

**PLANNING AND SUSTAINABLE LAND USE COMMITTEE**  
**Council of the County of Maui**

**MINUTES**

**January 30, 2019**

**Council Chamber, 8<sup>th</sup> Floor**

**CONVENE:** 9:03 a.m.

**PRESENT:** VOTING MEMBERS:

Councilmember Tamara Paltin, Chair  
Councilmember Shane M. Sinenci, Vice-Chair  
Councilmember Kelly T. King  
Councilmember Alice L. Lee (out 10:02 a.m.)  
Councilmember Michael J. Molina  
Councilmember Keani N.W. Rawlins-Fernandez  
Councilmember Yuki Lei K. Sugimura

**STAFF:** James Krueger, Legislative Analyst  
Clarita Balala, Committee Secretary

Zhantell Lindo, Council Aide, Molokai Council Office (via telephone conference bridge)  
Denise Fernandez, Council Aide, Lanai Council Office (via telephone conference bridge)  
Mavis Oliveira-Medeiros, Council Aide, Hana Council Office (via telephone conference bridge)

Don Atay, Executive Assistant to Councilmember Shane M. Sinenci

**ADMIN.:** David A. Galazin, Deputy Corporation Counsel, Department of the Corporation Counsel  
Michele N. McLean, Acting Planning Director, Department of Planning  
Candace R. Thackerson, Planner, Department of Planning (PSLU-20)

**OTHERS:** Kaleialoha "Pumkin" Moss (via telephone conference bridge - Molokai) (PSLU-23)  
Les Kuloloio (PSLU-20)  
Laurie Chang (PSLU-20)  
Zandra Amaral Crouse (PSLU-20)  
Llewellyn Awai (PSLU-20)  
(9) additional attendees

Rory Frampton, Rory Frampton Consulting Inc.

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Edward Chang, Board Trustee on behalf of John and Kamaka  
Kukahiko of Makena Corporation

**PRESS:**   *Akaku: Maui Community Television, Inc.*

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CHAIR PALTIN:   ...*(gavel)*... Good morning.

COUNCILMEMBER SUGIMURA: Good morning.

CHAIR PALTIN:   The Planning and Sustainable Land Use Committee meeting of January 3, 2019 [sic] will come to order. The time is now 9:03. May I please request that everyone disable their cell phones, ringers, and other noisemaking devices? Thank you. I'm Tamara Paltin, Chair of the Planning and Sustainable Land Use Committee. And I'd like to introduce our Voting Members, we have Vice-Chair Shane Sinenci from Hana.

VICE-CHAIR SINENCI: Good morning, Chair.

CHAIR PALTIN: Good morning. Councilmember Mike Molina.

COUNCILMEMBER MOLINA: Good morning, Madam Chair.

CHAIR PALTIN: Good morning. Good morning...Councilmember Alice Lee.

COUNCILMEMBER LEE: Good morning, Madam Chair.

CHAIR PALTIN: Good morning. Councilmember Keani Rawlins-Fernandez, Vice-Chair.

COUNCILMEMBER RAWLINS-FERNANDEZ: Aloha, Madam Chair.

CHAIR PALTIN: Aloha. Council Chair Kelly King.

COUNCILMEMBER KING: Good morning. Aloha, Chair.

CHAIR PALTIN: Good morning. And, Councilmember Yuki Lei Sugimura.

COUNCILMEMBER SUGIMURA: Aloha, Chair.

CHAIR PALTIN: Aloha. We also have Department of Corporation Counsel representative, David Galazin.

MR. GALAZIN: Good morning. Thank you.

CHAIR PALTIN: Good morning. And Administration representatives, Michele McLean, Acting Director of Planning.

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MS. McLEAN: Aloha, Chair, Committee Members.

CHAIR PALTIN: For our Staff, we have Committee Secretary, Clarita Balala; Legislative Analyst, James Krueger; and on the line we have Mavis Oliveira-Medeiros, Hana District Office Staff; Denise Fernandez, Lanai District Office Staff; and Zhantell Lindo, Molokai District Office Staff. Today's agenda items are PSLU-1 [sic], Orientation Workshop by the Department of Planning; PSLU-20, Conditional Permit for the Kukahiko Estate in Makena; and PSLU-23, Change in Zoning for Tax Map Key (2) 5-3-002:049, Kaunakakai. For individuals testifying in the Chamber, please sign up at the desk just outside the Chamber door. If testifying from one of the remote testimony sites, please sign up with District Office Staff. Testimony will be limited to items listed on the agenda today. Pursuant to the Rules of the Council, each testifier will be allowed to testify up to three minutes per item. When testifying, please state your name and any organization you may be representing. If you are a paid lobbyist, please inform the Committee. Also for individuals sitting in the gallery, please do not comment, clap, record video using flash or interrupt testimony or the Committee's proceedings. I believe we have one testifier on the line from Molokai. So, let's start with the Molokai District Office please.

MS. LINDO: Aloha, Chair. This is Zhantell from the Molokai District Office. We have one testifier, Pumkin Moss, on item 23.

**. . .BEGIN PUBLIC TESTIMONY. . .**

MS. MOSS: Aloha. My name is Kaleialoha Moss but on Molokai I'm known as Pumkin, and I'm testifying on agenda item PSLU-23. The land described in this proposed resolution belongs to my husband and I. We bought this property three years ago and it is located in the heart of Kaunakakai. On this property, there is a laundromat and a retail store. It is currently zoned Interim. And in the Interim zoning, these types of businesses aren't allowed. But because these businesses have been established before the '60s, they are grandfathered in. But what we face is that if ever these buildings were to burn down or fall down, at least half, we're not then allowed to rebuild a laundromat or retail store because of the current zoning. Of course, this is something that my husband and I worry about. This is how we provide for our small children and this is something that we are trying to build for our future and our children's future. We also have encountered that we are not able to do improvements on the property. We currently have a request in for an SMA but due to the zoning where technically those businesses aren't supposed to be there. So, we're not able to do the improvements that we would like. This property in the past was known for not-so-good activities. Since we've been there, we've been able to clean it up to change it. We have a lot of people always compliment us on how different it is now. So, we're...I'm just asking that, you know, you go ahead and help this move along in the process. I know now that it would...if you approve it, it would go in front of the Molokai Planning Commission so I'm just asking for your support. Thank you.

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CHAIR PALTIN: Thank you, Ms. Moss. Moving to testifiers in the Chamber, we have three people signed up at the moment. Calling the first testifier up, Uncle Les Kuloloio.

MR. KULOLOIO: Aloha, Chair.

CHAIR PALTIN: Aloha, good morning.

MR. KULOLOIO: Aloha, all new Members of Council. I'm honored to sit among the new faces that will represent our County, of people of Maui, and I honor each and every one of you with the highest valor of performing your duties here, and thank you for bringing your experiences for all of us on Maui to work with. Good morning. I'll be speaking on this subject real short and fast. My name is Leslie Kuloloio or Aka Kuloloia, the real name of Honolulu Harbor. I have an old history in regards to a place name. Ike kai o kuloloia is the original name for Honolulu Harbor. And in time, history changes. Why? Because Westerners sometime forget to put the L and the O in the right place in the 1800s. So, let me speak on this subject real fast. I'm greatly honored to be part of the bringing up of the values of my mom, Aunty Alice...Aunty Alice Apuakehau, Goh Tong on her Chinese side, related to Sun Yat-sen and Goh Tong Lee who own the Chinese store where Oprah Winfrey is at right now up Kula. And so, I just wanted to mention my dad is a family and I come from four grandfathers and four great grandfathers and four great-great grandfathers and grandmothers. So, my genealogy is big. The conditional permit for the Kukahiko Estate is nothing new. It started on my return from the army after Statehood going into in 1959, been territory as local boys being registered as Caucasians rather than Native Hawaiians. So, in coming back, we found out that we were a State us local boys. I'm a veteran. And so, I just wanted to speak in the time of change, in returning to here, I just want you folks to support this bill because my dad and I fought hard with the Kukahiko family to keep our heritage ongoing forever in the Makena-Honuaua area. We're the only one that had set in a model like this in the State of Hawaii. In the State of Hawaii, we're struggling because we've been surrounded by giant, giant, giant, rich people on both sides. Mahalo.

CHAIR PALTIN: Mahalo. Does anyone have any questions of clarification --

COUNCILMEMBER SUGIMURA: Chair?

CHAIR PALTIN: --for the testifier? Councilmember Sugimura?

COUNCILMEMBER SUGIMURA: Thank you. Nice to see you here, Uncle Les.

MR. KULOLOIO: Thank you.

COUNCILMEMBER SUGIMURA: So, Uncle Les, so, basically you're saying you support the item before us, right? And --

MR. KULOLOIO: Yes.

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COUNCILMEMBER SUGIMURA: --you're part of the family too?

MR. KULOLOIO: I am part of the original...my dad was the president, my mom and myself carried on the beginning of the corporation to bring family together to begin in handling the changes, economic and social changes in Makena real fast. So, we needed to form and educate our families to get ahead before the projection of hotel into Hawaii. Yeah, yeah, in the '60s...'65 . . .*(inaudible)*. . .

COUNCILMEMBER SUGIMURA: Thank you.

MR. KULOLOIO: Thank you.

COUNCILMEMBER SUGIMURA: Thank you.

CHAIR PALTIN: Council Chair King?

COUNCILMEMBER KING: Thank you, Chair. Thank you for being here, Mr. Kuloloio. I just have one question.

MR. KULOLOIO: Yes?

COUNCILMEMBER KING: Have you had any opposition to the conditional permit?

MR. KULOLOIO: Opposition?

COUNCILMEMBER KING: Yeah, in the area? In your...

MR. KULOLOIO: No, I...

COUNCILMEMBER KING: In the surrounding area?

MR. KULOLOIO: I think...I believe that we, the corporation, the family has been in order, trying our best --

COUNCILMEMBER KING: Okay.

MR. KULOLOIO: --learning the socioeconomic changes, the real changes that happened to us through the government under the umbrella of permits, and we've been teaching our young generations how to run business to survive in the future. Yeah, and how to pay the taxes especially in a place like that that we come from. And so, we're trying to...and this is not a sovereignty thing, this is a family thing. Okay. This is a family thing. And I'm here to back up my family and they're listening today. I represent my family, the young and old generation, and I'm the historian, I'm proud, and I'm proud of my kupuna, my parents, that have passed all to us who will be speaking to you in relationships of our family ties.

COUNCILMEMBER KING: And...

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MR. KULOLOIO: Thank you.

COUNCILMEMBER KING: Thank you. And I do appreciate your involvement in our community --

MR. KULOLOIO: Yes.

COUNCILMEMBER KING: --trying to make things better. Thank you.

CHAIR PALTIN: Councilmember Sinenci?

VICE-CHAIR SINENCI: Uncle Les, is there any family types of things on the property?

MR. KULOLOIO: Yes, yes. The reason why we started in 1962 is because when we started to encroach one of our first land use notifications, I think Chairman Machado was on the Land Use Commission for the State at that time, she notified us that we were on the agenda. And when we looked at it, we have our family graveyard, the John Kamaka Kukahiko Corporation graveyard, well, the graveyard and their children, some of them, the other rest of their ten children is buried down at the Makena Keawalai Church and at the Chang's cemetery and elsewhere throughout the State. But this is a big family interrelated to all of us. And I think I'm related to all of you. So, I don't know if I have a conflict of interest especially with the Chair and my ohana people. We are all related to the Kauaia-a-Mahi, yeah. So, that's okay, we're talking family now. Thank you. Mahalo.

CHAIR PALTIN: Any other questions for the testifier? Seeing none, thank you, Uncle Les. Also testifying on PSLU-20, we have Laurie Chang. And Mrs. Chang will be followed by Zandra Amaral Crouse, also testifying on PSLU-20.

MS. CHANG: Good morning. Aloha kakahiaka. Nice to see some old faces and some new faces. My name is Laurie Chang. I live in Makena. I'm the wife of Ed Chang who's...he belongs to the Kukahiko family, not me. But anyway, yesterday my husband said something to me that really touched me. We got a call from one of the wedding coordinators and she asked permission to go down to Kukahiko Estate. And I said, Ed, well what for? Well, there was a couple that came from all the way from I believe was Los Angeles, and they were married there. But they came yesterday, which just touched my heart. They came to put flowers on the Kukahiko grave, and that made me say I need to go up and say that to you. Because, you know, we're really touching people outside of the State of Hawaii. And I thought that was so nice, but wow, that really got to me. I said, this couple came all the way to put flowers on the family grave. And I thought you folks need to know that...need to know that so that you could help you to make your decision. The other thing I wanna tell, several years ago, we had a get together at the house for the family, and Uncle Sami Chang came from Oahu for the reunion. Now, he was I think in his...about 90 years old when he came. And during the day, he sat outside on the deck and he was looking out at the water and I saw tears come down his eyes. And I said...I went up to him I

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said, Uncle Sami, are you okay? He says I'm okay. He says, you know, I'm looking out there and I can remember when I was a little boy, right there on the left side over there, I used to auau over there. I said, oh, you did. He said, yeah, there's nice sweet water that comes down there. We used to auau there. So, my husband told me about that that there was water that came...freshwater that came down to the ocean but I never knew the story about that this is where they took a bath in the days when they were growing up in Makena. So, anyway, there's stories to Makena. We would like to keep this place because there is a lot of stories and it's a beautiful place. And if you've never been there, go and visit that place because it's a beautiful place for people to get married. Thank you.

CHAIR PALTIN: Thank you, Mrs. Chang. Any questions for the testifier? Seeing none, next up we have Zandra Amaral Crouse, also testifying on PSLU-20.

MS. CROUSE: Aloha kakahiaka kakou mao hoaloha. Good morning, my friends. I am testifying...my name is Zandra Amaral Crouse, and I am testifying on PSLU-20. And the reason I am is because local people being able to hang on to their heritage and their properties that their parents, grandparents, and great grandparents worked very hard to hand down to them are entitled to be given ways to hang on to them. I recall many years ago when the hotels started going in. I stood before the Council then testifying on ways, begging, pleading, on ways to keep land taxes down so that these people could hang on to their land. And much has been done in that way. This is a local family. And I recall as a child, going with my father and all of us and staying there, camping there, and then going up to the Medeiros property to go hunting for sustainability. My father had nine children and he worked at Maui Pineapple Company but it was fun. This family has always opened up their property to the scouts, to local families. Unfortunately, well not unfortunately, progress, the hotels came in and caused many of the local landowners to either lose their property or have to make decisions to do things that would enable them to keep their property. This my friends, is one of the ways of the Kukahiko family have found to hang on to their family while maintaining the heritage while still enabling the local folks to come down and visit. If you do not grant them this, I can testify that being the local family that they are, they're not rich, they're land rich because many people before them worked really, really hard but not money rich. But if you don't grant this to this family, there will be an investor from the mainland that will come in, have the money to pay the lawyers to take the land and all of the heritage away from this family. I humbly ask all of you, do what you can and let this family stay where they are not only today, tomorrow, but for generations to come. This...so, we the local people can have access to our beaches through the graciousness of this Kukahiko family. Mahalo.

CHAIR PALTIN: Thank you. Any questions for this testifier? Seeing none, thank you. Hana Office, do we have anyone wishing to testify?

MS. OLIVEIRA-MEDEIROS: Aloha, Chair. There is nobody here currently waiting to testify.

CHAIR PALTIN: Thank you. Lanai Office, do you have anyone wishing to testify?

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MS. FERNANDEZ: Good morning, Chair.

MR. AWAI: Good morning.

MS. FERNANDEZ: This is Denise Fernandez at the Lanai Office and there --

MR. AWAI: I'm sorry.

MS. FERNANDEZ: --is no one waiting to testify.

MR. AWAI: Okay?

CHAIR PALTIN: Thank you.

MR. AWAI: Ready?

CHAIR PALTIN: Did you fill out a form?

MR. AWAI: No, I didn't.

CHAIR PALTIN: Okay. Can you please state your name?

MR. AWAI: Llewellyn Awai. Okay. Llewellyn Awai, family of Kukahiko. I am the treasurer of this Kukahiko. I remember paying \$100 a month...a year. Now, paying \$80,000 a year? It's ridiculous, ridiculous. But we gotta pay the taxes. We have to pay the taxes, right? Family next door, building and all, they don't even build the house completely, it's already sold next to our property. How you do that? How you do that? Okay. I'm here to represent the Kukahiko because we are here to protect our heritage in kuu Makena. My family is from Makena. I'm here just to represent my mom and my grandma, Haihai-Kukahiko, big family. We're just here to protect our family, our heritage in Makena. That's all we wanna do. How do we remain in Makena? How do we remain without...we're dying. We need...that's our family name, Kukahiko. We need to be there to represent our family. That's all I have to say. Thank you. Mahalo.

CHAIR PALTIN: Thank you. Any questions for this testifier? Seeing none, thank you. Anyone else wishing to testify? Last call. Members, seeing there are no more individuals wishing to testify, without objection, I will now close public testimony.

COUNCILMEMBERS: No objections.

**...END OF PUBLIC TESTIMONY...**

**PSLU-1(1)      ORIENTATION WORKSHOP BY THE DEPARTMENT OF PLANNING**

CHAIR PALTIN: Okay. Moving along, for PSLU-1(1), Orientation Workshop by the Department of Planning. Pursuant to Rule 7(B) of the Rules of the Council, the



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Committee intends to have an orientation workshop to be conducted by the Department of Planning. The workshop may cover such topics as the planning framework, Chapter 2.80B of the Maui County Code relating to the General Plan and community plans, Title 19 of the Maui County Code relating to zoning, Chapter 343 of the Hawaii Revised Statutes relating to Environmental Impact Statements, applicable standards of review for applications referred to the Planning and Sustainable Land Use Committee, and other issues germane to the processing and review of the land use applications and amendments to the Title 19 of the Maui County Code. Also, at this time, I'd like to recognize Candace Thackerson in the gallery, Planner from the Department of Planning. County land use and the application process for such entitlements can be quite complex. Since we have many new Councilmembers on our Committee including myself, I have invited the Department of Planning to conduct an orientation workshop to better help us understand what the Department does and our role in the County land use process. Ms. McLean, can you please proceed with your presentation?

MS. McLEAN: Thank you, Chair. And again, good morning to you and to the Committee Members. The presentation will take probably about 20 minutes at the most depending on what questions the Committee may have. There are just a few slides on the Planning Department, a number of slides on the...on land use regulations and the Council's role, and then a few slides on the environmental review process. And if the Chair would allow it, I don't mind if Members jump in at any time with questions or there are a few pauses throughout where I will stop and see if there are any questions on what I just reviewed.

CHAIR PALTIN: That sounds --

MS. McLEAN: So...

CHAIR PALTIN: --good.

MS. McLEAN: Okay. Thank you, Chair. First, the Planning Department has four divisions, and 71 employees. We have our Zoning Administration and Enforcement Division, which we refer to as ZAED, Current Planning, Long Range Planning, and our newest Division with only three people, the Plan Implementation Division. Then we also have an Administration group, which is the Director, Deputy, Account Clerk, Personnel Officer and so forth. And we staff seven boards and commissions plus the community plan advisory committees. So, those are the three island planning commissions including the Hana Advisory Committee to the Maui Planning Commission. We staff the Urban Design Review Board, the Cultural Resources Commission and the Board of Variances and Appeals. And very soon, we will have the West Maui CPAC empaneled. As I mentioned, the Administration Division is a small group for oversight and management of the entire Department. We handle personnel, procurement, purchasing, and we're the main front desk for the Department. Our Plan Implementation Division as the name suggests works on implementation of our long range plans and tracking the implementation of our community plans and the Maui Island Plan. I believe we're just transmitting now the latest report of the

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implementation of the community plan, the Maui Island Plan, and the Countywide Policy Plan. And then for Department projects that are implementing actions in our plans, this Division is responsible for managing those. We have the rewrite of our Zoning Code, Title 19. They were responsible for seeing the adoption of the digital zoning map and they maintain the GIS layer for our zoning. And one of their recent projects was adopting amendments to the Lanai SMA boundaries. So, those are just some of the implementation actions that PID has been responsible for. Our Long Range Division is responsible for our long range plans such as the Maui Island Plan, the community plan updates. They're currently working on an update to the County cultural resources program and they're involved with various master plans. As backup resources for those endeavors, they update the socioeconomic and land use forecasts and they maintain the GIS layers for the Maui Island Plan and the community plans. And they also participate in the Maui MPO, which is the transportation planning organization as well as the State Transit-Oriented Development Council. And they staff the Cultural Resources Commission and the CPACs when the CPACs are empaneled. Our Current Planning Division is responsible for most of the larger project permit processing. So, they're most involved with Special Management Area permits, assessments, exemptions, minor and major permits, State and County special and conditional use permits like the item you have today was processed by our Current Division. They also process changes in zoning, community plan amendments and other major entitlements including B&Bs and STRHs. They're generally the ones who review EAs and EISs that come through the Department and then time extensions for those permits. And they're the staff primarily responsible for our three planning commissions and the Hana Advisory Committee and the Urban Design Review Board. And lastly, ZAED is where the rubber meets the road with our land use plans and ordinances. So, Title 19 is the Maui County Zoning. Hawaii Revised Statutes, Chapter 205 is State Land Use. And ZAED is the one when people wanna know what can I do or not do on my property. They're the ones who handle those inquiries whether by telephone, letter, walk-in. And they review various permits for compliance with zoning and other land use. And they also include our enforcement section, and we enforce not just zoning but also SMA, historic districts, commercial signs, zoning conditions. So, they conduct the investigations and issue notices of warning or notices of violation. And they're also the ones responsible for the County's flood development program. They issue sign and banner permits, landscaping plans and parking plans, and they staff the BVA. And the BVA hears variances or appeals request from any part of the County Code, not just land use. So, if there's a request for a variance from the Building Code or the Fire Code, or the Parks Director makes a decision that somebody appeals, those all go through the BVA. And this is the last slide about the Department, and then we'll go into the land use process that involves the Council. So, I categorized permits into four different categories. First, are reviews where we review a permit for zoning compliance but we're not the issuing Department. So, we review building permits, subdivisions, Certificates of Occupancy for example, we don't issue those but they get routed to us to review for zoning compliance. Then there are ones where the Department has the authority to make the final call. Some of these are administrative, meaning they're black and white. There's no judgment or discretion needed but some of these are discretionary. So, again, the Department issues approval or denial. We review for Code compliance

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and we seek agency comments where applicable. And examples of those are sign and banner permits, flood development permits. SMA emergency permits are under the Department's authority, SMA exemptions, and SMA minor permits. Bed and breakfast and short-term rental homes have an asterisk because the County Code allows for those to get bumped up to planning commission review if certain triggers are hit. So, sometimes those are issued by the Department but sometimes they're issued by commissions. That brings us to the next category, which are decisions where the board or commission has final approval authority, and these are all considered discretionary reviews. And this is where the board or commission grants approval or denial. The Department prepares a staff report and recommendation. So, we assess the application. We send it out for agency comment and then put those together in a staff report and recommendation, and then the board or commission has final approval authority. So, that includes the bed and breakfast and short-term rentals that get bumped up to the commission. It includes SMA major permits, shoreline setback variances, County special use permits, State special permits for projects that are less than 15 acres in size, variances, and appeals. For State special permits that are larger than 15 acres, that is handled by the State Land Use Commission. So, if it's less than 15 acres then the County planning commission or the island planning commission can process that on behalf of the Land Use Commission. And then the biggest category for the permits where Council has authority, those will go through the planning commission first and then will come to the County Council with that planning commission's recommendation. So, an example is like the one you're seeing today, the conditional permit for the Kukahiko Estate, and it also includes changes in zoning, community plan amendments, State land use district boundary amendments, again, less than 15 acres. And also changes to the Zoning Code itself, that is under the Council's authority. So, are there any questions so far before I get into the next section?

VICE-CHAIR SINENCI: Yes.

CHAIR PALTIN: Councilmember Sinenci?

VICE-CHAIR SINENCI: Yes, Ms. McLean, can you...who sits on your boards and commissions to make some of these reviews?

MS. McLEAN: The boards and commissions are volunteers and they are nominated by the Mayor and then approved by the Council.

VICE-CHAIR SINENCI: Okay.

MS. McLEAN: And board and commission members typically have five-year terms, and they only serve one five-year term. And the terms generally begin April 1<sup>st</sup> and end five years later, March 31<sup>st</sup>. So, you folks will be looking at a whole batch of new appointees for those vacancies that are coming up in another couple of months.

VICE-CHAIR SINENCI: Thank you. And you also...when you say discretionary, can you explain discretionary?

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MS. McLEAN: It's...and maybe Corporation Counsel can chime in 'cause there's a --

VICE-CHAIR SINENCI: Thank you.

MS. McLEAN: --legal aspect to it as well. It's where there is some sort of judgment or discretion required versus something that's black and white. So, a building permit for example, is the building setback six feet or not? That's pretty black and white. That's administrative. Does this proposed structure have an environmental impact, that's discretionary. So, where it's black and white, clear-cut, then that's a routine permit. The requirements are met. It's a straightforward call. The ones that require some degree of assessment and judgment are considered discretionary.

CHAIR PALTIN: Yes, Mr. Galazin?

MR. GALAZIN: Thank you, Chair. And I would certainly not contradict anything that the Director has said. Just to supplement that, you know, the ministerial permits, the ones that are not discretionary, you usually can think of as a form that has checkboxes and you just check off the boxes. Does it have four wheels? Does it have an engine? Does it have a roof? It's a car. Okay. The discretionary permits are the ones as the Director said where either there's a body or the administration making a determination based on all the information. Why it matters is that for ministerial permits, a lot of times there are different rules that apply or rather don't apply. For something like compliance with the community plan, a lot of ministerial permits do not require that but discretionary permits do require to look at that. And that's why inconsistencies in community plan become important. And then for purposes of vesting rights for anybody who's wishing to do anything with a parcel of land, usually those rights vest after the last discretionary approval. So, they may still need a ministerial permit but if they got all the discretionary approvals, then they have a vested right to proceed even if there are intervening changes in the law. Those are the two main distinctions that I would make. Thank you.

VICE-CHAIR SINENCI: Thank you.

COUNCILMEMBER KING: Chair, question?

CHAIR PALTIN: Chair King?

COUNCILMEMBER KING: Thank you, Chair. So, Ms. McLean, the...who has the...does the Director see all of the recommendations from the Department? And this relates to a recent SMA exemption that was granted in Kihei by somebody I guess who has left the Department but does that...is...are they able to make those recommendations and have them go through without like oversight by yourself or a supervisor?

CHAIR PALTIN: Ms. McLean?

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MS. McLEAN: Thank you, Chair. The Director does not see those kinds of decisions. The responsibility for those decisions are the Director's but those are handled on a staff level. Those are usually signed off by the Division Chief. For SMA exemptions, the two different divisions actually handle SMA exemptions, ZAED and Current. And so, the staff planner would do their analysis, have it reviewed by their supervisor, and usually the Division Chief and then an exemption or even an SMA minor permit can be issued through that process. The Director does not see those.

COUNCILMEMBER KING: Okay. So, it would take...I guess what happened in Kihei, which was the complaint for the Director to get involved and step in and oversee that process.

MS. McLEAN: That's correct.

COUNCILMEMBER KING: Okay.

MS. McLEAN: And certainly there are occasions where the Division Chief isn't sure or the staffer isn't sure and they seek direction before they finalize it. But in that particular case, they didn't seek direction and they proceeded.

COUNCILMEMBER KING: Okay. That...and that would be one of the discretionary things that...so, not all discretionary issues are handled by...are finalized by the Director is what you're telling me?

MS. McLEAN: That's correct.

COUNCILMEMBER KING: Okay.

MS. McLEAN: And we process hundreds of those a year. So, it's a matter of efficiency to not have everything come to the Director.

COUNCILMEMBER KING: Okay. Thank you.

CHAIR PALTIN: I had a question. How do we ensure the consistency of the discretionary decisions being made?

MS. McLEAN: That's a great question. We do our best and that's why the Division Chief and the supervising planners in those divisions need to coordinate together. In the Current Planning Division for example, the current planners meet every Friday morning and that's an opportunity to talk story about different projects. Oh, I have this one, I'm not really sure if it's this or that, and someone can say, oh, I had a similar thing before and this is how I handled it. But it's...we do strive for consistency. But at the same time, we also encourage staff to use their judgment. And so, there isn't always consistency. We strive for it but that really is the role of the supervisors and the Division Chief.

CHAIR PALTIN: Thank you.

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MS. McLEAN: Okay.

CHAIR PALTIN: Anybody else have any questions? Continue.

MS. McLEAN: Okay. Now, on to the discretionary permits where the Council has authority, as I'm sure everyone would agree, we have a very complex land use regulatory system. So, touching on again, we have State Land Use Districts, which are pursuant to HRS Chapter 205. We have the Maui Island Plan and the community plans, which are under Maui County Code, Chapter 2.80B. We have zoning, which is Title 19 of the County Code. And then we have environmental review, which is again State law, Chapter 343. Then there are other designations that apply in our regulatory system. These typically don't involve Council. But on top of these different layers, there are other special designations. And just the general objectives of land use regulations, there are several, encouraging appropriate land use, conserving and stabilizing property values, making sure that detrimental uses don't occur next to existing uses; and then the broad category of promoting health, safety, and general welfare. And that includes open space resources, recreational resources, and environmental health. It's not strictly personal health. And again, these work in layers. So, starting at the bottom, you have the land, and we'll look at these maps more closely in a few more slides. This is the area where UHMC is located. So, you have the land itself. You have State designations, community plan, zoning, and then you can also have SMA, flood, and other designations. The Maui Island Plan isn't shown in this particular example 'cause I stole it from an old presentation and didn't insert the Maui Island Plan. So, starting at the...that first layer, the State, looking at Maui Island, 94 percent of our land is in Agriculture or Conservation. Only 6 percent is in Urban or Rural. And that's typical Statewide. So, again, there are four State Land Use Districts, Ag, Conservation, Urban, and Rural. And you'll see the majority is in Ag, with a...so, close second by Conservation, very little in Urban and Rural categories. So, when we talk about State Land Use District boundary amendments, which are under Council's authority for under 15 acres, it's changing these districts. Typically, what you see is a change from Agriculture to Rural or Urban. That's the most typical thing that the Council sees. And here's a map of Maui that shows these designations. You'll see the green is Conservation, and that's the national park and typically the watershed areas. Then the Rural is the dark brown, and you see that mostly here, Upcountry, and here, Pukalani and Makawao. Then the red is Urban. And then Agriculture, I call it largely it's the default category. And that's problematic, and we can talk about that another time, but you try to have this one-size-fits-all regulation of Ag land when really it's one size doesn't fit all. Looking at this information in another way, you can see there's just a small percent in Urban and Rural. And moving on to the Maui Island Plan, it was adopted just a few years ago and the Maui Island Plan adopted urban growth boundaries, which are shown here.

COUNCILMEMBER RAWLINS-FERNANDEZ: I'm sorry, Director McLean.

MS. McLEAN: Sorry.

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COUNCILMEMBER RAWLINS-FERNANDEZ: Were you planning to present on the rest of the County? Were you gonna include Molokai and Lanai in the presentation or just the Maui island?

MS. McLEAN: For the State districts, I only have Maui for the presentation. The Maui Island Plan, the urban growth boundaries are in the red, the small town growth boundaries in the yellow, rural growth boundaries in blue, and then they're also protected areas. So, this is another layer of land use regulation that we look at when there's proposed development. And to amend the Maui Island Plan, again, that's something over which the Council has authority. And then we have the community plans. There are nine community plans, and these are when they were most recently adopted. Molokai was just completed at the end of last year. And this is the order in which they will be updated. And the order is determined by the Council. So, in 2013, the Council established this order of updates. And you'll see some of those are quite dated even though they're supposed to be adopted or updated, excuse me, every ten years. And this is that same area, this is where UHMC is located. This is what community plan designations typically look like. They're somewhat broad. So, in this example, we have Park, Public/Quasi-Public, Multi-Family, Business. And to amend these designations again is under the Council's authority. And also if any changes or proposed to the text of the community plan, that's also under the Council's authority. Zoning is a lot more specific. It establishes what we call development standards. That includes building heights and setbacks, the minimum lot size if you're going to subdivide and the lot width, what uses are permitted on that property, the overall density, as well as landscaping and parking requirements. So, looking back at UHMC, the zoning map is a bit different. It's more specific. In the Park designation, we have two different Park districts. We have Park and Golf Course. In the Residential, we have R-1, R-2, R-3, R-0, so as opposed to the community plan designation of Single-Family. There's M-1 and M-2, Industrial zoning districts. We also have an M-3, Industrial District. This is the H Hotel Zoning District. We also have H-1, H-2, and HM. And then the P-1, Public/Quasi-Public District. We also have a P-2, Public/Quasi-Public District. So, there is more variety and more detail with zoning. And again, to change that zoning, Council has authority for individual parcels as well as changing the Code itself. Ideally, again, looking at these layers, they all work together and are consistent with each other but not always. So, you can see in this example where the community plan on the lower left has the site designated Public/Quasi-Public, which is appropriate for the school, but then the zoning map has the properties split-zoned between Residential and Light Industrial. It's not problematic because the uses of the school happened to be allowed in both those zoning districts but certainly it's not ideal. Looking across the street at the Queen Kaahumanu Center is Business on the community plan, it's M-2, Heavy Industrial, on the zoning map. So, they don't always work together even though that is what we would like to see. Then lastly, conditional permits, which is what you have before you today, this is pursuant to a specific chapter in the Zoning Code, Chapter 19.40. And conditional permits are used when there's a use that the zoning district doesn't allow but you don't wanna go ahead and change the zoning. You want to allow a use that's not permitted in the district but it's similar, related, or compatible to those uses. And sometimes you do it on sort of a trial basis and see if that works out then you go

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ahead and change the zoning permanently. But it's common for conditional permits to be renewed and extended over longer periods of time. And examples are like what you're seeing today to allow special events. We have conditional permits for concrete batching plants, cell towers. But most recently, we've seen them for special events like you're seeing today. So, in summary for the Council's authority, Council has final approval authority over changes in zoning, community plan amendments, and Maui Island Plan amendments, State Land Use District Boundary amendments less than 15 acres, and conditional permits. And before the Council reviews those, the relevant island planning commission will hold the public hearing and make a recommendation.

CHAIR PALTIN: Ms. McLean, before --

MS. McLEAN: Yes?

CHAIR PALTIN: --you go on, I just was wondering maybe it's because Molokai and Lanai aren't included in this presentation but we also have on the agenda PSLU-23, where it goes over Interim zoning in Molokai, and I was wondering that wasn't included, what...what's...is that only on Molokai?

MS. McLEAN: No, there is Interim zoning throughout the County. When the County first adopted the concept of zoning in 1958, it zoned all lands in the County Interim. And the Interim District listed a number of permitted uses, different standards like setbacks and building heights and said, everything is zoned Interim until we zone otherwise. And then after that, the County adopted various land use maps for large areas. There's a big...there was a big land use zoning map adopted for South Maui, some for West Maui. And after those regional zoning maps were adopted, there wasn't any effort to continue proactively zoning. And so, a lot of land was left in Interim. Then applicants could come in, parcel by parcel, or the County might initiate a zone change for some reason or another. So, land did get zoned here and there, but lots of land remained Interim. In the late 1990s, the Planning Department took an initiative to proactively zone Interim lands in the State Urban District. So, you saw on that map, it's a, relatively small areas. And where the existing use on the property match the community plan designation in the Urban District, the Department proposed zoning that property accordingly. So, that's when Kaunakakai got zoned. That's when Makawao, Paia, other places got zoned whether it was Business, Residential, whatever. However, if there were vacant parcels or if there were parcels where the use and the community plan did not match, those were left in Interim or changed to Urban Reserve in some cases. So, they're still Interim-zoned. Then when the County adopted the Rural Bill in the late '90s and then the Ag Bill in '98, those had comprehensive zoning provisions in them. So, most rural lands got zoned, and most ag lands got zoned. And so, that took care of most of the Interim but there are still places on Maui, on Lanai, on Molokai that have Interim zoning. Molokai has the most I believe but there is still Interim zoning throughout the County.

CHAIR PALTIN: So, that initial Interim was 1959 or...

MS. McLEAN: Fifty-eight.



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COUNCILMEMBER KING: Chair? Oh, sorry --

CHAIR PALTIN: Chair King?

COUNCILMEMBER KING: --I thought you were...I'm sorry, were you done?

CHAIR PALTIN: Yeah.

COUNCILMEMBER KING: There's a zoning code in the Kihei-Makena Community Plan, which I'm not sure what it...maybe you don't even know what it stands for, it's an O. I've been told that's not open space but it means open. And I heard various explanations for it but maybe you could give us a formal explanation for what that O means and if it exists anywhere else in the...any of the other community plans.

MS. McLEAN: The...when a land zoning map was adopted for South Maui, so that was, you know, if you can picture a map of the island of Maui, it was a large rectangle that covered a lot of South Maui, that just established all these various zonings. And one of those was called Open zone on that map. But there was never a chapter put into the Zoning Code for Open zone to say what's...what uses are allowed. So, I don't know if that exists in other locations. And when people come in with those designation, there were also areas zoned proposed road or future reserve, you know, these things that we grapple with what they tried to...what they were trying to do. The adoption of the digital zoning map for Maui addressed a lot of those but some of those we were uncertain enough as to what they meant that we left those as they are because that's something that the Council needs to determine. So, if there is something that's Open zone, we would have to look at, you know, what we can find out from the zoning as well as what the community plan says and try to determine what uses may or may not be allowed on it.

COUNCILMEMBER KING: Okay. Is it possible to...is it too far back or is it possible to try to determine original intent on those kinds of things?

MS. McLEAN: It's...

COUNCILMEMBER KING: And I don't know if it's the intent of the Planning Department or the County or the Administration or the community because we have land use designations and then we have zoning but...

MS. McLEAN: Right. I...we've looked and I don't think we've been able to find much. It was adopting this comprehensive map and I don't recall that there was much explanation for that particular designation.

COUNCILMEMBER KING: Okay. I guess that's another thing we have to work on. Thank you.

MS. McLEAN: Yeah.

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COUNCILMEMBER KING: Thank you, Chair.

CHAIR PALTIN: Member Lee?

COUNCILMEMBER LEE: Thank you, Madam Chair. Michele, years ago, this CP, conditional permit, was called conditional use permit, is there a reason why it changed? And the second part of that question is the length of time used to be a limit of five years, what's the length of time now?

MS. McLEAN: The Chapter 19.40 in the County Code is titled Conditional Permit. And over time it just became common to call them conditional use permits 'cause it is a conditional use. Similarly, we have County special use permits and that's what the Code calls them. On the State level, they're called special permits. But we got used to calling them special use permits. So, we've tried to change the terminology to be consistent with what the Code or the State statute says. And in this case, it's conditional permit. The time limit does vary. There has been a practice of an initial permit being granted for five years but it doesn't have to be. It could be for any length of time. In some cases, the Council may wish for it to be a shorter period if you're uncertain about the use and you wanna see it again in a year. Or if it's a use that's been going for quite a while even without a permit, and if you feel like we don't need to see this again, you can grant a longer term, yeah.

VICE-CHAIR SINENCI: Chair?

CHAIR PALTIN: Member Sinenci?

VICE-CHAIR SINENCI: Question for Ms. McLean. Will the Council be able to chime in to the changes to Title 1 or that process has already ended?

MS. McLEAN: The...to the Zoning Code change?

VICE-CHAIR SINENCI: Yes.

MS. McLEAN: The...well, ultimately, a new Zoning Code could only be adopted by the Council. So, absolutely, the Council will have a say. We are in the process of entering into a contract with...we had bids. We're scoring the bids or we will soon be entering into a contract for a consultant to propose a draft, a new draft of the Zoning Code. And that's gonna be a multi-year process. As with the audit that was performed, there's interaction with a broad variety of stakeholders, and the Council will be one of those. So, as they're working to prepare this draft, they will be spending time with the Council, giving the Council updates and getting feedback from the Council on the direction that it's going in. And then eventually, it will end up with the Council for adoption.

CHAIR PALTIN: Member Molina?

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COUNCILMEMBER MOLINA: Yeah, thank you, Madam Chair. I just wanted to ask a question of Director McLean related to an earlier portion of the presentation upon the completion of questions for this particular section.

CHAIR PALTIN: Sure thing.

COUNCILMEMBER MOLINA: Thank you.

MS. McLEAN: Okay. There are just a few slides on the environmental review process. This is under State law, Chapter 343, within the planning process to have environmental review. It encourages conservation, enhancing quality of life, allows public participation. And when you have an EA, an Environmental Assessment, or an EIS, an Environmental Impact Statement, there has to be an agency that accepts that. And the accepting agency is the one who has the first discretionary permit approval authority. However, if it's a government entity that's pursuing the action, then they often accept their own EA or EIS. In State law, there are nine triggers that require the preparation of an EA or EIS. The one that is most common is the use of State or County lands or funds. And even though there might be a private development on private land, it will often involve roadway improvements or other infrastructure improvements. So, that's where the trigger comes in for State or County using State or County land. Also, a use in the State Conservation District, use within the shoreline area, use within any historic site, within the Waikiki area of Oahu, amendments to the General Plan other than a change to Agriculture or Conservation or Preservation. So, this is another trigger that is common for what the Council sees. If someone wants to amend the community plan, that's a trigger for an EA or EIS. However, if it's County-initiated, if the Council initiates a community plan amendment or the Department initiates a community plan amendment, then that trigger is not hit. Reclassifying State Conservation District lands to the Ag or Rural or Urban District is also an EA trigger. Helicopter facilities or wastewater and other major infrastructure facilities. All of these are triggers. In addition to these triggers; however, there are exemption classes. So, that first trigger for example, use of State or County lands or funds, that means if you go out and buy paperclips for your Council office, that could be an EA trigger. But no, under ongoing operations, that's one of the exemption classes. And this is really intended for those small kinds of things to not have to prepare an EA or EIS. Continuing administrative function is number ten. That's another again, paying our staff salaries, things like that. Those don't trigger an EA or an EIS. And the way the exemption classes are administered is every agency is supposed to prepare a detailed list under each of these classes for the types of things that that agency would see being exempt and then that list has to get approved by the State Environmental Council. So the County of Maui has a Countywide exemption list that covers the entire County and then different County departments have their own exemption list. So, if you hear of a project that has a...has...that declared an EA exemption, it follows one of those approved classes that the Environmental Council reviewed. Generally, what we most often see is for the relevant island planning commission to be the accepting authority for an EA or EIS. The EA or EIS process, the preparer of the document does preconsultation with various County departments. They can also go to the planning commission as a preconsulted agency. Then the applicant prepares the EA and presents the draft to the commission. And then the

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commission makes comments and those comments, as well as any other comments that the applicant received on the draft EA gets incorporated into the final EA. Then the commission accepts the final EA and issues a finding of no significant impact, which is called a FONSI. However, if the commission doesn't accept the final and doesn't issue a FONSI, then an EIS has to be prepared. Sometimes with major projects, applicants will go ahead and just prepare an EIS from the get go knowing that the project is too significant and needs more study than an EA would allow. And even if it's let's say an agency action where the agency is going to accept its EA, the planning commissions are often...often review the document as a commenting agency. And that's it.

CHAIR PALTIN: Member Molina?

COUNCILMEMBER MOLINA: Thank you very much, Madam Chair, and for allowing me to ask questions about something that was previously discussed by the Director. My question is...relates to boards and commissions especially the planning commission, which is probably one of the most high-profile and important commissions in our community. The issue is accessibility of commissioners to the public. We, as elected officials, we have our office numbers published and e-mails, and we're expected to be accessible to the public to discuss any item that will be coming up on the Council agenda. Now as it relates to planning commission members, are they asked or told that...are there limitations on their accessibility? Like for example, if there was an upcoming item on the planning commission that may not have Council oversight, could be potentially controversial, and a member of the public wanted to lobby a planning commissioner or to support or not support, are there restrictions for them? And I know this is strictly...they're strictly volunteers whereas we're paid by the public as elected officials. So, does the Department have a policy with planning commissioners on their accessibility to the public as it relates to discussing an agenda item with members of the public before, you know, outside of the planning commission meeting setting? Maybe Corp. Counsel I guess can add to this.

MR. GALAZIN: Thank you for that question, Member Molina. That's really good and something I try to go over with the commission, the planning commission, the Maui Planning Commission, at least once a year every time we get new members on during the orientation. And I personally encourage members to go out and be visible within their community for those items that speak to their advisory function, you know, whether it's legislation that land use legislation that this body is considering as a whole, and it is sent to the planning commission for review. You know, I encourage the members to go out and listen to people, get feedback, and talk about it. The thing that we run up against for planning commissioners is they often act in the same meeting, both in an advisory capacity or in a quasi-judicial capacity. In that instance, State law requires that the body not consider any outside sources that are not open and available to all parties. It would be something akin to an ex parte communication with a judge. So, in those instances, the best that the commissioners can do individually, and now I advise them, is to speak with members of the public who wanna approach them and talk about it and then encourage them to participate when the item is up for a public hearing before the commission because they do have to be

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very careful in terms of avoiding any appearance of impropriety and any appearance that they may have prejudged an issue or considered some facts. It is a fine line. I think it's difficult for a lot of the new commissioners to sort of find where that balance is and they may be a bit hesitant. But I try and explain to them what, you know, what the difference is for in terms of being a conduit when it comes to bringing together discussion items, being a conduit for the community, and then being in an impartial role and encouraging people to come if they do approach them but making sure that they do not attempt to...it goes beyond Sunshine Law requirements in terms of listening to somebody talk and somebody, but not making a commitment to vote. This is really a quasi-judicial function of State law in Chapter 91, HRS, that mandates this kind of approach. So, that's the short answer.

COUNCILMEMBER MOLINA: Okay. Sure. So, basically, it's that you encourage them to get out and talk to the community but not make any commitments to any item that's upcoming on the agenda so to speak, yeah.

MR. GALAZIN: Yeah, that's correct especially when it comes to, you know, something that's a contested case item where, and say somebody is looking for a permit and they have a hearing before the commission on that permit, they can't...the commissioners can't really talk to anybody about that. If somebody wants to talk to them, they...the best answer is to say, well, the meeting is gonna be on, you know, X date, please come and provide your testimony or submit written testimony.

COUNCILMEMBER MOLINA: Okay. Thank you. Thank you, Madam Chair.

CHAIR PALTIN: Chair King?

COUNCILMEMBER KING: Chair, thank you, Chair. I just want to follow up on that comment and if you could extrapolate the difference between the planning commission and the Council in those areas because we get lobbied a lot. We have people that go from office to office and sit down and talk to us, and, you know, I don't know, maybe we're not considered quasi-judicial. And so, and maybe we're expected to do that but what is the difference between, and is it...have...does it have anything to do with us being elected and the planning commission being appointed?

MR. GALAZIN: Chair? Thank you, Chair. That's an excellent question to ask. As a Legislative body, that's what makes you folks different. When you act on a conditional permit, you do so via legislation. And that's where the distinction lies. Because yes, as you point out, you are elected representatives and you sit in that capacity. And even though you sometimes hear information from both sides of an issue before making a determination, the way that you carry out your powers is through, you know, passage of resolutions or most often, you know, passage of ordinances. That's why in your community plan ordinances, changes in zoning, conditional permit, those are all things that require, you know, two readings of a bill, the, you know, opportunity for people to testify and everything that goes with that. And that's really like I said, the distinction comes down to as a Legislative body just under State law,

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you're considered different even though sometimes what you do seems a little bit like say in a capacity of having to judge or weigh the relative merits of something.

COUNCILMEMBER KING: Okay. Thank you.

CHAIR PALTIN: Councilmember Sugimura?

COUNCILMEMBER SUGIMURA: Thank you. So, I have a question basically for the Department. EA and EIS, so I hear that, you know, projects do one or the other, so what basically triggers it? If it's a bigger project, is it...then you do an EIS or what triggers that difference?

MS. McLEAN: One of the triggers can be if an EA is prepared and then a FONSI is not issued where the accepting agency says we do not have enough information in this document, in this final document, to determine or to issue a finding of no significant impact. We need to know more. So, if it gets, I don't wanna say rejected, but if after reviewing a final EA, an agency says we can't make that call yet, we don't have enough information and not enough analysis has been provided, then it has to move to an EIS. And there are differences between the two. An EIS has a bit more extensive process to follow and the contents are more extensive. There's more analysis, more alternatives are studied, just there's...it's not as if HRS 343 has two different sections that this is an EA and this is an EIS, it doesn't at all. Their administrative rules provide a little bit more guidance but it's still whatever the accepting agency needs to make a call. And oftentimes, that's substantive enough to have to be an EIS.

COUNCILMEMBER SUGIMURA: Thank you. If I could ask a couple more questions. So, on the conditional permits, so let's say if we gave like I think it was Haiku Mill, we gave them a five-year conditional use permit or conditional permit, what happens after the five years?

MS. McLEAN: The County Code allows for time extensions to be granted by the Department, by the Director. However, if in the conditions that you established on that permit, you indicate that you want the time extension to be reviewed by the commission or by the Council, then you can specify that. Prior to the expiration date, the applicant has to submit for a renewal request. And if conditions haven't changed, if there aren't any substantive changes, then we would issue the renewal. We would issue a time extension. If there are changes however, then it would be the Director's call to take that forward to the commission and Council to amend the terms to allow more events for example or more people.

COUNCILMEMBER SUGIMURA: Thank you. One last question. So, as this relates to, 'cause in your testimony, you mentioned Interim zoning, and I think the question came up about Molokai. And I believe you said that Kaunakakai, a lot of it was then changed from Interim to I guess it would be Business Country Town, right? So, in the case of the item that's before us, they're in Kaunakakai Town but yet they were forgotten or why weren't they also...why wasn't that also changed when the mass changes were made at that appropriate time?

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MS. McLEAN: I believe at that time, the community plan designation was not Business Commercial. And because the use in the community plan didn't match, even though the use was Business, and as the testifier said the Business use was grandfathered, the community plan designation wouldn't have allowed the County to zone it Business 'cause you can't zone inconsistently with the community plan.

COUNCILMEMBER SUGIMURA: So this just corrects what should have been done then?

MS. McLEAN: Now that the community plan has --

COUNCILMEMBER SUGIMURA: Yeah.

MS. McLEAN: --been updated and designated that Business then yes --

COUNCILMEMBER SUGIMURA: Okay. Good.

MS. McLEAN: --it can be zoned Business.

CHAIR PALTIN: Chair King?

COUNCILMEMBER KING: Thank you, Chair. So, I've seen various accepting authorities mentioned for EAs, and who makes that designation, of what...who the accepting agency will be?

MS. McLEAN: If it's again, if it's an agency action then the agency makes that call. And oftentimes, the agency says we will accept our own EA. So, if Department of Water Supply is going to do a new wastewater treatment plant, they prepare the EA. They can accept their own EA.

COUNCILMEMBER KING: Okay. 'Cause that seems a little bit like a conflict of interest. I mean you got...

MS. McLEAN: It...

COUNCILMEMBER KING: It's really limited oversight if you're gonna accept your own EA because you're not gonna do something you're not gonna accept.

MS. McLEAN: If there aren't any entitlements required, then there really isn't a venue for another agency to accept it. If let's say they needed a Change in Zoning to do a new water treatment plant somewhere, a Change in Zoning that would go to commission and Council, then if the commission wasn't the accepting authority if the Department of Water Supply said, we want to accept our own EA, the commission would at least be a consulted agency on it. For a private project, let's say there's a private project that has an entitlement as well as roadway improvements, they...there is sometimes, and the roadway improvements are gonna go in first, there is sometimes a question, should it be planning commission or should it be Public Works or State DOT? And so,

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the applicant inquires, would you be the accepting agency or would you be the accepting agency? But when it's an agency action, it's...it is generally the agency's call.

COUNCILMEMBER KING: Okay. And that's in ordinance?

MS. McLEAN: That is in either HRS 343 or the administrative rules that go along with that.

COUNCILMEMBER KING: Okay. Thank you.

CHAIR PALTIN: Are there any further questions? Okay. Members, if there are no objections, the Chair will defer this item.

COUNCILMEMBERS: No objections.

**COUNCILMEMBERS VOICED NO OBJECTIONS.** (Excused: AL)

**ACTION:           DEFER PENDING FURTHER DISCUSSION.**

CHAIR PALTIN: So, it's about 10:20. Do you folks wanna take a ten-minute recess?

UNIDENTIFIED SPEAKER: Sure.

CHAIR PALTIN: Okay. So, we'll come back at 10:30. Recess until 10:30. . . .(gavel). . .

**RECESS:           10:20 a.m.**

**RECONVENE:   10:30 a.m.**

CHAIR PALTIN: . . .(gavel). . . So, the Planning and Sustainable Land Use Committee meeting will come back to order.

**PSLU-20           CONDITIONAL PERMIT FOR THE KUKAHIKO ESTATE (MAKENA)**  
(CC 18-377)

CHAIR PALTIN: Next up on the agenda we have PSLU-20, Conditional Permit for the Kukahiko Estate. The Committee is in receipt of the County Communication 18-377, from the Planning Director, transmitting a proposed bill entitled A Bill for an Ordinance Granting the John & Kamaka Kukahiko of Makena Corporation a Conditional Permit to Conduct Special Events within the County Apartment District, Tax Map Key Number (2) 2-1-007:079, Makena, Maui, Hawaii. The purpose of the proposed bill is to grant a request from John & Kamaka Kukahiko of Makena Corporation for a five-year conditional permit to conduct a maximum of a 110 small-scale special events per year on a .811-acre parcel within the County A-2 Apartment District at 5034 Makena Road, Kihei, Maui, Hawaii, identified for real property tax purposes as tax map key (2) 2-1-007:079. Members, the Staff is passing



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out a revised proposed bill for your consideration today. While some changes are for clarity, I have also incorporated revisions recommended by the Department of Planning in their letter dated January 28, 2019, which is available in Granicus. I would ask that the Committee focus on the revised version of the bill being distributed today. With us today to help us with any questions we have on the project, a representative of the applicant, Ed Chang of John & Kamaka Kukahiko of Makena Corporation, and the Corporation's consultant, Rory Frampton. Because of their specialized knowledge concerning the application, the Chair will ask they first be designated as resource persons pursuant to Rule 18A of the Rules of the Council if there are no objections.

COUNCILMEMBERS: No objections.

CHAIR PALTIN: Mr. Frampton has a short ten-minute presentation prepared for us. Before he proceeds, I would like to ask if the Department of Planning has any opening comments?

MS. McLEAN: Thank you, Chair. We have no comments at this time.

CHAIR PALTIN: Thank you. Mr. Frampton, please proceed with your presentation.

MR. FRAMPTON: Thank you very much, Chair. Again, my name is Rory Frampton. I'm a planning consultant on behalf of the Corporation. And I'll go through my presentation, which will give you a little orientation of the use. I have some maps and photographs to show what the property looks like, where it's located. And then we'll talk a little bit about the conditional permit criteria and justifications for this request. And then after that, we'll have Uncle Eddie Chang come up and give a little bit more history about the family and their presence in Makena. So, for project description, again, the applicant is John and Kamaka Kukahiko of Makena Corporation. The request is for an after-the-fact approval of a conditional use permit in order to continue using the property for events such as weddings, receptions, vow renewals, photo shoots, et cetera. It doesn't involve any new construction or significant land use change. No ground altering activities are proposed. The property consists of a main dwelling of about 3,500 feet and a cottage just under 700 feet, and a garage. The land use designations as was mentioned is Apartment, and the zoning, Public/Quasi-Public, and the community plan, Urban under the State Land Use District, and it's in the Maui Island Plan Urban Growth Boundary. The need for the project, just as background, this property was purchased by John and Kamaka Kukahiko in...from Ulupalakua Ranch in about 1883. The John and Kamaka Kukahiko of Makena Corporation was incorporated in 1973 as a way for remaining heirs of the property that just had very small percentage ownership interest to maintain a portion of the Kukahiko family lands in Makena. Some background, there's been in this area, there's been skyrocketing land values as was mentioned earlier by Uncle Llewellyn. When he mentioned long ago that taxes were I think \$7 or \$100 a year, now, this past year there were \$57,000 a year, the family had to pay in taxes. And in 2013, it was \$74,000. So, you know, the taxes are based on comparable land sales in the area. So, even though they haven't done much in the

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way of improving their property other than putting the homes on it, the taxes have just gotten rather ridiculous if you ask me. Without the generation of revenue from the events, maintaining the property as a family beach house is difficult at best. And also in terms of need, there's a high demand for wedding venues on Maui and the property provides an ideal location for small-scale events and ceremonies. The...you have before you the bill with the conditions and just as a quick summary, you know, there's limitations on the number of events, number of guests, the time of operations. They don't...all parking should be onsite. For larger events, they use shuttles. And no event structures would stay open longer than...or keep...would stay on the property for longer than 24 hours. There's a lot of house rules as well, like having an event coordinator must be present onsite as well, and the property owner has a right to enter and inspect the property at any time, and they need to conform with the Department of Liquor Control and Department of Health standards, and there's rules on, you know, no fire dancing or drums or flying aerial drones, and also just basic common sense type of rules. If you're belligerent or acting out, you can be kicked off the property and the event would end. And these rules have been put in place. As was mentioned, they've been doing the weddings on this property. It started kinda small as a way to generate some revenues and then eventually, it's grown to the point where they need to come in and get the conditional permit. But over the years, they've developed a really strict set of rules. And when we were at the planning commission, one of the testifiers said he had looked up the reviews of this property and everybody said how beautiful it was but a couple of people said, well, but you gotta...they're really strict, you gotta follow the rules, they mean business. And so, that's...it's kind of the common knowledge on the street that they don't wanna impact the neighborhood negatively. Other required permits, the Planning Director issued a SMA exemption for the temporary activities because the tables and the chairs and the trellises are considered to be very minor. And there was also a shoreline setback assessment that the temporary placement of minor structures in the setback area would be allowed as a minor activity. And also because it's in a shoreline setback, I'll just mention this 'cause you talked...Michele talked about it earlier, that's a potential trigger for an Environmental Assessment but it falls under the class of minor actions or minor activities. So, it was also determined to be exempt from the Environmental Impact Statement law. So, the next series of figures are some maps, and I'm gonna zoom in to where we just...or looking at the property and immediate neighbors. But this slide shows Big Beach on the left and the beginning of Wailea or Palaua on the right side. The project site is right in the middle of Makena. It's right at the northern point of Makena Bay and in the vicinity of Keawalai Church and the former Makena Prince Hotel. This is another zoom-in of the property showing the project site on that peninsula that forms again the northern point of Makena Bay. It's right on the northern side of the edge of homes there. Na Hale O...Hale O Makena condos are across the street, a little bit to the north--I'll use this pointer--in this area here. And then of course, Makena Landing is right around the corner. So, if you go from this house, I'll go to the next slide, there's the house property in red. From that...there, the property goes up. The topography I should say goes up about almost 30 feet in elevation. So, those homes there are all on a bluff overlooking the ocean. And then of course, on the left side there is Makena Landing parking lot. So, they're all right there in vicinity...in the vicinity of Makena Bay. The area outlined in white is the area that

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was the original Kukahiko property boundary. And what's remaining of the Kukahiko family lands is the red, outlined in red, that's the project site. And I just note, I did highlight the Luuwai property. They're also Kukahiko and they had enough shares and interest to have...actually have their own parcel when it was partitioned for sale in the late '60s and early '70s. So, just looking at the project site, the Chair mentioned is .8 acres. It's a pretty sizable property. It has a lot of room in the front, along the roadway for parking. I'll do the...I think that's the next slide here.

UNIDENTIFIED SPEAKER: Point eight?

MR. FRAMPTON: Yeah. So, here's the project site, and the parking occurs along the...along the long driveway or in this gravel area where I labeled parking. The...most of the activities happen in the front or in the front--I always call the ocean side the front--but on the ocean side of the property. And there's a well-established public shoreline access that borders the entire northern boundary of the property. That's a well-used access. It's a very popular diving spot offshore both for scuba divers and for snorkelers. There's always kayakers and tourist boats out there dropping off people to go snorkeling. The homes to the immediate left of the property if you're proceeding down these homes are...they're large multi-million dollar homes. The house immediately next to the property is 9,000 square feet. The next one over is about I think the next two average between six and 7,000 square feet along with the cottage. So, they're big homes. The rising values of land in this area is really what impacted the family and has caused their taxes to skyrocket as I said earlier. This is looking at the house from the road as right at the bottom of the hill where you start to go up the bluff. And you can see the dwelling on the left, the garage in the middle, and the cottage on the right. And the family graveyard is to...a little further to the right. If you go up the hill a little ways, because of the low-profile nature of the homes, you can see over the homes. It's unlike a lot of properties in Makena. A lot of properties in Makena have been walled off and you have a lot of privacy walls and gates and you can't really look out towards the ocean. This property is maintained in a very open way. It's kinda symbolic of how their family has always been in the area, being very open to having people come and visit and having gatherings down there. This is the ocean side of the house. This is where a lot of the activities take place on the makai, the lanai, and then the yard down below. This is the yard area in the front looking south towards the Iliili Stone Beach. And this is from the Iliili Stone Beach looking back towards the yard. And that's where a lot of their ceremonies occur. The ohana dwelling is on the right and then the detached garage is on the left. And they have some additional bathrooms that you can enter...use these bathrooms without going into the house 'cause a lot of the events they just use the yard. They won't use the inside of the house. This is what a typical lawn ceremony would look like. And this is what a smaller event might look like as well. So, I'm gonna go through a couple slides on the community...the policy plan and the Maui Island Plan. And in their staff report, there's justification citing the policy plan and the Maui Island Plan and how it talks about promoting a economic climate that would help the islands with a sustainable rate of growth.

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COUNCILMEMBER KING: Chair? I'm sorry to interrupt but before we leave the...can I ask a couple questions before we leave the slide so that we don't have to try to backtrack? But I didn't see where any of the parking, onsite parking is. Do you have that showing somewhere?

MR. FRAMPTON: Yes, it's shown...in this slide, you can see this gravel area over here along the...and I'll show you on the aerial as well. And then for a lot of the vendors, there's a lot of space around in front of the garage and along the driveway and even along on the grass on the side of the driveway, there's places for parking. So, a lot of the parking occurs on the driveway but most of it for the guests occurs in this area, which has been cleaned up. And oh, I'm going the wrong way, sorry about that. So, in this slide here, this is a pretty big area that can handle I think up to ten or 12 cars. Yeah, Uncle just nodded his head. So, it's really this area in here where a lot of the guest --

COUNCILMEMBER KING: Ten to 12 cars.

MR. FRAMPTON: --parking is.

COUNCILMEMBER KING: Yeah.

MR. FRAMPTON: And then as well as for the vendors, they all kinda park in here by the garage and the house.

COUNCILMEMBER KING: Okay.

VICE-CHAIR SINENCI: Question? Is there current construction going on to the right of the graveyard?

MR. FRAMPTON: Absolutely, yeah, there's a real big house being built alongside where the words...family graveyard are here, and the house is out...goes out into this area. So, it's abutting the shoreline access going out to this area. Yeah.

COUNCILMEMBER KING: Is that gonna interfere with parking?

MR. FRAMPTON: I'm sorry?

COUNCILMEMBER KING: Will that interfere with the parking?

MR. FRAMPTON: No, the parking is all on the private property.

COUNCILMEMBER KING: Okay.

MR. FRAMPTON: So, I was talking about the Island Plan and the policy plans and there's always language in there about, you know, supporting the tourism industry. But I kinda wanted to focus on some points that were alluded to earlier. And there's some statements, this one says, that which makes Maui County unique in the world will be preserved, celebrated, and protected for generations to come. And there's a strategy

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that says, preserve local cultures and traditions. The cultures and traditions of Maui County's people make the lifestyle of the islands unique and special. Preserving cultural resources and perpetuating the aloha spirit are important to maintaining our quality of life and sense of place. And just one more point to reiterate that under the Maui Island Plan, under cultural, archaeological, and historical resources, it talks about the island's archaeological artifacts, folklore, historic buildings, landscapes, people, traditions, languages, and lifestyles are all part of its history. Cultural, historical, and archaeological resources provide us a...with a connection to the past and a sense of identity and place. They inform us of our history and provide us with an understanding of Maui's people, past, and present. And I say that because a lot of times when you have applications come before you, if you're strictly following the criteria, you're not really supposed to think of who the people are. You're supposed to look at the criteria of the permit, and you're not supposed to worry about financial issues if they're having problems making ends meet and using that. But I think in this case, the...what the Kukahiko family represents for the Makena area and the history of the area and the sense of place, I think it very much is relevant to consider who is coming before you asking this permit and the positive impacts that they've had on the community. And keeping them there in the community very much enhances the community and it enhances the welfare of the community. And so, I think in this case, it is appropriate to focus on who really is coming before you. The community plan also has language like that too. So, conditional permit criteria, this is the paragraph under the law that says that provides the decision-making criteria. And it's really whether or not the proposed use would not, well, it's...that the proposed use would not be significantly detrimental to the public interest, convenience, and welfare. So, there is that public interest, convenience, and welfare. It will...has to be in harmony with the area in which it would be located, and issuance of the permit may be recommended subject to terms and conditions for such a period of time as the facts may warrant. So, the rationale and in support, the requested use enriches the visitor experience while protecting the island's natural beauty, culture, lifestyles, and aloha spirit. Approval of the request would recognize and support the important contributions that the visitor industry makes and would help to maintain a healthy and vibrant visitor industry. So, that goes to the general welfare of the community, those two points. The events are small scale and capable of being handled on the property without disruption to the existing neighborhood and infrastructure facilities. And that's well detailed in the report. If you go through the report, there was a thorough analysis of that. Approval of the request will allow limited commercial use of the property in order to generate income to offset property taxes and maintenance. Again, that's not normally a condition that I would include in my criteria. But in this case, I think it's unique in that the scale of development that's happened in the neighborhood and the level of taxes that are impacting this family, I think it's significant and it needs to be considered. It's not...it...you gotta be careful about that because you can't use that as a precedent in a lot of places. But I think in this case again, I think we're in a unique situation here. And of course, allowing the remaining Kukahiko heirs to retain their family land in Makena for family gathering events, events and gatherings is very important. And this maintains cultural ties to the land while allowing others to experience the beauty and history of Makena. And that's always been a tradition in the area for the families in Makena to have gatherings, and

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to have people come down and to open up their properties and to share the experiences of Makena. So, I think that's an...very important consideration. That concludes my presentation. I'm available for questions. But I think at this point, well, I'll ask if there's any questions. But if not, we'll have Uncle Eddie come up and just give a little bit on the family history and then we'll move on.

CHAIR PALTIN: Chair King?

COUNCILMEMBER KING: Thank you, Chair. Thank you for that presentation. I, you know, I'm supportive of this but I think everybody needs to be treated fairly. So, it's really difficult for us to say to set aside one person over another and say, you know, this one deserves...because all those rationales could be used by a lot of people who are doing illegal short-term rentals right now, and I've heard that. So, I wanna be really fair. And I wanna address some of the issues that have come up in some testimony by someone who looks like to be a neighbor. Just because I'm gonna hear about if I don't, and, you know, this is my district. One of the first questions I have was is the family utilizing the circuit breaker for the tax break? Because we have a...an item in our tax code that allows for properties that, you know, have had extreme increases in their tax rate due to the development around it. So, do you know if that's being utilized?

MR. FRAMPTON: I don't think it has and I'll let Uncle Eddie expand on that --

COUNCILMEMBER KING: Okay.

MR. FRAMPTON: --'cause they handle a lot of those. I...I'm not...

COUNCILMEMBER KING: Okay.

MR. FRAMPTON: I haven't been involved on that.

COUNCILMEMBER KING: Okay. Yeah, one of the...I guess one of the things that I think you said were for larger events, you would use shuttles. But the largest event is...that's allowed is 49, which includes vendors. So, is the parking onsite there sufficient for that? So, why would they...

MR. FRAMPTON: What their house rule says is if you have...gonna have over 21 guests that the...you should bring a shuttle for their...if you're above 21 that you should have a shuttle to help offset the impacts on the parking.

COUNCILMEMBER KING: Okay. But that's being taken out in this proposed amendment. So...

MR. FRAMPTON: Yeah, 'cause I think the...I think what they're proposing to do is to just keep it simple and just say, all your parking is...keep all --

COUNCILMEMBER KING: Onsite.

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MR. FRAMPTON: --your parking onsite and don't use the road.

COUNCILMEMBER KING: Okay.

MR. FRAMPTON: And however you handle that is however you handle that.

COUNCILMEMBER KING: Okay. 'Cause yeah --

MR. FRAMPTON: And...

COUNCILMEMBER KING: --if you have a shuttle then you have to ask where they're parking to shuttle from.

MR. FRAMPTON: Right.

COUNCILMEMBER KING: So --

MR. FRAMPTON: No, so if --

COUNCILMEMBER KING: --you know.

MR. FRAMPTON: --you know, if there's --

COUNCILMEMBER KING: That's a --

MR. FRAMPTON: --25...

COUNCILMEMBER KING: --tight area.

MR. FRAMPTON: Yeah, it's good to have that taken off. Because let's say if there's 25 people and they're in vans or something, it's easily gonna be accommodated onsite. So, I think we appreciate that being made more simple.

COUNCILMEMBER KING: Okay. And then, can you just maybe detail what kind of minor structures might be built onsite since that's being exempted?

MR. FRAMPTON: Sometimes there'll be trellises that you'll use for, you know, the wedding ceremonies --

COUNCILMEMBER KING: Okay.

MR. FRAMPTON: --with the flowers on 'em and stuff, all very temporary. I wouldn't say they'd be constructed. If anything, they'll just be brought onsite, tables and chairs.

COUNCILMEMBER KING: Oh, okay.

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MR. FRAMPTON: That type of stuff.

COUNCILMEMBER KING: That's not a problem. I just --

MR. FRAMPTON: Yeah.

COUNCILMEMBER KING: --didn't wanna see anything that we...would be counter to having any construction in that area, you know, or dealing with sea level rise and climate change and all that. And then I guess, Chair, I have a question for the Department but I don't know if this is the time, if it...if I should ask the Department. Okay. So, Ms. McLean, one of the things that concerns me in the interest of being fair to all is that, and we've done this before, we've approved conditional permits on a property that has been doing this, you know, in violation. So, I just kinda wanted to get from you what your thoughts are. And we have a, I believe we have a policy that if someone applies for a short-term rental and has been doing it, we deny it. So, I'm just trying to get some consistency here so that we don't hear about it, you know, because a lot of people have looked at that and don't wanna apply and don't wanna talk about the fact that they've been doing short-term rentals because that would automatically preclude them from applying for it. So, we did this, the same thing for Haiku Mill and now we're being asked to do it. And so, just...what is the justification or I mean for being able to do this?

MS. McLEAN: Thank you for the question. For me, I try to separate the two things. One is this is...is this an appropriate use of land, and let's look at the land use and potential impacts, and is this something a conditional permit should be granted for and let's assess the proposed use by itself, and then enforcement is even though obviously they're related is somewhat separate. When we've seen these things before, and I 'm glad you brought up the short-term rental home because that as I said in the response letter, the Department and the planning commission have a heightened awareness about applicants coming in for an activity that requires a permit that they're conducting before they get the permit. And so, it's...with Haiku Mill for example, the decision that was made at that time is you have existing reservations, we will let you honor those because we know what's involved with people coming to Maui and planning a wedding or whatever the event may be. So, if you have existing reservations, we'll let you honor those. Show us what you have so that we know but stop advertising, stop booking new ones until you get your permit. I believe that was the agreement that we had with them. And we asked the same of these folks. And so, the question was brought up at commission, you know, the...one of the commissioners asked, so, you're operating, you're still doing this. And that commissioner proceeded to support the application. But we did continue with our enforcement action and we've discussed with the applicant how to resolve the violations that have accrued to date with accompanying fines. We've worked with the applicant to where we've agreed on how to resolve those. So, we didn't stop the enforcement action. We've continued with it and we're...after today or after...if the Council ultimately approves this, then we can finalize everything and the enforcement will be resolved and the permit will be issued.



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COUNCILMEMBER KING: Okay. The...I mean that's because...and that just was one letter but that's gonna be an ongoing issue I think with...as we move forward with...and especially since we've just gotten a Charter amendment which allows the fines on illegal short-term rentals to go up to 20,000. So, I just wanna make sure that we're aware and we're...and there's a level of fairness in there. And, you know, I'm not disputing any of the rationale because I really appreciate some of the community championing that Mr. Kuloloio has done over the years but I just wanna make sure that we're being fair across the board and we're not setting ourselves up for future disputes. So, okay, thank you for that. Thank you, Chair.

MS. McLEAN: Our zoning inspectors will be glad to hear that. Thank you.

CHAIR PALTIN: Member Molina?

COUNCILMEMBER MOLINA: Yeah, thank you, Madam Chair. First of all, thank you to Mr. Frampton for this very informative presentation. With regards to the operation, how long has it been in existence for how many years now, since 2005, 2004?

MR. FRAMPTON: It's approximately...they started approximately in 2008.

COUNCILMEMBER MOLINA: So...

MR. FRAMPTON: But, Chair, should we have Uncle Eddie come up and just real quickly say something and then...

COUNCILMEMBER RAWLINS-FERNANDEZ: Chair?

CHAIR PALTIN: Before that --

COUNCILMEMBER RAWLINS-FERNANDEZ: Before...

CHAIR PALTIN: --let's recognize --

COUNCILMEMBER RAWLINS-FERNANDEZ: Thank you.

CHAIR PALTIN: --Vice-Chair Rawlins-Fernandez.

MR. FRAMPTON: Okay.

COUNCILMEMBER RAWLINS-FERNANDEZ: Thank you --

CHAIR PALTIN: Sorry.

COUNCILMEMBER RAWLINS-FERNANDEZ: --Chair. Sorry, I was gonna wait until after the presentation and we started deliberating. But I need to consult with Corp. Counsel on a potential conflict of interest. My husband is a descendant of John and Kamaka Kukahiko, and will you please provide comment on that?

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MR. GALAZIN: Sure. Thank you. The conflicts of interest rules that apply to you when you're in this capacity really relate to whether you have a financial, direct financial interest in this. If you feel as though you do in the sense that you or your husband would be profiting in some way off of the action, then you may want to recuse yourself. I don't know...without knowing any more details, I can't be too specific but that's the sort of the broad basis for what you wanna consider. It comes down to finances really, not your personal interest in it.

COUNCILMEMBER RAWLINS-FERNANDEZ: Okay. So, to be clear, it's not whether my husband is a relative but whether he would benefit and therefore I would benefit financially. And so, there is no financial benefit to myself or my family.

MR. GALAZIN: Okay. Yeah, that's pretty much how it works, yes. So, but, you know, it's...I'm glad you brought it up so that, you know, it's clear, and the other Members can chime in if they do feel as though there is an issue also.

COUNCILMEMBER KING: Chair?

CHAIR PALTIN: Chair King?

COUNCILMEMBER KING: Just...I wanna make a comment that I don't see a...an...a conflict here. I think a lot of us are related to a lot of people in the community or are close friends with a lot of people in the community. So, I think that standard of whether you're gonna financially gain has been asked and answered. And so, I don't have a...I don't see a conflict as a colleague of Ms. Rawlins-Fernandez.

CHAIR PALTIN: Thank you.

VICE-CHAIR SINENCI: Chair? Question for --

CHAIR PALTIN: Councilmember Sinenci?

VICE-CHAIR SINENCI: --Mr. Frampton. In your slide presentation, you showed the Maui plan as an urban growth area, is that correct?

MR. FRAMPTON: Yes, it's when the...it's within the Urban Growth Boundary of the Maui Island Plan, yes.

VICE-CHAIR SINENCI: Yet it has a different zoning designation of Apartment?

MR. FRAMPTON: Yes, and that's...Apartment is considered one of the uses that are...would be located within an urban growth area.

VICE-CHAIR SINENCI: Thank you.

MR. FRAMPTON: Yes.

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CHAIR PALTIN: Councilmember Sugimura?

COUNCILMEMBER SUGIMURA: Thank you, Chair. So, just a question maybe from what Michele was explaining or Department was explaining. So, fines, you're saying that fines were issued and that once this decision is made then that will be finalized. And is that for the events that happened from the day...I forget the exact date that it was some kind of date in May I think. So, from that date forward or what kind of fines are you talking about?

MS. McLEAN: We issued notices of violation for SMA shoreline and zoning violations. They submitted the appropriate applications for SMA and shoreline and those were issued. So, after those were issued then the subsequent violations were just for zoning. And those we have through late November. So, from May through late November for roughly 26 events. That's what's indicated in our letter, 26 events, and it's a total of 42 notices of violation. And so, the issuance of the permit will cure the zoning violation. And so, we don't anticipate issuing any more. And so, we can just...the applicant would pay the fines that have accrued and then the enforcement case could be closed.

COUNCILMEMBER SUGIMURA: Okay. And that was made clear to the applicants and everybody concerned, and this is the resolution then?

MS. McLEAN: Yes.

COUNCILMEMBER SUGIMURA: Okay. I support this. I understand by looking at the maps and understanding the history since I grew up here, you know, growing up and spending a lot of time in Kihei and all of a sudden seeing Makena or Wailea I guess develop. But having Makena there at the end where a lot of us, you know, would go to the beach, I value the family in maintaining the cultural history. I really can tie in to what Mr. Frampton is saying. Because if you look at the map and all the beautiful homes that are coming up on the sides of it and the family preserving their family graveyard, you know, site, I really appreciate that. I appreciate the fact that the family will join together in a true ohana to try to preserve what is, you know, local, cultural, and they're finding ways to keep it available for the community. They could do a lot of different things if they wanted to. They could decide to sell it and they could look just like their neighbors. That would be a huge statement of private property, do not trespass, you know, this is only for the families. Bless their heart, they can afford to build a 9,000-square foot home. And I bet you, there's other people that could easily if they put it up for sale do the same thing. So, I...this is hard. I think the family decided on their own to come forward and get the appropriate, you know, permits that they need with the County so they can continue doing what they doing...they're doing. They could have done exactly what the neighbors are doing. You see also I think on your map, the Luuwai family. So, the Luuwai family, which, you know, I think a lot of us know them also, I mean they're doing the exact same thing of trying to figure out how to keep this, you know, land within their families. And I support this in what they're doing. And I think from what I understand, because they filed the permits and did whatever then that triggered us, you know, the County, all of a sudden looking at

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them and seeing all of these weddings, events that were already planned. I'm gonna guess that they probably notified the Department that this was already in place but the County acted in the way that we need to act for what Ms. King is talking about, in terms of fairness for everything else. So, I hope that whenever this gets resolved, and I hope, you know, we approve this, that there is some kind of understanding of, you know, I don't know how you resolve fines, but you all are the experts and are tasked with a very difficult job of balancing all of that. But I just wanna commend the family. I know Rory sounds like when he came to talk to us, he seems like he was part of their family too. I think you've grown to appreciate them. As I know some of the family members, I don't know enough of 'em but I would love to meet many of 'em. But thank you very much for doing this and I commend them for the courage it takes to bring this forward 'cause it's not easy. And I'm curious, I'm quite sure this is an expensive process but that the family have decided to do what is right so that they can have the preservation of this for the future. Thank you, Chair.

CHAIR PALTIN: Member Molina?

COUNCILMEMBER MOLINA: Thank you, Madam Chair. I, too, have a lot of extended commentary and discussion to share but at the appropriate time, which is when you make your recommendation, Madam Chair. Question for the Department, can you provide us more specifics with regards to the fines? What exactly were they fined for? I mean you said SMA fines but can you give a little bit more specifics? Just cite some examples.

MS. McLEAN: Sure. As background, zoning violations are established in Chapter 19.530 of the County Code. There actually is a criminal enforcement provision, which we, in the time I've been with the Department, we've never pursued. For administrative enforcement, initial fines can be up to a \$1,000 per day and daily fines can be up to a \$1,000 per day. For SMA and shoreline fines, those are established in the rules of the Maui Planning Commission. And SMA rules are up to \$10,000 for an initial fine and up to a \$1,000 daily. Shoreline rules are up to \$100,000 initial fine and up to 10,000 daily. For the first 25 events that were cited, they had SMA and shoreline and zoning violations of a 1,000 each. So, those were through early July and those were for nine different events. Some had three violations, SMA, shoreline, and zoning --

COUNCILMEMBER MOLINA: Okay.

MS. McLEAN: --and then a few had just zoning. So, those total 25,000.

COUNCILMEMBER MOLINA: Yeah, and thank you, you gave me a great information about the --

MS. McLEAN: Okay.

COUNCILMEMBER MOLINA: --amount of it but what exactly is the violation in terms of what did they do or whoever was on their property? What did they specifically do?

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MS. McLEAN: Oh, I'm sorry. Okay.

COUNCILMEMBER MOLINA: Yeah, that's kinda...

MS. McLEAN: Okay.

COUNCILMEMBER MOLINA: That's what my...the...what I want more.

MS. McLEAN: The...having the minor structures without SMA or shoreline review --

COUNCILMEMBER MOLINA: Oh, okay.

MS. McLEAN: --and the events in the shoreline area without review, those were the SMA and shoreline violations. And then the zoning violation is conducting the commercial event in a zoning district that doesn't allow it.

COUNCILMEMBER MOLINA: Okay. All right. And since that time, the applicants, they've been working to resolve this and compliance, and as it ties into this proposal then. So, they...it's not like you've had to chase them. This family has been cooperative with addressing this?

MS. McLEAN: They did promptly file and receive the SMA and shoreline approvals. So, those have been cured completely. And...but the ongoing events as they would continue to conduct events, each event continue to be a zoning violation. And this permit is what would cure that --

COUNCILMEMBER MOLINA: Interesting.

MS. McLEAN: --violation for events in the future.

COUNCILMEMBER MOLINA: Okay. Very good. One last question for the Department, Madam Chair. Now, you've issued a five-year recommendation for the conditional use permit. You know, this family has a tremendous history in the area, and they've been basically good stewards of the land. Do you see any concerns if we were to amend this and extend it to say ten years? 'Cause it is time consuming for this family and it is, you know, costly. They are not of as, you know, in the area you have a lot of super rich people that have come into the area that can afford, you know, the taxes, and everything else, and they've been somewhat I guess a victims of circumstances with the costly property tax that this family have, has had to pay. Does the Department see a concern if we were to consider extending the permit to ten years?

MS. McLEAN: The condition right now would allow the Department to grant time extensions administratively. So, it wouldn't have to go through commission and Council for the renewal. But we would not object to ten years.

COUNCILMEMBER MOLINA: Okay. Thank you very much, Madam Director. And, Madam Chair, at the appropriate time once you make your recommendation or whether it be

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me or the area representative, Councilmember King, if she's supportive of that, I would certainly support an extension of this permit to ten years. So, for the record. Thank you.

COUNCILMEMBER RAWLINS-FERNANDEZ: Chair? One last question for --

CHAIR PALTIN: Member Keani?

COUNCILMEMBER RAWLINS-FERNANDEZ: --Department.

CHAIR PALTIN: Sure.

COUNCILMEMBER RAWLINS-FERNANDEZ: Okay. So, in administratively approving a time extension, how long would those time extensions be? Is it at your discretion?

MS. McLEAN: It is at the Department's discretion. If a ten-year permit were granted for example, we would probably do a ten-year extension. We would continue the same term as was initially granted. Sometimes if an initial permit is only for one year then the extension might be for a longer period. But if you were to go five years, we would extend for five. Ten years, we would extend for ten.

COUNCILMEMBER KING: Chair?

CHAIR PALTIN: Mr. Frampton, did you wanna weigh in on that?

MR. FRAMPTON: Yes, just...thank you. Yes, thank you, Chair. Just the fact that the Code says that when you do a time extension, you have to notify everybody in...within 500 feet of your property that you're going in for the time extension. If there's no letters of opposition that come in after that notice, then the Director is free to sign off. If one letter of opposition comes in, then you have to go through the whole process again starting from scratch. So, it's not automatic that the Director gets to sign off. I just wanted to make that clarification.

COUNCILMEMBER RAWLINS-FERNANDEZ: Thank you.

CHAIR PALTIN: Chair King?

COUNCILMEMBER KING: Yeah, thank you. You know, this, I mean having a ten-year permit for...especially for the first one when there have been violations, I'd be more comfortable with the five-year and allowing the Director. Because it's really, it's not about, you know, whether we believe in the family or we believe if this is a proper...it's really about what we believe is fair to the community, in the community. And my concern would be the lack of recourse people might have if violations were to happen and if there were noise issues and if there were parking issues in that area. We're gonna start having some, you know, unrelated to any of the actions that are going on because I believe there's a very conscious effort to be good neighbors but we're gonna start having some major weather and climate issues in those areas and they may need

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to be reassessed in five years unrelated to the actual activity and how it's being conducted. But I'm comfortable that we're giving...I mean we've had permits in the past where we've actually taken that ability for the Department to extend away and put it into the Council. So, I'm confident that the Department can handle and then work with the applicant to do those extensions and to make sure that any possible complaints from neighbors are mitigated in the meantime. Because that's what that enforcement is supposed to do. I mean we had this happen on...we...I know we had a permit on Lanai that we talked about that was two years and we extended it to five years, and the comment around there was well, if it gets...if there is a violation you could actually pull the permit but you need to be looking at that too. So, I don't know. I have mixed feelings because I know...because it's such a...there's a lot of things that have been going on in that area and a lot of construction and a lot of angst in the community about what's happening with Ahihi-Kinai, and the access to that and some other properties that have been developed. And it's not necessarily a reflection on this applicant. I think this applicant has shown extremely good faith. And, you know, obviously we're all in favor of the permit but I just have some reservations about, you know, the first...a first-time permit and then if we go through five years and we wanna extend it for ten because there's...it's...there's been no problem then I would certainly be in favor of that. So, I don't know, does Corp. Counsel have any comment?

MR. GALAZIN: Thank you. I would first confirm for the Members that in 19.40.090 of the Code, extensions, Mr. Frampton did accurately describe the process that when somebody comes in for a time extension of the permit that they've been granted, they do need to notify all, by mailing all property owners within 500 feet. And if there is even one protest letter that comes in, then the process is treated as a new application. So, it goes through planning commission then it comes back to you. The Director has the authority to grant time extensions if it's included as a condition of the original permit. So, as you said, you know, you can either delegate that authority to the Planning Director, and then, you know, the Planning Director will use that criteria in the Code to decide whether or not a extension could be granted. And I think you brought up some excellent points about, you know, other applicants for other applications and the impact that this has in the community. And I would suggest that, you know, to all the Councilmembers that, you know, just close your eyes and imagine this is somebody from Finland who bought the property a year ago. What are the land use impacts? And if they come in and they wanna do this, they describe it exactly the same way, you make a term for five years, what do you wanna see happen at that point? So, thank you.

COUNCILMEMBER KING: Okay. And then, Chair, if I could just follow up. Because I'm surprised to hear that one person complaining could put it back into that same process but I am...you got one person complaining in this process. And so, I wanna make sure that we're not ignoring that, you know, the one testimony that we have on Granicus here, that we're not ignoring that one neighbor and saying it doesn't matter what you say and yet we're saying further down the line if they come back and say that we would turn...put this whole thing into a tailspin. So, just out of respect for the whole process. That's what I'm worried about more than anything is that we wanna

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make sure that the process is fair and it's consistent so that if somebody else doesn't, you know, that we deny further down the line doesn't come back and say, you know, and sue us or something because we didn't show the same due process. So, that...those are my concerns and it has nothing to do with, you know, my feelings about the applicant because I'm, you know, I've been dealing with another issue that they've been champions in and, you know, I really appreciate that but I think we just have to look at this in all fairness.

CHAIR PALTIN: Member Sinenci?

VICE-CHAIR SINENCI: Yes, Chair. Would I...we get a chance to question Mr. Ed Chang?

CHAIR PALTIN: Sure. Mr. Chang, would you like to take the testifier stand?

VICE-CHAIR SINENCI: Thank you.

MR. CHANG: Good afternoon, Councilmembers, Council Chair. My name is Ed Chang. I'm one of the past directors. I'm the current director and past president of the Kukahiko Corporation. Do you...did you want me to do the testimony that I had prepared or --

CHAIR PALTIN: If you'd like --

MR. CHANG: --just...

CHAIR PALTIN: --to. I think Councilmember Sinenci had a question. But if you'd like to do the testimony --

MR. CHANG: Yeah --

CHAIR PALTIN: --that's --

MR. CHANG: --it's --

CHAIR PALTIN: --okay.

MR. CHANG: --sort of short and sweet. Rory covered some of the main points. But I'd like to review because the changes that occurred from the time my great, great grandfather purchased the property in 1883, 135 years ago, is what's left most of us compassionate for the area. Makena is not easy to live there anymore. It's very expensive but I'd like to at least go through the history of it and give you some idea of what we went through and what we experienced. John and Kamaka Kukahiko purchased the property in 1883. They eventually deeded the property to ten children and grandson 20 years later, about 1902. Out of the ten children, they had five boys, five girls. All the girls had children. Only one son had children. And it's the current Kukahiko that had children is the real Kukahiko who we call chief. He came...his great grandfather was a Mahele, and he's the only male that had children. All the rest of the Kukahiko children came from the wahine side. And the biggest producer of



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children was Leslie Kuloloio's great, great grandmother called Molowa. And if you look across the family, you'll note that there very little Kukahiko's, you know, estimate we should have had a 1,000 heirs by now. You know, and actually we have more. But most of the heirs of the Kukahiko's don't have last name of Kukahiko's such as I, Chang, Kuloloio, Awai, another Chang up there. You know, this is what occurred. Somewhere around 1969, the property was purchased by an outsider. At that point in time, he bought about 70 percent of the property. The remaining heirs, some 59, had a lot of compassion for that property that we had as Rory outlined. It went from Makena Landing all the way to where our family graveyard is.

CHAIR PALTIN: Is this the partition process that you're talking about? Is this the partition process that you're talking about right now?

MR. CHANG: I'm getting there, yes.

CHAIR PALTIN: Oh, okay.

MR. CHANG: Yes --

CHAIR PALTIN: Sorry.

MR. CHANG: --I'm getting there.

CHAIR PALTIN: Thank you.

MR. CHANG: The family eventually...the person that bought the property partitioned his share from all the other undivided owners, most of which were Kukahiko's. Some 59 members then formed the corporation and that's where we are today. Corporation was formed in 1974, some 44 years ago. It's gone through five presidents starting from Leslie Kuloloio's father, Leslie Kuloloio, then myself, then Chris, and now Ransom Piltz. We all served pretty close to ten-year terms. And the...we're at the point by where our generation is getting a little makule for handling this. So, we're trying to bring in new blood, and it's been difficult. But the growth of the family and the passion for the family to save the property sort of came together in about 1994 when taxes really got high. And we had three pieces of property, one was in foreclosure, no income. Through the passion of some of our family members, that foreclosure tax was paid and we got into discussions through the membership of the Corporation, and we decided to sell two properties because we couldn't afford to pay the taxes on two properties plus the third one that was next to the graveyard. We decided to build a house that Rory showed you on his display. And that house was finished in 2004. We've been there since 2004 in operation. Families have used that place to...as an example, tomorrow or today rather, we have a person, a family coming, his name is Kukahiko, Lyn [sic] Kukahiko, who lives in Utah. And he's staying there for two weeks. We have lots of family that use that. I wish it was more often. We went through a point by where the cost of the taxes, you know, we...when we ran, started weddings it was very small, maybe 30 weddings in a six month...no, 30 weddings in a year time and then it's still small. And we got to a point where we're

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way behind on taxes. And yes, we did hold about a 100 weddings. I think our largest number in weddings is 109. Last year, we had 52 weddings. And the reason why it was 52 'cause we had to cut back via, you know, potential fines that we couldn't upkeep either. And I think we've resolved that as to our satisfaction. I hope Michele is satisfied. I won't divulge the numbers but I think everyone came out okay. You know, I'd like to sort of apologize for extending the family through this kind of embarrassment but it happens. You know, we were first advised that we could run weddings by wedding coordinators. And then we got to a point where the taxes got ahead of us, we couldn't even afford to hire Rory. So, we increased the weddings. You know, this is a passionate thing you go through. You start with a little. That's not enough, you do some more. And I gotta say that our weddings were small and they were cheap. We've since resolved some of the problems. Our weddings now costs more. You know, we're wedding...renting weddings for \$300 for three hours. You know, and we net hardly anything out of that. But that's been resolved, it's changed. And I think the weddings we have are still cheaper than most of the weddings that are in the Makena area. However, we limit the weddings. We don't want our house tore up. You know, the...our family uses it. And we've had conditions where they leave windows open. I have casement windows. And the wind comes and the casement flops around, we gotta replace them. But lo and behold, I hope I've covered what struggles we went through. If you have any question, I'll be happy to answer them. Again, thank you for letting me testify.

CHAIR PALTIN: Thank you. Member Sinenci, you had a question?

VICE-CHAIR SINENCI: Yes, couple questions, Mr. Chang. Beside families from far coming and staying at the property, does anyone reside there regularly?

MR. CHANG: No.

VICE-CHAIR SINENCI: Nobody stays in the --

MR. CHANG: No.

VICE-CHAIR SINENCI: --property?

MR. CHANG: It's our belief, the board and most of the family that if someone stayed there then it impede...our visitation would impede whoever stayed there. And we decided even though our taxes would be higher that it's best that if we could leave it open for the family, they get the whole place when they come in. What we do like to encourage is though is that we would have more corporation meetings, more family get-togethers that we haven't done much of that because we're so busy running weddings. And hopefully with financial will be in a shape we can handle that.

VICE-CHAIR SINENCI: Second question, does the corporation maintain the family graves next door?

MR. CHANG: Yes.

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VICE-CHAIR SINENCI: Is it under the corporation's care legally?

MR. CHANG: Technically, the County in the subdivision process, so, the process of, the property was owned by Ulupalakua Ranch. It was claimed by Ulupalakua Ranch at one time. We've resolved that. But when it was claimed by Ulupalakua Ranch, the graveyard was set aside as an exclusion. When we litigated with Ulupalakua Ranch to, you know, settle our disagreements, they gave us the graveyard. They wrote the deed for that and also a separate access to the graveyard so that if and anything happens to the property that we have that the graveyard will still be isolated for family concerns. But right now, they're together.

VICE-CHAIR SINENCI: That they're --

MR. CHANG: Yes.

VICE-CHAIR SINENCI: --one --

MR. CHANG: Yes.

VICE-CHAIR SINENCI: --property?

MR. CHANG: Yes. And that's what we want.

VICE-CHAIR SINENCI: Okay. I understand. So, the weddings are put on to help to pay for the operation...the tax. So, you would agree that if your tax, your taxes, your property taxes were lower, you would...you wouldn't have to do as many weddings?

MR. CHANG: I would still have to do some --

VICE-CHAIR SINENCI: To...

MR. CHANG: --but not many.

VICE-CHAIR SINENCI: No --

MR. CHANG: Obviously --

VICE-CHAIR SINENCI: --I'm looking --

MR. CHANG: --a lot less.

VICE-CHAIR SINENCI: --at, you know, because you guys are a corporation and possibly looking at, you know, Member Kim...King talked about having the tax breaks if it was designated or moved into another tax classification where it wouldn't be, you know, the same as some of the...your neighbors. And so, I just wanted to...I understand why

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you need to do the weddings just to exist there and maintain your family property. So, thank you.

MR. CHANG: Thank you for the question.

CHAIR PALTIN: Chair King?

COUNCILMEMBER KING: Thank you, Chair. Thank you for being here, Mr. Chang, and for that little talk. I'm...when I was talking about earlier with the circuit breaker and I don't know if that, if you have...if you've looked into that and maybe you're precluded from using that tax break because of the --

MR. CHANG: Well --

COUNCILMEMBER KING: --corporate --

MR. CHANG: --what I --

COUNCILMEMBER KING: --being a corporation --

MR. CHANG: --understand...

COUNCILMEMBER KING: --or being...

MR. CHANG: What I understand from the circuit breaker that it's only given to families of homeowner exemption.

COUNCILMEMBER KING: Right.

MR. CHANG: We don't have homeowner's --

COUNCILMEMBER KING: Oh, okay.

MR. CHANG: --exemption --

COUNCILMEMBER KING: So, you don't have --

MR. CHANG: --concerns.

COUNCILMEMBER KING: --that home...okay.

MR. CHANG: In addition to that, I believe that if the house is over a certain value, you're disqualified from it. I think at one point in time, the house value of 400,000 disqualified you from circuit breaker even though your salary qualified.

COUNCILMEMBER KING: Yeah --

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MR. CHANG: So.

COUNCILMEMBER KING: --I don't, you know, I don't know that that's true because I think it was meant...circuit breaker was meant to protect homeowners against the rising cost of, the rising value because they are affected by the surrounding development. So, I'm not sure if that's true. But I do...I think if you don't have a homeowner exemption, I do think you're precluded from using that stipulation. So, I just wanted to double check and see if you had checked into that. But...

MR. CHANG: But thank you for your concern.

COUNCILMEMBER KING: Yeah, I mean I support what you're doing. I just...I, and I wanna support...I'm gonna support what's on the table here. And I just want you to understand that my concern with the...with...against going for...to straight to a ten-year just has to do with the first time the permit is issued that there should be a consideration of also the neighborhood and making sure that there's a record. But I...it's what you've asked for is the five-year, correct?

MR. CHANG: It was recommended by planning council [sic], which I wholly agreed to.

COUNCILMEMBER KING: Okay.

MR. CHANG: Not that I disagree for the ten years but I understand your concern.

COUNCILMEMBER KING: Yeah, okay. Thank you, appreciate it.

CHAIR PALTIN: Member Sinenci?

VICE-CHAIR SINENCI: I think just, you know, listening to all of the testimony and some of the challenges of the property, it just seems that the family doesn't live there. It's run by a corporation. They manage their family burial sites, which has historical significance. And it just seems that...and because of the...because they're in a certain tax bracket, they need to have this business to go on just to maintain their property. So, I'm just looking at some ways where real property tax or is that...if there's any exemptions where we can, you know, assist the situation and not have so many of the commercial activities in this area. That's all.

CHAIR PALTIN: I have some questions. So, the violations, were zoning inspectors onsite and happened upon the weddings?

MS. McLEAN: I don't know if the inspectors or how many events the inspectors witnessed in person but they were able to find information on various websites and social media of events that took place.

CHAIR PALTIN: Okay. So, it's okay to...cite a notice of violation based on social media is okay?

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MS. McLEAN: It's whatever our inspectors use to...as part of their investigation. There are a number of tools that they use and social media is one them. Advertising is one of them.

CHAIR PALTIN: Thank you. Members, do you have any more questions for the applicant's representatives, or the Planning Department?

COUNCILMEMBER SUGIMURA: So, list...for your recommendation.

COUNCILMEMBER MOLINA: Yeah --

COUNCILMEMBER SUGIMURA: Could we --

COUNCILMEMBER MOLINA: --recommendation.

COUNCILMEMBER SUGIMURA: --get your recommendation, Chair?

CHAIR PALTIN: The floor is now open for discussion. No --

COUNCILMEMBER SUGIMURA: Oh.

CHAIR PALTIN: --discussion?

COUNCILMEMBER SUGIMURA: Do you...your motion?

COUNCILMEMBER KING: . . .*(inaudible)*. . .

COUNCILMEMBER SUGIMURA: Your recommendation for what you're asking the Committee?

CHAIR PALTIN: Members, the Chair will entertain a motion to recommend passage on first reading of the revised proposed bill distributed at today's meeting entitled, A Bill for an Ordinance Granting the John and Kamaka Kukahiko of Makena Corporation a Conditional Permit to Conduct Special Events within the County A-2 Apartment District, Tax Map Key Number (2) 2-1-007:079, Makena, Maui, Hawaii; incorporating any nonsubstantive revisions; and the filing of County Communication 18-377.

COUNCILMEMBER KING: So moved.

COUNCILMEMBER SUGIMURA: Second.

CHAIR PALTIN: Moved by Chair King and seconded by Councilmember Sugimura. I'd like to open the floor to discussion.

COUNCILMEMBER MOLINA: Madam Chair?

CHAIR PALTIN: Councilmember Molina?

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COUNCILMEMBER MOLINA: I will certainly support this consideration and I will throw it out there on the floor, I move to amend the motion to expand the conditional permit for...to ten years.

COUNCILMEMBER RAWLINS-FERNANDEZ: I second.

CHAIR PALTIN: I have a motion to expand to ten years by Councilmember Molina and seconded by Vice-Chair Rawlins-Fernandez.

COUNCILMEMBER MOLINA: Yeah, thank you for the consideration, Madam Chair. Now, let me just share my rationale for this. It's somewhat tragic that this family has to do this type of business just to keep these lands in their hands, which has been part of their legacy for...since 1883. This family is very rich in culture and very rich in aloha and they've been wonderful stewards of the land. I just see this in a strange sort of way as a form of genocide for this wonderful Hawaiian family. I mean look at what's happening in the area. I remember going back to my history days if I recall when David Malo talked about the big fish eating the little fish up. And this is why, you know, not everything is straight black or white. Sometimes there's some grey areas here. When I think of Makena, the Kukahiko's, the Luuwai's, they're all...that's one of the first names that come to mind. They are a legacy that's part of this area. And we've heard it stated for the record, the family is working with the Department to address these notices of violations and certainly, the family was put through a lot. And, you know, local style, it's shame to go through this, you know, getting fined but they're addressing it. Director McLean said the Department doesn't see any major problem if this Council were to support this amendment to ten years. And you even heard it from Uncle Eddie that their wedding prices are still cheaper than other people. This family is just trying to stay afloat. They're not like others who venture into these types of business to make money, to make money off of others. This is a case of they're just trying to survive and keep it in their hands for their future generations. So, yeah, it may to some might seem illogical or what, but this is a special set of circumstances. And this is about we gotta be respectful to our local families who've been here for generations, and no disrespect to all the newcomers in the area. And I know there's...that there's this one perspective that says, you know, we gotta just, you know, treat this as fair as we can for all others. But if we're talking about fairness, look at what this family has been subjected to if we're talking about the issue of fairness. They're victims of circumstance. Because of all the popularity of Maui County, now, all these escalating property values, which the super-rich are willing to pay for, now, you subject those who don't have the kinds of resources they have to pay this incredible amounts of property taxes, you know. This family is not, you know, don't have deep pockets, you know, like others do in the area. So, I...that's just my plea. And if it flies, it flies and so be it. But again, I speak in favor of this because one, it's costly and time consuming to go through this process, you know. It's a little easier for those with deep pockets to go through this process in a shorter amount of time such as a five-year permit would allow for. But, you know, you're looking at ten, to me, make an exception. That's what I believe in, Madam Chair. And thank you for allowing me to speak on this.

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COUNCILMEMBER KING: Chair?

CHAIR PALTIN: Chair King?

COUNCILMEMBER KING: Yeah, I...I'm...I speak against the motion for the ten-year but I'm completely in favor of the five-year. And I don't think it shows disrespect to approve a permit that was brought before us in the original format. I have as much respect for this family and for what they're going through but I think if we start making our decisions based on these kinds of applications, based on what the motivation is behind them that we're gonna put ourselves in a very tenuous situation as a Council. And I sat here and deliberated in the last two years on other permits that we've denied. And I, you know, I think if we get into...I mean I've heard...I heard the exact same arguments for that situation in Wailuku, and we...and it was something that we denied for various reasons. But I don't wanna personally get into that. And I also, if I hadn't been sitting here looking at somebody's concern who lives right on Makena Road, I might feel differently about a ten-year, but I just wanna give the surrounding neighborhood that consideration that...to not extend this for a period of time because I believe they...there is a...there are avenues to complain anyway even if there is a ten-year permit, but I also wanna respect some of the concerns of the surrounding area. And I think we hopefully will get a good record of stewardship and then the Department will be able to continue on with this, and, you know, just do the approval without going through this whole process. Thank you.

CHAIR PALTIN: Member Sugimura?

COUNCILMEMBER SUGIMURA: Thank you. So, I wanna speak in favor of this because one of the first conditional permits that I remember this body doing was the Haiku Mill. And the Haiku Mill actually came before us for a two-year permit. But through our discussion, the Council gave them a five-year permit. So, we cannot say in one sense that, you know, we...we're only gonna do the five years and disregard what we're hearing from the other Councilmember saying out of respect for the...I think it was very similar, out of the respect for the Haiku Mill organization, that, you know, and if you think about Haiku Mill, they're in the middle of a full-on community and yet we extended instead of the two, we gave them a five-year conditional use permit, and similar discussions that I'm hearing today. But I would like us to recognize that this permit that's being applied for is, it's not in the middle of a huge community but it's in the middle of selected homes that are being...starting to come up on the side of them. I understand their plight of what they're trying to do and I totally respect that. So, I would like to hear from the Department if you have any comments about, you know, doing ten-year versus five-year, and what...from your experience, you know, what kind of impacts do you see and hearing what Ms. King is saying also and being sensitive for...to other...you always have a broader perspective of what's happening in the community and I just want us to be sure that we're balancing it.

MS. McLEAN: Thank you. As I've said, we don't have an objection to it. This is one of those where we talked administrative versus discretionary. This is a discretionary call. We



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recommended five, which is sometimes in a lot of cases longer than an initial permit term as you referenced Haiku Mill, two years. But because for good or for bad, these things have been occurring on this property for more than ten years already, we have a reasonable idea of what the impacts are and that the applicant has done a good job of establishing policies to minimize the impacts 'cause we haven't heard complaints really about it. So, it's...I think these things may become more common because what the wedding industry is a big one here, and is growing and the...other than the resort areas, there aren't that many venues. And so, it's really looking at the potential impacts, you know, what kind of impacts will be generated? Traffic and parking is a big one, and how are those going to be accommodated? That's really what we look at. And are there physical environmental impacts to the site as Chair King mentioned with sea level rise and other concerns, you know, this being a shoreline property? So, just looking at all of those things, it's, you know, it comes down to a judgment call and five years was a term that's a little bit longer than is usually done. But given that the events have been conducted for a long time, we don't have a particular concern with going to ten.

COUNCILMEMBER SUGIMURA: Chair, if I could? So, basically you're saying that for ten years, wedding activities or events were happening at the site but you didn't even...they...it was invisible 'cause you received no complaints about it but only when they applied for this that's when it became visible to the County and therefore it generated the violations based upon the land use or zoning. So, if they've been doing this for ten years and no complaints were ever noted, I don't see, you know, I think ten years is a good number for me for that reason, and I would like to support the amendment, Chair.

CHAIR PALTIN: Member Sinenci?

VICE-CHAIR SINENCI: Yeah, just as a comment as the Culture Preservation Committee Chair, I would just wanna look at what are some of the possible tax exemptions for maintaining cultural sites. So, even though I support the amendment, I would wanna look at other avenues to help this corporation in maintaining the cultural site. Thank you.

CHAIR PALTIN: Thank you. Member Molina?

COUNCILMEMBER MOLINA: Yeah, thank you, Madam Chair. Just a question again for follow-up about...to Councilmember Sugimura's question to Director McLean. So, there are already built-in mechanism. So, whether we go five years or ten years, and in your opinion the family seems to, and listening to Uncle Eddie, seems to have I guess learned their lesson from the NOV's that they received, and upon approval, assuming this gets approved, this basically establishes it more in black and white that, you know, any violation from here on in, so then the permit could be pulled, right? Am I correct with that --

MS. McLEAN: That's correct.

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COUNCILMEMBER MOLINA: --Director?

MS. McLEAN: The --

COUNCILMEMBER MOLINA: Okay.

MS. McLEAN: --conditions that are in the revised proposed bill establishes the Committee has discussed that all parking has to be onsite. There's also the condition that the property shall be developed in substantial compliance with the representations made to the Council. That's...that requires some judgment and interpretation but we look at the minutes, we review the record to see if that condition has been violated, the maximum number of events. We have our enforcement mechanisms of tracking that, the maximum number of guests. Those kinds of things are all pretty clear. And that if we do find that any of those have been violated, it can result in permit revocation. The initial effort would be an enforcement action, a notice of warning or notice of violation. Unless it's just an extreme violation that could go to immediate revocation. But initially, we just to try to achieve compliance getting back to what the conditions are.

COUNCILMEMBER MOLINA: Okay. Thank you for that information. Thank you, Madam Chair.

CHAIR PALTIN: Chair King?

COUNCILMEMBER KING: Yeah, I just wanted to ask the Department. The letter that I'm looking at from a resident named Jay Arakawa who lives in that area, was that sent to you earlier? Was that considered...would that be considered a complaint? I mean there's somebody who said he doesn't want to, not being submitted to lobby for denying the subject permit but just to request that all facts be fully presented. So, there was some concerns about whether these numbers are being adhered to, about the numbers of...I mean it's just like general concerns. So, I don't know if this is something that you would consider --

CHAIR PALTIN: Chair King --

COUNCILMEMBER KING: --a complaint?

CHAIR PALTIN: --Mr. Frampton did respond to those. I don't know if you saw the item.

COUNCILMEMBER KING: No, there's no response.

COUNCILMEMBER SUGIMURA: Oh, in Granicus.

COUNCILMEMBER KING: I mean I don't see...

MS. McLEAN: Chair, if I may answer the question? This --

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CHAIR PALTIN: Sure.

MS. McLEAN: --was submitted as testimony to the Committee. So, we're...

COUNCILMEMBER KING: So, you haven't seen it. Okay. So, you haven't had any complaints --

MS. McLEAN: I only saw it --

COUNCILMEMBER KING: --directly to you.

MS. McLEAN: --in preparation for this meeting but I wouldn't take this as a complaint.

COUNCILMEMBER KING: Okay. Thank you.

CHAIR PALTIN: We saw that and then we got a response from the consultant, and it should have been uploaded --

COUNCILMEMBER SUGIMURA: It's on...

CHAIR PALTIN: --to Granicus.

COUNCILMEMBER SUGIMURA: It is.

CHAIR PALTIN: Yeah.

COUNCILMEMBER SUGIMURA: From Rory Frampton.

COUNCILMEMBER KING: Or it just...it doesn't say...it didn't say response to the letter so I didn't know. I mean there's a...there's several things from Mr. Frampton. So, I didn't look.

CHAIR PALTIN: Sorry about that.

COUNCILMEMBER KING: That's okay. No problem.

CHAIR PALTIN: Council Vice-Chair Rawlins-Fernandez?

COUNCILMEMBER RAWLINS-FERNANDEZ: Yeah, so, I intend to vote in favor of this motion for the points that Councilmember Sugimura brought up as far as that the impacts are known and they have been mitigated, and the points that Councilmember Molina also brought up, which is that there are mechanisms in place to ensure that any potential impacts will be addressed. And I wanted to dovetail on Councilmember Sinenci's comments about trying to do more for our community members. You know, I think this is an example of why we as the Council need to try to figure out better legislation to protect our generational families from being pushed out of these popular locations. Mahalo, Chair.

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CHAIR PALTIN: Thank you. With that, I'd like to call for the vote on the amendment. All those in favor of the amendment say "aye."

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**VOTE:**      **AYES:**    Chair    Paltin,      Vice-Chair    Sinenci,    and  
                 Councilmembers King, Molina, Rawlins-Fernandez,  
                 and Sugimura.

**NOES:**     **None.**

**ABSTAIN:     None.**

**ABSENT: None.**

**EXC.: Councilmember Lee.**

**MOTION CARRIED.**

**ACTION: Recommending FIRST READING of revised bill and FILING of communication.**

CHAIR PALTIN: Thank you for your work on this.

MR. FRAMPTON: Thank you, Chair.

COUNCILMEMBER SUGIMURA: We can take the last item in five minutes.

**PSLU-23 CHANGE IN ZONING FOR TAX MAP KEY (2) 5-3-002:049**  
**(KAUNAKAKAI)** (CC 18-447)

CHAIR PALTIN: So, next on the agenda is PSLU-23, Change in Zoning for Tax Map Key (2) 5-3-002:049. The Committee is in receipt of County Communication 18-447, from Councilmember Stacy Crivello, transmitting a proposed resolution entitled Referring to the Molokai Planning Commission a Proposed Bill to Change the Zoning for Approximately 32,068 Square Feet Kaunakakai, Molokai, Hawaii, Tax Map Key (2) 5-3-002:049. The purpose of this proposed resolution is to transmit to the Molokai Planning Commission a proposed bill entitled A Bill for an Ordinance to Change the Zoning from Interim Zone to B-CT Country Town Business District for Approximately 32,068 Square Feet in Kaunakakai, Molokai. Oh, this is the same as what I just read, sorry. So, I just wanted to let folks know that Pumpkin Moss is on the line to answer any questions that you may have. And Staff has already passed out a revised proposed resolution for your consideration today, which incorporates nonsubstantive revisions for consistency and clarity. Please note that the attached bill was also revised to replace Exhibit "A" with a larger map. The Chair would ask the Committee to focus on this revised version during your discussion today. The resolution before us would transmit the attached bill to the Molokai Planning Commission. Pursuant to Section 8-8.4, and 8-8.6 of the Revised Charter of the County of Maui (1983), the appropriate planning commission must review proposed land use ordinances and provide its findings and recommendations to the Council.

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before any action can be taken on the proposed land use change. Ms. McLean, do you have any comments for the Committee at this time?

MS. McLEAN: Thank you, Chair. Just to comment that the process as we discussed earlier, this is a proposed Change in Zoning. So, the Department would put together an appropriate package. There's probably information that we will need to get from the property owner in order to do a complete assessment of the proposed Change in Zoning. We would circulate that to relevant agencies who would provide their comments. We would put those together in a staff report and recommendation that we would present to the Molokai Planning Commission. They would hold a public hearing and then they would deliberate on the matter and then they would vote to offer their recommendation. So, then that would come back to the Council for final decision making on the zone change. We do have...the Planning Department does have I believe it's 120 days to bring this back to Council. That's not always under our control but we endeavor to do that, which means it will be coming back to you probably in the midst of your Budget discussions. But certainly, before, well before the end of the year, you would have this back and you would be able to act on that.

CHAIR PALTIN: Thank you. Members, the floor is open for discussion at this time.

COUNCILMEMBER RAWLINS-FERNANDEZ: Chair?

CHAIR PALTIN: Vice-Chair...

COUNCILMEMBER RAWLINS-FERNANDEZ: Is...yeah, is it appropriate to move to adopt the resolution at this time?

CHAIR PALTIN: If there is no discussion, sure.

COUNCILMEMBER KING: Is it...oh, can we...

COUNCILMEMBER RAWLINS-FERNANDEZ: We move to adopt and then the second and then we discuss.

CHAIR PALTIN: Oh, okay.

COUNCILMEMBER SUGIMURA: So, did you move?

COUNCILMEMBER RAWLINS-FERNANDEZ: Yes --

COUNCILMEMBER SUGIMURA: Did you just...

COUNCILMEMBER RAWLINS-FERNANDEZ: --I did.

COUNCILMEMBER SUGIMURA: Second.

COUNCILMEMBER RAWLINS-FERNANDEZ: Thank you.

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COUNCILMEMBER KING: Okay.

CHAIR PALTIN: Discussion?

COUNCILMEMBER KING: Just...well, all right. No, I think this is just a resolution asking for actions to be taken. So, it's not the final ordinance, and it will just need one Council hearing. It goes to the Council from here, is that correct, Ms. McLean?

MS. McLEAN: Yeah, that's correct. For a resolution, this would go to full Council just for...

COUNCILMEMBER KING: Before it goes to planning commission?

MS. McLEAN: Correct.

COUNCILMEMBER KING: Okay. So, and I just wanted to also point out that this is one of the implementation action items of the Molokai plan. So, I believe it's already supported through multiple deliberations over the past year when we were addressing the Molokai Island Community Plan. So, I'm in support of this. There's a couple of typos in it but I think we can fix that on the nonsubstantive changes, CE instead of C for the words that need a capital C. I don't know where that...

MS. McLEAN: This wasn't drafted by the Department, so.

COUNCILMEMBER KING: Oh, okay. But we can...

MR. KRUEGER: Excuse me --

CHAIR PALTIN: Legislative --

MR. KRUEGER: --Chair?

CHAIR PALTIN: --Analyst James --

MR. KRUEGER: Oh --

CHAIR PALTIN: --Krueger?

MR. KRUEGER: --apologies. But just to clarify that, Member Rawlins-Fernandez, that you moved to adopt the revised proposed resolution that the Chair passed out that has distributed at the meeting today entitled Referring to the Molokai Planning Commission a Proposed Bill to Change the Zoning from Interim Zone to B-CT Country Town Business District for Approximately 32,068 Square Feet of Property in Kaunakakai, Molokai, Hawaii, Tax Map Key (2) 5-3-002:049.

COUNCILMEMBER KING: Chair?

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COUNCILMEMBER RAWLINS-FERNANDEZ: Yes, that's correct.

COUNCILMEMBER KING: Chair, could we --

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo.

COUNCILMEMBER KING: --just add and any nonsubstantive changes just so we could fix the typos?

CHAIR PALTIN: Sure thing.

MR. KRUEGER: Thank you.

CHAIR PALTIN: So, any objections to calling for a vote?

COUNCILMEMBERS: No objections.

CHAIR PALTIN: Okay. I call for a vote, all those in favor say "aye."

COUNCILMEMBERS: Aye.

CHAIR PALTIN: Opposed? And the motion passed unanimously.

**VOTE:       AYES:   Chair    Paltin,   Vice-Chair   Sinenci,   and  
                      Councilmembers King, Molina, Rawlins-Fernandez,  
                      and Sugimura.**

**NOES:   None.**

**ABSTAIN:   None.**

**ABSENT:   None.**

**EXC.:   Councilmember Lee.**

**MOTION CARRIED.**

**ACTION:   Recommending ADOPTION of revised resolution.**

CHAIR PALTIN: Thank you, Members, for your hard work. This --

COUNCILMEMBER KING: Do we need --

CHAIR PALTIN: concludes...

COUNCILMEMBER KING: --to file this? Do we need to file it?



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COUNCILMEMBER SUGIMURA: Yes, we're --

CHAIR PALTIN: Oh.

COUNCILMEMBER SUGIMURA: --done?

COUNCILMEMBER KING: Move to file.

UNIDENTIFIED SPEAKER: . . . *(inaudible)* . . .

MR. KRUEGER: Chair?

CHAIR PALTIN: Yes?

MR. KRUEGER: Staff would note that filing in this situation is not necessary for the communication. The Committee can if it so chooses; however, leaving the file open in the Committee file would allow for the planning --

COUNCILMEMBER SUGIMURA: Come back.

MR. KRUEGER: --commission's comments and recommendations to come straight back to the Committee.

COUNCILMEMBER KING: Okay.

COUNCILMEMBER SUGIMURA: Planning to repost.

MR. KRUEGER: Okay. Thank you.

COUNCILMEMBER KING: Withdraw.

CHAIR PALTIN: Member Molina?

COUNCILMEMBER MOLINA: Yeah, thank you, Madam Chair. Just for clarification sake, I know you mentioned the vote passed unanimously. I believe we have one excusal. So, it's a...I think it will be a six-zero vote. Just --

CHAIR PALTIN: Yeah --

COUNCILMEMBER MOLINA: --for the record.

CHAIR PALTIN: --all the votes have Councilmember Lee excused since 10:02.

COUNCILMEMBER MOLINA: Okay. Thank you.

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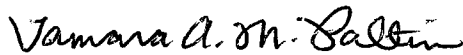
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CHAIR PALTIN: Thanks for the clarification. This concludes today's Planning and Sustainable Land Use Committee meeting. Thank you very much, Members. This meeting is adjourned. . . .(gavel). . .

**ADJOURN:** 11:56 a.m.

APPROVED:



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TAMARA PALTIN, Chair  
Planning and Sustainable Land Use  
Committee

pslu:min:190130:acqp

Transcribed by: Ann Carmel Q. Pugh

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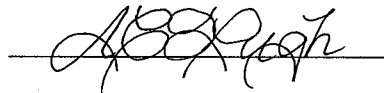
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CERTIFICATE

I, Ann Carmel Q. Pugh, hereby certify that the foregoing represents to the best of my ability, a true and correct transcript of the proceedings. I further certify that I am not in any way concerned with the cause.

DATED the 20<sup>th</sup> day of February, 2019, in Kihei, Hawaii

A handwritten signature in cursive script, appearing to read "Ann Carmel Q. Pugh", is written over a horizontal line.

Ann Carmel Q. Pugh