area regulations, the height regulations, and the yards or setbacks into one section. Other changes is measuring the building height in feet only, 30 feet, replacing the term, yard, with setback area. Clarify that the setback lines for taller buildings are six and ten because there's been some debate sometimes about that one, and then the limit on impervious structures for drainage purposes.

As I mentioned, there's a lot of policy memos. This image here is from one of them that back in 2008, and this is just regarding those setbacks for the taller buildings. Those are the things that we've been following all these years, like to put them into the Code. And this image would also be included in the Code, and it just provides clarity of exactly where setbacks are, that you have a taller structure and the lower part, the setback is six and then the higher part its setback is ten, and it's measured from the...from 15 feet here is measured from the exterior, so that's real easy for people to see and to measure.

One thing that we're proposing to allow is that eaves can extend three feet setback. Hopefully, by having a little bit more clear image in the Code, it's easier for everybody to see and we can all interpret it the same way.

So, the next part is adding a criteria for impervious surfaces. Back in the Chapter 4, Definitions, 19.04, we added the definition and in here would be the development standard for residential zoning. For dwellings constructed pursuant to building permits applied for after January 1<sup>st</sup>, impervious surface area of zoning lot must not exceed 65 percent of the total area lot area. So, what this means is that no more than 65 percent of the total, that area can be covered by impervious surfaces because impervious surfaces prevent the land from naturally absorbing and infiltrating rainfall or storm water. So, that would include buildings, driveways, access paths, patios, lanais, swimming pools, roof overhangs, eaves and most walkways. For existing lots, that are more than 65 percent impervious, those would be allowed to continue as non...(inaudible)...and the amount of impervious surfaces on the site can be redistributed, but the total cannot be increased because we know with the changing climate rainfall events are likely to have more significant consequences. And the goal here is to reduce the runoff that's going into the street. Because I know that in subdivisions, you know, there are some provisions for



addressing runoff. But if we can reduce the amount of runoff going into the street, that's even better. It's, you know, we need to look at this as a whole in terms of...(inaudible)...

So, this list here before you, these come from the policy memos over the years. And like I mentioned, they're better to be in the Zoning Code and then everyone can see them in here. Proposing to codify that walls and fences can be permitted in the setback, roof eaves like I mentioned, no more than three feet into the setback, porches, lanais, decks and walkways that are uncovered or under roof eaves are okay, mailboxes and trash enclosures, minor utility equipment be allowed, and for some reason back in 1974, they allowed greenhouses to be in the setback and if you think about like Dream City, there's the house on the big lot and there's the green house in the back, you know, right up against the fence, you know, I guess that's how it was back then, but what we're proposing is that, that they comply with setback limitations just like anything else. Existing greenhouses they can stay where there are, the nonconforming but new ones should comply with setback limitations just like any other type of structure.

So, that's it in a nutshell. You can approve, you can make amendments, deny, we can defer if you want to get more information, but that's the presentation. I'm gonna stop sharing and then we can take...(inaudible)...thank you very much.

Mr. Tackett: Thank you. Commissioners, any discussion on this? We got P Dee followed by Dale, go ahead P Dee.

Ms. La Costa: Thank you, Chair. Jacky, I'd like to thank you, the Director, and everyone who's worked on this, because it has been a long time coming and I know it's going to be a whole lot easier for people when they build and get their permits to understand what the County needs instead of doing something and then having to tear it down or getting their hands slapped or fined. So, thank you so very much. It's very well done. Appreciate.

Mr. Tackett: Thank you, P Dee. Commissioner Thompson.

Mr. Thompson: Thank you, Chair. Oh, by the way, I was here early on. I know the meeting...my internet was fuzzy, but I heard us from about two minutes past, just in case for your record. And actually, I have a question for Jacky. So retail, food and beverage establishments and these are residential, does that include apartment zoned as well?

Ms. Takakura: Thank you, Commissioner Thompson. Apartment, I would think they already can. I'm only looking at Residential, 19.08, I'm not looking at 19.13, Apartment Zoning District.

Mr. Thompson: Okay, thank you. So, and one other question I have for you. So, ...(inaudible)...tiny homes, and/or mobile...you're laughing there, the ones with on wheels that are still registered as vehicles, but it's a house and the can...park them on the lots. Are we encouraging those or disencouraging them?

Ms. Takakura: Okay, well, I'm sure Jordan will have a lot to say because this has been a hot topic lately in terms of, yeah, these tiny homes. Now if it's a structure that's built, that can get a building permit, those are not a problem, but if it's used a dwelling unit, we count them as a dwelling unit.

Now, if it's an RV something on wheels and it has a valid motor vehicle registration that's not in storage, then those are exempt from building permit. But if it's being used as a dwelling unit, we do count them as a dwelling unit. So, we're not really addressing them here, but that is another hot topic that may...actually the County is actively working on trying to figure out procedures for them, but keep in mind, if for State zoning and I'm getting a little bit off track here, but for State zoning Rural and Ag, trailer homes and RVs are not allowed to be used as dwelling units, but for today, we're just talking about Residential Zoning District which is most likely to be State Urban. So, those could be allowed in Residential Zoning District and I think Jordan probably has a lot more information on this one.

Mr. Thompson: Yes, thank you. That would be very important. Also, yeah, if it is license plates, then it does not count for your property tax as an asset because I guess it can be moved, you know, hauled away, but I know they are...they build them like homes, it's a living structure, people live in them, but it's still registered. So, would that be a dwelling or a vehicle?

Ms. Takakura: Well, it's...you're right that there's...we've been talking with DMV, real property, Public Works to try to figure this all out because we look at them in different ways. Like you say, if it's a motor vehicle, then it's not like real property, and it's not going...it's going to be taxed differently, so, it really does vary depending on which perspective you're looking at it from. But for us, for Department of Planning, if it's being used as a dwelling unit, we count it as a dwelling unit. As you know, most zoning districts have a limit on how many dwelling units you can have on a lot. So, if you're allowed two, and you have a house and a tiny home being used as a dwelling unit, we count those as your ...(inaudible)... And if you need an SMA, you have to get an SMA. If you need a Flood Development Permit, you need to get that too. So, for us, we look at the use.

Mr. Thompson: Okay, thank you very much. I know that we're going to be faced with these coming up and there are people going to say, no, no, it's not a dwelling because it's got a license plate, so why do we have to pay more tax? And I know, from the County, we want to get everybody's money, but we also want to have more units on there. And for a homeowner, I can see him going, you know what, I can \$50,000, I get my truck, I back this puppy in, and I can rent it out for a thousand dollars a month, and I gave someone a house, and they're going to come here, and that's the argument we're going to get, isn't it? It's going to be, why do you have to pay property tax? It's a trailer, it a truck, I backed it in, I can back it out, hook it up to my garden hose, going to be another big problem is the toilets.

Mr. Hart: Chair, yeah, I could say a few things about that. It's an extreme problem because you have these things that don't actually comply with clear standards. You have RVs that have standards for construction. But, you know, I, personally have not seen too many legitimate RVs on Maui Island. I've seen a few, but not, not as many as I've seen at these other kind of DIY structures. But, you know, as far as real property tax, you know, they would be taking that up with the Department of Financing and potentially Real Property Tax Appeals Board, so, we wouldn't have to face those kinds of discussions, but we would potentially get into discussions of use here, which is what the Department focuses on, including environmental impacts and things like that. And we are focusing on the use. So, if somebody is trying to use, you know, a structure that does not comply with Building Code, but they're trying to use it as a dwelling, even though it isn't

categorized as a dwelling by the Building Code, you know, it's being used, it's a dwelling, so we'd address it that way.

The same with a structure that they believe they're exempt from building permit requirements because they put it on wheels. You know, the self-propelled, self-propelled vehicles are exempt from the Building Code, not just trailers, but there is just this belief that that's some sort of a gray area that the County of Maui is not aware of. And so, people are basically going out and purchasing these things and relying on them. And you're right, it is going to be an issue because they're not actually covered by the Code and they don't have building permits. So, they've been sold a structure that doesn't actually have a legal place in our existing regulations. But we are working on a way to try and address those, but it's very complicated because all of our regulations are health and safety driven and these structures are not compliant with any sort of health and safety standard, especially the ones, like I said, that are DIY or just, you know, some, some individual constructed themselves or you buy it, you know, from some vendor like there are ones that are compliant with standards that are related to RVs and there are others that are not. And how do you give somebody final inspections of a structure that wasn't built to any sort of code, wasn't wired to any sort of code, may not have even been inspected when it was wired or plumbed up and has no fire protection or escape mechanisms, but is needed because there's a housing shortage. You know, that's a real complicated issue, and I would just encourage people to really consult with the County before they spend a lot of money and rely on, on something like this because they get up into the tens of thousands of dollars. They're not just, you know, a thousand dollars. They're like \$40,000, I've seen these things and more on Craigslist, and you're going to be holding the bag on that. So, you know, do your due diligence.

Mr. Thompson: Thank you very much, Mr. Hart.

Mr. Tackett: Thank you, Dale. Commissioners, any other questions? Commissioner Thayer, go ahead please.

Ms. Thayer: Thank you, Chair. Jacky, I have a question. Since you mentioned Kaohu Store, I was wondering if this change would allow there to be structures where you have the store on the bottom and the dwelling on top.

Ms. Takakura: Thank you, Commissioner Thayer. Yes, there could be.

Ms. Thayer: Okay, and that would be just allowed as a special use then in that case?

Ms. Takakura: Yes, so it would come before the commissioner first, so you could impose you know, if you want to set hours for something you could do that.

Ms. Thayer: Okay, and then I just wanted to say, thank you for the kind of proactive approach to reducing runoff and increasing infiltration. Appreciate that.

Mr. Tackett: Thank you, Commissioner Thayer. Commissioner Lindsey, go ahead please.

Ms. Lindsey: Also, on the Kaohu Store, Kaohu Store does sell liquor, so I'm wondering a little bit why you're living it out, but Kaohu Store does have an upstairs to potentially where somebody could live and work. Is that just a part of the Code that's connected to Liquor Code or something that I just don't know?

Ms. Takakura: Thank you, Commissioner Lindsey. Actually, Kaohu Store is a different zoning district. I think it's like a business or something. But, you know, we, I added that in there just because if it's going to be in a Residential District to just say our food and beverage establishments would be allowed, if you look in our definitions, that would include liquor stores, and we were just thinking that, you know, maybe in a Residential District, we don't want to have that, but, you know, if you folks want that, that's certainly fine, but that's what we kind of decided as a group in the department that, you know, just something small, you know, so, you know, if you forgot your, your milk or your thing, you could walk there instead of having to drive to, you know... And I just I had been researching different zoning codes and you know, sustainability measures and having some small retail like this is a way to be sustainability in the zoning code, because like I mentioned, you know, it just, you know, gives you the option for walking to a place rather than having to drive, but we wanted to keep it small too.

Ms. Lindsey: One more question, Chair.

Mr. Tackett: Go ahead Commissioner Lindsey.

Ms. Lindsey: So, regarding the greenhouses, I think a lot of the residents of Dream City are pretty innovative with their growing techniques and although I don't want to totally discourage greenhouses, I feel like they use their lot to the best of their ability. So, is this just like a physical greenhouse structure with wood or oftentimes shade cloth kind of helps with water evaporation and stuff, would that be excluded. I'm just trying to find a middle ground between growing your food and it, you know being neighborly to each other.

Ms. Takakura: Thank you, Commissioner Lindsey. So, existing greenhouses would not be affected. They can continue. But if, we look at is if it's a structure or not. So, if it's just a shade cloth, that that would be fine because that's something you can easily move if you needed to. So, those wouldn't be affected...you know, you could still put up something like that. Just looking in the Code, if we have an existing definition for greenhouse...doublecheck. But yeah, existing would continue, and then things that aren't structures, those are, you know, like a shade cloths that would be okay. The structures that we're trying to...(inaudible)...the new ones.

Ms. Lindsey: Okay, thank you.

Mr. Tackett: Commissioner La Costa, go ahead, please.

Ms. La Costa: Thank you. Chair. Ms. Takakura, is there any push, I don't know if that's the correct word for live-work buildings like Kai Ani. We don't have many of those. And I think that that would be something that would really help a community thrive as well. You know, it's, it's just really it's such a great idea, and it has been really successful in Kihei at Kai Ani Village. So, I think that that's something that maybe, you know, needs to be a focus. We do need duplexes, so thank

you for putting that in this revision because we don't have many of those here, and that really does maximize the use of the lot. But the live-work situation is so very important, I think, too, so thank you. That was just a comment. No questions

Ms. Takakura: May I say, though, we did research that a little, and there is, you know, home business is allowed and so kind of just left it at that because, you know, you can do home business in...(inaudible)...hopefully that kind of meets that need.

Ms. La Costa: I was thinking of a more structured approach like Kai Ani, where you have commercial on the bottom and they're living up above. You know, I've sold a couple of those to my friends and clients and they have had...they're just ecstatic to walk downstairs and go to work and pop up and have lunch and whatever. And it also, they, you know, visit the other businesses that are in the same complex. So, it's very... it just really helps with the community atmosphere, I think. So that's, I think, something that the County should definitely look at when you're looking at apartments. I know we're talking residential, but that's something I think that should be visited. Thank you.

Mr. Hart: Chair, I do want to point that we are promoting that, and the West Maui Community Plan that was passed through the Maui Planning Commission did address those, for instance the Small Town Center designation, so we are moving towards that direction in the community plan designations, and then there are the Commercial and including Light Industrial zoning districts that allow for that. And you're also going to see Heavy Industrial proposals, so we are trying to make that change and you'll see one of those in the next agenda item. But, but the Residential District, we're looking at increased density in the Title 19 rewrite for the, the basic Residential District, but not so much the direct transition into mixed use there. But there are incremental districts between the more Commercial Districts and the Single-Family District that you'll start to see, especially the Title 19 rewrite that's coming forward.

Mr. Tackett: Thank you, Director. One thing, one thing I would like to say that, that all this stuff is really great, but before it's implemented, if you do not get a hold of the illegal vacation rental thing that is going on, you're going to have wealthy people come in and buy up all the affordable stuff and they're going to turn it all into, into illegals, and it's going to be like an algae bloom that you cannot control. So, it is super important before you let all this stuff happen, that there's protections in place that make sure that this stuff gets funneled to the, the low and the middle-income families instead of getting bought up by everybody from the mainland and turned into illegals because they don't think it can be enforced. So, I love everything that I hear, I'm just saying that before it happens that you got to have control of that, in my opinion. So, that's, that's just an opinion that I have on, on, on what we're talking about.

So, Commissioners anybody else have...oh, and one other thing I wanted to ask as far as retail, so say and say, let's just take Waiehu Heights cause I'm familiar with it, so, you're saying somebody could buy a lot in this neighborhood and make a store, and where would their parking go? And you know, what I mean? Would they be allowed to park on the street or 'cause right down the street from my house, somebody built like a like a 6,000-foot structure on like a 8,000 square foot lot. It is 100 percent concreted, maxed out to the maximum height, maximum width, maximum thickness, segregated into four separate rentals and just obliterated my entire

view, so he's running a commercial rental, basically a condominium out of, out of lot, two lots down from me that is kinda crazy, you know, and none of his...he can't even fit his cars on his lot and he has whole lot paved and then he has it striped. So, he has like six stripes you know what I mean for the cars and they're still overflowing onto the street and that happened to me last year. So, it's important if you do put these...I'm interested and if you do put these businesses, say my next-door neighbor decides he's got one, how would the parking and stuff like that work for that type of thing?

Ms. Takakura: Thank you, Chair Tackett. So, in our Chapter 19.36B there are parking requirements for eating and drinking establishments, one per 500 square feet provided that the minimum shall be three for establishment, and maybe what we can do is add to that one that, yeah, parking shall be pursuant to 19.36B or you know, these would come before the planning commission so you could impose those requirements at that time if you wanted to or we can just say you know, refer to the parking chapter because that would be where it's...(inaudible).

Mr. Tackett: Okay, yeah, whatever you guys decide to do and however you bring it forward, but it definitely, it needs to be thought out because I have, I have illegal short-term rentals in my neighborhood and the only time that they ever park their cars in their parking spots is when you guys come out and look for it. You know, they're all over every place until you guys come and inspect, and on that day, they tear down their structure, which is like a fence that hides all their tools and stuff like that and it's supposed to be a parking space, and then as soon as you guys do your inspection, then it goes back up, they park all their stuff on the street, and then the only car that parks in the driveway is usually the one rent-a-car. So, it's definitely that something that, that, how it's, how it's managed is pretty important I think at this point. Commissioners anybody else got any questions or comments? All right, hearing none, what would be our next step, Director?

Mr. Hart: If you believe that you provided comments to the Department, you know, as they went, you can say that you want those to reflect the comments by the Commission to the Department for transmittal to the, to the Council. You should make a recommendation on the overall item, but I think that it would be...it kind of seemed that those were off the cuff. It might seem that you would point out the specific comments that you want the commission to be making to the Council for consideration and then what you propose their action should be on this proposal.

Mr. Tackett: Okay, let's go. Let's, let's follow that a little, a little more strict then. Commissioners, any, any specifics that you guys want included in this? Let's go ahead and just call them out specifically and then we can go from there.

Mr. Hart: Chair, Corp. Counsel seems to be trying to get your attention as well.

Mr. Tackett: Okay, Mr. Hopper.

Mr. Hopper: I just wanted to check, was there a completed public testimony? It's a public hearing item, so that's the purpose of that, so you'd need to take public testimony.

Mr. Tackett: Okay, I appreciate that. Yeah, I forgot about that. Thanks so much Mr. Hopper. If we've, if we've...I think we've done a fair amount of discussion, let's go ahead and get our public testimony and then we can get our recommendations and our motions. Could we open public testimony please?

Ms. Takayama-Corden: Chair, there is one person signed up to testify and that is Tom Croly.

Mr. Tackett: Okay.

Mr. Tom Croly: Aloha Commissioners. I enjoyed the presentation by Jacky and I like the idea of trying to create new housing opportunities and I can picture this working very well in a new subdivision.

Mr. Tackett: Mr. Croly...

Mr. Croly: Tom Croly, speaking on my own on my own behalf and I promise to tell the truth. Thank you, Mr. Chair. I guess I can picture this all working in a new subdivision where we're laying things out and so forth. But I tried to picture it working in existing things and it brings a whole lot of questions to mind, such as the idea of having a retail establishment in a residential home on a residential street. Now, I recognize that that's a special use and it would have to come to the commission, but wow, I can imagine the discussions that you might have that. Also, essentially converting single family neighborhoods into duplex neighborhoods. Again, a good idea for creating housing and I'd like it to be considered in the Rural District. I happen to live in Maui Meadows, where I'd say half the homes in Maui Meadows already have been converted into duplexes, not necessarily legally, but that's, that's what they are. So, that's, that's a that's a big one. And, and the idea of converting single family homes into duplexes brings in a whole nother set of issues with Fire Code. I know that all single-family structures, by our current definitions in Code are not reviewed by Fire. I believe that all multi-family structures which a duplex would be, would be reviewed by Fire. So, I would, I would want to see Fire's comments on this before it goes forward.

I also am a little concerned about the idea of grandfathered properties. We have setbacks that may not be compliant. So, are we saying that a property that has a has a structure in a setback that was approved at one time but now wants to build another structure on that property would have to have the first structure that was previously approved, change the setback to make that, so, I'm just not sure.

And then, I wanted to bring one other thought in about the impervious surface thing, and I got this from watching This Old House, what they...I saw them do in one subdivision or one area where they were building something, was they put a great big tank in the...underneath the driveway to catch all the water, something that that we see all the time done in commercial establishments where someone's building a big parking lot and they say, you have to keep all your runoff on site. Well, that probably should be an option here for people who might want to do some type of development, and it's impossible for them to stay within this 75 percent or whatever number is chosen of the impervious surface idea to put underneath their driveway, this great holding tank

that, that would keep the runoff on site. So, that's something that I would, I would ask the Department to take a look at. And then finally, usually a –

Ms. Takayama-Corden: Three minutes.

Mr. Croly: Yeah, I'll be real quick. Usually, a report like this comes with reviews—

Mr. Tackett: Mr. Croly, your—

Mr. Croly: I just have one sentence to give.

Mr. Tackett: You can't do it.

Mr. Croly: Okay, other agencies...that's all I want to say, okay. Sorry, Chair.

Mr. Tackett: No, but there may be some questions, you know, but I just can't make that type of exception for anybody.

Mr. Croly: Understood.

Mr. Tackett: So, Commissioners, does anybody have any questions for Mr. Croly? Go ahead, P Dee.

Ms. La Costa: Thank you, Chair. Appreciate it. Mr. Croly, you always have such great insight, but you were cut off after three minutes, which was...are the rules. So, could you please let us know the rest of your very short ending? Thank you.

Mr. Croly: Yeah, which was just that a report like this from the Department usually comes with the other agencies comments on it, be that Fire, be it, you know, so that we understand full picture of what, what is going forward not just Planning's kuleana on this, but Fire, and Water and Public Works and so forth, that's all.

Mr. Tackett: Thank you. Commissioners, any other questions? Appreciate it, Mr. Croly. If we have any other testifiers at this time, if you could please come forward. Going once, going twice, going three times, if we could please close public testimony.

Ms. Takayama-Corden: Testimony is closed.

Mr. Tackett: And then, Commissioners we need, we need comments and a motion I believe. So, anybody would like to provide comments? Commissioner Lindsey go ahead.

Ms. Lindsey: Regarding duplexes, that is definitely needed where we are now, but I'm wondering if there can be a little bit more care when this...describing what a duplex is and what makes them a duplex just so that it doesn't double, double the residents everywhere on Maui at one time, but it is sorely needed, so, just some sort of care regarding that description. That's my only comment for now, thank you.



Mr. Tackett: Thank you, Commissioner Lindsey. Commissioners, any other comments? I can't see everybody right now, so I can't see Dale... Does anyone else see anyone that has comments at this time? If not, we can entertain a motion.

Ms. Takakura: Chair Tackett?

Mr. Tackett: Yes?

Ms. Takakura: So, just in response about duplex, it's a dwelling unit two-family, and it's simply a building consisting of only two dwelling units designed exclusively for occupancy by two families living independently of each other. So, it would be, you know, like two houses stuck together and they're still subject to the same setback requirements that are already there. The setback numbers are not changing at all, the fifteen for the front and the six for the sides and the rear, none of those are changing. And so, you know, right now you can have a main dwelling and an accessory that can be connected to each other as long as there's a wall between the two, this would simply be, you know, an accessory dwelling, but bigger, you know, 'cause it could be the regular sized dwellings, but they're still subject to the setback rule. Can't go beyond what's the setbacks, so I want to make that clear. Thank you very much.

Mr. Tackett: Thank you, Jacky. Commissioner Lindsey, go ahead.

Ms. Lindsey: So, can you have a duplex and an accessory dwelling?

Ms. Takakura: Chair Tackett, may I answer that?

Mr. Tackett: Absolutely.

Ms. Takakura: Okay, so that would depend on the size of the lot. If the size of the lot allows for accessory dwellings, then if they're big enough then you could potentially. Not for the smaller ones, but for the bigger ones depending on the size.

Ms. Lindsey: Okay, thank you for that.

Mr. Tackett: Commissioners, any other questions? Do we have a motion? Commissioner La Costa was a little bit faster than Commissioner Thayer, sorry. Go ahead Commissioner La Costa.

Ms. La Costa: Thank you, Chair. I would like to move that we accept the comments and the information provided by the Department with our comments attached.

Mr. Tackett: And do we have a second? Okay, we have a motion on the floor and a second.

Ms. Thayer: Question.

Mr. Tackett: Oh, question.

Ms. Thayer: Just looking at what our options are. So, we can approve approval, sorry, is that what you're doing, Commissioner La Costa?

Mr. Tackett: I believe she's recommending approval with comments.

Ms. Thayer: Okay, yeah, I can. Thank you.

Mr. Tackett: Okay. And so, we have a motion and second, and Director would you like to roll call vote or a raise of hands. I can't really see a raise of hands, so sometimes I prefer a roll call vote just because I know that everything gets...

Ms. La Costa: Chair, may I speak to the motion please?

Mr. Tackett: Oh, yeah, absolutely. Sorry, P Dee. Go ahead.

Ms. La Costa: Thank you, thank you. The reason that I made the motion to approve with our comments is because we have done some really good input here and they will be in the minutes of the meetings if, if Assistant Director has not made those notes, we kind of got spoiled with Michele writing down everything for us. So, the recording will have our comments and I think those are important to attach. So, that's why I made my motion. Thank you.

Mr. Tackett: Absolutely. And Commissioner Thayer, would you like to speak to your second?

Ms. Thayer: Sure, thank you, Chair. I just want to say I appreciate the efforts made by the Department to kind of refresh these Codes to make them easier to understand, especially with the images and the tables, to be kind of proactive in enabling more different kinds of housing to be produced, and also the, the limit on impervious surfaces I appreciate very much. Thank you.

Mr. Tackett: Thank you. Commissioners, does anybody else want to speak to the motion before we move forward? Yeah, hearing none, could we could we have a roll call vote, please Director?

Mr. Hart: Commissioner Edlao.

Mr. Edlao: Yes.

Mr. Hart: Commissioner Hipolito.

Mr. Hipolito: Aye.

Mr. Hart: Commissioner Thayer.

Ms. Thayer: Aye.

Mr. Hart: Commissioner Lindsey.

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Ms. Lindsey: Aye.

Mr. Hart: Commissioner La Costa.

Ms. La Costa: Aye.

Mr. Hart: Commissioner Freitas.

Mr. Freitas: Aye.

Mr. Hart: And then the Chair.

Mr. Tackett: Yes.

Mr. Hart: I count seven in favor.

Ms. Lindsey: Commissioner Thompson.

Mr. Thompson: Aye.

Mr. Hart: I'm not seeing...oh, I apologize. Commissioner Thompson also, so I count eight in favor.

Mr. Tackett: Thank you, Director.

**It was moved by Ms. La Costa, seconded by Ms. Thayer, then**

**VOTED: To Recommend Approval of the Proposed Bill to the County Council  
as Recommended by the Department and with the Commission's  
Comments as Discussed.  
(Assenting – P D. La Costa, K. Thayer, K. Freitas, J. Edlao,  
M. Hipolito, A. Lindsey, D. Thompson, C. Tackett)  
(Excused – K. Pali)**

Respectfully Submitted by,

CAROLYN TAKAYAMA-CORDEN  
Secretary to Boards and Commissions II

Mr. Nakagawa: Thank you, Chair, Commissioners.

Chair Buchanan: Okay. Thank you. Nobody take a break. We're going to quickly do housekeeping kind stuff. There is an amendment to the agenda. We are not moving into item D right now, but we're going to quickly move into item B, Public Hearing, and we need to do this because it's going to cost the Department money if we don't start our public hearing action right now. And so, are there any objections to that? No. Seeing none, we are now moving into item B, Public Hearing, item number 1:

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

**B. PUBLIC HEARING (Action to be taken after the Public Hearing)**

- 1. MS. MICHELE MCLEAN, AICP, Planning Director, referring to the Molokai Planning Commission a proposed bill to amend Maui County Code Chapter 19.04 – General Provisions and Definitions, and Chapter 19.08 – Residential Districts, to revise definitions and clarify code provisions regarding yards and setbacks; increase housing options and sustainability, and codify practices regarding the uses and standards of residential zoning districts. (J. Takakura)**

**The entire text of the proposed bill for ordinance is available at:**  
**<https://www.mauicounty.gov/DocumentCenter/View/129345/Draft-Bill-for-Ordinance-amending-1904---General-Provisions--Definitions-1908-Residential-Districts-09282021>**

Chair Buchanan: Jacky waited all day. Hi, Jacky.

Ms. Takakura: Good afternoon, everyone. So, did you want the presentation now or -- okay. I see Jordan shaking his head.

Mr. Hart: Jacky, what I think that we -- the Department would say is that -- that the content of the -- the item was provided with the agenda, so the members of the general public who might have wanted to testify have all of that material, but we will do a presentation at the next meeting, and the Chair may choose to also allow the public to comment again at that time.

Chair Buchanan: So, Jordan, do I open up for public testimony right now? Okay. Thank you. We will open up public testimony on this agenda item. If there's anyone in the public wishing to testify, please unmute yourself, state your name for the record so I can swear

you in. And, I don't see any in the chat. So, thank you very much. Last call for public testimony. Seeing none, the Chair will reserve the right to open up public testimony again when we hear this. Yes, Jordan?

Mr. Hart: I'm sorry. I wanted to make sure that you stated the next date that it would be heard.

Chair Buchanan: Oh. Which is when?

Mr. Hart: I believe that that would be January 12, 2022.

Chair Buchanan: Thank you very much. The Chair will reserve its right to open up public testimony when we hear this public hearing item again on January 12, 2022. Thank you very much. With that, this item is deferred until January 12. And then I wanted to go on to a Public Hearing, item number 2:

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

2. **MS. MICHELE MCLEAN, AICP, Planning Director, referring to the Molokai Planning Commission a proposed bill to amend Maui County Code Chapter 19.26 – M-2 Heavy Industrial District, to allow apartments when located on the same lot as business or industrial uses and when the property is located within 500 feet of any property with existing residential use; transient vacation rental use is prohibited. (J. Takakura)**

**The entire text of the proposed bill for ordinance is available at:**  
**<https://www.mauicounty.gov/DocumentCenter/View/129722/Bill-for-Ordinance-updating-Chapter-1926---M-2-Heavy-Industrial>**

Chair Buchanan: With that, we would like to open up for any public testimony on this public hearing agenda item. I see none in the chat, and -- and then same thing. Jacky, thank you very much for waiting all day, but seeing no public testimony, I will close public testimony at this time, but the Chair would like to reserve the right to open public hearing testimony when we rehear this item again on January 12, 2022. Until then, this item is deferred till those public hearing dates. Let me check one chat over here. Okay. So, I just wanted to make sure because some people did not hear, during the first item, that public hearing was closed for the first item B, item number 1, the County Code 19.04, so testimony was close if nobody heard that at that time. And then again, the public testimony is close for this agenda item as well, Public Hearing, item number 2, the proposed bill to 19.26. So, that's it, and we're going to hear that on the 19<sup>th</sup> so --

MOLOKAI PLANNING COMMISSION  
REGULAR MINUTES  
JANUARY 12, 2022

**A. CALL TO ORDER**

The regular meeting of the Molokai Planning Commission was called to order by Chairperson Lori Buchanan at 11:09 a.m., Wednesday, January 12, 2022, via BlueJeans Meeting No. 637682190.

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

Chair Buchanan: Aloha, everyone, and Happy New Year. So, welcome to the January 12, 2022 meeting, first meeting of 2022 of the Molokai Planning Commission. On our agenda, we are in item A., Call to Order. Under the Call to Order, you will see many ways to participate in this meeting today. You can contact the board secretary in our chat, but don't try to contact any of the Commission Members directly. Commission Members will not use the chat to directly communicate with each other, as a reminder, and everyone can also call in by phone, and you can also simply unmute and introduce yourself, after which I will swear you in for the record. We have a really full meeting today, so if I forget to take a break, please, if anyone needs to take a break, remind me, and just cut me off and say we need a break. So, we really stacked up so we might as well hit the road running and go ahead.

Ms. Chen: Hi, Chair. Sorry. Good -- good morning, Members and staff. Chair, just a reminder, pursuant to the Governor's proclamation, we're going to go over this a little bit later on the agenda, but members should just say if anybody's present in the room with them.

Chair Buchanan: Okay. Thank you, Stephanie, for the reminder. So, if anyone has anyone else in the room with them, please, just make that known to Commission Members or to the staff. Thank very much.

Ms. Albino: Aloha, Lori.

Chair Buchanan: Aloha.

Ms. Albino: Aloha. Hi. Aloha. I could not come on as I'm on as a guest; somehow, I'm not being able to connect to the -- to the link, so I'm here as a guest, and I don't have anyone with me.

Chair Buchanan: Oh, okay. But, we can see you and hear you.

Ms. Albino: Okay. Okay. That's the main thing.

Chair Buchanan: So, that's great. Yeah.

Ms. Albino: Okay. Thank you.

Chair Buchanan: I sorry you cannot connect to the link. We should try to fix that ahead of time next time. But, if you get trouble and stuff, yeah, maybe Suzie can help us. Okay.

Ms. Albino: Thank you.

Chair Buchanan: So, one last thing before we move on is are there any proposed changes to the agenda for today, which is quite full, or any shifting? I see we starting with items we already deferred, so we have to get stuff done. Okay. Seeing none, thank you very much. We'll move directly into item B., Unfinished Business, and under Unfinished Business, item number 1:

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

## **B. UNFINISHED BUSINESS**

1. **MS. MICHELE MCLEAN, AICP, Planning Director, referring to the Molokai Planning Commission a proposed bill to amend Maui County Code Chapter 19.04 – General Provisions and Definitions, and Chapter 19.08 – Residential Districts, to revise definitions and clarify code provisions regarding yards and setbacks; increase housing options and sustainability, and codify practices regarding the uses and standards of residential zoning districts. (J. Takakura)**

**(At the Commission's December 8, 2021 meeting, the Public Hearing was opened and closed. This item was deferred at the December 8, 2021 meeting.)**

**The entire text of the proposed bill for ordinance is available at:**  
**<https://www.mauicounty.gov/DocumentCenter/View/129345/Draft-Bill-for-Ordinance-amending-1904---General-Provisions--Definitions-1908-Residential-Districts-09282021>**

Chair Buchanan: And I know Jacky is our go-to person. We did open the public hearing at the December 8, 2021 meeting, and the public hearing was open and closed, but the Chair will reserve the right to reopen if I -- if I see fit or if the Commission wants to. So, Jacky?

Ms. Takakura: Good morning, Molokai Planning Commission. Good morning, Chair Buchanan. Happy New Year. So, this is, as Chair Buchanan had explained, it's a lot of

fixes to this part of the code that hasn't been changed in a long time. So, I'm going to go through those changes. I'm going to share screen.

Chair Buchanan: Okay. Hang on, Jacky.

Ms. Takakura: Okay. Okay.

Chair Buchanan: Can everyone -- can everyone hear Jacky? 'Cause I'm needing to turn up my whole volume. Okay. I see Debbie can hear. Okay. Main thing everybody can hear Jacky. Okay. Thank you.

Ms. Takakura: There is some construction going on next door so apologize if you hear some banging, but I'll try to talk between when there's -- I'll try to keep myself ...(inaudible)... if they're making too much noise. Okay. So, this is two chapters that I'm working on, 19.04 and 19.08, and, like I said, it's a lot of fixes -- fixes to this code. Can you hear me okay?

Ms. Mowat: Yeah.

Ms. Takakura: Thumbs up okay? Okay. So, what we're trying to do here is fix some of the terms, like changing the word to -- from "yards" to "setbacks," and clarify the definitions, some minor fixes, trying to give some options for increasing housing, take into consideration sustainability and climate change, and put into the code a lot of internal policy memos that we've been relying on over the years that this just make more sense to be in the zoning code where everybody can read. Now, this is only for the residential zoning district that we're proposing fixes to, and that's 19,641 parcels in Maui County. So, it's residential zoning district.

Let's go through the changes in order of the chapters, starting with 19.04 is where we have compliance and definitions, and these are just some general fixes. And, you can see here it's kind of almost like moving things around because, the way it is right now, we have buildings and subdivisions together but those are really two different things, so we're proposing to move subdivisions to its own line, which would be B, in the middle there on the screen, and then have buildings and structures have their own requirements for compliance. It's not really changing -- it's not changing the substance of this section. It's simply that compliance criteria for buildings and structures are different from compliance for subdivisions and so they're separated. And then, the revisions that you see at the bottom for permitted uses in each district, it's just simplifying the wording without changing the meaning. And so, that's it for this part, for compliance.

Now, we're going to go to definitions. Most of the definitions are regarding setback areas, and then that's generally the open space area extending inward from the property line. If



you can imagine a lot, there's a line, the part of the lot going inward, that's the setback area. The width of the setback varies by zoning districts, and so what we're proposing to update for these definitions is the "front lot line," which means every lot line bordering a public or private street in which a driveway provides access to the lot area, and you can see from these examples, in the drawing, that the front is determined by the driveway, which are the red lines. And so, some of these, you know, might have multiple streets surrounding the parcel, but it's going to be the driveway that determines the -- what's going to be the front. So, if you can see, like this top row, these are some examples of corner lots, and so there's more than one street, but it's going to be where the driveway is that determines that this is going to be the front. So, like say for this one in the upper corner, because there's no driveway here on the side, even though there's a street, that one can be considered side. It's going to be this driveway access that determines the front. Okay.

The next change is changing the term "yard" to "setback area," and that's the area between the setback line, established in that zoning district, and the lot line, which includes the boundary of public or private streets, and this is the area that remains unoccupied and unobstructed by any structure, including a swimming pool, except as specifically allowed in a zoning district. Setback line is a line beyond which no wall of a building or -- or structure may project, and it's going to be different based on the different zoning districts. And then, we also have another revision to the definition of "private street," and that's simply to add the word "easement" into what's included as a private street.

Some of these terms, like for me, they're kind of complicated, and so I try to add pictures because they're just a lot easier to understand versus trying to read the word. So, like you can see here, this is the street down here at the bottom, and this would be the driveway, and so this is the front setback area, and that's the area extending inward from the front lot line to the front setback line. And then, you can see the sides are here along the sides, and then the back is the rear setback area. So, we're trying to put more images and just make it easier to understand for, you know, the average person who's not an architect. Pictures speak a thousand words.

One new definition that we're proposing is to add this definition for "impervious surfaces," and that's to mean the surface covering or pavement of a developed parcel that prevents the land's ability to absorb and infiltrate rainfall or storm water, and it can include rooftops, walkways, patios, driveways, concrete, any other water type pavement or covering. So, I have this picture here on the side, it's just the, you know, the aerial imagery of an area in Kahului, and if you can see, like, say, this middle lot, you can see the structures, the houses, and then you can see the paved driveway. It's almost entirely covered by impervious surface; that's what would be the impervious surface. You can see the one right above it has the house and the driveway, but then there's some open yard in the

back; that's -- that's pervious; that's open, yeah? And so, we can kind of see, based on aerial imagery, and also from plans, what impervious surfaces are on parcels, so that's just kind of to give you an understanding of what is that impervious surface. This is similar to Honolulu's definition. They've already had this definition in their code for a while.

Now we're going to move to Chapter 19.08, which is specifically residential zoning district. First, we're going to go over permitted uses. Most of the changes are grammatical in nature or for clarity purposes. The second item is allowing accessory structures, like walls and accessory dwellings, to be built -- be built before the main dwelling because property owners sometimes build these things first, or they build their ohana unit before the main dwelling, and so we're going to put language -- we'd like to put language in there to allow these types of accessory uses prior to the development of -- and then the other thing is adding the reference to Hawaii Revised Statutes for daycare, nurseries, and care homes, because we do want to be consistent with State law. So, that's permitted uses.

Next is the special uses and these are the ones that require a County special use permit, and those are the ones that would come before the Planning Commission. A lot of the revisions are grammatical in nature and non-substantive. We do have a few changes that we're proposing to provide more opportunities for housing; to increase of walkability between neighborhoods; we're proposing that housing for aged, and housing for low and moderate-income families created by government or nonprofit organizations; that density be increased to 25 percent would be the trigger for having to come to the Planning Commission. Right now, the current percentage that triggers commission review is ten percent, so we'd like to increase that to 25 percent, and that would allow the development of more units, housing. The other thing we're proposing is to allow two-family dwelling units or duplexes, and this is a little bit different from accessory dwelling units because with a duplex, the size of the dwelling units would be limited by the size of the parcel and the setbacks. Right now, if you can remember, accessory dwelling units are limited by their own chapter, Chapter 19.35, and the maximum floor area has a specific range, depending on the size of the lot. But a duplex, a duplex would allow two families to live independently of each other on the same parcel, and they could be bigger than the accessory dwelling sizes. We're proposing to allow retail, food and beverage establishments, excluding liquor stores, not to exceed 2,000 square feet of gross covered floor area, and this proposed addition is to promote walkability in neighborhoods and reduce having to get in the car and drive to a place. And then, lastly, on this list is revising the criteria for modification of minimum lot area for affordable housing to encourage density and connectivity. There's a provision already in the zoning code about this but, to our knowledge, it's never been used to develop affordable housing, so we're proposing the change that the project is designed to meet the needs of low, below moderate, and/or moderate-income families and adequate provisions are required to ensure owner occupancy, the prevention or limitation of speculation, and that they have shared use paths crossing through the subdivision for bicycles and pedestrians to connect to adjacent

lands, and if a developer were to propose this, they could have a little bit more impervious surface requirements as a kind of a motivation to develop more housing.

The next parts, sections 19.08.040, 050, and 060, they haven't changed since at least the -- at least 1974, so what we're proposing to do is consolidate these area regulations, height regulations, and yards into one section, and use a table just 'cause tables are a lot easier to read and understand. We're proposing that building height be measured in feet only, like I mentioned before, take out the word "yard" and use "setback area," clarify that the setback lines for taller buildings. You can see this, we have this very simple diagram that we follow, and it's from a memo that is really old, so we'd like to put this in the code about the setback lines for a taller building. And then, having the limit on impervious surfaces.

So, again, pictures make things a lot clearer to understand. This would be the setbacks for the residential. For the lower part of the structure, it's six feet; for the upper part, it's ten, and this is actually what it is now, so it's just adding some clarity about -- and the -- and the image into the code to make it clear. And that eaves, if you have eaves, like from photovoltaic or from the roof, it can go into the setback up to three feet. And then going back to that part about impervious surfaces, so back in 19.04, we had the definition, and here's what would be the development standard for the residential zoning district that impervious surface -- surfaces would be could not exceed 65 percent of the lot, so that would mean that no more than 65 percent can be covered by impervious surfaces because impervious surfaces prevent the land from naturally absorbing and infiltrating rainfall or stormwater. Impervious surfaces could be the buildings or driveways, access paths, swimming pool, walkways. Now, if a property already has more than 65 percent, that would be considered nonconforming and that's fine. The amount of impervious surfaces on the site can be redistributed but the total amount cannot be increased. And we know, with the changing climate, that rainfall events are likely to have more significant consequences so we need to prepare for this. And this proposal is consistent with the State of Hawaii's 2050 Sustainability Plan, Strategy 23, which is about sustainable design principle, and it's just -- it encourages expanding and integrating permeable pavement and concrete opportunities.

And so, now going to what would be allowed in the setback, and this list of proposed permitted structures in a setback comes from policy memos over the years, and they're more appropriate to be in the zoning code, and this includes walls and fences no taller than seven feet unless approved by the director, roof eaves, like I mentioned, no more than three feet, must be eight feet or taller, porches, lanais, decks, and walkways, mailboxes, and trash enclosures, and then minor utility equipment and their enclosures. Greenhouses, for some reason, were allowed to be in the setback, but we'd like to have them comply with setback limitations, existing ones can stay where they are, but new

ones should comply with setback limitations. I don't know why they were allowed in 1974, but they should be consistent with all the other restrictions.

So, that's it in a nutshell. You can recommend approval, you can approve with amendments, denial, or defer action if you wanna get further information. I'm going to stop sharing, but I can always go back to a page if you want to look at something. That's it, and thank you.

Chair Buchanan: Okay. Thank you, Jacky. Gee, for something that is not substantive, it sure sounds substantive to me, and it's a lot. And, to be honest, Jacky, it's something I think that my community doesn't know about. You know, it's piecemealing, like spot and piece, to me, piecing things together. So, I have a really general question right now, Jacky. What happened to the overhaul? The chapter plans where the Planning Department hired a firm to overhaul title or chapter 19. Is that still in the works? It was supposed to be a multi-year plan and, during that time, we wasn't going do substantive changes to the code. Can you comment?

Ms. Takakura: Yes. Thank you, Chair Buchanan. And so, yes, that Title 19 rewrite is in the works, but it's still a few years away, and because we have so many of these policy memos and things that just are not working for our plans reviewers, we'd like to get this chapter fixed, and we don't want to have to wait a couple more years for the Title 19 rewrite, but we are trying to make sure that everything we're working on goes to the staff who are working on that Title 19 rewrite, and Jordan might have a little bit more information about the specifics of where that project is, but it is still in the works.

Mr. Hart: Yeah, Chair, so it's -- it is still in the drafting process, so it's internal. It's not -- it's not ready for the initial public review. But, I would reiterate that we don't view these, if you look at what is actually being changed, we don't view this as a substantive change to the zoning code. For instance, it's not significantly increasing the -- the density or intensity of the uses that may be permitted or anything like that. I think it's clarification of existing regulations. That would be the extent of my comments.

Chair Buchanan: Thank you, Deputy. I think I disagree because, I mean, some stuff does -- just doesn't make sense to me, like basing your setbacks on the driveway, which you can always change. I mean, I have someone even in my district right now that kinda just made their own road off the highway. I mean, you know, I don't know what engineering they had to go through, but that's kinda the Molokai speed where you just create your own ingress and egress, and then -- or put in stuff and then have to go and find out that you -- you need one after-the-fact permit, but, you know, just like basing setbacks on driveway, and then the impervious surfaces, I mean, how is like all the mcmansions in Kahului going to be affected by that when you have total buildout of your lot with multiple family use, and then where does parking and on-street parking where

people are beefing and fighting with each other over parking on the road because you have multiple families living in one total build out mcmansion, how does that -- where does that figure in, Jacky, on impervious surface? You know, I heard like going moving forward, but I don't know how that works. I mean --

Ms. Takakura: Thank you, Chair, so --

Chair Buchanan: But anyway, Commissioners, questions? Commissioner Poepoe.

Mr. Poepoe: Yeah, I kinda had a similar question along the line of the moving impervious surfaces, like cars parked on properties, and, you know, greenhouses in, especially on Molokai, is usually easy-up tents, yeah? So, would that be included in the -- in the percentage, I know it's temporary and it's supposed to be fixed impervious surfaces, but how would that work out?

Ms. Takakura: Chair Buchanan, may I answer that?

Chair Buchanan: Sure. Vice-Chair Poepoe, so regarding existing paved, like, say, those properties in Kahului that are almost entirely paved, those would be nonconforming 'cause they're already paved, but it would be to try to limit new ones, you know, so that they don't do that and pave the entire lot. With regards to parking, the parking requirements are not going to change. They're still going to be the same as what they are now in the parking code. So, if a lot requires two parking spaces, it still has to have two parking spaces. In terms of those kind of popup tents, we don't count those structures because you could easily move them if you -- I hope that answers the questions.

Mr. Poepoe: Okay. Yeah. Yeah, it's -- it's an answer. Yeah, definitely.

Mr. Hart: I can maybe add on a little bit to that. You know, structures under 120 square feet are exempt from building permits so sometimes there's incidental structures like that, maybe not even temporary, but smaller that can be not considered to be permitted or don't require permits. And then, to follow up on Jacky's comments about the nonconforming status, basically, you know, our position is that these properties shouldn't be completely concreting or asphaltting their properties and that's, you know, going to either cause heat island effect problems or flooding problems and that we're trying to, you know, implement this in order to prevent that from continuing, but those that have already done it and can show evidence to the Department, you know, when they come in for new permits that this was already established prior to this ordinance, if it passes, then they would have existing nonconforming status or be grandfathered, but the -- the initiative is intended to stop that trend, which is, you know, maybe convenient for some people, but it's probably not appropriate for the environment.

Mr. Poepoe: Chair, your mike is off.

Chair Buchanan: Sorry. Thank you. Commissioner Poepoe, you had any more questions? Anyone else, Commissioners?

Mr. Poepoe: I had a -- one -- I get one more question.

Chair Buchanan: Okay, go ahead.

Mr. Poepoe: For Jacky, and you mentioned about something between the -- a difference between the term "easement" and "private driveway", was that going to be changed as well? I didn't catch which one was going to be changed.

Ms. Takakura: Thank you, Vice-Chair Poepoe. So, there's already a definition for "private street" in the code. We just wanted to add the word "easement" in the definition because a person could have an easement and that's still -- that would be part of what a private street would be. So, it's just adding that word "easement" to the definition, the existing definition of "private street."

Mr. Hart: Chair, if I could go backwards also to -- to prior comments that were made. There is actually a process for establishing your driveway with the Department of Public Works, in the County of Maui, and so, you know, these things are intended to regulate people who are complying with the, you know, existing code and it's -- we address people who didn't comply, you know, on a complaint-driven basis when they come up, but this is laid out for people who are going through the process and intending to be in compliance.

Chair Buchanan: Okay. Thank you. So, if nobody else has questions, I just -- I have some comments, Jacky. It sounds like this impervious surface thing is going to be a big deal, it does not, in any way, thwart the other mandate of any development, including residential homes, that they have to keep all of the runoff onsite. Is that correct?

Ms. Takakura: Chair Buchanan, so this is intended to complement the -- like the Public Works drainage and those kinds of rules, so it's -- it should kind of help reduce the amount of drainage or amount of runoff into the street or into the drainage ways. And, you know, I did -- I was looking at, well, how does this affect like the various lot sizes? And like for smaller lots, they're really more limited by the setbacks already so they can't build that much out anyway, it's really only the bigger lots, and, when I was doing the math, it really doesn't change a lot compared to what would be allowed to be built out as compared to the, you know, with the setback limitations and the sizes that the structures are allowed to be, but I think it's important that we start somewhere. Honolulu, City and County of Honolulu is -- their limitation is 75 percent, we're not Honolulu, we're not Oahu, so we're

proposing 65 percent impervious surfaces just as a start to try to get that, you know, at least the rainfall percolate into the ground and not running off to the drainage ways.

Chair Buchanan: Thank you, Jacky. I mean, of course, nobody would, you know, go against having water, you know, come down and percolate into our -- into our, you know, reservoirs and stuff, but I can -- I see this problem with the subdivisions, and you said smaller lots, I -- I think I live in a smaller lot, what you would consider a smaller lot, because, according to you guys, it's less than the 75 square feet, so -- and I'm just thinking, oh, now I can put in one accessory, but again, I go back to the parking requirements haven't changed, but we changing the density, so when it comes to the changes for the duplex, you know, I'm concerned again because you're increasing density in the -- in the residential areas, you're increasing commercial use within the residential area, or you're making it an allowable use, but I no see how the accessories to the uses are being addressed, such as parking, or on-street parking, off-street parking, or parking to accommodate the -- the duplex, or even if the three stories, you can make one short house and call 'em three stories, but use not exceeding the 30-foot total height. Is that correct?

Ms. Takakura: Thank you, Chair. So, we're not changing the parking requirements, those are already in Chapter 19.36, and the parking requirements are based on the -- the size of the dwelling units, so like if a dwelling unit is under 3,000 square feet, the minimum number of parking spaces is two, and that doesn't change; for accessory dwellings, it's one parking space for each, that's not changing either so -- and then these things are proposed to be special, that they would come before the Molokai Planning Commission so you could ask the applicant those questions to make sure that they're addressing them if they were to be applied for like, say, for a duplex or for a ...(inaudible)... so those would come before the Commission.

Chair Buchanan: Okay. I hope the Maui Planning Commission ready because they going be --

Mr. Hart: Yeah, let me --

Chair Buchanan: Go ahead, Jordan.

Mr. Hart: I'm sorry. I wanted to clarify, not only could you ask questions, but you could also potentially apply conditions if you're going to grant a special permit approval, for instance --

Chair Buchanan: I mean, I no like what I'm hearing. I --I -- I don't -- I don't like it. Some is okay; some is not okay. You know, the walkability, and easements, and all that kind of stuff, I can see potential problems in the future, people fighting over shared uses, and I

don't know, when we, at the Planning Commission, ask about easements and ownership, and we've, you know, gone through this before with utilities and other items, the -- the legalese and legality of who owns what, so I'm not completely absorbing the whole walkability issue to do sidewalks and shared spaces as easements, and I don't know who would be required to do that. I think this is a lot to swallow and I don't think my community has -- has had a fair review of this in a public forum outside of the Molokai Planning Commission. So, I think people will be affected. They may be affected adversely. So -- so I'm not comfortable for us saying yes or no because, in my -- in my mind, there are some substantive, and -- and I'm kinda mad because the Department should be -- should be outreaching to this community better when we have -- what we would consider substantive, you guys might not consider substantive because you get 19,000 residential stuff that going be affected by this and maybe Molokai only get 1,000, but what I want to ensure is, in the future, we will be adhering to these policies, so it might not be a fit for Molokai. And then, if you want to, we can go through them one by one 'cause even the fences, yeah, no taller than seven feet. You know, we had complaints come in from central Molokai that people were building berms, and then from the berm height building their fences in order to have a higher fence, and so, you know, I don't know how that fits into this, like 30 feet from the hill you already on, or seven feet from the berm you just went build, or the -- and then, so totally, like I mean, right now, with my neighbor, it seems like if I put up one fence right now, it's going to be like a ten-foot fence between -- between us just because my house is already set higher than his. And then, the roof eaves, and then I wanted to know, Jacky, what is minor utility equipment and -- and their enclosures -- enclosures on lots of 7500 square feet or smaller? 'Cause I'd be right in that 7500 square feet or smaller, and most of Manila Camp and, in fact, all of Manila Camp and Ranch Camp would be in there.

Ms. Takakura: Thank you, Chair. So, that comes from a memo back in I think it's 2006 that we've been following all these years. Oh, let's see. Equipment such as water heaters, pool pump, gas tanks, washing machine and driers, air conditioning units, landscape features, and trash enclosures, they can be enclosed, but wall enclosures for the equipment may be allowed provided they do not exceed the height of the equipment and is not more than four feet in height. Any wall enclosure shall be uncovered and unroofed. Minimum of three feet wide access shall be maintained. So, it's, yeah, something that's been policy since 2006 and we feel that this should be in the code because it's clearer.

Chair Buchanan: Okay. I had someone ask me if that included rabbit hutches, chicken coops, dog kennels, and -- and similar stuff like that. That would be allowed on one 7500-square-foot lot or smaller? Which is kind of small already.

Ms. Takakura: Bigger than my lot. So, those are things that could be moved, right? And I don't think they would need a building permit, so it should be okay. Right, Jordan?



Mr. Hart: Yeah. And they also sound like animal keeping as opposed to utility type situations, but, you know, the pet -- keeping of pets is kind of -- it's -- it's pretty complicated in our code, it's not really specifically addressed, so it's just one of those things, but -- but they're not utilities, that's for certain. One other thing I want to touch on is that Jacky's been saying that these are related to policy memos, and so what she means by that is that -- that when, you know, the Department is responsible to implement these zoning ordinances and you get these unique questions that come up, and then they start coming up over and over again, so then, ultimately, the Director will write an interpretation about how we're going to handle this situation when it keeps on coming in, and so then the Department has been implementing these policy memos for years, at times, sometimes decades, and so this is the way that the Department has been making decisions on building permits for many years but it's just in this internal interpretation memo as opposed to just being out in the code so everybody understands it up front; what I mean by that is that these, the majority of these adjustments wouldn't change anything from what you see as far as how development is happening in the residential district because this is the way that the Department's been approving permits for a long time, it's just basically moving them from policy-interpretation memo into the code just so it's -- it's easier for everybody to understand, and these come up because the way the code is written now, there are these customary uses, like, for instance, enclosing your -- your water heater, you know, people always do that, or let's say you got an AC unit and you don't want it to be visible, people always do things like that, and how do they get addressed, so somebody had to write up a memo to explain how you address that, and there's a number of things that are like that. And so, the intention of this is to put this in the code. The other thing I want to talk about is the -- the density of development. You know, Chair, you had expressed concern that maybe this would change the density development, but I want to point out that the County already has the ability to build up to two accessory dwellings on any residential lot over 7,500 square feet, but it's not the zoning code that's normally the only deciding factor, you have issues like wastewater or water capacity. So, basically, just because you have the -- the -- the permission to do something by zoning doesn't mean you have the infrastructure capability to -- to do something, so, for instance, areas that are not served by sewer, a lot of times they don't have the square footage to get the septic systems to allow them to do those units. So, I don't think that you would expect to see dramatic changes, maybe some of the areas that -- well, first of all, for the duplex component, it's a special use, so that's -- let just set that aside. But, for the accessory dwelling issue, which is not part of this ordinance but has been existing for about two to four years, now that would only be affecting the areas that are served by sewer. So, you don't see those changes. Anyway, you can see how those changes take form and they're not as dramatic as you might anticipate by looking at the amount of underlying language in the ordinance.

Chair Buchanan: Thank you, Jordan. So, what we supposed to do? Because I don't feel comfortable. I can give you feedback right now, but I feel that the Department has to do a better job at working with the Molokai community somehow, someway, even because we're now on year three of Covid, we don't have site visits, we don't have in-person meetings, it's greatly thwarted the participation by the general public, and I feel that just checking the box of having changes to chapter 19 or Title 19 without fully giving the public a chance to really absorb what is going on because it can get complex, like you just said, Jordan, even though the zoning said you can do it, doesn't mean you can do it. And I think that's the -- the problem that some Commissioners have. You know, I know Commissioner Pele have said at times like what does the law say? And then -- then it's not that simple 'cause there's other underlying considerations and stuff, which is not clearly evident at the time. So, it's like this. And, I don't like to piecemeal regulations and changes in the code without fully understanding all the rest of the triggers that, for compliance, that this going cause. So, I don't know. Commissioners, you guys get any feedback? Do -- Jacky, is the Department gonna move forward with this if we feel that we want more information going out to our community?

Ms. Takakura: I guess, Jordan --

Mr. Hart: Yeah. We gotta talk about that. So -- so basically, you know, any land use ordinance like this, it goes to the three planning commissions, Maui Planning Commission, Lanai Planning Commission, Molokai Planning Commission. The planning commissions provide their comment to the Council, you know, recommendations; they could say they don't want to see it approved, they could say they want changes. You know, we'll also pass along that you feel that there needs to be additional engagement with the community, but I do have to share with you, just on the part of, like, you know, managing the Planning Department, we're tasked to do these things, you know, with the budget that we have and so we don't have, you know, the budget to just do additional outreach for every ordinance. And if the Council wants us to do that, you know, as a result of the comments they hear from Molokai Planning Commission, for instance, we'll be able to do those kinds of things, but under -- with our capacity that we have now, you know, we are, unfortunately, going through the process, the process as it exists is to present it to the three planning commissions, and, you know, you may recall that we did open public testimony the last time, and I don't think that there was anybody that testified, but, you know, we're here again and you can, you know, allow people to testify again if you wanted to but, you know, this is the process that the County makes the community aware of -- of proposed changes to zoning ordinances, and this is the venue that the community has to engage the issue. And, I agree with you that it would be nice that more people would engage and show interest, but I also do honestly believe that -- that, you know, the comments that I had made earlier, that I think that these are clarifying issues, and I don't think that they are necessarily of concern. I mean, I think that they're important, but I don't think that they're -- I think that they're are appropriate. I mean, I don't -- I don't,

personally, share -- share the concerns that that you've expressed, but I do respect and understand where you're coming from. But, you know, I do think that we're -- we have to meet the obligation that's before us and we can't just start to change our process one by one, and so we're going to stay consistent with our -- our process for doing ordinances at this time. But your Counsel turned her camera.

Chair Buchanan: I see Commissioner Pele, but, Stephanie, do you have something before I call on Commissioner Pele?

Ms. Chen: Oh, yes. Thank you, Chair. So, I just -- just wanted to remind the Commission that, under the Charter, the Commission has 120 days to transmit its comments regarding the proposed bill to the Council. So, since I'm advising the Commission, I would want your comments to be included even if that includes questions or recommendations. I would really hate for the Commission's comments not be included because the deadline expires. I just wanted to make you aware of that, and I can give you the citation for that if you want to read it on your own. You want me to put it in the chat, Chair?

Chair Buchanan: I don't need it, but you can put it in the chat for others.

Ms. Chen: Okay. I'll put it in the chat.

Chair Buchanan: Thank you, Corp Counsel. And that's probably -- probably why sometimes I'm reluctant to open public hearing when we run out of time at meetings is because when we do that, we start the clock and then Maui -- we're famous for you start the clock, and then you run out of time, and then stuff is already done without actual input from the Commission. So, Jordan, and then if you like respond to that specific, and then Commissioner Pele.

Mr. Hart: Yeah. Counsel, can get clarification on when the clock starts? Because the purpose that we had asked to open public testimony was because of the the -- the cost of the public hearing notices that were published --

Chair Buchanan: Right.

Mr. Hart: And to, basically, not have to do that twice. And then what we had talked about the last time --

Ms. Chen: Well --

Mr. Hart: Go ahead.

Ms. Chen: Sorry, Jordan, and also, I mean, in the interest of not wasting the public's time, you don't want to put it on an agenda that there's going to be a public hearing and then not hold the public hearing, so it's -- it's also just to follow the Sunshine Law. The -- the shot clock starts, the 120 days starts after the final public hearing, so the final public hearing occurred at the previous meeting. I'm going to put it in the chat for you all.

Chair Buchanan: Commissioner Pele.

Mr. Pele: Thank you, Chair. With all due respect, I know you mentioned my name about how I view myself as a Commissioner, and I just want to say when I say I follow the law, I do feel that that's my role as a Commissioner, and if there's other things that are to be taken into consideration, I understand that, all I ask is that they be presented to us with the information is presented to us, so I appreciate your views, and I respectfully ask that you appreciate my role as a Commissioner, what I -- and my views, and that's -- that's as simple as that is with following laws. I know I've said that and that's just how I feel as a Commissioner. I don't think I can make up my own rules and my own laws as a Commissioner, and that's just -- I just wanted to get that on the record.

Chair Buchanan: Thank you, Commissioner Pele. I agree. And I think that's my concern, at this point, is that having been dealing within Maui County Code for many years now, I know that there are other related questions and considerations that are not being offered up in support of what's being offered today, and I think that's what -- what I mean when I say there's not enough information to the general public in order to make one determination whether all of these changes are amenable or not, and -- and that's all I saying. So, I never completely -- oh, go ahead, Jacky.

Ms. Takakura: Thank you, Chair. I just wanted to back up a little bit and describe the -- where this bill came from. This actually came from my staff, the plans reviewers who are working with the public every day because the -- the current system about these policy memos, it doesn't make sense to the customer, and they have to explain it, and then go back to this memo from 2008, and, you know, all these different things, so, you know, it's the plans reviewers working with the public day to day that really triggered these fixes, so that's why we're here before you. It's just to put the things that we've been doing all these years into one place so that it's clear to everybody.

Chair Buchanan: Okay. Thank you, Jacky. Jordan.

Mr. Hart: Chair, so I believe that it's roughly going to be March 8th is the deadline that the -- the package would need to be transmitted to Council, so that would mean that there's roughly two more meeting dates between now and then to -- to discuss. So, you know, that would be an option that the -- the Chair just keep the item on the agenda, and if people want to come out and talk about it, I mean, we're here to discuss it. I mean, as

far as more information, we can talk about any of these items and what they're intended to do so that's -- that's why we're, you know, having these public hearings and -- and, you know, Jacky is here as a resource to discuss this ordinance. But, you know, kind of the thing that we're lacking is -- is the public comment.

Chair Buchanan: Yeah.

Mr. Hart: The second time it's been on the agenda, and it's been on the -- and I do want to just add that it continues to Council, so just because the Planning Commission opportunity to comment happens, it doesn't mean that -- that the same community members can't also comment directly at Council Committee when this item is there, and it'll probably be there are a couple of meetings as well before it goes through the committee, and then it ultimately goes to the Full Council where they take testimony as well. So, I just want to point those venues out for -- for engagement.

Chair Buchanan: Okay. Thank you. So, with that, I'm probably going to keep it on the - the meeting, and I don't know. We going try figure out how we can better outreach to this community. But, just to provide you, Jacky, right now with some feedback, on 19.04.040, on the definitions of the setback, to me, it doesn't make sense because you're basing everything on a driveway. I mean, setbacks are setbacks. I don't know from the back, the front, to the whatever. To me, you have one lot, and no matter where your driveway is, or you change it, because I see people change driveways all the time, they have a main dwelling, their families get bigger, they build one accessory dwelling, and then they put in a separate driveway. By then, the lot depth has already been decided by the driveway, in this rule, it's going to be decided by that driveway, so you cannot be having one other setback on your accessory dwelling, like, I don't know, it's just messy to me, and -- and it's confusing. It's still confusing. It -- it's not confusing if you never going have one change ever again on the lot, which is next to impossible because we all change our lots, you know, subdivisions changes, contiguous development changes, roads are installed, and people's stuffs are changed. I see 'em in my own neighborhood just this year. So, I know that that exist. So, I don't know. I know this has been a longstanding problem for the Department, but I think it's still a problem. I think just saying you going base 'em off the driveway does not solve the problem. And then, on 19.08.02, residential districts, permitted uses. Here we go again. Remember, this is where they went catch us the last time. It says that the changes are grammatical for clarity purpose, but that two are substantive, after we said wasn't, so number one, the property owners often build walls and ohana unit before the main dwelling. So, we are including language to allow these types of accessory prior to the development of the prior use. Let me tell you what happened on Molokai with this. We've had people who own lots, rather larger lots, come in, whether they local or not, and they say we cannot afford to -- to build the main house so we're going to build the accessory house first, and, we go through the whole thing of them testifying on the record that they're not going to rent out that accessory use house,

and within one year of completing the accessory use, they build the -- the main dwelling and, boom, we have a transient vacation rental. I not saying that that's what's going to happen. And because of our short-term rental changes in the law that is always changing and fluctuating, that same accessory can become a long-term use. But, I'm saying that's what I've seen actually happen. And then so number two, so whether -- I think you gotta use that accessory use under certain conditions and -- and promissories that it's -- you building that not with the intent to commercialize. And then, number two, the reference to the Chapter 46, regarding day care nurseries and care homes, can you please go over that again, Jacky, as to what is the change for that?

Ms. Takakura: Thank you, Chair. So, that's just to add that we're going to be following Chapter 46, of the Hawaii Revised Statutes, 'cause that's actually the law, you know, that governs those types of day care nurseries and homes and so forth --

Chair Buchanan: Okay so --

Ms. Takakura: And we need to be consistent with the State law.

Chair Buchanan: So, right now, what does it say about day care nurseries and care homes in the residential district?

Ms. Takakura: That they are allowed. The only changes is to say that or as otherwise required pursuant to the Hawaii Revised Statutes. There's no change in the details of that use.

Chair Buchanan: So, right now, where can I -- where can I have that permitted use? Anywhere? Does -- is there a lot foot -- is there permitting? I mean, parking? Is there -- what's the restrictions on having a commercial business like a care home and a care nursery in a residential?

Ms. Takakura: So, those are permitted uses. For the daycare or the kindergartens, they shall serve six or fewer children at any one time on lots of less than 7,500 square feet, or eight or fewer on lots of 7,500 square feet or more but less than 10,000, or can have 12 children, 12 or fewer, on lot sizes of 10,000 or more square feet. So, those are already outright permitted uses in residential zoning districts.

Chair Buchanan: Okay.

Ms. Takakura: And then, the family child care homes, hospice homes, adult residential care homes, those are allowed by State law so we have to allow them too, so that's the change there.

Chair Buchanan: So, basically, every one of my neighbors today can open one care home facility or one daycare center as long as the number of clients they treat meet the State requirement?

Ms. Takakura: That's my understanding. Yes

Chair Buchanan: Does DCC&Rs override that or supersede those State requirements?

Ms. Takakura: I'm not sure. Those are private documents. I don't know.

Chair Buchanan: Okay. Well, I would like to know.

Mr. Hart: Let me clarify. Sorry, Chair. So, what -- what Jacky was trying to say about private documents is that CC&Rs are -- are like covenants for a specific neighborhood, so, and they're all different, so we wouldn't -- we wouldn't know that. Now, I don't know if there's any sort of other regulatory non-discriminatory regulation that would prevent that. I don't know the answer to that. But the Department has no ability to analyze, for instance, all of the CC&Rs on Molokai and give you some sort of response to that inquiry.

Chair Buchanan: Okay. I just kind of -- I'm -- I'm curious because now you're talking about people's rights and privileges under the law, so that's why I asked the question, yeah? Because when I bought my house in this subdivision, I was -- I was aware of the covenants and restrictions, and so if -- if I don't know if the -- my neighbor comes in and does something that is outside of the CC&Rs citing a State law, I just want to know who is right, and that's why I ask the question. Okay. So, we don't know is the -- is the answer. And then, 19.08.03, the special uses. I see one flood of special uses coming in because, if we don't know, we going throw 'em into special uses, which is good. I'm glad that the -- I like that the planning commissions are going to have purview over the special uses. But, you know, under the special uses, you talked about walkability. I would hate for walkability to be the priority for the change in -- in this walkability within neighborhoods one, two, three, and four. I don't think it's clear, and I think, for Molokai, there -- we should -- there should be no change. I see this being one issue on Maui or in high density areas. And then, the -- I don't know enough about the impacts of dwelling units and duplexes to give feedback, so maybe we can have more information on that, Jacky. And then, 19.08.040, the district development standards, on the 19.08.030, special uses, and revised criteria, my concern there is the increase in density and associated public works needed to support the increase in density. I like that we're not exceeding 30 feet. I don't know what the three stories. Replacing the word "setback" with "yard" is okay. The rest look okay. But, I like revisit the walls and fences taller than seven feet 'cause everybody now get one issue with axis deer and stuff, so even roof and eaves, we've had complaints of people with roofs and eaves that cause negative impacts to neighbors. And then, I think I need more on the porch, the lanai, and the utility, and greenhouses because

people's lots are so small already that everybody encroach -- is encroaching all the way up until the fence lines. And that's it. Thank you.

Ms. Takakura: Chair, if it's all right, I can try to go down one by one.

Chair Buchanan: I thought I just did.

Ms. Takakura: So, in terms of the access and the setbacks, it's simply for the front setback, and if a property owner wants to, they can have two fronts except, you know, the front setback is bigger, yeah? So then, they can't really build as much, but, if a person wanted two front setbacks, that's okay, if they want to have two driveways. Regarding the short-term rentals, those are, as far as I know, they're not allowed so, hopefully, if anybody observes them, they put in a request for service. Regarding the duplexes, that's just an opportunity to allow more housing, especially on a lot that can do houses, you know, that's big enough, and if you want to say "except for Molokai," you know, that's an option, just like how would the accessory dwellings, yeah? It's a little bit unique for Molokai, you can only have one, but, on Maui, where you can have two. The provision about the walkability, that's only if they want to try to reduce the -- the size of the lot to 4,000 square feet, then they have to meet this criteria that there is still, you know, people can walk and get to the next places; only in that situation that they're applying for lots 4,000 or less; otherwise, you know, a lot of times people try to cut these things out and then people in the neighborhoods, with the smaller lots, don't have sidewalks and so forth so they can't connect to the next neighborhood. Walls and fences greater than seven feet, that's just our standard practice. You know, there's -- I think it's okay that sometimes people put things that are higher on -- on there that's not defined as a wall, you know, that -- that's not a problem. The roof and the eaves, that's our standard practice, allowing them to be only three feet into the set back, and they still have to be eight feet or higher so nobody hits their head on them. And then the porches and lanais, that's just things that the plans reviewers have seen and then we always have to go ask, well, what does this mean or what are we ...(inaudible)... The utilities, like I said, there's that memo from 2006 we've been following. And then for the greenhouses, I'm thinking that's from back in the day, you know, well, at least in Kahului when Dream City was built, you know, it was like the -- the bigger lots and every lot had this green -- greenhouse, and it was up against the fence and the reason they were allowed in the setback, but we just feel that, you know, greenhouses should be consistent with everything else and the setback should be clear, so new ones built, they should be consistent with keep the setback clear. So -- so that answers your questions.

Chair Buchanan: Yeah. Thank you, Jacky. And to go back to impervious surface and increase in affordable housing or increase in housing density, don't they conflict 'cause you limiting people on their lots to not build the -- that they're entitled to build out? I mean, how does that work, Jordan? You're restricting impervious surface by cement and roof,



you counting that as impervious surface, so -- but -- but, in Kahului, you have these McMansions that are totally built out to the max because, under the law, they can. So, how does it work? So, now you going restrict people from building out to the max? It would change the building code?

Mr. Hart: Yeah. So, we had to -- well, it's not the building code, but this is the zoning code, and we had addressed this earlier in the conversation. There -- you know, everybody who really does anything in this country knows that there's various governmental branches and they all have unique rules and sometimes they are on the same subject and you have to comply with all of them, but anyway, so the Planning Department administers zoning, and this is zoning regulations, that's different from the building code, and I just wanted, I'm not trying to be snide or anything like that, I'm just trying to clarify that it's a different thing. So, what we had talked about earlier was the existing nonconforming status, so -- so some of these properties, let's say Kahului for example, they fully concreted their entire property. If they've already done it, you know, that -- that would have the opportunity to have existing nonconforming status. So, if they came in for another building permit, you know, they would need to basically provide evidence to the Department that they had already done that because we wouldn't let them propose to do it now if this ordinance were to pass; if it doesn't pass, then it's -- it is what it is. But, if it does pass, then now there would be regulation on how much you could cover with impervious surface.

Chair Buchanan: Thank you, Jordan. I just, you know, citing that I can build more house, but if now I cannot build more house because the roof coverage going be considered one impervious surface, then you're restricting my ability, but in the other rule, you encouraging me to build more on one smaller lot. I -- I just a layman. I just looking at it from that wait. Wait a minute. You -- I can build out my small lot, but -- but now I not going make the impervious surface. Am I -- Am I off, Jacky? Thank you.

Ms. Takakura: So, I was wondering that question too. You know, is this going to limit how much pavement a house or a lot can have, so I just did some math, and for the smaller lots, you're really limited by your setbacks on how much you could pave. It's when you hit 9,000-square-foot lot that that's when the 65 percent will kick in a little bit. If you have a 9,000-square-foot lot right now, with -- and you have the setbacks, you could pretty much pave 66 percent of your lot. So, going to 65 is -- is really not that much. The smaller lots, like below 9,000 square feet, you can't go -- you can't even reach 65 percent because you have the limitations of the setbacks. And so, I was trying to look at, like for Molokai, like say you have a 4,000-square-foot lot, you could, if you took away the setbacks that you gotta keep clear, you could still build, you know, like almost 1,950 square feet. So, it's when you hit 9,000-square-foot lots that the limitation will kick in. And, really, I went -- I just did math, and I did up to a 20,000-square-foot lot, still, with the setbacks, you're limited to how much -- 73 percent of how much you can build out anyway.

So, it doesn't really change a whole lot compared to what you can actually build out. And, you know, people could do -- there's like the pervious kind of pavement or put in, you know, those concrete things that look like tic-tac-toe on there and then grow grass. You know, there's a lot of options and more -- more all over, you know, coming up over time as climate change happens where you can have pervious things that, you know, allow for rainfall to absorb in, I don't know if that helps a lot, but, yeah, I had to try to figure this out so I made a whole spreadsheet to see what -- what this mean.

Mr. Hart: I did want to point out that there are alternative services are permitted for the parking stalls and that's outlined in the parking code that are required.

Chair Buchanan: Thank you, Jacky, for doing that hard work. You know, I would ask. Okay, so I going to open just to see if there's anyone in the public wishing to testify, and then I going close 'em again. So, is there anyone in the public wishing to testify on this agenda item? Please unmute yourself, state your name for the record, and I can swear you in because if not, we can move on.

Ms. Esmeralda: Hi, Chair. This is Suzie. I don't have anyone signed up.

Chair Buchanan: Thank you. Okay. So, with that, then I will close public testimony and can we keep this on till the next one? And then, Jacky, anybody needs a break before we go into the second item with Jacky? Seeing none, is that okay with you, Jacky? We can review the next Unfinished Business, under item B.

Ms. Chen: Sorry, Chair. Just for that item, do you want to just defer the item by consensus?

Chair Buchanan: Yeah. Oh, okay. Sorry. Well, yeah. Well, maybe, Commissioners, would you like to keep this item on or you guys have -- we need a motion to defer? I did ask for some -- some more -- little bit more information or to give the community little bit more time to -- I think it's important for people's homes that we somehow gotta communicate to them, but, Commissioner Mowat.

Ms. Mowat: Yeah. I kinda feel because of the Covid and because of, you know, and -- and more concern with the lack of participation, I mean, it's not like people are going to go looking for bills for ordinance or changes, and -- and I don't feel that just because nobody's here to testify that they know what's going on, maybe they're not here because they don't know of the changes that are being proposed, and I think the community should be informed and what it means to them is do they have to take any actions, which -- which I think this is for the future, but, hopefully, the community kinda would have a chance to -- to see this and decide for themselves how this is going to affect them in the future. So, I -- I -- I would like to defer with your comments, or I don't think I had the answer when --

when Lori asked if -- if we vote, if we agree with the proposal, or go for the proposal, or deny it, will it still happen. Did somebody answer that one? Was that answered whether we -- whether we vote to approve or deny or -- for Molokai because I think Molokai is so different from all the other -- from Maui County, and we're so individualized, if we say -- if we do not approve, our Commission does not approve, then -- and Lanai and -- does not approve, but -- but will it still happen? Yes, Lori?

Ms. Chen: Chair, can I ...(inaudible)... that?

Chair Buchanan: Go ahead, Stephanie.

Ms. Chen: Okay. Thanks, Chair. So, Commissioner Mowat, the answer is the Council has the discretion to basically do what it wants with this legislation, so the Council is asking, you know, via the Charter, for the Commission's comments on the proposed legislation, and since the Commission does appear to have strong feelings about some of the language, I would certainly suggest that the comments be transmitted to Council whether that's today or at the next meeting, just sometime within that 120-day period so that if the Commission does want Molokai to be exempt from some of these changes, that that it's transmitted to them. But, ultimately, Council would have the discretion to agree with the Commission or disagree.

Ms. Mowat: Thank you. Lori, you on mute.

Chair Buchanan: I try to be da kine. Sorry. So, Jordan said that we get until March to come back with recommendations on this proposed bill ordinance -- for ordinance. Is that correct, Jordan?

Mr. Hart: I think I need to double check the dates of the meetings. March 8th, I believe is the date it needs to be transmitted.

Chair Buchanan: So, if we defer, Bridget, we would have until then to come back and -- and say yes, no, yes, no, yes on 19.04, no on 19.08, that kinda stuff, or give recommendations and the reason why we no support because then the County Council going make the decision, yeah? Then we have to work with our Councilwoman. Jordan?

Mr. Hart: Chair, I do think that we need to have the minutes from the -- from the meeting, so we will need a little bit of time, but -- but there definitely -- I think that one more for sure, and then let me check the -- the calendar to see

Chair Buchanan: Okay. So, Bridget, ideally, we would have some feedback for them by the next meeting because, remember --

Ms. Mowat: Okay.

Chair Buchanan: We going -- we going move to the heavy industrial district next. To me, this kind is all important. These little changes are substantive to me 'cause they not little.

Ms. Mowat: So, can I make a motion?

Chair Buchanan: Yeah. Go ahead.

Ms. Mowat: I'd like to make a motion to defer the action on the proposed bill to gather specific additional information, and that would be the information that, Lori, you pointed out, and if anybody else has anything else. I just would like to see the -- just a little bit more time for the community and myself how it's going to affect us.

Chair Buchanan: Okay. Thank you. There's a motion to defer. Is there any second for discussion?

Mr. Poepoe: Chair, Commissioner Poepoe second.

Chair Buchanan: Okay. It's been moved and seconded. Any discussion? Commissioner Kelly. Oh, we no can hear you, Commissioner Kelly. No, we cannot hear you still yet. Sometimes I gotta disconnect my -- your hearing -- your stuff. You can use the chat too or phone in. Okay. Anybody else get any comments? I have a -- my comment is this -- this -- I just saw one new house go up in Ranch Camp. According to these changes, they will be nonconforming. I -- I -- I pretty darn sure they going be nonconforming. I know a number of homes on Molokai that going be considered nonconforming because of the impervious surface. And so, I just want to make sure that this community knows because, at the point that they might go in for an accessory use and find out that they are nonconforming, it's going to be a shock, and then they're going to say, when did this happen? And we going say, well, we had one Planning Commission meeting, the County Council, you know, I mean, the Planning Department made a change in ordinance. And so, I see that happening all the time so that's why I just don't want it to be a surprise. It's like ag, yeah? You build one mansion or one gentleman's estate on ag where the primary use is ag, and then you find out ...(inaudible)... so because -- go ahead, John Pele.

Ms. Kelly: Can you hear me now?

Chair Buchanan: Oh yeah, Debbie.

Ms. Kelly: Okay. Sorry. Sorry.

Chair Buchanan: Okay. Hang on, John.

Ms. Kelly: This is how -- yeah. No, sorry. This is how much I don't know. So, when you say it's a setback, it's based on the size of the dwelling that's going to be there or is there a specific setback, like five feet in, ten feet in, because how would we know? That would be my question because it's -- nothing is to scale, there's no dimensions as far as I understood the front setback is more than the sides and back and whatever, but what is the setback? If that could be cleared up because the general public is going to ask the same thing so could that be clarified?

Ms. Takakura: Chair Buchanan, if I may? So, we're not proposing any changes to the setbacks, that's been in the code since probably 1970, but, for residential, the front yard setback back is 15, one-five, feet, and the side and the rear is six feet, and then for two-story buildings, it's ten feet, and so that's the setbacks for residential zoning districts, and it's going to depend on what zoning the lots, because it might be different for, say, interim or ag. Each zoning district has its own setbacks and, like I said, we're not proposing to change it for --

Ms. Kelly: Okay. Thank you.

Chair Buchanan: Good question, Commissioner, that's why it is confusing 'cause everybody get their own set of setbacks.

Ms. Kelly: Yeah.

Chair Buchanan: Okay. So, we in -- it's been moved and seconded to defer. Any more questions? John Pele.

Mr. Pele: Yeah, just for clarity. This -- this this decision lies with the Council anyway so whether we give them an opinion, don't give them opinion, give our opinion and they don't listen to it, so when people are applying and they find out about these -- these ordinances, it is the County Council's decision on these ordinances. I just want to make sure that it's -- we're making it sound like it's our decision and we're making the plans, but I want to be clear that no matter what we say, the Council might just tell us to kick rocks and do what they want to do anyways. I mean, 'cause there's flip sides to both of these things. Right? What might be negative for somebody, might be positive for -- like for me, personally, I love the fact of being able to have a high fence. Fences make great neighbors, to me. That's me. Seven foot. I wish I could build a 12-foot fence sometimes between me and my neighbor, but that's just me, right? So, there's always different ways that people look at some of the ordinances that -- that we have. And -- but I just want to make sure that I'm clear that the Council is making this decision on this ordinance, it's not the Molokai Planning Commission. Is that correct? Or am I -- they could -- they could take our

suggestions and just put them on the wayside and do what they're going to do anyways. Am I misunderstanding?

Ms. Chen: Chair, if I may? So, yes. Commissioner Pele, that's -- that's accurate. You're transmitting comments to the Council for the Council's consideration and adoption of the proposed ordinance, but they will consider your comments, they generally do, but that's what Jordan was talking about with the minutes, the Department will transcribe all of the minutes from these meetings where the Commission discussed the matter and transmit that to Council along with the specific comments that the Commission has and that will all be included in a letter, a transmittal letter to Council. But, yes. Ultimately, it's up to Council to adopt the law as it's written, change it, or to not adopt the law at all.

Mr. Pele: So, is it safe for me to say that our community should be -- really be focusing on the County Council on all these matters? Not -- not -- so -- I mean, they could pass - - they could pass their feelings onto this Commission, and we could transmit those -- those feelings to the Council but those feelings still might be ignored, so is it safe for me to say that people should be advocating to the Council directly on a lot of these things? 'Cause we know, we say we want our community to talk, and I'm just trying to go back on all the meetings that we have here on Zoom, I have yet to have anybody from the public testify, that I can remember, in all the meetings. I mean, we've been saying, oh, our community doesn't have a chance to put input for the five years that I've been on this Commission, and nobody ever has input as much as we would like, but I just want to know if we should, you know, I think we should advocate to the community that the Council is where they should be voicing their concerns because whether they -- they give their concerns to us or not, Council might just say, whatever.

Ms. Chen: Well, I think the idea behind having each of the three planning commissions conduct a public hearing regarding any proposed land use ordinance that is prepared by the Director or the Council is to give, you know, that specific community another opportunity to appear at a public hearing at that level before the wording is, you know, maybe finalized by the Department and then transmitted, or before the Council even considers the matter. So, it's kind of an opportunity for the public to get in there at the ground level. Certainly, the -- if anybody is concerned about the language as it goes through, there -- I would certainly encourage them to attend subsequent meetings at the committee level and then at the Full Council level, but I think this is just another opportunity for the public. So, I wouldn't say that they shouldn't come and transmit their comments. Their -- public testimony at these meetings is often considered by the Commission and could be included in your transmittal to the Council.

Mr. Pele: Oh, most definitely. I just get -- I think with -- I have to go back and say with Covid, it's been easier to testify now at these meetings. You can testify from your cell phone.

Ms. Chen: Yep.

Mr. Pele: Whereas -- whereas, previously, you had to come to Mitchell Pauole, take time from your day, take off, drive into town, and that was the complaint that we've always heard. Now, you can go on your cell phone, park on the side of the road, and give your testimony, but I still don't see a lot of testimony. So, maybe I'm wrong. Maybe I haven't been paying attention during the meetings, but we still don't have a lot of public input, and that's all I'm trying to say, it's -- it's been lacking. So, whatever. I'm good.

Chair Buchanan: Okay. Thank you, Commissioner Pele. Yeah, I wish people would participate more, but I did want to say that our County Council is pretty awesome. They actually do care about what we say and they rely heavily on the Planning Commission and their feedback in order to make decisions for this community because Molokai has a reputation, so they always want to know, and then so it is each one of our duties. We do have a fiduciary duty to our community. So, we'll try harder to try and find one way to have more outreach, maybe through The Dispatch, I not sure, but -- but yeah, I would -- I think we all like more participation. Is there any more discussion on the motion to defer? Okay. Thank you. If not, then I going call for the vote, and we have to do a rollcall. So, Commissioner Bridget?

Ms. Mowat: Aye.

Chair Buchanan: Commissioner Kelly?

Ms. Kelly: Aye.

Chair Buchanan: Commissioner Moss?

Ms. Moss: Aye.

Chair Buchanan: Commissioner Pele?

Mr. Pele: Aye.

Chair Buchanan: Commissioner Poepoe?

Mr. Poepoe: Aye.

Chair Buchanan: Commissioner Moore?

Mr. Moore: Aye.

Chair Buchanan: And the Chair votes in the affirmative.

**It was moved by Commissioner Bridget Mowat, seconded by Commissioner Laakea Poepoe, then**

**VOTED: to defer the action on the proposed bill to gather specific additional information, as discussed.**

(Assenting: L. Buchanan; D. Kelly; W. Moore; K. Moss; B. Mowat; J. Pele;  
L. Poepoe)

(Absent: C. Machado)

(Excused: L. Albino - due to technical difficulty)

Chair Buchanan: Motion carried to defer. Thank you very much. And, we can speed right along. Jacky?

Ms. Takakura: Thank you, Chair. If you have specific things you want me to research further, can you let me know and I'll do that.

Chair Buchanan: Okay, Jacky. Thank you. Will do. Anybody need a five-minute? No? Okay. Moving right along to under item B., Unfinished Business, number 2:

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

2. **MS. MICHELE MCLEAN, AICP, Planning Director, referring to the Molokai Planning Commission a proposed bill to amend Maui County Code Chapter 19.26 – M-2 Heavy Industrial District, to allow apartments when located on the same lot as business or industrial uses and when the property is located within 500 feet of any property with existing residential use; transient vacation rental use is prohibited. (J. Takakura) (At the Commission's December 8, 2021 meeting, the Public Hearing was opened and closed. This item was deferred at the December 8, 2021 meeting.)**

**The entire text of the proposed bill for ordinance is available at:  
<https://www.mauicounty.gov/DocumentCenter/View/129722/Bill-for-Ordinance-updating-Chapter-1926---M-2-Heavy-Industrial>**

Chair Buchanan: Jacky?

Ms. Takakura: Thank you, Chair. Again, I do have a short presentation so I'm going to share screen. Can everybody see the blue and white? This one is -- it's not very long so



MOLOKAI PLANNING COMMISSION  
REGULAR MINUTES  
JANUARY 26, 2022

**A. CALL TO ORDER**

The regular meeting of the Molokai Planning Commission was called to order by Chairperson Lori Buchanan at 11:02 a.m., Wednesday, January 26, 2022, via BlueJeans Meeting No. **236940443**.

Chair Buchanan: Okay. Aloha and good morning, everyone.

Ms. Mowat: Good morning.

Chair Buchanan: Good morning. Welcome to the January 26, 2022 meeting of the Molokai Planning Commission. We are on item A., the Call to Order, and so, under Call to Order, there are several ways to participate in this meeting today, and you can contact us through our board secretary, Suzie, from the chat function. Reminder that the Commissioners will not use the chat to contact each other, and you can also unmute yourself and state your name for the record, and then I can swear you in when we have - if we have a public hearing, which I believe we do have today. So, Commissioners, are there any additions or amendments to the agenda as posted? Okay, seeing none, we can move right into item B., Unfinished Business, item 1:

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

**B. UNFINISHED BUSINESS**

1. **MS. MICHELE MCLEAN, AICP, Planning Director, referring to the Molokai Planning Commission a proposed bill to amend Maui County Code Chapter 19.04 – General Provisions and Definitions, and Chapter 19.08 – Residential Districts, to revise definitions and clarify code provisions regarding yards and setbacks; increase housing options and sustainability, and codify practices regarding the uses and standards of residential zoning districts. (J. Takakura)**

**(At the Commission's December 8, 2021 meeting, the Public Hearing was opened and closed. This item was deferred at the December 8, 2021 and January 12, 2022 meetings.)**

The entire text of the proposed bill for ordinance is available at:  
<https://www.mauicounty.gov/DocumentCenter/View/129345/Draft-Bill-for-Ordinance-amending-1904---General-Provisions--Definitions-1908-Residential-Districts-09282021>

Chair Buchanan: So, with that, I think we have Jacky or is -- do we have -- oh, there you are, Jacky. Okay. Thank you, Jacky. All or yours.

Ms. Takakura: Good morning, Molokai Planning Commission. Good morning, Chair Buchanan. So, I'm going to share screen again, and we're going to go over this one. And I thought we could just go over the changes, and if you have questions, we can try to address them as we go through it if that's okay with you. So, this is just going into detail about the proposed revisions and updates we have to these two chapters of the Maui County Code, 19.04 and 19.08.

We're going to start with 19.04, and this first part is compliance, and what I have here is, on the left side, is what we have now in the Maui County Code and, on the right side, is the proposed revisions so, hopefully, by comparing the two, you can see exactly what it is that we're trying to fix, like, for example, for this one, in the existing, we have buildings and subdivisions combined. But if you think about a building, and you think about a subdivision, they're really two different things, and so what we're doing here is breaking out the subdivisions to have its own line, and it's actually just a movement because you see the exact same wording about the no land can be subdivided unless the subdivision complies with the provisions of this title, that's taking that exact wording and moving it to its own line so that subdivisions is separate, and then the part that's remaining, just saying buildings and structures 'cause those are both words that are in the -- the definitions. So, that's basically it for this. This part down here about permitted uses, right now, it's kind of written in the passive that there may be permitted in these districts, and we're just saying, "In the zoning districts, the three categories of uses are permitted." So, it's just a simpler way of saying it and not in that passive tense. And I think you'll see the general trend of, throughout the County, is trying to put things into more simple and layman's terms and just regular, you know, language and so that's part of what this is. Any questions on this page about compliance? Is that pretty straightforward?

Okay. So, I'm going to go to the next one then. And yeah, if you have questions, let me know. Okay. So now we're going to move to definitions, and, right now, we have this definition in there now that is "Front of lot," and that's the front boundary line of a lot bordering the street or closest to the street, and in the case of a corner lot, can be either frontage, and we're just changing it to say, "every lot line bordering a public or private street, the driveway provides access to the lot area." And the reason we're doing this is because sometimes you have a lot and the line is not an exact straight line, it might be a little curved this way and a little bit that way 'cause, you know, land is not perfectly flat, right? It's got topography and different things, so it may not be one single line and some people try to say, well, what about this portion of the lot line and that one and this one? We're trying to say that the whole thing that's bordering the public or private street is the front lot line, just to make it really clear, even if it's not exactly one straight line, this, and a little bit crooked because that's how land is. That is all the front of the lot line. Does that make sense? Because on paper, sure, things can be one straight line, but in land, it may not be exactly one straight line. Does that make sense because in -- in -- on a land,

on a plot of land, a lot line may not be exactly straight, whether it is or it isn't, it's the front of the land line. We can come back to any of these if you have questions later too. Okay.

The next proposed definition is to add "impervious surface," and that's the like concrete, like a surface covering or pavement that prevents the land's ability to absorb and infiltrate rainfall or storm water, and it can include rooftops, walkways, patios, driveways, parking lots, impermeable concrete and asphalt, anything that prevents water from soaking down into the ground, and all this is doing here is adding a definition because there's no definition in the code right now. So, this, in and of itself, doesn't change anything. It's just putting the definition -- definition as part of the code. And, I did consult with the Honolulu Department of Permitting and Planning, and so it's consistent with theirs, you know, if -- if a developer works there, they have a consistent definition here, too, so that, you know, it's not something that's out in left field, but it's something consistent, but that's just a definition. That's all it is.

Okay, so then we have this other definition "Lot line front," which sounds very familiar to the ones we had two -- two slides ago, right? So, instead of having redundant definitions, it's just going to say go see the other definition, "Front of lot." So, just one definition for the one thing instead of two separate definitions.

And now, we're moving into setbacks. Right now, we have this term "yard," and open space on a lot unoccupied and unobstructed from the ground upward by any structure except as otherwise provided in this article. Changing that, we'd like to change it to say, "setback area," that's the general trend to get away from the term "yard" and saying "setback area," and that's the area between the setback line, established in the zoning district, and the lot line, which includes the boundary of public or private streets. So, you've got two lines there: You've got the -- the lot line, the other side is either the public or the private street, and then you've got to set -- setback line is in the -- the chapter of the zoning district, and that area would remain unoccupied and unobstructed from the ground upward, so that's open for access, like say, you know, if the fire or EMTs need to get back there or something, it's open and unobstructed. So, it's actually quite similar to the existing definition but just using this term "setback area" we're trying to get to.

Chair Buchanan: Hey, Jacky?

Ms. Takakura: Yes?

Chair Buchanan: This is Lori. I had a question about that.

Ms. Takakura: Okay.

Chair Buchanan: The setback area, the last sentence, "except as specifically allowed in each zoning district."

Ms. Takakura: Yes, Chair Buchanan. So, it's going to vary depending on if you're looking at, say, hotel zoning or residential zoning or interim or ag zoning. Each one has its own setback number of feet, and so this just gives the definition, but to know exactly what the setback is, if it's 10 feet or 15 or whatever, you have to go to the zoning, that chapter, like, you know, ag or interim or rural chapter.

Chair Buchanan: Okay. Thank you.

Ms. Takakura: This kind of refers to that. The "setback line" means the line beyond which no wall of a building or structure can project -- may project, and then it says it here that you would have to go look at the zoning district. Each zoning district specifies the distance from a lot line to a setback line because it's going to vary 'cause, you know, it's going to be different for residential, say, versus, you know, agriculture or a business district or ...(inaudible)... but also trying to see, I think you'll see this also, it's getting away from that word "shall." Shall, I guess, is kind of a vague term. Is --

Chair Buchanan: Thank you, Jacky.

Ms. Takakura: Yes?

Chair Buchanan: Eh, Jacky, just as you go through each one, because this is probably now the third time we've heard it, I'm actually writing next to each one whether I, personally, support that or not, so when you go back and you going to ask us for feedback, other than the feedback you received the first time around, maybe we can be really specific, and I think your table, at the last time, was really helpful, so thank you for that. So, please --

Ms. Takakura: Thank you, Chair.

Chair Buchanan: Go on. Thanks, Jacky.

Ms. Takakura: Okay. So, the next one is about streets, "private street." There is an existing definition and what we're doing here is adding the word "easement," and then taking out this part about the fees 'cause we would not be able to look that up, who paid and when and all of that stuff, so that's -- it's very impractical to have that. I'm just going to remove that altogether and just say it's open passage land, easement, or right-of-way, so forth, so that's the change for - add this word "easement," and then take out this part about the fees. Next one. Okay --

Chair Buchanan: Jacky?

Ms. Takakura: Yes?

Chair Buchanan: Can I ask you why they took that out?

Ms. Takakura: Because when we're doing research, we can't -- it's -- it's almost impossible to try to find that part about the fees because some of it's from like the '50s or the '60s and it's just, yeah, it's not useful information and it doesn't help. We can already tell if it's a private street or not. It's just not necessary.

Chair Buchanan: Okay. I -- thank you. I was just thinking about all the trouble in Kakaako, in Honolulu, where you have huge battles between the private street owners and the State, the battles of who's, you know, going to enforce it. So -- so if the County doesn't have a problem with that, okay, then I going be curious, at one point in time, how the county does handle that. Okay, so thank you, Jacky.

Ms. Takakura: I think if that were to come up, we could, you know, ask Public Works to research that, and, hopefully, we don't have problems like over there. So, the next one is -- is similar to some of the previous ones about setback, and that's this "access yard," which is a present definition, changing that to "setback area," and it's basically saying it's the same as the front setback area. I think we talked about this one a little bit before. And then, these are all going to be similar about the yard, front yard, change that to "front setback area," and, to me, 'cause I'm not really very, you know, I'm not an engineer anything, some of these definitions, the existing definitions are kind of, you know, you gotta stop and think about it, the depth of which shall be the least distance between the front lot line and the front of the main building, so I have to get a piece of paper and kind of draw it out, whereas, what we're trying to do is have a little bit simpler definition, simply saying this area is going to be inward from the front lot line to the front set back line, period. So, if you think about the front line where the property line is to the front setback line, and that's what it is, and it's simpler to understand, especially for a layperson as compared to the ...(inaudible)... and then, this one, the rear yard one, to me, is even harder because then you have this nearest part of a main building at a 90 degree angle from the -- so, instead of all of that math, this says, "The setback area extending inward from the rear lot line to the rear setback line," period. So, it's much simpler versus having to think about these angles and all of this depth and stuff like that. Look at the property line in the back setback area, back, and that's your rear setback area. It's real simple. Even this one for the side, same thing. It's just really simple. Setback area extending inward from the side lot line to the side setback line. And, as you saw last time, just adding some pictures to help people understand, you know, different possibilities of where these setbacks would be. And then, this is another -- just an example of what it would look like for like, say, a residential property. Here's the driveway and the garage and that makes this be the front, and then you've got the sides here, and then the back is the rear. So just visually ...(inaudible)...

Chair Buchanan: Yeah, thank you for this but, Commissioners, if you guys have questions and I not seeing you, just unmute yourself and ask questions. Thank you.

Ms. Takakura: Yeah, please feel free to ask questions. Then I'm going to move to the residential chapter and just some of the revisions there. This first one, this first part is the stuff that's allowed, the permitted uses, outright allowed, you know, no need come to Commission or anything, it's just outright allowed as a permitted use. This first one, it's just some minor revisions about the greenhouses. Right now, it says "flower and truck gardens," but that's pretty much the same thing as a plant nursery and raising of plants, flowers, and fruits or vegetables, so just taking out this redundant part, and then this wordage about except that there shall be no, you know, it's except as provided, it's clearer if you just say it once, except for retailing or transacting a business on the premise, unless it's allowed by the home business chapter. It makes it a lot simpler. So, that's just that one for this permitted use, taking out "flower and trucks gardens" because it's already included and understood as plants and raising of plants, flowers and fruits. Simple language. The other permitted uses about the schools, just rearranging the wording, it already says, "publicly or privately owned," and we're just putting that in the front, "privately or publicly owned and operated schools." And then, this is the one we talked about a little bit about the accessory things on the same lot, and, right now, it just says that they're allowed, but it doesn't say, oh, but they can or cannot be built first, and so it's not clear, so people have to come and ask, and then we gotta talk about it and make a decision, but we'd like to make that it -- make it clear that it is okay to build, you know, if you need a retaining wall first or maybe you want to build the accessory dwelling first, if that's all you can afford at the time. So, I just want to make that clear that it is okay to do those things first if you need to and build the main structure later. That's what the purpose of this change is. Any questions on that one? Because we've had people come in and then, you know, we have to talk about it because it's not stated and then this would just make it really clear that it's okay to build your retaining wall if you need to. Okay. So, the next one is permitted uses --

Chair Buchanan: Hey, Jacky?

Ms. Takakura: Yes?

Chair Buchanan: I sorry, Jacky. That one I had to -- can you go back?

Ms. Takakura: Yes.

Chair Buchanan: I sorry. I was -- I had to think about that one. But the -- you adding "uses and structures" 'cause that's underlined, and then "subordinate" is also you adding, and then you taking out "buildings" and "necessary," yeah? And then, you adding, "The initiation of accessory uses . . ." Is there a list of that someplace else? The determination of accessory?

Ms. Takakura: I'm -- I'm looking. Thank you, Chair. I'm looking in -- it just says, "accessory buildings on the same lot, the use of which is customary." Let me look in the definitions. But those are pretty much understood to be, you know, walls, driveways, the garages, it could even be the accessory dwelling unit, but I'm going to look in the definitions.

Chair Buchanan: Yeah. I mean, yeah. Okay. No, I just -- I like be real sure.

Ms. Takakura: Yeah.

Chair Buchanan: Because I know that this Commission has approved accessory dwellings, you know, before the main homes were built. So yeah, I just, I just making sure it's someplace, yeah, to be really clear.

Ms. Takakura: Yes. Thank you, Chair. So, in our definitions, we do have definitions for "accessory building," it means a portion of the main building or a detached subordinate building located on the same lot, the use of which is appropriate, subordinate, and customarily incidental to that of the main building and use of the land. There's also "accessory building or structure," and that's a structure detached from the principal building, so I guess that could be like a detached garage, customarily, incidental, and subordinate to the principal building for use and not used for human habitation. So, could be either. And then, we do have a definition, as you know, for "accessory dwelling." And there's a whole chapter on that one. So, yeah, we do have definitions in 19.04, so thank you for making that clear.

Chair Buchanan: Okay, Jacky, I think, you know, those three words that you went use that is not practical or whatever to the main use, I think we had trouble with someone building something on the shoreline and that became an issue, that accessory, whatever they built on the shoreline, was kind of in question, and somebody did a request for service, so someplace if you can have that definition, maybe, you know, include 'em or attached to this 19.08.040, permitted uses, the uses to further define the word "subordinate." I mean, I had -- I mean, I even seen arguments that columbariums and other stuff for cultural practices are subordinate and accessory to uses, and then all of that went to court, so that's the only thing that worry me sometimes is if it's not defined, and left open to interpretation, you know, who's interpreting it, and if sometimes it's only staff, and then when people see it go up, then they come back to the Planning Commission and go, eh, you guys went approve that, and I'm like, what are you talking about? I never even see that. So, that's my concern, the just defining. Sometimes you guys use protocols, like to define stuff that is gray. So, what you just read to me, Jacky, there's like three words in there. I'm like, okay, who's deciding that it's appropriate or subordinate or -- to the primary use? Because that's when we get all of this, oh, it's

nonconforming and all this kind stuff. That's my only feedback on -- on this one right here, the proposed changes, yeah?

Ms. Takakura: Yeah, so appropriate, subordinate, and customarily incidental, so those would have to be customary, incidental, usual, and subordinate to the main building or use of the land, and here we're only talking about residential, and so it would have to be, you know, customary, incidental, usual, subordinate to a residence, a house, you know, somebody living there. It would be pretty limited.

Chair Buchanan: Yeah. But I think I would just like know what the -- what the -- the County would define as "customarily incidental." Okay, that's my feedback. Hi, Michelle. You have feedback on that question?

Ms. McLean: Well, I just wanted to comment that we don't have a precise definition because the kinds of things that are customary and incidental really evolved over time. Generally, these things, you know, 99 percent of the time it's a storage shed or a dog house or a playhouse for kids, garage, carport, those kinds of things, but, every now and then, we'll have a request for someone who wants to do a little art studio, or they want to do a mancave in a detached structure, or a yoga studio, which is relatively new, or I should say a yoga room. You know, these things aren't commercial. They could be conducted in a room of the home, but they want to build a separate structure, and, you know, they're not commercial, they're not a predominant use of the home, it's something that could be conducted in the home but they're choosing to do it in a separate structure so those things have been allowed in the past but, like I said, they -- they evolve over time so that's the challenge with doing a list of kinds of uses; if something's not on that list, it can't be done and, you know, we don't want that kind of rigidity. But when it comes to things on the shoreline, that -- that doesn't have to do with the use being allowed by the zoning, that would be more an SMA or shoreline permitting issue and both of those would have to be satisfied for something to be allowed. Thank you, Chair.

Chair Buchanan: Okay. Thank you. I just wanted to raise the concern and I guess I got my answer. So yeah, it is gray. You know, I hear that if the -- the incidental use, whatever it might be, cannot be -- you can't be making money off of it. Right? Because then we gotta do a request for service and then investigate it, and it's like short-term rentals, you can't prove it.

Ms. McLean: Well, there are -- the -- the code does allow certain kinds of home occupation uses, but it's really, really limited. You know, it's a small percentage of use of the structure, there are -- there are restrictions for that. And our concern, again, with it being accessory is that that doesn't become the predominant use of the property. The predominant use of the property still has to be residential and these other things are secondary and accessory to it.



Chair Buchanan: Thank you.

Ms. Takakura: So, the next proposed change in residential permitted uses is not -- not a change in the use because it's already existing, the day care nurseries and kindergartens, it's simply to add that otherwise required pursuant to Chapter 46, Hawaii Revised Statutes, and that's 46-15.35, which regulates family child care homes and allows them as a permitted use in residential area so, you know, it's required by Hawaii Revised Statutes, so what the -- what the State laws allow. And then, this is also something that's allowed by State law, and so we're including it, and that's family child care homes, hospice homes, adult residential care homes, and adult family care homes, as required, pursuant to Chapter 46, Hawaii Revised Statutes, and that's 46-15.3, 46-15.35, and 46-15.36, those are all State laws that allow these types of homes in residential areas. That's State law.

Now, we're moving on to the special uses, and these are the things that would come before the Commission for approval. This one is really no change in meaning, but then we get asked, well, what about this and what about that? So, this one, we are doing some examples. We're adding on that, for churches, including any accessory buildings such as a parsonage, a Sunday school, nursery school, thrift shop or office, not really a change, just some clarification on special use, which, if it came up, as I mentioned, would come before the Planning Commission. Okay. This next one is similar to the one that was in the permitted uses, but this is one that does not meet that criteria of permitted use so these might be ones that are a little bit bigger, have some unique circumstance where it doesn't meet the -- this one, that's allowed outright, so this would be nursing or convalescent homes and domiciliary facilities operated and maintained to provide nursing or supporting care that do not meet the criteria of the one that you just saw in the permitted uses, and so this one would go beyond what State laws allow and would be subject to Commission review, and that's actually already listed as a special use.

Chair Buchanan: Okay, Jacky?

Ms. Takakura: Yes?

Chair Buchanan: Okay. Sorry. If you can stop right there, and then go back to the prior one about the churches. Okay, so, you know, so the existing is churches, including any accessory buildings, and then proposes churches, including any accessory buildings such as parsonage, Sunday school, nursery school, thrift shop or office. So, why are we adding this type of stuff if we're not adding it elsewhere if we don't want to be restrictive for churches? Maybe Michelle can chime in, you know, because now we're listing what the churches would be such as but it doesn't -- it's not an exhaustive list, but I just wondering why this was added instead of leaving it accessory buildings.

Ms. McLean: In this -- and that's a great question. In this case, because some of these uses, if they were standalone, would not be allowed in the district so a thrift shop, all by itself, could be considered like a retail use, an office is usually an office, the schools considered schools, the parsonage considered a residence, so because those uses by themselves are distinct recognized uses, there have been questions about, well, can that be accessory to a church because that, you know, that goes beyond, you know, just the -- the sole use of the church and so we felt it was important to clarify that because there have been questions over time whether those -- those things were allowed, so that's why.

Chair Buchanan: Director McLean, has there been any targeted and focused outreach on this type of changes to 19.8.040 for the community other than the Planning Commission and whatever else the Department is doing to let people know of proposed changes?

Ms. McLean: No. I don't believe so. We -- we got agency comments, but we didn't do community outreach because they were essentially what we call housekeeping revisions and not substantive changes.

Chair Buchanan: Okay. So, I don't know about this because if you going start listing stuff, you know, you're not even talking about whether it's a nonprofit because most churches are nonprofit churches and -- and you are talking about churches within residential areas, which I would think somebody went and defined, you know, what is accessory to a church, and then I think it's depending on what church you go to, you know, not that all churches have nursery school and a thrift shop, you know, some churches do a lot of other things, but I think -- I just think it should have been more of a community type of discussion. And, when you start talking about naming stuff, like the Director pointed out, you know, I think if existing, if you leave the existing, it leaves it to interpretation, but I don't know, just something about it just makes me wonder if it's going to be restrictive to churches that work and do a lot of other things than just having a Sunday school, nursery, and thrift shop. So, okay. Thank you. Can -- can we go back to the next one? Yeah, the nursing home. What is Section 19.8.020? What was that again?

Ms. Takakura: Thank you Chair. So, this part here is the one that we talked about previously that they're outright allowed. Those are the ones that meet the Hawaii Revised Statutes 46-15, so this would be ones that do not meet that criteria so they're a little bit bigger and I can ...(inaudible)...

Chair Buchanan: But why -- so why are they allowed if they're bigger and they nonconforming under 19.8.02 does -- does the County want to make it -- make -- make it a use? Why is that?

Ms. Takakura: So, these would be subject to Commission approval if the Commission wanted to approve them?

Chair Buchanan: Goodness.

Ms. Takakura: So, right now, the HRS allows I think it's up to like six people, but say, you know, somebody wanted to have -- they have room for seven or eight or something, then they could apply and come before the Planning Commission to seek the Planning Commission's approval if they wanted to do that, so that's an option, but it's for ones that don't meet the criteria of the -- in -- as an outright permitted use that's required by State law.

Chair Buchanan: How long is the list of special uses now under 19 -- Chapter 19? What -- what is the -- for residential?

Ms. Takakura: So, right now, it's under special uses, there's A through I. There's nine special uses.

Chair Buchanan: So, with this, going be 10, or we going be 11 or 12 or whatever by the time we get through our presentation? So, all of these stuff now you making, you know, the Planning Commission is going to now have to approve special uses, and then I forget what is the process for special uses and then ...(inaudible)...

Ms. Takakura: So that would be a special use permit, but this is already existing in the code.

Chair Buchanan: Yeah. But we talking about here that don't meet the code right now?

Ms. Takakura: Yeah, so this is bigger ones that are beyond what's already outright permitted by State law.

Chair Buchanan: Jacky, is it really hard to go back to 19.8.020? And let me see that State law. There you go. Okay, this is a big blanket.

Ms. Takakura: Oh, sorry. What I can do, Chair, after is I can -- I have the State law in a word document, I can screen share that also, but it's in a word document, but we can go to that after if you want to look a little bit ...(inaudible)...

Chair Buchanan: Yeah, that would be great since -- since we already saying that, you know, that's why people get confused because it's pursuant to so many other overlying statutes and ordinances. Okay. So, if we can go back to the special uses.

Ms. Takakura: One more thing about this, the churches one, this is just such as a parsonage and so forth, but it's not limited to these things. These are just examples of things that people have asked about it's okay, or is that okay and -- the church.

Chair Buchanan: Okay so -- go ahead, Bridget.

Ms. Mowat: Maybe you should -- maybe you should add "such as but not limited to."

Ms. Takakura: Thank you. That's a good idea. Okay. So, this is back to the nursing homes and we can take a look at HRS a little more closely after this. And, is it okay to go to the next one?

Chair Buchanan: Yep.

Ms. Takakura: Okay. Okay. So, this is already an existing allowed special use and that is housing for the aged, and what we're proposing is to change the -- allowing the density to be increased by not more than ten percent to say that it's increased by not more than 25 percent and that's because, as you know, we do have a housing crisis and we do need to take care of our kupuna, so we would like to allow that by more than 25 percent and that's, at that point, it would trigger coming to the Planning Commission.

Chair Buchanan: Jacky, all of the special uses get triggered to the Planning Commission?

Ms. Takakura: That is correct.

Chair Buchanan: I think the only thing to point out here is you're saying housing for the aged operated by the government or a nonprofit.

Ms. Takakura: Yes. That's the existing language.

Chair Buchanan: Yeah. Okay. Right now, I'm not supporting it, but thank you. Anybody get questions?

Ms. Takakura: Just the similar -- similar one and that's for our neighbors who are low and moderate-income families, same thing, allowing it to be increased to 25 percent. Anything more than 25 percent would require a special use to try to do whatever ...(inaudible)... Okay. And then, this one is actually a correction because this home businesses is listed twice, it's listed as a permitted and then it's listed again as a special use, so I think that was a mistake. It should be listed under permitted uses, that's correct, but here it should say home businesses that don't meet the requirements of this Chapter 19.67. Chapter 19.67 is the chapter about home businesses, and so if it doesn't meet this chapter, it should come to the Planning Commission. So, this is actually a -- a correction to an error because it's listed twice, which is it shouldn't be listed twice. It should only be listed once under permitted uses and if it doesn't meet these rules, it's got to come to the Planning Commission. And then, now, under special uses, we're proposing to allow duplexes because we have the housing crisis and we need more housing. So, we're proposing to

allow small, very small retail food and beverage establishments, like in Wailuku, down the street, there's a small store, it's real small, like 1800 square feet, and you can, you know, you forget your lunch, you can go pick up lunch or you forget something you can go there. That's the idea is that you can walk to this place that's nearby, get something, it's small, it shouldn't be very disruptive because it's very small, allow that as a use, but it would come before the Planning Commission if somebody wanted to, but that's to reduce the having to drive; that's, basically, the purpose for allowing this. Walkability. If I have to go pick up something.

Chair Buchanan: Hi, Jacky.

Ms. Takakura: Yes?

Chair Buchanan: Can you -- can you define "gross covered floor area?"

Ms. Takakura: So --

Chair Buchanan: That's -- that's 2,000 feet, only the building?

Ms. Takakura: Correct. That wouldn't include the parking or anything outside, and, really, you should just be able to walk to it. It should be something real small, like if you're in Wailuku, Kaohu Store I think is 1,800 square feet. There's another one out in Haiku, I think it's Hanzawa, it might Fukushima Store, but it's real small, just like that. And, actually, you know, if you think about these stores that are still existing, these are how -- how it was in the, you know, small-kid time when the stores were small and they weren't that far away, you could just walk to it, kind of to bring that back if people can just walk there, but real small.

Chair Buchanan: Thank you, Jacky. Well, 2,000 square feet is not real small on Molokai because most of our residential homes built under USDA rural housing development were, at the most, 1100 square feet and, I mean, I raised ten people in 1100 square feet all my life, you know, with one bathroom, which was difficult, so 2000 square feet is, you know, kind of big to me for one store in one residential neighborhood, but I thought this - there was -- there was no existing for this special use?

Ms. Takakura: Right. The examples I'm giving you, like Kaohu Store, that's actually a different zoning district, they must have gotten rezoned so that they can have the use, I don't remember what the other zoning is for those others, but yeah, you're correct. There is currently none that I know of in residential zoning district.

Chair Buchanan: Okay. So, I'm trying to think of, on Molokai, I can think of one, one special use type of establishment that is permitted on Molokai. Do you know of any, right

now, that have retail, food and beverage establishment, not including liquor stores, on Molokai under special use permits?

Ms. Takakura: Probably not, Chair. I think yours probably have like conditional permits.

Chair Buchanan: Okay. Or maybe both. I think Manae Goods and Grinds is a example of that conditional use permit. Okay, let's think about this. Okay. Okay. It's going to be hard. Okay, how does this play with community plans then? Because our community plan for East Molokai says no commercial, to not promote commercial businesses in East Molokai. I mean, that's kind of just a broad sweep of statement, but how does this work with community plans?

Ms. Takakura: Well, maybe the Director might know, but I will check with the special use permits. You know, there might be a requirement that they have to be consistent with community plans, but I have to look that up because I don't work on those.

Chair Buchanan: Yeah. You know how are we seeing that contingent or, you know, in compliance with Chapter 19.08? I don't see anything that talks about community plans, and we've always been told that the community plans are our bible and we supposed to, you know, kind of follow our community plans. Stephanie, I seen you come off. You want to see something?

Ms. Chen: Yeah. I can just help with -- so, under 19.510.070, of the code, which talks about special use permits, one of the criteria for a special use permit is that the proposed request meets the intent of the General Plan and the objectives and policies of the applicable community plan. So, it is accounted for there. Just -- just so you know.

Chair Buchanan: Thank you for sharing, Stephanie. Appreciate it. Okay. Thank you, Jacky.

Ms. Takakura: Okay, so this one is a lot of words, but it's already in the code, we're just trying to modify it, and, like I mentioned last time, we're not aware that it's ever been used, but it is to try to motivate, you know, developers to -- to encourage more affordable housing and, right now, it refers to lot size of 6,000 square feet, and we're proposing to allow that to be smaller to 4,000 square feet; that might entice some developers to try this, but we want to have the restrictions, which are already in here, that it's designed to meet the needs of low, below moderate, and moderate income families and then also have, you know, clear paths so that, you know, you can get from where you need to go from where you are to where you need to ...(inaudible)... by bicycle, you can. As an enticement, they could have more -- a little bit more impervious surface requirement. So, that's just the proposal to try to encourage more housing, what's currently on here, which, as I mentioned, we don't know that it's ever been used. Questions on that one? Okay. So, next is the development standards. We're proposing to --

Chair Buchanan: ...(inaudible)... Jacky?

Ms. Takakura: Yes, go ahead.

Chair Buchanan: I was -- I was getting trouble trying to unmute myself. You can hear me?

Ms. Takakura: Yes.

Chair Buchanan: Okay. So, on 19.08.040, you know, I -- I -- when I first read it and I continued to read it, I -- I can't say that I support the modification and the proposed changes to the 19.08.040 because, first of all, you know, there's a lot in it, but the minimum lot area, to reduce it and to -- I think it's -- all of the special uses today, so far up to this point in your presentation, I think the justification and validation of why the proposed changes are being asked for, I don't really think they valid. I mean, at least for Molokai, I have a hard time trying to justify and, for me, it seems like it's trying to -- it's trying to address nonconforming uses on Maui, you know, where we trying to catch up with Chapter 19. I mean, that's why we were supposed to overhaul it because you have so much nonconforming use right now. So, when it comes to Molokai, and you talking about all the different reasons, like walkability, you know, all that kind stuff is really not -- I guess it's not for Molokai people, it -- it's not such of one issue than it is -- than in Maui, and the old school stuff we have, like Kaunakakai Town walkability and all of the stuff we have now, Maunaloa Town, Kualapuu, you know, the zoning and everything within that, it works and it's walkable, and, you know, kids are walking to the high school from -- so, I don't like to reduce lot sizes because we have so much congestion already in lots -- and then to say you're going do duplexes and stuff, but I don't see how you going allow -- and I asked about the parking and all of that stuff before, so I see -- I don't know. Molokai people have never been one to densify ourselves because we have so much accessory uses. We have animals, you know, that might not be compliant under the -- the residential barn animal law and all this kind stuff, but, you know, nobody wants to be sitting on top their neighbor either. Yeah, I'm just -- I'm not one proponent I think of modifying the minimum lot area. You know, shared use paths, we already have that. And increasing impervious surface, I think gotta be from -- on a case-by-case basis because that adds to the cost of projects for Molokai people. So, okay. I don't know if anybody else get feedback. Commissioners, you guys get feedback on minimum lot area? Let me just say that Manila Camp, I think the residential dwellings in Manila Camp are now, currently, 6,000 feet, I don't know the exact number, but if you wanna think about how one 6,000-foot lot looks like in one housing subdivision or area, use Manila Camp as one example, and then think that you going to decrease that minimum lot size to 4,000 feet. Oh my gosh. So, that's my two cents. Sorry guys. Thank you, Jacky.

Ms. Takakura: So, development standards or height, we're not proposing any change in the number of feet, but just getting rid of the part about the stories, just keeping the feet as the proposal.

Chair Buchanan: And then, I have, Jacky, a question about that. How is density being addressed in this proposal?

Ms. Takakura: Well, in terms of a structure or house, a dwelling unit, you can still only have one kitchen for it to be a house, so it still would be, you know, considered a single-family dwelling.

Chair Buchanan: Okay. Sorry. I think I was thinking about the stories, that's the one I have problem with. Okay. We can support 30 feet. Okay. Thank you.

Ms. Takakura: Okay, and that's -- this is the part about the setbacks for residential zoning district. Right now, there shall be a front yard of 15 feet, side yard of six, rear yard of six and then it talks about two-story buildings shall be ten feet in all residential districts. So, does that mean, for a two-story building, even the bottom floor has to be a ten-foot setback? It's not clear. Then we have this memo that says, okay, the bottom one can be six-foot set back and the top part can be ten-foot setback, so we've been following this memo since 2008 and what we'd like to do is simply put that in the code so that the bottom, it's clear, setback is six, and the top, clear, it's ten, instead of having to follow this memo from a long time ago that not everybody knows about so, if it's in the code, it's in black and white, everybody can see it and can follow it. And then, it's that -- it's exactly what we've been doing all along. And then, by specifying where the change from six to ten is at, 15 feet measured from the natural finish grade, it's really clear, and everyone can see it, you know, just from the exterior, measured from the exterior. I mean, even the iPhone has a measurement tool that you can easily measure, okay, that's the 15-foot height place where the setback goes from six to ten for side and rear, it's really clear versus trying to interpret, oh, where's the floor, is it from the, you know, it just gets complicated so this is really, really clear.

Chair Buchanan: Thank you, Jack. I had a question about this too. Why is it different? What is the justification for the setback to be more as the building goes higher?

Ms. Takakura: So, thank you, Chair. For, you know, people say it's for light and air purposes so that, you know, a bigger or more blocky type building doesn't block sunlight, but what we want to make sure is that it's clear that the bottom floor is only the six-foot setback because you would like to have as much developable space as you can and not have them both be ten-foot setbacks where you'd have just a straight building, you have the bigger block and then the upper, but people say, you know, light and air, airflow and things like that, that's why you would have this, like the top of the Empire State Building kind.



Chair Buchanan: Oh, Jacky. I'm sorry. I'm wondering, like where in the world these justifications come from when people did this back in the day? Because you just -- you just told me in one breath, and it's not you, Jacky, it's the Department tells me in one breath that they want to make a developable lot for increased housing from 6,000 square feet to 4,000, and then, in the next breath, you telling me, wait, you going build one mcmansion, you gotta make sure that I can breathe and get air, so your setback, as your building go up, it's going to be less. So, I just -- it's so arbitrary. I mean, that's my feedback at this point is the special uses is so arbitrary in the validation and considerations of why we proposing stuff. I mean, I'm kinda -- I'm like scratching my head over here because, oh, I seen some mcmansions, I tell you, in Kahului when I had to park my car five miles down the road 'cause never have parking, like it's everything to me is nonconforming right now in town. So, but thank you. I can see them trying, okay, we going think about this. Thank you.

Ms. Takakura: Well, this here, thank you. Chair, is how we're doing it now, and talking about setbacks, and the reason I'm smiling is because the zoning code, you know, came, you know, 1916 was the first zoning code in the U.S. and so, in New York, you know, so that's where these kinds of things evolved from. Yeah, we want to make it clear though is that the bottom part of the house, it has a six-foot setback, the top part has the ten-foot setback, which is how we've been doing it all these years.

Chair Buchanan: Okay. So, that does nothing to further affordable housing because do -- can you go to the image? Is the image for this? A residential side and rear setback area image? Yeah. There you go. Okay. So, for no reason other than air and light for your neighbors, you gotta have one setback of ten feet when the bottom was six feet already, so you get two eaves when you could have just one eave, and you probably could squeeze one other family into that extra space in one other room over there if -- if you never have the ten feet setback. But I tell you what, if I was your neighbor, I would appreciate this, you know, as your neighbor, but as if -- if the County is proposing affordable housing, and the best use, and, you know, the six-foot setback in order to have buildable space, then this absolutely makes no sense, to me, anyway. So, I don't know. I mean, please, somebody that can be brought back to the Council before they start making -- I mean, for changes, like this kind stuff. I don't know if Director McLean wants to -- I -- I don't know why it would be -- I don't know. Thank you. I don't know what for do.

Ms. Takakura: Thank you, Chair. So, you are correct that say the second floor had only the six-foot setback, and then say the next-door neighbor had the same thing, that would only be 12 feet away. So, by having the second floor a little bit further back, like how we've been doing it all these years, just gives a little bit more space, and this is for all house, you know, all residential, not in the residential zoning district. But, what I'm-- the thing that is important to note is that, for the bottom floor, it's six and not ten here because

then that would, you know, like you were mentioning, a place that could be used for housing, living area, so we want to make it clear that this is six for the bottom.

Ms. Kelly: I have a question. Sorry. So, this was supposed to have been in effect since 2008? And, if the top floor was the same setback with six feet, there wasn't supposed to be any houses built like that? I mean, I just wanted clarification because when I go to Maui, my son's house is the same height. I mean, there's no setback for the top floor so -- and his house was just built like maybe four years ago. So, did they have to get special permission?

Ms. Takakura: Thank you, Member Kelly. So, the current language has been the same since probably nineteen seventy something. This is from like the initial code, yeah, eight -- yeah, this is like before even ordinances that the front yard setback is 15, side six, rear six, and then side and rear for two-story buildings shall be ten in all residential districts. So, it could be that the one you're thinking of, maybe the bottom floor is also ten feet setback, or it could be in a project district or, you know, another zoning district that has different rules, is what I'm thinking.

Ms. Kelly: Okay. Yeah. It is in a subdivision and all the homes were built like that.

Ms. Takakura: Could be planned development --

Ms. Kelly: Second --

Ms. Takakura: Or the zero-lot line kind, but that's different rules. Yeah.

Ms. Kelly: Yeah. It's a affordable housing subdivision. So, they wouldn't have to abide by this? Okay.

Ms. Takakura: Yes. That would follow a different set of rules. That is correct.

Ms. Kelly: Okay. Thank you.

Chair Buchanan: I -- I see your hand, Commissioner Moss.

Ms. Moss: So, I -- I have like the same question. So, if you did a ten-foot setback for bottom and top, then that means it could be one, for a two-story, so you wouldn't have to do like the tiered thing if it was all ten-foot setback? Is that what you're saying?

Ms. Takakura: Yes, Commissioner Moss. That is correct. You could have the bottom one ten-foot setback. You can always make your setback wider. This is just a minimum. So, yeah, you can always have a bigger setback if you want a bigger yard. Yes.

Ms. Moss: And not have to do the tiered wedding cake?

Ms. Takakura: That's correct. Yes.

Ms. Moss: Okay. Thank you.

Chair Buchanan: Hey, Jacky? Sorry, one last comment on this. You know, exactly what -- what Commissioner Kelly was asking, you know, because observations are made by people like us all the time is like, wow, you know, how come when we was building our house, we had to adhere to all these kind rules and regulations? And then, you go to total subdivisions that totally -- or, you know, it's like, oh, they have one whole set of different rules. So, go back to how is this fair for the -- the regular person who has to have a million dollars now to purchase a home in Hawaii? How is this fair to just the average Joe that just trying to build one house that is not part of our special subdivision or under special rules because they -- they one special development? You know, to me, that's really -- I hate arbitrary stuff, you know, like it further, to me, is detrimental and oppresses just the regular person that trying to make a living and build one house that cannot even afford to be part -- and why would you want to be part of a development where you have to pay maintenance fees that sometimes is in excess of thousands of dollars so -- but -- but, at the same time, you making special uses that is going to change the character of a simple neighborhood, so that's how come I get trouble with all these kind proposals of special uses and then, you know, we were supposed to attack all of this at one time, and not do spot changes, like -- like we doing now, to clean up, we cleaning up the code, so -- so that is the reason why if I say I no support something and stuff it's like I take all of that stuff into consideration and how it applies on the ground to the -- the people working three jobs right now, you know, for just try and buy one million dollar house that we all know is not even worth that. So, yeah, this kind stuff no make sense to me, Jacky, but thank you. Thank you for your question, Commissioner Moss and Commissioner Kelly. Appreciate that. Thanks, Jacky.

Ms. Takakura: So, you know, it may be that, you know, to me, these were fixes that should have been done a long time ago but ...(inaudible)... they weren't done, so it's just trying to fix these things that would make things simpler and easier for your average person to hopefully understand ...(inaudible)... residential zoning district.

Mr. Moore: I have a quick --

Chair Buchanan: I just was going say, I no see Commissioner Moore. Go ahead. Go ahead, Bill.

Mr. Moore: I wanna ask a question. If my house was built reversed, the one pictured on the screen where the top floor was wider than the bottom, and my bottom floor is setback ten feet and my upper floor be setback six feet.

Ms. Takakura: Commissioner Moore --

Mr. Moore: I hope you understand what I'm saying.

Ms. Takakura: Yeah. I don't know that that would be allowed in the residential zoning district now because whether it's -- the -- the upper portion always has to be ten. It's always been that way. So maybe in a different zoning district, it might be allowed.

Mr. Moore: Maybe you misunderstood what I said. In this picture, if the top floor was on the bottom and bottom floor was on the top with the ten-foot setback on the bottom.

Ms. Takakura: Commissioner Moore, no. The -- I'm going to go back to the existing language which says that side yard is six feet, the rear yard is six feet, and then the side and the rear for two-story buildings is ten feet. So, that's the existing code right now, so anything that's two-story is ten in residential.

Mr. Moore: So then, in that case, my bottom floor would have to be setback 16 feet if the size -- the floors were reversed.

Ms. Takakura: Yes. So that, yes, Commissioner Moore, so that the second floor would be a ten-foot setback.

Mr. Moore: And the bottom floor would be 16.

Ms. Takakura: Yes.

Mr. Moore: Thank you.

Chair Buchanan: Thank you, Bill, for your question. I finally got it. So, if you wanted to build just one box on top your lot, you would have to have one 16-foot setback from your property line. Is that right, Jacky?

Ms. Takakura: Chair Buchanan, so, in his example, if you wanted to meet the ten-foot setback criteria and there's a six-foot difference, like say, like, you know, maybe you just have an open area underneath here, then, yes, the bottom, I guess, would be 16 in order to meet this ten here. Yes.

Chair Buchanan: Okay. Thank you. Well, I have to think about that one, Bill. Thanks, Jacky.

Mr. Pele: Yeah, the term is a cantilever. Bill's terminology, if your house -- house is built like that, you have a cantilevered house.

Chair Buchanan: I don't even know what a cantilever is. Thanks, John Pele.

Mr. Pele: It's -- it's built like how Bill described.

Ms. Takakura: Okay. And then, I believe this is the last part. Things that are allowed in the setbacks. We're proposing to allow walls and fences because they're allowed ...(inaudible)... a memo. You have roof eaves policy memo, so we'd like to put that in the code. You have porches, lanais, decks, walkways; every time one comes up, we have to interpret it. Make it clear it's allowed in the code. Memo from 2006 about mailboxes and trash enclosures, so we'd like to put that in the code. Same thing for the utility equipment. Like I mentioned before, for some reason, greenhouses are allowed in the setback but we'd like to -- new greenhouses comply with the setback rules, but existing ones can stay. They're fine. So, these would just be to codify things that are already doing and so that way it's clear to the public, they can read it, and say, oh yes, I can do this. They don't have to call us up and ask and that it's just really, really clear.

Chair Buchanan: Jacky, I'm perplexed by the existing greenhouse stuff at the end. If you wanted to build a greenhouse right now, and you don't have an existing greenhouse, what would I have to do? I cannot build 'em in the setback?

Ms. Takakura: Thank you, Chair. Right now, you can. Greenhouses may be constructed along the rear or side lot lines. That's what the code says right now. I mean, it's got a little bit longer -- provided the entire roof is constructed of laps or screen to permit -- permit passage of light and air.

Chair Buchanan: Whoa. You know why? I've seen now a boom of new greenhouses that have lights on all night. Nobody laughing. Is -- is Kaleialoha Moss laughing? Okay. You guys know what I talking about. There's a boom because of a law change that people are now growing stuff for use, personal use, but what I notice is they now where greenhouses never used to have artificial light, they now have artificial light, and I actually know of an incident where some neighbors were getting into an argument over the use of artificial lights at night in a greenhouse, and so what would the County want to do about that? Is there something about use of artificial light and lights, like, you know, just outside lights and yard lights and all that kind stuff? Is there some place addressed in the code that addresses lights that might bother your neighbor?

Ms. McLean: Chair, there is an outdoor lighting ordinance that's administered by the Department of Public Works that generally relates to things like lights in parking lots and street lights. If it's just lights that someone has on in their house all night long or even if they're outside lights in someone's house, they're -- they probably are not. That kind of lighting is probably not regulated at all.

Chair Buchanan: Director McLean, with the -- with the new technology of LED lights, why -- is the County trying to address that? Have you guys had complaints?

Ms. McLean: Not that I'm aware of. No.

Chair Buchanan: Oh, can I file one right now?

Ms. McLean: Go right ahead. I don't know that there's anything we can do about it. I don't think there's any regulation against it.

Chair Buchanan: Yeah, because there's these new lights, the LED lights that are super, super, super bright and, I mean, I tried to call the Federal guys on maybe the lights being -- if -- to birds, you know, birds flying into lights. I would like to put it on your guys' radar because as technology changes and people's usage changes, like existing greenhouses where people leave lights on all night as growing beds, that never used to be, and now it's a new issue so that's how come I just, you know, I guess the Planning Commission always hear people's complaints, and they complain to us first, and then, you know, I always say request for service; that's what I always tell people, request for service, request for service.

Ms. McLean: Yeah. If it's something that can be regulated. Like I said, there wouldn't be much point in putting in a request for service for something like that because it's not regulated. If that's ...(inaudible)...

Chair Buchanan: So, maybe I'm -- maybe I'm trying to think is if existing greenhouses -- what is the original zoning code?

Ms. McLean: For what? For green houses in residential areas?

Chair Buchanan: Yeah. Yeah.

Ms. McLean: Well, Jacky just reviewed it where they are allowed in the setbacks.

Chair Buchanan: But given that the -- the -- it's not like a permanent roof structure and all that kind stuff, maybe would help if we had that additional verbiage. Okay. That's just my -- I just thinking that's why I don't want to have to deal with that in 4,000 square feet of density. Thank you, Jacky.

Ms. Takakura: Now, I want to show you where the residential zoning districts are on Molokai. So, there's one parcel here, the yellow, in Kaluakoi, there's one parcel in Kawela, five parcels in Kamilihoa here, three over here, and then one Kalae -- Kalae, and then eight in Maunaloa. So, that brings a total of 16, one-six, 16 parcels of residential on the island of Molokai. So, it's 16 parcels total that this bill would affect, 16 parcels. That's

all I have to share. I did want to say, you know, in terms of public notice, you know, we're not doing public meetings right now, which I'm sure try to limit -- we'd like to limit the number of travelers to Molokai and -- but there are 186 subscribers for the Molokai Planning Commission calendar and agenda update, so 186 subscribers have received the notice about our agendas, and this is the third time on the agenda, so, hopefully, within those three times, those 186 subscribers, hopefully, would have seen this item on the agenda, so that's the best we can do right now with the conditions we have. But yeah, 186 subscribers, that's pretty good. But, so yeah, 16 parcels are residential on the ...(inaudible)...

Chair Buchanan: Okay.

Ms. Takakura: If it's okay with you, I'll stop sharing. Is that okay? Or you have any questions you want me to go back to ...(inaudible)...

Chair Buchanan: No. No. I like you go back to the other map if you can, Jacky. The West Molokai map. Okay, that is one parcel?

Ms. Takakura: Chair Buchanan, that's what I was told by our GIS person.

Chair Buchanan: So, only one parcel. Okay. I sorry. I just trying to look at like where is this. Oh, no wonder. Okay. I trying to figure out what we were told during the Molokai Community Plan update, CPAC, the advisory council when we reviewed all of the zoning and in West Molokai because there's a lot of urban, there's urban, so where's the key for the colors on zoning?

Ms. Takakura: Chair, that would be on the digital zoning map and I can get that up.

Chair Buchanan: Okay. So, residential, single-family residential, huh? I trying to -- I don't know how this works with the overlapping if it's Kaluakoi in West Molokai, if it's subject to the -- to DCC&Rs that would put it into what Debbie Kelly was adhering to in the beginning, which is a whole set of separate rules on the -- if they -- if they are private or a part of a homeowners' association that has -- has additional oversight and rules and regulations over and above or in -- or in addition to the County and the State. Maybe if we can find out, that would be great. I'm just curious because that looks like -- and we don't even know how many acres, yeah? I think it's minimum two acres. John, you don't know, yeah? Commissioner Pele? Okay. 'Cause -- 'cause all of this stuff affects that. This is a good map. Thank you, Jacky. Oh, John, if you talking, I cannot hear you.

Mr. Pele: We're looking at the yellow area on this map?

Chair Buchana: Yeah, the R-2.

Mr. Pele: R-2. Shucks, that looks like right below Nobu's house, yeah, right there? Somewhere over there.

Chair Buchanan: That's what I was wondering.

Mr. Pele: Yeah. That looks like to the right, like right below Kathleen Shimizu's -- Sakamoto's house down -- down below that area to the right there 'cause that's way before you get down to -- oh yeah, maybe where the electric, yeah, before Kahako Road -- Kakaako Road, which is the turn off to go like Make Horse. So that looks -- that's where that is. It looks like it's like on the right-hand side by the guardrail, you know the guardrail where everybody stop and look deer as you coming down Kaluakoi.

Chair Buchanan: Okay. I going -- I going look after, Jacky, about R-2 residential. And then, Jacky, if you can go to the other two maps, or, Michelle, you have comment? No?

Ms. McLean: Well, you can see on this map, in the top right corner, the location map. You see where that little red square is? So, that indicates where this is. If you'd like me to share screen and show a -- a zoomed out version, not of this map, but of this parcel to be oriented to where this is 'cause it doesn't sound like it's -- it's where you folks are thinking of.

Mr. Pele: Yeah. That's not where it's at, not on -- not on the map that I'm looking. R-2, on this map, is not where that red square is. That's why I was getting confused.

Ms. McLean: Yeah.

Mr. Pele: R-2, on this map, is right by the guardrail coming down Kaluakoi Road, just before you pass Edie Anderson's house to the right; that would be below Nobu -- Nobu's house where the -- where the Kalukoi, the green waste dump used to be. That's what it's looking at right now, almost where the telephone -- the electrical telephone or the Hawaiian Tel stations are, just before that. It's not -- it's not where that red -- that red box is on the smaller map.

Chair Buchanan: Yeah.

Ms. McLean: So, if you'd like, I can share my screen and give you a better idea of where this -- where this R-2 is located.

Chair Buchanan: Sure. Why not. Go ahead, Michelle.

Ms. McLean: Okay. Can you see the map?

Chair Buchanan: Yeah.



Ms. McLean: Okay. So, this is the parcel that's one huge parcel, and then this area blue, this is the State rural district, so just a portion of this large parcel is in the State rural district, and those are the areas that were zoned on the map that Jacky showed.

Chair Buchanan: Scary.

Mr. Pele: Towards -- so it says letter A, the letter A, that parcel is all residential?

Ms. McLean: No, no, no. Just -- the map that Jacky showed is just within this blue.

Mr. Pele: Okay.

Ms. McLean: So, you see the shape of this, how it's squared off on the one corner, that matches, and then all curved on this side, that matches the image that Jacky showed, so that's where this parcel is located.

Chair Buchanan: Thank you, Michelle.

Ms. McLean: Okay. You're welcome.

Chair Buchanan: And then, Jacky, if we can go back to the other map. Because there's nothing to stop anybody from -- so I would assume the purple then on this map, Jacky, is all interim. I'm going to guess that it's interim, that it doesn't have a zoning code or a zoning, which that's how come, on Molokai, we always coming in like, oh, okay, this is interim so what is, you know, everything's allowed in interim, basically, not, I mean, not a lot but okay. Kawela. Okay. Kawela. And I guess that's all the Kawela Plantation subdivisions that we see all those roads going up mauka, and then in between, I don't know which one is this, looks like between, oh, Kawela One, okay. So, the one farthest east, between the one farthest east and then coming back west. Okay. That's all rural. Interesting, 'cause that's right by the river. And then, in Kamilihoa, we have only one parcel single-family residential, and then one more over there. Okay. Where the Rawlins live that side. Okay. And then, Maunaloa, and Kalae, that's very interesting. Now which one is that? Okay. I just wanted to know what going be affected. Interesting. Because, potentially, now I can do a lot more if this passes in those 16 parcels. I can -- can go down to 4,000-square-foot parcels and build duplexes. Right? I think so.

Ms. Takakura: Chair, I think you could do one or another -- one or the other, I don't think you could do both. If it met the criteria for the affordable housing provision about subdivision into 4,000-square-foot lots, that's one thing, but then allowing duplexes would be something different on a bigger lot.

Chair Buchanan: Okay, so doesn't the affordable housing provision allow for resale of affordable housing that are built under the affordable housing provisions to be sold in X amount of number of years, you able to sell it after you satisfied that provision? I mean, I think that's what happened a lot is a whole lot of affordable housing and workforce development housing went -- got built under those laws with whatever provision and breaks that we had and then after 15 years or whatever years was, the developers came in, kicked everybody out, and resold those units at a very -- at a fair market value of 10, 15 years later. Am I wrong? I know Director McLean listening. That's -- that's my worry, yeah? I always looking 50 years down the road thinking about our third and fourth generation of families and how they going be impacted by the decisions we make today. I mean, we in this position of one-million-dollar houses because what people did in the '70s so --

Ms. Takakura: Chair Buchanan, the provision about allowing smaller lots does say that adequate provisions are recorded to ensure owner occupancy on the prevention or limiting speculation, yeah, like you mentioned, that would be provisions for that in the affordable housing chapter. We did want to make sure that this was okay. We did run this by the Housing Department, Housing and Human Concerns to make sure that they were okay with this. They helped us with the wording on that. But that part about the ensure owner occupancy and the control or limitation of speculation is already in the code. We kept that language to be sure.

Chair Buchanan: But -- but -- but that's not enforceable. If Director McLean wants to comment on the enforceability of that provision, then I'm happy to hear it. It does say provisions are recorded for owner occupancy. But, yeah, if the Director ...(inaudible)...

Chair Buchanan: Oh, you muted, Michele. You muted.

Ms. McLean: Sorry. I was multitasking. What was the question about enforceability?

Chair Buchanan: So, of the 16 parcels I have today, anybody can come in, if the approval of the special uses in what we review today from Jacky, who did a great job, Jacky, putting it into bite sizes so I could digest this, you know, I basically could, you know, cut my lots down to 4,000 instead of 6,000, I could do duplexes, everything that we talked about today, given the affordability housing provisions, but what I've seen in the past is that for workforce development and affordable housing provisions, a lot of those stuff got built, and then once they had the maturity date, they got resold at fair market value down the line, which was way too much for people to afford and then they had to exit and find housing elsewhere, so how is that provision going to be enforced or -- or what has the County done to stop that?

Ms. McLean: So, with the special use permit, right? These things would only be allowed with a special use permit that would have to be approved by the Commission, so there

would most likely be conditions that go along with that permit, and those conditions could relate to how long a unit need to be offered in the affordable range if they're sold, that permit could get recorded against the property so that future owners would know, we would be responsible for monitoring permit conditions and ensuring permit compliance, and on those kinds of conditions, we would get guidance from the Department of Housing and Human Concerns who grapple with the same issues with, you know, the fast-track affordable housing projects and what percentages of affordable need to be served, things like that so those would get -- would be enforced through permit conditions.

Chair Buchanan: Okay. But, when -- when the rubber hit the road, and we putting conditions, we're always cautioned that you cannot overstep the conditions for the home, private land owner's rights and privileges of land ownership, and I think the County has had multiple lawsuits concerning, you know, that -- that type of back and forth, so, to me, it's opening a can of worms that you -- now that the Commissioners, this Planning Commission going have to deal with at that time because when you come -- when somebody going come in and say, oh my gosh, I cannot afford, I gotta do only 4,000 square feet, and I going make this one duplex 'cause, you know, I can, under the rules, and so you feel bad and you say, yeah, okay, but that owner is maybe not one local owner and then, you know, after just having that provision, they go and they decide to sell and we cannot say they cannot sell. We cannot say they cannot sell in the condition. See. Yes. Yes. See, the Director said cannot. Cannot. So, that's how come I said no more enforceability of the provision that -- like I've never seen it enforced. So, I don't know how -- how we can just say it's going to be okay when I know it's not going to be okay. Commissioner Pele.

Mr. Pele: Yeah, I just had a question for -- along those lines. I thought a lot -- so does the County know of the affordable projects? I was under the impression some of them are built and they do have the timelines for resale, but I thought they always had to remain in current affordable prices. I think that development in Maunaloa, my sister owns, I think they had a ten-year cap before they sold, but I thought that they could only sell according to affordable, what the medium affordable price would be. Maybe I'm wrong. I thought there was that stipulation also when they resold those houses. I thought that was their agreement when they entered into the contract for those affordable units, and I'm just wondering if -- is there something -- have you ever heard of something like that where -- where if you buy in an affordable project, they put a cap, yeah, you have to live in there ten years, but I thought I heard language before where even if you resell it, it still has to match the criteria for affordable housing, could be ten years later, whatever that -- that medium income price is for affordable housing? I just don't know if some of those exist.

Ms. McLean: Yeah, that is often the case with the fast-track affordable housing approvals because that's a fast-track process and gives such a tremendous entitlement in a relatively short and streamlined way. There are requirements on that related to the ranges of affordability as well as how long the units need to be remain -- need to remain

affordable, and so before those projects are developed, the developer enters into an affordable housing agreement with the Department of Housing and Human Concerns, and that agreement lays it all out, and that's binding on all properties. I don't know if similar language could be put into this section. I wouldn't be opposed to it if it could be, but that's not really the point of this. The point of this is for smaller individual property owners and not a developer to develop a whole affordable housing project. So, this is intended to just help a property owner here or there that wants to benefit from this, it would still have to come before the Commission, but I think that permit conditions could be added to ensure that this doesn't get abused like you're suggesting it might.

Chair Buchanan: Good question, Commissioner Pele. You have a follow up on that? No? Okay, so all of that is not in here right now. There's no -- there's no verbiage. Housing and Human Concerns, does that come under the County Housing and Human Concerns or State Housing Human Concerns, Jacky or Michelle?

Ms. Takakura: Chair Buchanan, that's a different Department within the County, Department of Housing and Human Concerns.

Chair Buchanan: Okay. And therein lies the -- the -- the problems too. You know, we going out into one whole different section under the County. I just think it just muddies the water. And if I was that -- if -- if I was smart, not if I was smart, but if I could, I would buy the five lots in Ranch Camp or wherever that was, Kawela, 'cause they contiguous, and I would draw up all duplexes tomorrow, which would raise the value and the best and best use of my zoning. Hang on. I looking for that. Right here. If I was -- oh, if was Maunaloa, I'd buy all those contiguous lots right now because I could have 2, 4, 6, 8, 10, 12, 14, 16. I can have 16 rentals right now that no have to conform to the kind because there's nothing that says I have to, but that's what I could do if the proposed changes go through. Okay. Thank you. I just wanted to know. I gotta have reason for myself why I support and no support stuff. Thanks, Jacky. Whoa, that was good, Jacky. Good job. Commissioners, any questions? And then, I don't think we have anybody waiting for testify, but I can. I'll open it again or --

Ms. Takakura: Excuse me, Chair?

Chair Buchanan: Yeah?

Ms. Takakura: I forgot one part though, so I'm sorry, but there's that part about, for residential, about the impervious surfaces, and we talked about it last time, but trying to impose a limit of 65 percent of the total zoning lot area for impervious surfaces. So, I'm sorry. I forgot to put it in the presentation. But, remember, we have the definition back in the definitions but, for residential, we're proposing to limit it to 65 percent for impervious. Sorry about that.

Chair Buchanan: Thank you, Jacky.

Ms. Takakura: I forgot that in the presentation.

Chair Buchanan: Thank you, Jacky. And then, I have a hard time with that impervious surface and being -- having residential people have to comply to that, especially if you like cut down my 6,000 to 4,000 and then expect me for be driving on dirt in and out of my house, and then, you know, what if you get grandma on the wheelchair and all that kind stuff, it just doesn't make sense for one really, really small lot that going be covered by most of your roof. I don't know how you going to comply with that 65 impervious surface, but as a conservationist, I wholly support impervious surfaces, but I don't know if it just makes sense in one residential lot of 6,000, but thank you. Okay. Again, questions for Jacky or staff on the proposed amendments to 19 -- Chapter 19? If not, I would like it -- to open it for public testimony since we all heard that this the only time that the County is proposing this in the public. So, if there's anyone wishing to testify in the public, please unmute yourself, state your name for the record, and I can swear you in, or contact Suzie in the chat. So, anyone wishing to testify on this agenda item, please come forward.

Ms. Esmeralda: Chair, this is Suzie. I don't have anyone signed up.

Chair Buchanan: Okay. Thank you, Suzie. So, seeing none, and I see Mr. Manera is on here too. As a developer, I was wondering about his feedback. Okay, seeing none, I will close public testimony and then go back to staff, and let's see what you guys want from us.

Mr. Manera: Oh, Lori?

Chair Buchanan: Yes?

Mr. Manera: Lori?

Chair Buchanan: Yes?

Mr. Manera: Oh, sorry.

Chair Buchanan: Mr. Manera --

Mr. Manera: I'm sorry.

Chair Buchanan: Okay, Mr. Manera --

Mr. Manera: I'm sorry ...(inaudible)...

Chair Buchanan: Do you wish to testify?

Mr. Manera: Yes and --

Chair Buchanan: Okay. Stop. Stop. Stop. Sorry, not to be rude, but stop. So, the Chair, at this point, is going to reopen public testimony because of technical difficulties and members of the public never hear, so I'm going to reopen public testimony on this agenda item. Mr. Manera, you wish to testify, please state your name for the record.

Mr. Manera: Yeah. Luigi Manera.

Chair Buchanan: Mr. Manera, do you promise to tell the truth, the whole truth, and nothing but the truth?

Mr. Manera: Yes, I do.

Chair Buchanan: Thank you. Please proceed.

Mr. Manera: I'm sorry. After two hours, you know, I got a little bit -- I was snoozing little bit. But, anyhow, sorry. But, I mean, you know, the two item I was listening, in particular, you know, the first one is, you know, when they talk about the 15 feet, ten feet setback, six feet setback, well, to make it easy, that always was in effect, believe it or not, every time I apply for a permit. What they fail to say is even if you have a story, but because it's one story, if you decide to have a wall 15 feet high, you cannot have that close to six feet, like they say. Have to be ten feet away. I know it's kind of trippy, but if you decide to have a wall of house 15 feet because you like the height, and then you have a roof, you cannot be six feet away from the property, have to be at least ten. It doesn't matter whether it's one-story or two-story. Any portion of the house that's more than 15 feet high, have to be ten feet. It doesn't matter if it's one-story or two-story. That's minor, but, believe it or not, in some case, if you have a house, it's a gable-end roof and facing the side, you -- you really are 15 feet or you have to move it back, or you cut the roof off, one of the two. So, that's one thing. Second, you know when the -- you guys mentioned above the 4,000-square-foot lot? Well, that rule only apply if you are -- if you have a sewer system, if you have a County sewer, if you have a -- it cannot apply if you have a septic tank because the minimum lot have to be ten feet -- 10,000-square-foot, so that's -- that's a little -- they never explain that one too well. If you had a, you know, so that's the two things. Four thousand square feet only apply if you are on County sewer or State, some kind of State whatever, but like we are on Molokai, 90 percent of the people, we own a septic. You cannot have a lot 4,000 square feet. There's no way. It's impossible. So that's, basically, the two what I see the most important. Thank you.

Chair Buchanan: Thank you, Mr. Manera. Questions for Mr. Manera, Commissioners? That was good information, Mr. Manera. I never think about that. So, what you saying now is if you have -- if you on the County sewer system, then maybe yeah, you can have one smaller lot. But if you not, then no.

Mr. Manera: Yeah.

Chair Buchanan: Oh wow. Okay. So, yeah, we -- yeah, we wasn't told that. Anybody get questions? It's good to have a developer when you have this kind of technical stuff that the County trying to -- so I -- I really appreciate you, Mr. Manera, testifying. So, yeah, we going ask for clarification on that. Thank you. Anything else, Mr. Manera?

Mr. Manera: No, that's basically the -- the two item I see and maybe was better to explain a couple little things. That's all.

Chair Buchanan: How you feel about the special uses and special use permits?

Mr. Manera: Well, I was okay with that because how many -- how many we going to get over here anyhow, you know? And no matter what, in some case, all depend what special use permit we talking about, sometime it require have department scrutiny and approval, so it's not going to be that easy. I no think so.

Chair Buchanan: Okay. Thank you, Mr. Manera. Appreciate that. Okay, if there's no questions for Mr. Manera, anyone else in the public wishing to testify on this agenda item? Okay, if not, I will close public testimony again, and then maybe we can just go back to staff to clarify, maybe Jacky or Planning Director McLean can -- I can ask the question for the testifier about sewer septic, sewer, on sewer, smaller lot size not -- no more, not on sewer, septic tank, you restricted to 10,000. That's true?

Ms. Takakura: Thank you, Chair. So, I can only answer regarding the 15-foot height in the setbacks. Anything existing would be allowed to continue. So, if a two-story structure is already existing in residential, they would be fine the way they are. But, yeah, new development would have to be designed so that 15 feet and below is setback six and 15 feet and above is setback ten. So, new -- new homes would have to follow those new rules, but existing would be allowed to stay as is. Regarding the sewer, Jordan, I know he talked about some of that stuff last time and I will have to defer to Michele because I don't know anything about that stuff. Sorry.

Chair Buchanan: Okay. I don't know if Director McLean is still with us. She might have gone. She multitasking. There. Michele, septic tank, sewer system, developable area, so Mr. Manera says that if you have a septic tank, that you can only do -- be 10,000 square feet. If you on sewer, you can have the smaller lots, the 6,000 and 4,000.

Ms. McLean: That's correct. The State Department of Health requirement is that you have to have at least 10,000 square feet to have a septic tank.

Chair Buchanan: Okay. Good to know. Is that something new?

Ms. McLean: Not that new.

Chair Buchanan: I was going say I hope so 'cause, my god, I got a septic tank and I only got 7500 square feet of land. So, okay. Thank you. Anybody else question about that? Interesting. Okay. Mahalo. So, Jacky, what can we do for you now? What you need from us?

Ms. Takakura: Chair Buchanan, so you can approve the proposed bill for ordinance so we can recommend it to County Council, or you can make amendments, or deny, or defer.

Chair Buchanan: Okay. Okay, Commissioners, what you guys like do? I mean, I gave a lot of feedback already, Jacky. You want us to try and write -- write it up? I don't know who's going to write it up for us. I don't know if I have time. But, I can see if -- how -- what is the timeline on this?

Ms. Takakura: Last time we discussed, Chair, we were -- March 8<sup>th</sup> came up as the date that we need to get this transmitted.

Chair Buchanan: Oh, okay. Okay, okay. So, I just going say that, for myself, I can support everything except the special uses and the amendments to the special uses. I can support -- I see that I wrote support, support, support on everything until I got to, it's a lot, until residential, residential permitted uses on the proposal. The permitted uses, I - on 19.08.040, and then, as I tell you this, Jacky, if everybody is onboard too, but if we not, let's, you know, just say no. I no agree. The permitted uses, the existing and then the proposed, the proposed was that discussion about -- I went question the subordinate use, and then that's where the three words came in "customarily, incidental, commercial," my thing was asking about commercial, usual, and subordinate. So, I wasn't -- I -- my feedback is that wasn't clear to me, Jacky. Because the -- the existing verbiage, the customarily incidental is too broad. And, I mean, who decides what is customarily incidental to, you know, as an accessory? I mean, I know of somebody that -- that built one statue and said was customarily incidental to themselves as a resident and everybody else thought was horrible. So, I mean, I hate to get into beefs about that kind stuff, you know? So, I have questions of that that maybe we can maybe talk about further. I don't know what amendments I would have for 19.8.040.

Ms. McLean: Chair, you don't necessarily have to have revised language.

Chair Buchanan: Okay.



Ms. McLean: You can just say you recommend against it because you think the language is too unclear, or subject to interpretation or --

Chair Buchanan: Okay.

Ms. McLean: Something like that.

Chair Buchanan: Okay. But I do have one really focused, it says in 19.08, the new language on the last last line says, "as approved by the Planning Director." I no like that. That's this one. You know I always want the Planning Commission to make those decisions. I never want to punt the ball to one person if it affects the entire island of Molokai or our people. And so, my recommendation would be to strike that and say as approved by the -- by the Planning Commission, the appropriate Planning Commission, or except on Molokai, except on Molokai, where it would be approved by the Planning Commission, not the Planning Director. Maybe we can support that. Okay. So, that was 19.8.4. And then, I can support everything after that until we get to the discussion about the churches, 19.8.4, residential special uses, and then I just question the whole thing about listing because it alludes to commercialism of a nonprofit, yeah? That's why. That's the reason why. And then, in 19.8, the residential special uses, remember the criteria of section 19.8 was nine items and all the ones that we adding today. So, we going have I, J, K, L, I would suppose, Jacky?

Ms. Takakura: Chair Buchanan, just adding J and K to family dwelling units or duplexes, and then K is retail food and beverage, and then the modification of the minimum lot area part that's actually already in the code but we just moved it to over here.

Chair Buchanan: Okay. Okay. So, I don't support -- go ahead.

Ms. Chen: Oh, sorry --

Chair Buchanan: Yes, Stephanie?

Ms. Chen: Regarding the churches, when -- did you -- I know Commissioner Mowat had the suggestion of adding, you know, including but not limited to.

Chair Buchanan: Oh yeah.

Ms. Chen: Did you --

Chair Buchanan: Yeah, Bridget, that's a good one.

Ms. Chen: And, okay, just to clarify that that list is not exhaustive. It will say that that's been a change that's being made throughout the code based on, I guess, guidance that Council's receiving to simplify language, so they're trying to take out the word, the words "including, but not limited to," though I, personally, think, in a legal sense, it makes a lot of sense to include those words. Our interpretation or our office would be that that list is not exhaustive, as Jacky said, but those are examples of what is -- what would be allowed, but that it's not exhaustive, but I think it's fine to recommend "including, but not limited to."

Chair Buchanan: Okay. I love it. I think it's great. It's a great addition, Commissioner Mowat, and I going -- and I going tell you why, because in the 1920s, during the Great Depression, it was the churches that upheld America and was there for the people that included soup kitchens, you know, housing for families, and all that kinda stuff, so your non-profit kitchen, I mean, churches, like the Red Cross, when government fails, they're there to pick up the load, you know. I mean, we have what? Da kine food distribution. Yeah? We have now all the churches do food distribution.

Ms. Mowat: Yeah.

Chair Buchanan: Yeah. So, all you gotta do is look at the grant in aid people who are applying nowadays and they're mostly all churches for the social services. So, that's a good one, Bridget. Thank you for suggesting that. Okay. Then again, I just -- I, personally, no support the one on residential special use for unit density, increasing, that don't meet the criteria. I -- I outward just no support that, but I don't know how others feel. That was the existing low income, moderate family. I think there's not enough language in there from housing and human development to firm up the uses for low income. And I would say, for Molokai, no changes because, in this one, it says if you don't meet the criteria, so existing is they meet the criteria. Right, Jacky? Of 19.8, in existing right now, housing for low income have to meet the criteria. So, for Molokai, I would say to not increase the density. I no think we have the same issues you guys get on Maui. This can always change in the future, but, except on Molokai, Jacky, where we will keep with the existing.

Ms. Takakura: Chair Buchanan, just for my understanding, are you talking about housing for the aged and housing for the low and moderate-income families?

Chair Buchanan: Yeah, I talking about this one right here.

Ms. Takakura: Yeah. Okay. So, right now, they would come into the Commission if the population density is increased more than 10 percent, so you want to keep that 'cause that's what's allowed now?

Chair Buchanan: Yes, 'cause it is an allowable use. You just wanna to increase it so, I'm like, this is for people who come in and apply, like I said, I just bought the six lots and I

put 16 houses on 'em, I going see right away that I not allowed to increase that unit density in one area that is not -- doesn't have the infrastructure for that increase in density, so just leave it as it is.

Ms. Takakura: Excuse me, Chair Buchanan, this is only -- this is really limited to housing for the aged operated by government or non-profit organizations.

Chair Buchanan: Yes.

Ms. Takakura: Or housing for low and moderate-income families operated by government ...(inaudible)...

Chair Buchanan: Yeah.

Ms. Takakura: I just want to make sure I understand what you're saying.

Chair Buchanan: Yep. Well, we need a break pretty soon. And then, so the same reasoning, Jacky, for the housing for aged, same thing. Same -- same verbiage. And then, same thing for the two-family dwelling units or duplexes. This is only from me now. I mean, anybody like chime in can chime in, Commissioners. And that's about the two-family dwelling units. So, we would be able to do it with anybody on sewer, we could do that. So, there is -- I don't support. Go ahead, Kaleialoha.

Ms. Moss: For the two-family dwelling units or duplexes, does that mean that they actually have to be attached to each other or it could be two separate homes on the same unit or on the same lot?

Chair Buchanan: Good question. It is defined.

Ms. Takakura: Okay, Commissioner Moss, so, okay. Dwelling unit, two-family. A building consisting of only two dwelling units designed exclusively for occupancy by two families living independently of each other. So, it's -- it would be one building and -- but be two dwelling units, so they'd be connected in some way. One -- a building. Thank you. That's a good --

Ms. Moss: Thank you.

Chair Buchanan: Okay. Thank you. Good question. And then the same thing, Jacky, for the retail food and beverage establishments, except -- except for Molokai because, right now, you can have -- you can -- you can apply. I mean, we have it in -- in a lot of areas on Molokai already. You can apply for a retail food or beverage establishment, except a liquor establishment, like Paddlers, but 2,000 square feet going be bigger than the houses where you're walking from, at least over here, unless you in Hoolehua, and

that fall under one whole separate set of rules 'cause it's DHHL, and, in rural Manae, it's already in the community plan that you gotta come in for one special use already. So, I would say that I don't support the proposed changes 'cause I think what we have is adequate. Except on Molokai. And then, the same thing for this long one, the modification of minimum lot size, taking into consideration public testimony from Mr. Manera and what Commissioner Moore said, and the -- the lack of justification for everything including the impervious surface because this is residential, we're not talking about big box stores and commercial buildings, we talking about residential areas on Molokai that is already 7,000 square feet. So, no support. Except for Molokai. And then, the rest we can support. The height we support. I don't -- you guys have any feedback on these, guys, about the setback, Debbie, John, Uncle Bill? The one about the wedding cake one. I thought -- Commissioner Moore?

Mr. Moore: No. I have no comment.

Chair Buchanan: Okay. Okay. I guess if I was your neighbor, I would approve because I no like you casting a shadow on my bedroom next door. Nah. I sorry to be like that. Okay. Yeah, and no -- I going show this, but not that I went write the word "stupid" next to 'em but that's okay. That was a joke. And this one about the greenhouses, assuming nobody have one -- one problem with their neighbors having growing beds with lights on all night. Okay. So, that's okay, Jacky. And then, thank you. Then approve the maps. Oh, we done unless anybody -- maybe one feedback if -- if you guys kind of agree or no really agree with what we just went through or what I went through. Commissioner Bridget.

Ms. Mowat: Hello. You know, this is a whole lot, and there's a lot of things that I was really confused about, but I thank you, Lori, for, you know, your -- your input because you know plenty stuff, so it kinda, you know, gave me a better understanding of what this meant. So, as long as Molokai is, you know, because we're so different from Maui, the bigger -- the more -- more -- it's more complex, yeah, whereas we're so rural that a lot of this stuff kind of will affect us, I believe, in a negative way. So, I support what you -- what, you know, you have, and so I'm just wondering, are these like amendments? Are we, you know, we adding things on that we want to see the changes? Are we going to review it again one more time to make sure that whatever your points or is this the final that we making one decision today or a recommendation?

Chair Buchanan: Thank you. Thank you for that question. Maybe you gotta mute yourself, Bridget? Okay, thank -- thank you for the question. We just making recommendations 'cause this is a Council -- the -- any changes to Title 19 come from the County Council, but they do it with input from the Planning Commission, and they do listen, they do -- they do listen, and then I try to chime in and follow up when the Council is hearing it to reinforce what the Planning Commission -- to make sure that the staff report from the Commission accurately reflects what this Commission had discussed and

that is conveyed to the planning council, so they actually do the amendments and revisions, the except for Molokai come from them, not us. We just telling them this is what we like and we hope you guys going listen. And then, in the end, they actually make the decision. So, that's how that go.

Ms. Mowat: Thank you, Lori.

Chair Buchanan: Okay. Thank you, Bridget, and, Bill, Commissioners Pele, Kelly, and Moss, you guys have any feedback? I would hate to hear this again.

Ms. Kelly: This is Commissioner Kelly. No. I'm fine with your recommendations.

Chair Buchanan: Okay. But -- but I'm open, if you guys -- we can hear 'em again. We get to March. We can hear 'em one more time, but maybe this time only the areas of concern, you know, which is only one-third of the entire package. Okay. Anybody no agree that we -- okay, Commissioner Moss.

Ms. Moss: No, I was just going to say, yeah, that it was a lot and I -- I mean, I think I agree with pretty much everything, your recommendations and your concerns. On the impervious surfaces, you -- you're saying except for Molokai on that one? Yes? Okay.

Chair Buchanan: Yeah.

Ms. Moss: Yeah, I didn't ...(inaudible)... that one either. So, okay.

Chair Buchanan: Yeah.

Ms. Moss: So yeah. I mean, I'm -- I'm -- I'm fine. Thank you for breaking that down for us and, you know, walking us through that so --

Mr. Pele: Same here, Chair. I didn't have a lot of -- I actually didn't have any problems with some of the -- with the language as it was presented but I also will support the additions that you added and the concerns.

Chair Buchanan: Oh, hoo-hoo. Okay, so, Stephanie, we don't have to vote on this, right? I don't think we have to vote on it. It's just feedback.

Ms. Chen: So, it sounds like there would be consensus, so --

Chair Buchanan: There is consensus.

Ms. Chen: I would suggest asking, you know, if there -- if there's any objections to transmitting the comments that have been stated throughout, you know, by the Chair.

Chair Buchanan: Okay. Thank you. So, if there's no additions to -- oh, Jacky, you have -- you want say something? Go ahead.

Ms. Takakura: Oh, I just needed a clarification on what the position was regarding duplexes. I'm sorry. I didn't write that one down.

Chair Buchanan: Oh, I no think we supported it because was on the small -- yeah, was already too tight because the only properties on Molokai that have the sewer system are already six and seven thousand square feet. Oh my gosh. Yeah. Okay, so if there's nobody that opposes us transmitting what we just stated to Jacky on our recommendations on 19 -- Title 19, then it's communicated to Jacky. Seeing none, for the record, okay, mahalo. Yay. Can we take a break? Let's take a ten-minute break. You guys like ten-minute break? It's 1:20, you guys wanna to come back at 1:30? Commissioner Kelly.

Ms. Kelly: Sorry. I need to leave. Will you still have quorum?

Chair Buchanan: We will have bare quorum if you have to leave, but nobody else can leave, so you lucky you said first.

Ms. Kelly: Yeah. Sorry.

Chair Buchanan: And the next one -- and the next one someone told me is a little bit difficult so --

Ms. Kelly: Okay.

Chair Buchanan: But we'll try to -- we'll try to rush it through. Okay. So --

Ms. Kelly: Alright.

Chair Buchanan: I guess you excused but nobody else is excused or else we have to defer the last item. Okay.

Ms. Kelly: Okay.

Chair Buchanan: Thank you for conveying that --

Ms. Kelly: Thank you.

Chair Buchanan: Commissioner Kelly. Okay, see you guys at 1:30.

Ms. Takakura: Thank you.

Chair Buchanan: We on recess, Suzie. Thank you.

***(Chair Buchanan called a recess at 1:21 p.m. and reconvened the meeting at 1:35 p.m.)***

Chair Buchanan: Thank you. Welcome back to the January 26 meeting of the Molokai Planning Commission, back from recess, and we are on agenda item C., Contested Cases:

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

### **C. CONTESTED CASES**

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

**MS. MICHELE MCLEAN, Planning Director, notifying the Commission pursuant to Section 12-302-13.1(a) of the Molokai Planning Commission's Special Management Area Rules that the following proposed action(s) located within the Special Management Area is not a "development" and is therefore exempt from the requirements of the Molokai Planning Commission's Special Management Area Rules. The Commission's options with regard to the proposed action(s) are governed by Section 12-302-13.1, Molokai Planning Commission's Special Management Area Rules.**

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

- a. **MR. LUIGI MANERA, on behalf of LJ Howard, proposing an after-the-fact (ATF) approval for the replacement of an existing culvert at 8555 Kamehameha V Hwy, Kaunakakai, Molokai, (TMK (2) 5-7-007:069) (SMX 2021/0173) (Valuation \$4,000) (W. Bradshaw)**

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

Chair Buchanan: And I see, I think at that point, staff. Is that you, Wesley? No? Who is

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