

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

**MINUTES**

**January 22, 2020**

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

**CONVENE:** 9:02 a.m.

**PRESENT:** VOTING MEMBERS:  
Councilmember Tamara Paltin, Chair  
Councilmember Shane M. Sinenci, Vice-Chair  
Councilmember Kelly Takaya King (out 12:01 p.m.)  
Councilmember Michael J. Molina  
Councilmember Keani N.W. Rawlins-Fernandez  
Councilmember Yuki Lei K. Sugimura (in 9:03 a.m.; out 12:01 p.m.)

**EXCUSED:** VOTING MEMBERS:  
Councilmember Alice L. Lee

**STAFF:** James Krueger, Legislative Analyst  
Ana Lillis, 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.:** Michael J. Hopper, Deputy Corporation Counsel, Department of the Corporation Counsel  
Jordan Molina, Deputy Director, Department of Public Works (Item 49)  
Michele McLean, Director, Department of Planning (Items 43 & 44)

*Seated in the gallery:*

David A. Galazin, Deputy Corporation Counsel, Department of the Corporation Counsel

**OTHERS:** Jason Economou, Government Affairs Director, REALTORS® Association of Maui (Items 43 & 44)  
Mike Moran, President, Kihei Community Association (Item 44)  
Dick Mayer (Items 43 & 44)  
Scott Shapiro (Item 44)

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Tom Croly (Items 43 & 44)  
Sam Small (Items 49, 43 & 44)  
Zandra Amaral Crouse (Items 43 & 44)  
Lucienne de Naie (Items 43 & 44)

Lawrence Carnicelli (Items 43 & 44)  
(2) additional attendees

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

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CHAIR PALTIN: . . .*(gavel)*. . . The time is 9:02 on January 22, 2020...9:02 a.m., Wednesday. Will the Planning and Sustainable Land Use Committee meeting come to order. If everybody can silence their cell phones and any noise-making devices. My name is Tamara Paltin, and I'm the Chair of the Planning and Sustainable Land Use Committee. Today, we have my Vice-Chair, Shane Sinenci, from Hana.

VICE-CHAIR SINENCI: Aloha kakahiaka, Chair.

CHAIR PALTIN: Aloha kakahiaka. We have Councilmember Mike Molina.

COUNCILMEMBER MOLINA: Good morning, Madam Chair.

CHAIR PALTIN: Good morning. And we have Councilmember Kelly King.

COUNCILMEMBER KING: Aloha kakahiaka.

CHAIR PALTIN: Aloha kakahiaka. And we also have Council Vice-Chair Rawlins-Fernandez.

COUNCILMEMBER RAWLINS-FERNANDEZ: Aloha kakahiaka, Chair.

CHAIR PALTIN: Aloha kakahiaka. And Councilmember Riki Hokama is not a voting Member but welcome to join us at any time. Council Chair Alice Lee is not in the State, I believe. And looks like Councilmember Sugimura may be joining us a little bit later. And Council Pro Tempore Kama is not a voting Member but welcome to join us at any time as well. Today, with us we have Deputy Corporation Counsel Michael Hopper. Good morning.

MR. HOPPER: Good morning, Chair.

CHAIR PALTIN: Good morning. And Deputy Director of Public Works, Jordan Molina.

MR. MOLINA: Good morning.

CHAIR PALTIN: Good morning. And we have Councilmember Yuki Lei Sugimura.

COUNCILMEMBER SUGIMURA: Good morning, Chair.

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CHAIR PALTIN: Good morning. And we also have Committee Staff, Clarita Balala.

MS. BALALA: Good morning.

CHAIR PALTIN: Good morning. Legislative Analysts, James Krueger and Ana Lillis.

MR. KRUEGER: Good morning.

CHAIR PALTIN: Good morning. From Molokai, we have Ms. Lindo. From Lanai, we have Ms. Fernandez. And from Hana, we have Ms. Mavis Oliveira-Medeiros. Good morning, ladies. So, we have three items on the agenda today, PSLU-49, Existing Streets; PSLU-43, Establishing the Paia-Haiku Advisory Committee; and PSLU-44, Advisory Committees to the Maui Planning Commission. So, later trying to combine 43 and 44 into one item. But for testimony today, 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 the items on the agenda today. Pursuant to the Rules of the Council, each testifier will be allowed to testify for up to three minutes per item. So, the red dot is three minutes, and the yellow one is you have 30 seconds left. When testifying, please state your name and the name of any organization you may be representing. If you're a paid lobbyist, please inform the Committee. We have established a connection to the Council District Offices. Ms. Mavis Oliveira-Medeiros in Hana, is there anyone waiting to testify?

MS. OLIVEIRA-MEDEIROS: Aloha, Chair. This is Mavis in the Hana Office, and there's nobody here waiting to testify.

CHAIR PALTIN: Thank you. Ms. Fernandez on Lanai, is there anyone waiting to testify?

MS. FERNANDEZ: Aloha, Chair. There are no testifiers at the Lanai Office.

CHAIR PALTIN: Thank you so much. Ms. Lindo from Molokai, is there anyone waiting to testify?

MS. LINDO: Aloha, Chair. This is Zhan from the Molokai Office. There are no testifiers.

CHAIR PALTIN: Thank you. Please let us know if anyone comes in to testify.

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

CHAIR PALTIN: The first testifier signed up in the Chambers today is Jason Economou, testifying on agenda items 43 and 44 on behalf of the REALTORS® Association of Maui. And his title is Government Affairs Director, and he is a registered lobbyist for the organization and an employee or officer of the organization. Good morning, Mr. Economou.

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MR. ECONOMOU: Good morning, Chair. Thank you for that. Everything she said is accurate and correct. My name is Jason Economou. I'm the Government Affairs Director for the REALTORS® Association of Maui. I am a paid employee, all of that. I have previously given written testimony on PSLU-43 and 44. I'm here just to supplement that and once again reiterate that this is not an idea that will benefit us in a significant manner. Adding another regulatory layer to the development process goes against all of the various plans and conferences that Maui County has put together over the past decade or so. You all have been in politics longer than me. I've only been at this for about a year. And even in that short period of time, I could still tell you that adding a regulatory body with additional costs to the budget is antithetical to streamlining the development process. I've seen a spreadsheet with data containing the agendas for the Hana Advisory Committee. There's an estimate that on average it adds about ten months to a project for it to go to the Hana Advisory Committee. Now, that's not every project. Some projects skew the average because they go 4 to 5 months because it deals with a short-term rental permit and whatnot. But even a few months will add more time and constraint to the development process. Once again, if we're honest with ourselves that we actually want to streamline a process, adding additional regulatory bodies that need to be staffed is not the way to do it. Similarly, it makes sense for the Hana Advisory Committee. Does anybody want to take a guess how far away Hana is from here? Fifty miles. Well, to the Hana Community Center it's 53.6 miles. To the Paia Community Center, it is 11 miles. To the Haiku Community Center, it's 15 miles. And for the Kihei Community Center, depending on the route you take, it is 12 to 14 miles. It is insulting to insinuate that Hana is similarly situated to South Maui. It's easier to get here. If you want to make things easier for more public input, you want to make it easier for people to share their feelings on projects that would go before these advisory committees, well, set up a portal for their Councilmembers to get the feedback. And so, the Councilmembers can continue to represent their people in their districts. Or move the meetings for the Planning Commission to the evening. Do something that'll reduce costs, that will actually streamline the process and make it easier for people to go. But adding additional meetings for planners to go to, for people to present their projects at, that's not the way to do it. We have a representative government for a reason. If we're just going to turn everything into direct democracy, then why are any of you here? Represent the people. Streamline the process. Make things easier. That will save costs. That'll get us more housing, more whatever we need. Do that, not this. Thank you.

CHAIR PALTIN: Thank you, Mr. Economou. Members, any questions for the testifier? Seeing none, thank you for your testimony.

MR. ECONOMOU: Thank you very much.

CHAIR PALTIN: Next up to testify, we have Mike Moran, testifying on PSLU-44, to be followed by Mr. Dick Mayer. Mr. Moran is testifying on behalf of the Kihei Community Association. He's an officer of the organization and his title is President.

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MR. MORAN: Aloha, Chair. You stated it correctly, and I will add that I'm unpaid. So, this is from the community's perspective, not a business perspective. We are here this morning to express community input on PSLU-44. We were here two weeks ago today to support South Maui, but we see an attempt to kind of homogenize all future regional community advisory committees. We came today to reinforce what we offered on January 8<sup>th</sup> because we feel it is so important to our region to have some official input concerning development. Our volunteer group of South Maui residents has our next monthly meeting set for tomorrow evening, something we began back in April of last year under the guidance of our District Member, Kelly King. All in the evening in the district so residents can more easily participate. We believe it is vital to have the resident Councilmember choose volunteer members. If the Mayor decides we would have an advisory committee group selected by the Mayor advising the Maui Planning Commission composed of selections of the Mayor under the guidance of a department appointed by the Mayor. Some think a compromise is to allow the Mayor to select one or two of the advisory committee members. With such an effort for executive legislature, compromise means the Council would now elect...select one or two of the Maui Planning Commissioners. Our intent was to be able to hit the ground running when the full Council gave us an official designation. We missed our goal of that happening this month, but we see that as not possible. So, as we said on January 8<sup>th</sup>, we have always found our district community challenged to participate in the Maui Planning Commission meetings on Tuesday mornings in Wailuku. However, participation hardship was exacerbated a few years ago when public testimony was only accepted on an item at the time the item was addressed. You can see this could mean waiting for hours, awaiting your item, or trying to gauge when it would be discussed and finding you arrived too late and was shut out. A South Maui Advisory Committee public meeting held locally in the evening offers greater opportunity for the local residents to hear from the developers and express their concerns to the Committee members who could then offer this Planning Commission a true representative community voice on the island. So, we thank you, Chair, for scheduling this item instituting a South Maui Advisory Committee, and we hope the Committee sees the value of direct voice once it's officially in place. And my last sentence is that some people said this is what the Council does, the same as the Maui Planning Commission. Obviously, I can come in here at 9 o'clock, testify and leave, completely different than the Planning Commission process. Thank you.

CHAIR PALTIN: Thank you, Mr. Moran. Members, any questions for the testifier?  
Seeing...oh.

COUNCILMEMBER KING: I have a question.

CHAIR PALTIN: Councilmember King?

COUNCILMEMBER KING: Thank you, Chair. So, thanks for coming, Mike. My question is, right now developers go to, when they have something happening in Kihei, they'll go to the Kihei Community Association. They might go to various homeowners' associations. So, they have different places that they go. So, do you see this group as being able to kind of harness all that energy and have one place for them to go versus

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all the different community associations and homeowners' associations and neighborhood associations?

MR. MORAN: Yes, we do, Councilmember. And beyond that, we believe it would get more community involvement by...even when KCA meetings, yeah, there are different entities that feel, oh, we have our own group. So, they should come to us. One big meeting, conveniently in the evening we think would get even more community input. And as you said, make it easier for the developer. Go to one unity, one unified meeting. So, I agree.

COUNCILMEMBER KING: Thank you.

CHAIR PALTIN: Vice-Chair Sinenci?

VICE-CHAIR SINENCI: Thank you, Chair. Thank you, Mr. Moran, for being here. You know, one of the problems with the Hana Advisory Committee is that oftentimes we're...at times the Maui Planning Commission doesn't follow some of their recommendations, so, you know, at times. So, do you think, you know, if the advisory was created in South Maui, that pose a problem?

MR. MORAN: Well, we read the testimony submitted to the last meeting from the Hana resident that expressed that very thing. And there was some consideration which instead of having an advisory committee, have all these commissions. Well, we feel this is one step and see how it works. And if that is the...if that's what happens, if the Planning Commission says we don't care, we're not going to listen, then maybe we'll have to spend more money and try a stronger thing. But we feel this is a way to start at least and try and say there's aloha here, they are going to listen to the community. If they don't, well, then we'll have to get stronger. Thank you.

VICE-CHAIR SINENCI: Thank you. Thanks, Chair.

CHAIR PALTIN: Any further questions for the testifier? Seeing none, thank you, Mr. Moran.

MR. MORAN: Thank you very much.

CHAIR PALTIN: Next up we have Mr. Dick Mayer, to be followed by Mr. Scott Shapiro. Both are testifying on PSLU-44, and Mr. Mayer is also 43. And he's submitted 16 copies of written testimony.

MR. MAYER: Thank you very much and Happy New Year to everybody.

CHAIR PALTIN: Happy New Year.

MR. MAYER: I'm strongly in favor of getting a district advisory committee structure set up. I think what you're doing now, and if you pass this and adopt it, will give us a trial for the next year or two that will allow us when the Charter Review Commission gets going in '21, '22, they will be able to look at this and say, yes, what's good, what's bad,

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and being, incorporating something into the Charter. And what I'm anticipating is that we don't just set up an advisory committee to the Planning Commission, but an advisory committee to the County Council, to all the departments in the County, and to the Planning Commission, that each of these areas have that ability to give constructive community input. As you know, I'm the coordinator for the Alliance of Maui Community Associations. And we have these community plans, but the name "community plan" is a misnomer because almost every one of the community plans is actually made up of multiple communities. The one I represent is Makawao, Pukalani, and Kula. South Maui, it's Kihei, Wailea, Makena, Maalaea. So, what we have then are really many communities. So, I would prefer down the road, and that's what I'm going to be asking the Charter Review Commission, to rename the entire structure, district community plans, not community plans. And I would hope that you will set up this structure that will allow committees to be formed in each of the districts, starting with Paia-Haiku, and also South Maui, and revising the Hana thing. And having one ordinance as your Chair has suggested that would allow the Mayor to appoint two, the Council to appoint five members which I think is an excellent thing. I'd like to make a number of other recommendations which you have on the paper in front of you. Let me just quickly go through those. The items can be referred to the advisory committee by not only the Planning Commission, but the County Council, the County departments, and the County boards and commissions. For example, the Public Works Department may want to say, should we have a roundabout here, or should we have a traffic light? What would be the better approach to go? That would be something that they could make a recommendation on. I'm just giving an example that how a group like this representing the area, the district, could make recommendations. The advisory committee should schedule as needed. It shouldn't be like every month, or every two months necessarily. But when there are issues that come up, they should be able to go ahead and call their meeting. Number three, meetings at times and places when most community members should be attend. In other words, that means meetings usually in the evenings. It was called to my attention, for example, in West Maui, so many of the people in West Maui work in the hotels and restaurants in the evenings that it might be appropriate in West Maui to have it during the daytime. I'm not saying that it should be, but that might be a possibility. They should do it when they think community members can come. There should be no detail...you shouldn't have to have somebody from the County go in there and keeping detailed minutes of everything that's said at the meeting, or a transcript. Rather all motions, conditions, votes, and recommendations should be made. The advisory committee should initiate recommendations but never have the final authority. In other words, there are truly an advisory body and will not make the final determination. That would be made by the people referring things to them. And lastly, for the Haiku area, I would recommend that Spreckelsville be moved into the Haiku-Paia area as an action that could be taken for the future when eventually they get their full thing. They...right now Central Maui has so many areas, Waihee, Waikapu, Wailuku Heights, all those areas, Paukukalo, Maui Lani. They don't need Spreckelsville within that area. That's really more appropriate for the other. Down below, I put down terms that I think in the future I'm going to be asking the Charter Commission to do. I don't expect you to do that. And that is to call each area a District Advisory Committee, not a community plan committee, because they should

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be for the districts. And I would urge that the names be slightly modified also. Rather than calling it the Lahaina, or Hana Community Plan, or anything of that sort, just use the terms West Maui, Central, South, North, Upcountry, and East Maui. Makes it very clear to everybody the area you're talking about because, as I said, many of those community plan districts are made up of multiple communities and the name is left off. To call it the Wailuku-Kahului Community Plan leaves out Waikapu, now it's going to be a whole town, Waihee, Maui Lani, et cetera. It'd be much more appropriate to refer to it as Central Maui Community...District Advisory Committee. I offer these as recommendations and would be...worked a lot on this when we did the Maui Island Plan. It was in our original GPAC report. The Planning Director at that time said that it was going to be too costly to implement. And I would say that it should not be a high-cost item. We shouldn't have to send four people as have gone to Hana. The realtors just now came up and a very self-serving statement saying they want to expedite the development process. Basically, what they're saying is we don't want to hear from the community because we want the meetings to be held during the daytime at nine o'clock in the morning downstairs there. What we're saying here is they should be held in the community. Let the community decide what they want, and then go forward with the things. I'd much rather...Maui does not need more development at a rapid rate. What we need is good development in the right places at the right time. Thank you.

CHAIR PALTIN: Thank you, Mr. Mayer. Members, any questions for the testifier?  
Councilmember Molina?

COUNCILMEMBER MOLINA: Thank you, Madam Chair. Good morning, Mr. Mayer, and thank you for providing us additional input on this. Do you see the creation of these advisory committees as a way to...you believe it'll help generate more...the feeling of empowerment in our various community plan districts?

MR. MAYER: Absolutely, because right now we have community associations which are really self-appointed, and although I've been a strong advocate of community associations over the years, it's the people who say, you know, I want to get in rather than having any government authority. So, oftentimes when developments come up here at the Council or the Planning Commission, one of the commissioners or one of the Councilmembers will ask how many people in your community support this? How many people...it's an unknown because and does your community association truly represent that community. This will give it a status that people will feel we have now an input into the government process, into the decision-making process. That'll be much more effective than...and you may even have...as Upcountry, for example, we have Kula, Pukalani, Makawao, each with their own community association. This will give one body that can look at the overall traffic patterns, the housing, the water meter list, all of the things, because it's an Upcountry area that does it, and the same for your district, and for those in the other areas. So, I think a meeting at night is absolutely critical in most of the districts.

COUNCILMEMBER MOLINA: All right. Thank you very much. Thank you, Madam Chair.



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CHAIR PALTIN: Thank you. Members, any further questions for the testifier?  
Ms. Sugimura?

COUNCILMEMBER SUGIMURA: Yeah, thank you. Thanks for being here, Mr. Mayer.

MR. MAYER: Thank you.

COUNCILMEMBER SUGIMURA: So, I just want to comment that it appears to me that the Kula Community Association, 'cause I go to as many as I can, has a great depth and provides a lot of input for the community as well as, you know, projects that come before our community. And I'm just not sure of all the other communities because I don't go to their community association meetings, but we do hear from Mr. Moran or others. So, what is your comment about the KCA?

MR. MAYER: I wish we had a strong community association in every area of the island. We have a number of them, but ironically three communities that are the largest overall long-term centers, Lahaina, Kahului, and Wailuku, have no community associations that really come forward on a regular basis and meet and have a history and background to represent their communities. So, I would hope that this will be a mechanism, so the people in Central Maui, for example, would have a body that they can look to that will represent the interest because as we all know, Wailuku, Kahului, so many of the issues interrelate with each other, traffic and schools and the health center, and everything else, that it would be really good to have a thing. But Kahului has no association. It's the largest...if you look at Kahului, Maui Lani, and put 'em all together, now with the growing Waiale that will eventually be built, there's no representation. So, this would give an area such as that...Pukalani has a much weaker association than Kula, for example, for whatever reasons, historical reasons. And this will give all of the Upcountry residents who may want to have input into the process, a much smoother, better ability to get...it would be agendized. It should be...there should be a major...a website...

COUNCILMEMBER SUGIMURA: Thank you, thank you, thank you.

CHAIR PALTIN: Thank you, Mr. Mayer. Any further questions from the Members? Seeing none, thank you for your testimony, Mr. Mayer.

MR. MAYER: Thank you. Best wishes to all.

CHAIR PALTIN: Thank you. Next up we have Mr. Shapiro, Scott Shapiro, will be testifying on agenda item PSLU-44 for himself as an individual, to be followed by Tom Croly.

MR. SHAPIRO: Good morning, everybody. My name is Scott Shapiro. I'm here as an individual, but I polled our provisional South Maui Advisory Committee. Our meeting is tomorrow night so I was hoping that we could have a meeting before this came up again. But I would also ask if I could just comment on PSLU-43 as well. I just wanted to go over my notes. I did a survey. I sent this in last night, but I didn't see it come up in the testimony online. So, the main points that we were looking at were the

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amount of members that were appointed by Councilmembers. Most people think at least six members should be appointed. A couple of people wanted seven to be appointed as a kind of check-and-balance against the Planning Commission who are solely appointed by the Mayor. So, that was kind of the overall thought, at least six. There were...in my viewpoint, five is okay. I'd rather get this thing passed than, you know, stopped. So, I'm in favor of six, but I would accept five. So, also under that hybrid draft, it's under A(3), that's the number of members. They're appointed as...also as who appoints them. Again, almost 100 percent of the members in our advisory committee asked that the district Councilmember appoint the members, not just the Council in general. And then depending on the balance, how that would work with the Mayor, you know, having one or two members. You might want to break it...you know, my thought there was if it's just the general Council appointing members, where would the general Council get the names from. You'd probably be getting the names from the district member anyway, so it might just, you know, be a little bit more streamlined to just come from the district member anyway. But if you wanted to break it down, you could say, well, four members are appointed by the district rep, one from the general Councilmembers, and then one or two from the Mayor. So, you could break it down if you wanted to get, you know, real complicated there. I think you could streamline that. We also looked at D(2) which were kind of the areas that the advisory committees would look at. And I know this was a big topic of what should the advisory committees be doing. So, the number one came as community plan amendments. They felt that that was a definite thing to look at. And the highest also on the list were changes in zoning, duties delegated to it by the Maui Planning Commission, SMA permits. And then the third highest were district boundary amendments, County Special Use Permits, and...am I done? Oh, there we go. And all items within Title 19 which pertained to the advisory committee assigned area. Bed and breakfast permits, TVR permits, no. That was a big let's-not-do-that. Then on D(3) which was the time to get the recommendations back. Most people felt 90 days was...that was the best. The way I think the 120 days works for the Planning Commission, and I know there can be some explanation on that, I think the 120 days comes from the last meeting of the Planning Commission held on that item. I'm not sure. So, that's when the clock starts ticking. I could be wrong on that. If 60 days were used, I think it could be used...somebody suggested that we could have a proviso with a 30-day extension with good cause, something like the Land Use Commission has. Or, one other recommendation provided that the file on the subject item is complete. That's kind of vague but...anyway, you get the idea. The other thing I would like to add to D(3)(a) that, and they may do this, and again this could be answered, that the Planning Commission to read in public the recommendations of the advisory committee during deliberations of the pertinent item at the Planning Commission. So, not just that...I don't know how that's handled right now. But, and then in general, I think that if one meeting were to occur and developers could come and not have to go to the neighborhoods, and they went to these advisory committees, it would streamline things for them. It would make it easier, as long as the plans are complete. If they're not done yet, then it's not the right time to come. But the plans have to be complete. If the Planning Commission were to change their hours to have nighttime meetings, that would be wonderful. I don't think that that should stop these advisory committees though. I think it could be in addition to. And then also

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just to make sure that these advisory committees, if they're passed, are at convenient hours. I think you need to...I know Dick Mayer had talked about just, you know, whatever the community felt, whatever they felt the community could attend those meetings would be the best time. I wouldn't want it to turn into something where it goes against, you know, if there's a body that wants to hear things without the public showing, they could, you know. It has to be...there has to be some parameters that have to be set that the public has to be able to attend easily. I don't know what that mechanism is, but that's just my thoughts. Thank you.

CHAIR PALTIN: Thank you, Mr. Shapiro. I really appreciate you and all the testifiers. It's obvious that you put a lot of thought and effort into this proposal. Members, any questions for the testifier?

COUNCILMEMBER KING: Chair?

CHAIR PALTIN: Member King?

COUNCILMEMBER KING: Thank you. I just actually wanted to find out if we have a copy of that survey that you sent in last night from...can we get that?

CHAIR PALTIN: I did see a copy.

MR. SHAPIRO: No, I didn't send the survey. That was...it's called Survey Monkey and I put it together and a few...yeah, and 7 of 13 responses came back. So, it didn't even get...cause I was...again --

COUNCILMEMBER KING: Oh, okay.

MR. SHAPIRO: --I was hoping to get...

COUNCILMEMBER KING: I thought you said you sent it to the Council actually.

MR. SHAPIRO: No, I sent this testimony just in case I didn't get through it --

COUNCILMEMBER KING: Okay.

MR. SHAPIRO: --the recommendations.

COUNCILMEMBER KING: Okay.

MR. SHAPIRO: I mean...

COUNCILMEMBER KING: Do we have the testimony?

CHAIR PALTIN: Yeah. It should be on Granicus.

MR. SHAPIRO: Oh, good, it came in. Okay.

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CHAIR PALTIN: I did have a question. So, you...just clarifying. You said the answers are based on 7, when you say 100 percent, that's 7 people?

MR. SHAPIRO: Yeah, just of the...

CHAIR PALTIN: Okay.

MR. SHAPIRO: Yeah, it's sort of...

CHAIR PALTIN: I know it was short amount of time. I just wanted to...

MR. SHAPIRO: Yeah. So, the advisory...the full advisory committee that we have which had I think...I think I had 12 people, and it could have included Lucienne as well, Lucienne de Naie. So, those were the e-mails that I sent, just to get feedback.

CHAIR PALTIN: Okay. And just for everyone's knowledge, you know, I'm not intending to make a decision on this today. I know that a lot of the advisory community associations haven't had a chance to have an in-depth discussion and that Monday, the Alliance of Community Associations is meeting on this. It was mainly, you know, Mr. Carnicelli, he's here from the Planning Commission, and just to get their perspectives so that when you guys do discuss it in your community associations that you have that perspective as well. So, I mean I'm not intending to make the call today. It's just, you know, continuing the discussion.

MR. SHAPIRO: Perfect. So, we'll try to talk about it tomorrow night then for sure.

CHAIR PALTIN: Yeah, yeah, so hopefully they can give you some good feedback on the, you know, the expectations versus the realities of how the government spins.

MR. SHAPIRO: Yeah, and it's interesting. One other thing, yeah, you know, we're not as far as Hana, you know. We're not 52 miles, we're just 14 miles to Kihei, but we still have a large group of people who cannot show up at, you know, certain meetings during the daytime. The miles don't matter. It's the hours.

CHAIR PALTIN: Thank you. Members, further questions?

COUNCILMEMBER KING: Chair, I think I still had the floor.

CHAIR PALTIN: Okay.

COUNCILMEMBER KING: I got interrupted. But so, I wanted to ask Mr. Shapiro, do you see this as an issue more of input rather than...I mean I think it's going to streamline it too. But I think the top priority is getting better input from the communities. So, is that what you're seeing this as, as well?

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MR. SHAPIRO: That's my expectation, yeah, that this will be just an...you know, an easier venue to get to. And, yeah, 100 percent more participation, you know, and probably the side effect will be that it will streamline things for developers. They'll be pleasantly surprised I bet, and so, yes --

COUNCILMEMBER KING: Okay, thank you.

MR. SHAPIRO: --I do think that. Thanks.

CHAIR PALTIN: Further questions for the testifier? Seeing none, thank you for your testimony. Next up --

MR. SHAPIRO: Thank you.

CHAIR PALTIN: --we have Mr. Tom Croly, testifying also on PSLU-43 and 44, to be followed by Sam Small, who will be testifying on all three items, it looks like.

MR. CROLY: Aloha, Chair. Aloha, Committee Members. Tom Croly, on my own behalf. And the perspective that I want to share with you today is for the last 13 years, I've gone to as many Planning Commission meetings that...as I can. I'm certain that only Carolyn, who staffs the Planning Commission, has been to more meetings than myself. I've outlasted four chairs. I've outlasted complete, you know, members have turned over twice in the time that I've been sitting there. So, I have a pretty good grasp as to what goes on in the Planning Commission, including the public testimony and the input that they get from the public. And one of the problems that I see, and I think you're trying to solve here, is when a hot topic comes up and the Planning Commission fills up, and there's 100 people who all want to be heard that day, it's hard and it's frustrating for those people because they don't necessarily have the opportunity to be heard and it feels like the Planning Commission is not really taking them seriously, and so forth. So, I do see that as a problem to some extent. However, one of the things that I noticed is these folks that come forward, many times they think that the reason this meeting is being held is to simply find out whether they want or don't want this project. And that's not the legal reason why these meetings are being held. If these folks have input as to here's where this project is stepping over the line and causing a problem, and I have an idea or solution for a condition that could be put on it that would address that, then that's really good input. But it's kind of hard for the Planning Commission at that last moment, too, to absorb that. So, this idea of getting, vetting those things sooner is good. But here's the problem. It's Sunshine Law, and it's what you were talking about yesterday, quorum. There's a few folks in this audience, and these people care. They come all the time. They're going to show up at these meetings. But I guarantee you put together one of these advisory groups, you're going to struggle for quorum every time. And I can tell you from experience when an applicant has to send out notice to all the people within 500 feet, and then has their meeting, and then on the day of their meeting they find out there's no quorum. And now they have to schedule it for another meeting which is several months away. These are problems. So, when we talk about how this is going to cause delays in the process, that's one of the delays you're going to cause. And then

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Sunshine Law, you have to notice these meetings in advance as you well know. You have to take minutes at these meetings. You have to have proper staffing of these meetings. So, you've created a monster, if you will, that while well-intentioned, will lead to less affordable housing and more trouble getting through the permitting process. Chair, I'll go on to the second item. And so, I throw these things out there and say, well, this isn't going to work. Okay, well, that's my opinion on it. But here's what I think would work. Here's how I think you could address some of the concerns that are being brought up right here. We have community associations that exist now. We have the Kihei Community Association we just heard from. We have the Kula Community Association which is, you know, very much thanks to people like Dick Mayer, and so forth. I think that these community associations or any group can register with the Planning Department and say anytime there is development that's going to take place in our area, we get notification of that development. Not of the meeting, not of the Planning Commission meeting, but ahead of that. And we tell the developer we want you to go meet with those. Developer can and may meet with them, he may not at his own peril. But then the community associations can bring these projects to their members upfront, and they can get the input from those members. And then the Planning Department can solicit that input from these community associations as part of the report. So, when the report gets written, the input of the community associations is included in that report. Anyone who has something to say about that, if they want to just say I don't like it, or whatever, then the community associations can put that input in. We have X number of members and this percentage, or this number of our members were against this. And then that can be part of the report that goes to the Planning Commission. And those folks have had their say. If they want to show up at the Planning Commission meeting and have their say again in person, well, that is always available to them. But this idea of creating another step in the process is not really going to solve your...the idea of more input from these people. I served on the board of the Maui Meadows Neighborhood Association. And one of my goals when I was on that board was to try to engage more of our members, to get more of the folks in Maui Meadows involved. I found that that didn't necessarily work. The people were either interested, and they came out, or they weren't, okay. But the association, we were not representing the membership. I felt that our job was to bring information to the community, and that should be the goals of any of these community associations. And then collect that input and give it to the Planning Department. But again, more importantly, give it to the Planning Department in the time for it to be included in their report that goes to the Planning Commissions. Thank you, Chair.

CHAIR PALTIN: Thank you, Mr. Croly. Any...Vice-Chair Sinenci, question for the testifier?

VICE-CHAIR SINENCI: Thank you, Chair. Thank you, Mr. Croly, for being here. Just a clarification. You mentioned that community associations could register to receive information. Is there a process to do that?

MR. CROLY: No, I'm suggesting that --

VICE-CHAIR SINENCI: . . .(inaudible). . .

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MR. CROLY: --be the process that you come up with.

VICE-CHAIR SINENCI: Okay.

MR. CROLY: That have a way for the community associations to register with the Planning Department, okay, so that they say, anything that's going to happen in this area, we want to know about when the application comes in.

VICE-CHAIR SINENCI: There's no process like that.

MR. CROLY: But there's not right now.

VICE-CHAIR SINENCI: Okay.

MR. CROLY: Right, right.

VICE-CHAIR SINENCI: Okay, thank you.

MR. CROLY: And in general, the people don't get notified about these projects sometimes until it's on the Planning Commission's agenda which is going to be seven days or sometimes five days before the meeting. And then all of a sudden, it's like, oh my God, we gotta show up at this meeting. We got to tell everyone about it. And that's not enough time, you know.

CHAIR PALTIN: Members, any further questions for the testifier? Vice...Council Vice-Chair --

COUNCILMEMBER RAWLINS-FERNANDEZ: Real quick.

CHAIR PALTIN: --Rawlins-Fernandez?

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Chair. Aloha, Mr. Croly. Mahalo for your testimony. I was looking for your written testimony. You usually submit it. Did you have written testimony this time?

MR. CROLY: I didn't have written testimony.

COUNCILMEMBER RAWLINS-FERNANDEZ: Okay.

MR. CROLY: Thank you for checking.

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo. Mahalo, Chair.

CHAIR PALTIN: Thank you, Mr. Croly. Next up we have Sam Small, testifying on all three items, and he is submitting less than 16 copies of written testimony. To be followed by Zandra Amaral Crouse.

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MR. SMALL: Good morning, Chair and Council. As always, it's an honor to be participating in the democratic process. The committees....community advisory committees that you're talking about here today are really just a Band-Aid. The previous testifier talked about a monster. The monster is that our Planning Commission is fully appointed by the Mayor. That's the monster. The monster is a environment within land development that is a culture of leniency. Those are the words of a past Planning Director who left because he couldn't handle how the abuse that was taking place in the land development system under the Planning Commission appointed by the Mayor. That culture of leniency is what has led to our lack of affordable housing. That culture of leniency is what has led to the water being brown at...along the coast all the time because a lack of enforcement of SMA permit regulations under this culture of leniency. So, you have a community that is becoming more and more aware of what the monster really is, and they're looking for ways to have more input into the process. The commissions that you're talking about are just a Band-Aid. Dick Mayer talked about Charter revision, and that is what is required. We need to bring the Planning Commission back under the authority of this Council, not the authority of the Mayor. And even Mayor Victorino campaigned with an understanding as a Councilmember historically that the Planning Commission needed...needs to be brought back under this Council, not being appointed solely by the Mayor. And I beg you, that that is one of the fundamental changes. And I believe that the industry will be well...better served by that more appropriate balance. The Planning Commission is able...they're going to be reviewing planning rules that have the force and effect of law. But there's no legislative process to go along with that because they're politically appointed. So, please bring the plan...you can solve this, you know, in the short term with these commissions, but in the long term we need to bring the Planning Commission back under the control of this Council. Thank you. The roadway improvements, the two lot. You know, we have an ordinance that developers of any subdivision with four lots or more must perform all their roadway infrastructure improvements. However, over the years the culture of leniency has allowed several schemes to be hatched to circumvent the four-lot rule, shifting developers' obligations onto citizens and ignoring shoreline environmental protections. As an expert witness to the Infrastructure Committee in 2018, I showed how thousands of three lot or less subdivision deferral agreements that Corp. Counsel wrote for over 40 years are degrading our shoreline. These were secretly exemptions because they were never tracked, and they have never ever been collected on. A select group of developers and lawyers knew that with department directors looking the other way, they could circumvent the rules using sequential overlapping three-lot deferrals so that three turned into five, turned into seven, turned into nine or more. Putting condos of hundreds of units on some of these multiple lots and getting taxpayers to pay for their infrastructure. This was an extraordinarily exploitative practice that went on for decades until Christopher Salem discovered it and blew the whistle in 2001. Joanne Johnson forced the Council to stop the abuse and shut the deferral program down in 2007. You're being asked today to remove a new freebie that was again...that is again benefitting selected developers which was created in secret through Public Works and Corporation Counsel's manipulation of the 2015 Upcountry Water Bill. It appears that David Goode, Jennifer Ohana [sic], Ed Kushi, and probably others



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misrepresented the facts to secretly manufacture a roadway improvement exemption for two-lot subdivisions island-wide that the Council thought was only going to benefit a select group of families on the Upcountry water meter waitlist. Gladys Baisa has testified that the two-lot exemptions were indeed David Goode's idea, and that they never discussed applying them Countywide. Goode testified about the high volume of Board of Variances' requests that could be avoided by his proposed exemption. I checked on BVA's involving two-lot subdivisions. They've been five of them in about ten years' time. So, there was no need for that. This was not an innocent mistake. Other real estate professionals have testified that the two-lot exemptions were specifically intended to replace the three-lot deferrals that were taken away. I can show that giving away that free infrastructure is an extremely unsuccessful way to generate affordable housing. This Council can give anything away once. But you have to do it under the legislative action in the light of day, not through a secret bait-and-switch that you're being asked to fix today. I'll be done in just a second. Again, it was Chris Salem who discovered this bait-and-switch. Please read his illuminating letter to the Auditor that you've gotten in written testimony on how --

CHAIR PALTIN: If you can conclude --

MR. SMALL: --these two-lot exemptions are now complicating --

CHAIR PALTIN: --within one minute.

MR. SMALL: --the potential collection on parcels that were given three-lot deferrals. Please fix this problem as Gladys Baisa begged you to do. Thank you.

CHAIR PALTIN: Thank you, Mr. Small. Members, any questions for the testifier? Ms. Sugimura?

COUNCILMEMBER SUGIMURA: Point of information, I think couple testifiers think that the Mayor appoints commissions and has exclusive, but the other part of the conversation that needs to be said possibly to more than Mr. Small, is that Council confirms. So, it's not only one way. He doesn't just decide. And there's also statute where, as we all know and maybe the public doesn't, where it has to fit certain criteria in terms of, you know, locality of where they live, you know, where they represent. So, it's not as blatant as the...I just want it clarified, Chair.

CHAIR PALTIN: Did you want to ask if he was aware of that, or just...

COUNCILMEMBER SUGIMURA: Oh, were you aware of that? I just wanted point of information because it's not only Mr. Small, it's others. So, thank you.

MR. SMALL: But we're never told who was up...who the potential committee members or we're only ever given the Mayor's choice. We never are told who the field of players are. So, I understand what you're saying. But I still believe that it is highly skewed towards the benefit of the development industry. And that's why we're dealing with these community planning initiative to put a Band-Aid on the much larger problem.

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CHAIR PALTIN: Any further questions? Member King?

COUNCILMEMBER KING: Thank you, Chair. I actually kind of had the same question. But I was curious when you said that the Mayor campaigned on putting the Planning Commission under the Council. Did you mean the naming and appointments of all the Planning Commission...is that what...I mean 'cause I never heard that...I didn't follow his whole campaign. But was he...were you talking about the actual naming of candidates and appointing commissioners, or were you talking about the function of the Planning Commission being under the Council? Do you know what that...

MR. SMALL: Both. In the discussions that I had with the Mayor, he expressed an understanding that the Planning Commission in total needed to be brought back under the control of this Council, both the naming of the individuals on the Planning Commission and the overall authority of the Planning Commission because they do have the ability to create a force and effect of law.

COUNCILMEMBER KING: Okay. Yeah, no, I...

MR. SMALL: And the people were not represented --

COUNCILMEMBER KING: Yeah, no --

MR. SMALL: --under the current structure.

COUNCILMEMBER KING: --I appreciate that, and I appreciate your understanding that we aren't given the alternative, so we are only given names to approve. And I, in my previous term, I did ask for if we could get a list of all the people who had applied, and I was denied that. So, I've never seen the whole list of applicants.

MR. SMALL: We need transparency.

COUNCILMEMBER KING: Yeah. Okay, thank you.

MR. SMALL: Thank you.

COUNCILMEMBER KING: Thank you, Chair.

CHAIR PALTIN: Thank you. Council Vice-Chair Rawlins-Fernandez?

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Chair. Aloha, Mr. Small. Mahalo for your testimony.

MR. SMALL: Good morning.

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COUNCILMEMBER RAWLINS-FERNANDEZ: So, our Chair has proposed a bill dated January 3<sup>rd</sup>, which is attached to PSLU-49. In...for clarification, do you support the proposed bill, or do you oppose it?

MR. SMALL: Which one? I'm sorry. I get lost in the numbers.

COUNCILMEMBER RAWLINS-FERNANDEZ: The one that's dated January 3<sup>rd</sup>.

MR. SMALL: The topic is? Not the number.

COUNCILMEMBER RAWLINS-FERNANDEZ: Existing streets.

MR. SMALL: Yes, existing streets.

COUNCILMEMBER RAWLINS-FERNANDEZ: Yeah.

MR. SMALL: Yes, I support the removal of the two-lot roadway subdivision exemption because it was not ever the intention of the Council. There was clear testimony from Ed Kushi that if the Council wanted to create a island-wide, a Countywide exemption, they could do so but not in the body of an Upcountry Water Bill. Jennifer Ohana [sic] testified --

COUNCILMEMBER RAWLINS-FERNANDEZ: Okay, mahalo for that clarification, Mr. Small.

MR. SMALL: --that it would never be used for commercial purposes. And as it is today, it is also being...commercial properties are also being exempted.

COUNCILMEMBER RAWLINS-FERNANDEZ: Okay, so you support the bill that the Chair has proposed.

MR. SMALL: Yes, please --

COUNCILMEMBER RAWLINS-FERNANDEZ: Okay, mahalo.

MR. SMALL: --remove the language if...and if the Council wants to create, you know, a benefit for developers, they can do so in the light of day.

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Mr. Small.

MR. SMALL: Thank you.

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Chair.

CHAIR PALTIN: Thank you. Members, any further questions for the testifier? Seeing none, next up we have --

MR. SMALL: Thank you.

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CHAIR PALTIN: --Zandra Amaral Crouse, testifying on PSLU-43 and 44, to be followed by Lucienne de Naie, also testifying on the same items. And she's the last person signed up to testify today.

MS. CROUSE: Aloha kakahiaka --

CHAIR PALTIN: Aloha.

MS. CROUSE: --Madam Chair and Councilmembers. Wow, you guys got some stuff in front of you. My name is Zandra Amaral Crouse, Madam Chair, and I am the principal broker and owner of Aina Hawaii ZEE Properties. I'm speaking on behalf of myself as an individual, not as a realtor. And I'm speaking on the community advisory committee plans. I had the opportunity and the privilege to attend your West Maui Advisory Committee meeting the other night on historical places.

CHAIR PALTIN: Just point of info...Lahaina Town Action Committee.

MS. CROUSE: Yes, Lahaina Town Action Committee. And they were awesome. I mean this was a bunch of people that came from all parts of Lahaina, from the south side to the west side of Lahaina. And they came together with one common thread, and that is to preserve historical places in Lahaina. As a native to Maui, I grew up here when this island was very small in population. I grew up on a farm. Hunting in Hana, in Paia, in Lahaina, in Makawao, in Kula, in Paukukalo where I was raised along the mouth of Iao River. Today when I look at all these districts, we are so different, so unique. With Paia, Haiku, Spreckelsville, that area has grown tremendously. That is another area that the population, when I visited them two weeks ago up in the little housing area, are very concerned. You still have citizens from the plantation era whose families still live there, who's concerned about preserving just a little bit of their culture, of who and what they are. And I do believe that by providing advisory committees to the different districts of the County of Maui would be prudent for us to do in preserving our culture. Regarding affordable housing, I think rather than rushing through procedures in affordable housing as was concerned by some of the testifiers, what we need to do is to see that more of the affordable housing is given to our local people. As represented in *The Maui News*, 43 percent of your affordable projects was bought by out-of-state buyers. There is no easy solution. I think community associations, I mean community advisory committees would assist in that. Going on to South Maui, when the Kaiwahine project came in, I thought it was absolutely a great place for it because it's contiguous to where I live, and it deals with affordable housing. The unfortunate thing is in front of Kaiwahine are not affordable housing. And none of those residences that I walked the streets and talked to had any idea that the project was going to happen. Nor did they know that there'd be a service center there. I'm not saying this is good, I'm not saying this is bad. But we do need to have a system in place where your local young men and women who live in that subdivision that's contiguous to Kaiwahine Villages, working family people, give them an opportunity to be informed. Give them an opportunity to give their input. If we do have an advisory committee already in promptu or whatever it is in South Kihei, I never heard of it. I

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heard of several meetings being conducted today and tomorrow, Monday, but I never heard of it. And I'm very active. So, I need to sit and ask myself, Zandra, if you didn't hear about it, has your neighbors? Has all of the young men and women who are busy working at those hotels, raising two, three, four, five children, taking care of their grandparents, do they know about it? I submit to you they don't, at least the ones I talked to. We do need to put in place if we do advisory committees, be sure it consists of the people who has been vested in this community for over 100 years. And they are your next-door neighbors, not those that's been here for a year, five years. I am sorry, I'm not prejudiced. I am not. Some of 'em are my family, some of 'em are my clients. But we need to get more of the local people involved in these advisory committees. Giving them an opportunity at night to attend your meetings. I humbly ask, guys, do not create committees that consist of people who moved here. Advise committees should be consisting of people who have a vested interest here on generations, past and generations to come. Mahalo.

CHAIR PALTIN: Thank you, Ms. Crouse. Members, questions for the testifier? Member King?

COUNCILMEMBER KING: Thank you, Chair. Thanks for being here, Zandra.

MS. CROUSE: You're welcome, Kelly.

COUNCILMEMBER KING: So, I'm glad you support it. I just...I also wanted to let you know do you understand that the actual people that have been meeting are not official and are all volunteers. And so, the idea was to create a body to see if we had the interest enough to get it going and to have people who would lead so that we wouldn't run into what one of the other testifiers said was quorum problems and issues. So, once it...the hope is that it would be, and I'm hoping you support this, the hope is that it would become official, a part of the County's structure. And then everything would be under Sunshine Law, would be noticed, and would be open to the public.

MS. CROUSE: I do.

COUNCILMEMBER KING: Okay.

MS. CROUSE: And to answer your question, I do; however, everyone I spoke to when I reviewed this agenda item four days ago, never heard of it. One of 'em was a Hawaiian group. One of 'em was a Filipino group. None of 'em who have lived in South Maui, my neighbors, my family, my friends ever heard, nor were they invited. My thing to you, Mrs. King, is simply that. There are us who are knowing, but unless you as a legislator, and us as individuals, reach out to the public and let not only those who are actively involved, not only let those who we know will vote our way, know about what's out there for them to get involved with. My consensus is, to answer your question, is everyone in the community has gotta know that it's open to them all. So, I think I hope that answered your question.

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COUNCILMEMBER KING: Well, I think you support it. I'm happy about that, and we will continue to reach out as we...

MS. CROUSE: I only support it on the level, Kelly, where you...we get more people in our community involved, not just those whom we can hold hand and agree with us. Thank you.

COUNCILMEMBER KING: Yeah, all the community associations.

CHAIR PALTIN: Members, further questions? Member...Vice...Council Vice-Chair Rawlins-Fernandez?

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Chair. Aloha, Ms. Amaral Crouse.

MS. CROUSE: Hello.

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo for your testimony.

MS. CROUSE: Thank you.

COUNCILMEMBER RAWLINS-FERNANDEZ: I just wanted to make a correction to see if this was what you meant with the Hawaii DBEDT data that 48 percent of homes purchased in Maui County during the last decade were sold to buyers outside the State? In your statement, you said that the affordable housing, 43 percent of affordable housing on Maui was what was being sold, which I'm, you know, it's possible that it is included in the 48 percent. But it's not 48 percent of affordable housing. It's just homes in Maui County. Is that what you meant?

MS. CROUSE: Yes.

COUNCILMEMBER RAWLINS-FERNANDEZ: Okay.

MS. CROUSE: Yes, yes, yes, yes, yes.

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo for that clarification. Mahalo, Chair.

CHAIR PALTIN: Members, further questions? Seeing none, I have a question.

MS. CROUSE: Yes, ma'am, Chair.

CHAIR PALTIN: Based on your testimony, and I'm assuming that you read the version that I had put forward of the community advisory committees, my question is, it sounds like you support what I put in there for 2.28.070, specifically B and also A.

MS. CROUSE: Read them out for me please, Madam Chair.

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CHAIR PALTIN: Okay. A is at least one member of each planning commission and advisory committee must have demonstrated expertise in Native Hawaiian traditional and customary practices, as evidenced by one or more of the following credentials, a college degree in a relevant field such as Hawaiian studies, Native Hawaiian law, Native Hawaiian traditional and customary practices, including traditional environmental practices, or related subject area; work history that demonstrates an appropriate level of knowledge in Native Hawaiian traditional and customary practices including traditional environmental practices; and...or three, substantial experience as a Native Hawaiian traditional and customary practitioner. The member that satisfies this requirement cannot satisfy another membership requirement established by this section. And B, which is at least one member of each advisory committee must be a third-generation resident of that advisory committee's assigned area. The member that satisfies this requirement cannot satisfy another membership requirement established by this section.

MS. CROUSE: I wholeheartedly agree with you, Madam Chair. But I also need to add to that, in that. We need to look at the vestment of our families who have built this community. Sometimes we look at guidelines in putting together our rules, regulations and giving power to those to charge and make regulations to people who come in. And oftentimes we don't take into consideration that our people don't have the time, nor the manao at times because they're busy raising their families to get involved with these things. So, as you do them, Madam Chair, the only thing I ask is you ask yourself, and Councilmembers, when you put these things forward and put people in charge, ask yourself questions. Are they vested in this community?

CHAIR PALTIN: Okay, thank you.

MS. CROUSE: You're welcome.

CHAIR PALTIN: Next up, we have Ms. de Naie, and she'll be testifying on PSLU-43 and 44, on behalf of the Haiku Community Association, and her title is President.

MS. DE NAIE: Thank you very much, Chair Paltin and Committee Members. Happy to be here today. Lucienne de Naie, representing the Haiku Community Association. We had a board meeting just a few days ago, and we spent half our board meeting going over the proposed changes to the language. I sent them around to the board, asked them to think about their comments. And so, we have a laundry list of comments. It's not like, oh my gosh, we won't support any bill if it doesn't have everything in it. But these our thoughts, you know. We're a very diverse board. Our board very strongly supported the third-generation member because that's the situation in our community. We need to hear from the people at our meetings, and we do, who have lived in our community for many, many generations. And we have people on our board who are multi-generational members of our community, kamaainas. And we have people on our board that have lived here, like me, 30 or 40 years. And we have people on our board who, you know, may not have been born here, but they've raised their kids here. They're invested in the community. We have a full range of people. And I think most community association boards do. So, just to get to the point, with

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all due respect to the comments about our Planning Commission, and I respect their work. I served on the GPAC for three years. I have to say I think we missed one meeting because of not quorum, 25 people. We made quorum, three years, every two weeks we met. It is possible. Why? The people were vetted. Many, many people applied for GPAC. Not all were chosen. The people who were chosen were people who had a track record for showing up, for being on community associations, for being on the contractors' associations, for being on the Chamber of Commerce, for doing something. And those are the kind of people you need to get on advisory committees because they've already proven their commitment, and they will show up. We want our...if we have the fortune, good fortune, to have a advisory group in Haiku-Paia, we want to vet the people. And that's why we think that our Councilmember...right now the language says that the Council itself will appoint. But those names really need to come from our Councilmember because I think they're in a position to know who shows up at community meetings, to reach out to the community groups within the planning area and find out who they recommend. There's just a lot of good points to having that system in place. I think part of the reason that we have commissions that don't meet quorum is that it's like, well, you know, who can we find? And we don't really find out if they have the time to serve. They're all good people. They're not bad people. They just don't always have the time to serve. Wow, have I gone three minutes already? Anyway, I did send the written comments, but I want to just qualify to say that we were also asked at the last...at the end of last meeting, what if this group had duties that were independent of the Planning Commissions? In other words, our Planning Commissions have a huge agenda. What if they concentrated their efforts on things like the update of Title 19? All these big projects that are coming forward, review of community plans, and many of the local decisions like rezoning and community plan amendments were actually...that are advisory to the Council, to this Council, were made by a well-vetted, diverse, local planning body, and didn't go to the Planning Commission, but were decided at that level. Would that be legal? Would that be possible? Would people support that? Our board thought that it would make sense, especially for infrastructure projects. We're looking at a new fire station. We love our Planning Commission, but they don't live in Haiku-Paia. I don't know if any member does at this point. Sometimes we have three members from the Planning district. Sometimes you have none. So, why not have these things heard where they're going to have an impact, where people just don't come to complain, but offer solutions. We have many, many skilled people that show up for our Haiku Community Association meetings. People who are engineers, architects, cultural practitioners who have stuff that is valuable to know, not just complaints. That's the input we want to get in these projects to save disasters from happening. So, you can read over our comments. The idea of who appoints, we just feel that it's important that our Councilmember has a strong say in that. The original version from Kihei had the Councilmember from the district making the appointments. We're not opposed to that, but if this Council can't live with that, at least the Councilmember from the district should generate the list of potential applicants for the Council to review. That really makes sense. And we also...we debated about Spreckelsville being included. I'm very enthusiastic about that idea. But our board members, some of them said, you know, those are really rich people over there. Do we have anything in common with them? Which goes to show, we all have more to learn 'cause I have friends who



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live in Spreckelsville who are not rich people. People rent in Spreckelsville. People own places there from long time who their families, you know, have been there for generations. But Spreckelsville folks, we have reached out to them. They're polling their own community to see what they think, and if that is something that needs to be moved forward, you know, there'll be a basis for that. So, thank you for your understanding.

CHAIR PALTIN: Thank you, Ms. de Naie. Members, any questions for the testifier? Member King?

COUNCILMEMBER KING: Thank you. Thank you for being here, Lucienne, and for all your work with the community association. On this testimony that you sent in, there's a lot of comments here, but do you have like final recommendations? Or did you...

MS. DE NAIE: Well, the one thing that we would...the two things we would strongly address would be the 60 days. We think if you have a 60-day turnaround, you need to have a provision just in case you have like this hot button issue that 100 people show up and you do need to hear them in some way. It might take two meetings. You might not be able to have two meetings within the 60-day range. It just might not be physically, you know, easy to do and make a decision. So, in those cases, there should be a, you know, provided that if additional time is needed, a 30-day extension. The Land Use Commission does this. They have very strict review deadlines. But they have this little escape clause for 30 days. So, I would just suggest that we put that in. If it's never used, it's never used. But if it's needed, it is there. And then the other thing is that the...recommend that, just like it's proposed, that if a person is on the committee for their traditional Hawaiian language, that does not count for the third-generation person. The third-generation person should be a separate person. And then we also think that geographic diversity within the planning district, both South Maui and Haiku-Paia have, you know--

COUNCILMEMBER KING: Right.

MS. DE NAIE: --a broad range. They go from, you know, basically from Baldwin Beach to all the way out in Huelo. So, you'd want to represent the different areas of those planning district on the board, if you could. You know, you can't always but you could at least try.

COUNCILMEMBER KING: Right. And actually, the provisional South Maui group does have representation from several different community associations so.

MS. DE NAIE: Right.

COUNCILMEMBER KING: You have in your district as well, correct?

MS. DE NAIE: Well, we only have two community associations in our district.

COUNCILMEMBER KING: Okay.

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MS. DE NAIE: Well, we have three if you count Spreckelsville. We have Spreckelsville, Paia, and Haiku. So, Huelo doesn't have its own...it's not like, you know, we don't have homeowners' associations and, you know, South Maui has much more.

COUNCILMEMBER KING: Right.

MS. DE NAIE: Yeah.

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

MS. DE NAIE: And, you know, much more population.

COUNCILMEMBER KING: Right, okay.

MS. DE NAIE: But anyway, those are our thoughts. And if it is decided that we have a splitting of roles, and if that's legal with the Planning Commission, we'd be happy to give, you know, more specific input on that. But our board did see some merit in maybe just having very localized decisions only reviewed by the local regional group and not have to go through two layers of process.

COUNCILMEMBER KING: Okay, thank you. That's good input.

CHAIR PALTIN: Member Molina?

COUNCILMEMBER MOLINA: Thank you, Madam Chair. Good morning, Lucienne. Thank you for your input. And I appreciate the point you hit upon with regards using the fire station as an example. The Planning Commission may not have somebody from the area but with these advisory committees, you have people who know the lay of the land. And so, I think that's why there's a lot of value in having these advisory committees and where if it goes on to the Planning Commission, then at least you have, you know, a lot more input from the people who are going to be directly affected by it.

MS. DE NAIE: Yes, I agree.

COUNCILMEMBER MOLINA: The point I wanted to make, or the question I have is more related to your testimony, written testimony regarding alternate members. We heard concerns about, you know, there's going to be a lack of quorum. I think the idea of creating alternate members has merit. Can you kind of further expound on that?

MS. DE NAIE: Well, I serve on a board that has that structure of alternate members. Now, it's a nonprofit organization. And for just this reason, it's all working people. And all people, most of them have kids or grandkids that they're responsible for. So, although we all care and want this organization to meet regularly, it isn't always possible when you have real people participating in these things. It's like not everybody can show up on the, you know, the agreed date. Stuff happens. Kids get sick, mom needs your

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help, whatever. So, the alternates really make sense. It's made it possible for us to have quorum. I understand that perhaps the body itself could set its own rules and setup for alternates, but the idea that an alternate...I served as an alternate to a panel on the State Land Use Commission reform for two years. And I was invited to come to every single meeting, and if the main person who represented the non-government organizations was not there, I had a vote. If they weren't, I could still participate and offer my manao. And I had a valuable experience. I attended every one of the meetings. Even though I was able to vote, I think at, you know, three out of the seven or something that I attended, you know, I was willing to do that. Would everybody be willing to do that? Well, I'm not sure, but it's I think worth trying. We are learning from our experiences here. Obviously, we're not doing this thing the same way we did in 1970 or 1990. So, why not give this a try. I think the Engineering Standards Committee has alternates.

COUNCILMEMBER MOLINA: Correct. I think the Urban Design Review Board. So, Madam Chair, this is nothing new to the County of Maui. Some of our boards and commissions have alternates on there. So, I think it's a good point you bring up with these advisory committees so.

MS. DE NAIE: Yeah, yeah.

COUNCILMEMBER MOLINA: Thank you.

MS. DE NAIE: And as far as, you know, community associations sort of just taking over this role and reviewing projects, South Maui does a really good job, Kihei does. You know, I'm not sure, most of our people are working people on our board. We have two retirees. And so, you know...

COUNCILMEMBER MOLINA: Yeah, and that could help address the concerns from testifiers --

MS. DE NAIE: I think having a group --

COUNCILMEMBER MOLINA: --to lack of quorum.

MS. DE NAIE: --that specifically has the staff support and everything for that makes sense.

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

CHAIR PALTIN: Any further questions for the testifier? Seeing none, thank you. Any further one wants to provide any public testimony in the Chambers or the District Offices? We're good? Okay. With no objections, I'll close public testimony.

COUNCILMEMBERS: No objections.

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

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CHAIR PALTIN: Okay. It's about 10:20. So, half the day is done. Members, ready for a recess, and then we'll come back and finish the business. Ten-minute recess. . . .(gavel). . .

**RECESS: 10:19 a.m.**

**RECONVENE: 10:33 a.m.**

CHAIR PALTIN: . . .(gavel). . . All right, so it's 10:33 on Wednesday, January 22<sup>nd</sup>. Will the Planning and Sustainable Land Use Committee meeting return to order

**PSLU-49 EXISTING STREETS** (CC 19-228; CR 19-100; CC 20-25)

CHAIR PALTIN: The first item on today's agenda is PSLU-49, Existing Streets. And the Committee is in receipt of the following: County Communication 19-228 from myself, transmitting a proposed bill to require improvements to existing streets for subdivisions creating two developable lots; Water and Infrastructure Committee Report 19-100, which was recommitted by the Council at its meeting of August 23, 2019; and County Communication 20-25, from myself as well, transmitting a proposed bill entitled, "A Bill for an Ordinance Amending Section 18.20.040, Maui County Code, Relating to Existing Streets." The purpose of the proposed bill is to require improvements to existing streets for subdivisions creating two developable lots. And I think we all know that this item has a long history attached to it. I scheduled the item because, you know, there's been quite a bit of outcry against it as it has been in effect for about the past five years or so, and it's effectively worked as a taxpayer-funded subsidy for development. And, you know, people like sidewalks, and they want these things. But they want us to pay for it. And with all the challenges we face coming up with sea level rise and things like that, you know, I don't think that's prudent when, you know, the developers are developing. So, the previous number was WAI-38, and it got transferred to PSLU during the restructure. My proposal that I'm proposing today is to basically bring the ordinance back to it was...what it was before the whole Upcountry Water Bill situation. So, Corp. Counsel hasn't yet signed off on the bill, but it was existing prior to it being changed. So, I don't foresee any legal problems in just reverting it back. In the gallery today, we have Deputy Director Jordan Molina from Public Works, and at this time if he has any opening comments to provide, I would like to welcome him.

MR. MOLINA: Good morning, Chair Paltin and Members of the PSLU Committee. My name is Jordan Molina. I'm the Deputy Director with Public Works. So, I guess at this time, you know, the Department has no objection with the proposed bill. I guess we would really defer to it as a policy decision whether to allow these exemptions to continue or not. From an administrative standpoint, processing these types of subdivisions, I mean in essence is a little simpler because you take out the review components related to the road improvements, so it does help to expedite these approvals. But otherwise, you know, it's really a policy call to allow these exemptions to occur, or not, and

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require the improvements. That's kind of where we're at at this point, and, you know, happy to answer any questions.

CHAIR PALTIN: Thank you, Mr. Molina. Mr. Hopper, would you like to weigh in on the bill at all?

MR. HOPPER: I don't think we have any comments at this time. Thank you, Madam Chair.

CHAIR PALTIN: Thank you. So, I'll open up to Member discussion. Any comments? Chair...or Councilmember King, followed by Councilmember Sugimura, followed by Councilmember Molina.

COUNCILMEMBER KING: Okay, thank you, Chair. I have some questions for the Public Works Department. And I don't know if you can answer this, but just in looking at the testimony from Christopher Salem from the Office of the Mayor, there's a statement in here that says that over 30 subdivisions involving developments of upwards to two 1,200 acres have now been granted exemptions from roadway infrastructure improvements. So, first of all, is that your understanding? Have you researched the information here? And second of all, how much does that cost the County?

CHAIR PALTIN: Before Deputy Director Molina answers, I just wanted to point out that Staff is handing around a little spreadsheet of, you know, in Granicus the previous communication between this subject Committee Chair Lee and the Public Works Department as well as the Planning Department, we did a little bit of a deeper dive on the information that was provided as of August 22<sup>nd</sup>. So, that's the spreadsheet that's being handed around, and I think it in some way relates to Councilmember King's question although it doesn't have all of the answers.

COUNCILMEMBER KING: These are the exemptions...

CHAIR PALTIN: As of I think August 22<sup>nd</sup> about, or so. It's not...

COUNCILMEMBER KING: Oh, these are new exemptions that have been granted since August, or...

CHAIR PALTIN: No, it's only up to August.

COUNCILMEMBER KING: Up to August.

CHAIR PALTIN: We don't have August to now.

COUNCILMEMBER KING: Okay. Yeah, and I...there's assessed values, but there's not...I mean what...I guess what I'm asking is what is the cost to the County of these exemptions, and can you give us a round figure, or have you done the research on that yet? And I know you're new so I don't want to put you on the spot. But it's been a ongoing problem.

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MR. MOLINA: Chair Paltin and Member King, it's going to be a case-by-case. Every subdivision has a different situation that would affect how much and the extent of the improvements. So, we have not done the analysis to go through and estimate what the improvements would've been and to try and put a price to that. So, when these reviews come in, that process does not occur because it's understood they're exemptions so we're not going to go and go through the exercise of having them propose the improvements for us to analyze just to say they're exempt.

COUNCILMEMBER KING: Okay. So, do you know if that's the type of information that should be coming out in this audit? 'Cause I know this is one of the issues that's being audited right now. Are they looking at those...that cost to the County?

MR. MOLINA: Madam Chair?

CHAIR PALTIN: Deputy Director?

MR. MOLINA: Yeah, so the...I guess what I was referring to was the two-lot exemption that we're discussing today.

COUNCILMEMBER KING: Right, so...

MR. MOLINA: The deferral agreement is a similar but separate avenue.

COUNCILMEMBER KING: Okay. So, the letter that we're looking at from Christopher Salem to the County Auditor is on a different issue than what we're talking about today?

MR. MOLINA: Madam Chair?

CHAIR PALTIN: Mr. Molina?

MR. MOLINA: So, the...it's...it affects the same section of the Code, but it happened...it's a previous provision that was allowed to defer improvements. So, those improvements were never exempted. They were deferred.

COUNCILMEMBER KING: So, these aren't...what we're talking about today is not part of the actual audit that's being done now.

MR. MOLINA: I'm not aware if they are looking at this part. But the matter in this letter referring to deferral agreements are a separate provision of law that was enacted with separate types of agreements that allowed subdivisions to defer their improvements.

COUNCILMEMBER KING: Right. No, I understand that. But what...I did notice that he's talking in his letter to the Auditor also about this...the change that we're talking about today, the Upcountry Water Bill. And so, I just wanted to...I didn't know if you were aware of whether these two things are both in the audit or they're completely...I mean and it's hard to know. I understand because the Auditor is totally independent, so I respect that and the fact that he needs to be independent in order to do his work. But

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it seemed to me like these two issues were being kind of related to each other in this document.

MR. MOLINA: Yeah, so, I guess I can speak to that. As a matter of practice, the way the Code reads, this two-lot exemption we're discussing today can be applied to a existing subdivision that has a deferral agreement. And this two-lot exemption would exempt those improvements for the two lots, but it would not erase what was obligated on the deferral agreement 'cause those deferred improvements are still owed.

COUNCILMEMBER KING: Okay, so they're still on the books and that's a separate issue.

MR. MOLINA: Correct. But this two-lot exemption allows a subsequent subdivision to occur without triggering those improvements.

COUNCILMEMBER KING: Okay, so we won't know from the audit what that's costing the County. That would have to be something you would have to research?

MR. MOLINA: I don't believe they would look at this two-lot exemption in that context at this point.

COUNCILMEMBER KING: Okay, so I don't know, Chair. I'd like to find out if there's a way. But I don't, you know, I don't know if this like a year's worth of work digging into this to find out what the cost to the County is, or if that information already exists. Is there a way we can...

CHAIR PALTIN: So, just to clarify. The audit was specific for the three-lot deferral agreement which is a completely separate issue. The three-lot deferral agreements as a legislature...or a piece of legislation ended around 2007.

COUNCILMEMBER KING: Right.

CHAIR PALTIN: And then this two-lot exemption began about 2015 to 2000...right, present day. So, it's similar in that both parties...or both people that are going through these subdivisions don't have to pay. One, the older one, the deferrals where they were supposed to pay up at some time, but a formula has never been given and no monies has ever been collected. And that's, you know, 50 years, and then David Goode was in for eight years. During his confirmation he said he had a formula, but I don't think one existed. But that's just speculation. So, it's totally not what we're dealing with today.

COUNCILMEMBER KING: No, I understand that --

CHAIR PALTIN: What we're dealing with today...

COUNCILMEMBER KING: --but what I was asking was if we could get a cost estimate of what this, the one that we are dealing with today, what it cost the County? And...

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CHAIR PALTIN: So...

COUNCILMEMBER KING: And I understand that the Auditor can add whatever he wants to his audit because he's totally independent. So, if he wanted to, he could put that in there. I don't know that he has. I'm just looking at the letter to the Auditor from Mr. Salem asking him to do that. But for this particular one I was just trying to find out if we could get a cost estimate of what it's cost the County to date.

CHAIR PALTIN: So, I don't think that that's in the Administration's plans because it's been exempted. So, they don't have a reason to go and do it unless they're directed to do it by the Administration. Is that correct, Mr. Molina?

MR. MOLINA: Madam Chair, what we could do is we could...so you guys have this list before you of what two-lot...which subdivisions have invoked this two-lot exemptions. You know, we could go through and review the files and have our Staff make assessments of what the scope of improvements would've been, and then provide estimates of what those costs might have been to give a ballpark. But that would be a new undertaking by us to go and do that analysis at this point.

COUNCILMEMBER KING: Okay. So, based on what you know in this spreadsheet, would your recommendation be to, you know, approve the...going back to the law the way it was before the exemption happened?

MR. MOLINA: I think as I stated earlier, we don't have a position either way at this point. If the intent is to, yeah, provide this avenue to make subdivisions of two lots easier, then, you know, it's the purview of the Council. But if not, that is also your purview. I don't think we're in a position to state whether it's extremely beneficial or not. Just in looking briefly at this listing, it's majority Ag lots that are utilizing this provision. You know, if there's concern about allowing Ag lots to do that or not, we don't have a concern either way at this point. We'd probably likely defer to Planning Department or, you know, the other land use provisions about whether, you know, that's an acceptable practice or not. But administratively, it kind of...you know, we could live with it either way.

COUNCILMEMBER KING: Okay, thank you.

CHAIR PALTIN: So, for me one of the things that stood out towards this discussion is a testimony from David Goode dated September that's in your Granicus. And within that testimony he had asked, what problems are you trying to solve? And so, in looking at all of these exemptions that have been granted to date within the last five years, and the problems that I'd like to solve is I would like to eliminate a taxpayer-funded developer subsidy, you know. When you look at some of the folks that have taken advantage of this exemption over the past five years, it doesn't make me feel good that we're asking our taxpayers to fund these two-lot subdivisions for, you know, I mean Snorkel Bob or Wailea Old Blue shops, Condo Master, A&B, you know, the intersection of Dairy and Puunene. I think that the developers that want to do those subdivisions have the means to pay for it. And that the taxpayers shouldn't



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be funding this type of subsidy. And so, I think, you know, if they had a good run for five years, they got a lot of freebies in the process, and now we need to focus on where our monies can best be spent. And I don't think it's to continue to subsidize subdivisions on Ag land. And you know, even in residential areas where our focus is on multimodal transportation, making our streets safer, more walkable communities, you know, we need to address those issues. Lahaina has a lot of hit-and-runs. I think Kihei has a lot of hit-and-runs. We gotta make our streets more walkable, more safeable [sic], and by continuing to hand out these exemptions, our taxpayers are going to fund the bill for these more walkable, safer streets. And so, you know, we're just going to, over the long term, dig ourselves deeper and deeper into the hole. And you know, there's even a golf course that took advantage of this subsidy. So, you know, the original intent of the bill I believe, in some of the testimony and some of the minutes, was to help long-time kamaaina families, to help those on the Upcountry water meter list. And it turned into this kind of, you know, free-for-all like where, you know, no size Ag subdivision gets community input or a public hearing, and now we're expediting the process. And I don't know, maybe Corp. Counsel can help me out if, you know, somebody subdivides into two and then it further subdivides and further subdivides, and you have the effect of having like, you know, an Agricultural subdivision eventually. So, I just, you know, if we want to address a problem, if we want to address the original problem, we need to go back to the drawing board and start from where we were because the problem that I'd like to address today is taxpayer-funded subsidy of developers creating two-lot subdivisions. And so, that's...I mean I guess I didn't explain well enough why I scheduled it. But that's the reason why I scheduled it. Member Sugimura?

COUNCILMEMBER KING: I'm good with your explanation.

COUNCILMEMBER SUGIMURA: Thank you.

CHAIR PALTIN: Huh?

COUNCILMEMBER KING: I'm good with your explanation. But I still would like to, you know, if we can, eventually get an opinion from Public Works on...

CHAIR PALTIN: Okay, so Staff, would you draft a letter to Public Works asking if they can provide an estimate of the exemptions granted to date. Thank you. Member Sugimura?

COUNCILMEMBER SUGIMURA: Yeah, I appreciate that information also that Member King is asking for to show the impact of what this, you know, what this does. I appreciate your explanation, Chair, and I also wondered what you just said. I didn't think about that aspect of taking an Ag... 'cause a lot of the parcels that we got on this list for review of who was taking... or using the two-lot subdivision now is Ag. But would they be able to subdivide and then subdivide? Maybe that's a question for Corp. Counsel or... I didn't think you could that.

MR. MOLINA: Madam Chair?

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CHAIR PALTIN: Mr. Molina?

MR. MOLINA: Yeah, so the current law as it reads, these two-lot exemptions is only a one-time. Any future subdivisions --

COUNCILMEMBER SUGIMURA: Okay, that's what I thought.

MR. MOLINA: --cannot occur with the exemption for that same, original subdivision.

COUNCILMEMBER SUGIMURA: Okay. So, that's good to know.

CHAIR PALTIN: Was that also a provision of the three-lot deferral?

MR. MOLINA: Yeah, Madam Chair. There's two different iterations of the three-lot deferral. So, the second iteration did have language about deferred improvements cannot be deferred a second time.

CHAIR PALTIN: And since that second language it never happened again?

MR. MOLINA: I'm not familiar enough with that file to speak on that at this time. But there is potentially properties where the first iteration was allowed, and the second iteration was allowed because that first iteration did not contain language limiting future deferrals.

CHAIR PALTIN: So, then, you know, when you say that the exemption would only be granted the one time, who is responsible for keeping track with that? Like say, you know, we have a new administration and new appointed directors, who...how is the institutional knowledge carried forward from when one administration to another whether a parcel already took advantage of their exemption? Is there...do you guys have a running list of parcels that are no longer allowed to have this two-lot exemption that you refer to or...

MR. MOLINA: Yeah, Madam Chair, down in DSA there's essentially a file for every TMK in the County. And so, it would be up to the engineering staff that's reviewing the subdivision at that time to review the existing file for any sort of flags that might be on the subdivision. So, there's no running list, per se, but the information is categorized by the parcels, and those parcels get reviewed at the time of subdivision application.

CHAIR PALTIN: Okay, thank you. Member Molina?

COUNCILMEMBER MOLINA: Thank you, Madam Chair. You know, I just want to preface my line of questioning by first saying that in my 11 years on the Council, this would be the first time I've ever asked the person with the same last name questions. So, this is, from a family perspective, quite historical. Good morning, Mr. Director. So, under the current ordinance, so two-lot subdivisions are required to provide road-widening lots to the County without the improvements?

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CHAIR PALTIN: Mr. Molina?

COUNCILMEMBER MOLINA: Just to help me get up to speed on this for clarification purposes.

MR. MOLINA: Madam Chair, Member Molina, I'd have to double-check on that if the road-widening lots is still required. I believe so, but I'd have to get back to you to confirm.

COUNCILMEMBER MOLINA: That's fine. And if we take action on this and remove the two-lot exemption, so you anticipate a lot of property owners going to the BVA now potentially for an appeal, I guess? And I know you mentioned earlier it would be reviewed on a case-by-case basis. So, that would be the outlet I guess for owners of two-lot subdivisions to go and appeal, or ask for a variance from the BVA?

CHAIR PALTIN: Before you answer, Chair Lee did request that information when she had the meeting and it was, I believe 2007 to 2015, there were six applications with five granting over the eight-year period. And that's consistent with Mr. Small's testimony as well.

COUNCILMEMBER MOLINA: Okay, okay. Well, thanks for that clarification.

CHAIR PALTIN: You have anything to add to that, Mr. Molina?

MR. MOLINA: Yeah, Madam Chair, Member Molina, yeah, so the variance process is the existing process to go in front a body and get, you know, exemptions essentially. Yeah, so that would be the outlet now. We wouldn't allow these two lots...

COUNCILMEMBER MOLINA: You know offhand what the fee is for the property owner to go before the BVA? I know it's...is it quite costly?

MR. MOLINA: I believe, my understanding is it's \$1,000 to just get a hearing.

COUNCILMEMBER MOLINA: With no guaranties, yeah. Okay, and maybe this...you can get this information back to us, Madam Chair, on your signature. If we could get an estimated range of how much savings the average two-lot subdivision could experience by having the existing exemption, if we could have that info at a later point. I don't know, unless it's been already been gathered.

CHAIR PALTIN: From my perspective, an average might be difficult because of the different types of exemptions. You got, you know, Commercial, Ag, like --

COUNCILMEMBER MOLINA: Family.

CHAIR PALTIN: --mentioned one was on Dairy and Puunene intersection. The Snorkel Bob one is in Lahaina, you know, right on I think Front Street or something. So, I think an

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average, Mr. Molina can weigh in, but it would be difficult for it to reflect a specific information that you're trying...

COUNCILMEMBER MOLINA: Yeah, depends on what type of improvements also.

CHAIR PALTIN: Yeah. Mr. Molina can weigh in as well.

MR. MOLINA: Yeah, I would also comment that like in Ag, if let's say you have a 50-acre parcel that has thousands of feet of abutting roadway, versus a ten-acre parcel that has hundreds of feet of roadway, an average might not be representative of what you're trying to, I guess, analyze maybe.

COUNCILMEMBER MOLINA: Might not paint an accurate picture, I guess.

MR. MOLINA: Yeah, exactly. So, I mean you could probably look at a total, but to, yeah...it's all case-by-case and parcels are in all kinds of different shapes and sizes and locations that an average might not be very representative.

COUNCILMEMBER MOLINA: And finally, what is the turnaround time for processing these applications? Again, that varies, I guess.

MR. MOLINA: The best estimates I've heard is a year.

COUNCILMEMBER MOLINA: A year.

MR. MOLINA: For the most seasoned developers that understand the review process and have a good understanding of what the expectations and the comments they'll get back from the various reviewing agencies there are.

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

CHAIR PALTIN: Thank you, Member Molina. Member Sinenci?

VICE-CHAIR SINENCI: Thank you, Chair. Just some general questions. It looks like there are a couple of ranch subdivisions, or the one on the end under Comments and Details, it said the total exemption value was 400,000. So, one of 'em has the exemption figures on it, on the right side. My question was there's some highlighted areas that says "final" and "expired." Are those projects done with and they've already paid those off? Is that what the expiration, the highlighted expiration means?

MR. MOLINA: Madam Chair and Member Sinenci, I'm not familiar with how this list was put together, but I would presume that those are the statuses that are reflected in KIVA which is our permit-tracking process. If it's noted as expired, essentially that means the applicant did not complete the review process in the...there's typically a one-year turnaround. Usually, after preliminary approval to get all the comments or requirements addressed and then to submit for final, often projects don't go through. And then once the one year is up, they'll get flagged as being expired.

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VICE-CHAIR SINENCI: So, these projects didn't go through?

MR. MOLINA: Again, I would have to confirm what the KIVA records say. But that's what it would indicate.

CHAIR PALTIN: Yeah, on the...I think the expired ones, the...it expired...for number 15, if you look at the Aeder Subdivision on the back page, it looks like it got resubmitted as number 20. And then I'm assuming that the final is at final subdivision approval part of it. So...

VICE-CHAIR SINENCI: Oh, okay. So, the --

CHAIR PALTIN: Yeah, some of these are...

VICE-CHAIR SINENCI: --original one expired, and then they resubmitted --

CHAIR PALTIN: Resubmitted, yeah.

VICE-CHAIR SINENCI: --the application. Okay. And then you mentioned another...so, you went ahead and you did a two-lot subdivision, but you cannot after the two lots, you cannot go ahead and re-subdivide those sections. Correct?

MR. MOLINA: Madam Chair, you would not be able to get the exemption for the road improvements.

VICE-CHAIR SINENCI: Okay, all right.

MR. MOLINA: But you could do another subdivision if your zoning would allow the lot sizes.

VICE-CHAIR SINENCI: Okay, thank you. Thank you, Chair.

CHAIR PALTIN: Members, any further discussion? Council Vice-Chair Rawlins-Fernandez?

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Chair. Okay, I think this question will be for Mr. Molina. Mahalo, for being here, Mr. Molina. Okay, so I'm trying to wrap my brain around this. So, my understanding of the original intention of the Council was to help those who were on the Upcountry water meter list. As they...as their name came up, they would qualify for this two-lot exemption. Is that correct? Okay, he nodded his head.

CHAIR PALTIN: There was also something in the minutes, you know, to help long-time local kamaaina families.

COUNCILMEMBER RAWLINS-FERNANDEZ: Okay, so the intention was to help Residential Homeowner tax class, not necessarily Ag, Commercial, Conservation.

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CHAIR PALTIN: Is Upcountry...I don't what the zoning is up there.

COUNCILMEMBER SUGIMURA: Lot of Ag.

CHAIR PALTIN: Lot of Ag. Member...Mr. Molina?

MR. MOLINA: Madam Chair and Member Rawlins, so, from reviewing the file, that seems to what been the intent; however, the language that was written...

COUNCILMEMBER RAWLINS-FERNANDEZ: Residential and Homeowner, not others tax classes.

MR. MOLINA: Likely Ag because Upcountry is primarily Ag. So, the people getting water meters Upcountry would primarily be Ag properties, which may also be Homeowner classed as well. But I guess the way the language is written, there is no clear exclusions called out. So, from our reading of what the Code says, any subdivision, as it reads currently, is eligible for these exemptions.

COUNCILMEMBER RAWLINS-FERNANDEZ: Right. I understand that part. I was just talking about the intention. And I know that, you know, as policymakers our intention don't always necessarily end up in black and white as we intended. So, I'm just trying to figure out because where I'm at now is...so the intention of this Council was to try to help the Upcountry residents who are on the water meter list and who are long-time, you know, generational families Upcountry. And, you know, whatever happened ended up being Countywide. How many properties or families--I don't know which one you would be able to answer--did this help Upcountry as was originally intended?

MR. MOLINA: Madam Chair, Member Rawlins, we would need to go back and review the projects and review them against essentially what the Water Department components were because that would really answer the question of the Upcountry meter list to actually go and reference that list, and reference these property owners and connect the dots to be able to say, yes, that subdivision was an Upcountry meter list subdivision or not.

COUNCILMEMBER RAWLINS-FERNANDEZ: Upcountry water meter list, but also you said generational families Upcountry. So, it wouldn't be exclusive to the list?

MR. MOLINA: Yeah, so I guess to answer to that one, we could...or we would have to essentially interview the families and evaluate if yes, from what...the intent is a generational-type --

COUNCILMEMBER RAWLINS-FERNANDEZ: Okay.

MR. MOLINA: --nature.

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COUNCILMEMBER RAWLINS-FERNANDEZ: So, is there any language in Administrative Rules or ordinance that help to define what generational family would be so that you could determine whether they were a generational family or not?

MR. MOLINA: Madam Chair, Member Rawlins, there is the provisions for Family Subdivisions which lay out requirements for essentially validating that it is a family subdivision. I'm not strongly familiar with that section, but I would say at this time that a provision of Code is probably the most appropriate at this time. But as it reads, this two-lot exemption is not tied to that Family Subdivision procedure.

COUNCILMEMBER RAWLINS-FERNANDEZ: Okay, so as far as you know, recording whether someone was on the Upcountry water meter list, or a generational family using the process in the Family Subdivision section of the ordinance was not used?

MR. MOLINA: That's for the purpose of this two-lot exemption, that's correct.

COUNCILMEMBER RAWLINS-FERNANDEZ: Okay, mahalo for that information. Okay, so, Chair, I appreciate the bill that you proposed. Where I'm at now is I could support what you proposed. But like the Council before us, I want to, you know, help those that are on the Upcountry water meter list. And I know the intention behind the two-lot exemption was to do that. And so, I don't want to support the bill that you've proposed without some kind of assurance to those on the Upcountry water meter list that we are committed to doing something more to help them. And if we cannot give that assurance, then I would like to support the bill that was originally in WAI that would limit those...to qualify for this two-lot exemption to be Upcountry on the water meter list, or using the Family Subdivision section of the ordinance that Mr. Molina just said.

CHAIR PALTIN: Yeah, for me I think that really a more appropriate place to do it would be the Family Subdivision Ordinance. It fits I think much more well within that framework rather than, you know, I think it morphed really into not what we had expected it to be. And so, for me, this is, you know, it's a multi-step process and let's see, 18.20.280, Family Subdivisions would not be affected by this repeal, and we can then go...whoever would like to champion that cause can then submit legislation under the Family Subdivision Ordinance that, you know, two-lot exemptions on the water...who were on the Upcountry water meter list that are Family Subdivisions. I think that would be a much more appropriate place. But that's in the future, and I would also welcome that action by anyone who wants to take it if people want me to take that action and want to work with me with the families, or if...I mean if Member Sugimura would...is closer to the families and would like to work on it. But I think that would definitely be a more appropriate place to deal with it. And I'm open to it as well as that was the original intent. For this action today, that's not what's on the agenda. It's easier to me to just, you know, do one thing at a time and focus on one bill and one issue so I don't want to murky it up with deferral agreements or Family Subdivisions. I just want to focus on the issue at hand. And so, I'll entertain a motion to recommend passage on first reading of the proposed bill entitled, "A Bill for an Ordinance Amending Section 18.20.040, Maui County Code, Relating to Existing

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Streets;" incorporating any nonsubstantive revisions; and filing of County Communication 19-228, Committee Report 19-100, and County Communication 20-25.

COUNCILMEMBER KING: So moved.

VICE-CHAIR SINENCI: Second.

CHAIR PALTIN: Moved by Councilmember King and seconded by Councilmember...Committee Vice-Chair Sinenci. Members, any discussion on the matter? Member Sugimura?

COUNCILMEMBER SUGIMURA: So, I like your...appreciate the discussion on taking up another issue as it may apply to the Upcountry water meter list as the intent was. So, I'd like to work on that and work with the community, KCA, Kula Community Association, Pukalani Community Association, and, you know, Upcountry and see where that, you know, goes. One of the things, if this bill passes and it takes effect, then what would happen to all these people on the list is a concern.

CHAIR PALTIN: Mr. Molina? Can I clarify which list that you were referring to?

COUNCILMEMBER SUGIMURA: Oh, the one that you were talking about.

CHAIR PALTIN: Oh, okay, that list...and whatever it's grown to since August.

COUNCILMEMBER SUGIMURA: Yeah, okay. Yeah, 'cause it looks like it's updated from the one we got during Committee.

MR. MOLINA: Madam Chair and Member Sugimura, that would be the purview of the Council to determine when the effective date of this change would occur and whether, you know, it's...applications have already been submitted, if preliminary approvals been granted, or outright anything pending.

CHAIR PALTIN: And in addition to Mr. Molina, I'd like to bring your attention to Section 3 of the bill. That this ordinance shall not apply to subdivisions that receive preliminary approval within 90 days after the effective date of this ordinance.

COUNCILMEMBER SUGIMURA: So, the people on this list, how do we know that they're...what stage they're at, Mr. Molina?

MR. MOLINA: We...

COUNCILMEMBER SUGIMURA: Because there's no...on their status.

MR. MOLINA: Yeah, so, we would have to go review where they are in the process at this point. I know, so in terms of preliminary approval, there is a clock in the Subdivision Code which is...



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COUNCILMEMBER KING: Chair?

CHAIR PALTIN: Member King?

COUNCILMEMBER KING: While he's looking for that, is there a way that we can prioritize those who are the original intent of the bill which is the Upcountry...the homeowners on the Upcountry water meter list for approval because that was the original intent? To make sure that those approvals happen within that 90 days.

CHAIR PALTIN: I guess one question at a time.

COUNCILMEMBER KING: Maybe you could use that as part of the answer to Member Sugimura 'cause I think that's one of her concerns too.

MR. MOLINA: Sorry, I'll have to go...get back to you on the time limit. But there is for the preliminary plat process, there is a time limit and if all the reviewing and commenting agencies don't return comments at that time, then it's understood that the preliminary plat is approved.

CHAIR PALTIN: So, there's a set amount of time, and if the agencies don't...I guess around 90 days was the courtesy period. But if there's no response, then it's approved. So...

MR. MOLINA: That's correct.

CHAIR PALTIN: Yeah. I mean they've had five years to take advantage of this. So, I feel that's sufficient as it was kind of morphed into something unintended and kind of a giveaway to developers. So, if there's no further discussion...

COUNCILMEMBER KING: I have...yeah, I have...

CHAIR PALTIN: Okay. Member Molina?

COUNCILMEMBER MOLINA: Thank you, Madam Chair. I'm of the like mind of my colleague from Molokai, Ms. Rawlins-Fernandez, that we should...well, whatever action we take today that we need some assurances that this, you know, sort of wouldn't have any unintended consequences to those on the Upcountry water list. And Director Molina is going to be coming back with some more information based on some of the questions that we've asked. So, honestly, I thought we'd maybe defer on this today, get more information, then, you know, take a vote at a future meeting. And we're missing one important Member. That's Chair Lee who chaired the then Water Committee where the, I guess, the legislation took place in her Committee. So, it would've been important to get input from her as well. But I just want to make sure that if we do take action today that this doesn't come off to those on the list that we're provided here as like changing the rules in the middle of the game, so to speak. So, and that's why I have a little bit of hesitation on this. I just would feel more assured if we get all the information, all the answers to our questions provided to us. So, that's

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just my statements on this. So, if it does move, I'll be voting with reservations just based on that alone 'cause I just want to get those assurances, and like, you know, Member Rawlins-Fernandez had stated. So, those are some of why I have some hesitancy on acting today. Thank you, Madam Chair.

CHAIR PALTIN: Yeah, I believe we can get the information before first reading so there's that. Member King?

COUNCILMEMBER KING: Oh, thank you, Chair. Yeah, I was just going to say I think I have confidence that Member Sugimura is going to start working on that, the bill, right away. But I also wanted to...I want to make sure that we kind of stop the bleeding, and we're not going ahead and having a mad rush of developers applying for this, you know, while it's in this stage, you know, because we've experienced that with the sand extraction where we were in the middle of trying to finalize the moratorium, and then permits were being given out. So, if we could get some assurance from Public Works that, you know, we'll...I mean and I have no problem with the original intent which is the homeowners Upcountry on the Upcountry water meter list. But I want to make sure that there's not, you know, a push to get more of these exemptions done for developers before we finalize this bill 'cause that tends to happen sometimes.

CHAIR PALTIN: Member...or Mr. Molina?

MR. MOLINA: Madam Chair, so to clarify that the preliminary approval process is 45 days at this point. So, if no response...or if no determination is made by Public Works to either approve or reject, essentially if we don't respond, then it's understood to be approved within 45 days.

COUNCILMEMBER KING: Right. Well, that's kind of what I was...I mean I'm not talking about anything on this list. I'm just talking about...or anything that's been applied for to date, but like, you know, if we're moving in this direction, can we kind of put a halt on --

CHAIR PALTIN: Accepting new applications.

COUNCILMEMBER KING: --new applications? Yeah.

CHAIR PALTIN: Mr. Hopper?

MR. HOPPER: Yeah, Madam Chair, I think an administrative halt in a situation where there's a law already in place would be questionable at that point. I'm not saying that they would, the Department would have to, you know, accelerate processing of permits to meet developers' schedules. But I do think if there's a exemption in the law that someone is free to apply to until the exemption is deleted from the law in that situation.

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COUNCILMEMBER KING: Okay. So, is it possible that we could...that new applications as of today, if we pass this bill, could still be preliminarily approved before it gets through the second reading at Council?

CHAIR PALTIN: Mr. Molina?

MR. MOLINA: Yeah, so, I guess knowing the Council process of two readings and...I mean you're already looking at 30 days. And then now the law provides 90 additional days so you're looking at, from today, at minimum a 120-day window where new applications could come in and receive approval if they can, you know...granted their applications are complete and the timing works out as such. So, yeah, that...I mean that is what's being allowed here.

CHAIR PALTIN: Mr. Hopper, I had a question. How would this be different than when the Planning Department stopped processing the permits for Paia short-term rentals?

MR. HOPPER: Well, in that situation, my understanding was that the people applying would've been denied under the reading of the Paia-Haiku Community Plan. And so, they were essentially in a situation where if they had proceeded forward, they would be denied their permits. But, again, an administrative halt on processing permits is highly questionable in any situation, in my opinion.

CHAIR PALTIN: Thank you. So, given that information, I think it's prudent that we move forward today because, you know, the more publicity this gets, the more word gets around, the more people are going to bum rush the system, and you know, it's a free handout for developers that they've gotten for the past five years. And I agree we need to stop the bleeding and, you know, move forward and correct the situation from the correct avenue which would be the Family Subdivisions with the restriction to Upcountry. I think, you know, seeing that that had passed before and five of us kind of stated that we're committed to doing it, I don't see that there would be a real problem addressing it from that angle. Council Vice-Chair Rawlins-Fernandez?

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Chair. So, the proposed bill that we'd be voting on says that this ordinance shall not apply to subdivisions that receive preliminary approval within 90 days after the effective date of the ordinance. When we had our meeting Upcountry when this item was under WAI, I believe...what was it...the representative for Public Works, I think it was the Director, Ms. Dagdag-Andaya, said that getting a preliminary approval takes a lot longer. And, you know, since Deputy Director is here, he can correct if I'm misstating or misrecalling [sic] what was discussed at that time. But it takes a lot longer than 90 days or, you know, 120 days, you know, 30 days after two readings when this law becomes effective, to get to this point. The application itself is extremely rigorous and involves a lot of documents. Mr. Molina?

MR. MOLINA: Madam Chair, Madam Rawlins, that's correct. The 45-day window is assuming the application is complete. But, as you pointed out, the application has many, many requirements that an individual alone can't always produce, and they

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COUNCILMEMBER RAWLINS-FERNANDEZ: Okay, so, mahalo, Mr. Molina. So, I guess I just wanted, for those that didn't attend or wasn't at that meeting, I think Member King wasn't on the Committee at that time, the Water Committee. So, that fear of the, you know, bum rush of applicants I think isn't something we have to necessarily fear. Yeah, that's all. Mahalo, Chair.

COUNCILMEMBERS: Aye.

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

**ABSTAIN:** None.

**EXC.: Councilmember Lee.**

**ACTION: Recommending FIRST READING of bill, FILING of Committee Report 19-100, and FILING of communications.**

**PSLU-43: ESTABLISHING THE PAIA-HAIKU ADVISORY COMMITTEE**  
(CC 19-401)

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and 2.40.240, Establishing the Paia-Haiku Advisory Committee.” The purpose of the proposed resolution is to transmit to the Maui Planning Commission a proposed bill entitled, “A Bill for an Ordinance Amending Chapter 2.28, Maui County Code, by Amending Sections 2.28.070 and 2.28.080, Relating to the Planning Commissions and Advisory Committees, and Creating New Sections, Establishing the Paia-Haiku Committee.” And if it’s okay, I’d also like to bring up PSLU-44 as these items are related, if with no objections.

COUNCILMEMBERS: No objections.

**PSLU-44:       ADVISORY COMMITTEES TO THE MAUI PLANNING COMMISSION (CC 19-402)**

CHAIR PALTIN: So PSLU-44, Advisory Committees to the Maui Planning Commission. The Committee is in receipt of the following: the County Communication 19-402, from Councilmember Kelly T. King, transmitting a proposed bill to establish a South Maui Advisory Committee to the Maui Planning Commission, which would advise the Commission on land use matters pertaining to South Maui; a revised proposed bill dated January 8, 2020, from the Committee Chair, entitled “A Bill For an Ordinance Amending Chapters 2.28 and 2.40, Maui County Code, Relating to Advisory Committees to the Maui Planning Commission.” The purpose of the revised proposed bill is to establish a Kihei-Makena Advisory Committee and a Paia-Haiku Advisory Committee to the Maui Planning Commission. The committees would advise the Commission on land use matters pertaining to the Kihei-Makena Community Plan Area and the Paia-Haiku plan area, respectively. So, I scheduled this item together so that we can combine it into one item that addresses advisory committees to the Planning Commission. And I know we had just heard of this during the last Committee meeting, and I know that a lot of the advisory committee...or community associations are having meetings either tonight, tomorrow night, and then the Alliance is having a meeting on Monday. So, I thought it would be prudent to have feedback from the Chair of the Planning Commission who would be taking in this advisory committee comments and feedback from the Director based on where the community groups are at now so that when they do have their meetings tonight, tomorrow night, and Monday, they can take that into the discussion and have that perspective. And, you know, try and reconcile expectations versus reality, and where we want to go with it, and further the discussion. We don’t want to make any mistakes, or you know, put the legislation in the wrong place. So, I think, you know, we have to thoroughly vet this out and talk about it, and have all perspectives taken into account. So, with no further ado, a few words from Director McLean and a few words from Mr. Carnicelli, in whichever order you prefer.

MR. CARNICELLI: Thank you, Chair, Members. Oh, Lawrence Carnicelli, Chair of the Planning Commission. I think that on this I’m going to try come from a perspective that’s not just the Planning Chair, but as a member that’s testified here, testified at the Planning Commission. I’ve been to all the community association meetings all over the island, the West Maui Taxpayers Association, Kula, Haiku, member of the

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KCA, the Kihei Community Association. And I think I get what we're trying to do here. We want more transparency, and we want more community input, right. That's kind of what, you know, it's like we need...how do we do that? And what it looks like what we did is we looked at the Code, and we saw this thing called the Hana Advisory Committee. Like, oh, we've got this thing. Let's copy it. But when you look at actually how the Hana Advisory Committee works, how did it come into existence? It came into existence because basically it was hard to get a Hana member to show up to the Planning Commission, and hard to get Hana people to show up to the Planning Commission to testify. So, we said, you know what, let's do public testimony in Hana. And so, the...basically what the Hana Advisory Committee does, is they just do public testimony. And just to kind of relate to how it is...how it would relate to you guys, so let's just say that if there was something in Hana, and the advisory committee held a public testimony for you, and then you got the transcript, and then you guys had to make the decision. That's kind of similar as to how it would work, say for the Planning Commission, how it does work for the Planning Commission. So, I don't get to, you know, as a Planning Commissioner, when that...and I think that it's important that that, you know, happens in Hana. But I don't get to ask questions of those testifiers. I don't get to see who else was in the room. I don't get to see, you know, any energy. All I get to...I have to read the transcript. So, it'd be no different than like when we're advisory to you. You guys get the transcript of our entire meeting. And I don't know if you guys read the entire transcript or not. I personally do 'cause I think it's important. But part of like this puzzle is what's going to happen, and Scott brought it up I think in his testimony, what's going to happen the first time that the Planning Commission disagrees. 'Cause that happens. Last meeting, you guys heard the Nahiku Community Association. I remember that meeting real specifically. I cried. So, you're not the only one that cries. I cried. 'Cause I was like, you know what, if we can't figure this out in Nahiku, in Hana, how're we going to figure it out on the rest of the island. And what the Nahiku people did is they showed up. And they said, we don't want Hana telling Nahiku what to do. And there was a whole bunch of people at our meeting that weren't in the Hana Advisory Committee, right. And so suddenly we did...we made a different decision because different people showed up. So, the reason why I tell that story is just because I think it's important to just sort of see how the advisory committees work. Or, at least how the Hana Advisory Committee works. And so, when I look now, okay, what are we going to do with the Kihei Community Association? So, we just sort of said, okay, we have this thing, let's use that. But does it really accomplish what we need? Because suddenly we have people that want to take testimony and want to be heard, but they have no authority, and eventually they're going to feel frustrated by that, as Hana does at times. But if we just go one island away, we look over to Oahu. They have neighborhood boards. And I'm familiar with the neighborhood boards, right. Couple things about the neighborhood boards, no one's appointed. No Mayor appointee. No Council appointee. That community holds an election as to who's going to represent them. So, we go to Kihei, it's not, you know, Member King saying, okay, this is who I would like and then, you know, person from the Mayor, we're trying to figure out a formula. It's like, no, the people from Kihei pick the people from Kihei who are going to represent them. And if they say, you know what, we want Keonekai south, and Keonekai to Waipuilani, and then Waipuilani north. In Paia, Kuau, Haiku, you know.

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And so, there's about 50 of 'em, even though there's I think nine City Councilmembers over on Oahu. There's like 50 of these. One or two staff members, planning staff members, for all of the boards and commissions, which then kind of gets me into Sunshine Law. Part of this Kihei Advisory Committee or, you know, Haiku Advisory Committee, the Sunshine Law thing. You realize that the Survey Monkey poll that Scott did, he would not be able to do. If Scott's neighbor wanted to talk to 'em about the thing that they were going to hear tomorrow, Scott can't talk to that guy. If the members want to talk to each other, like, hey, what did you think of that? What did you think of that? What did you think about this thing coming up? Can't. I have people call me. Say, hey, Lawrence, I want to talk to you about this thing that's coming before the Planning Commission. And I'd say, listen, there, you know, there's certain things I can and cannot do, just not allowed to. And I take that really seriously. So, and then it gets to, okay, how do we make decisions. How does the Planning Commission make the decisions? Oftentimes, people show up and they want to say, like, oh, you like this project or you don't like this project. But we have criteria with which we have to use. So, like let's just use an SMA permit, right. SMA permit has eight criteria with which we use. And people get up and they'll testify about how, let's say, I don't know, I don't like the roads. Or, I don't like the density, or...but it's like that's not one of the eight criteria. And so, people would say, oh, you approve this project, or you're streamlining it, or whatever it is, but if it meets the criteria. We denied the Paia Inn three times. The owner appealed, got remanded back. We denied it, appealed, got remanded back. And then basically said, no, he meets the criteria. You have to approve this permit. Otherwise, you're going to be against the court order. So, like there's these pieces to it, that I go, okay, how is this all going to work? And who do they report to and not? What is the authority of these...like if you look at, you know, the neighborhood boards on Oahu, they don't technically report to anybody. They don't technically have authority. But the first question, in talking to my friends over on Oahu, the first question the County Council asks somebody before, you know, they gave a presentation, did you talk to your neighborhood board? And if you didn't, guess what? They don't want to hear you talking. The Planning Commission asks, did you listen...did you go to your community board? What did they say? So, we can create that, that kind of situation. Also, they were talking about real meaningful and relevant input. Meaningful and relevant input to these decisions. And then suddenly the community is going to feel empowered. If it's suddenly like, I mean and I'm talking...it might be a dog barking. And they get together. You know, it's not just planning stuff. You know, it's not just, oh, this big, huge project. That's the easy one. But what if there's other conversations they want to have in their community and they're really empowered over there on Oahu from what I understand in that regard. A couple of things logistically. Testimony before or after each item, we changed it a few years ago for a couple reasons. One is, again testimony at the Planning Commission is a little bit different than here because we have contested case. And Mr. Hopper might be able to get into that deeper, if you want to. Or, actually the gentleman that actually started it all for us, Mr. Galazin, is in the audience. But the applicant actually gets to cross-examine the testifier. There's that opportunity to cross-examine. So, that's part of the reason we did that. If the community says, you know what, we really want to be able to show up first thing in the morning and testify, that's fine. I can, you know, we can do that. Just make sure

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that, you know, the cross-examine and all that stuff works out. That's easy enough. But one of the other things that we found when we went to testimony after the item rather than at the beginning was again that meaningful and relevant testimony really increased, 'cause people got to see the presentation. They got to see what it is. They got to see what the criteria it is that we make the decision on, and then they got to make their testimony based on that information. 'Cause oftentimes people, you know, testify early don't really understand what the project is or what it's about. They haven't really read. And then we get testimony and they might say, okay, the...you know, the project's bad, or the project's good, not relevant to how it is that we even make a decision. So, I think that that's...anyways, but if we want to make testimony ahead of time, totally can do that.

CHAIR PALTIN: If...so, we have 20 minutes left, if we can --

MR. CARNICELLI: Yeah, you better shut me up now.

CHAIR PALTIN: --hear from the Director --

MR. CARNICELLI: Okay.

CHAIR PALTIN: --a little bit and then I'll take questions because I want to make sure that the community associations has this feedback so they can discuss it at their meetings.

MS. MCLEAN: Okay. Thank you, Chair. As I said at a prior meeting, I don't really have a position one way or the other on these. But I am concerned that whatever outcome of this is done in the right way. And I say that because, and Lawrence sort of touched on it a little bit, is really understanding what the Planning Commission does and how it functions so that this...or these advisory committees can be appropriately created. There has been some talk about them possibly having approval authority which is something I had mentioned to the Chair previously. I think that would be a positive step because then you're not adding a step to the permitting process. You're just replacing these groups with...not the Planning Commission having the authority but these groups having the approval authority. And there are a number of permits that they could have approval authority over. They would not be able to have approval authority over SMA major permits though because that is delegated under State law to the Planning Commissions. So, unless the Charter were amended to make these actual Planning Commissions, SMA authority still rests with the Planning Commission. They could be advisory on SMA permits though. But there are a number of permits where the Planning Commission has final approval authority that these groups could have approval authority over. We need to make related changes to the County Code under those particular types of permits to make it clear that the approval authority is getting shifted. But that would be one way to, you know, for the voice and the decision-making to really be in the community without adding a step to the permitting process. We'd have to really have good training for those...these boards if they're going to have that approval authority, much like we do with our three Planning Commissions already, on Sunshine Law, on contested cases, on intervention. So, it's...saying give them approval authority, there is a lot of responsibility that goes



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along with that. So, that training would have to happen, and Corp. Counsel would need to attend those meetings if they were to have approval authority. So, if you want to take that step into approval authority, this turns into a little bit of a bigger thing. And so, for the groups that are going to be talking about this, they need to really think about do they want to have approval authority. And I'm all for that. I'm not against it, but you have to look at the whole picture and make sure that they have appropriate training. I think the idea of having alternates is a great one, but if they have approval authority, that becomes problematic because when they have contested cases, you need to have the same members involved in that the whole time. You can't switch them out. And if someone misses a meeting, they need to be given the complete record from that meeting, and they need to be able to say on the record at a future meeting that they read all the materials, and that they're informed enough to make a decision. So, again, in that contested case framework, the alternate to that...alternates idea while I think is great in a lot of ways, would be problematic for contested cases. Other provisions of the bill, this would be a really good opportunity to give some tweaks to how vacancies are filled because it would be great if we know a vacancy is coming for that appointment to be made, but it doesn't take place till the vacancy is actually created. Right now, that's a little bit confusing, so we have these lag times. So, if we can come up with language to figure that out so as soon as the vacancy happens, there's someone ready to take their place. That would be helpful. The Native Hawaiian law training, we have really struggled with that because the training only happened on Maui once or twice. Members aren't always able to make it. More recently it was on the Big Island, so we did send some people. But people just aren't able to stay overnight which is required for Molokai, Lanai, and Hana people going to the Big Island for the training. They have to stay overnight. Some people just can't take that kind of time away. So, if we could tweak that language a little bit to still make it a requirement, but if, you know, circumstances are such that, you know, logistically it can't happen, you know, we still push for it every time. We still try to get the training to happen on Maui, but we just really haven't been successful with the training being more readily available to our folks. The idea of having the time limit for these committees to give their comments, on the one hand I do like having the time limit, but sometimes the ball was in the applicant's court to provide more information, and if they don't get that together within the next whatever timeframe is established, you know, that shouldn't be a way for them to get out of going back. So, we just need to tweak that language a little bit. And in terms of who makes the appointments, I don't have a position on that. I do want it to be clear to people who are saying it shouldn't be up to the Mayor. It's that it's not ever up to the Mayor. The Council does have, with the exception of CPACs I should say, with board and commission nominees now the Mayor nominates, the Council approves. So, the Council can always reject the Mayor's nominees. So, it's not completely up to the Mayor to appoint people. The Council still confirms them. But if you change that so the Council appoints more, however you do it, I don't really have a position. I just want it to be made clear that the Council has to approve Mayor nominees for these positions. I think those are all of my comments. Again, I see this going in a positive direction in a lot of ways. There's just a lot of questions to answer about how you want the authority to be, and then making sure that Code changes are also made to give them approval authority. And also, it needs to accompany an increase in staffing 'cause we will need another

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Planner, another clerical, and possibly another attorney in Corp. Counsel if they're going to be advising these groups, depending on how often they meet. So, I think that's it. Thank you, Chair.

CHAIR PALTIN: Thank you, Director, for getting that in. So, we have 15 minutes depending on if guys can stay an extra ten minutes or not would determine if guys get one or two questions per round.

MR. HOPPER: Question?

CHAIR PALTIN: Mr. Hopper?

MR. HOPPER: Sorry, I don't want to take up your time, but one thing that was stated. Special Management Area permits, I do not believe that is an area that the Council can mandate goes to these boards. It can, I think, say that if the Planning Commission decides to delegate that to these boards or review, that it can be included as part of the mandatory review. But because the Planning Commission acts as authority in the Coastal Zone Management Act, I think it would have to be their decision as far as who reviews the SMA permits in addition to themselves. The other area is because they're within Title 19 and the Council has purview over, I think can be included here as mandatory review for these other boards. I think it should be noted that for district boundary amendments, it's for those under 15 acres which is what the Council's purview is. But those were just a couple of things that I think clarifying what Michele had talked about would be important for the record at this point if it's going to go to those groups for review.

CHAIR PALTIN: Thank you. Thank you for that clarification. So, I'll start with Vice-Chair Sinenci and work my way down. Try to limit yourself to one or two questions 'cause it looks like some folks have to leave at 12:00.

VICE-CHAIR SINENCI: Thank you, Chair. I just wanted to make a clarification with Lawrence's comment. Lawrence said Hana Advisory Committee just takes public testimony. You mean that we're just being given those projects that require public testimony. Is that what you meant?

MR. CARNICELLI: Yeah, the public hearing.

VICE-CHAIR SINENCI: . . . *(inaudible)* . . .

MR. CARNICELLI: The public hearing happens in Hana. Yeah, correct. Is that's what the Hana Advisory Committee does.

VICE-CHAIR SINENCI: Right, right.

MR. CARNICELLI: Is conducts the public hearing.

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VICE-CHAIR SINENCI: Right, but they don't just take public testimony. They go ahead and vet all the projects as well, right.

MR. CARNICELLI: Right, they take the public testimony and then what they do is they transmit then a recommendation to the Maui Planning Commission.

VICE-CHAIR SINENCI: Right.

MR. CARNICELLI: Very similar to what...like we say what we do to you guys, Title 19 stuff --

VICE-CHAIR SINENCI: So, they conduct --

MR. CARNICELLI: --comes to us and...

VICE-CHAIR SINENCI: --their meetings.

MR. CARNICELLI: Oh yeah, yeah, they don't just take hearings and then close their meeting --

VICE-CHAIR SINENCI: Right, right.

MR. CARNICELLI: --and then go move on.

VICE-CHAIR SINENCI: I just want to make that clarification.

MR. CARNICELLI: Right, yeah, yeah.

VICE-CHAIR SINENCI: And then one of the questions, well, my question was how many of the meetings are contested cases?

MR. CARNICELLI: Almost everything we hear is a contested case, almost. I'm not going to say every, but nearly everything that we have is a contested case. And maybe Mr. Hopper can speak more, you know, poignantly to that.

CHAIR PALTIN: Mr. Hopper?

MR. HOPPER: There'll generally be items that the Planning Commission makes the final decision on, so granting permits and things. Things like amendments to Title 19, community plan amendments, anything that Council has final authority over is not considered a contested case.

VICE-CHAIR SINENCI: And those advisory committees wouldn't hear those contested cases, just the MPC?

MR. HOPPER: Well, right now a lot of it depends on what the legislation is. But right now, Hana Advisory Committee does hear public hearings that are part of...if they're for a permit, they'd be part of a contested case I believe.

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VICE-CHAIR SINENCI: Okay. Thank you, Chair. I'll yield.

CHAIR PALTIN: Thank you. Member Molina?

COUNCILMEMBER MOLINA: Yeah, thank you, Madam Chair. And I appreciate the comments from the Director. I've read her comments in a letter and also from Mr. Carnicelli. So, I've had enough of their comments. And I mean that in a nice way. Okay, I've had...I really want to, because we have such short time, I want to throw some proposals out there for consideration whether we act on it or not. First, for Section 2.028.060, two members are appointed by the Mayor, and five members are nominated by the Council's district representative and appointed by the Council via resolution. So, that's what I would like to add. And then for adding a number five in that section, there shall be no more than three members from the same town on the committee. And, again, the purpose for this is to maintain balanced representation on the committee. And moving on to Section 2.028.060(D)(2), where it says powers, duties, and functions, I would like to add a D section, and it reads as follows: the Paia-Haiku Advisory Committee assigned area is the Paia-Haiku Community Plan area, inclusive of the Spreckelsville area from Stage Road near the airport to...I think it must be Stable Road...Stable Road near the airport to Baldwin Beach Park and Olopuia area from the coastline to Sunnyside Road. I'll share this with your Committee Staff. And I'm sorry, because of limited time, I just wanted to get this into the record for now. And then finally, moving on to Section 2.028.060(D)(3), under number three where the recommendation was for 60 days, I'd like to change that to 90 days from the first meeting held to review an application. So, making that 90 days. And finally, Madam Chair, a new number five under that same section, the advisory committee shall meet as needed with meetings scheduled in the evenings or weekends with the community plan district. 'Cause, you know, we've heard in testimony that to get more community participation, meetings should be held in, you know, evening hours, like say from five o'clock on to get those who cannot come out to the Planning Commission meetings which are typically held in the morning. So, those are my suggestions. So, I don't know if we'll be able to act on these today, but I just...for today's purposes, I wanted to get it into the record. Thank you.

CHAIR PALTIN: Thank you, Member Molina. And may I also suggest that you provide a copy to the groups that are having the meetings tonight, tomorrow, and on Monday for them to review as well. Member King?

COUNCILMEMBER KING: Thanks, Chair. So, I...my understanding is that the purpose of, if we are going to take a vote today is just to combine these two into one subject matter. So, you know, I'm in favor of that so that we're talking about one subject matter. And then getting into the details after the communities have had more opportunity to discuss among themselves and at the Alliance of Community Associations. But I do want to thank Director McLean for all of your comments, your thoughtful comments, and your support of the intent of these advisory committees. I thought I did hear you say that we...they wouldn't be allowed to make decisions on SMA, only advisory. I think you did say that in your discussion. On the alternates, on the idea of alternates,

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we do have some commissions or boards that have alternates on them. And so, are they...are the alternates required to attend every meeting then? And is there some kind of penalty if they don't?

MS. MCLEAN: The only board and commission that the Planning Department staffs that has alternates is the Urban Design Review Board, and they don't make final decisions. And so, those --

COUNCILMEMBER KING: Okay.

MS. MCLEAN: --it's not a contested case. It wouldn't have the kind of concern that would exist.

COUNCILMEMBER KING: Okay.

MS. MCLEAN: I mean that would be a way to resolve the --

COUNCILMEMBER KING: The quorum issue.

MS. MCLEAN: --that concern about contested cases would be if the alternates did attend the meetings, then they --

COUNCILMEMBER KING: Okay.

MS. MCLEAN: --you know, they would be...

COUNCILMEMBER KING: 'Cause I know we've been talking about alternates for the Planning Commission too, but it sounds like that wouldn't work either unless they attended every single meeting because, like you said, everything they do is contested, almost. So, that kind of informs that discussion too. And then I wanted to ask about the Native Hawaiian training because we're trying to follow the ordinance that we changed last term to require the Native Hawaiian cultural expert on all the Planning Commissions and all the advisory commissions, and then it also requires that training. Would we be able to possibly...I don't know if I want to say attract or request more trainings if we had more people that needed to go to them because if we're adding these two advisory committees, there's 14 people right there that would need that training. And is it a matter of they can't get enough people together to attend this to bring it to Maui? Or, is it just they only want to do them certain times of the year or certain number of...

MS. MCLEAN: I believe the issue is that they only have a handful of instructors who are involved in the training, and those instructors are also professors at UH, and they have a very busy course load and course schedule. So, they're really only available at certain times. And they conduct it on Oahu, and then they make an effort to go to the other islands, but going to the Big Island doesn't help us, you know, it's --

COUNCILMEMBER KING: Right.

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MS. MCLEAN: --easier, in fact, for us to go to Oahu.

COUNCILMEMBER KING: And they schedule those on their schedule, not ours, our need.

MS. MCLEAN: Right, right.

COUNCILMEMBER KING: Okay.

MS. MCLEAN: Yeah, our initial effort was that we wanted them to actually come to Maui and Molokai and Lanai to give the training sessions to the commissioners on there at their regularly scheduled meetings. And there was...that was just not going to happen 'cause they don't have that kind of availability. Then on top of that, then we asked if the training could be filmed and then we could provide the video to them. And they didn't...they would not allow it to be filmed or broadcast. They're very proprietary which introduces another concern to me because if these decision-makers are receiving training, the public should have the opportunity to know what they're being taught because if I'm applying for something and my decision-makers are having training that I am not privy to, that's kind of concerning. But they wouldn't allow it to be a public process either, which was a different concern.

COUNCILMEMBER KING: Okay.

MS. MCLEAN: So, it's, you know --

COUNCILMEMBER KING: You answered my...

MS. MCLEAN: --we support the idea completely. It's just been really difficult to get all of our members going.

COUNCILMEMBER KING: Okay. Okay, well, thank you for that, and thank you for all your comments. I think that we have...if we can discuss those at the Monday meeting of the Alliance of Community Associations too. That can kind of help solidify where this legislation goes. Thank you, Chair.

CHAIR PALTIN: Vice-Chair Rawlins-Fernandez, I think Member Sugimura has to leave. Do you mind her asking her one question?

COUNCILMEMBER RAWLINS-FERNANDEZ: No, not at all.

CHAIR PALTIN: Okay.

COUNCILMEMBER SUGIMURA: So, I'm just wondering. So, before we, you know, take it further if you could provide us, like, the Planning Commission can do this, the advisory committee would be able to do this, and what the, you know, some of the things that Mr. Hopper said too. I really can relate to Sunshine Law. We all struggle with it, right. And if that advisory body has to comply with the Sunshine Law like we

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do, it is going to stymie them from being a part of...or having to do these reports as we all have to, you know, just to make sure that we're transparent and compliant. And the last thing I want to say is I hope we don't forget our big meeting, or the discussion that we had yesterday trying to figure out how to make rules about getting quorum because it's such a big problem that, you know, we have this ordinance that we're going to be discussing further. And if this body will have to also have, you know, compliance problems and, you know, I don't want us to create a monster. So, I'm sorry. I gotta go, but I just wanted to...

CHAIR PALTIN: And then before you go and before Member Rawlins-Fernandez, I just wanted to get consensus from Members that in future meetings, I would like to solely utilize PSLU-44 to formalize that. We'll have Staff incorporate copies of documents from PSLU-43 into PSLU-44, which is just advisory committees to the Maui Planning Commission. So, basically combining it into one item. And if everyone agrees, we don't really need to vote. So, that, you know...

COUNCILMEMBER KING: No objections.

CHAIR PALTIN: --three minutes testimony versus six and then we can do more of the work.

COUNCILMEMBER KING: Chair, I have to leave as well 'cause I've got a noon interview.

CHAIR PALTIN: Okay. We have...we will have quorum for Member Rawlins-Fernandez's comments. And then we can defer the item.

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Chair.

COUNCILMEMBER SUGIMURA: ...*(inaudible)*...

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Member Sugimura. I'll be quick. I just have a couple things. One...the first one, I wanted to correct Mr. Carnicelli's recital of the Sunshine Law. As an elected official held to the Sunshine Law, I can talk to my neighbor as long as my neighbor isn't also a Councilmember. So, you can talk to other people who aren't...who don't sit on the same voting body that you do. So, I just wanted to correct the record on that that Mr. Shapiro could talk to his neighbor as long as his neighbor isn't also on the advisory board. I'm sorry?

UNIDENTIFIED SPEAKER: Hurry, hurry.

COUNCILMEMBER RAWLINS-FERNANDEZ: Okay.

MS. MCLEAN: Chair, if it's a contested case, then you cannot talk to your neighbor about...

COUNCILMEMBER RAWLINS-FERNANDEZ: Oh, is that what you meant? Only the contested cases?

MS. MCLEAN: It's...I'll let Michael...

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MR. HOPPER: You're correct. The Sunshine Law doesn't prohibit a member of a board from talking to a member of the public. It deals with members communicating with each other primarily. But the potential issue is if there's a contested case, generally a member shouldn't talk to someone about that contested case outside of the meeting because they could be seen as not being impartial in that case. So, there may have been a bit of confusion there. But you're correct, I think that the Sunshine Law wouldn't prevent that type of discussion.

COUNCILMEMBER RAWLINS-FERNANDEZ: Okay. I just wanted to make sure that that was clarified for everyone listening who could potentially sit on the advisory board or interested. And that way, they don't feel like they wouldn't want to participate on it because of that.

CHAIR PALTIN: Or tell us we cannot talk to our neighbors because --

COUNCILMEMBER RAWLINS-FERNANDEZ: Right.

CHAIR PALTIN: --of the Sunshine Law.

COUNCILMEMBER RAWLINS-FERNANDEZ: Right. And so then, what is...I think Member Sinenci had asked number of contested case hearings. And I understand that all of the items that you have final decision on could be a contested case. But I guess I understood his question, and if my understanding is incorrect, then I would like this answer. How many contested cases a year?

MS. MCLEAN: I can report back on that.

COUNCILMEMBER RAWLINS-FERNANDEZ: Okay.

MS. MCLEAN: But, you know, if they're an average of let's say four items on a Commission agenda and the Commission meets twice a month, then 100.

CHAIR PALTIN: Staff, can you make that request for the actual in like any given year? I guess maybe last year.

COUNCILMEMBER RAWLINS-FERNANDEZ: Yeah. So, basically, you're saying that close to...oh...what percentage are you basing that number 100?

MS. MCLEAN: I'm saying that if there are four items on the Commission agenda, four contested cases on each agenda and the Commission meets twice a month, then that's eight per month times 12 months. So, close to 100 contested cases per year.

COUNCILMEMBER RAWLINS-FERNANDEZ: So, all the items that they have final decision-making authority on are contested?

MS. MCLEAN: Are contested cases. The proceeding has to be conducted...



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COUNCILMEMBER RAWLINS-FERNANDEZ: How many times are they contested?

CHAIR PALTIN: Mr. Hopper?

MR. HOPPER: This is...this . . .*(inaudible)*. . . there's some case law called the E & J Lounge case which determines that a permit application is a contested case under HRS 91 even if the only parties are the...even if the only party is the applicant. So, if you're talking about contested cases as far as like in intervention, someone files a petition to intervene, that's a different number. As far as contested --

COUNCILMEMBER RAWLINS-FERNANDEZ: Okay.

MR. HOPPER: --cases, that's any item that somebody applies for a permit and that the Commission has final decision-making over, they have to treat that generally as a contested case under HRS 91. And so, that's what I think they're talking about as far as contested cases. The number of actual interventions that are filed, I think it's going to be significantly less than that because not every case has something like that filed. You could still though have public testimony in those cases where...that are opposed to the project. So, that's not to say they're not contested. But in that sense, I think an intervention...interventions are filed on a smaller number of cases, but every case where they've got to make a final decision is generally a contested case. So, there's certain rules under HRS 91 that apply to that proceeding to give essentially a process for the applicant.

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo for that clarification. I guess I've always used contested case and intervention interchangeably which is incorrect. So, I guess my question is, how many interventions did you have like last year?

MS. MCLEAN: One, or two, or three a year.

COUNCILMEMBER RAWLINS-FERNANDEZ: Okay, mahalo. Okay, I think that's all my questions.

CHAIR PALTIN: Okay. And did you guys want another round?

VICE-CHAIR SINENCI: One question.

CHAIR PALTIN: Okay. Member Sinenci, followed by Member Molina.

VICE-CHAIR SINENCI: And I don't know if they answered. My question was, so would the advisory committees receive SMA permit applications? Major, SMA major.

MS. MCLEAN: It would depend on how you write the bill. They could not have approval authority over SMA majors, but they could conduct a public hearing and make a recommendation, which is what Hana Advisory Committee does now.

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VICE-CHAIR SINENCI: Hana does. Okay.

CHAIR PALTIN: And, Mr. Hopper, you had something to add?

MR. HOPPER: Yeah, again, Hana does that because the Maui Planning Commission has a rule saying that they do that. In this bill, you could not require the advisory committees to review SMA major permits. I understand that they wouldn't be making a final decision, but you could not require them to do a review and recommendation. What you could say is that if the Planning Commission wants to look them to look at Special Management Area use permits, like Hana does now, that the Planning Commission can allow that. As far as these other items, Change in Zoning, community plan amendments, et cetera, I believe you can require that these new boards review those and make a recommendation on those. So, that's why I was trying to distinguish the SMA permit language because I think under the Charter, the Planning Commission has pretty broad authority over SMA permits. They get to decide who reviews them and not. And they decided that in Hana that they would review them. But for these other items, I think the Council is fully within its purview to say that these advisory committees are required to review these other items.

VICE-CHAIR SINENCI: Okay, thank you.

CHAIR PALTIN: And, Member Molina?

COUNCILMEMBER MOLINA: Yeah, thank you, Madam Chair. One quick question. Staying on the same topic of Hana Advisory Committee, if I could ask Director McLean from a historical perspective, now it was mentioned in testimony that these advisory committees may add time to the application process and so forth. And that may be true, but in most cases usually, for Hana exclusively, matters have been addressed maybe just one time, right? They haven't...most applicants haven't been told to come back a second time, or a third time, and whatnot? So, very few deferrals then basically?

CHAIR PALTIN: Director McLean?

MS. MCLEAN: Well, there's a couple of things. One, by going to the advisory committee first, we can't take an application to the advisory committee or straight to the Planning Commission until the application is complete, we have all agency comments, and we can prepare a staff report and recommendation. And if the...right now if the application is in the Hana region, it goes first to the Hana Advisory Committee. And so, then it goes to the Maui Planning Commission, and we can't give it to the Planning Commission until we have the minutes transcribed from that meeting because most of these are contested cases. The Planning Commission needs the complete record. So, it does add a couple of months from the time Hana is able to meet until the Commission can act. Now, we've had one application that is now going to schedule its public hearing with the Hana Advisory Committee for the third time because the first meeting it was scheduled, they did not have quorum. Next meeting that was scheduled months later, didn't have quorum again. That's not a regular occurrence

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with the Hana Advisory Committee. But in that case where quorum is lost, then it can be quite some time until that can be scheduled again. And then the cost of notification, the applicant has to bear which doesn't seem fair.

COUNCILMEMBER MOLINA: So, if the advisory committees under their own rules, they could create alternates to prevent, you know, situations like that, yeah. So, it could be to alleviate that quorum concern then.

MS. MCLEAN: I would...we'd need to look and see if that can be done solely by their rules, or if that would have to be done by ordinance. I don't know. But I think having alternates, if the alternates attend the meetings, as we've talked about, I think that could help with that problem, yeah.

COUNCILMEMBER MOLINA: Yeah, I guess and, you know, there's also talk in testimony about maybe lightening the workload of the Planning Commission if these advisory boards could be given over certain topics. And I guess one testifier said, let's not give them the authority over Special Use Permits for, you know, TVRs and so forth. So, could it be, I guess maybe in some ways, helpful to the Planning Commission by maybe taking on some of these responsibilities, or vice versa, you know. Do you see that as a way of...in a positive light of lightening the workload of the Planning Commission, which I know they're super busy.

MS. MCLEAN: I think it...certainly if the advisory committees had decision-making authority, those would be fewer matters that would be scheduled in front of the Planning Commission. I don't know that that would be the reason to do that. It's not as if the Commission is so overburdened that they can't keep up with their duties 'cause I think they can. It's more that the decision-making would be held in that community. It would make it easier for the applicant instead of adding a step. It would really be no different for the applicant. They're just getting approval one place instead of another. So, it really wouldn't change things for the applicant. It would lessen the workload for the Commission and give the authority to the community rather than it being with the Planning Commission.

COUNCILMEMBER MOLINA: Okay. Well, thank you, Director. Appreciate your input. Thank you, Mr. Carnicelli, as well. Thank you, Madam Chair.

CHAIR PALTIN: Sure thing. Vice-Chair Rawlins-Fernandez?

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Chair. I have no more questions. I just wanted to thank both Mr. Carnicelli and Director McLean for their feedback. I think this is awesome feedback to work with. I wanted to find out from you, Chair, if you were planning to distribute the updated bill?

CHAIR PALTIN: Oh, yes, please distribute the updated bill. Shucks.

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo. Appreciate that.

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CHAIR PALTIN: And if there's no further comment, I guess we might have to coordinate how much folks can go to which community association meetings tonight, tomorrow, and Monday so that we don't violate the Sunshine Law. But I just wanted to put it out there that I was invited on Monday, and I'd like to kind of go just so I know what's going on and how to schedule this and whatnot. So, I guess that leaves us open for a couple more folks can attend. So, the updated version of the hybrid has been passed out, and we'll have Member Molina's suggestions also put up on Granicus. Can, if it was distributed this meeting?

MS. LILLIS: We'll do that.

CHAIR PALTIN: Okay. All right, cool. And so, my recommendation is, if there's no objections, to defer this item.

**COUNCILMEMBERS VOICED NO OBJECTIONS.** (Excused: KTK, ALL, and YLKS)

**ACTION:           DEFER PENDING FURTHER DISCUSSION.**

CHAIR PALTIN: Okay, cool. So, this concludes today's Planning and Sustainable Land Use Committee meeting. Thank you very much, Members, for working 11 minutes overtime. I won't be paying you. And so this meeting is adjourned. . . .(gavel). . .

**ADJOURN:**   12:11 p.m.

APPROVED:

*Tamara A. M. Paltin*

TAMARA PALTIN, Chair  
Planning and Sustainable Land Use  
Committee

pslu:min:200122:rlk

Transcribed by: Reinette L. Kutz

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CERTIFICATE

I, Reinette L. Kutz, 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 this 10<sup>th</sup> day of February 2020, in Makawao, Hawaii.

  
Reinette L. Kutz