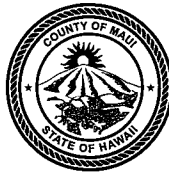


ALAN M. ARAKAWA  
Mayor

WILLIAM R. SPENCE  
Director

MICHELE CHOUTEAU McLEAN  
Deputy Director



COUNTY OF MAUI  
**DEPARTMENT OF PLANNING**

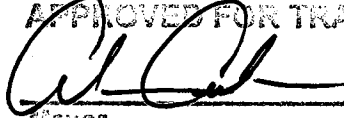
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OFFICE OF THE MAYOR

February 23, 2017

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

For Transmittal to:

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

APPROVED FOR TRANSMITTAL  
  
Mayor Date 2/27/17

Dear Chair White and Members:

**SUBJECT: PROPOSED BILL FOR AN ORDINANCE AMENDING CHAPTERS  
19.04 AND 19.30A, MAUI COUNTY CODE, TO AUTHORIZE CERTAIN  
SUBDIVISIONS AND USES**

Transmitted for your review is a proposed bill entitled "A BILL FOR AN ORDINANCE AMENDING CHAPTERS 19.04 AND 19.30A, MAUI COUNTY CODE, TO AUTHORIZE CERTAIN SUBDIVISIONS AND USES."

The purpose of this bill is to amend the Comprehensive Zoning Ordinance to authorize certain subdivisions and uses that are not detrimental to the public health, safety, or welfare and that are consistent with best planning practices, including certain filming and photography activity and certain events.

While allowing such uses may appear to be permissive, the bill will actually enable these uses to be appropriately regulated and enable detrimental impacts to be enforced.

The bill would also authorize the Department of Planning to collect fees to review and process ministerial and discretionary permit applications, as authorized in the annual budget. In addition, the bill would generally exempt roadway lots and restricted use lots from complying with minimum lot area, lot width, and lot coverage requirements established by zoning.

The proposed bill was transmitted to the Maui, Molokai, and Lanai Planning Commissions for review and comment. Below is a summary of their recommendations.

Honorable Alan Arakawa, Mayor  
For Transmittal to:  
Honorable Michael White, Chair  
February 23, 2017  
Page 2

Commission	Meeting Date	Recommendations
Maui	October 11, 2016	Recommended approval of the proposed bill.
Molokai	October 13, 2016	Recommended approval of the proposed bill.
Lanai	November 16, 2016	Recommended approval of the proposed bill.

The Department respectfully requests that the bill be referred to the appropriate Council committee for consideration.

Also attached for your review in conjunction with the bill are the following documents:

1. Memorandum from William Spence, Planning Director, to the Maui, Molokai, and Lanai Planning Commissions, dated September 29, 2016;
2. Relevant excerpts from the draft minutes of the October 11, 2016, Maui Planning Commission meeting;
3. Relevant excerpts from the official minutes of the October 13, 2016, Molokai Planning Commission meeting; and
4. Relevant excerpts from the official minutes of the November 16, 2016, Lanai Planning Commission meeting.

Thank you for your attention to this matter. Should further clarification be necessary, please contact Administrative Planning Officer David Raatz at [david.raatz@mauiocounty.gov](mailto:david.raatz@mauiocounty.gov) or Ext. 7743.

Sincerely,



WILLAM SPENCE  
Planning Director

Attachments (5)

xc: Michele McLean, Deputy Planning Director (pdf w/o att.)  
David Raatz, Administrative Planning Officer (pdf w/o att.)  
David Goode, Public Works Director (pdf w/o att.)  
Rowena Dagdag-Andaya, Deputy Public Works Director (pdf w/o att.)  
Teena Rasmussen, Economic Development Director (pdf w/o att.)  
Tracy Bennett, Film Commissioner (pdf w/o att.)

WRS:DMR:atw

Project File

General File

S:\ALL\APO\19.04 Definitions\2016amendments\counciltrans

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

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

A BILL FOR AN ORDINANCE AMENDING CHAPTERS 19.04 AND 19.30A, MAUI COUNTY CODE, TO AUTHORIZE CERTAIN SUBDIVISIONS AND USES

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

SECTION 1. The purpose of this ordinance is to authorize certain subdivisions and uses that are not detrimental to the public health, safety, or welfare and that are consistent with best planning practices, including certain filming and photography activity and certain events.

SECTION 2. Section 19.04.015, Maui County Code, is amended to read as follows:

**“19.04.015 Purpose and intent.** A. The purpose and intent of this comprehensive zoning article is to regulate the utilization of land in a manner encouraging orderly development in accordance with the land use directives of the Hawaii Revised Statutes, the revised charter of the County[, of Maui (1983), as amended, and the general plan and the community plans of the County.

B. The purpose and intent of this comprehensive zoning article is also to promote and protect the health, safety, and welfare of the people of the County by:

1. Guiding, controlling, and regulating future growth and development in accordance with the general plan and community plans of the County[.] .

2. Regulating the location and use of buildings and land adjacent to streets and thoroughfares to lessen the danger and inconvenience to the public caused by undue interference with existing or prospective traffic movements on streets and thoroughfares[;] .

3. Regulating the location, use, or design of sites and structures in order to minimize adverse effects on surrounding uses, prevent undue concentrations of people, provide for adequate air, light, privacy, and the convenience of access to property, and secure the safety of the public from fire and other dangers[;] .

4. Encouraging designs [which] that enhance the physical form of the various communities of the County[;] .

5. Stabilizing the value of property[;] .

6. Encouraging economic development which provides desirable employment and enlarges the tax base[;] .

7. Promoting the protection of historic areas, cultural resources, and the natural environment[;] .

8. Encouraging the timeliness of development in conjunction with the provision of public services which include, but are not limited to, police, fire, flood protection, transportation, water, sewerage, drainage, schools, recreational facilities, health facilities, and airports.

C. The purpose and intent of this comprehensive zoning article is also to provide reasonable development standards which implement the community plans of the County. These standards include, but are not limited to, the location, height, density, massing, size, off-street parking, yard area, open space, density of population, and use of buildings, structures, and lands to be utilized for agricultural, industrial, commercial, residential, or any other purpose.

D. The department may collect fees as set forth in the annual budget to administer this title, such as fees to review and process ministerial and discretionary permit applications, including applications that are reviewed by the department but administered by another agency, including building permit or subdivision applications. Additional fees, as set forth in the annual budget, may also be collected when an application is deemed by the director to be inadequate or incorrect and, therefore, requires additional submittals and further review.

E. The director may adopt administrative rules to implement the provisions of this article."

SECTION 3. Section 19.04.020, Maui County Code, is amended to read as follows:

**"19.04.020 Compliance.** A. Buildings and [Subdivisions.] subdivisions. No building or structure shall be erected, structurally enlarged, or maintained unless it complies with the requirements of

the building code of the County. No land shall be subdivided unless the subdivision complies with the provisions of this title. Minimum lot area, lot width, and lot coverage requirements elsewhere in this title do not apply to roadway lot and restricted use lot subdivisions.

Roadway lot and restricted use lot subdivisions are subject to the following:

1. Roadway lots and restricted use lots shall be designated in the notes section of the final subdivision plat with a description of each lot's intended purpose and any designation shall be recorded and shall run with the land.

2. Any lot designated as a roadway lot or restricted use lot shall not be used for any purpose other than a roadway lot or restricted use lot, respectively, unless the lot is consolidated with another lot and the resulting lot complies with the minimum lot area, lot width, and lot coverage requirements elsewhere in this title.

3. In the agricultural district, any future consolidation concurrent with a subdivision that includes any roadway lot or restricted use lot shall not result in any additional lots above the number that would have been allowed at the time the lot was created by the subdivision, in accordance with sections 19.30A.030.G and 19.30A.040 of this title.

B. [Prohibited Uses.] Permitted uses in each district. There [shall] may be permitted in the districts three categories of uses [established by this section]: principal, accessory, and special. Any use [which] that is not expressly listed as a permitted [as a] principal, accessory, or special use [shall be] is prohibited.

Unless otherwise expressly prohibited elsewhere in this title, the following uses are permitted in all districts:

1. Commercial filming and photography activity, subject to the following limitations:

a. If on County property, the activity shall be authorized by a valid film permit from the County throughout the duration of the activity.

b. If on State property, the activity shall be authorized by a valid film permit from the State throughout the duration of the activity.

c. If on private property, notice of the activity shall be provided to owners of all adjacent properties and potentially impacted properties. Such notice shall be provided no less than fourteen days prior to the initiation of the activity, shall describe the activity and its duration, and shall provide contact information for a responsible party who shall respond to questions and

concerns from property owners. Evidence and documentation of such notice shall be provided to the director upon request.

d. If on private property, the activity shall not result in material annoyance, inconvenience, or discomfort to the neighborhood or to the public, such as from excessive noise, lighting, and traffic, beyond such impacts that would ordinarily occur with any use permitted on the property.

e. If on private property, the activity shall involve no outdoor activities before 8:00 a.m. and after 10:00 p.m., including setup and breakdown.

f. The activity shall not cause permanent change in the use of the subject property, unless such change is lawful or properly permitted.

g. All other required permits and approvals shall be obtained.

2. A temporary commercial event such as a bazaar, fair, reception, or festival, subject to the following limitations:

a. The event is related, incidental, customary, or compatible with an existing principal or accessory use.

b. Notice of the event shall be provided to owners of all adjacent properties for an event not sponsored by the County. Such notice shall be provided no less than fourteen days prior to the initiation of such event, shall describe the event and its duration, and shall provide contact information for a responsible party who shall respond to questions and concerns from property owners. Evidence and documentation of such notice shall be provided to the director upon request.

c. The event shall not result in material annoyance, inconvenience, or discomfort to the neighborhood or to the public, such as from excessive noise, lighting, and traffic, beyond such impacts that would ordinarily occur with any use permitted on the property.

d. The activity shall involve no outdoor activities before 8:00 a.m. and after 10:00 p.m., including setup and breakdown.

e. The event shall not cause permanent change in the use of the subject property, unless such change is lawful or properly permitted.

f. Events shall be limited to no more than twelve days in a twelve-month period per parcel for

County-sponsored events and four days in a twelve-month period per parcel for events that are not sponsored by the County.

g. All other required permits and approvals shall be obtained.

3. Temporary sales offices for new projects when located in the same project area.

4. Restricted use lots and the uses allowed thereon. Limitations listed above shall not apply to any use that is expressly permitted elsewhere in this title."

SECTION 4. Section 19.04.040, Maui County Code, is amended by adding new definitions to appropriately inserted and to read as follows:

"Commercial filming and photography" means filming and photography for commercial purposes that requires the use of equipment such as light stands, electrical power boxes, dolly and dolly tracks, and similar grip and electrical gear.

"Restricted use lot" means a lot that shall only be used for drainage, open space, bikeway, pedestrian walkway, greenway, landscaping, roadway, or minor utility facility purposes."

SECTION 5. Section 19.30A.040, Maui County Code, is amended to read as follows:

**"19.30A.040 Limitations on resubdivision.** A. At the time of subdivision, the director of public works [and waste management] shall determine the maximum number of lots that can be created based upon the provisions and standards set forth in section 19.30A.30[;] .

[2.]**B.** The subdivider shall allocate the maximum number of lots that can be created between the original lot and any new lot created as a result of the subdivision[;] .

[3.]**C.** The allocation of lots shall be recorded with the bureau of conveyances[;] .

[4.]**D.** No lot, or portion thereof, which is in the agricultural district shall be further subdivided beyond the maximum number of lots permitted pursuant to this chapter and as recorded with the bureau of conveyances, except as provided by subsection 19.30A.040.C[;] .

[B.]E. The following subdivisions shall not reduce the gross “area of lot” [nor] or the “maximum number of permitted lots” as provided by subsection 19.30A.030.G:

1. Any subdivision requested by a public agency or public utility company for a public purpose;

2. Any consolidation and resubdivision in which no additional developable lots, as defined by section 18.04.123 [Maui County Code,] of this code, are created, [provided that] so long as this would not result in the potential to create any additional lots than could have been created prior to consolidation and resubdivision;

3. Any subdivision for purposes of providing an easement exclusively for the protection of sites of cultural and historic significance; greenways; protection of sensitive environmental areas such as wetlands, streams, and endangered species habitat; and easements for public access to shoreline and mountain areas; or

4. Any subdivision for purposes of providing a roadway easement, [or lot.] roadway lot, or restricted use lot.

[C.]F. If the original lot has been subdivided into the maximum number of lots permitted pursuant to this chapter, additional lots may be created for family members as described in subsections 18.20.280.B.1 and 18.20.280.B.2[, Maui County Code,] of this code, whether or not a deferral of improvements is intended, with the approval of the council; the application for such additional lots shall be processed in the same manner as applications for conditional permits, as provided by chapter 19.40[, Maui County Code.] of this title.

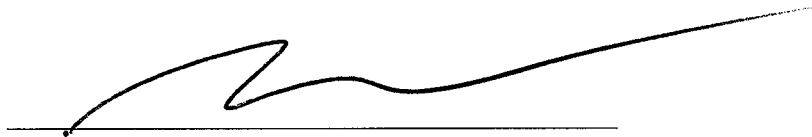
[D.]G. No deed, lease, agreement of sale, mortgage, or other instrument of conveyance shall contain any covenant or clause which restricts, directly or indirectly, the operation of agricultural activities on lands within the agricultural district. This subsection shall not apply to any covenant or clause existing prior to the effective date of the ordinance codified in this chapter."

SECTION 6. Material to be repealed is bracketed. New material is underscored. In printing this ordinance, the County Clerk need not include the brackets, the bracketed material, or the underscoring.



SECTION 7. This ordinance shall take effect upon its approval.

APPROVED AS TO FORM AND LEGALITY:

A handwritten signature in black ink, consisting of a series of loops and a long horizontal stroke, positioned above a horizontal line.

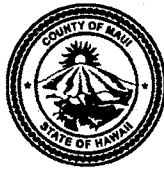
MICHAEL J. HOPPER  
Department of the Corporation Counsel  
County of Maui

LF2017-0204  
2017-02-16 Ord Amd Ch 19.04 & 19.30A

ALAN M. ARAKAWA  
Mayor

WILLIAM R. SPENCE  
Director

MICHELE CHOUTEAU McLEAN  
Deputy Director



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OFFICE OF THE MAYOR

COUNTY OF MAUI

## DEPARTMENT OF PLANNING

September 29, 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 19.04,  
MAUI COUNTY CODE, RELATING TO COMPREHENSIVE ZONING  
PROVISIONS.

The purpose of this proposed bill is to amend the general provisions of the comprehensive zoning ordinance to provide flexibility for certain subdivisions and uses that will not be detrimental to the public health, safety or welfare, and that are consistent with best planning practices (Exhibit 1).

In general, the proposed amendments will exempt the creation of utility and roadway lots from zoning requirements such as lot width and minimum size. The proposal will also allow certain uses to be allowed in all zoning districts, provided the use is not specifically prohibited. These uses include commercial and non-commercial filming and photography, temporary commercial events such as bazaars, fairs, receptions or festivals and temporary sales offices. The proposal provides for standards and restrictions on these generally allowed uses and exempt lots.

The proposed bill gives the department the ability to establish and collect fees for administrative reviews, as set forth in the annual budget.

The proposed bill has received support from the Mayor's Office of Economic Development (OED) (Exhibit 2). OED states that the bill would provide for a streamlined and more flexible code for a variety of activities. Specifically, the code would provide assurance and guidance for OED's Film Commissioner and film crews, while protecting surrounding properties. OED is also supportive of the clarification for temporary commercial events without the added layer of getting a special use permit.

The Department of Public Works was consulted during the drafting of the proposal. DPW supports the amendments to allow utility, roadway and other lots to be created in the subdivision process that is not subject to minimum lot size requirements (Exhibit 3).

The State Office of Planning had no comments. (Exhibit 4). No comments were received by the Department of Business Economic Development and Tourism or from the Maui County Police Department.

### **Recommendation and Options**

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

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

### **Attachments**

WRS:JWA:atw

S:\ALL\APO\19.04 Definitions\2016 amendments\memoreport.doc

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

BILL NO. \_\_\_\_\_ (2016)

A BILL FOR AN ORDINANCE AMENDING CHAPTER 19.04, MAUI COUNTY  
CODE, RELATING TO COMPREHENSIVE ZONING PROVISIONS

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

SECTION 1. Purpose and Intent. The purpose of this bill is to amend the general provisions of the comprehensive zoning ordinance to provide flexibility for certain subdivisions and uses that will not be detrimental to the public health, safety or welfare, and that are consistent with best planning practices.

SECTION 2. Section 19.04.015, Maui County Code, is amended to read as follows:

**"19.04.015 - Purpose and intent.**

A. The purpose and intent of this comprehensive zoning article is to regulate the utilization of land in a manner encouraging orderly development in accordance with the land use directives of the Hawaii Revised Statutes, the revised charter of the County, and the general plan and the community plans of the County.

B. The purpose and intent of this comprehensive zoning article is also to promote and protect the health, safety and welfare of the people of the County by:

1. Guiding, controlling and regulating future growth and development in accordance with the general plan and community plans of the County;

**EXHIBIT - 1**

2. Regulating the location and use of buildings and land adjacent to streets and thoroughfares to lessen the danger and inconvenience to the public caused by undue interference with existing or prospective traffic movements on streets and thoroughfares;

3. Regulating the location, use or design of sites and structures in order to minimize adverse effects on surrounding uses, prevent undue concentrations of people, provide for adequate air, light, privacy, and the convenience of access to property, and secure the safety of the public from fire and other dangers;

4. Encouraging designs which enhance the physical form of the various communities of the County;

5. Stabilizing the value of property;

6. Encouraging economic development which provides desirable employment and enlarges the tax base;

7. Promoting the protection of historic areas, cultural resources and the natural environment;

8. Encouraging the timeliness of development in conjunction with the provision of public services which include, but are not limited to, police, fire, flood protection, transportation, water, sewerage, drainage, schools, recreational facilities, health facilities and airports.

C. The purpose and intent of this comprehensive zoning article is also to provide reasonable development standards which implement the community plans of the County. These standards include, but are not limited to, the location, height, density, massing, size, off-street parking, yard area, open space, density of population, and use of buildings, structures, and lands to be utilized for agricultural, industrial, commercial, residential, or any other purpose.

D. The Planning Department may collect fees as set forth in the annual budget ordinance to administer this title, including but not limited to fees to review and process ministerial and discretionary applications, and including applications that are reviewed by the Planning Department but administered by another department, such as building permit or subdivision applications. Additional fees may also be collected when an application is deemed by the director to be inadequate or incorrect and, therefore, requires additional submittals and further review.

E. The Planning Department may adopt administrative rules to implement the provisions of this title.

SECTION 3. Section 19.04.020, Maui County Code, is amended to read as follows:

**"19.04.020 - Compliance.**

A. Buildings and Subdivisions. No building or structure shall be erected, structurally enlarged, or maintained unless it complies with the requirements of the building code of the County. No land shall be subdivided unless the subdivision complies with the provisions of this title, except that roadway lots and restricted use lots are not required to comply with minimum lot area, lot width and lot coverage requirements, provided:

1. Any such lot shall be designated as roadway lot or restricted use lot in the notes section of the final subdivision plat with a description of its intended purpose, and any such designation or restriction shall be recorded and shall run with the land;

2. Any lot designated as a roadway lot or restricted use lot shall not be used for any purpose other than roadway lot or restricted use lot, unless the lot is consolidated with another non-roadway or non-restricted use lot and the resulting lot complies with the provisions of this title; and

3. In the agricultural district, any future consolidation/resubdivision that includes any roadway lot or restricted use lot cannot result in any additional lots above the number that would have been allowed at the time the lot was created by the subdivision, in accordance with sections 19.30A.030.G and 19.30A.040.

B. [Prohibited Uses.]Permitted uses in each district. There may be permitted in the districts three categories of uses [established by this section]: principal, accessory and special. Any use which is not expressly listed as a permitted [as a] principal, accessory, or special use [shall be] is prohibited. Unless otherwise specifically prohibited or further allowed by title 19 of this code, the following uses are permitted in all districts:

1. Commercial and non-commercial filming and photography provided that such activity:

a. is authorized by a valid film permit from the County of Maui, throughout the duration of the activity, if on County property;

b. is authorized by a valid film permit from the State of Hawaii, throughout the duration of the activity, if on State property;

c. is the subject of notice provided to owners of all adjacent properties and potentially impacted properties; such notice shall be provided no less than 14 days prior to the initiation of such activity, shall describe the activity and its duration, and shall provide contact information for a responsible party who shall respond to questions and concerns from owners; evidence and documentation of such notice shall be provided to the planning director upon request;

d. results in no material annoyance, inconvenience or discomfort to the neighborhood or to the public, as determined by the planning director, including but not limited to excessive noise, lighting and traffic, beyond such impacts that would ordinarily occur with any use permitted on the property;

e. involves no outdoor activities before 8:00 a.m. and after 10:00 p.m., including set-up and break-down, if on private property;

f. involves no change in the use of the subject property unless such change is lawful or properly permitted;

g. obtains all other required permits and approvals; and

h. is subject to enforcement pursuant to chapter 19.530 of this title.

2. Temporary commercial events such as bazaars, fairs, receptions or festivals, provided that the total of all such activities:

a. are related, incidental, customary or compatible with an existing principal or accessory use;

b. are each the subject of notice provided to owners of all adjacent properties and potentially impacted properties for events that are not sponsored by the county; such notice shall be provided no less

than 14 days prior to the initiation of such activity, shall describe the activity and its duration, and shall provide contact information for a responsible party who shall respond to questions and concerns from owners; evidence and documentation of such notice shall be provided to the planning director upon request;

c. result in no material annoyance, inconvenience or discomfort to the neighborhood or to the public, as determined by the planning director, including but not limited to excessive noise, lighting and traffic, beyond such impacts that would ordinarily occur with any use permitted on the property;

d. involve no outdoor activities before 8:00 a.m. and after 10:00 p.m., including set-up and break-down;

e. are limited to no more than twelve days in a twelve-month period per parcel for county-sponsored events, and are limited to no more than four days in a twelve month period per parcel for events that are not sponsored by the county;

f. each obtains all other required permits and approvals; and

g. is subject to enforcement pursuant to chapter 19.530 of this title.

3. Temporary sales offices for new projects when located in the same project area.

4. Restricted use lots, and the uses allowed thereon.

SECTION 4. Section 19.04.040, Maui County Code, is amended to add a new definition as follows:

"Restricted use lot" means a lot which shall only be used for drainage, open space, bikeway, pedestrianway, greenway, landscaping, roadway, or minor utility facility purposes.



SECTION 5. Section 19.30A.040.B.4, Maui County Code, is amended to read as follows:

**19.30A.040 – Limitation of resubdivision.**

B. The following subdivisions shall not reduce the gross "area of lot" nor the "maximum number of permitted lots" as provided by subsection 19.30A.030.G:

1. Any subdivision requested by a public agency or public utility company for a public purpose;
2. Any consolidation and resubdivision in which no additional developable lots, as defined by section 18.04.123, Maui County Code, are created, provided that this would not result in the potential to create any additional lots than could have been created prior to consolidation and resubdivision;
3. Any subdivision for purposes of providing an easement exclusively for the protection of sites of cultural and historic significance; greenways; protection of sensitive environmental areas such as wetlands, streams, and endangered species habitat; and easements for public access to shoreline and mountain areas; or
4. Any subdivision for purposes of providing a roadway easement [or lot], roadway lot or restricted use lot.

SECTION 6. Material in this bill to be repealed is bracketed. New material is underscored. In printing this bill, the County Clerk need not include the brackets, the bracketed material, or the underscoring.

SECTION 7. This ordinance shall take effect upon its approval.

APPROVED AS TO FORM AND  
LEGALITY:

---

Department of the Corporation  
Counsel  
County of Maui

ALAN M. ARAKAWA  
Mayor



TEENA M. RASMUSSEN  
Economic Development Director

**OFFICE OF ECONOMIC DEVELOPMENT**

COUNTY OF MAUI

2200 MAIN STREET, SUITE 305, WAILUKU, MAUI, HAWAII 96793. USA

Telephone: (808) 270-7710 • Facsimile: (808) 270-7995 • Email: economic.development@mauicounty.gov

Will Spence  
County of Maui Department of Planning  
2200 Main Street Ste 315  
Wailuku, HI 96793

September 23, 2016

Dear Mr. Spence,

**RE: A BILL FOR AN ORDINANCE AMENDING CHAPTER 19.04, MAUI COUNTY CODE,  
RELATING TO COMPREHENSIVE ZONING PROVISIONS**

The Mayor's Office of Economic Development has reviewed the amendments to Chapter 19.04. We are very supportive of these amendments, and commend your department for the hard work in creating a streamlined and much more flexible Code that governs a myriad of activities.

Specifically our department would interface with **19.04.020 - Compliance. B1 through B4.**

These amendments support a more flexible, yet defined code regarding filming in the County of Maui. These amendments will provide our office and our Film Commissioner much greater clarity and assurance of what can take place and how a film project must conduct its activities. This will be a huge benefit for us to provide assurance and guidance to a film crew. At the same time, it protects the surrounding impacted properties.

We are also very supportive of the clarification for temporary commercial events such as bazaars, fairs, festivals etc. Clarifying exactly how many events can take place on a property based on the type of presenting sponsorship again provides clarity and certainty without the added layer of getting a special use permit.

You have our full support for these amendments.

Sincerely,

A handwritten signature in black ink that reads "Teena M. Rasmussen". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Teena M. Rasmussen

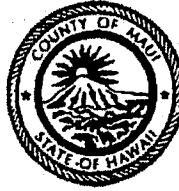
**EXHIBIT - 2**

ALAN M. ARAKAWA  
Mayor

DAVID C. GOODE  
Director

ROWENA M. DAGDAG-ANDAYA  
Deputy Director

Telephone: (808) 270-7845  
Fax: (808) 270-7955



GLEN A. UENO, P.E., P.L.S.  
Development Services Administration

CARY YAMASHITA, P.E.  
Engineering Division

LESLI L. OTANI, P.E., L.S.  
Highways Division

COUNTY OF MAUI  
**DEPARTMENT OF PUBLIC WORKS**  
200 SOUTH HIGH STREET, ROOM NO. 434  
WAILUKU, MAUI, HAWAII 96793

September 28, 2016

MEMO TO: WILLIAM R. SPENCE, PLANNING DIRECTOR  
FROM: DAVID C. GOODE, DIRECTOR OF PUBLIC WORKS  
SUBJECT: DRAFT AMENDMENTS TO MAUI COUNTY CODE, CHAPTER 19.04  
PERTAINING TO MINIMUM LOT SIZES

As you know, the Department of Public Works has worked with the Department of Planning on the technical issues of concern to our Development Services Administration and the Department is satisfied that the proposed bill has addressed these issues.

We support the amendment to allow utility, roadway and other lots to be created in the subdivision process and not be subject to minimum lot size requirements.

If you have any questions regarding this memo, please contact me at any time.

DCG:jso

xc: Development Services Administration 9/28/16

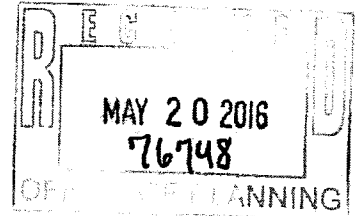
s:\david2\wspence\_support of draft amd to mcc chapter 19.04 minimum lot sizes

EXHIBIT - 3

ALAN M. ARAKAWA  
Mayor

WILLIAM R. SPENCE  
Director

MICHELE CHOUTEAU McLEAN  
Deputy Director



COUNTY OF MAUI

**DEPARTMENT OF PLANNING**

May 18, 2016

**TRANSMITTAL**

STATE AGENCIES	
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OTHER	
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COUNTY AGENCIES	
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<input checked="" type="checkbox"/>	Police Department
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FEDERAL AGENCIES	
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PROJECT NAME: TITLE 19 UPDATED TO 19.04 Comprehensive zoning provisions  
APPLICANT: William Spence, Planning Director  
SUBJECT I.D.: Changes 19.04 Comprehensive zoning provisions

**TRANSMITTED TO YOU ARE THE FOLLOWING:**

☒ Draft Ordinance

**THESE ARE TRANSMITTED AS CHECKED BELOW:**

☒ For your Comment and Recommendation

Please provide any previous comments, letters, etc. pertinent to this application and identify which of your comments and recommendations you would like the Department of Planning to recommend as conditions of project approval. Submit your comments directly to me by June 20, 2016. If no comment, please sign the bottom and return. For additional clarification, please contact me via email at [joseph.alueta@mauicounty.gov](mailto:joseph.alueta@mauicounty.gov) or by phone at (808) 270-7743.

Sincerely,

JOSEPH W. ALUETA, Administrative Planning Officer  
For: William Spence, Planning Director

xc: Joseph W. Alueta, Administrative Planning Officer  
Project File  
General File

:JWA:  
S:\ALLI\PO\19.04 Definitions\2016 Amendments\Transmittal to agencies

We have no comment:	Signed:	Dated: 6/9/16
Print Name:	RODNEY FYNAKOSM	Title: PLANNING PROG. ADMINISTRATOR

**EXHIBIT - 4**

**DRAFT  
MAUI PLANNING COMMISSION  
PORTION OF REGULAR MINUTES  
ITEM D-1  
OCTOBER 11, 2016**

**Please note: Due to technical difficulties with regards to the sound system parts of the transcription are inaudible.**

Chair Tsai: Thank you Commissioner Canto and thanks for joining us. Okay, now we're going to Public Hearing, Number one, Deputy?

Ms. McLean: Thank you Chair and good morning Commissioners. There are two public hearing items on your agenda today. The first is from Planning Director William Spence transmitting a proposed bill with 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 proposed bill would also 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. Joe Alueta, the Administrative Planning Officer will present the proposed bill.

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

- 1. MR. WILLIAM SPENCE transmitting a proposed bill with 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. Joe Alueta: Good morning Commissioners. Again, my name is Joe Alueta. I'm your Administrative Planning Officer with the Planning Department. There's two basic methods for those who haven't heard the speech before in which you can amend Title 19. One is through a resolution which comes from Council and which is sent out to all the planning commissions in which you're one of the three commissions to review those changes or the other method is through the administrative process in which it is initiated by either the Director or the Mayor. In this case, this one is being initiated by the Department by the Director for what we consider kind of a house cleaning process of amendments to 19.04 allowing for certain uses.

The primary purpose of this is to one, to allow for certain uses across all of the zoning districts. So this is rather than amending or having specific uses in certain districts. This would apply across all zoning classes. The other thing this does is that it allows for substandards specifically smaller lots than what is specified in the zoning district. As you know, like say in the Agricultural District it's two acres. In the Residential District it may be a 6,000 square foot lot or in the Rural District it may be a half-acre. This would allow for smaller ...(inaudible)...lots that are used for...affecting part of the subdivision for utility purposes. These are primarily or like say a

substation like Hawaiian Telephone they get to do a substation box or MECO need to do a substation. You would be able to subdivide or a roadway, they had a utility roadway easements they could be, they would be subdivided out as part of...within that Agricultural or Residential District without having to meet the minimum lot requirements.

In a recent case we had like I believe it was Maui Electric out and they were trying to do a I believe it was Maui Electric up and they was trying to do a little substation out on...off of the highway and it was in the middle of the sugar cane and it ended up being they had to do a two-acre lot because that was minimum lot size. It just didn't seem appropriate for that. So again this would restrict the lot, it would restrict that lot for that specific purposes so you wouldn't be able to in the case of say if the lot was created for a utility purpose it wouldn't be considered a nonconforming lot later on and be developed to whatever what was allowed within the uses within the uses within that district. The classic example when I first came to the Planning Department this was when Hawaii Tel was consolidating some of their switching boxes and so if you remember they used to have all these concrete boxes out around Maui with these collectors line and there was one small little lot in Kihei right off South Kihei Road and Hawaiian Tel was selling it at the time and I was wow, it's like \$40,000 or \$20,000 really cheap and I was like wow, it doesn't meet the minimum lot size, but someone bought it and they put a three-story apartment on it. So if you go there now it stands out. It's in the middle of this parking lot in Kihei. So you would not be able to do that. So if you create these substandard lots you would not be able to create, would not be able to use for other than what is specified in specific.

The other component of this bill is...(inaudible due to sound system crackling noise)...certain uses to be allowed across the board within the zoning district with certain criterias. Primarily this comes about as we've done requests for filming, the film industry either photography or movie or television series and normally these are regulated under the Film Board, either the local Film Board or the State Film Commission. So we have decided that you know like certain uses such as commercial, noncommercial, if you want to follow along it's on Page 3 and on 4 of the memo report or the proposed bill. So basically it would allow for commercial and noncommercial filming, photography for such activities authorized by a film permit that's issued by the County and establishes certain criteria as you can see within...with that we'll break up and set up a limit of hours.

Also we're also looking at allowing for temporary commercial events such as bazaars, fairs, reception or festival ...(inaudible)...of all such activities, incidental, customary to the existing principal accessory use. I think some of us at one point in time hosted a wedding party or at some point at their house for the reception and you've the two families get together and you have entertainment...sometimes you will bring entertainment and it can be a large gathering normally once, hopefully once in a lifetime, you do that and so typically that's part of what happens. Baby luaus, I remember being five years old having a huge party in rural Kahului and lot of people were there and that's having people park along the street...(inaudible)...one time functions the families go through. So...(inaudible)...allows those. Just trying to clarify, a lot of this is things that already happen in our neighborhoods and so we just wanna make sure that it's covered. We've also seen bazaars, fairs happen, sometimes there's church functions, church bazaars, St. Anthony has a bazaar or hoolaulea, that's become a function, but again it's an event within a...considered a normal function of that...(inaudible)... on a property. Temporary sales offices have normally been allowed on new subdivisions, either new subdivision, new housing, condominium tracts where

you have a sales office so normally commercial retailing or sales would not be allowed in the residential or apartment district, however we do allow for sales of that and that pretty much summarizes the purpose and intent and some of the uses that would be allowed. As you can see we've established some type of criteria for ...(inaudible)...all of those uses to limit them. We've also placed limited on the lots that would be subdivided or would be created. And again, all of these uses would be subject to enforcement under 19.530. And again, the Department has determined that these uses would not be detrimental to the public health, safety or welfare and that it's consistent with best practices, best planning practices for our community. That pretty much concludes the memo report. Do you have any questions?

Chair Tsai: Thanks Joe. Okay, at this point we're going to open the floor for public testimony. Anyone wish to testify on this item please come forward? Please identify yourself you have three minutes.

Mr. Ryan Churchill: Good morning Chair. My name's Ryan Churchill and I'm with Pacific Rim Land testifying on Item D-1, proposed changes to Chapter 19.04 of the Maui County Code that Mr. Alueta described here.

We support the Administration's changes to 19.04.020 and believe they're long overdue. The proposed changes will allow the creation of substandard lots for roadway, utilities and drainage, pedestrianways and similar purposes. As Mr. Alueta mentioned in the past the County used allow substandard lots for utility purposes but recently has taken a more strict interpretation of the code and is no longer allowing them. The proposed changes presented by the Administration clean up and clarify the code so there no longer be conflicting interpretations on this issue. I think Mr. Alueta gave some good examples. Another good example you see happen all the time is water tanks. A water tank lot you only need six-ten thousand square feet for a water tank but certain zoning districts like Ag you gotta create a two-acre lot and it just creates excess land that's not necessary.

So in summary the proposed changes are consistent with best planning practices have been utilized in the past will clean up and provide clarity to the existing language in the Code. We therefore ask for your recommendation to pass these amendments to the Code. Thanks.

Chair Tsai: Thank you. Questions from the Commission? Thank you. Oh, Commissioner Hedani?

Mr. Hedani: This is a question for Joe.

Chair Tsai: Hold on a second I wanna finish public testimony first. Next testifier?

Mr. Tom Croly: Thank you. Tom Croly and I'm actually testifying on behalf of someone who had some concerns about this, the amendments specifically the ability to film in any district. If I understand what's being proposed is they're saying you can get a permit to film in any district and I imagine that the person who had concern probably would be fine with that. But she wanted me to express that they had been filming on her street and that the impact was great. It extended many houses along the whole street. In fact the neighbors were told be quiet we're filming in the meantime you know the generators are making all this noise and that kind of thing. So this idea



that we would extend ability to have filming permits to all districts probably needs to be evaluated in conjunction with what are the restrictions of those filming permits to make sure that we're not potentially putting something out there that would be a nuisance to folks and I've never seen what the restrictions are on filming permits. I'm just relating someone who lived on a street where they were doing filming said wow. This was not just an impact to the immediately adjoining neighbors. This was an impact to the entire street and I just noticed in here it talks about making notice to the immediately adjoining neighbors. So just a matter of getting that on record at this point. This will eventually go to Council and only get further consideration, but thanks for the opportunity to comment.

Chair Tsai: Thank you Tom. Question for the testifier? Commissioner Robinson?

Mr. Robinson: Who's testifying? I mean are we allowed to have anonymous testifying?

Mr. Croly: Did I not identify myself? Thomas Croly.

Mr. Robinson: Although you said, but you're testifying for somebody else. It's like I saw the bait where a guy ...(inaudible)...

Mr. Croly: Ah, okay. So the person for who asked me to bring this up was Kathryn Clark.

Mr. Robinson: And what neighborhood was Kathryn from?

Mr. Croly: Haiku Hill.

Mr. Robinson: Thank you Tom.

Mr. Croly: Yeah.

Chair Tsai: Commissioner Canto?

Ms. Canto: I have a question for you Mr. Croly. So are you saying that you're in support or she's in support or...

Mr. Croly: Well she has concern about the idea that filming would be allowed in all districts and again I think that it requires a better understanding of the...of what it takes to get a filming permit before she would be able to say whether or not this is an okay thing to happen. But her experience was the filming in her neighborhood was a major disruption so I guess given those circumstances she would be against the idea of allowing it in all districts.

Ms. Canto: Thank you.

Chair Tsai: Any more testifiers? Seeing none, public testimony is now closed. Questions from the Commission? Commissioner Hedani?

Mr. Hedani: Joe I had a couple of concerns. One is the Department is asking the ability to collect fees or establish its own fees and who would review ...(inaudible)...

Mr. Alueta: It would be during the budget ordinance. This would allow generically we current review certain administrative permits such as building permit reviews, landscaping plans and currently we don't have the ability to charge.

Mr. Hedani: So it will be reviewed by the Council?

Mr. Alueta: Yes, it would be during the budget process we would add it to our fees of collection, proposed fees during the budget.

Chair Tsai: Deputy?

Ms. McLean: Thank you, Chair. In the past year or so during the annual budget process we have asked the Council to allow us to charge fees for some of these reviews and Corp. Counsel has rightly told us, well there's nothing in the Code that authorizes us to collect those fees. So it has to be somewhere in the Code that says the Department is authorized to collect those fees then in the budget the Council will establish what those fees are. Most of the permits that come before there's either a Code or a rule like the SMA Rules that say, and a fee established in the annual budget that a lot of the administrative permits ...(inaudible)...we don't have that authority in the Code at this time.

Chair Tsai: Commissioner Carnicelli?

Mr. Carnicelli: ...(inaudible-due to static)... I guess my question is how is it going to effect that particular method of people creating subdivisions since that ordinance is basically being used to create subdivisions that are not subdivisions you know, so now suddenly we have these substandard lots, how is that going to then later impact, (a) how is it going to impact the current ones that exist? Can they somehow take advantage of you know, use a loophole here to get one over and then (b) moving forward...is there an unintended consequence that we're not looking at that you know some of these big landowners are gonna say okay we're gonna do a ...(inaudible)...subdivision who has substandard lots...(inaudible)...

Mr. Alueta: That's a good point with regards to existing consolidation and resubdivision of existing substandard lots that do occur in which we create more developable lots from that. This doesn't necessarily affect that current process of consolidation resubdivision. During this process in which someone establishes a utility lot there will be restrictions on that lot which would prevent it from being one used for anything else other than a utility lot. But we can look into that to make sure, but I don't believe that the current...currently the way we have it worded it would not benefit anybody from trying to use, one, do a subdivision, create several utility lots then come back and do a consolidation resubdivision to gather more lots because I think it would still be specific to that land area for a utility and it would not gain another additional lot...additional lots from that. But I see that loophole and I think it was discussed at one point during our process and the restrictions that we currently have on those lots would not allow them to do that.

Mr. Carnicelli: ...(inaudible-not speaking into the mic)...

Chair Tsai: Yeah of course.

Mr. Carnicelli: Deputy Director, I mean I guess how do you feel ...(inaudible)... this is the existing one now. And I think going forward they have to name it as a utility lot and then you know can't change it. But what about existing how's that going to affect?

Ms. McLean: Existing subdivisions would have to be compliant with that this would establish. So the description of an ag subdivision where there's a two-acre lot that had to be created for a water tank and let's say you only need a half an acre for that and if it is adjacent to a couple of larger agricultural lots three or four or five acres then certainly they could come and potentially get one more developable lot out of that because you have that two-acre site used for a water tank. Our position on that would be...let me back up, they could take advantage of that because we think it's silly that they needed to create a two-acre lot in the first place for a water tank lot that they should not have had to do that. And had that not been the requirement at the time they would have been able to subdivide with that one additional lot. So if they were to come in...if this were to pass as we have it contemplated, if they were to come in today then potentially because they would only need a small area for that water tank they would have the balance of the land to put into two acres and potentially they could, they could have gotten one more lot out of that depending on the size of the original lot. There wouldn't be a reason for them not to do that. However, if it's an existing subdivision it's probably built out already and so if it's built out and you try to carve out that small water tank then the balance would be substandard and they wouldn't be allowed to do it. So if you have a two-acre water tank and you want to subdivide out a very small area for that water tank lot that balance would have to be at least two acres and chances are that's not the case. If everything else is developed already you wouldn't be able to manipulate the lines to make it work.

Mr. Alueta: And Commissioner I was speaking to...sorry, I was speaking about substandard lots that are existing not utility lots that meet the current subdivision standards as the Deputy Director that was counted toward with regards to Ag District was counted...(inaudible)...that two-acre lot was counted toward their allocation so again, they have a legal right to try to consolidate or establish a new smaller lot and then maybe consolidate with an adjacent lot to create...bring back that lot to where I could put a house on it. That's always a potential. Most likely that water tank lot still probably has a house on it. They just...if there's a common easement over it and so you wouldn't be able to do that. I was speaking more of existing nonconforming lot sizes that are utility lots.

Chair Tsai: Yeah, go ahead.

Mr. Carnicelli: So I guess ...(inaudible)...so I understand you know that it is silly to have a two-acre, you know, water tank lot. And however I guess my concern is that these changes can increase density though potentially. I mean...(inaudible)...this lot is I don't know say a little over two acres and okay they just parcel out the water tank and then I get a another two acres to build a house. I mean...(inaudible)...and I don't wanna you know sit here and try to build a better mouse trap, close every single hole possible, you know, but I think it's something that if can be addressed while we're doing this, you can't create and you can't increase density in doing this I think its now's the time to address that if we can.

Ms. McLean: At most the density would be increased by one lot. That would be the greatest increase in density of any subdivision...(inaudible)...

Mr. Alueta: Well, technically no you wouldn't be increasing at all because they had the density of that existing lot per se.

Ms. McLean: Oh, they would have the utility on the lot that they created so...

Mr. Alueta: Right and they wouldn't like I said that lot is...under current standards, right they're required to create a lot of that, of what the zoning standard is. It's just they had to dedicate or choose to use that full size say residential lot or full size agricultural lot of the purposes of having a utility and that was counted toward their density of the number lots that that parcel could be subdivided out. Under the proposal, under this proposal what would occur is that they would then get that full allocation of lots, right as they currently have and no new lots would be created and then they would be able to create one substandard lot that is dedicated for utility purposes only. So essentially the land area is the same it's just that somebody's lot instead of being two and a half acres may be two and a quarter acres, you know they met the minimum two-acre lot and that quarter acre, 10,000 square foot lot is then got the water tank on it.

Mr. Carnicelli: That makes sense. So thank you.

Chair Tsai: Commissioner Hedani?

Mr. Hedani: I guess on the question of density my comment would be that increasing density is good somewhere in order to create more housing. The other question that I had was on the checks and balances for the Department itself. The Department is establishing fees and the Department is establishing administrative rules to implement those fees and under Section E, I thought it might be appropriate to consider having the Commission adopt administrative rules that the Department would provide or propose rather than the Department approving its own rules. Our existing directors are sane but you know in the future we may have people that are not. So the question is should the Department be adopting its own rules or should it be approved by a group like the Commission?

Mr. Alueta: Well it should be really the Department because the permits that we're talking about the administrative permits are not commission permits. They're permits that done administratively. Like I say it's done by the Zoning Administration staff or which is primarily gonna be parking analysis, parking, landscaping plans, building permit review for setback and stuff like that. So that's not a permit that comes under the purview of the planning commission. And the permits that do come under the purview of the planning commission have been established by your administrative rules in which we then can put them into the...into the Budget Ordinance. So this basically all it allows us to do is put them into the Budget Ordinance, right. Whether that gets approved or not we have gone before the Council several times and put the true cost of our, just to recover 50 percent, half of what we...is the cost to process an SMA or change in zoning and it has been out rightly rejected by the Council. So we have...so probably collect on the fees closer to 10 to 15 percent of the true cost of the processing of a major permit so yes we are subsidizing development...(inaudible)...it's just...but we are not really, I mean from a government standpoint we are not recovering the full cost of a lot of our permits in the processing and we've attempted

that. And this is again is one attempt to bring to have the ability to collect some of these fees in which there is real work being done by staff and to help recover that for the taxpayers and again, the ultimate authority is gonna be Council.

Chair Tsai: Commissioner Hedani?

Mr. Hedani: You know, when we talk about trying to keep the cost of housing down, making housing affordable for people every little thing that we add increases the cost of that housing. Some of the process I think should be subsidized by the County as part of its administrative responsibility. So I'm just looking for a check and balance in terms of how the fees get approved. If it's the Council then that's fine. They have the responsibility of approving that. Adopting rules if the Department adopts its own rules...well, let me put it this way, if the Commission adopts its own rules then I guess the Department should be able to adopt its own rules is what you're saying.

Mr. Alueta: Yes, and we currently have our own administrative, I mean, our own administrative rules just like you have for the commission. And yes, the ultimate authority for fees will be in the Budget Ordinance by the Council.

Chair Tsai: Commissioner Robinson?

Mr. Robinson: Joe, I just wanna understand the parcels talking about. So when you have a property and instead of subdividing it to two acres a lot of people have been using easements and utility easements and so on and so forth. Will this allow them to say okay, I don't have to carry insurance for that easement, I can just give the utility there 800 square feet and the rest of the lot is mine? Will this ordinance do that?

Mr. Alueta: Yeah, in a lot of cases it would. So rather than having a easement over someone's private property, the developer would be able to subdivide out that small section. So like in my subdivision we have a lot of our parcels have easements over other people's parcels either for wells or for roadways and so that would potentially eliminate that without impacting the number of lots allowed.

Mr. Robinson: I have another question. The filming, does this ordinance allow them to go into conservation lands and film or is this is conservation excluded from this ordinance. And people when they rent their homes out to be filming they're making some money off of it. So how...is there a fee that the people pay for that or is there some kind of restriction where Mr. Croly said where neighbors get affected is there some type of notice? Or if they're gonna film there for three days and they'd have their 12 trucks at our beautiful neighbor?

Ms. McLean: I can take a stab at responding to that. Part of the reason that we wanted to put this, put this component in the bill is because of the situation that Mr. Croly referred to in Haiku Hill. It's really gray area if someone says can you film on my property? If the use of your property is residential and you're still doing residential things you know we have a hard problem...we have a hard time saying that you can't film that. You know the activity, the use of the property is still compliant with the zoning. Same with in business or on ag land if someone came to film or to do a photo shoot that's not changing the use of the property. However, what we found at Haiku Hill was that there were these other impacts to it that we did wanna be able to control. And because

with Haiku Hill we didn't have any criteria to enforce, it's important to note that you only need a State Film Permit if you're filming on State land. You only need a County Film Permit if you're filming on County land. If you're filming on private property there's no permit that you need and so this is our way trying to regulate that by saying that you have to notify neighbors, you have to have a contact person, the hours are limited and you can't have these impacts because if any of those things are not followed then we have the ability to enforce because this is in our Zoning Code and we can enforce against that. So if there's a filming activity somewhere that's during the daytime, that doesn't bother anybody, neighbors are notified, and there are no issues then there's no problem. But if neighbors aren't notified, if the contact person isn't reachable, if there's these impact if it's late at night then we can enforce. So that's what the objective was and putting these criteria out there and we worked with the County Film Office on this. So that's what we're trying to do. It's not a permit. They don't have to come in and ask, it's you can do these things if you meet these restrictions and if you don't then we can enforce on you.

Mr. Robinson: So you're saying that filming is allowable in a residential area because it's considered a residential use? Yes?

Ms. McLean: That's the gray area that we're grappling with because some of it is and I think truly what happens in the incident that we're talking about is the use of the property did change. It wasn't the residents who were staying there and they weren't filming the people who lived there doing their daily activities. They brought in people so that was problematic.

Mr. Robinson: 'Cause how I view it is it's a short-term rental because they're actually paying rent to the homeowner to use their home to use it as a temporary studio, but to me it's a short-term rental.

Ms. McLean: That...in that particular case we would most likely feel the same way if the use of the property is changing from long-term and agricultural use to a short-term use then yeah, that's a change in use and I think that's one of the criteria here involves no change in the use of the property unless such change is lawful or properly permitted.

Mr. Robinson: So they would need a permit?

Ms. McLean: So for...if you have situation, you have a residential lot and you say okay, we're gonna bring in all of these college students for spring break and they're gonna stay there for a month and be filmed then that would be a short-term occupancy of the property and that wouldn't be allowed without a short-term, some type of short-term rental permit.

Mr. Robinson: One day Hawaii 5-O wants to come in for two days? I mean it happens all the time. I'm not against that, but they come in for two days and the occupants are not at the home because they're getting paid you know a short-term fee to film in that house and not that that's a bad thing but I think we need to figure out something for that instance where it should be permitted. It doesn't have to be a major permit or come in front of the Council but it should be where you folks are notified and the Council and should be where the neighbors are notified because they have their...(inaudible)... so they're gonna know and at least that way, you know, I assume that the film crews have their off-duty police officer here that controls, I think that's...so you know, I think that might be something for consideration to have it where it needs just maybe not a full-on

short-term permit but a filming permit that the neighbors can be notified. Because a film crew is encumbersome they come with a lot of vehicles and if they're gonna use a home that might be a criteria for them choosing a certain home compared to another one.

Ms. McLean: This is our first step with this.

Mr. Robinson: I'm trying to understand like Lahaina had that MTV where they had a home and they were filming all day and people coming around and film crews and then people watching the film crews and for a couple months at a time so I understand that ordinance, but I'm looking at the really short-term, two-day, but thank you, thanks for the...(inaudible)...

Chair Tsai: Commissioner Carnicelli?

Mr. Carnicelli: Commissioner Robinson asked a question and you answered but you answered it nonverbally, so I just want for the record, cannot be done, filming cannot be done on conservation land.

Mr. Alueta: Correct. Yes. The County has no jurisdiction over conservation land. If you wanted to film on conservation land...(inaudible-not speaking into a mic)...As the Deputy Director pointed out it would be a State department issue,, whether it's with the State Film Commission or the Department of Land and Natural Resources. The Department has basically like I said no authority over conservation land.

Chair Tsai: Commissioner Carnicelli?

Mr. Carnicelli: So one other, I guess I don't know if it's exactly a question, more maybe a statement along what Commissioner Hedani was talking about with fees. I understand the Department's need to you know be able to collect fees, however, part of the dynamic of any government agency trying to recoup all of their cost is no offense is the inefficiencies of government that are inherently built into those costs to say, so for the department to say, okay we wanna recoup all of our costs for being able to do this built into that is your inefficiencies of government. So I don't know if there's a question there but is...it's now part of the record.

Chair Tsai: Okay, Commissioner Hedani?

Mr. Hedani: Joe, what kind of dollars we're talking about?

Mr. Alueta: I really don't know. We haven't put together a proposal as far as what fees we're gonna ask for. Again, this is just giving us the ability to put it in the Budget Ordinance and then...and see what's reasonable. Normally we're only talking about like say a \$50 fee or \$25 fee depending on what type of review it is. We're also looking at being able to for rereviews, we have a lot of especially in the building permit side which I supervise is that you constantly get resubmittals or parcel submittals of applications so a lot of the time delays is we don't have a complete record. So, and then the guy has to then, he or she has to then redraw the plans because they didn't draw it correctly or they gave us partial information and so there's a lot of back and forth. And so one of the things that we're looking at is try to cut down on that is to this is what we need, if you okay, first time around it's free no problem. Second time around you're

gonna have to pay a fee for us to look at it again. And so that's the main thing is try to discourage the using our plan review people as their proofreaders I guess you could say for their plans.

Mr. Hedani: So you're talking about nominal fees, you're not talking about thousands of dollars?

Mr. Alueta: No, we...I think we got the \$1,000 fees with the SMAs that are under your rules, so...

Chair Tsai: Commissioners Hedani?

Mr. Hedani: If there's no more questions, move to recommend approval to the County Council.

Chair Tsai: I think we need the Department's recommendation first. Can we get the Department's recommendation?

Mr. Alueta: Thank you. Yes, the Department is recommending approval of the proposed bill. The Commission does have the following options. It can recommend approval of the bill to the Maui County Council. Recommend approval of the bill with amendments to the Maui County Council. Recommend denial of the proposal bill to the Maui County Council or vote to defer action on the proposed bill in order to gather more specific information.

Mr. Hedani: Move to recommend approval to the Maui County Council as proposed.

Mr. Carnicelli: Second.

Chair Tsai: Okay moved by Commissioner Hedani, second by Commissioner Carnicelli. Any discussion on the motion?

Ms. Canto: Chair Tsai I have a question. I know that the option was to pick one, but I just have a little question on Item 4, the option of 4, to gather specific additional information. I wanted to be clear what specific additional information entails?

Chair Tsai: That decided based on what we feel, the Commission can ask...well, basically No. 4 is an option is we can vote to defer, but we have to state what additional information we want to gather.

Ms. Canto: ...(inaudible)...

Chair Tsai: Yes, exactly.

Ms. Canto: All right.

Chair Tsai: Commissioner Robinson?

Mr. Robinson: I support the motion. But I also would like to put an amendment when it has to do with the filming in residential areas of having some type of, just a simple permit pulled and notice to the neighbors, you know at least 48-hour notice. Is it already in there? I remember they can't do certain things, but...



Ms. McLean: Notice to the neighbors is in there.

Mr. Robinson: Is in there.

Ms. McLean: But right now there isn't any sort of permit for them to have to obtain.

Mr. Robinson: But is there a time for...of when the notices, it just says notice, right?

Ms. McLean: It's on Page 4 of the bill, Subsection C, so the filming is...

Mr. Robinson: No less than 14 days?

Ms. McLean: No less than 14 days prior to the initiation. Shall describe the activity and its duration and shall provide contact information for a responsible party who shall respond to questions and concerns from owners.

Chair Tsai: Commissioner Hedani?

Mr. Hedani: So as I understand it on Commissioner Robinson's question this is giving the Department criteria for reviews of film permits where you don't have any right now?

Ms. McLean: It gives us the ability to enforce.

Mr. Hedani: Okay, thank you.

Chair Tsai: Any other discussion regarding the motion? Seeing none, let's call for a vote. All in favor...sorry, Deputy can you repeat the motion please?

Ms. McLean: The motion is to recommend approval of the proposed bill to the County Council.

Chair Tsai: All in favor of the motion?

Mr. Robinson: ...(inaudible)...is it right now the residential not having a permit?

Ms. McLean: There is no type of film permit or a temporary permit. It doesn't exist. We would need to create that kind of permit in the Code to require it. The only permits that are now required is if the filming is on County land or State land.

Mr. Robinson: So I guess nobody else feels that the County should have, be able to have a permit if there's gonna be filming at a home or?

Chair Tsai: If the rest of the Commission feels like that's, oh actually if the maker of the motion would be open to...

Mr. Murai: I'm sorry, Mr. Chair just for the sake of clarity. We have Commissioner Hedani's main motion on the floor. I wasn't sure whether Commissioner Robinson was making a motion to amend? Commissioner were you moving—

Mr. Robinson: Yes.

Mr. Murai: 'Cause in that case then maybe for the sake of the record restate your motion and the Chair you can if whether there's a second.

Chair Tsai: Okay. So Commissioner Robinson are you choosing to make amendment to the motion?

Mr. Robinson: I'd like to make a motion to amend with the requirement that all filming even if it's not on top of County property will have a permit.

Chair Tsai: Do I hear a second on...

Mr. Higashi: Second.

Chair Tsai: Okay, so we have an amendment from Commissioner Robinson and a second from Commissioner Higashi. Discussion on the amendment? Yes, Commissioner Carnicelli?

Mr. Carnicelli: So Deputy Director if we were to include Commissioner Robinson's amendment what processes ....(inaudible—not speaking into mic)...What has to happen to actually create what it is that we're trying to do?

Ms. McLean: Your action if it were to include the amendment would go to the County Council for their consideration. They could choose not to go along with that particular recommendation and pass the bill without creating such a permit. If they agree with that recommendation then they would likely defer taking final action on this bill and direct us to work with the County Film Office to create some sort of film permit that would be required for private land as well. I'm not sure if how that permit would be created. We'd need to figure that out with the film office 'cause we wouldn't be the ones to process that. We would have the Film Office process that. So we'd need to find out and work with them on how to create it.

Chair Tsai: Commissioner Higashi?

Mr. Higashi: I seconded the amendment to Commissioner Robinson's amendment based upon the fact that there might be a loophole in this filming process from the standpoint that take for example the testimony that was done earlier if there is filming done and the film company itself is now directing neighbors to keep their voices down, whatever, sound, right now the way the proposal, the bill is I don't see any stop gap in it and that's why I'm seconding the amendment to the motion.

Chair Tsai: Commissioner Robinson?

Mr. Robinson: Yeah, I don't wanna make this cumbersome, but it's I'm just thinking that if the County already has a permit for their county lands that the same permit but it would just encompass all properties instead of just county. So I think there's a permit process in place it would just be that more would have be having a permit instead of just the ones on county property. I'm hoping that it wouldn't be that large of a deal. And again, this is just a recommendation. You know the Council's still gonna decide what they feel is right.

Chair Tsai: Okay, Commissioner Canto?

Ms. Canto: Okay, so I'm gonna take the new kid on the block away from you Commissioner Carnicelli but I'm gonna have to...I'm not going to be supporting the amendment. If the purpose is to simplify the process I just don't think adding another layer to the process is going to work so in all due respect I'm not going to be supporting the amendment.

Chair Tsai: Thank you. Any other discussion regarding the amendment? Commissioner Carnicelli?

Mr. Carnicelli: So I mean, thank you for the clarification of where you're coming from Commissioner Robinson. So I guess my question then Deputy Director is ...(inaudible)...I mean if you already have a permit for county lands is it just, you know...that's why I'm saying like what process needed to happen. But it's you know, ...(inaudible)...to say okay this is the same exact thing for residential as it is county property that to me seems like pretty easy, you know, a pretty easy fix. If it's something like we gotta go create whole other system and whole other permit that we have that's different. So would it be...I mean, I'm not saying that you have the exact answer but I mean is that logic work that we just say okay, listen we're just gonna now ...(inaudible)... this and say residential as well as county?

Ms. McLean: There is an existing permit process in place. I don't know the authority that created that for the Office of Economic Development to issue film permits. It could be a County Code amendment, it could be their administrative rules as we talked about, other departments have administrative rules. But the Planning Department can't just for example hypothetically, we can't just decide you know we're gonna require a permit if you wanna paint your green and just start requiring that. We have to be authorized to do that either in rules or the County Code. So the Economic Development Office has the authority to require film permits. I don't know how that authority was granted, but whatever created that authority for them whether it was the County Code or their rules would probably have to be amended to expand that authority from county land to private land as well. I don't think it's reinventing the wheel. I don't think it's you know prolonged or particularly cumbersome but I'm just not familiar enough with it to be able to tell you what it would require. But for the Council to act on this bill with that amendment they would want to do that first. So they would wanna see that happen first and then they could move on the bill that requirement.

Chair Tsai: Okay, just a quick note, my apologies for the technical difficulties, I'm being signaled by our filming crew, Akaku, to please speak louder and into the mics, so we're apparently having yeah issues getting all the verbiage down. Commissioner Carnicelli?

Mr. Carnicelli: Everybody saying I'm speaking too softly. Now I forgot my question. I think what...I'm gonna support the amendment just for the sake of we're not the last stop on it. This still gonna go to the Council so then I'm gonna support the amendment so they can have this conversation on the Council floor. I'm also assuming that if we include this amendment that you guys will probably put a certain element of ...(inaudible)...prior to getting to the Council and saying okay, this is the other thing that we need to do first before doing this. So I'm gonna go ahead and support the amendment you know for that ...(inaudible)...They can still say no, but at least you guys will have some answers for them by the time you get there and the conversation ...(inaudible)...

Ms. McLean: We can follow up with the Film Office and get their position in writing and when the Council does take this up, recommend that they participate in the discussion.

Chair Tsai: Any further discussion on the amendment? Commissioner Hedani?

Mr. Hedani: Can you restate the amendment please?

Chair Tsai: Deputy?

Ms. McLean: The proposed amendment would be to require a County Film Permit for filming on private land.

Chair Tsai: Okay, so let's vote on the amendment. Oh, Commissioner Hedani?

Mr. Hedani: I'm assuming it was the Film Department that requested this particular provision?

Ms. McLean: It probably...I believe it originated with us because we had questions about prior filming activity and we talked with them about and together came up with the criteria.

Mr. Hedani: Okay, 'cause I kinda agree with Commissioner Canto that we're adding another layer of approvals that will be required. The sugar industry is gone, the pineapple industry is gone, if we want the film industry to be gone then what we should do is just add another layer of regulation over them so that they throw their hands up in the air go, Hawaii embraces us.

Chair Tsai: Okay, any other discussion?

Mr. Robinson: I'm fine with the vote going either way but I'm not trying to add regulation. It's a permit. It's a document that says, when we come there and the County is now gonna know what the filming industry is gonna do. They're not gonna give approval. It's a permit as you pull a permit for a bicycle. You know it's just a permit. It's not a...I don't think there's gonna be...with the film industry it's not going to be that many rules where they're gonna have to jump through hoops. It's just they're gonna get a permit and they're gonna know that the County's gonna know that they're gonna film in 14 days. They're gonna make sure that the neighbors were notified and they're gonna be aware of what's going on on the County, know. And I think with the county roads it might...you know, they might have planned to film some place and the County is going to put speed bumps or repave then what? You know, it's just a permit. It's not a regulation in my view. Thank you.

Chair Tsai: Okay, all right we have a amendment to the original motion to add a permit everyone in favor say, "aye" or raise your hand?

Ms. McLean: Three ayes.

Chair Tsai: Opposed?

Ms. McLean: Five.

**It was moved by Mr. Robinson, seconded by Mr. Higashi, and**

**The Motion to Amend to Require a Film Permit, FAILED.  
(Assenting – K. Robinson, R. Higashi, L. Hudson)  
(Dissenting – L. Carnicelli, P. Canto, W. Hedani, S. Duvauchelle, S. Castro)**

Chair Tsai: Motion fails. So going back to the original motion. Any more discussion on the original motion to approve as recommended? Seeing none, let's call for a vote on the original motion to approve agenda item as submitted by the Department. All in favor of that.

Ms. McLean: Eight ayes.

Chair Tsai: Motion carries. Thank you.

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

**VOTED: To Approve the Proposed Bill as Recommended by the Department.  
(Assenting – W. Hedani, L. Carnicelli, L. Hudson, K. Robinson,  
P. Canto, S. Duvauchelle, S. Castro, R. Higashi)**

Submitted by,

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

**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 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 criterions, 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**



So that was discussed. There's a lot of discussion there. We had discussion with the Deputy Director about our planning commission meeting schedule. I think both the commission and the community provided various feedback on that, suggestions and ideas. We also had --

Ms. Zigmond: We had Joe, and Joe is here, yeah?

Ms. Gima: Yeah, Joe gave --

Ms. Zigmond: And he'll be giving it again so --.

#### **F. UNFINISHED BUSINESS**

1. **MR. WILLIAM SPENCE transmitting a proposed bill amending 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) (Opportunity for public testimony was made on November 16, 2016.)**

**The Commission may provide its recommendations to the Maui County Council.**

Ms. Gima: Right, because we weren't -- that was our action item and we weren't able to, to vote due lack of quorum. We got a status update from Pulama Lanai regarding permitting for the jet fuel storage tank. And I think that was -- and then our Director's Report, you know, our open applications. But that was the gist of the meeting so...any discussions commissioners?

Okay. We'll go ahead and move to Item F, which is our unfinished business and Item #1 (*Chair Kelli Gima, read the above project description into the record.*) And there was an opportunity for public testimony -- oh, there's an opportunity after Joe gives his presentation. So I'll turn it over to you Joe.

Mr. Joseph Alueta: Good evening Commissioners. Again, this is sort of a 19.04 amendment to Title 19. For those who are not familiar, my name is Joe Schmo -- I mean, Joe Alueta. I'm with the Maui County Planning Department. I am the Administrative Planning Officer. There are two methodologies in which you can amend Title 19, which is the Zoning Code for the County of Maui in which Lanai is a part of. You can either amend it

either through administratively, through the department, or propose it, meaning the Mayor, the Planning Director will make proposals, or it will come by resolution by via the County Council, Maui County Council. The Charter requires that all three Planning Commissioners -- all three Planning Commissions review any changes to Title 19, provide their feedback to the Maui County Council prior to its enactment.

So, again this is an administrative initiated change to Title 19. The Chair read basically what the summary of what the four major changes. One, it allows us to establish some type -- in the budget -- again, this would be done at the budget time... fees for ministerial permits and other permits that we currently review. Currently the division that I -- one of the divisions I supervise is ZAED. We review building permits for zoning compliance. We -- and when someone files for a building permit, and pay a building permit fees, those go to the Fire Department and they go to Public Works. None of that fees get routed to our cost for the Planning Department. What we are --. We are not seeking to have those fees, building permit fees raised, and we get a portion of it. What we're seeking is just to be able to charge in the future through a budget process for re-review. We get a lot of re-reviews meaning they submit the plans, they're missing information, we ask for corrections, we don't get the corrections. They only make -- correct two out of the four -- we constantly go back and forth. We need to have a stick as well as a carrot when we're dealing with both the lay people as well as the developers so that we can review the permit once, yay or nay, and be done with it. So that all it does is it allows us to establish a fee and that fee would be then be reviewed and approved by the Maui County Council during the budget process.

The other issue is sub -- smaller lots within all the zoning categories. Almost all of the zoning categories -- R1, R2, Business, BCT, B1 -- in the zoning category has a minimum lot size, so --. But what we find is that when you have a roadway or you need to create a small lot for a utility substation or for a transformer, maybe for -- maybe if it's a condominium complex you have mailboxes that need to be on a separate TMK. We don't --. I mean, there's various reasons. MECo as well as HawaiianTel, the cable company sometimes, they want to have a separate lot. In that zoning, rather than create a 10,000 square foot lot in the R3 District for a small little utility area, or in the case on Maui, MECo had to subdivide out two acres for, for a substation. They really didn't -- they only needed like 5,000 square feet. It's kind of wasteful. This, does not, as I explained before, does not allow that lot to then be used for anything other than a utility lot, or roadway, whatever it was dedicated for. I gave you some examples last time about how we previously had created existing utility lots in Kihei for like when GTE was in town or was the provider, and when technology changed not all of those substations were needed, they sold them off and there were like these 2,000 square foot, 3,000 square foot substations. And people built condos or build an apartment on it, and we wouldn't allow for that. Under these rules, if you create a substandard lot within a zoning category for utility purposes, it will remain that. And if you dissolve the purpose of that lot, meaning the utility purpose of it, for some reason, you would have -- they only way you could do is consolidate it with an adjacent lot. You need to get rid of it.

The other one is dealing with photography, and commercial and noncommercial video and photography. We feel a lot of times that's an allowable -- it should be allowed. It's really a nonintrusive for the most part, but we did create standards for that so that it can be done in all zoning categories. This would allow for --. And also if it, if it gets a video permit or something like that then we could establish -- conditions can be established. If, if something comes to our attention and there is -- we find that there is a nuisance or a permit we can enforce it through 19.510. So it doesn't give -- this doesn't give carte blanche. It says this is the standards for video shooting. If you don't meet those standards, then it's not a permitted use. Okay? So that's basically what it says.

The next one is allowing for commercial, noncommercial -- temporary events. You've all been to a church bazaar, I'm assuming at some point in your life, a -- or a, say...church farmer's market, a school rummage sale. All of those are commercial, technically commercial activities, but they're temporary. If someone asks, like, well, how can they do that? Well, a lot times they're allowed as, you know, we consider them to be accessory to the permitted use on the property. And this would allow us to make it clear that, yeah, it's not -- it's not a real commercial, quote, quote, event that the zoning -- zoning has the perfectly match. That you can only do it in a commercial use zone. This would allow it for any zoning category provided that it was a set -- related to...the activity or the use on the property.

So that's pretty much a summary of basically the four key things that this bill does in 19.04. Do you have any questions for me at this time?

Ms. Green: So I'm assuming on these filming and these temporary like bazaars and things, they still need to go to you for permit.

Mr. Alueta: No, they would not.

Ms. Green: They wouldn't have to.

Mr. Alueta: No. They would still meet -- they would still meet other criteria such as they could assess parking based on that thing. But as far as the use being allowed, we would consider it to be allowed.

Ms. Zigmond: Joe, didn't you say last time, though, that, let's say in the case of, of filming, that they would have to notify people within a certain area, and do it only during certain times of the day. So Caron, I don't know if you saw the -- from last time, but there were some restrictions on that.

Mr. Alueta: Correct. And I'm going by the staff report, the memo report that's dated September 29<sup>th</sup>, that was passed out at the last meeting and I'm hope you --. And it's

Exhibit 1 is the actual ordinance, and it's in Ramseyer, and so we're basically amending 19.04 to allow these certain uses as a permitted use in all zoning categories.

We're doing it in 19.04, in this section rather than...list it and go through every zoning, amend every zoning chapter and say it's allowed, you know, it's allowed under these categories because we're establishing the criteria right here.

Ms. Gima: Commissioners, any other questions? I'm going to open public testimony so if anyone in the audience would like to provide testimony, ask any questions. Okay, no one. Come on up and state your name please.

Mr. Myles Saruwatari: My name is Miles Saruwatari, Lanai resident. On the fourth thing they talk, you know, bazaars and stuff like that, I just have one question, if in those functions they sell food, would they have to have health inspectors and all that kind of stuff too, or is that exempted? Not exempted.

Mr. Alueta: . . . (inaudible) . . .

Mr. Saruwatari: Okay. Alright.

Ms. Gima: Yeah, so other permits that would be needed, what I'm hearing for filming if they needed a permit or if you're providing food, they would still have to go all those necessary routes. Okay. Anyone else wishing to provide public testimony, ask any questions? Alright, we'll go ahead and close public testimony.

*(Commissioner Stephen Ferguson attends the Lanai Planning Commission meeting at approximately 5:55 p.m.)*

Mr. Alueta: So basically we are recommending approval of the proposed bill. There are four options that you can do. You can, again, recommend approval of the proposed bill to the Maui County Council. Recommend approval of the proposal with amendments to the Maui County Council. Recommend denial of the proposed bill to the Maui County Council. Or vote to defer action on the proposed bill in order to gather more specific additional information.

Ms. Gima: Commissioners, again, any -- any other questions for Joe, any discussion?

Ms. Zigmond: Madame Chair, I move to recommend approval.

Ms. Gima: Do I hear a second? Second by --. Okay, so Beverly has made a motion to recommend approval, second by Stu. Any other discussion? All in favor of the motion raise your hand. Okay, all opposed? None, so it's unanimous.

**It was moved by Commissioner Beverly Zigmond, seconded by Commissioner Stuart Marlowe, then**

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

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

*(Excused: M. Baltero)*

Mr. Alueta: Thank you very much.

Ms. Gima: Thank you Joe.

**G. ORIENTATION WORKSHOP NO. 2**

***(Previously scheduled for the June 15, 2016 meeting)***

- 1. Opening Remarks**
- 2. County Policy Against Discrimination**
- 3. The Sunshine Law (Chapter 92, Hawaii Revised Statutes)**
- 4. Ethics**
- 5. Contested Cases**
- 6. Property Rights**
- 7. Rational Nexus and Rough Proportionality**

Ms. Gima: Alright, we're going to move along and go to Item G, which is Orientation Workshop No. 2. This was previously scheduled for the June 15<sup>th</sup>, 2016 meeting, so glad that we can finally have this on the agenda.

Ms. Thomson: Okay. I'll just -- I'll let you know when I'm turning the page so you can kind of follow along. The first section is on the open meetings law, also called The Sunshine Law. It's Hawaii Revised Statutes 92. And the purpose of the Sunshine Law is to open up government processes to the public so that the public is made aware of what's going on with its government and that decisions aren't made behind closed doors. So that's the purpose behind the law.

Kind of the things to remember as far as the Commission goes is that board business is business that you either have before you currently or that you know is going to be on, on an upcoming agenda. And the thing to keep in mind is don't talk about it with other commission members outside of a public meeting. So, outside of a meeting like this. The reason for that is that your decisions made later could be challenged as being improperly made, and so there's been a recent court case regarding Maui County Council regarding that issue. You know, whether decisions were made outside of open meetings, that kind of