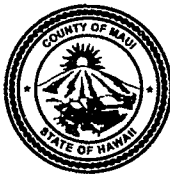


ALAN M. ARAKAWA  
Mayor

WILLIAM R. SPENCE  
Director

MICHELE CHOUTEAU McLEAN  
Deputy Director



COUNTY OF MAUI  
**DEPARTMENT OF PLANNING**

January 17, 2017

Honorable Alan M. Arakawa  
Mayor, County of Maui  
200 South High Street  
Wailuku, Hawaii 96793

For Transmittal to:

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

Dear Chair White and Members:

**SUBJECT: A BILL FOR AN ORDINANCE AMENDING CHAPTER 19.62  
RELATING TO FLOOD HAZARD AREAS DISTRICTS**

Transmitted for your review is a proposed bill entitled, "A BILL FOR AN ORDINANCE AMENDING CHAPTER 19.62 MAUI COUNTY CODE RELATING TO FLOOD HAZARD AREAS DISTRICTS."

The proposed bill incorporates revisions required by the Federal Emergency Management Agency (FEMA) to ensure Maui County's continued participation in the National Flood Insurance Program (NFIP). Participation in the NFIP provides subsidized flood insurance as well as federal disaster assistance to Maui County residents and businesses.

The proposed bill was transmitted to the Maui, Molokai, and Lanai Planning Commissions for review. The following is a summary of the Commissions' comments:

Commission	Public Hearing Date:	Comments and Recommendations:
Maui	September 27, 2016	Voted to recommend approval of the proposed changes as represented.
Molokai	October 13, 2016	Voted to recommend approval of the proposed changes as represented.
Lanai	September 28, 2016	Voted to recommend approval of the proposed changes as represented.

COUNTY COMMUNICATION NO. 67-74

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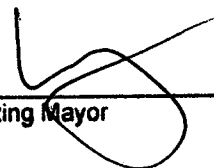
OFFICE OF THE MAYOR

OFFICE OF THE  
COUNTY CLERK

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APPROVED FOR TRANSMITTAL

  
\_\_\_\_\_  
Acting Mayor

1/20/17  
Date

Honorable Alan M. Arakawa, Mayor  
For Transmittal to:  
Honorable Mike White, Chair  
January 17, 2017  
Page 2

Attached for your review are the following documents:

1. Memorandum from William Spence, Planning Director, to the Maui, Molokai, and Lanai Planning Commissions, dated September 15, 2016;
2. Approved minutes of the September 27, 2016 Maui Planning Commission meeting;
3. Draft minutes of the October 13, 2016 Molokai Planning Commission meeting;
4. Approved minutes of the September 28, 2016 Lanai Planning Commission meeting; and
5. Proposed Bill.

The approved minutes for the Molokai Planning Commission meeting will be sent under a separate transmittal. The Department respectfully requests that the proposed bill be referred to the appropriate Council committee for consideration. Thank you for your attention to this matter. Should further clarification be necessary, please contact Carolyn Cortez at Ext. 7813.

Sincerely,

  
for WILLIAM SPENCE  
Planning Director

Attachments

xc: Clayton I. Yoshida, Planning Program Administrator  
Joseph W. Alueta, Administrative Planning Officer  
Maui Planning Commission  
Molokai Planning Commission  
Lanai Planning Commission  
Project File  
General File

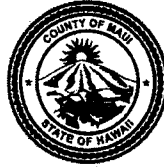
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ALAN M. ARAKAWA  
Mayor

WILLIAM R. SPENCE  
Director

MICHELE CHOUTEAU McLEAN  
Deputy Director



COUNTY OF MAUI  
**DEPARTMENT OF PLANNING**

September 15, 2016

**MEMORANDUM**

TO: MAUI PLANNING COMMISSION  
MOLOKAI PLANNING COMMISSION  
LANAI PLANNING COMMISSION

FROM: WILLIAM SPENCE *W.S.*  
PLANNING DIRECTOR

SUBJECT: **PROPOSED BILL FOR AN ORDINANCE AMENDING CHAPTER 19.62, MAUI COUNTY CODE, RELATING TO FLOOD HAZARD AREAS DISTRICT**

The National Flood Insurance Program provides subsidized flood insurance policies to Maui County's insureds as well as federal disaster assistance in times of national disaster declarations. The proposed bill (Exhibit 1) incorporates revisions to the Maui County flood ordinance required by FEMA to maintain our continued participation in the National Flood Insurance Program. A summary of the proposed changes and rationale are as follows:

Page and Line #	Summary of change	Rationale
1.37-42	Clarification of the consequences of non-participation in the National Flood Insurance Program.	Required by FEMA, Region IX.
2.12-14	Deletion of item #7.	The County does not have the mechanism to ensure that potential buyers are notified of a property's flood zone. Although, the information is available through our office and realtors typically will provide that information to their buyers. Required by FEMA, Region IX.
3.4-11	Changing our definition of "breakaway wall" to be identical to the 44Code of Federal Regulations (CFR) §59.1	Required by FEMA, Region IX.
4.2-3	Deleting "flood hazard boundary map."	With the modernization of paper maps to digital flood insurance rate maps (DFIRMs), flood hazard boundary maps are no longer used. Required by FEMA, Region IX.
4.11-13	Adding a "Floodway fringe" definition	This is necessary in order to explain the delineation between the floodway, an area in which fill is not allowed and the flood fringe, an area in which fill is allowed.

4.30 - 31	Changing our definition of "historic structure" to be identical to the 44Code of Federal Regulations (CFR) §59.1	Correcting a typographical error as required by the State National Flood Insurance Program Coordinator.
4.32 - 33	Deleting the "limited storage" definition	Because 44CFR uses the term "storage," and we used limited storage, FEMA asked us to make the terminology consistent. Required by FEMA, Region IX.
5.1 - 2	Changing our definition of "lowest floor" to be identical to the 44Code of Federal Regulations (CFR) §59.1	Required by FEMA, Region IX.
5.23 - 24	Deleting the reference to NGVD 1929 and replacing it with Local Tidal Datum (LTD)	Local Tidal Datum is the current datum used in the State of Hawaii and is consistent with the datum used for the DFIRMs. Required by FEMA, Region IX.
6.30 - 7.17	Clarifying the definition of "Substantial improvement."	Provide clarity in the "substantial improvement" definition and explain how the calculation of a substantial improvement is to be made.
8.16 - 25	Deleting the exemptions.	Required by FEMA, Region IX.
8.30	Changing our office address.	Updating our office address.
9.5 - 8	Adding a new section to state the responsible county official who administers the National Flood Insurance Program.	Required by FEMA, Region IX.
10.18	Correcting grammatical error.	Correcting grammatical error.
10.22 - 32	Clarification on when a conditional letter of map revision (CLOMR) is required.	Provide clarity on CLOMR requirements pursuant to 44CFR §65.12(a). Required by FEMA, Region IX.
11.40 – 12.5	Deleting item 2c and 3.	Required by FEMA, Region IX. FEMA no longer provides these services.
14.8 - 10	Adding flood zone AO.	The AO zone was inadvertently left out when we revised the ordinance in 2009. We also are clarifying when a "no-rise calculation" is required.
14.37 – 15.2	Added "more than" and deleted the requirement for approximate floodplain limits for projects less than 50 lots or less than 5 acres.	Clarified that "more than" applied to both 50 lots and 5 acres.

15.9	Adding "at least one foot."	To clarify that manufactured homes must be elevated at least one foot above the base flood elevation. This requirement is for all structures and was inadvertently left out of the 2009 ordinance change.
15.16	Adding flood zone AO.	The AO zone was inadvertently left out when we revised the ordinance in 2009.
15.40 - 41	Deleting the word "uniform" and adding "International," and "International Residential Code."	Updating the ordinance to reflect the current Building code that Maui County is using.
16.10 - 13	Deleting "limited storage," "washers," "dryers," and "food freezers."	Washers, dryers and food freezers are not regarded by FEMA as machinery and equipment that service the building and are allowed.
16.30 - 31	Deleting "information regarding whether such structures contain basements."	FEMA required we delete this because basements are not allowed in the VE zone, so there should be no basements constructed in the VE zone.
16.34	Deleting "limited storage."	FEMA allows storage use below the base flood elevation and we are aligning our code with theirs.
17.29 - 39	Clarifying when additional information may be required by the Director and clarifying when to apply A zone standards and when to apply V zone standards.	Previously, it was not clear to which flood zone standards an applicant must comply with. This makes it clear that A zone standards apply to AE AO and AH zones, while V zone standards apply to VE zones.
18.14 - 15	Adding "recommend issuance of" and "or approval"	To provide clarity that the Planning Dept. can require compliance to flood for permits and approvals that we do not issue, but for which we are a reviewing agency.
18.23 - 25	Adding section 19.62.130 enforcement	Required by FEMA, Region IX. Previously we relied on enforcement through 19.530, MCC. FEMA wanted us to include an enforcement section in Chapter 19.62
21.10 - 12	Adding "likely" and "substantially."	Required by FEMA, Region IX. FEMA did not want us quoting premium amounts because they are subject to change.
22.5 - 10	Adding section 19.62.200 Severability.	Required by FEMA, Region IX. Previously we relied on severability through §1.04.050, MCC. FEMA wanted us to include a severability section in Chapter 19.62

**Recommendation and Options**

The Department is recommending approval of the proposed bill to ensure our continued participation in the National Flood Insurance Program. The commission has the following options:

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

**MAUI PLANNING COMMISSION  
PORTION OF REGULAR MINUTES  
ITEM B-2  
SEPTEMBER 27, 2016**

Mr. Spence: Okay, Commissioners we're on Item C-2, this is your second and final public hearing for this meeting. This is a bill that the Planning Department proposed to update and change the flood hazard area ordinance under Title 19.62. Our Staff Planner this morning is Carolyn Cortez.

**B. PUBLIC HEARING**

**2. MR. WILLIAM SPENCE, Planning Director transmitting proposed amendments to Chapter 19.62 of the Maui County Code relating to Flood Hazard Areas to incorporate changes required by the Federal Emergency Management Agency (FEMA). (C. Cortez)**

Ms. Carolyn Cortez: So what I prepared for you in your packet is a detailed list of the revisions that are being proposed and the rational and as you can see a lot of the changes were dictated by FEMA to update our ordinance in conjunction with the map changes that occurred on November 4, 2015 of last year. And so I don't have a presentation but I can take any questions you may have on the amendments.

Chair Tsai: Thank you.

Mr. Spence: And...Mr. Chairman?

Chair Tsai: Director?

Mr. Spence: Commissioners I would just know that in order for Maui County to participate in the flood insurance program we are required to have this chapter as a part of Title 19 and as Carolyn Cortez pointed out that most of these changes are dictated by FEMA we're required by them in order to be a part of the program. Pretty much the other ones that we opted for were just mostly to clarify individual sections of it. So it's not...this certainly not one of the more controversial items that we've brought before you. It's pretty much something that we gotta do. So thank you.

Chair Tsai: Thank you, Director. At this point going to open the floor for public testimony. Seeing none, public testimony is now closed. Comments from the Commission? Commissioner Robinson?

Mr. Robinson: I just have one question on the 2.12-14, deletion of Item No. 7 and maybe Commissioner Carnicelli can answer this, don't realtors disclose that a property is not flood insurancable or is that not a requirement?

Chair Tsai: Commissioner Carnicelli?

Mr. Carnicelli: Realtors are mandated to disclose anything and everything that they may know about a property. As far as the legality of whether it's in the flood plain or not I believe will become a part of the title report but to say that a realtor will know whether this particular property is in the

Maui Planning Commission  
Portion of Minutes – September 27, 2016  
Page 2

flood plain or not I wouldn't...I personally wouldn't just trust a realtor's knowledge of the flood maps.

Mr. Spence: Mr. Chairman?

Chair Tsai: Director?

Mr. Spence: We regularly have realtors send in flood confirmation forms, flood and...I should say zoning confirmation forms and when they're selling a house or they are representing a buyer they will send in like a whole list of tax map key numbers for all around the island. They wanna confirm what the zoning is so they can disclose it. So that form includes the State Land Use District, the Maui Island Plan area if it's in the growth area or not and which particular growth area, the community plan designation, the zoning, flood zone, which flood zone, any other special designations like the Special Management Area or the Historic District or the redevelopment district there's a whole number of things. So a realtor may not know but they can always call in and so can any other property owner. They can call in and we'll give them this form confirm all these different things for them the flood zoning being one of them.

Chair Tsai: Commissioner Robinson?

Mr. Robinson: With that being said Director, so for banks or mortgage companies wouldn't they require some type of information from you or again they would go back to the title report?

Mr. Spence: We don't, I don't...I can't tell you what goes on a title report or not. We don't generally get requests from banks, we get requests from realtors and property owners. What they do with that information I'm not sure. Probably as a part of the disclosure but that's all I know.

Mr. Robinson: So with Lao Valley happening and some of them not having flood insurance how does that impact the County tax payers?

Mr. Spence: I can't answer that.

Mr. Robinson: I mean, I mean so the County does the clean up or is it State or the government. I saw...I see different things but it's too complicated?

Mr. Spence: Yeah, I can't answer that. I'm not sure with what all goes with the...I know some things go along with the Governor's proclamation that we can waive certain state laws as far as doing repairs and those kinds of things but as far as what it means to the taxpayers or the flood insurance rates I can't say. Those things I are probably yet to be determined.

Chair Tsai: Commissioner Carnicelli?

Mr. Carnicelli: So this may be a redundant question and probably is a redundant question, just having understanding and knowledge that at the state level right now we've got a conflictual law with FEMA regulations that we're trying to fix, hopefully we'll fix this particular legislative session. Is this along the same lines? Is this I guess does this follow what the State law did and then we're



gonna have to correct it again or does this follow or is this kinda FEMA driven? The State thing being Ag land you know the shed?

Ms. Cortez: Right, HRS 46-88—

Mr. Carnicelli: Yes.

Ms. Cortez: --they are FEMA feels that being able to build structures without having to obtain a building permit and review—

Mr. Carnicelli: Correct.

Ms. Cortez: --is in conflict with the Flood Code, so what they're trying to do is they are trying to correct it at the State Legislature and our, my counterpart, the State Flood Insurance Coordinator Carol Tyau-Beam is taking that, the changes to legislation through the next session because FEMA has given us a deadline of I believe it's next year mid-July or August to correct that or else they may look into...what is that...they may look into suspending us from the program.

Mr. Carnicelli: Right. Where we have to repeal the law if we can't come to a—

Ms. Cortez: Correct.

Mr. Carnicelli: So I guess my question then being do we know, is there any oops in here? 'Cause that was an oops on our part, you know the State's part. Is there any oops in here that we know of?

Ms. Cortez: Actually these oops were actually identified by FEMA and so that's what they want us to revise. It's not really oops, but so for example the severability clause is one that is located in another part of the Maui County Code but FEMA wants it to be located in Title 19 which is the Zoning Code also and 19.62 specifically. Also they wanted the Director to be named specifically as the person who implements the National Flood Insurance Program for the County of Maui that was always sort of an understanding but they wanted it stated specifically in the Code. So those are the types of things that FEMA is requesting us, of us to change in this code revision.

Mr. Carnicelli: One more question Chair?

Chair Tsai: Yeah, Commissioner Carnicelli.

Mr. Carnicelli: So then I guess as I look at this of all of the changes that we're looking at are all of FEMA mandated or is there then something you as the Department are saying while we're in here doing it we actually wanna add this as well? So or is everything pretty much FEMA mandated?

Ms. Cortez: I think many of them and the majority of them are FEMA mandated, but one that I can think of that we put in was the clarification for substantial improvement and substantial damage. So that is Page 6, Lines 30 thru Page 7, Line 17, and that is clarifying the definition of substantial improvement because when we first drafted it in 2009 it wasn't clear to which valuation

of the property that we were referring to. So we were referring to the initial valuation so say if the property was worth \$100,000 in 1990 we were referring to that valuation throughout the 10-year period when computing a fifty percent substantial improvement because what happens if you exceed the fifty percent or \$50,000 in this example you have to comply with all flood regulations and that means you have to actually elevate your house and comply with current codes. So this is sort of a grandfathering clause where if your improvements stay below the fifty percent over a 10-year period your house can remain at the elevation that it was built and in this case it's below the base flood elevation. So we're clarifying the \$100,000, the initial valuation and because what how we wrote it before is that we would carry that \$100,000 through for the entire 10-year period.

Mr. Carnicelli: Thank you.

Chair Tsai: Commissioner Robinson?

Mr. Robinson: So on the changes and I know is, I see where the Planning Department has to require certain require to the flood...when we have special events, you know special tents or building permits and you know they're on a golf course not a flood zone things like that are those then going to be exempt or are we still gonna have...the Planning Department's gonna have the ability to do a special use permit or is that gonna tie your hands now?

Ms. Cortez: The special use permit?

Mr. Robinson: It's the Director shall not issue or recommend issuance of any permit or approve of any modification or construction, you know, I mean like we do a lot of those little things, hotels you know and so it all gonna...on Page 18 I'm not sure which one of this, it was one of your kinda highlighted areas.

Ms. Cortez: Oh, okay, Commissioner Robinson so that's Page 18, Line No. 14 and 15?

Mr. Robinson: Yeah, yeah.

Ms. Cortez: Oh, okay, so yeah, so the Director shall not issue or recommend issuance actually that is with regard to building permits because we don't issue building permits actually we're just a reviewing agency so FEMA wanted us to put that in because it sounds like it would only be applicable if we issued the permit.

Mr. Robinson: So when we have dire circumstances like the flooding against the walls or something like that with the building of it and we have the temporary structures that would be exempt or is that not considered a building permit?

Ms. Cortez: Right. So tents are not actually don't meet the definition of structure for flood plain management purposes because the structure needs to be walled and roofed so—

Mr. Robinson: How about emergency seawalls or emergency rock walls? Is that my...I'm just trying to think about the minors that have come along and the special circumstances that we've given permits to help protect certain things.

Ms. Cortez: Okay, I believe that's for SMAs, emergency permits.

Mr. Robinson: Well, I mean, but if he's not, if he cannot recommend or approve a permit, I mean is this just one specific area or are they gonna be—

Ms. Cortez: Oh yes, I'm sorry yes this is—

Mr. Robinson: Going to encompass all permits.

Ms. Cortez: Involving modification, construction, lining or alteration of any drainage facility, river or stream. So it's not, it's not on the ocean.

Mr. Robinson: Not applicable?

Ms. Cortez: Yeah.

Mr. Robinson: Okay. Thank you.

Ms. Cortez: Thank you.

Chair Tsai: Commissioner Hedani?

Mr. Hedani: So our purpose here today is to recommend approval to the County Council?

Chair Tsai: Correct.

Ms. Cortez: Yes, that's correct.

Mr. Hedani: Move to recommend approval of the changes as presented to the County Council.

Mr. Castro: Second.

Chair Tsai: Moved by Commissioner Hedani, second by Commissioner Castro. Discussion? Director can you please repeat the motion?

Mr. Spence: The motion is to recommend approval of these changes to the Maui County Council.

Chair Tsai: Thank you. All in favor of the motion?

Mr. Carnicelli: I guess I don't move or he moved it?

Chair Tsai: We already—

Mr. Spence: The motion was made.

Chair Tsai: So I'll call for a vote. All in favor raise your hand? Five—

Mr. Spence: There's five ayes.

Chair Tsai: No opposition. Motion carries.

**It was moved by Mr. Hedani, seconded by Mr. Castro, then**

**VOTED: To Recommend the Amendments to the County Council as  
Recommended by the Department.  
(Assenting – W. Hedani, S. Castro, K. Robinson, L. Carnicelli,  
R. Higashi)  
(Excused – L. Hudson, S. Duvauchelle)**

Submitted by,

CAROLYN J. TAKAYAMA-CORDEN  
Secretary to Boards and Commissions II

- DRAFT -

- DRAFT -

**MOLOKAI PLANNING COMMISSION  
REGULAR MEETING  
OCTOBER 13, 2016**

*\*\* All documents, including written testimony, that was submitted for or at this meeting are filed in the minutes' file and are available for public viewing at the Maui County Department of Planning, 2200 Main St., Suite 315, Wailuku, Maui, and at the Planning Commission Office at the Mitchell Pauole Center, Kaunakakai, Molokai. \*\**

**A. CALL TO ORDER**

The regular meeting of the Molokai Planning Commission was called to order by Chairperson, Michael Jennings, at approximately 11:00 a.m., Thursday, October 13, 2016, at the Department of Hawaiian Home Lands/Office of Hawaiian Affairs Conference Room, Kulana Oihi, 600 Kamehameha V Highway, Kalamaula, Molokai.

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

**B. PUBLIC TESTIMONY** - At the discretion of the Chair, public testimony may also be taken when each agenda item is discussed, except for contested cases under Chapter 91, HRS. Individuals who cannot be present when the agenda item is discussed may testify at the beginning of the meeting instead and will not be allowed to testify again when the agenda item is discussed unless new or additional information will be offered.

Chair Michael Jennings: Okay, good morning, Commissioners, it is 11:00, and we're called to order, first, is there any public testimony for any of those that can't be here for their item? Seeing none, public testimony is closed. Clayton?

Mr. Clayton Yoshida: Good morning, Mr. Chair and Members of the Molokai Planning Commission. Clayton Yoshida, with the Planning Department. With me from the County of Maui are Jennifer Oana, your Deputy Corporation Counsel, Suzie Esmeralda, your Secretary to Boards and Commissions, and from our Zoning Division, we have Administrative Planning Officer, Joe Alueta, and Senior Supervisory, Carolyn Cortez.

*Mr. Yoshida read the following agenda into the record:*

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

- 1. MR. WILLIAM SPENCE transmitting a proposed bill that would allow the Planning Department to establish fees in the annual budget for the review of ministerial and discretionary applications. The proposal would exempt roadway lots or utility lots from minimum lot area requirements and would allow commercial and non-commercial filming, photography and other temporary commercial events in all zoning districts under certain restrictions and standards. (J. Alueta)**

Mr. Yoshida: Presenting the staff report is Administrative Planning Officer, Joe Alueta.

Mr. Joe Alueta: Good morning, Commissioners. Again, my name is Joe Alueta. I'm your Administrative Planning Officer for the County of Maui. As indicated, for some of you you might remember, there's two methods where we can amend a land use ordinance under Title 19, one is either via a resolution that's done by the County Council in which you are

a reviewing body; another method is initiated by the director or one of the commissioners themselves. As indicated, this bill is being proposed by the department itself, so the administration. The purpose of the bill is primarily to amend 19.04, which is our general provisions and definitions section of Title 19, which is the zoning code. This would basically establish a general provision that would allow for uses across all zoning categories rather than just -- so rather than you know how each zoning category had uses listed specifically in each zoning category, this would basically establishes that certain uses would be allowed all zoning categories, these are primarily for temporary events that has very little impact on the specific land use of that area; it's temporary in nature. Primarily, it's kind of deemed with more like, one, filming, taking photography, either commercial or non-commercial. We see that happening more and more. So we're kind of in a quandary because it's not really a land use issue, and so we kind of established a -- I mean it is in some aspects, but it doesn't fall under to where it would be allowed, so we -- I mean we had really way to regulate it unless we create provisions, so that's primarily one of the reasons we've created these standards so that we can, in the future, enforce it, enforce on that if it becomes an issue or a problem with distraction of the neighbors.

The other one is primarily dealing with like temporary events. I think all of us have, some point in time, maybe hosted a wedding or wedding reception, family members, baby luau at their house, and they can get pretty big. It happens on a very infrequent occasion. You normally invite all your neighbors anyway, and, you know, there's normally loud music, and there's -- pretty much people take care. But so it's something where you're fortunate enough to have a better facility at their house, bigger land, and so sometimes your house becomes -- when a family member has a baby and your cousin need to come over or you kinda end up being the host family. This kind of will cover that as well as some -- on a temporary basis, even commercially, where it would be considered commercial. So like say we were talking about earlier like say a Maui Masuri, like we say, is a nonprofit organization, they help host -- they do it as say UH-MC. UH-MC is a school, how -- it's not really directly related. If it was directly a school function, it would be fine. But they're basically hosting a nonprofit or another organization to do it on their campus, it's a suitable facility, but in reality, that facility is actually zoned R-3, residential, so it's kind of a -- it's like so here you have -- you're kind of in a quandary, you have the school, the big university on the island, it's got a lot of land area, somebody in nonprofit comes to them wanting to host or have them use the facilities, the zoning may or may not match up, but it happens all the time, and we've kind of, you know, how do we address these types of issues in uses where the use, again, is temporary, and it's completely appropriate for that area or that land, so that's kind of where that portion of the general provisions of uses cross all zoning categories.

The other section of this bill deals with zoning utility lots or specific purpose lots, like roadways, wells, water tanks. As you know, in every zoning category you have minimum -- a lot of them have a minimum lot size, so in the agricultural district, it's a 2-acre minimum, sometimes in the residential district, it may be a 10,000 square-foot lot or whatever. You have, specifically, in the agricultural district, you may have -- there's limitations on the number of lots that can be created, and because of this provision, maybe you need a water tanker or a sewer pump station, that sewer pump station may only take up 10,000 square feet, but because of the minimum lot requirements, you have to then create a 2-acre minimum lot size. Recently, we had, off of Kahekili Highway on Maui,

MECO wanted to do a new substation off of Maui Lani, it was in the middle -- there's a sugarcane field right off the highway, because of this provision, they had to create a minimum of 2 acres even though they only needed about 5, 6,000 square feet to do this so -- but they had to go through the subdivision process of cutting out and subdividing a 2-acre lot because of the minimum requirement. Same thing goes for any other subdivision that when they want to create a roadway or a sewer access, either they gotta do it by easement, which encumbers someone's lot with an easement over that person's parcel, which can be problematic for that individual landowner, but also it just takes up -- you're either cutting out more land for a use that's really not needed. So this would allow, again, in say the agricultural district, someone could cut out an 8,000 square-foot water tank lot. This does not create an additional lot, so if an agricultural sliding-scale subdivision allowed for 16 lots, they would be able to create their 16, you know, their 2-acre and 5-acre lots, and they would be able to create a separate 8,000 square-foot lot for the utility purposes, or they could subdivide out the roadways, right, and dedicate it, and that would be a separate lot also, but it does not grant additional developable lots. These restricted lots could not then be converted to another use, so they could not, let's say, cut out that 8,000 square-foot lot and say, oh, we don't need that anymore, and then someone puts a house on it based on what the zoning is. That would not be allowed. Under the current, what's happening right now, under the old lots that were created, one of my examples was off of South Kihei Road, there was Hawaiian Tel had little substations, you know, switching stations, and so you'd see them on -- you probably have still a few on Molokai here, my dad was the island manager for Hawaiian Tel back in '60s, so there's like these little concrete bunker boxes that are on the side of the road that where a lot of the telephone exchanges would come in before going to the main switching stations. As modern technology evolved with regards to telecommunications, a lot of these 2,000 or 3,000 square-foot lots that were cut out for these utilities no longer were needed so Hawaiian Tel started selling off these little lots, so in Kihei, there was this little 3, 4,000 square-foot lot with this telephone exchange, and one of the guys bought it, he ended up -- because it was an existing nonconforming lot in that apartment district, he ended up building a 3-story apartment house right off of South Kihei Road, and under this provision, you would not be able to do that. So if it's a utility, it would have to be a utility lot. So if in the future they wanted to get rid of it, they would have to either consolidate that lot with an adjoining lot or, you know, get rid of it, but it would not be to be used for the specific uses that are allowed in that zoning category.

I think I covered most of the things that are in this bill. We did establish standards, you know, again for filming, commercial filming, you can see that on page 4, it goes over the standards; also, there's also standards with regards to temporary commercial events, again, just to create the standards to limit the uses; it would be, again, following the enforcement of 19.530; we've also, again, it talks about the restrictions on the lot it can only be used for drainage, open space, bikeways, pedestrian and greenways, landscaping, roadways, or minor utility purposes; and then again, on page, the last page, page 6, it talks about the whole limitation on subdivisions. So that pretty much covers the -- my presentation if you have any questions, I'm more than willing to answer them at this time unless you want to go to public testimony.

Chair Jennings: I think, before we get to questions, we'll close public testimony -- oh, let's open it. Is there any one that wants to publicly speak on this? Seeing none, public

testimony is closed. So if you want to go ahead. Is there any questions for Joe? Excuse me, I'm sorry. Commissioners? Okay, Rob?

Mr. Robert Stephenson: Thank you, Chair Jennings. Joe, thanks for your presentation. I appreciate it. One question on the special events. If we look at no. 2, I guess it's on page 4, so temporary commercial events, such as bazaars fairs, receptions or festivals, and so on and so forth, how would that affect specifically our Saturday market here in Molokai on Ala Malama Street as kind of a farmers market that go up in different areas of our community, people tend to have farmers markets or places where people gather to sell their goods and services, and I can imagine that if those events were affected by this in the administrative version on these small businesses could make it to the point where they wouldn't even want to participate?

Mr. Alueta: Good question. It all depends on how the farmers markets are allowed. Farmers markets are allowed within the commercial district, any of the commercial districts, so if they're in the commercial district, which most of Ala Malama is in, so that would be an outright permitted use if it's on a specific lot. If in the agricultural district, obviously the, you know, food product stands as well as farmers markets are also allowed in the provision within the agricultural district, so those would not be affected by this at all. This actually helps establish more of these to have it on a monthly basis in almost any of the zoning category districts provided that it's accessory and, you know, it doesn't create an impact ... (inaudible) ... so I think that's -- the intention is not to make it harder; this is more to make it easier for events like that. I think it's just to cover our bases as to how some of these events are going on, mainly to basically allow some of these events to go on without having to go through a cumbersome -- cumbersome of getting some type of conditional permit from the County Council or a special use -- special permit from the planning commissions if that's in this category so this, again, is more of allowing something with some standards, at the same time, we need to protect the, you know, the surrounding property owners, I think that's where some of these uses could occur, and that's why we provided some kind of notification by the person doing it, you know, the applicant, let the neighbors know what's going on, if they have any concerns, to try to address those.

Mr. Stephenson: Okay, thanks. I know one of -- one of the events that I'm involved with and a number of people in the community, every year the Molokai Chamber along with the development partners with Maui College that have -- we have our business conference at the Molokai facility there so is that something that would most likely would have to go through this process of this being ... (inaudible) ...

Mr. Alueta: Yes. It's not so much of a process, as long as you met the requirements of this section, then it'd be a permitted use. Again, this is something that is not established in the permit process. The permit process are normally all established within the -- I mean, generally, within each zoning category, so this is more of us saying if you meet these criteria, then you're an allowed -- you're permitted by ... (inaudible) ...

Mr. Stephenson: But we'd still have to -- an event like that would have to provide notice to all adjacent properties within 14 days and they would be limited. Is that correct?



Mr. Alueta: Correct. If it wasn't considered to be -- if it was not considered to be an accessory use in that particular zoning category and allowed by right. So under -- this is more general to cover like more of the agricultural and residential districts. In the public/quasi-public districts, it would not be affected because that -- you're saying you're doing it on the Molokai Campus? It wouldn't impacted. They're already allowed to do those uses.

Mr. Stephenson: Okay.

Mr. Alueta: So this would not put another burden on where it's already permitted. If it's going to be permitted, you don't need to follow this. It's where it's not specifically listed as a permitted use, this covers those areas.

Mr. Stephenson: I see. Thank you very much. I appreciate ...(inaudible)...

Mr. Alueta: I should have explained that earlier. Sorry.

Mr. Stephenson: No. That's great. Good. Thank you. Thank you very much.

Chair Jennings: Commissioners, any other questions for Joe? Okay, Joe, your recommendations, please.

Mr. Alueta: The department is recommending approval of the proposed bill to the Maui County Council. Again, the Commission has the option of either approving the bill to the Maui County Council, approving the bill with amendments to the Maui County Council, recommend denial of the proposed bill to the Maui County Council, or we can defer action on the proposed bill in order to gather more specific additional information. So again, we are recommending -- it is our bill, we are recommending approval of it and, hopefully, we can get some good comments. I appreciate your comment. I'm going to make sure that that is clarified in the bill.

Chair Jennings: Okay, any further questions for Joe? Okay, is there a motion, gentlemen?

Mr. Stephenson: Actually, I do have another question. When it comes to the photography and filming, so would the photography and filming, as described in here, apply to all commercial and non-commercial photography and filming because that could include anyone standing on the side or the corner using an iPhone to film any type of anything or take a photograph, and where are the -- where are the triggers? What are the triggers? What are the --

Mr. Alueta: Primarily it's going to be like, like I said, where there's zero impact, meaning you're on the side of the road, there's no problem, there doesn't have to be notice to the neighbors. This is primarily to establish -- if we get a complaint about someone doing commercial -- primarily commercial photography, we have the ability to say, hey, we have a provision here that says you need -- you need to do notice. Primarily to be able for us to say, when we get a complaint and it becomes an issue, that we can go out and enforce and say, hey, you're allowed to do commercial photography or non-commercial photography provided you met these criteria and if you didn't meet the criteria, then we

would have an issue. I guess it came about regarding my earlier -- it came about because somebody had complained, neighbors had complained about I guess MTV had done some videotaping or had setup a -- rent a house and we were -- we basically had no method to enforce on it because -- and we didn't really want to enforce and it became more of a police issue of nuisance, then it became a zoning issue, and so this would allow us to both use the police as well as us, from a zoning aspect, to say, hey, did you get a film permit? Most of the time, if you're doing commercial filming, you'll get a film permit, you get it from the state or the county. We've been working -- this language, a lot of it, was generated out of the film commission, out of the county's film office, Office of Economic Development, we're going to continue to refine this with them, and then -- because they currently have a permit process but it primarily only encompasses county lands, so we're working with them to expand that authority to non-county, to private lands so that if somebody does want to rent a house temporarily or film at a house or film on private property, they would then -- the criteria and the requirements would be established by the film commission rather than the Planning Department because they probably have a better understanding of the impacts and how to do this.

Mr. Stephenson: Okay, thank you. I'm still a bit unclear because here it says -- it says, "Any use which is not expressly listed as a permitted principle or accessory or special use is prohibited." So this says, "Commercial and non-commercial filming and photography provided that such activity," and it gives a whole list, "is authorized by a valid film permit from the County of Maui," "is authorized by a valid film permit from the State of Hawaii," so is it the case that as this is written, any filming on any property, for commercial or non-commercial uses, would be covered under this, and if you didn't have a valid film permit, from either the county or the state, then you would be in violation of this ordinance. Is that the case?

Mr. Alueta: That's a good question. Looking at it from another angle.

Mr. Stephenson: Because if that is the case, it's really problematic because there's a number of people, as you know, in Maui or on Maui, on Lanai, and Molokai, or statewide, people that go out and they make documentary films for nonprofits, they put stuff on Akaku, they do things for a private graduation, or they may be shooting just a simple low-budget commercial for a local business or organization, maybe doing some type of a family video, and if in fact you must require or must meet all of these requirements to be in compliant with this, then virtually everyone who operates a motion picture or still picture capturing or recording device without following this ordinance would be in violation. Is that correct?

Mr. Alueta: If they do not meet, like again, if they did not meet -- say you --

Mr. Stephenson: So if they did not meet all the requirements -- I'm sorry, I'm not trying to be argumentative; I'm trying to seek clarity. So one of the requirements, and all of these must be met, one of the requirements is has an authorized valid film permit from the County of Maui, so anyone filming or photographing without a valid film permit from the County of Maui, as an example, would be in violation. Is that correct?

Mr. Alueta: If they were using -- if they were using, right now, if they were using county lands --

Mr. Stephenson: Okay.

Mr. Alueta: Okay, so say a private business doing their own filming, or a family doing video, that would be an accessory, generally, considered to be an accessory to that family or that business, therefore, it would not be subject to this. This is something that where it's not considered to be an accessory or clearly an accessory or permitted within the specific zoning district.

Mr. Stephenson: Okay, so understanding the requirement, if you're standing across the street, if you're standing on the county sidewalk across the street filming a property that is not accessory to your property so -- do you see what I'm getting at?

Mr. Alueta: Yeah, no, no, I totally --

Mr. Stephenson: This becomes -- I don't think this has gone through enough of a thorough vetting process to be able to allow people to be compliant when there's just ordinary things that people do, and so that would be my personal concern looking at this from a statutory standpoint.

Mr. Alueta: Good comments and so I'm going to take that back to my boss and we'll try to look at what -- what we can add to this and make it clearer that that's not what we're - - 'cause that's clearly not the intention of the bill was not try to -- you whipping out your iPhone and you want to videotape something, that's not what this is meant to cover; this is clearly only to say -- establish regulations primarily for someone doing a full-blown commercial or non-commercial filming with either a nonprofit or for-profit corporations that has an impact that where you need to close down the streets, or you need to -- you have a potential to create a nuisance on the neighborhood, but, you know, videotaping family vacations, although I've seen them stand in the middle of the road and block traffic, that is -- that's not the intent to deal with that, and so I think that there is room in here, in this code, that we can amend or make slight modifications to capture what you're essentially trying to avoid creating a conflict.

Mr. Stephenson: Sure, and I think it's -- I think it's a great step and it needs to go a little further in defining, you know, if you say the intent is to address a certain activity, then I think that certain activity needs to be defined and triggers placed in there and the specifics so people who either are not aware of that or don't fall in that category don't subject themselves to fines or any type of civil or criminal penalties.

Chair Jennings: Marshall, did you have --

Mr. Marshall Racine: Yes. To piggyback on Rob's concerns, you mentioned pulling the permits, this is on state property, many of our cultural events, such as Ka Hula Piko, take place on county and state property, they move around year to year, but amateur photographers who for no economic advantage spend their day or they'll sit and watch looking through a viewfinder. Are they also exposed to violating the conditions of this proposed law?

Mr. Alueta: I understand. I'm just making notes. And so, in essence, you want to make sure that this does not restrict people from taking personal photos or personal videos for their own use and then -- or for --

Mr. Stephenson: Or even limited small commercial.

Mr. Alueta: Okay.

Mr. Stephenson: And I can give you some examples. I know, personally, myself and there's a number of other individuals here on the island that take photographs for fee for service or they take a video for a fee for a service, or just photographing images or use videography and for small projects, it doesn't seem to make sense to go and get a film permit, you know, for example, if you're taking a headshot for someone or their website or a business card or something like that.

Mr. Alueta: Right. And I think the intention is, you know, it's not like you -- I think there is -- the intention is that you don't meet all of these. I think maybe that needs to be clear. I think d. is the key issue, d. is results in no annoyance, inconvenience or discomfort to the neighborhood or to the public, as determined by the planning director, or determined by the planning director, including but not limited to excessive noise, lighting and traffic, beyond impacts that would ordinarily occur with any use permitted on the property, so I think that --

Mr. Stephenson: So perhaps saying if it meets one or more of the following criteria --

Mr. Alueta: Right.

Mr. Stephenson: Could clear that up.

Mr. Alueta: Correct. And that --

Mr. Stephenson: Currently, as it's written, is you must meet all.

Mr. Alueta: If that's -- yeah, I see what you're saying that's why I just want to make sure that we want to clarify that, you know, that if you meet d., right, you don't need to have a., b., or, you know, so let me go back and make sure -- I'll work with my boss as well as Corporation Counsel and make sure that's the intention, but I understand what your intent is, so as long as it meets d., you don't need to go get a permit ...(inaudible)... ok. Alright.

Mr. Stephenson: Yes, thank you very much. I think that's a great solution. Thanks.

Chair Jennings: Any further questions for Joe? Okay, is there a motion to any of the ...(inaudible)...

Mr. Stephenson: Chair?

Chair Jennings: Yes?

Mr. Stephenson: Should we save comments for the discussion portion or would you like comments now?

Ms. Jennifer Oana: You can do comments now and that way you want to add the comments into the motion, we'll ...(inaudible)...

Mr. Stephenson: Okay. So I do have one comment on page 2, item number D., if you look down at the third line from the bottom, it says, "Additional fees may also be collected when an application is deemed by the director to inadequate or incorrect and, therefore, requires additional submittals and further review." I think that is well intentioned but I think it could have some issues and problems, and I know, from experience in some of the work I do in my professional capacity, there were times where we have submitted applications whether it'd be SMA applications, SUP2 applications, short-term rental applications, whatever that application may be to the Planning Department, the Planning Department's come back and said, well, it's incorrect, you need to provide a, b, and c, and then we go back and forth and try to figure out, well, actually that's what the Planning Department wants but actually the law says something else, and so it's one of those things to where if the director can deem an application inadequate and collect additional fees, yet, you go back and the actual department policy is inconsistent with some of the laws or the department rules -- or practical application is a little different, then you could be imposing fees on applicants who shouldn't have to pay those fees because the department practice is inconsistent with the actual codified law.

Mr. Alueta: Yeah, this section is standalone from all the rest of the other provisions that we talked about today. This involves -- would allow for the Planning Department during the annual budget to just put it in to propose as part of our budget that we would be able to collect fees on administrative reviews. Currently, we collect fees as commission and department rules, and in the budget that allow us to collect fees for the process of SMAs, change in zonings, and whatnot, those that are listed, this portion is primarily to deal with -- we currently review building permits, review parking analysis, and landscaping, a lot of other permits, administrative permits that we do not collect fees for, so we are not -- without this provision, we would not be able to at least propose some type of fee structure for those types of reviews that the department currently does, and so like a say a new commercial building comes in, or they come in ahead of time, and they'll ask us to do a parking analysis for them. Their architect is fully capable and some of them do that, but they use us to then check their work and that can be very cumbersome, especially if it's an after-the-fact, especially with some existing buildings, they'll come back with, well, appears the existing commercial building, how parking stalls do I need if I want to change this use? And so we end up going through having somebody go out there and count the number of stalls, make sure it's still in compliance, figure out what the square footage of each -- of all the units are, what are the uses of each unit, what is the parking requirement for each unit based on its use, and then tell them, oh yeah, you're short two stalls or, yeah, you have enough stalls now but if you change this unit to a restaurant, you're not going to have enough stalls. So a lot of them, that's the analysis that we do ahead of time. We, currently -- we're currently one of the reviewing agencies for building permits, some single-family, a lot of times commercial, and all of the buildings within the agricultural districts, that building permit fee that you pay for, we don't get any of that. That goes to Public Works, and it also goes to Fire, okay. We're not proposing to amend the building permit fees to add the Planning Department on it, and we feel that we should,

the first pass, we have no problem with reviewing them; it's on the second or third or fourth pass where we have told the person, okay, we reviewed it, you need to make these changes, so they bring it back; okay, we still need changes, that you didn't do, I told you to do 1 through 5, you submitted 1 through 2, and 3, 4, and 5 have not be submitted, and we, basically, want to say, okay, if you want us to look at it again without addressing everything we asked you to address, you're going to have to pay another review fee. It's kind of a -- we're looking at a nominal collection. I mean you see they're very nominal relative to the time and effort it takes. It's more for someone to say you need to look at this, make the changes once, and we'll make -- and also we can review it all at once. And we get a lot of piecemeal. I supervise the plans examiners in the Planning Department who review all these permits, and we will go back three and four times to people, and it'll get stretched out. I mean they all say, oh, it takes a year-and-a-half to get your final. It's like, well, we told you 90 days, in the first 90 days you need these 5 things, you need the flood zone, you need the thing, and it took you a year just to get a new elevation certificate, to file for your SMA, you had to remove the setback violations, there was a lot of things going on. This just, again, allows us to put something in the budget, council may reject it, they have rejected a lot of our budget and fee increases. We've never gotten a fee increase on all of our SMAs or change in zonings. We still collect about maybe -- we recover maybe 10% in fees for what it cost to process a permit, and, you know, again that's the big argument. Do you subsidize that? And right now, the council feels that we shouldn't collect the whole amount. The general taxpayers, as a whole, should subsidize it because it's a benefit to the county so that's their prerogative. And the same thing with this. We'll propose it to the County Council and let them decide whether or not they feel this is worth it to add it to the budget. Right now, we don't have -- we need this section of the code so that we can at least add it to the budget 'cause right now we don't have a provision that allows us to make that proposal for those administrative types. So it does not impact SMAs, all those other ones; those are already covered under the budget and they're already covered by administrative rules for the department as well as administrative rules for each planning commission. And that's where it's at. But I understand where you're coming from.

Mr. Stephenson: Okay. So it's not necessarily page 4 is missing the checkbox under line 3, so resubmit and here's another \$20.00 fee; it's more we have -- because of your project, we have to do a parking analysis, and we need to do a landscape planting, and we need to do whatever it might be, and the fees for those additional permits it X. Is that correct?

Mr. Alueta: A lot of that is for that but it will be for people coming in ahead of time, they want our services, meaning right now they want us to do the parking analysis for them because they're looking at buying. I'm looking to buy this commercial building, but I want to convert this unit, do I have enough parking? So right now, we're like normally you would have an architect do that, but a lot of the architects go, hey, Planning's going to make the final call on that so let's have them confirm before I buy this building, but we don't -- we're not able to charge for that because -- basically, an official determination letter of what's going to be -- if you have enough parking. If you convert this, do you have enough parking? That's their -- they want to -- they don't want to proceed with the purchase until they know from Planning that they're going to have enough parking. Or, again, landscaping is a separate review from your SMA. Your SMA comes in, you come in for your building permit. You need to do a landscaping plan. We don't get to collect

for that landscaping reviewing making sure you got enough trees. I mean so those are the permits that we're looking to collect for.

Mr. Stephenson: Thank you.

Chair Jennings: And I think it's only fair. Okay, any further discussion? Okay, I'll ask for a motion then.

Ms. Oana: This could also be a motion to recommend approval with comments. I mean you don't have to ...(inaudible)...

Mr. Alueta: Correct.

Ms. Oana: With amendments. You can do comments as well and Joe can take that back.

Mr. Alueta: Right. And the comments I have right now are ensure that this does not impede people from doing personal or limited commercial small filming, it's an event, criteria D, that they would not need to go through any of this notification process as outlined in the rest of the section on page 4. And so I already have that comment that I'm going to take back if you want to formalize that.

Mr. Douglas Rogers: Yeah, I move to approve the comments.

Chair Jennings: There's a motion to approve with the comments that were made. Is there a second to that motion?

Mr. Racine: I'll second it.

Chair Jennings: Seconded by Marshall. Is there any discussion? Seeing none.

***It has been moved by Commissioner Rogers, seconded by Commissioner Racine, then***

***VOTED: to recommend approval of the proposed bill with the Molokai Planning Commission's comments as discussed.***

***(Assenting: B. Buchanan; M. Drew; L. Lasua; M. Racine; D. Rogers; R. Stephenson)***

***(Excused: W. Akutagawa; D. Swenson)***

Chair Jennings: Motion carried.

Mr. Alueta: Thank you very much.

Chair Jennings: Thank you, Joe.

Mr. Yoshida read the following agenda item into the record:

- 2. MR. WILLIAM SPENCE, Planning Director, transmitting proposed amendments to Chapter 19.62 of the Maui County Code relating to**

**Flood Hazard Areas to incorporate changes required by the Federal Emergency Management Agency (FEMA). (C. Cortez)**

Mr. Yoshida: The staff presenting the report is Carolyn Cortez.

Ms. Carolyn Cortez: Hi. Good morning, Commissioners. My name is Carolyn Cortez, and I'm the supervising planner at the Zoning Administration and Enforcement Division. Our division is tasked with implementing the National Flood Insurance Program, which is a federal program and is run by FEMA, the Federal Emergency Management Agency, and what this does is it provides subsidized flood insurance policies for our community, for people that are located in the flood zone, it also provides federal funds in times of national disaster, so there's a presidential disaster declaration, such as we had for the recent flooding at Iao Stream, or, sorry, Wailuku River, the federal monies become available for us to use, and so what this is is the ordinance changes are being requested by FEMA in order for us to make eligibility in the program. So if we -- right now, we are a community that participates in the National Flood Insurance Program, and as I said, it provides us with those benefits. If we were not a part of the NFIP, then those monies and those -- the subsidized for flood insurance premiums would be -- we would no longer get that, and so what these revisions to the flood ordinance are are mainly - I did a kinda crosswalk for you for all of the changes in the ordinance, mainly, they are kind of a housekeeping changes, there are things like we updated our office address, we updated the current building code that we use, we did correct some definitions to be in-line with FEMA's definitions, so we had definitions that were a little different than FEMA. FEMA requested that we be identical to them. There were some changes on services that FEMA had previously offered that FEMA no longer offers and they asked us to delete those also on the code. We did also quote some insurance rates, which FEMA told us to take out because premium amounts are subject to change. They did ask that we include a section on enforcement, and a section on severability, and also a section on who is responsible for writing the flood program because we have these in the code, the Maui County Code, but we did not have it specifically in this chapter and they asked us to add that into the chapter. There were some corrections, such as adding Flood Zone AO, which was inadvertently left out when we revised the ordinance in 2009, so we corrected that. And so I'm here to answer any questions you may have on the changes.

Mr. Lawrence Lasua: So your changes on this is basically to be uniform with the federal?

Ms. Cortez: Yes. That is correct.

Mr. Lasua: Thank you.

Ms. Cortez: So I can explain a little bit more. What happens is what instigates the review of our ordinance is you had a map change that happened last year in 2015, so what FEMA did was, as you all are aware, FEMA decertified the Kaunakakai Levy, and so what happened was areas in Kaunakakai Town were flooded because we could not certify the levy as being able to withstand the 100-year flood, so that revision happened on November 4<sup>th</sup> of last year, and with that, FEMA will look over our flood ordinance and when they did this review, they came across these things that they felt needed to be corrected, and usually the ordinance is required to be adopted and amended prior to the adoption of the flood insurance rate maps, and what happened was there was a little



delay and we asked FEMA to allow us to have a little grace period, so they're allowing us to do that. And so they just identified mainly fairly -- they're not substantive changes to the flood ordinance.

Chair Jennings: Okay, at this time, is there any public -- anyone would like to speak on this item? Seeing none, the public hearing is closed. Commissioners, do you have any questions for Carolyn?

Mr. Lasua: I get one question regarding the FEMA and probably the county as well. When we do this, do they actually remap the mapping as well?

Ms. Cortez: This review of our ordinance came because of the --

Mr. Lasua: Because of the map?

Ms. Cortez: Yes, because of the map.

Mr. Lasua: So is the mapping like current? If I remember right, when I looked at my home when I was doing my ...(inaudible)... that had to with flood, the last map that was there showed 1959 so I wanted to know if that was up to date.

Ms. Cortez: Okay, yeah, what happened was Maui County joined the NFIP in 1981, but prior to that, we did not have any flood construction standards, so I'm not sure where the 1959 date came from.

Mr. Lasua: That was for ...(inaudible)... property and so that was based on that -- excuse me '79.

Ms. Cortez: Oh, '79. Okay, so what happens is that structure is a pre-FIRM structure, and so it wouldn't be subject to, you know, any of the flood standards because you were not in the program at that time, so that property is kind of like grandfathered and it could have a subsidized flood insurance policy, you know, if they choose to give it.

Mr. Lasua: So what is the date they're using now for that?

Ms. Cortez: Okay, so the most current date is November 4, 2015.

Mr. Lasua: Okay. Thank you. That sounds better.

Chair Jennings: Okay, any other questions for Carolyn? Is there a motion, gentlemen? I think too I should ask, Carolyn, what are your recommendations for this? I apologize.

Ms. Cortez: No problem, Mr. Chair. The department is recommending approval of the proposed bill to ensure our continued participating in the National Flood Insurance Program, although your Commission has the following options: Number one, they may recommend approval of the proposed bill to the Maui County Council; Number two, they may recommend approval of the proposed will with amendments to the Maui County Council; Number three, they may recommend denial of the proposed bill to the Maui County Council; and number four, you may vote to defer action on the proposed bill in order to gather specific additional information, but our recommendation is to approve.

Chair Jennings: Thank you, Carolyn. Commissioners, any discussion on the recommendations? Okay. Do I have a motion? Rob?

Mr. Stephenson: I move to recommend approval as presented.

Chair Jennings: Is there a second?

Mr. Lasua: Second.

Chair Jennings: Any further discussion? Seeing none.

***It has been moved by Commissioner Stephenson, seconded by Commissioner Lasua, then***

***VOTED: to recommend approval of the proposed bill as presented.***

***(Assenting: B. Buchanan; M. Drew; L. Lasua; M. Racine; D. Rogers; R. Stephenson)***

***(Excused: W. Akutagawa; D. Swenson)***

Chair Jennings: Motion carried. Carolyn, thank you very much.

Ms. Cortez: Thank you very much.

#### **D. DIRECTOR'S REPORT**

##### **1. Reports from the Members Who Attended the September 21-23, 2016 Hawaii Congress of Planning Officials Conference on Kauai**

Mr. Yoshida: Thank you, Mr. Chair. Under the Director's Report, item 1., reports from the Members who attended last month's Hawaii Congress of Planning Officials Conference on Kauai. This is an opportunity for those who attended the conference last month to share with the rest of the body some of the highlights of the conference.

Chair Jennings: Lawrence?

Mr. Lasua: Actually, one minute. Regarding the -- what do you call the congress, Hawaii Congress of Planning Officials, that was pretty good. It's the first time I've gone to anything like that. We did a lot of things. There were a couple of ethics in planning that we attended. We went through - what do you call - a role playing for that as far as being a planning official and having a conflict of interest, so that was pretty good. Rob put in a lot of examples. We had to break out into groups, and then come back together and put things together whether it was based on the -- I guess the codes that they have there for the commissioners as far as conflict of interest and things like that. I did find something interesting, which they called the ecological -- it was interesting that most of the, well, not most of them, but they were looking at how the Mainland was using this to help the community in safety and health, so parking stalls were made to park backwards so when people get out of the car, they're not worried about the kids from the oncoming traffic, so the kids would get out and go to the sidewalks and go to the back of the car instead of

the other way that we're doing it now, and I think they did a lot of -- they showed a lot of - they had test patterns that before this would happen and ...(inaudible)... they didn't have a test pattern for this to happen so the people could see it in a test pattern and then whether they wanted it or not before they went ahead with it, and that was a good thing to see. I can't remember the name. They called it the socio-ecological model. Yeah, but there was a socio-ecological model of a policy committee organization, it's a community coalition that would do that. And I thank the county ...(inaudible)...

Chair Jennings: No, thank you accepting to go to that. It sounds like it was very good. You learned something. I appreciate that. Rob?

Mr. Stephenson: Thank you very much, Chair Jennings, and thanks for the opportunity from you recommending to attend and for the county and all the staff to help make it happen. I appreciate. It was a great experience. And just out of complete and total transparency, there were actually three of us at the Hawaii Congress of Planning Officials, Doug Rogers was there, he went in his own personal capacity, and the three of us never discussed any items related to the Planning Commission or future agenda items. So I wanted to let everyone know that, to my understanding, there was no violation of the Sunshine Law. I wanted take care of the housekeeping. I'll let Mr. Rogers speak for himself. Other than the nice things Mayor Carvalho, it was hosted by the County of Kauai, and Mayor Carvalho is a great guy, he had a great statement, he said, "We're a state, we're separated by water, but we're connected through family, through business, and through opportunities." So even though we are on different islands, everything that we do as a community, everything we do to interact with other communities, it's all connected, and so we need to help to draw on the strengths of one another. So I thought that was a really nice way to set the tone. One of the other things that was talked about is your zip code shouldn't determine your outcome, and based upon people's zip codes, whether they live in under privileged areas, often their outcomes aren't different than those that live in the good zip codes, and much of that has to do with planning and the built environment and the availability of different types of infrastructure, schools, and retail, or housing opportunities, so that's one of the key things I got. The other one was affordable housing, and everyone in the congress that I talked to and that we heard from said that the largest failure to affordable housing is regulations. If developers can't build and make a profit and make it affordable for them to build, then they can't build and they won't build, and so there needs to be a way that we all collectively find ways to make the regulations still appropriate to protect the environment and protect the community, but also make it possible for developers to build affordable housing, otherwise, we're not going to meet this need of 60,000 a year that we're going to need by the 2030 to maintain our current housing needs. The other thing, Mike Dahilig, who's the Director of Planning for the County of Kauai, he said the best way to get anything done is to get community informed of the initiatives. First thing, go to the community and talk to them and get their input whether it's county initiatives, state initiatives, or private initiatives. I thought that was a good and important thing, and that's the importance of this process that we have here through the Planning Commission. And one of the other ...(inaudible)... that I thought that he mentioned as well, and we see this, we see all these revisions that are going on with the laws, he said there's a need for enforcement, but planning through enforcement may not be the right way to go. If you have to -- rather than planning and telling all of the things that you cannot do, perhaps we need to focus more on the things that we want to do and focus on those rather than putting into policy all the things that they're not

supposed to do. I thought that was really a profound perspective on that. It was a great opportunity to spend time with Lawrence and Doug, and all the rest of the planning people throughout the state so, all in all, great conference and I appreciate the opportunity. Thank you.

Chair Jennings: Doug, you have anything you'd like to share with us?

Mr. Rogers: Rob covered it pretty good. I was really impressed with Mayor Carvalho's team and what they're doing over there and their focus on community input first before -- instead of top-down planning, it is community input first. See what does the community want as far as especially with affordable housing, which definitely one of the biggest challenges that we're going to face, and I think they're going about it right. I think they have a lot of good ideas. I was really impressed.

Chair Jennings: Thank you. Guys, I'm glad you could accept the invitation to go and I thank you for sharing your perspective with us. So again, thank you, both -- excuse me, thank all three of you. Thanks guys. Back to the Director's Report.

2. **Pending Molokai Applications Report generated by the Planning Department (Appendix A)**
3. **Closed Molokai Applications Report generated by the Planning Department (Appendix B)**

Mr. Yoshida: With regards to items 2 and 3, under the Director's Report, the department has circulated a list of pending Molokai applications as well as closed Molokai applications if the Members have any questions on either of those.

Chair Jennings: Is there any questions? Okay, seeing none. I'll give this back to Clayton.

4. **Agenda items for the October 27 Molokai Planning Commission meeting**
  - a. **Comments on the Draft Environmental Assessment prepared in support of the Department of Public Works' Proposed Kaunakakai Drainage Subsystem B SMA Application**

Mr. Yoshida: Under item 4, under Director's Report, your next meeting is scheduled for October 27. We provided you with some meeting materials for that meeting, the two volume environmental assessment from the Department of Public Works on the Kaunakakai Drainage System B, the improvements. Back in the 1990s, there was a master drainage plan done by the county by Wilson Okamoto Corporation. The county has implemented different phases of that plan. There was a proposal for Subsystem B to run along Kaunakakai Place and down outside the wharf. They ran into some problems, technical problems, so now they've rerouted the Subsystem B to go in between the wastewater treatment plant and the Molokai Yacht Club to take water. So anyways, Public Works has applied for a special management area permit. Because they're utilizing county funds and they have to do an environmental assessment, so once they have completed the environmental assessment process, then we can bring the special

management areas permit to you, but this is opportunity for the Commission and for the public to the Commission to provide their comments on this public informational document, the draft environmental assessment. I guess also we'd like to discuss the meeting schedule for calendar year 2017 so we can reserve the meeting facilities. Happy reading.

Chair Jennings: Yes, please, if you would, not use these as paperweights in your office because there will be a test, and -- no, I won't be giving one. I want to thank Carolyn and Joe, and Suzie, Clayton, and of course my left-hand over here, she's been pointing me in the right direction, so again, thank you guys, and -- oh, I do have one question. Will we have an announcement in the paper or anything in the paper for public to come and voice their opinions?

Mr. Yoshida: I guess copies of the environmental -- draft EA are available on the Office of Environmental Quality Control website, but we will circulate copies to the other Commissioners, those who are not present today, and we have a copy available at the Mitchell Pauole Center if a member of the public wants to review a hard copy of the document. I think the comment period ends on November 7<sup>th</sup>, public comments, November 7<sup>th</sup>.

**E. NEXT SCHEDULED REGULAR MEETING DATE: October 27, 2016**

**F. ADJOURNMENT**

Chair Jennings: Okay, I guess that answers my question and I better turn my microphone on. Meeting is adjourn. Thank you all.

There being no further business brought before the Commission, the meeting was adjourned at 12:07 p.m.

Respectfully submitted by,

SUZETTE L. ESMERALDA  
Secretary to Boards and Commissions

**RECORD OF ATTENDANCE:**

**Present:**

Michael Jennings, Chairperson  
Douglas Rogers, Vice-Chairperson  
Billy Buchanan  
Michael Drew  
Lawrence Lasua  
Marshall Racine  
Robert Stephenson

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**Excused:**

Wiliama Akutagawa

Diane Swenson

**Others:**

Clayton Yoshida, Planning Program Administrator, Current Division

Joseph Alueta, Administrative Planning Officer

Carolyn Cortez, Staff Planner, Zoning Administration and Enforcement Division

Jennifer Oana, Deputy Corporation Counsel

**LANA'I PLANNING COMMISSION  
REGULAR MEETING  
SEPTEMBER 28, 2016**

**APPROVED 11-16-2016**

**A. CALL TO ORDER**

The regular meeting of the Lana'i Planning Commission (Commission) was called to order by Chair Kelli Gima at approximately 5:30 p.m., Wednesday, September 28, 2016, in the Lana'i Senior Center, Lana'i City, Hawaii.

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

Ms. Kelli Gima: Good evening everyone we're going to go ahead and get started. It's now 5:30 p.m. This is the September 28, 2016 Lanai Planning Commission meeting. At this time I'm going to open up public testimony for those who need to leave, and we will -- I will be opening up public testimony after every agenda item. So is there anyone that would wish to give testimony at this time? Alright come on up Uncle Ron.

**B. PUBLIC TESTIMONY - At the discretion of the Chair, public testimony may also be taken when each agenda item is discussed, except for contested cases under Chapter 91, HRS. Individuals who cannot be present when the agenda item is discussed may testify at the beginning of the meeting instead and will not be allowed to testify again when the agenda item is discussed unless new or additional information will be offered.**

Mr. Ron McOmber: I'll try to make this short and sweet. My name is Ron McOmber. I'm a resident, 44 year resident -- not 44 years old, but 44 years on the island. I came in here last night at a budget hearing. I cannot -- I heard there was all kinds of rumors going on that the Mayor dropped the rumor that he would like to do away with the Molokai and the Lanai Planning Commission. We cannot allow that to happen, totally we cannot allow that to happen. No matter what he thinks of it, this is the only way that we can converse between us and the Council. Please do not allow that to happen -- anybody. I also I sit at a table over here with the fireman last night, talked stories with them. I told them that they needed to get that extension on the firehouse done which has been on the budget for three years or four years now. While I was sitting there talking to them guess who was partying over here by the front door? Was Lynn McCrory and the Mayor. The Mayor won't talk to the rest of us, but he talks to Lynn McCrory. This is really unsettling to me. This is my personal opinion; I think that's wrong. It should not be going on. I know that she goes over and talks to him in Maui, but we can't allow that to happen. This is not comfortable for us. I saw that and I could not believe it. I just couldn't believe what I was looking at, and that's my testimony, you guys. Thank you.

Ms. Gima: Thank you. Anyone from the Planning Department have any -- I mean in regards to what he stated about the Mayor stating that the Planning Commission would be

abolished? I mean has that been in discussion or talked about?

Mr. Clayton Yoshida: Thank you Madame Chair. I'm not aware of a proposed change, and such a proposed change would require a Charter Amendment that has to be voted on by the voters of the County.

Ms. Gima: Thank you for clarifying for that, and thank you Uncle Ron. Anyone else at this time wishing to provide public testimony? Come on up.

Ms. Winifred Basques: Good afternoon. My name is Winifred Basques. I've been on the island for 53 years. It has been a lot of changes on this island, good and bad. It creates problems for the community, okay. There are a lot of pros and cons on what goes on in the community. They work here, they work the other side, and then they leave things all this kind stuff, like the coconut wireless, okay. Now the thing is that what Ron just said I left here about quarter to five because I was at the meeting. I had to go to one other meeting so I didn't hear until I heard it this morning. There was a lot of discussion between these two parties. Now the thing is that when they do this kind stuff it doesn't cut it. It doesn't make no sense why you folks make this kind problems like this. Who's going to benefit out of it? Not us. It's the two guys. Okay, they was here to say, oh, I wanted this on . . . (inaudible) . . . can we do it this way?

Ms. Gima: Aunty, sorry to cut you off. What are you specifically referring to? The, the statement about the Mayor's saying that they're going to get rid of the Planning Commission, is that what you were referring to?

Ms. Basques: No, I left before that, but I heard it from the outside.

Ms. Gima: Okay.

Ms. Basques: . . . (inaudible) . . .

Ms. Gima: But that's what you're referring to?

Ms. Basques: Yes.

Ms. Gima: Okay.

Ms. Basques: But other than that, you know, I hate to say it, it doesn't cut it. It doesn't make sense. Here he comes over here, there all this shambles goes on in the community, here in this hall, what people gonna think? Okay, he comes here, he do his thing, and then go back. Is there's no feedback. There's nothing come back to the community. So is it -- excuse the word -- okay, I didn't want to say it like loud, but other than that, that's what it's all about. Thank you.



Ms. Gima: Thank you.

Ms. Basques: You're welcome.

Ms. Gima: Can I just make a request Clayton to see if you would be able to follow up? I know again this was something that was just said yesterday and probably just...talk at this point, but if it's something that you could follow up on because that's a pretty huge and kind of scary accusation or statement made. So if, if the Planning Department could please follow up on that we'd appreciate it.

Mr. Yoshida: Yes, we can check, check on that.

Ms. Gima: Thank you. Okay, last call for public testimony. Again, we will open up after various items on the agenda. Okay, I'm going to close public testimony at this time and move on to Item C which is approval of the August 17<sup>th</sup>, 2016 meeting minutes. Commissioners, discussion?

**C. APPROVAL OF THE AUGUST 17, 2016 MEETING MINUTES**

Ms. Beverly Zigmond: Madame Chair, I move that the minutes of the August 17<sup>th</sup>, 2016 meeting be approved, please.

Mr. Stuart Marlowe: Second.

Ms. Gima: Okay, it's been moved by Bev, second by Stu, to approve the August 17<sup>th</sup>, 2016 meeting minutes. Any discussion Commissioners? No? None? All in favor of approving the minutes raise your hand. Okay, all opposed? So it's unanimous, that passes.

**It was moved by Ms. Beverly Zigmond, seconded by Mr. Stuart Marlowe, then unanimously**

**VOTED: that the minutes of the August 17, 2016 meeting be approved.**

*(Assenting: M. Badillo, M. Baltero, S. Koanui Nefalar, S. Marlowe, B. Oshiro, B. Zigmond)*

*(Excused: S. Ferguson)*

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

**1. MR. WILLIAM SPENCE, Planning Director, transmitting Council**

**Resolution No. 16-93 referring to the Lanai, Maui, and Molokai Planning Commissions a Proposed Bill Amending the Comprehensive Zoning Ordinance relating to Enforcement Procedures for Bed and Breakfast Homes and Short-Term Rental Homes. (G. Flammer)**

Ms. Gima: Okay, so we're going to go ahead and move on to Item D which is public hearing, Item #1. . . *(Chair Kelli Gima read the above project description into the record.) . . .*

Mr. Yoshida: Good evening Madame Chair. Clayton Yoshida with the Planning Department and with me tonight is your secretary, Leilani Ramoran-Quemado. And we have two senior planners, Gina Flammer with the Current Division who was here in 2011 when Council proposed a resolution on regulating short-term rental homes, and 2014 when the Department proposed amendments to the legislation that the Council adopted. And we have to deal with these two Council Resolutions on short-term rental homes. And we have Carolyn Cortez from our Zoning Division who will be dealing with the proposed amendment by FEMA on the Flood Hazard District Ordinance. So Gina will be presenting the staff report on this resolution.

Ms. Gina Flammer: Hi. Good evening everyone, I'm Gina Flammer, staff planner. I recognize a couple of you from two years ago when I was here to go over the amendments to the short-term rental home ordinance. As Clayton just stated the ordinance was passed in 2012. I came to you in 2011. This is the original ordinance to allow short-term rentals where an owner doesn't live on the property; bed and breakfast where you live on the property were allowed, I think, in 2008. So we had a lot of -- there was a two year look back clause in that original bill. The Department looked at the bill, proposed some changes, came back to you in 2014 with those changes. You gave us some great suggestions and then it went to the County Council where it was discussed. I think it was 11 different hearings that we had over it, so I'm going to review these changes.

The Council felt like they got as far as they could in about the year that they went -- maybe a year and a half discussing all this -- budget was coming up, they wanted to wrap up their work that they had done. What hadn't been done yet was looking at the enforcement section of the Code, and then there was also the next item that we're going to go through is a whole separate, new requirement that came up at the end of that discussion.

Those two things were then bundled into different bills that we're going to talk about today. It's nice because it gives enforcement its own spot light. The rest of the items were passed by Council, so I thought it'd be useful for me first to, unless you already know, but to bring you up to speed on what happened with all those amendments. Okay.

So Council allowed properties that have a condominium property regime, and I don't know if Lanai, if you have any properties like that. It's a State process that allows a property to be

divided into different ownerships. It's still the same density. So because a number of these properties that were coming in for short-term rental home permits were condominium -- had condominium property regimes on them, which would mean they're divided into two, sometimes three separate parcels with different owners. Because they were coming in for permits, Council wanted to let each individual owner of that CPR unit have their own permit. We were requiring before the way we were reading the law it was an entire TMK. If you had two different owners, they had to be on the same permit. So that was one of the things Council did. It did cause a little bit of confusion for us. In some of the amendments that we're going to talk about today relate to that because that's cleaning up their language.

Another thing that Council did is they added a minimum ownership interest for short-term rental homes. And after some discussion they came to 50%. So what that means is that the applicant applying for the permit or number of applicants combined together have to own 50% of the property. We had a couple of cases where people had come in with maybe a 1% ownership interest and Council didn't want to see that.

Another thing we did is we just kind of restructured the bill so that all the criteria was in one place. Sometimes when we do bills, and you add things they get added in a different section so we just kind of cleaned up the bill. There's a little bit of that in this new one we're going to go through again.

Council reduced -- now short-term rentals have a cap for each area. Lanai does not have a cap. But on the island of Maui, the different community plan areas -- West Maui, Kihei, the North Shore, Hana, Makawao, Kula -- each area has their own cap. So Council reduced Hana from 48 down to 30. They left everybody else the same. Molokai and Lanai, they also left with having no cap. If you have any comments about that, you can give that to me. Molokai decided they like having no cap. I just went to them a couple of weeks ago.

The new bill at the end of it, the discussion, Councilmember Baisa came up with a certification form that new people applying for a permit will have to fill out. It's in the application. And the certification form, people have to state on there that they haven't been operating. And if they do own an interest in another one they need to put that on the form and a couple of other things.

Council also granted a six month amnesty for anybody that was operating illegally. As part of the bill that was passed in 2012 there was a provision banning any people that were caught advertising or operating through e-mails . . . (inaudible) . . . or other ways from being able to apply for a permit. There's a lot of discussion about should we just get rid of it altogether...or should we keep it and then let it compromise with the six month amnesty period to allow people. So this new certification form has some of the amnesty language in it.

One other change and we talked a lot about the signs here. They are big. They do stay up

for a really long period of time. Council did agree with the Department that it would be okay to have the sign only come up for 45-days. They didn't take your recommendation that the sign be smaller. We did talk a lot about that. Lanai City, there are small properties. Council just wanted to keep everything uniform so it's still the same size. Short-term rental home signs aren't too bad, it's the B&Bs that are the really big ones. They haven't taken up the B&B amendments yet so maybe those can come down to a smaller size. So again the signs are only going to be up now for the 45-day neighbor notice period.

Also it got rid of the requirement where the applicant went -- if they went to a public hearing before you folks they had to put notice in the newspaper three weeks in a row. It's about \$1,200 that fee. It came at the end of the process. It was something they, they took out. We recommended that they take that out. The Department still publishes a notice in the newspaper, and they're still -- the agendas are still posted. Any everybody within 500 feet still gets mailed a notice of that. So the only thing that was gotten rid of was that extra expense for the three newspaper notices.

Another big policy change was that before if there was one permitted property with a short-term rental home permit was within 500 feet, that second one came to you for a public hearing. Council changed that to the third one. It just means the first two can go through administratively. A little bit easier. We looked at having the fourth or the fifth, and Council just felt the most comfortable was the third. They really want your oversight on where these are located. And they recognized that in a lot of cases you're going to have them grouped together in a certain areas. With you folks, for sure, Lanai City, I mean, that's where the most -- it's where they are. So they still want to see you looking at it when there's, there's -- when there's the third one comes in now, or the fourth and the fifth. And they're okay with having them be approved. They recognized that they -- they see a lot of value in your individual review of those.

They added another trigger to come to you folks for review and that is if an applicant owns an interest in another short-term rental. We had a case. You know, sometimes you don't know your loop hole till you start implementing the law. So we had a case where somebody had applied under their own name, and then they opened two trusts with relatives and applied, and they essentially ended up with three. So we've thought, you know, there will be cases where there's husband, wife, or family members, and if you folks are comfortable with that, we're fine with that. We just thought it'd be a good idea to have you take a closer look at some of these types when there's multiple ownerships. And it doesn't say that you're not allowed to do, they just wanted a little bit of review. You know your community the best.

The other change that they made was...applicant -- and this is a real minute detail unless you're a permit holder. Permit renewal applications used to -- we used to require that they came in 90-days prior to the expiration date. When our attorneys took a closer look at the bill, they said, well, you know, requiring them to come in 90-days before the expiration date,

that 90-days really is the expiration date, you can't really do that. So we thought, okay, so what do we do? So, some language was written that allows people to apply within 90-days. You can still apply the day before your permit expires and you're fine. So that language was passed. One of the things we're going to talk about is then once this was passed we had applicants come to us saying well we want to come in more than 90-days. I'm taking bookings for five months from now. So one of the proposals the Department is suggesting is taking that 90 out to a 180-days.

Ms. Zigmond: Gina? Excuse me?

Ms. Flammer: Yes?

Ms. Zigmond: Before you turn that page.

Ms. Flammer: Yes.

Ms. Zigmond: So, the last line there, which is in bold, I -- I don't remember and Leilani can attest to the fact that I'm forgetting some things these days -- it says that on Lanai the Director can grant permit renewals for up to five years. Is that...was that just an administrative decision or --?

Ms. Flammer: That was part of the original bill.

Ms. Zigmond: It was? Okay.

Ms. Flammer: Yeah. So there were no changes to that. Okay. The other thing the bill did that was passed was that we created specific criteria for when we choose not to renew someone's permit. And these criteria are the same criteria used when we actually revoked and pulled somebody's permit. We did have a little bit of experience with this. It gave us a more legal eye when taking a look at the law, so we, we -- we added some more language, and then we made a whole separate section. So if we're not renewing it, it's been expired, they've come in for renewal, we decide due to problems we use these criteria. And then if we have problems when the permit is going on, we use the same criteria if we're going to revoke it. It just kind of helps us if there's an appeal or --. And it helps the applicant understands really clearly what's being expected of them.

And there was a two year wait period that's added if the permit is not renewed, so that property owner would then have to wait two years before reapplying. We did have, at least two cases, that I know, where the permit was not renewed, and then the person just reapplied three days later. So again, you don't really know your loop holes until you implement it.

I already told you about the six month amnesty period now. So if you know anybody that

does want to come in, it runs until the end of this year. So anybody that may have been advertising or wasn't aware they needed a permit, or, you know, for some reason hadn't come in, they do have an opportunity to come in now. This is for short-term rental home. That ban currently doesn't apply to bed and breakfast; people don't live on the property.

So those -- those are kind of the basic changes in the new bill. That's what we're working with. Well, now, this first one we're going to do is...we're going to take a look at the enforcement procedures. The purpose of this bill that you have is to establish mandatory timeframes for enforcement actions and update the enforcement procedures for bed and breakfast. And at the same time the Department is using this bill as a way to clarify some of the amendments that were just recently made. And just to give you a little bit of background, when the short-term rental home bill passed in 2012 there were a group of operators on the north shore that were working pretty closely with government. They had permits. They wanted to see a regulated market, and part of that regulated market is enforcement. So they feel like the unpermitted people can compete with lower prices. They don't pay their taxes. They wanted to see everybody play by the same rules. So they weren't seeing the enforcement that they wanted right after it passed. They kept meeting with the Mayor and different people in the County, and it really wasn't for about three years until the Planning Department started pro-active enforcement. Then they allowed anonymous complaints to come in. The group, even though we had been doing a lot of enforcement recently, I think we issued over 300 notices of warning from May 2015 to May 2016, and almost 90 notices of violation were issued for vacation rentals. It's really the bulk of what we're doing. This group just wants to make sure that enforcement continues in the future. If there's a change of administration, if anything changes, they just want it codified in the law.

So we have a couple of ways that we could go about it. You know, there's a lot of different amendment here. They're in -- I put them into a table, in your packet. They're kind of small. I did print out the table, bigger. We can go through the table if you want to do that or I can just take comments from you. We can go through the bill. Does anybody have a preference how you want to --?

Ms. Gima: Commissioners, do you want to go through the table or just ask --

Ms. Flammer: Or provide your comments?

Ms. Gima: Or just provides comments to Gina?

Mr. Bradford Oshiro: I have a question.

Ms. Flammer: Sure.

Mr. Oshiro: Who looks at the permit? Do they look at the property before they even submit -

- I mean accept the -- give a permit?

Ms. Flammer: Yes. Every property has their site inspection by a planner. Also as part of the application, we require that all houses have building permits or be built to code so it's probably the toughest requirement. Maui County doesn't require a certificate of occupancy for residency so they -- that's usually when an inspector comes at the end. So often you'll also have a building inspector, plumbing person that come out and look at the house.

Mr. Oshiro: The reason I ask this question is I always bring this up but, you know, on any corner, at a stop sign, they suppose to -- hedges or whatever they growing suppose to only be four feet high. Well, I know two, you know, short-term rentals that pretty much got hedges that's six feet high. So I just wondering, that's why I'm asking, does anybody look at the property before they issue the permit or is it just passable?

Ms. Flammer: No, no. They come out and look, but the requirement that you're talking about for the landscaping is actually a Department of Public Works requirement.

Mr. Oshiro: But what I'm saying is if you giving the permit, shouldn't it be up to code?

Ms. Flammer: It should, but I'm not sure that all be. We're responsible for Title 19. I think I'm familiarity -- but I think it's Title 16? I don't know, maybe Clayton probably knows.

The current planners probably aren't as familiar with all of those types of procedures. It's really when the building inspector comes out to the property that they should notice that. That's with the, the site distances. If there's problems you can always put a request in with the County for that. And, and they'll come out have them -- send them notices that they need to trim that.

Ms. Gima: Gina, I had a question. You had said when you were referring to they didn't take our recommendation for decreasing the signs. I'm pretty sure we had this discussion -- Commissioners, correct me if I'm wrong -- was we had talked about when you have to notify everyone in the 500 foot radius and the issues that we bring up here because you would be notifying so many people. And I think our recommendation was to have just notifying your neighbors on the sides, and then in the back and the front. So I'm assuming they didn't take that recommendation.

Ms. Flammer: No.

Ms. Gima: Okay.

Ms. Flammer: I think your Council Member sat in on a few of the meetings, but he's not on that Committee.

Ms. Gima: Okay.

Ms. Flammer: But we did discuss it as we went through.

Ms. Gima: Okay.

Ms. Flammer: Through it. And I think their main thing was they just want all three islands to be consistent.

Ms. Gima: Which is weird because all three islands are so different.

Ms. Flammer: Are very unique. I know. Yes, I know, we explained that. Especially -- I think it's one of the best examples of being unique. Yeah, we spent a lot of time talking about that in here. I remember that.

Ms. Gima: Okay, thank you. Commissioners, any other questions or comments for Gina? None? So I'm guessing we don't have to go line by line.

Ms. Flammer: It's super technical. I mean, I have some groups that love to do, but this isn't as meaty like it was the last time I came to you.

Ms. Gima: Right. I think the last time you came we did go pretty much through everything, and you took our feedback and whatnot.

Ms. Flammer: Do you want me to hit you up with just the major policy items and you can discuss it?

Ms. Gima: Sure. Sure, please. Thank you.

Ms. Flammer: Sure. So the first thing, major policy item would be the proposed amendment adds a 50% ownership interest for bed and breakfast. We are recommending it actually. It's the same thing with the short-term rental home. If you feel differently, you can let me know. Otherwise when you vote at the end, what you're voting on is all of the Department's recommendations. And also if you have any general comments you want me to include, but I'm not --. Does anybody have any comments about requiring the applicants that come in for a bed and breakfast to have an interest, a 50% interest? Okay, I'm not seeing any comments there.

So the core of the bill, the enforcement part, what it does is -- and we're going to go through the -- it's the same for bed and breakfast, the short-term rental home. So I'm going to go through the B&B section because that's first, but it also applies to short-term rental homes. And this is what that group, the north shore operators, wrote. The first thing that they did is that...for complaints received by the Department that have everything that that



inspector needs in it. It's got the address, it's got link to the advertising. They want to see that that notice get out within a certain amount of time. Within 30-days of the receipt for Request for Service, they want to see our Department hand out that Notice of Warning. The Department is just a little bit concerned about a "shall" and a requirement for 30-days. I don't know if you had -- a couple years ago we had a -- somebody had a sign violation, just a business, and then it kind of mushroomed into everybody turning each other in, and it kind of overwhelmed our enforcement division for a couple of months. That's all they really focused especially dealing with Front Street. So they're just worried if they have something like that come up, they might not meet those 30-days. So they're just -- the Department is recommending a "may" instead of a "shall", so I don't know if you have any comments about that.

Ms. Zigmond: Gina? Excuse me, question. So -- but "may," the word may is not enforceable.

Ms. Flammer: It's, no --. Yes, you know --. The whole core of this is shall -- using shall, does this be mandated, or may, does it allow discretion? So in this case, the Department is recommending may, but the bill says shall. I think we can live with shall if it were there.

Ms. Zigmond: May is way -- for, in most cases, is too, too loose of a boundary because then...it's a subjective thing.

Ms. Flammer: Yeah, it's discretion. Yeah. So why don't I read all five of these and then you guys can provide me your comment because I have a feeling it might -- . . . (inaudible) . . . it's going to be a little different . . . (inaudible) . . .

Ms. Gima: Gina, what page are you looking at just so we can follow along appropriately? Or you have your --

Ms. Flammer: I'm on page --. Well, let's look what's in the bill? You want me to pass this? Okay. I'm going to go ahead and just pass out -- I printed a bigger one for you guys.

Ms. Gima: Okay.

Ms. Flammer: I'm just going to go ahead and give it to you that way we're all --

Ms. Gima: Okay, thank you. Perfect. Thank you.

Ms. Flammer: Okay, so what we'll talk about now is on page 6 of this table. Okay, so item #1 on this, the alleged violator and the property owner shall be notified that all advertising without a permit shall be terminated within seven days after issuance of a notice of warning. The notice of warning shall specify that failure to cease such advertising by the deadline shall result issuance of a notice of violation and ordered to pay civil fine in the amount of

\$1,000 a day...as long as the advertising continues. This is all new language they want to add. Our current practice is we do give them seven days. And instead of shall we use the word will, and I don't know -- I'm hoping none of you have ever received a notice of warning. It does say in there that...failure to cease advertising will result in there.

Okay, so for #2, a complaint of advertising -- this is the one I just talked about that has everything that they need -- without --. If you're advertising without a valid permit number, it's initiated by the public and it has come into the -- our Department with everything in it. It's got the correct address, and it's got the right link, that we have to get that out within 30-days.

For #3, they're giving us 60-days after --. A notice of violation in order -- including an order to pay fees shall be sent to the violator and the property owner within 60-days of this deadline if they're advertising without the valid permit number continues to be on that deadline unless the violator can show that they're, they're working to get that off.

Then #4, all repeat violations for advertising without a permit shall result in a notice of violation without doing a NOW, a notice of warning, which is what we do now, anyway, just as a practice. That notice of violation shall be sent to...the violator and the property owner. And...it just describes what a repeat violation is.

And then #5 it has a caveat saying the Department's failure to serve that notice of warning or violation with any time limit shall not invalidate that notice of warning or violation. So if we do get busy, something else comes up, or it's not done right away, it takes more effort than we thought. It does.

So again, the Department, really what we're saying is "may" is better than "shall." And that we really don't see a need for 3 or 4. But I'm really here just to collect your ideas about this, not so much to present what the Department thinks. So those are the five enforcement related provisions. Do you have a comments about a "shall" versus a "may?"

Ms. Zigmond: I do.

Ms. Flammer: Okay.

Ms. Zigmond: Again, you were talking about across administration so that everybody is doing the same thing. It doesn't matter who's in charge, so that's probably not going to happen if it's a may.

Ms. Flammer: So you're saying shall creates conformity over time?

Ms. Zigmond: Yes. Thank you.

Ms. Flammer: Do you want to just do a vote on, on this particular one? It will be easier with -- to the Council for me to say to -- right now the way we're presenting it to you includes the Department's recommendation of may. So if you don't like the may, you would need to tell me specifically so I can include that.

Ms. Gima: Bev, you want to make a motion? That's what she just said to vote.

Ms. Flammer: Yeah, we can do it by consensus, or we would just like to see the group have some kind of, you know, something on the record.

Ms. Gima: Okay, so going around, I mean, how many of you would like to see shall remain in there? Okay --

Ms. Flammer: Oh, unanimous.

Ms. Gima: Unanimous.

Ms. Flammer: Okay, I can put that in there. And that's for both bed and breakfast enforcement, and short-term rental? Yeah, we will -- okay. So continuing on, on page 7, the new language, and interestingly this came...we're not exactly sure. It wasn't that part of the original bill submitted to Councilmember White from the north shore operators. It went to Council Services, but what ended up coming out is that the five year ban for people that have operated illegally is been applied to bed and breakfast homes. So the Department -- we don't really support it. We'd like to give local residents more flexibility to become legal. This ultimately is Council's decision though, but I'd like to know what you folks think about applying that five year ban...to bed and breakfast where the owner operator lives on the property.

Ms. Zigmond: What is, what is now? What's the time frame now?

Ms. Flammer: There is no ban for bed and breakfast. What you do is you get your notice of warning and hopefully you come in for a permit...or stop operating, short-term and long-term or -- those are your options now.

Ms. Zigmond: Just for purposes of discussion...it seems like there should be something. I don't know if it's five years, but something for bed and breakfast as well. I mean...if the idea is to have people legitimate. Right?

Ms. Gima: So Gina you're saying for short-term rental they have that five year?

Ms. Flammer: That's currently, the policy, yes.

Ms. Gima: Okay.

Ms. Flammer: With the six month amnesty now.

Ms. Gima: And so what was the rationale to have that five year ban for short-term rental but not bed and breakfasts?

Ms. Flammer: The short-term --. Yeah, it's interesting how legislation passes. The short-term rental home came after the bed and breakfast. There was a community member in Maui Meadows that wrote the language and it was inserted into the bill, there's a lot of discussion, and it ended up in the bill at the time of Council. It was a deterrent for people. That was it was -- they wanted a punishment. The thinking at the time, and still now, is that if you're charging, you know, \$250, \$500 a day, that set fine, you can easily make that up. So people -- the feeling was people were going to operate because it's so lucrative as long as they possibly could. So they wanted to try find a way to motivate people to come in before they start operating.

Mr. Stuart Marlowe: The way it's set up now it only leads to more ambiguity. I think that the bed and breakfast should be treated the same way as the short-term, and so it would bring, I think, more semblance of these are the rules and you should abide by them. And if doing it the other way or changing one for three years, one for five years, people would use that as a reason or an excuse, so let's get rid of the ambiguity and make them parallel.

Ms. Flammer: Okay. Do you want to do a vote again on this one?

Ms. Gima: Yeah, is there --. Thank you Stu. Is there any other commissioners that want to kind of key in on this? I think for me I understand the Department's rationale. However, just like how we were talking about how they're saying if one place has signs they all should have the sign. I think it should be the same here for bed and breakfast. So...are we all in --? Okay, who's in favor of, of keeping that five year ban in place...the bed and breakfast, just as it is for short-term rental? Okay, so, it's unanimous.

Ms. Flammer: That's unanimous. Great, okay, thank you. So you want the five year ban... for consistency purposes.

Ms. Gima: Well, yeah, and then I mean, 'cause what would happen is if nothing happens then...sorry, I lost my train of thought. Because right now with the short-term rentals there's a ban, and there isn't with bed and breakfast. So they could just say well I'm not going to do a short-term rental anymore, I'm just going to do a bed and breakfast, and then it's not addressing the issue, right?

Ms. Flammer: Yeah, we get --. Right. Yeah, we get a number of those.

Ms. Gima: I bet.

Ms. Flammer: We show up to the site visit, and there's a lock box. Okay. There's --. Okay, so I recorded that. We're kind of floating an idea. We don't really -- we're not making a recommendation, but we wanted to make sure it got discussed with you folks. And now we're on to the short-term rental home section, page 9 of this chart. There's been a lot of discussion about permit transferability. Especially when we get to the next one where there's a five year requirement for owning a property. I just wanted to get a sense of how you folks feel about having a permit transferred. Right now it's only to the current owner of a property. So when the property is sold, the permit goes away. But there's been talk about making it transferrable so that there's no consequences for guests. The flip side is it then it does add some value to the property, and that has unintended consequences as well. But I wanted them to know what you think about it.

Ms. Zigmond: So assuming that the new owner wanted it, they would just have it. They wouldn't have to, like, register with you or do anything at all.

Ms. Flammer: Well how this -- how it's written in this particular case -- again, I just wanted to get a general feeling of how you feel about it. But the way it was written up it says specifically, "upon the sale of the property, provided the new owner submits the information required by the application, and provided that the transfer is approved by the same authority that approved the original permit." So if it was administrative, it'd be administrative. If they came to you, they'd come back to you.

Ms. Zigmond: Okay, so I'm reading this rationale here...so...Carroll wants to prohibit short-term rental homes and newly purchased homes.

Ms. Flammer: That's what we're going to talk about next.

Ms. Zigmond: Okay.

Ms. Flammer: So it fit better under there, but I was asked to just kind of get a -- how you feel in general about permit transferability.

Ms. Gima: And it's only to immediate -- immediate family member?

Ms. Flammer: No, that's --. How it works right now is it can be transferred at death to family members. This would expand that to anybody.

Ms. Gima: Oh, they're expanding to when you sell the home. I got it.

Ms. Flammer: Yes, yeah.

Ms. Gima: I mean it sounds like they would have to still go through...

Ms. Flammer: They still have to submit the application.

Ms. Gima: ...process. Right.

Ms. Flammer: They just wouldn't have to cancel the reservations.

Ms. Gima: Okay. Oh, okay.

Ms. Flammer: But, as, as we get in the next bill, there's a little more analysis about that. What it does is the value of the permit, the business, then gets added on to the value of the house. So that's, that's kind of a down side. And we tried to -- if anybody can think of a way that it doesn't do that. We couldn't come up with any way to isolate it out of there. But again, you know, the guests --. Escrow typically is 60, 90-days. There is time, but...it is the guest that does suffer sometimes.

Ms. Gima: Okay, Commissioners, any discussion? So right now, it's being proposed to add that highlighted blue area, correct?

Ms. Flammer: Yeah, but it's really there just for discussion purposes.

Ms. Gima: Okay.

Ms. Flammer: Yeah. So, we're not recommending it.

Ms. Gima: Okay.

Ms. Flammer: It's just if you have any strong -- we can have no comment. We can --.

Ms. Gima: Okay.

Ms. Flammer: It's up --. Some people have strong feelings about it. Others --. Okay, so we'll skip it. Hana is really where they discussed it the most out there. Okay, that's really the gist of this bill. I'm seeing if there's anything else. Council would like us, at the end of the year, to submit information -- this is on page 17 -- they want to know what all the notices of warning, all the notices of violation, and all of the appeals and the outcome of the all the appeals. And we told him we're just fine with giving you all that information. So they may review this. I guess they get some of the information --. Actually, Real Property Tax gets it, Council doesn't get it, but Council would also like to get this information.

So that's -- that's the first order of business that we have. Do you have any general comments about short-term rentals and B&Bs? I know you just went through your community plan process. There's a little bit of language in there. Is there anything you

want convey to the Council before you go -- wrap this part up?

Ms. Gima: Yeah, I mean, I know they've pretty much denied everything that we recommended, but I would still like to make that comment back to them again, if possible, that, again, you know, Maui, Lanai, and Molokai are completely different places. And I understand wanting consistency, however, I just don't see how that would work with three different places. So, again, the recommendations that we made the last time, or the comments we made about just notifying your adjacent neighbors, not 500 feet radius, and then the smaller signs. Oh, I take it back, they did listen to our recommendation about the newspaper, so that, that's good. But if that can just be mentioned again.

Ms. Zigmond: And in actuality, they already made some exceptions that permit renewal, Molokai has a one year and us, and Maui have five years, so everything isn't uniform.

Ms. Flammer: No, it's not. Yeah, I know. Yeah. So right now, I'm going to add in my report that you also support some previous things that you had recommended including notification only of adjacent neighbors. Is that across the street too?

Ms. Gima: I think we did side by side, and then --

Ms. Flammer: I think it was adjacent and across, directly across.

Ms. Gima: Yeah, yeah, directly across.

Ms. Flammer: That's what I thought. And then having a smaller notification sign.

Ms. Gima: Yes.

Ms. Flammer: Yeah, that's what I thought.

Ms. Gima: Because our lots are a lot smaller.

Ms. Flammer: Yeah. Okay, anything else? Are you okay with no caps, though, too?

Ms. Zigmond: You know, that's a really good question because there are a lot of those little signs going up on this island. I mean, I walk every morning, and I see, frequently see new ones throughout the town.

Ms. Gima: Didn't we have this conversation? Do you guys remember? I mean, we talked about a cap. I don't remember what it was. Do you guys remember what it was?

Ms. Flammer: I think you were hoping to come up with something during the community plan process, but it didn't --

Ms. Gima: Was it that long ago?

Ms. Flammer: Yeah. But it didn't really lend itself to that process. So if anybody had any thought about it since then?

Ms. Zigmond: Can you share with us what some of the other caps are?

Ms. Flammer: Sure. I used to be able to do it off the top of my head, but it's been a while since I've looked at this. West Maui and the North Shore, Paia-Haiku, I think, are both 88 each. There's 400 total for the island of Maui. Do you remember it? It's 88 for West Maui, 88 for Paia-Haiku, a 100 for South Maui. Hana was 48, now they're 30. That's just for short-term rental. It's still at 48 for bed and breakfast. I think it's 40 up in Makawao-Pukalani-Kula.

Ms. Gima: How do they come up with these numbers?

Ms. Flammer: Oh, Wailuku.

Ms. Gima: How are these numbers --?

Ms. Flammer: Yeah, it's an interesting question. And so what happened is during the bed and breakfast process -- I think we're talking 10 years ago at this point, 2006 -- a study was done by the Kauaian Institute and they were a public policy group. They looked at the numbers at that time, how many there were, and I think there were 800. So the Director at the time, Jeff Hunt, just cut it in half. And then how they divided them up between the community plan areas, I'm not exactly -- I don't think there's any scientific method to it. But the 400 came from that, and it was actually Councilmember Mike Molina that said, during, after everything has been through all the commission, and they were in Council, they said why don't we try a cap, and that was a compromise that everybody liked.

There is a provision in the law that does say, though, if you reach your cap, Council can extend your cap.

Ms. Zigmond: You know, I totally understand the need for them given the prices at the hotel. Having said that, however...it really concerns me about taking those places out of the housing market.

Ms. Flammer: Our next item we're going to talk about is going to hit on that directly.

Ms. Gima: Yeah, I think should be a cap. How we come up with a number, I have, like, no idea how we would do that. Yeah, are you guys aware of how many short-term rentals we have now that are either permitted or in the process?



Mr. Yoshida: I think since last year, there's been about, maybe six. And then I think Kurt is processing a few more.

Ms. Gima: That's just for short-term rental? That's just for short-term rental. And then B&B? I know of one that's in the process.

Ms. Flammer: You already have one. I came to you with Onaona's and Kapa's.

Ms. Gima: Yeah, and I know there's one, I think, in the permitting process.

Ms. Flammer: And then Jasmine's House, I think, is already permitted. Maybe three.

Ms. Gima: I guess I'll pose this to the Commissioners before we start looking into anything else is who is in -- who agrees that there should be a cap, raise your hand. Okay. All those that don't agree raise their hand.

Ms. Stephen Ferguson: I, I -- I don't know, I just feel might be kind of premature right now. I don't know. I just think since this is all kind of new, you know, like --. I don't know, I feel if you put one cap, that might rush people into thinking, eh, get one cap, we got to do 'em now. But, I don't know, I just think people is still kind of feeling it out and I no see it as a problem yet, so, I don't know, that's just my opinion.

Ms. Gima: It's pretty -- it's unanimous that we would like to see a cap. Gina, is -- so it could -- could the cap be adjusted at any point?

Ms. Flammer: There's that provision that says when you reach it that Council will take it up again. I mean, how timely that process is, I don't know. We all know it's not a quick process.

Ms. Gima: So I guess more specifically, like, if there wasn't a cap right now, and all of sudden we see this rush, of like, you know, 50 short-term rentals, which would be pretty alarming, right? How would -- what would have to happen if at that point would come to say, hey, we really need a cap here, this is getting out of control. What is the process for that?

Ms. Flammer: You would go to your Councilmember or another Councilmember and introduce some legislation, and it would be really simple language but it would then go to all the Commission -- or I guess only yours because it only applies to Lanai -- and then to the County Council.

Ms. Zigmond: Because I hear what Fergie's saying, but I, I, I am uncomfortable without ever having any, but if there is something, I say it's fairly easy.

Ms. Flammer: What's the number of homes that you have on --? We could do a percentage of that.

Ms. Zigmond: Brad, you should know.

Mr. Oshiro: Not everybody has a house that has a P.O. A lot of families share the P. O. box.

Ms. Flammer: Molokai doesn't have a cap either, and they're actually very comfortable with that.

Ms. Gima: Right, right. Which is understandable, I think, if they're looking for kind of -- to have that.

Ms. Flammer: Economic growth.

Ms. Gima: Yeah, right, right.

Ms. Flammer: They're really feeling it now.

Ms. Gima: But with the, with the concern of not having enough rental properties here for just residents to rent. I mean, like Beverly said, that that's concerning if they all become short-term rental -- not all -- but a lot becomes short-term rentals which then takes that away residents who are looking for long term rentals. So how do we come up with a cap? I mean that's the hard thing, I mean, it's what number do you use. I guess a number can be set, Gina, and then it can be extended, right? It's easier to extend than to --

Ms. Flammer: And just a reminder, bed and breakfast homes come to you. I think short-term rentals can --

Ms. Gima: Right.

Ms. Flammer: Yeah, can be administrative...unless there are two within 500 feet. So you will end up at some point the saturation will cause them to come to you. And at that point, you do have some criteria, as well as the Department does, but you do look at the number of permitted.

Ms. Gima: So, yeah, and it's hard too when we don't have kind of the figures, like, how many homes we have on the island. So we've had already six in the last year, and according to Clayton, they're currently processing a few. So I'm saying, I'm thinking a few is like two or three.

Mr. Oshiro: Kelli?

Ms. Gima: Yes?

Mr. Oshiro: There was a meeting we had, and it was about homes that they could put on little small extension bedrooms for like a rental.

Ms. Gima: Oh the accessory dwelling.

Mr. Oshiro: Yeah, and somebody, whoever the County, gave us figures on how many houses.

Ms. Gima: Oh, that was Joe.

Mr. Oshiro: Like, somebody gave us figures on how many houses there was on Lanai.

Ms. Gima: That's right. That's right, we had that map. Is this something that --

Ms. Flammer: What you might want to do is recommend, you know, 5% of your -- the number of your single family homes or something like that and let --. Or you could just let me tell Council that you feel like there should be a cap but you just didn't know how to come up with a number. And if you wanted to work with your Councilmember on that.

Ms. Gima: Yeah.

Ms. Flammer: That's what Hana did.

Ms. Gima: Yeah, and that would make sense because I wouldn't want us also to just rush and coming up with number. And then also being able to have public and community input if they knew that this was on the agenda, and this was being discussed. I feel like there's probably a lot of residents that would like to give input there. Commissioners, I mean, are you guys okay with, with Gina providing the comment that we want a cap, but at this time cannot come up with a number?

Ms. Zigmond: But will it come back to us?

Ms. Flammer: Not in an official capacity --

Ms. Zigmond: See.

Ms. Flammer: -- but what Hana did is they worked with --. It was actually Elle Cochran is the one that, that pushed it through. So if you want to have discussions with your community, informal discussions, and then maybe work with one of the Councilmembers.

When it's at the Council, they will have ability to open up the bill again.

Ms. Gima: Do you guys just --. This is hard. Oh, go ahead Clayton.

Mr. Yoshida: Again, I think this is a public hearing, and I think the public can testify on anything that has been mentioned thus far.

Ms. Gima: Yeah, sure. Yeah, definitely, I'm going to open up public testimony, but I'm thinking -- I mean, this wasn't technically listed specifically on the agenda. Where if it was, we might have had way more people here in the audience wanted to really key in there. Yeah, you know what I'm going to open up public testimony at this time, if that's okay with you Gina. I'm going to stop you a little bit, just to get some input here. So again, really wanting to -- I mean, please provide input on anything that was discussed, but specifically your thoughts on having a cap on short-term rentals and number suggestion. Anybody wishing to provide public testimony? Please. Okay, please come up.

Ms. Basques: Thank you again. Winnie Basques. 53 years, Lanai resident. Okay, you talk about short-term rental. Okay, beside vacation rental. Okay, when the hunters -- I going talk about hunting now. When the hunters comes . . . (inaudible) . . ., okay, they have to look place for stay, for rent, okay. They cannot rent at the hotel and take the carcass over there. Right? There's no more room for put the carcass inside there, right? And they going inside there look all . . . (inaudible) . . . as dirty right? So how you gonna do this? Vacation rentals, they come, they stay two, three days, and they go. Okay, that's good.

But I can go back, way back. Dole Company time. Okay, the old man work here. Okay, they go with their family Philippine Island, they come back, they get money, right? They buy houses for their families. Okay, they can --. If you have -- just imagine those days...Kaunapali Harbor had one house, was only \$3,000, for ½ acre, and is only five cents a foot for the other ½ acre. Okay, now you think about them -- if the people who worked for Dole, retire, came back, bought houses, if they had \$25,000, they could buy houses those days, and there was no questions asked. As long as you give them the money, they're fine. And then they neva had this kind rules and regulations. Oh, my family coming back, they going stay here, so they have to pay for that place, they have to rent out the houses. Okay, same like let the hunters come inside. Hunters come in all the time. They get businessmen come here and where they stay? Vacation rental. It's much cheaper. Why? The hotel is very expensive which they cannot pay for it, okay.

Ms. Gima: So I'm hearing that you support short-term rentals.

Ms. Basques: Yes.

Ms. Gima: Especially for hunters.

Ms. Basques: Yes.

Ms. Gima: Okay.

Ms. Basques: For hunters and as well as businessmen, whoever comes here.

Ms. Gima: And you don't feel that there's a need for a cap.

Ms. Basques: No.

Ms. Gima: Okay.

Ms. Basques: Because why, they going question that, and people going say, oh, my goodness, I can't stay in the hotel, and they going pay \$1,000 for stay only for one night. Now remember, airplane fare, hotel, meal, rental of the car or the jeep, and food, as going almost be five grand.

Ms. Gima: So thank for providing your input about support short-term rental. Thank you.

Ms. Basques: Thank you. Yeah, I support that. Thank you very much.

Ms. Zigmond: Madame Chair, if I can just comment on that? I don't think most of the hunters go to real short-term rentals, permitted ones. I mean there are some that do, but --

Ms. Gima: Yeah. Yeah. Anyone else wishing to provide public testimony for this item? Okay, I'm going to close public testimony. And we're still stuck with the issue of, of -- again, we're all in it. It was...all of us except Fergie's agreeing that there needs to be a cap for short-term rentals and now it's really coming up with a number. It sounds like if we moved on and Gina brought our comments back that we want a cap but don't have a number, this would not come back to us in this capacity. Therefore it would be someone taking on this responsibility with our Council, our Councilman, and hoping that this would be discussed. So it sounds like this actually is the best venue so that Gina can appropriately bring that back.

Ms. Zigmond: Madame Chair, can we not defer if we wanted to, to get a number of houses and to think about it? I'm thinking we still have time on this, do we not?

Ms. Gima: Gina?

Ms. Flammer: Actually no. Council wants it back by the end of the year. They have two members that want to be able to discuss this before their terms end.

Ms. Zigmond: But we could do it at the next meeting.

Ms. Flammer: They --. In order for that to happen, I need to have it to them by next week.

Ms. Zigmond: Ah, crap.

Ms. Flammer: And this meeting was delayed already because of HCPO. We started in August. Even if you were to give a specific number today, you would still need to follow up with the Council just in a practical...for it to really happen. So you still have that avenue with to do. It will be --. They may take up -- I'm not sure which bill they're going to take up first, but it does give you a couple of months to think of a number and reach out to your Councilmembers and --. Hana didn't say 30. Or did they? They did recommend reduced, but it really got picked up at the end just by Councilmember Cochran, and she was the one that pushed it through.

Ms. Zigmond: If you're saying that we cannot defer, what if we -- is there a way that we could still give recommendations for this tonight saying that we have a cap and we'll be working on it and discuss it at the next meeting, with some additional information? I don't know if we can do that or not.

Ms. Gima: Yeah, I think it would be helpful to have that discussion, whether you're here or not, Gina, with this in front of us. If this is something that is going to go back to the Councilmembers, obviously Councilmember Hokama is going to hear that...this -- we want a cap. Maybe not. Okay, Bev's right, he's not the committee. Clayton?

Mr. Yoshida: Well, I think that is possible, but you know, realizing that, you know, this is an election year and I guess the term ends on January 2<sup>nd</sup>. Essentially the Council Committees probably will start shutting down around the end of November and they will defer unfinished business, whatever is on their unfinished business docket to the next Council. So there are some folks, at least two, who have been through a year and a half of discussion on this and they won't be back on January 2<sup>nd</sup>.

Ms. Stacie Koanui Nefalar: I, I -- my feeling is we come up with a number, not too low, not too high, you know, 30. And if we -- when we reach that limit, then we can request for -- to go higher. 30 or 40.

Mr. Oshiro: What is the --? Excuse me, Stacie. What's the population of Hana? Bigger than Lanai? Smaller than Lanai? If it's smaller then, you know, maybe we should just go with 30, you know.

Ms. Flammer: We're thinking it's a little bit smaller.

Mr. Oshiro: Okay.

Ms. Gima: So yeah I hear what you're saying. Have a number and if...obviously if there's a need or a want for it to go more that's a possibility. But if not, we know that this is pretty much it. 30...30 seems like a fair number. Again, we had, what, six on one year. Okay, so I'm just going to put it out there so we can move along. It's due --. How many agree, again, for the cap and to have it at 30 raise your hand? Okay, opposed? Okay, so...majority.

Ms. Flammer: Okay, and I like your rationale. I'll explain that to them.

Ms. Gima: Thank you. Sorry to take --

Ms. Flammer: No, you gotta go through the process.

Ms. Gima: Yeah, absolutely, so thank you.

Ms. Flammer: Okay, so our next step is -- hold on let me just capture this. Okay, so the next step is you have, like any bill that comes before you, you have the following options. You can go ahead and recommend approval of the bill without any of the amendments. You can recommend approval of the proposed bill with the amendments the Department is recommending minus those two other changes that you talked about. You can recommend denial of the bill. Or, you can vote to defer action in order to gather additional information.

Ms. Zigmond: . . . (inaudible) . . .

Ms. Flammer: I mean you could, it would just slow things down.

Ms. Gima: So we would go with one of these options, and again you would bring back our comments, whether, whatever option we, we choose.

Ms. Flammer: Yes. I'm going to guess no. 2 where you would recommend approval of the proposed bill with the amendments, with the two exceptions that you told me. You like the "shall" versus the "may," and you would like to see that the ban be applied to B&B for consistency purposes.

Ms. Zigmond: And where does the cap come in?

Ms. Flammer: That's an additional comment that, that you also -- so you are, in addition to the bill, you have specific amendments which would be you like -- for notification purposes, you would like to notify adjacent neighbors and directly across the street, you'd like a smaller notification sign, and you would like to see a cap of 30...with the provision that it can be reviewed, yeah, once you reach that cap.

Ms. Zigmond: Madame Chair, I'll, I'll make a motion to accept -- to approve -- to recommend approval of the resolution with the amendments as stated, except for our two exceptions,

and with the comments that we gave. Is that sufficient?

Ms. Gima: Do I hear a second? Okay. So it's been moved by Bev, second by Stu, to recommend approval of the proposed bill with amendments to the Maui County Council, except for those two that's noted, and with our additional comments. All in favor raise your hand. So it's unanimous.

**It was moved by Ms. Beverly Zigmond, seconded by Mr. Stuart Marlowe, then unanimously**

**VOTED: to recommend approval of the proposed bill with amendments to the Maui County Council, except for those two that's noted, and with our additional comments.**

*(Assenting: M. Badillo, M. Baltero, S. Ferguson, S. Koanui Nefalar, S. Marlowe, B. Oshiro, B. Zigmond)*

Ms. Flammer: Great, thank you.

- 2. MR. WILLIAM SPENCE, Planning Director, transmitting Council Resolution No. 16-94 to the Lanai, Maui and Molokai, Planning Commissions containing a Proposed Bill Amending Section 19.65.030 of the Maui County Code to Establish Ownership Durational Requirements for Short-Term Rental Home Applications. (G. Flammer)**

Ms. Gima: Thank you Gina. Okay, so we're going to move along here and go on to no. 2 . . .  
*(Chair Kelli Gima read the above project description into the record.) . . .*

Ms. Flammer: Can I just ask you one clarifying thing about your cap? Is that for short-term rentals and B&Bs? Each?

Ms. Gima: Total.

Ms. Flammer: Combined, cap of 30. That would make it 15 short-term rentals? I'm sorry, it just occurred to me that there are two separate sections of the code. Do you want me to just recommend it for short-term rentals for now since you see all the B&B applications?

Ms. Gima: Yeah. That would make sense.

Ms. Flammer: Okay. Great, okay. So I'm on? So you're ready for no. 2? Okay. Alright, so the second bill, this was an idea that came up, actually...this came up after the committee referred it to the Full Council. It's really rare you that you see something added that late. This is how much discussion was going on with the Council over short-term



rentals. So it was introduced during the first reading. Maybe it came up in the second reading. Anyway, this is what it is. And it does deserve its full consideration on its own and not just thrown at the end of the meeting. I'm glad Council did that.

The purpose of these amendments from the County Council are to require that short-term rental home permit applications own a property for at least five years prior to applying for a permit with three exceptions. Those exceptions are, no. 1, it would provide a grace period of six months after the bill is adopted so anybody in the process could finish the process.

Secondly, the second exemption would be for property owners where the structure, the building itself -- and that will be talked about at Council whether it's the building of the property -- but for right now, if the building is high enough and worth enough to take it out of the long-term residential housing market. After discussion Council came up with a building value of a million dollars, would then put it out of the residential market. So any residential structure as, as appraised by the real property tax division of the Maui County with a value of less than million dollars -- I mean, over a million dollar, would be eligible to get a short-term rental home permit prior to the five years.

The third exemption allows properties previously used for short-term rental homes with a permit to be eligible again if the owner applies within three years of purchasing the property. And just to give you some background on this. This came from Councilmember Carroll out in Hana. Hana has a number of homes sold that were in long-term rental that went to short-term. Small community, big impact, so this is where it came from. So he stated that the purpose of the measure is to discourage investors from speculating with long-term rental properties by buying them and then immediately converting them into short-term rentals. He stated that we have a limited land area for housing and it's difficult for residents to obtain. They should be allowed a crack at it before we allow short-term rentals. There was recognition that Hawaii residents earn low wages but have very high property values, and it makes it very difficult for current residents to buy a property, and that increases the demand for rental housing.

There was also a lot of talk about the demand for housing by off shore buyers due to Maui's low tax rate. And then there was talk about how high LA and some of those other west coast counties are and it makes it attractive to them. And also the state of the economy and how buying houses now is another investment option just like a stock or a bond would be, too, and that also increases the demand for these investment properties. Now on the flip side Councilmember Baisa did talk about tourism is a significant part of the economy, and that she was concerned about the unintended consequences for putting the five year requirement on it. And also that the effect of short-term rentals is minimal because many of these homes are high end already. So I did do a big, long chart which I'm sure you saw in there an analysis of that. And also the Council did admit that this is just a band aid. The real solution to affordable housing is to build housing. They recognize that's all it is, but the band aid is better than nothing is what they said.

And so again, I'm here to get your comments on --. Again, there's analysis at the end, so what you would be voting on is the Department is okay with...hold on, let me get to that page. So I included your new community plan policies in part of the analysis. So the Department was okay with the five year wait period. We're okay with the grace period. We're not sure about the million dollars, but we know Council is going to talk about that, so we'll be there during that discussion. We thought maybe it should be just a little bit higher. We noticed when we did the analysis of all the rental properties, and it was really interesting, most of them are under a million dollars, the building value. You get a couple that are \$1.2, \$1.3., and then you jump right to \$3-, \$4-, \$6-million. I was surprised when I did this. There's not a whole lot in the million range. You're either under or you're over, so Council can pick that number. We're comfortable with that.

The only thing that we were not comfortable with was the permit transferability, and we're worried that it's going to have -- it's going to increase the value of those houses that have a permit, and in doing so it's going to increase, drive up the prices of neighboring houses. And it's not going to do that so much through the tax structure because they have different tax classification, so their taxes won't go up. But what will happen is when you go to sell it, the appraisal, then the market appraisal will take into the value of that house was sold for more money, and that's how it drives up prices. And it kind of creates the perpetual cycle of rising home values. So we're...we're not recommending. We're recommending the bill with the exception of the transfer.

So based on the analysis that's in the report, we support the proposed bill with the revision, that they take another look at the valuation and also without the transferability exception. We recognize that this bill really speaks to public policy and competing policies. You're looking at economic policies versus housing policies, and they really are pitted against each other so we're trying to fine line, and so is Council, in between it.

So we feel like this bill does try to walk a fine line. It doesn't restrict the total number of permits that can be issued for short-term rental use. Instead, it restricts the type of home that may be used. So when the permit caps have been reached, they will be held by owners who have a long-term investment in Maui because they had to wait the five years, or, and, they will also be held by high end homes that will provide a higher economic value in terms of tax assessments and local employment opportunities, and continue to attract the real high end visitor.

So again you have the same choice where you can recommend approval of the bill just as it is. You can recommend approval with amendments. You can recommend denial. I think Molokai chose to deny...recommend denial. Or, again, the fourth, defer.

Ms. Zigmond: Gina, why did Molokai deny?

Ms. Flammer: They don't want any restrictions. They had just had the canoe races, the paddling races, and they had a really hard time finding places for people, and they want to see more tourism dollars come in.

Ms. Gima: Again, probably why they had no caps...no cap on the short-term rental.

Ms. Flammer: Yeah, so they saw the restriction is hurting their tourism.

Ms. Gima: Well, then I can see why. Commissioners, any questions for Gina? Discussions? Comments?

Mr. Marlowe: What is the definition of short-term, not bed and breakfast?

Ms. Flammer: Short-term means the owner doesn't live on the property.

Mr. Marlowe: But it can be one night, or 30-days, or --?

Ms. Flammer: And it's under 180-days, so it can be anywhere between one night to 179 nights.

Ms. Zigmond: Regarding the value amount, you're saying a million or above a million, or Council's going to --

Ms. Flammer: Council is the one that came up with the million dollar building value. I think we're going to have a lot of discussion on the floor about what's the appropriate number for that. So if you have any comments. If you like the five year wait, if you like the idea of having the higher homes excluded, if you have any comments...about where to find that number, or do you like a million for the building, you know?

Ms. Gima: I think the rationale behind this is good. And it makes sense, you know, for our community as well being a small community just like Hana where it would, like Gina said, kind of first crack to -- instead of right away doing short-term rentals -- first crack to residents who want to have housing, and then excluding these high end housing that majority of our residents couldn't afford to rent anyways. Again, I mean, yeah, that's for like, I guess, the Council to address is that number amount.

Ms. Zigmond: The five year appeals to me.

Ms. Gima: Yeah. It makes sense. The rationale is good. Would anybody would like to make a motion or any other discussion?

Mr. Yoshida: Madame Chair, again, this is a public hearing, and --

Ms. Gima: Oh, I'm sorry, I apologize. Okay, open up public hearing. Anybody else would like to come up and testify? Okay, public testimony is closed. So Commissioners?

Ms. Zigmond: I move to recommend approval.

Ms. Gima: So there's two options here to recommend approval of the proposed bill to the Maui County Council, or recommend approval of the proposed bill with these amendments to the County Council. Again, when, Gina, when it say with these amendments those are the three amendments that you went over, correct?

Ms. Flammer: Yeah, they're all in the bill. The only --. And maybe you can just tell me what you like and what you don't like, and I can --. So do you like the overall concept? Do you like the idea of six months grace period? Do you like idea of the high end homes being excluded from this? And are you okay with the transferability for these --? Or no, it's not transferability. Are you okay with these high end homes being able -- those permits being able to, I guess, be transferred essentially or that person to come in before the five years?

Ms. Gima: So that's the one, the third exception which allows properties previously used for short-term rental home will the permits be eligible for a permit again if the owner applies within three years of purchasing a property. So Bev, are you --?

Ms. Zigmond: Yes.

Ms. Gima: Yes, what? For the record please? On page 18 there's the list of our options if you would like to refer to that.

Ms. Zigmond: So it would be...no. 2...recommend approval of the proposed bill with amendments to the Maui County Council.

Ms. Gima: Okay, Bev made the motion, do I hear a second? Second by Brad. So it's been moved by Bev, second by Brad to recommend approval of the proposed bill with amendments to the Maui County Council. Any discussion Commissioners? All in favor of the motion raise your hand. All opposed? None, so that's unanimous. Thank you.

**It was moved by Ms. Beverly Zigmond, seconded by Mr. Bradford Oshiro, then unanimously**

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

*(Assenting: M. Badillo, M. Baltero, S. Ferguson, S. Koanui Nefalar, S. Marlowe, B. Oshiro, B. Zigmond)*

Ms. Flammer: Thank you very much.

**3. MR. WILLIAM SPENCE, Planning Director, transmitting proposed amendments to Chapter 19.62 of the Maui County Code relating to Flood Hazard Areas to incorporate changes required by the Federal Emergency Management Agency (FEMA). (C. Cortez)**

Ms. Gima: Okay, so we're moving along to our last resolution and I don't know -- which is . . .  
(Chair Kelli Gima read the above project description into the record.) . . .

Ms. Carolyn Cortez: Hi, good afternoon Madame Chair and Commissioners. My name is Carolyn Cortez, and I am the supervising planner of the Zoning Administration and Enforcement Division. Our division is charged with maintaining the National Flood Insurance Program (NFIP) for the County of Maui. I'm also the County Flood Plain Manager, and how this -- how these amendments came about was that in November of last year, FEMA changed some of their Digital Flood Insurance Rate Maps. And when that happens they take a look at our ordinance which is 19.62 and they had some...changes that they wanted us to do. So these -- these amendments are...what FEMA wants us to adopt for our flood hazard ordinance.

Now the National Flood Insurance Program provides flood insurance for our properties that are in the flood zone, and it also provides federal assistance in times of national declarations of disaster. If our community was not to participate in the National Flood Insurance Program, then these, the flood insurance and then the federal assistance would not be available to us. So I just wanted to make you aware of that.

So the changes and amendments that are being proposed are really not anything drastic. They're more housekeeping. We had an ordinance change in 2009, and some flood zones were inadvertently left out at that time, that we're correcting that. We are also correcting the severability clause. We're adding it in to 19.62. We have it in Maui County Code, but in a different title, but FEMA wanted us to put it specifically in the Flood Hazard Ordinance. Another thing is that they wanted the Director of the Department of Planning to be named as the person responsible for the National Flood Insurance Program. Whereas that was sort of an implied thing. They wanted it to be actually stated, so they added that also into the ordinance. So what I provided for you is...the change and the rationale for each of the changes in the ordinance, the flood hazard ordinance. And I'm available if you have any questions on any of the amendments.

Ms. Zigmond: Can I ask you a question please?

Ms. Cortez: Yes, Commissioner Zigmond.

Ms. Zigmond: Sorry...I will admit I briefly glanced through this. If there was a pop quiz I couldn't tell you what it contained. Could I ask you if there was anything specific that we here on Lanai should be concerned about or that might apply to us specifically?

Ms. Cortez: Sure. A lot of it is...kind of like housekeeping. We're updating like our office address, we're updating the uniform and international residential code because the County adopted that in 2012, I believe. It is not really anything substantive really. It's very correcting some typographical areas, and as I said, inadvertently we left out like adding flood zone AO...so those types of things. It's really not a substantive bill.

Ms. Zigmond: Okay, that's what I thought looking at the chart, but I just wanted to confirm it and I didn't mean to have you take a pop quiz. Sorry.

Ms. Gima: And, and again, question. And again this would mean all these amendments is - - would get everything up to par with FEMA so that if flooding happens, like you said, for the flood insurance and federal assistance.

Ms. Cortez: Yes.

Ms. Gima: So this is obviously significant because we obviously want to see that happen.

Ms. Cortez: Yes, that's correct.

Ms. Gima: Commissioners, any other questions, comments, discussions? It's pretty clear, you have more housekeeping stuff.

Ms. Cortez: Yes. We changed some definitions to be --

Ms. Gima: Right.

Ms. Cortez: -- consistent with FEMA definitions. And in some cases they didn't want us to quote like specific insurance rates because the insurance rates change. We had actually put in \$25 per -- you know, we actually put in. They didn't want us to do that. Also there was some services that FEMA had offered before, but they no longer offer it, so they wanted us to take that out.

Ms. Gima: I'm going to open up public testimony, so if there's anyone that would like to provide comments please --. John? Okay.

Mr. John Ornellas: This is John Ornellas, resident. There's a few things when it comes to flood hazard areas. I think most of us here already knew that the water got extremely -- the rains that we had recently, got extremely close to Kaunapali Highway. If it would have gone over, then we probably wouldn't have a way to get to the airport or to the harbor.

Lanai City has a drainage plan that was done by TM Towell many years ago, and which the County of Maui has adopted. We must maintain that, that...drainage plan and it cannot be forgotten. So -- and then, of course, I've got my, my petty bitch about the three FEMA containers down at the airport. The weeds are taller than the containers, so they need -- so somebody needs to go down there, put them on a slab and maintain those containers because when we need them, they'll be all rotten by the time we get down there, so that's it.

Ms. Gima: Thank you. Anyone else? Okay, we'll close public testimony. Commissioners?

Mr. Oshiro: I don't know if you know this question -- to answer this question, but does Lanai have any places that you could consider as a flood zone?

Ms. Cortez: Not Lanai City. But there are areas near the coast, like, by the harbor, that area, I believe is in V-zone. So a lot of the coastal areas are in the V-zone. But you don't really have that much A-zone, which is caused by riverine flooding.

Ms. Gima: Sure.

Ms. Caron Green: My name is Caron Green. I happen to live down at Manele. We moved here in 2006. But I know that -- was it 2004 that there was the flooding down there? And there has been some remediation that was done after that. But it would be very helpful for people who live down there to know if any of us are in flood zones. And is that information available somehow?

Ms. Cortez: Yes. That information is available. You can call our office at the Department of Planning. There is also a website. FEMA has both, a website and I can give you that information, or we also have a better website with what the State of Hawaii does, Department of Land and Natural Resources. And what's helpful about that site, and what's different about that site as compared to FEMA is that it has property lines on that. The FEMA website and FIRM maps, Flood Insurance Rate Maps, do not have parcel lines on it. So you have to look at the imagery and kind of guess where your property is. So the most recent change we had was November 4<sup>th</sup>, 2015. But the panels that were changed at that time were Waikapu, Molokai, and Kihei. So Lanai was not included. Well, panels for Lanai were not changed at that time.

Ms. Gima: Thank you. Thank you. So I'm assuming you're recommending that we --

Ms. Cortez: Yes, I'm sorry. So you have the same options as what Gina mentioned. You can, no. 1, recommend approval of the proposed bill to the Maui County Council. No. 2, recommend approval of the proposed bill with amendments, if you have any amendments to propose. No. 3, recommend denial of the proposed bill to the Maui County Council. And no. 4, vote to defer action on the proposed bill in order to gather specific additional information.

Ms. Koanui Nefalar: I'd like to recommend approval of the proposed bill to the Maui County Council with the revisions that you mentioned or the changes.

Ms. Gima: The revisions and the changes is the proposed bill, correct? This whole chart.

Ms. Cortez: Yes.

Ms. Gima: Okay.

Ms. Cortez: But the Commission has not recommended any amendments either.

Ms. Gima: Yeah. So as -- yeah.

Ms. Cortez: Okay, thank you.

Ms. Gima: Okay, so it's been moved by Stacie, and second by Bev, to recommend approval of the proposed bill to the Maui County Council. Any discussion Commissioners? All in favor of the motion please raise your hand. All opposed? None, so unanimous. Thank you.

Ms. Cortez: Thank you very much.

**It was moved by Ms. Stacie Koanui Nefalar, seconded by Ms. Beverly Zigmond, then unanimously**

**VOTED: to recommend approval of the proposed bill to the Maui County Council with the revisions and changes that were mentioned.**

*(Assenting: M. Badillo, M. Baltero, S. Ferguson, S. Koanui Nefalar, S. Marlowe, B. Oshiro, B. Zigmond)*

Ms. Gima: I'm going to call a quick break, a 10 minute break before we go on to our next agenda item.

*(The Lanai Planning Commission recessed at approximately 7:05 p.m., and reconvened at approximately 7:15 p.m.)*

## **E. COMMUNICATIONS**

### **1. AUGUST 16, 2016 Third Semi-Annual Report (January through June**



**2016) submitted by MS. LYNN McCrory, Senior Vice-President of Governmental Affairs, PULAMA LANAI regarding the project irrigation demand associated with the Residential and Multi-Family Development at Manele, TMK: 4-9-017-001, 002, 003, 004, 005 and 4-9-002:049, Manele, Island of Lanai. (95/SM1-015) (95/PH2-001)**

**The Commission may provide its comments on the report.**

Ms. Gima: . . . started since everyone's back in the room. We'll move onto Item E, which is Communications, starting off with the first item . . . *(Chair Kelli Gima read the above project description into the record.)* . . . Lynn, would you like to come up please?

Ms. Lynn McCrory: Lynn McCrory, Pulama Lanai. This is the same report we've been basically giving you for the last, about, three years now. The report originally was all numbers and it was difficult for me to understand all the numbers, so we put it into a graph format so that you can see the water usage and change to all the gallons per day which then provides the consistency as to what it is. So I'll take any questions that you happen to have on it. Otherwise, it looks similar.

Ms. Gima: Commissioners, any questions or comments for Lynn?

Ms. Zigmond: The other Manele potable water usage, the first period of 2016 was kind of significantly higher. Just any -- anything that you know about that might have caused that?

Ms. McCrory: Not particularly. It was the multi family was higher. I don't know of any leaks, which would be one reason that you would have significantly higher. But I don't know of any leaks and it's back down again. So it may have been a leak, but I can't tell you that for sure. I did not ask that question.

Ms. Gima: Commissioners, any other questions? If not, I'm going to open up public testimony. So if there's anyone in the audience that would like to ask Lynn any questions or provide any comments. Anyone? Okay. Close, thank you Lynn.

**2. MS. KELLI GIMA, Chairperson of the Lanai Planning Commission referring phone communications from the State's Ombudsman's Office regarding Lanai Planning Commission meetings.**

Ms. Gima: Alright, moving along to Item no. 2. . . *(Chair Kelli Gima read the above project description into the record.)* . . . So this, I spoke about briefly at our last meeting to get this on the next agenda. Again, I've been in contact with the State's Ombudsman's Office probably for about the past three months. And I was approached by -- his name is Renee dela Cruz, informing me as the Chairperson that there has been a complaint against the

Lanai Planning Commission for not having monthly meetings. And so he had asked questions as to why this was happening, who was cancelling the meetings, and, and I just want to make it very clear to, to the Commission that the complaint and investigation is against us, as the Lanai Planning Commission, not against the Planning Department.

So I had on and off conversations with him. Again, he was just trying to gather various information, and you know, shared with him that it was never the Planning Commission or any of the Planning Commissioners canceling the meeting, that it was in fact, the Planning Department which we do receive e-mail communications, sometimes from Leilani or Clayton. And two of the reasons or I guess the most common reasons of why meetings are canceled because there will be no quorum, and that's happened a few times, but majority of the time because there are no action items on the agenda for us to vote on. So provided him with those reasons and also dates that meetings have been canceled. And again, he, you know, on the County's website they do have that information if a meeting is canceled. And again, this, this complaint was made back in July of 2015, and I don't know why there was such a long delay of them following up on this. From what -- it sounded like it was kind of passed along to different people in the Ombudsman's Office and finally someone got it and decided to do their follow up.

So when talking with him it was really, you know, what do we as a Planning Commission need to do, what we need to be aware of, and it's basically, you know, stating he had told me that we need to have this conversation on record where we can all be here at the meeting to discuss, therefore we got it on the agenda. So, yeah, that's, that's the gist of it.

I'm going to if no -- if commissioners if none of you object, I'm going to ask Mr. John Ornellas to come up. He was the complainant and also the Chair for the Planning Commission at that time. I think it would be helpful to get some context, John, for the newer members of what made you initiate this.

Mr. Ornellas: John Ornellas. Some of you were part of our Commission when we were having our commission meetings and then of course we had the plane crash, and then from then kind of on it was just...Spence and the Planning Department canceling meetings because they said there was nothing on the agenda. Well, according to the Maui County ordinance there is an ordinance that says that the Planning Commission has to meet once a month, period. Go ahead.

Ms. Gima: I can read that because this was what was referenced to me. So it's the -- the Department of Planning Sub Title 4, Lanai Planning Commission, Chapter 401, and under -- what is this here? -- 12-401-14, Section E, it says:

*"Regular meetings shall be held at least once a month, at the Lanai Public Library, Lanai City. The regular meeting maybe held elsewhere, when necessary, to enable the Commission to effectively conduct its business."*

So that is what is stated in our rules of practice and procedures.

Mr. Ornellas: So when I found that -- when -- in our disc -- my discussions with, with Spence and Clayton, Clayton would say there was nothing on the agenda. But when talking to Spence about canceling these meetings it was always about the money. How much money it took to get the Planning Department here and then, you know, so --. But I kept, I kept telling him, I said, wait a minute, you sit before the County budget, and you submit a budget, so you know how much money it takes to run the Lanai Planning Commission on a monthly basis. So for you to go and say, you know, it costs too much money, that's crap. He doesn't -- he's got the money because it's been approved by the Maui County Council. So that's how I got involved with calling the Ombudsman, and getting this, this complaint started. You know, I mean, he canceled, they cancel but there's all of us and during that time there was plenty of room for, for training, there was plenty of room for discussions about what's going on with this community and so there shouldn't have been any cancellations per se. And I was kind of thinking how far back, I mean, I was Chair for, what, three years? And I think only twice during those three years as a -- only twice in the five years that I sat on the planning Commission that quorum was an issue. Other than that, it was the Planning Department canceling these meetings. And they would cancel, what, four, four months in a row. So...that's what got me going.

Ms. Gima: Yeah, there is a period from March to June 2015 when there were no meetings held. Commissioners, any questions that you may have for John?

Ms. Zigmond: I think it's not so much a question as, as restating if I can what you said, so there, there's two things here. The...Ombudsman made the complaint against us even though we never canceled anything. The issue of the money which as we see those numbers are really inflated, number one, and number two, we have given a number of alternatives that never went anywhere, so that isn't really an issue. So, so your original complaint was that the Department canceled a lot of meetings and then I'm not sure how the complaint actually got to be against us. Do, do you know that?

Mr. Ornellas: My complaint was against the Maui, Maui Planning Department. I don't know how they -- how it switched to the Planning Commission.

Ms. Gima: I'm not quite sure.

Mr. Ornellas: But you don't make the agenda.

Ms. Gima: Right.

Mr. Ornellas: I mean, you approve the agenda, but you don't make the agenda.

Ms. Gima: Correct. I'm not quite sure where that switch happened, but from my understanding with the talks to the Ombudsman Office is that, you know, they look into us first to see if there was anything happening where we were making those decisions, voting on it, or proposing to cancel. And then if it's clear that that was not the case, then they would move on to investigating with the Planning Department, and that's what I was told. How Bev it was switched I have no idea. It might just be that they have to look at us first and then go from there. But again it's a pretty serious complaint and understandably, you know, hearing why.

Mr. Ornellas: It's kind of ironic that Ron's testimony earlier today that the Mayor wants to get rid of the Lanai Planning Commission and the Molokai Planning Commission, what better way of getting it if we can't get quorum. I mean, I hear -- every time I would listen to the County meetings that go on Maui and stuff, this issue came up in the Cost of Government that, that Michele, the Deputy Director, said that there was quorum issue for this island. And, you know, I'm yelling at the television set, you're lying. So, I mean, it's not, it's not the Lanai Planning Commission that, that's screwing up, it's the Planning Department because they're trying to save money for something, I don't know, something down the road. But that was Spence's --

Ms. Gima: Rationale.

Mr. Ornellas: -- rationale for canceling meetings.

Ms. Gima: Thanks for providing that clarification. I'm guessing I'm going to turn it over to you Clayton because Corp Counsel is not here nor is Director, Director Spence. I guess my first question would be is there anything -- and I mean, I was looking through all of LPC's rules and procedures and whatnot. Is there anything that says a meeting cannot happen if there's no quorum? I understand we can't vote, but can a meeting still take place without quorum?

Mr. Yoshida: I believe annually the Corp Counsel does a training on the sunshine law, and basically if there is less than a quorum, Commission cannot take any action. It can have a meeting to hear testimony and report to the Commission at a future meeting on what transpired at that scheduled meeting. I think it's happened before where we've had three members show up, and so we didn't have a quorum, but the public was here, so we did -- the three members did accept public testimony from the people that were here, but they couldn't take --

Ms. Gima: -- Okay, so short answer, yes, you can have a meeting without a quorum. That's what I'm hearing.

Mr. Yoshida: You could but you couldn't take --

Ms. Gima: -- Correct. You can't take action, you can't vote, but you can still have a meeting. Okay. So, I mean, we -- we had this discussion last month to put it on the agenda. We got in our packet a letter dated July 23, 2015 to the Ombudsman's Office from Director Spence. I don't know if you were tasked at all, Clayton, to come tonight and go over things or respond to, to any of this?

Mr. Yoshida: Well, I think our response dated July 23, 2015 to the Ombudsman, Robin Matsunaga, sort of explains the situation relative to how the Commission gets agenda items, and I guess the cost of funding some of the meetings, paying for staff and so forth. And I guess we have, to my recollection, we haven't receive a response from the Ombudsman since our July 23<sup>rd</sup>, 2015 letter.

Ms. Zigmond: Madame Chair, can I ask a question? So Clayton, in the past, we have enumerated a number of very viable alternatives to reduce the cost, which I still say is very inflated...and there's no mention of that. And, and my understanding is that our, our suggestions for alternatives didn't go anywhere so if we're all trying to work for a solution and this still doesn't mean that we have canceled any meetings. I want to emphasize that again. But you know, we're trying to work with you all and, and they've been ignored...so I'm confused.

Mr. Yoshida: Well, again, I think, we explained in the letter that there are two primary ways of which the Commission exercises authority on matters that come before the Commission. One is as you saw tonight in your advisory role to the Council in reviewing proposed amendments to the Zoning Code or other ordinances. Second is decision making with regards to discretionary permit applications. If there aren't a lot of discretionary permit applications that we're proposing, then, you know -- and the Council isn't producing a lot of proposed amendments to the Code, there's not much business, I mean, for the Commission to discuss.

Ms. Zigmond: That doesn't address what I asked you. I said, what happened to all those alternatives to help save money even though I believe that money is not the issue. But we did have cost saving alternatives and they went nowhere. They're not mentioned in here. Nobody seems to know about them, although we had them on the record. For instance, chartering a Expeditions Ferry to go home. The hotel accommodations, \$250 to \$400 a night per person a hotel a night, I'm not sure about that. We -- about the possibility of you all coming in later. You know, we, we get the whole thing about how inconvenient it is even if it's for your job to go off island, overnight, and to have to care for children and your pets. We get that, we do it all the time, so it's not like we're being insensitive. We're saying that there are other ways and, and nobody's even acknowledging them, let alone discussing them.

Ms. Gima: I'm going to piggy back on you Bev here. In, in Director Spence's letter he referenced during a December meeting which I'm assuming is December 2014. I mean,

this is how long we've been having this discussion as a Commission involving input from, from the community who've attended these meetings. Like Beverly said offering what I think is viable alternatives to, to address this issue of saving cost. And again, as John referenced, I don't know what the issue is when it's already been budgeted, this is what's going to be spent. But, yes, we also -- on top of what Bev said we said we could do Saturday morning meetings like we did when we were reviewing the community plans so therefore not having to stay overnight. We talked about video conferencing. You know, sometimes like so many people come over, someone speaks for all of five minutes just to spend all that money to speak for five minutes. Go on video conference. I mean, it's clear, someone like Leilani, you know, always needs to be here, she's recording, she has a very important job, or the planners who are, you know, providing overview of the resolution or the application. And, yeah, it is a bit frustrating because this letter that Director Spence had sent was basically like we just need to save money and had totally failed to mention that the Planning Commissioners, again, we're very sensitive and willing to work with coming up with really good solutions and compromises. So is -- do you know, I mean, you were here at all these meetings, Clayton, were those alternatives brought back on those numerous times we discussed it? Did you guys sit around a table and say, hey, okay, let's really look at how, how viable and feasible these alternatives are? Or was it just, no, that isn't what we want to do, so we're not going to listen because that's how it's feeling like right now. And again, this was not just comments from the Commission, but comments from the community, many comments, and people really trying to find ideas to save costs, but to ensure that our meetings still take place at a time that it's historically always been, in the evenings, because we'll get better participation especially with the Commissioners.

Mr. Yoshida: Well again we -- I think Director Spence has been here on several occasions to talk about this issue, hear from the Commissioners, hear from the public. We have looked at various alternatives. We looked at trying to start meetings earlier. We were unable to obtain a quorum.

Ms. Gima: Right, and we also made that very clear on the record. I think majority of the Commissioners said that would never work, and we would not be able to be here for a quorum. So to take the one alternative that the majority of the Commissioners are saying that does not work and just run with that and not look at all the others kind of doesn't make sense to me.

Ms. Zigmond: And, and the, the alternatives that Spence brought up was not about what we had offered to help you all. It was what he wanted to help him. Change it to 4:00 p.m. in the afternoon.

Ms. Gima: Yeah, and it's unfortunate, you know, Clayton, I don't mean to have this all go on you. I mean I wish Director Spence was here because you're right, he has been here numerous times and we have had these discussions. I just, I kind of like, I don't even know what to do anymore. We have, like I said, had discussions, offered solutions, and then now

we have this in front of us with this Ombudsman Office complaint, it doesn't seem like we can get much information from you Clayton. I don't know how --. I don't know. I'm going to let other Commissioners key in here. I know Medigale and Marlene, and Fergie, I don't know if you were here. You might have come in around the time. You guys weren't here when this was happening. Do you guys have any questions about kind of the context, or any thoughts about this?

Ms. Marlene Baltero: I've been hearing from your suggestions before for like other alternative meeting schedules, but it seems that Clayton was not being following it up or whatsoever and I think that should be considered too instead of like having this conversation right now with the Ombudsman. I think we better look some alternative with the meeting schedule as well.

Ms. Gima: So basically right now we're not in compliant with, with the rules. That's what the Ombudsman Office is saying which is true, we're not, and therefore having this discussion. Again, we understand the Planning Department's point of view, and I think it's going to have to have this discussion thoroughly again because it seems like it's gone nowhere in the past two years. At the end of the day this needs to be resolved or else it's going to be an ongoing issue, and I don't want the worst case scenario of a, of a lawsuit or something like that coming towards us or towards the Planning Department. I don't want to see that either. So it's how do we work, as two entities here, suppose to be working together to make this work. And one thing that the Ombudsman Office had shared with me is the Planning Department does not have the authority to cancel meetings, and so just to have that clear. And again, I mean, there has been times that I don't think any of us have objected to canceling a meeting that had nothing on the agenda. You know, no one is putting up a fight saying, wait, why aren't we? I mean, we talked about finding alternatives like doing workshops or trainings or things like that that would be beneficial. But it is, I think, and I talked with Corp Counsel and too bad she wasn't here tonight. I really expected her to be here was maybe possibly having to look at amending our rules cause this is pretty outdated, to have this kind of further discussion so that we can put, you know, put some amendments in place that would make sense.

And so, first off, I'm going to request that on our October agenda that we do have that discussion because again this is going to kind of go back and forth, and I think, to protect all of us here, is coming up with some solid solutions and amending the rules if need be. So then at least Corp Counsel can be here who can guide us through that process, we'll be able to ask her questions, you know, legal questions as we move forward.

Ms. Zigmond: Madame Chair, the primary objective tonight, though...is to...to put on the record that the Lanai Planning Commission has never canceled a meeting. Is that correct?

Ms. Gima: Correct. It's never been canceled or initiated by us. Is there -- I mean, is there anything further that you want to share Clayton? I would definitely recommend having the

Director here next month if we're going to sit down and really have this discussion and look at possibly amending rules.

Mr. Yoshida: I believe we have spoken to the Chairperson prior to cancellation of meetings. I agree that the rules need to be -- the rules of practice and procedure need to be updated. I mean it's been a while since we've had a meeting at the Lanai Public Library. You know, we used to have it there, but then the DOE wouldn't let us use it. So then we moved to the cafeteria, then we moved here, then they did the renovation of this building, so we moved back to the cafeteria, then back here. Yeah, it should be updated.

Ms. Gima: And I'm also going to put on the record that -- and please Commissioners object if you don't agree with me on this -- is that we want to continue to have our monthly meetings. If there is no quorum, a meeting like Clayton clarified tonight can still go on. Again, I think looking at moving forward with possibly having to amend the rules if there's no action items, but, you know, we can make it work. We still have some, you know, some things to review. I think workshops are always great, especially for those who are new, for those of us who definitely need a fresher. So I just want to put on the record, and if you all agree that we want to have monthly meetings. Does anybody object to that? Okay. I'm going to open up public testimony to allow the residents of our community share any thoughts or ask any questions. John?

Mr. Ornellas: John Ornellas. That's -- that's -- you know amending the rules...amending the rules, I, you know, I have a hard time with that, but...you know, there's always something to talk about. This is the only Commission that has Lanai residents, Lanai residents and it's on this island. We have -- we have plenty of people that sit on boards and commissions, but their meetings are over on Maui. So this, this is basically the community's time. I mean, you heard it from Ron. I mean, totally had nothing to do with you guys, but yet he brought it up. But he was able to get it on record which, which Leilani has, and which now being videoed. But this is the only way that where the community has a voice and can be heard. And it was plainly obviously last night that it wasn't -- there wasn't too many people listening to the community, but they -- you guys listen. You allow the community to sometimes vent and that helps because those issues then become part of a record, and then people then start to discuss it more.

This Ombudsman thing, I mean, I thought it was getting buried. I mean, I made the complaint. First of all, the County's got to make it a lot easier to file a complaint. This took an act of God to get. And then finally Corp Counsel says, well, maybe you should go talk to the Ombudsman. Maui has an Ombudsman? No, the State of Hawaii has an Ombudsman, so then I started talking to them. But it was -- it was like pulling teeth to get this thing though in the beginning and I thought it died, but then it came back to life. So, yeah, so, you know, again, having the rules change -- having the rules discussed is, I think, would be a better term than the rules being changed because there is always something that the Planning Commission can learn through workshops and to, and to -- and technology



changes all the time, you know. So look at the high level, the water level, the sea level rise. I mean, you know, when I first came to the Planning Commission we didn't talk that much about it. But at the end, it was a big deal, so.

Ms. Gima: I just want to share my thinking and rationale for looking at amending the rules is because, well, now, for two years we've kind of been going back and forth. We've offering alternatives, nothing changing, and at the end of the day we're still not in compliant with the rules, so is -- it's not saying we will but do we have to look at it -- and you're right, having that discussion. Because it's not just -- you know, as I was skim -- reading through all of this here for this purpose, it's noticing a lot of things that may need to be discussed and reviewed.

Mr. Ornellas: So -- so, I mean, you guys been talking -- we've been talking about this for ages and Butch has been talking about it during, during CPAC and all that other stuff -- enforcement. Who's enforcing those regulations? You can pull regulations down until the cows come home, but if nobody enforces them, what's the sense having them?

Ms. Gima: That's a good discussion to have. Thank you. Anyone else? You can use Clayton's mic.

Mr. Reynold "Butch" Gima: Butch Gima. I had the opportunity to talk to...Michele McLean, the Deputy Director, last night at the budget meeting. She said right off the bat the issue is not money. She said the budget is put in and if they, the Planning Department, needs more money for extra meetings, she doesn't feel that's going to be a problem and she feels that Riki Hokama will ensure that, you know, money is provided.

I think you have to remember this is your Planning Commission and you have a choice of kind of reacting to what the Planning Department wants you to do, or you can also by virtue of your rules make motions and say this is how we want our meetings to be, what you want to have at the meetings. Back in mid-2000's when there was not much on the agenda, we proposed and we had workshops. One of the workshops that's being considered right now is having a joint Lanai Planning Commission and Lanai Water Advisory Committee site visit so you guys have a better idea of the water resources and the challenges and the successes of the Water Department because so much of the Pulama applications that come before you have water implications.

You can talk about how --. Well back, back when we had that one workshop that's when they had that big wind thing that was going on and we had to determine how we wanted open space to be utilized. And there's some other things where I think during down periods the Planning Department can kind of provide you cheat sheets on, like, applications that come from say Pulama and then some of the things that came, like, tonight from the, from the Planning Department and from the County. Because it's very, it's very confusing, and a lot of times depending on who the planner is you really don't know what your options are

and you don't know how it's going to impact our community or how it's going to impact, you know, the County.

So my suggestion is flat out and say we will have 12 meetings a year, at minimum, and the only way that they're going to be canceled is by motion by the, the Planning Commission. And then work together with the Planning Department on, on workshops and how you can be better educated on all aspects of serving, you know, on the Commission.

One last thing, when we were talking with Michele yesterday, I said, so what's the issue? And she said it's a man power issue. She was saying when, when the County, Planning Department comes over they're losing like two days. I said, wait, wait, how the hell are you going to lose two days of work? I say, you guys come in at 3:15 p.m., come up here, set up, get something to eat, meet for three hours, go sleep, catch the 8:00 a.m. boat, you're back in Wailuku at 10:00 a.m. So I don't where they're coming up with this two day stuff.

Then she asked, well, can we just meet at four o'clock. I said, look, at four o'clock you've got a shift change. Half of Four Seasons going down, half of them going back up so you're going to lose those groups of Four Seasons workers not coming to the meetings. Then she said, okay, what about, you know, noon time meetings? And I said well you have to remember that the only people who are getting paid at a noon time meeting would be Pulama and the County people. All the people that are testifying and all you guys would -- are volunteers. And four of you, I think, will have to take vacation in order to attend a noon time meeting. I said, that, you know, that's not fair. And I said, for the last, since 1992, the evening meetings have worked, and so what changed? And she well, it was, it was the plane crash. I said, okay, understandably so, but have you guys have followed up on the, the recommendation of having Expeditions take you guys back at 8:30 p.m., 9:00 p.m. because that's what they do for Pineapple Festival, Fifth Friday, the Lahaina Halloween stuffs. So that, that was the extent of our, our conversation.

Ms. Gima: Thank you, and thank you for the suggestions. And just to let you know last month we make a vote to have the meetings at 5:30 p.m. so there really shouldn't be any discussion again on meetings times because that vote went through.

Ms. Zigmond: Madame Chair, I'd just like to thank Butch for that little bit of background. I attended -- I was on the Commission back then and I attended some of those, those workshop and they were so very helpful in helping us to understand some of the applications that came before us. In fact when John was Chair he had asked to have workshops on the SMA and possibly changing our SMA rules. Well, it has been how many years and I think we had two, maybe, right, and so I agree Butch there is no lack of pertinent important topics that we could have workshops on. And I don't think Kelli, I didn't get the impression that you were saying amend the rules so that we don't have to. Correct? Because we, we want them. We want to be able to, to make the best choices and we have to be informed, so thank you.

Ms. Gima: Yeah, and also to put on the record, as Beverly said, back when John was still Chair, we have requested workshops and that has never happened. I don't know why. Because usually at the end of our meeting, right, we go over what's on next month's agenda, and there has been times, and I specifically remember when John was Chair he would bring that up. So...I will at this time, and I will make a motion. I will make a motion that we have our monthly meetings...regardless of agenda items or quorum, and that we will work with the Planning Department to find, if there's no agenda items, to find ways to make that a productive meeting.

Ms. Zigmond: I'll second that.

Ms. Gima: So it's been moved by myself and second by Bev to have consistent monthly meetings, regardless of no quorum or no agenda items, and again working with the Planning Department to make it an appropriate, feasible meeting. Commissioners, discussion?

Ms. Zigmond: Just, just a quick reminder, as John said, in five years, there were only two times when there wasn't quorum, no quorum, and I, I --

Ms. Gima: That meetings were canceled for that.

Ms. Zigmond: Yes, for that reason. And so if we were slacking off, if we were not putting forth our best effort that would be one thing, but that's certainly not the case as the records show, and so I totally agree with you.

Ms. Gima: And a side note to this motion as well and this can be discussed at the end of our every meeting when Clayton usually brings up what's on the agenda, and sometimes he says there's nothing, and I think that's when we, as Commissioners, can make a recommendation, of hey, you know, I'd really like to maybe have a workshop on the SMA boundaries, or on climate change, or whatever it may be and being able to give feedback to the Planning Department of what our needs are. Or we might know that, you know, Clayton could share, okay, you're going to have this application coming up soon for a Special Use Permit in the next three months, and maybe finding a way to tie in a workshop there so that that really prepares us, and again, especially for those who are new, and us who needs refreshers so that when the application comes we kind of have that fresh in our minds. I think that's going to be beneficial for all of us, and also for the applicant as well. So, any other discussion?

Ms. Zigmond: One other, one other point especially for the newer members, again, to remember that we do get, as Butch says, it is our Commission and we do get to set the agenda. You do get to approve it, and so it's not the other way around, correct?

Ms. Gima: So go ahead, we have a motion on the table. You guys all understand the motion. Any other discussion? Okay, we're going to take a vote. All in favor of the motion please raise your hand. So that's one, two, three, four, five, six, seven. All opposed? Are you not voting Stu?

Mr. Marlowe: No.

Ms. Gima: Okay, so you're abstaining. So that's --

Ms. Zigmond: Abstain is . . . (inaudible) . . .

Ms. Gima: Yeah. And it, and it, and it passes. So let's go ahead and move on to Item F, the Director's Report. Clayton?

**It was moved by Ms. Kelli Gima, seconded by Ms. Beverly Zigmond, then**

**VOTED: to have monthly meetings regardless of agenda items or quorum, and that the Commission will work with the Planning Department to find, if there are no agenda items, feasible ways to make it a productive meeting.**

*(Assenting: M. Badillo, M. Baltero, S. Ferguson, S. Koanui Nefalar, S. Marlowe, B. Oshiro, B. Zigmond)*

## **F. DIRECTOR'S REPORT**

### **1. Meeting Schedule for Calendar Year 2017**

**The Commission may act to adopt the meeting schedule or take some other action.**

Mr. Yoshida: Under no. 1, under Director's Report, we distributed the meeting schedule for calendar year 2017. We ask that you approve it or amend it and approve it so we can reserve the facility.

Ms. Gima: These are all third Wednesdays, correct Clayton?

Mr. Yoshida: Yes.

Ms. Gima: Okay.

Ms. Zigmond: Madame Chair, I move that we approve the 2017 schedule.

Ms. Gima: It's been moved by Bev, second by Brad to approve the proposed Lanai Planning Commission 2017 schedule. Commissioners, any discussion? All in favor of the motion please raise your hand. It's all, and none opposing, so that's unanimous, and that passes.

**It was moved by Ms. Beverly Zigmond, seconded by Mr. Bradford Oshiro, then unanimously**

**VOTED: to approve the proposed Lanai Planning Commission 2017 meeting schedule.**

*(Assenting: M. Badillo, M. Baltero, S. Ferguson, S. Koanui Nefalar, S. Marlowe, B. Oshiro, B. Zigmond)*

**2. 2016 Hawaii Congress of Planning Officials (HCPO) Conference - September 21-23, 2016 at the Kauai Grand Hyatt Hotel.**

**Board members who attended the Conference may report to the Commission on the highlights of the Conference.**

Mr. Yoshida: The second item is the 2016 Hawaii Congress of Planning Official Conference of last week on Kauai. I guess hearing from Board members who attended the conference reporting on the highlights of the conference.

Ms. Koanui Nefalar: I was one of the Commissioners that attended HCPO on Kauai. It, it was my first time on Kauai so it was a enjoyable experience. I was able to attend several cultural and land conservation type sessions. I have some information if anybody needs or wants some. And I also attended one of the activities was to visit the salt ponds in Hanapepe. Visited the missile range down at Barking Sands, and I personally I didn't know there was a missile range over there. We were able to get on the base and see everything, and go to places that they said public is not privileged to, so that was an experience. And my, my suggestion is if you -- if any of the Commissioners ever have a chance or the opportunity to attend an HCPO it's a wonderful experience. You get to meet a lot of people throughout the State, and you make a lot of good connections, and...you, you make, you build bonds that if you have any questions you can always call them and get more information.

Ms. Gima: So I also attended and I was very grateful. This is my first time since being on the Planning Commission that I could attend that my work schedule didn't conflict and so it was really nice to be on Kauai. I haven't been there in a while. It was hot, but that's alright. They had some really great speakers and some breakout sessions. I went to some breakout sessions involving affordable housing. One about...health and planning and how that kind of ties in which, which I thought was fascinating. That was something that I never

really thought about. We had this great speaker and I don't know where he's from -- Pennsylvania, maybe. I don't know. But really talking about planners and how they plan for communities to be, you know, physically active. You know, walking communities, biking communities, and it was kind of like, well duh, yeah, that would make sense, but never really saw that connection from a planner's perspective. So I really appreciate it that that was a really great --. And I attended another breakout session on that. So, yeah, a lot of good speakers, good breakout sessions. Yeah, and like Stacie said, it's a good way to network and meet other people. I think that's it. Anything else Stacie?

**3. Open Lanai Applications Report as distributed by the Planning Department with the September 28, 2016 agenda.**

Mr. Yoshida: Okay, with that we distributed our Open Lanai Applications Report, if there are any questions?

Ms. Zigmond: Clayton, on the open...right above Dreams Come True, the 1036 Lanai Avenue, what is install metal trellis for PV and who is that? It's Country Town Business, right? And I'm thinking 1036 Lanai Avenue.

Mr. Yoshida: Yes. I...I thought they said it was across from the Dollar Rent-A-Car facility, but I guess not.

Ms. Gima: Yeah, no applicant name, just the address, yeah?

Ms. Zigmond: So that's where the rovers used to be? Remember what's his name had all those rovers?

Mr. Oshiro: . . . (inaudible) . . .

Ms. Gima: Okay. Any other questions about the open applications Commissioners? Okay.

**4. Agenda Items for the October 19, 2016 Lanai Planning Commission meeting.**

**Public Hearing on the following:**

- a. MR. WILLIAM SPENCE transmitting a proposed bill regarding amendments to Chapter 19.04 of the Maui County Code that would allow the Planning Department to establish fees in the annual budget for the review of ministerial and discretionary applications. The proposal would exempt roadway lots or utility**

**lots from minimum lot area requirements and would allow commercial and non-commercial filming, photography and other temporary commercial events in all zoning districts under certain restrictions and standards. (J. Alueta)**

Mr. Yoshida: Next item is agenda items for the October 19<sup>th</sup> meeting. Under public hearings we do have a department initiated bill amending -- proposing amendments to Chapter 19.04 of the County Code allowing for various items, and Joe Alueta will be here to present that.

Ms. Gima: So given our discussion tonight, I think, adding to the agenda as well, discussion of our Planning Commission Rules and Procedures. It should be on the agenda. That's --

Ms. Zigmond: Madame Chair, I think we had asked previously, again, as an informational item, it's not anything we have any jurisdictions over, but it was Margaret Peary's continuance, and I don't see that here unless I'm missing a page.

Ms. Gima: Nope it's not on here, and you're right, we had that thorough discussion and it is in the minutes that that be on the agenda as well.

Ms. Zigmond: Okay, so we have three things, correct, Clayton? We have...that item, we have Kelli's item, and we have Margaret Peary's item on the agenda, which is what we are asking for and if we have to vote and approve, we can do that as well. We used to do that in the old days.

Ms. Gima: Do you need for us to, to vote and approve those two additional agenda items, Clayton?

Mr. Yoshida: Well, we've gotten the input from the Commission as to what they want to have on the next meeting agenda.

Ms. Gima: Okay. So we don't need a motion. It's duly noted. Alright, again, opening up public testimony one last time if there's any, anything else? Really? Okay, you haven't been here to one of these in while since you left, and so now you're here tonight and you're all here ready to speak.

Mr. Ornellas: You know, I, I've had this thing before, and I think Sally also had, a previous Planning Commission Chair, is the Chairperson -- and we talked about this that this is the Lanai community's meeting. This is a -- it's your meeting. But I think every year a chairperson has to be trained. County's gotta give some sort of training to the chair so that the chairs know exactly where they're suppose to lead this Commission, and not let the Planning Department lead this Commission.

Ms. Gima: Did you have a training when you were chair?

Mr. Ornellas: No. But we've asked. Sally asked for it, I asked for it.

Ms. Gima: Okay.

Mr. Ornellas: You know, but it -- that should be all --. I mean, Lanai --. The Molokai Planning Commission, the Hana Advisory and even the Maui Planning Commission needs, needs -- the chairs need to know the scope of their job.

Ms. Gima: Sure.

Mr. Ornellas: You know, 'cause, you're what, on the job training. So, I mean, I was on the job training, so it's hard, you know, so that should be part of the County's -- when your, when the new chair is elected, they should send you to Maui for two or three days and they should give instructions on how to run a, how to run a commission meeting and what your -- what the scope is.

Ms. Gima: Are you hinting that I'm not running it well?

Mr. Ornellas: No, no. I'm just saying -- I mean, you're doing a great job. I'm just saying somebody else is not.

Ms. Gima: I'm just joking. No, you're right, and, and I agree there, when you take on the role of being a chair, and you're right, you're thrown into it, it's on the job training and you learn as you go.

Mr. Ornellas: And, you know, when you're a new chair, you know, you depend a lot on, on Clayton. But there's sometimes, there's -- the Chair has to run their own meeting so that's why I'm saying it. Yeah, but know the, know the diameters are -- their parameters within their jobs, not necessarily what Clayton . . . (inaudible) . . .

**G. NEXT REGULAR MEETING DATE: OCTOBER 19, 2016**



## **H. ADJOURNMENT**

Ms. Gima: I appreciate those comments. I think that is definitely a thought. Thank you. Anyone else? Okay with no objections, Commissioners, I am going to adjourn the meeting. It is now 8:04 p.m.

There being no further discussion brought forward to the Commission, the meeting was adjourned at approximately 8:04 p.m.

Respectfully submitted by,

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

## **RECORD OF ATTENDANCE**

### **PRESENT:**

Medigale Badillo  
Marlene Baltero  
Stephen Ferguson  
Kelli Gima, Chair  
Stacie Lee Koanui Nefalar, Vice-Chair  
Stuart Marlowe  
Bradford Oshiro  
Beverly Zigmond

### **OTHERS:**

Clayton I. Yoshida, Planning Program Administrator, Current Planning Division  
Carolyn Cortez, Staff Planner, Zoning Administration and Enforcement Division  
Gina Flammer, Staff Planner, Current Planning Division  
Michael Hopper, Deputy Corporation Counsel (On-Call)

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

BILL NO. \_\_\_\_\_ (2017)

A BILL FOR AN ORDINANCE AMENDING CHAPTER 19.62, MAUI  
COUNTY CODE, RELATING TO FLOOD HAZARD AREAS DISTRICTS

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

SECTION 1. Chapter 19.62, Maui County Code, is amended to  
read as follows:

**"Chapter 19.62**

**FLOOD HAZARD AREAS**

**Sections:**

- 19.62.010 Legislative intent.**
- 19.62.020 Statutory authority.**
- 19.62.030 Definitions.**
- 19.62.040 Special flood hazard areas.**
- 19.62.045 Responsible county official.**
- 19.62.050 Administration.**
- 19.62.060 Standards for development.**
- 19.62.100 Developments adjacent to drainage facilities.**
- 19.62.130 Enforcement.**
- 19.62.140 Variances and appeals.**
- 19.62.160 Warning and disclaimer of liability.**
- 19.62.170 Other laws and regulations.**
- 19.62.180 No exemptions.**

**19.62.010 Legislative intent.** A. Within the County of Maui, certain areas are subject to periodic inundation by flooding or tsunami or both, resulting in loss of life and property, creation of health and safety hazards, disruption of commerce and governmental services as well as extraordinary public expenditures for flood and tsunami protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety, and general welfare.

B. The flood losses are caused by the cumulative

effect of obstructions in areas of special flood hazard that increase flood heights and velocities, and, when inadequately anchored, damage uses in other areas. Uses that are inadequately floodproofed, elevated, or otherwise protected from flood damage also contribute to flood loss.

C. Congress has determined that regulation of construction in areas subject to flood hazards is necessary for the protection of life and property and reduction of public costs for flood control, rescue and relief efforts, thereby promoting the safety, health, convenience and general welfare of the community. In order to achieve these purposes, this chapter establishes flood hazard areas and imposes restrictions upon [manmade] man-made changes to improved and unimproved real estate within the areas. These restrictions are necessary to qualify the County of Maui for participation in the federal flood insurance program.

D. Failure to participate in the program would substantially increase the cost of flood insurance to individual residential and commercial property owners and result in the denial of federal financial assistance [for acquisition and construction purposes, and jeopardize the making, securing, extension, and renewal of loans secured by improved real estate by lending institutions regulated by the federal government].

E. This chapter is designed to:

1. Protect human life and health and promote the general welfare[;] .
2. Minimize expenditure of public money for costly flood control projects[;] .
3. Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public[;] .
4. Minimize prolonged business interruptions[;] .
5. Minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets, and bridges located in areas of special flood hazard[;] .
6. Help maintain a stable tax base by providing for the sound use and development of areas of special flood hazard[;] .
7. [Ensure that potential buyers are notified that property is in an area of special flood hazard; and
- 8.] Ensure that those who occupy the areas of special flood hazard assume responsibility for their actions.

**19.62.020 Statutory authority.** This chapter is enacted pursuant to the U.S. National Flood Insurance Act of 1968 (public laws 90-448 and 91-152), as amended, and the U.S. Flood Disaster Protection Act of 1973 (public law 93-234), as amended, and chapter 46, Hawaii Revised Statutes.

**19.62.030 Definitions.** Definitions contained in regulations governing the National Flood Insurance Program, 44 CFR 59 through 77, as amended, are incorporated by reference and made a part of this chapter as though set forth fully herein. Where terms are not defined in this chapter, they shall have their ordinary accepted meanings within the context in which they are used or as they are defined in chapter 19.04[.] of this title. The following words and terms used herein are only applicable to this chapter and are defined as follows:

"Architect" means a person who has a license to practice architecture in the State of Hawaii.

"Base flood" means the flood having a one percent chance of being equaled or exceeded in any given year (also called the "100-year flood").

"Base flood elevation" means the water surface elevation of the base flood.

"Basement" means any area of a building having its floor below ground level on all sides.

"Breakaway wall" means [any type of] a wall[, whether solid or lattice, and whether constructed of concrete, masonry, wood, metal, plastic, or any other suitable building material,] that is not part of the structural support of a building and [which] is intended through its [designed] design and construction to [break away without damaging the structural integrity] collapse under specific lateral loading forces, without causing damage to the elevated portion of the building or supporting foundation system [other buildings to which it might be carried by floodwaters].

"Coastal high hazard area" means a special flood hazard area subject to high velocity wave action from storms or seismic sources and designated on a flood insurance rate map (FIRM) as zone VE or V.

"Development" means any [manmade] man-made change to improved or unimproved real estate, including walls, buildings, or other structures, filling, grading, excavation, mining, drilling operations, dredging, paving, or storage of equipment or materials.

"Director" means the director of the department of planning, County of Maui, or the director's authorized representative.

"Encroachment" means the advance or infringement of uses, plant growth, fill, excavation, walls, buildings, permanent structures, or development into a floodplain which may impede or alter the flow capacity of a floodplain.

"Engineer" means a person who is licensed to practice civil or structural engineering in the State of Hawaii.

"FEMA" means Federal Emergency Management Agency.

"Flood" or "flooding" means a general and temporary condition of partial or complete inundation of normally dry land areas from the overflow of inland or tidal waters, resulting from any source, such as tsunamis, or the unusual and rapid accumulation of runoff of surface waters or mud from any source.

"Flood insurance rate map (FIRM)" means the map on which the Federal Emergency Management Agency or Federal Insurance Administration has delineated both the special flood hazard areas and the risk premium zones applicable to the community.

"Flood insurance study" means the report provided by the Federal Insurance Administration that includes flood profiles, the flood insurance rate map, [the flood hazard boundary map,] and the water surface elevation of the base flood.

"Floodproofing" means any combination of structural and nonstructural additions, changes, or adjustments to structures and properties that reduces flood damage to real estate or improved real property, water and sanitary facilities, structures, and their contents.

"Floodway" means the channel or watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot.

"Floodway fringe" in a special flood hazard area in which a floodway is designated, the floodway fringe means the area between the special flood hazard area boundary and the floodway boundary.

"General floodplain" means an area of special flood hazards for which detailed engineering studies were not performed by FEMA to determine the base flood elevations or to identify the floodways, and is identified as zones A, D, or V on the FIRM.

"Highest adjacent grade" means the highest natural

elevation of the ground surface before construction next to the proposed walls of a structure.

"Historic structure" means a structure that is: (a) listed individually in the National Register of Historic Places or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register; (b) certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the secretary to qualify as a registered historic district; (c) individually listed on a state inventory of historic places pursuant to a historic preservation program approved by the Secretary of Interior; or (d) individually listed on a local inventory of historic places pursuant to a historic preservation program certified either (1) by an approved state program as determined by the Secretary of the Interior, or (2) directly by the [secretary.] Secretary of the Interior in states without approved programs.

["Limited storage" means a storage area of less than three hundred square feet enclosed by only open wood latticework or insect screening.]

"Lowest floor" means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood-resistant enclosure, usable solely for parking of vehicles, building access, or storage, in an area other than a basement area, is not considered a building's lowest floor, provided that such enclosure is not [modified] built so as to render the [use] structure in violation of the applicable [elevation] non-elevation design [requirement] requirements of this chapter.

"Manufactured home" means a structure (other than a recreational vehicle), transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when attached to the required utilities.

"Market value" means the value determined by estimating the cost to replace the structure in new condition and adjusting that cost figure by the amount of depreciation that has accrued since the structure was constructed. In determining market value:

1. The cost of replacement of the structure shall be based on a square foot cost factor determined by reference to a building cost estimating guide recognized by the building construction industry[;].
2. The amount of depreciation shall be

determined by taking into account the age and physical deterioration of the structure and functional obsolescence as approved by the director, but shall not include economic or other forms of external obsolescence[; and] .

3. Replacement costs or accrued depreciation factors different from those in recognized building cost estimating guides may be considered only if such costs or factors are included in a report prepared by an independent professional appraiser and supported by a written explanation of the differences.

"Mean sea level" means the [national geodetic vertical datum (NGVD) of 1929] Local Tidal Datum (LTD) also called local mean sea level or other datum, to which base flood elevations shown on a community's flood insurance rate map are referenced.

"New construction" means structures for which the "start of construction" commenced on or after the effective date of the ordinance codified in this chapter, as amended, and includes any subsequent improvements to such structures.

"Recreational vehicle" means a vehicle which is (a) built on a single chassis; (b) 400 square feet or less when measured at the largest horizontal projection; (c) designed to be self-propelled or permanently towable by a light duty truck; and (d) designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

"Repetitive loss structure" means a structure that was damaged by flood two or more times within any ten-year period, where the cost of fully repairing the flood damage to the structure, on average, equaled or exceeded twenty-five percent of its market value at the time of each flood.

"Special flood hazard area" means an area having special flood or flood-related erosion hazards, and shown on a FIRM as zone A, AO, AE, AEF, A99, AH, D, VE, or V.

"Start of construction" includes substantial improvement and other proposed new development and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement was within one hundred eighty days from the date of the permit. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footing, the installation of piles, the construction of columns, or any work beyond the stage of

excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading, and filling; nor does it include the installation of streets or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erections of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

"Structure" means, for floodplain management purposes, a walled and roofed building, including a gas or liquid storage tank that is principally above ground, and a manufactured home.

"Substantial damage" means damage of any origin sustained by a structure whereby the cost of restoring the structure to its pre-damaged condition would equal or exceed fifty percent of the market value of the structure (excluding land) before the damage occurred.

"Substantial improvement" means any repair, replacement, reconstruction, rehabilitation, [addition,] addition; or any series of repairs, replacement, reconstruction, rehabilitation, or [additions,] additions; or other proposed new development of a structure or repetitive loss structure, in [any] the ten-year period[,] preceding the currently proposed improvement (but no earlier than September 25, 2009), the cumulative cost of which equals or exceeds fifty percent of the market value of the structure (excluding land) [before the "start of construction" of the first improvement during that ten-year period.] determined as follows:

For each improvement or proposed improvement ("improvement") the director shall establish the ratio expressed as a percentage, of the cost of improvement divided by the market value of the structure (excluding land) upon application for a flood development permit for the improvement. The director shall add the cumulative total of each of the individual percentages. If the cumulative total of percentages exceeds fifty percent then the improvements in the preceding ten-year period are substantial.

This term includes structures that have incurred "substantial damage," regardless of the actual repair work performed. An improvement shall constitute a substantial



improvement only if:

1. The structure was constructed on or before June 1, 1981;
2. The structure was constructed after June 1, 1981 and was not within a special flood hazard area at the time of the issuance of the building permit;
3. The structure was constructed after June 1, 1981 and was the subject of a map change that resulted in higher base flood elevations; or
4. The structure was constructed after June 1, 1981 and was the subject of a map change that resulted in a FIRM zone change. [The term does not, however, include either:]

The following are exceptions to the above and do not constitute substantial improvement:

1. Any project for improvement of a structure to correct existing violations of [state] State or County health, sanitary, or safety specifications; or
2. Any alteration of a historic structure, provided that the alteration will not preclude the structure's continued designation as a historic structure.

"Surveyor" means a person who is licensed to practice surveying in the State of Hawaii.

"Violation" means the failure of a structure or other development to be fully compliant with this chapter. A structure or other development without a required elevation certificate, other certification, or other evidence of compliance with this chapter shall be presumed to be in violation until such time as the required certificate or other evidence of compliance is provided.

"Watercourse" means a stream, wash, channel, or other topographic feature on or over which waters flow at least periodically.

"Water surface elevation" means the height, in relation to the national geodetic vertical datum (NGVD) of 1929 (or other datum, where specific), of floods of various magnitudes and frequencies in the floodplains of coastal or riverine areas.

"Zoning district" means a zoning district as established by the County of Maui zoning ordinances and a land use district as established by the State Land Use Commission, as applicable.

**19.62.040 Special flood hazard areas. A.**

Applicability.

1. This chapter shall apply to all land within the special flood hazard areas and corresponding areas of special flood hazard delineated on the FIRM, as prepared by FEMA. The following special flood hazard areas are established:

- a. Floodway area (floodway in zone AEF)[;] .
- b. Flood fringe area (zones AE, AH, AO)[;] .
- c. Coastal high hazard area (zones V, VE)[;] .
- d. General floodplain area (zones A, D, V).

[2. This chapter shall not apply to:

- a. Carnivals, luaus, fairs, and camping tents of a temporary nature that are not in a floodway;
- b. Unfenced, below-grade outdoor swimming pools;
- c. Signs that are not in a floodway;
- d. Demolition; and
- e. Temporary structures and uses incidental to building construction or land development that are not in a floodway, provided the structures and uses are removed upon completion of the work, or as directed by the department.]

B. Identification of [Special Flood Hazard Areas.] special flood hazard areas. The flood insurance rate map and flood insurance study effective September 25, 2009, and any subsequent revisions and amendments, are hereby adopted and declared to be part of this section, and shall be on file at the County of Maui, [Department of Planning, 250 South High] department of planning, 2200 Main Street, Wailuku, Maui, Hawaii 96793.

C. Abrogation and [Greater Restrictions.] greater restrictions. This chapter is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this chapter and another title or chapter of [the Maui County Code] this code, easement, covenant, or deed restriction conflict, the more stringent restrictions shall prevail.

D. Interpretation. All provisions of this chapter shall be considered as minimum requirements and liberally construed in favor of the County. This chapter neither limits

nor repeals any powers granted under state statute.

**19.62.045 Responsible county official.** The director of the department of planning shall be the official with the responsibility, authority, and means to implement the commitments required to implement the national flood insurance program.

**19.62.050 Administration.** A. Special [Flood Hazard Area Development Permit.] flood hazard area development permit. A special flood hazard area development permit shall be obtained from the director before construction of any development begins within any special flood hazard area, flood-related erosion hazard area, or mudslide (i.e., mudflow) area. Application for a permit shall be made on forms furnished by the director that may require: plans in duplicate drawn to scale showing the nature, location, dimensions, and elevation of the area in question, existing or proposed structures, fill, stockpiles, and drainage facilities. The application shall require the following:

1. Proposed elevation, in relation to mean sea level, of the lowest floor (including basement) of all structures. In zone AO, elevation of highest adjacent grade and proposed elevation of lowest floor of all structures[;] .
2. Proposed elevation, in relation to mean sea level, to which any structure will be floodproofed[;] .
3. All appropriate certifications required under section 19.62.060[; and] .
4. Description of any anticipated watercourse alteration or relocation as a result of the proposed development.

B. Permit [Review.] review. The director shall review all special flood hazard development permit applications to determine the following:

1. That the requirements of this chapter have been satisfied[;] .
2. That the site is reasonably safe from flooding[;] .
3. That where base flood elevations have been determined but a floodway has not been designated, the cumulative effect of the proposed development (as certified by a civil engineer) when combined with all other existing and anticipated development will not increase the water surface

elevation of the base flood at any point[;] .

4. That all necessary permits have been received from those governmental agencies from which approval is required by federal or state law, including section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334[; and] .

5. That for proposed building sites in flood-prone areas where special flood hazard areas have not been defined, water surface elevations have not been provided, and there is insufficient data to identify the floodway or coastal high hazard areas, but the director has determined that there are verifiable physical indications that such hazards are present, all new construction and substantial improvements (including the placement of manufactured homes) shall be:

a. Designed and adequately anchored to prevent flotation, collapse, or lateral movement[;] .

b. Constructed of flood-resistant materials[;] .

c. Constructed by methods and practices that minimize flood damage[;] .

d. Constructed with electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding[;] .

e. Constructed such that new and replacement utilities shall comply with the requirements of section 19.62.060.B.

C. Use of [Other Base Flood Data.] other base flood data. Where base flood [elevation has] elevations have not been determined, the director shall obtain, review, and reasonably use any base flood elevation and floodway data available from a federal or state agency, or other source, in administering section 19.62.060.

D. Flood [Map Revisions.] map revisions. Whenever the director determines that base flood elevations may increase or decrease due to a proposed development in a special flood hazard area, the owner of the property shall obtain a conditional letter of map revision [(CLOMR)] from FEMA before the approval or issuance of any development permit[.] , as follows:

1. If a floodway is not designated within the subject special flood hazard area, any development in

the subject special flood hazard area requires a conditional letter of map revision.

2. If a floodway is designated within the subject special flood hazard area and the development will cause a rise in the base flood elevation, a conditional letter of map revision is required. Development within the floodway fringe does not require a conditional letter of map revision.

A letter of map revision [(LOMR)] shall be obtained from FEMA whenever a development has increased or decreased the base flood elevation within any special flood hazard area. An application for a [LOMR] letter of map revision shall be submitted to FEMA no later than six months after the completion of a development.

E. Watercourse [Alteration.] alteration. Whenever a watercourse is to be altered or relocated, the director shall:

1. For riverine situations, require the applicant to notify the State of Hawaii department of land and natural resources, commission on water resource management, before such alteration or relocation, and submit evidence of such notification to the Federal Insurance Administration[,] and FEMA[.] .

2. Require that the flood-carrying capacity of the altered or relocated portion of the watercourse be maintained.

F. Certifications. The director shall obtain and maintain for public inspection the certifications required under section 19.62.060.

G. Boundary [Determinations.] determinations. The director shall determine, where needed, the exact location of boundaries of special flood hazard areas (for example, where there appears to be a conflict between a mapped boundary and actual field conditions).

1. Where interpretation is needed as to whether or not a development lies within a special flood hazard area or as to the base flood elevation affecting a development, a request for such interpretation shall be submitted to the director. The request shall include a description of the development site, a location plan showing the property lines and dimensions of the development, and a copy of the tax map showing the parcel upon which the development is proposed to be constructed. The director shall, where interpretation is possible from the information shown on the FIRM, issue written determination of the specific area boundaries and the base flood elevation.

2. Where, in the opinion of the director, interpretation is not possible from the information shown on the FIRM, the director shall require the applicant to provide more detailed information concerning the request for determination of flood boundaries and the base flood elevation. The additional information shall be submitted to the director and shall contain a recommendation certified by a civil engineer as to the flood area and base flood elevation that should apply to the proposed development and shall include three sets of documents certified by the engineer containing adequate data consistent with this chapter, such as flood and hydrology studies, project site and location plans, property maps showing lines and dimensions, tax maps, and topographic data including contours or spot heights based upon mean sea level. After review the director shall, in writing:

a. Inform the applicant that the detailed request contains inadequate data to make a determination as to flood area boundaries and base flood elevations, and specify the specific lack of data needed to resolve the question and decline to make a determination; or

b. Based upon the supporting data submitted with the request for interpretation and other available data, determine the flood area boundaries and the base flood elevations affecting the development[; or

c. Instruct the applicant to submit the request for interpretation directly to FEMA.

3. None of the provisions of this section shall prevent an applicant from requesting an appeal or resubmitting a request for a determination of the flood area boundaries or the base flood elevations directly from the director or FEMA. Any such written determination from FEMA shall be sufficient in lieu of a determination from the director].

**19.62.060 Standards for development.** A. Standards of [Construction.] construction. In special flood hazard areas the following standards shall be required:

1. Anchoring.

a. New construction and substantial improvements shall be adequately anchored to

prevent flotation, collapse, or lateral movement resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy.

2. Construction [Materials and Methods.]  
materials and methods.

a. New construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.

b. New construction and substantial improvements shall be constructed using methods and practices that minimize flood damage.

c. New construction and substantial improvements shall be constructed with electrical, heating, ventilation, plumbing, air conditioning, and other service facilities that are designed or located so as to prevent the entry and accumulation of floodwater.

d. New construction and substantial improvements within zones AH or AO shall provide adequate drainage paths around structures on slopes to guide floodwaters around and away from proposed structures.

3. Elevation and [Floodproofing.]  
floodproofing.

a. New construction and substantial improvements (except those in zone AO) shall have the lowest floor, including basement, elevated to at least one foot above the base flood elevation. Upon completion of the structure, the elevation of the lowest floor, including basement, shall be certified by a civil engineer or surveyor. FEMA's "elevation certificate" form, as amended, shall be used for the certification, and a copy provided to the director.

b. New construction and substantial improvements in zone AO shall have the lowest floor, including basement, elevated above the highest adjacent grade at least as high as one foot above the depth number specified in feet on the FIRM, or at least three feet if no depth number is specified. Upon completion of the structure, the elevation of the lowest floor, including basement, shall be certified by a civil engineer or surveyor. FEMA's "elevation

certificate" form, as amended, shall be used for the certification, and a copy provided to the director.

c. Nonresidential construction shall either be elevated to conform with subparagraphs a or b of this paragraph or, together with attendant utility and sanitary facilities:

i. Be floodproofed so that walls below the base flood level are substantially impermeable to the passage of water[;] .

ii. Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy[; and] .

iii. Be certified by a structural engineer or architect as satisfying the standards of this subparagraph. FEMA's "floodproofing certificate" form, as amended, shall be used for the certification, and a copy provided to the director.

d. New construction and substantial improvements of fully enclosed areas below the lowest floor that are usable solely for vehicular parking, building access, or storage in an area other than a basement and which are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwater. Designs for meeting this requirement must be either certified by an engineer or architect or meet or exceed one of the following minimum criteria:

i. Provide a minimum of two openings, having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding, with the bottom of all openings no higher than one foot above grade. (Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of floodwater.); or

ii. Be certified by an engineer as complying with a County floodproofing



standard approved by the Federal Insurance Administration or FEMA.

e. New construction and substantial improvements shall be reasonably safe from flooding in accordance with FEMA technical bulletin 10-01 and amendments thereto. Designs for meeting this requirement shall be certified by an engineer.

4. Building [Height Allowance.] height allowance. Building heights in the agricultural, rural, and residential zoning districts may be increased by a height equal to the base flood, up to a maximum of five feet above the maximum building height permitted by the zoning regulations for the zoning district in which the building is located.

5. Certification shall be provided by an architect or engineer that all new construction and substantial improvements meet or exceed applicable standards for flood hazard reduction, including those regarding anchoring, construction materials and methods, elevation and floodproofing, utilities, subdivisions, and manufactured homes.

6. Within zones A, AH, AO, and AE, except where there is a designated floodway or flooding caused by coastal run up, [until a floodway is designated,] no new construction, substantial improvement, or other development (including fill) shall be permitted unless it is demonstrated that the cumulative effect of the proposed construction, substantial improvement, or development, when combined with all other existing and anticipated construction, substantial improvement, and development, will not increase the water surface elevation of the base flood at any point.

B. Utilities.

1. New and replacement water supply and sanitary sewage systems shall be designed to minimize or eliminate infiltration of floodwaters into such systems and discharge from such systems into floodwaters.

2. On-site waste disposal systems shall be located to avoid impairment to, or contamination from, such systems during flooding.

C. Subdivisions and other developments.

1. All subdivisions and other developments where special flood hazard areas have not been

defined, water surface elevations have not been provided, and there is insufficient data to identify the floodway or coastal high hazard areas, but there are verifiable physical indications that such hazards are present as determined by the director, shall:

a. Be consistent with the need to minimize flood damage[;] .

b. Have utilities, such as sewer, gas, electric, and water systems located and constructed to minimize flood damage[;] .

c. Provide adequate drainage to reduce exposure to flood hazards[; and] .

d. Provide documentation and a certification that the requirements of subsection 19.62.050 have been satisfied.

2. All subdivision and other development applications shall identify special flood hazard areas and base flood elevations on the proposed site. If such information is not provided by the FIRM and if the proposed development or subdivision consists of more than fifty lots or more than five acres, the developer or subdivider shall include base flood elevation data within the proposal. [If the proposed development or subdivision consists of fifty or fewer lots or five or fewer acres, the developer or subdivider shall include the one hundred year floodplain limits by approximate methods within the proposal.]

3. Approved final subdivision plats for subdivisions within special flood hazard areas or flood-prone areas shall include the base flood elevations within the lots as provided in subsection C.2.

D. Manufactured [Homes.] homes. Manufactured homes that are placed or substantially improved within special flood hazard areas that are not coastal high hazard areas shall be elevated on a permanent foundation such that the lowest floor of the manufactured home is elevated to [, or] at least one foot above, the base flood elevation and be securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movement. Manufactured homes that are placed or substantially improved within coastal high hazard areas shall meet the requirements of subsection G of this section.

E. Recreational [Vehicles.] vehicles. Recreational vehicles placed on sites within zones A, AH, AE, AO, V, or VE shall either:

1. Be on site for fewer than thirty

consecutive days;

2. Be fully licensed and ready for highway use (a recreational vehicle is ready for highway use if it is on wheels or a jacking system, is attached to the site only by a quick disconnect type utilities and security device, and has no permanently attached additions); or

3. Meet the permit requirements of section 19.62.050 and the requirements for manufactured homes under subsection D [of this section].

F. Floodways. No encroachments, including fill, new construction, substantial improvement, or other new development shall be allowed within floodways unless certification by a civil engineer is provided to the director demonstrating that the encroachments will not result in any increases in base flood levels.

G. Coastal [High Hazard Areas.] high hazard areas.  
Within coastal high hazard areas:

1. New construction and substantial improvements shall be elevated on adequately anchored pilings or columns and securely anchored to such pilings or columns so that the lowest horizontal portion of the structural members of the lowest floor (excluding the pilings or columns) is elevated to at least one foot above the base flood level. The pile or column foundation and the structure attached thereto shall be anchored to resist flotation, collapse, and lateral movement due to the simultaneous action of wind and water loads on all building components. Water loading values used for purposes of meeting this requirement shall be those associated with the base flood. Wind loading values used shall be those required by the [Uniform] International Building Code and the International Residential Code, as amended.

2. New construction and substantial improvements shall be located on the landward side of the reach of mean high tide.

3. New construction and substantial improvements shall have the space below the lowest floor free of obstructions, or constructed with breakaway walls, open wood latticework, or insect screening intended to collapse under wind and water loads without causing collapse, displacement, or other structural damage to the elevated portion of the building or supporting foundation system. Such space shall not be used for human habitation, but shall be useable solely for vehicular parking, building access,

[limited storage,] or storage. Machinery and equipment that service the building, such as furnaces, air conditioners, heat pumps, water heaters, [washers, dryers,] elevator lift equipment, electrical junction and circuit boxes[, and food freezers] are prohibited in such spaces. A breakaway wall shall have a safe design loading resistance of not less than ten and no more than twenty pounds per square foot. Breakaway wall collapse shall be designed to result from a water load less than that which would occur during a base flood and the elevated portion of the building shall be designed so as not to incur any structural damage from wind and water loads acting simultaneously during a base flood.

4. Fill shall not be used for structural support of buildings.

5. [Manmade] Man-made alteration of sand dunes shall not increase potential flood damage.

6. The director shall be provided and shall maintain the following records:

a. Certification by an engineer or architect that the proposed structure complies with paragraphs 1 through 5 of this subsection[;].

b. Certification by a structural engineer or surveyor of the elevation (in relation to mean sea level) of the bottom of the lowest structural member of the lowest floor (excluding pilings or columns) of all new and substantially improved structures[, and information regarding whether such structures contain basements]. FEMA's "elevation certificate" form, as amended, shall be used for the certification.

7. Areas of a structure below the base flood elevation may be used for parking vehicles, [limited storage or] storage, or access to the building, but not for human habitation. For such areas that are five feet or more in height as measured from any point within such areas, the property owner shall enter into a "Non-conversion Agreement for Construction Within Flood Hazard Areas" with the County. The agreement shall be in a form acceptable to the director and shall be recorded with the bureau of conveyances or land court as a deed restriction.

The director or the director's authorized representative may, upon prior notice of at least

seventy-two hours, inspect any area of a structure below the base flood elevation to ensure compliance.

H. General [Floodplain.] floodplain. For areas within the general floodplain:

1. The director may obtain, review, and reasonably utilize any base flood elevation and floodway data available from a federal, state, or other source, including information requested of a permit applicant, to determine base flood elevations and the locations of floodways within the general floodplain.

2. Development or subdivision proposals shall conform to the requirements of section 19.62.060.C.

3. An applicant for a special flood hazard area development permit within a general floodplain area shall submit the following information to the director:

a. Project location and site plan showing dimensions[;] .

b. Relationship to floodway and floodway fringes as determined by flood elevation study[;] .

c. Contour map of appropriate scale and contours showing the topography of existing ground based on elevation reference marks on flood maps[;] .

d. Existing and proposed base flood elevations[; and] .

e. Existing and proposed floodproofing and flood control measures. The director may waive informational requirements if the director has sufficient information to make an evaluation and determination regarding flood elevation, or may request further information, including a detailed flood elevation study and a drainage report to evaluate flood risks and determine the applicability of flood construction and development standards.

f. If the information provided gives the director reason to believe that there may be a significant impact on the floodplain, the director may require additional information.

4. [New] For new construction and substantial improvements in zone A, [within the general floodplain shall satisfy the requirements set forth in zones AE, AO, AH, or VE, as determined to be

applicable by] the director, shall, based on base flood information and floodway data obtained through subsections H.1 and [H.3.] H.3, require compliance with the standards for zones AE, AO, and AH, as applicable. For new construction and substantial improvements in zone V, the director shall require compliance with the standards for zone VE, as applicable.

5. New construction and substantial improvements within the general floodplain shall conform to sections 19.62.050 and 19.62.060.

6. All manufactured homes shall be elevated and anchored to resist flotation, collapse, or lateral movement.

**19.62.100 Developments adjacent to drainage facilities.** A. Applications involving developments encompassing or adjoining any stream, river, or drainage facility outside of the special flood hazard areas identified on the FIRM shall be subject to review by the director. Upon request by the director, further information concerning base flood elevation, floodways, surface water runoff, existing and proposed drainage patterns, and other information, including a detailed flood elevation study, drainage report, and findings and opinions by a licensed professional civil engineer, shall be provided to evaluate the potential flooding of the area.

B. The director shall not issue or recommend issuance of any permit or approval involving modification, construction, lining, or alteration of any drainage facility, river, or stream unless such modification, construction, lining, or alteration does not reduce the capacity of the drainage facility, river, or stream, or adversely affect any downstream or adjacent property.

C. New construction and substantial improvements encompassing or adjoining any stream, river, or drainage facility outside of the special flood hazard areas shall conform to sections 19.62.050 and 19.62.060.

**19.62.130 Enforcement.** The director shall enforce this chapter pursuant to chapter 19.530 of this title.

**19.62.140 - Variances and appeals.** A. The board of variances and appeals shall hear and decide appeals alleging an error in any requirement or determination by the director and requests for variances from the requirements of

this chapter.

B. Application. Applications for variances and appeals shall conform to the requirements of chapter 19.520[.] of this title. The application shall be certified by an architect or engineer, and shall include three sets of the following documentation:

1. Plans and specifications showing: the site and location; dimensions of all property lines and topographic elevation of the lot; existing and proposed structures and improvements, fill, and storage areas; location and elevations of existing and proposed streets and utilities; floodproofing measures; relationship of the site to flood boundaries; and existing and proposed flood control measures and improvements.

2. Cross-sections and profile of the area and the base flood elevations based on mean sea level.

3. Flood study and drainage report.

4. Description of surrounding properties and existing structures and uses, and the effect of a base flood as a result of the variance.

5. Justification for the variance with consideration of the intent and provisions of this chapter and information on the impact the variance would have on the factors listed in subsection C [of this section] and proposed mitigative measures.

6. An agreement to insert and record covenants in the conveyance and title documents of the property that the property is located in a special flood hazard area and is subject to flooding and flood damage. The covenants shall contain statements attesting to all adverse effects resulting from the variance. The covenants shall also state that the property owner or owners and assigns shall not file any lawsuit or action against the county for costs or damages or any claim, and shall indemnify and save harmless the county from any liability when such loss, damage, injury, or death results due to the flood hazard variance and flooding of the property. Upon approval of the flood hazard variance, such covenants shall be fully executed and submitted to the director for approval. Upon approval, the applicant shall file the covenants with the bureau of conveyances.

C. In passing upon variance applications, the board of variances and appeals shall consider:

1. The danger that materials may be swept

onto other lands to the injury of others[;] .

2. The danger to life and property due to flooding or erosion damage[;] .

3. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the existing owner and future owners of the property[;] .

4. The importance of the services provided by the proposed facility to the community[;] .

5. The necessity, if any, to the facility of a waterfront location[;] .

6. The availability of alternative locations for the proposed use that are not subject to flooding or erosion damage[;] .

7. The compatibility of the proposed use with existing and anticipated development[;] .

8. The relationship of the proposed use to the community plan and floodplain management program for that area[;] .

9. The safety of access to the property in time of flood for ordinary and emergency vehicles[;] .

10. The expected heights, velocity, duration, rate of rise, and sediment transport of floodwaters expected at the site[;] .

11. The costs of providing governmental services during and after flood conditions, including maintenance and repair of utilities and facilities, such as sewer, gas, electric, and water systems, and streets and bridges.

D. Conditions for [Variances.] variances.

1. Variances shall be issued only upon a determination that the variance is peculiar to the property involved and is the minimum necessary to afford relief to the applicant with minimum deviation from the requirements of this chapter.

2. Variances shall be issued only upon (a) a showing of good and sufficient cause; (b) a determination that failure to grant the variance would result in exceptional hardship to the applicant; and (c) a determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, defraud or victimize the public, or conflict with existing county or state laws. Mere economic or financial hardship, or inconvenience, or aesthetic preferences, shall not, by themselves, constitute a



finding of exceptional hardship.

3. Variances shall not be issued within any designated floodway if any increase in base flood levels would result.

4. Variances may be issued for new construction, substantial improvements, and other proposed new developments to be erected on a lot of one-half acre or less in size contiguous to, and surrounded by, lots with existing structures constructed below the base flood level, provided that the procedures of sections 19.62.050 and 19.62.060 have been fully considered. For lots greater than one-half acre, the technical justification required for issuing the variance shall be greater.

5. Variances may be issued for the repair or rehabilitation of historic structures upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.

6. Variances may be issued for new construction, substantial improvements, and other proposed new developments necessary for the conduct of a use that cannot perform its intended purpose unless located in close proximity to water. Such uses shall include only docking facilities, port facilities necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities (but not long-term storage or manufacturing facilities); provided that the provisions of subsection B [of this section] are satisfied and that the structure or other development is protected by methods that minimize base flood damage and create no additional threats to public safety.

7. Upon consideration of the factors of subsection B [of this section] and the purposes of this chapter, the board of variances and appeals may attach such conditions to the granting of a variance as it deems necessary to further the purposes of this chapter.

E. Any applicant to whom a variance is granted shall be given written notice over the signature of the director that (a) the issuance of a variance to construct a structure below the base flood level will likely result in substantially increased premium rates for flood insurance

[up to amounts as high as \$25 for \$100 of insurance coverage] and (b) such construction below the base flood level increases risks to life and property. A copy of the notice shall be recorded by the applicant in the bureau of conveyances of the State of Hawaii in a manner that appears in the chain of title of the affected parcel.

F. The director shall maintain a record of all variance actions, including justification for their issuance, and report such variances issued in its biennial report submitted to the Federal Insurance Administration[,] and [Federal Emergency Management Agency.] FEMA.

**19.62.160 - Warning and disclaimer of liability.** A. The degree of flood and tsunami protection required by this chapter is considered reasonable for regulatory purposes and is based on standard engineering methods of study. Larger floods or tsunamis than the base flood as designated on the flood maps, may occur on occasions, or flood or tsunami elevations may be increased by [manmade] man-made or natural causes. This chapter does not imply that areas outside the flood hazard area will be free from flooding or damage.

B. This chapter shall not create liability on the part of the [county] County or any officer, official, or employee for any flood or tsunami damages that result from reliance on this chapter or any administrative decision lawfully made thereunder.

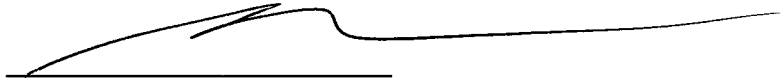
**19.62.170 Other laws and regulations.** All construction and improvements subject to this chapter shall comply with other applicable laws and regulations.

**19.62.180 No exemptions.** Neither the [county] County itself nor any agency, department, or division under its control shall be exempted from compliance with the provisions of this chapter."

SECTION 2. 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 3. This ordinance shall take effect upon its approval.

APPROVED AS TO FORM  
AND LEGALITY:

A handwritten signature in black ink, appearing to read "MICHAEL J. HOPPER", written over a horizontal line.

MICHAEL J. HOPPER  
Deputy Corporation Counsel  
County of Maui  
2016-1578  
2017-01-25 Amend Chapter 19.62