

PLANNING AND SUSTAINABLE LAND USE COMMITTEE

Council of the County of Maui

MINUTES

February 19, 2020

Council Chamber, 8th Floor

CONVENE: 9:06 a.m.

PRESENT: VOTING MEMBERS:

Councilmember Tamara Paltin, Chair
Councilmember Shane M. Sinenci, Vice-Chair
Councilmember Alice L. Lee (out 9:51 a.m.)
Councilmember Michael J. Molina
Councilmember Keani N.W. Rawlins-Fernandez (out 11:38 a.m.)
Councilmember Yuki Lei K. Sugimura

EXCUSED: VOTING MEMBERS:

Councilmember Kelly Takaya King

STAFF: 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

Sarah Pajimola, Executive Assistant to Councilmember Keani N.W. Rawlins-Fernandez

ADMIN.: Michael J. Hopper, Deputy Corporation Counsel, Department of the Corporation Counsel

Jordan Molina, Deputy Director, Department of Public Works

Michele McLean, Director, Department of Planning

OTHERS: (4) additional attendees

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

CHAIR PALTIN: . . .(*gavel*). . . Aloha kakahiaka. Good morning. The time is 9:06 and will the Planning and Sustainable Land Use Committee meeting of February 19, 2020, please come to order. At this time, I'd like to ask everybody in the gallery to please silence their cell phones or any noisemaking devices. My name is Tamara Paltin, and

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

February 19, 2020

I'm the Chair of the Planning and Sustainable Land Use Committee. With me here today, I have Vice-Chair Councilmember Sinenci.

VICE-CHAIR SINENCI: Aloha Poakolu, Chair.

CHAIR PALTIN: Aloha Poakolu. We also have Councilmember Mike Molina.

COUNCILMEMBER MOLINA: Aloha kakahiaka, Madam Chair.

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

COUNCILMEMBER RAWLINS-FERNANDEZ: Aloha kakahiaka, Chair.

CHAIR PALTIN: Aloha kakahiaka. As well as Council Chair Alice Lee.

COUNCILMEMBER LEE: Madam Chair, ohayo gozaimasu.

CHAIR PALTIN: Ohayo gozaimasu. And we also have Councilmember Yuki Lei Sugimura.

COUNCILMEMBER SUGIMURA: Good morning.

CHAIR PALTIN: Good morning. Our non-voting Members today are Riki Hokama and Tasha Kama, and they're welcome to join us at any time. For Corporation Counsel, we have Deputy Corporation Counsel Michael Hopper.

MR. HOPPER: Good morning, Chair.

CHAIR PALTIN: Good morning. From the Administration, we have Deputy Director Jordan Molina from the Department of Public Works.

MR. MOLINA: Good morning.

CHAIR PALTIN: Good morning. And from the Department of Planning we have Director Michelle McLean.

MS. MCLEAN: Good morning.

CHAIR PALTIN: Good morning. Committee Staff with us today we have Committee Secretary Clarita Balala.

MS. BALALA: Good morning.

CHAIR PALTIN: Good morning. And Legislative Analyst Ana Lillis.

MS. LILLIS: Good morning.

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

February 19, 2020

CHAIR PALTIN: Good morning. In the Molokai Office we have Ms. Zhantell Lindo, and the Lanai Office we have Denise Fernandez. Hana Office is offline at the moment and they'll let us know if they do have testifiers. On the agenda today we have three items, PSLU-16, Amending the Comprehensive Zoning Ordinance Relating to Resource Extraction or Processing; PSLU-53, Operational and Budgetary Review of the Department of Planning; and PSLU-51, Status of Active Conditional Permits. At this time, I'll take any public testimony. For individuals testifying in the Chamber, please sign up at the desk just outside the Chamber door. If testifying from one of the remote testimony sites, please sign up with District Office Staff. Testimony will be limited to the item on the agenda today, and under the Rules of the Council, each testifier will be allowed to testify for up to three minutes per item. When testifying, please state your name and the name of any organization you may be representing. If you are a paid lobbyist, please inform the Committee. We have established a connection to the Council District Offices. Let's see. Lanai Office, Ms. Fernandez, do you have anyone wishing to testify?

MS. FERNANDEZ: Aloha, Chair, this is Denise at the Lanai Office and there are no testifiers.

CHAIR PALTIN: Thank you. Molokai Office, Ms. Zhantell Lindo, do you have anyone wishing to testify?

MS. LINDO: Good morning, Chair. There are no testifiers at the Molokai Office.

CHAIR PALTIN: Thank you. Do we have any testifiers wishing to testify in the Chamber? No? And no word from Hana? Okay. So, last chance. Anyone in the Chamber want to give any testimony? It's like a record for this Committee. Okay, seeing there are no more...no individuals wishing to testify, without objection I will now close public testimony.

COUNCILMEMBERS: No objections.

CHAIR PALTIN: Okay.

**PSLU-16: AMENDING THE COMPREHENSIVE ZONING ORDINANCE
RELATING TO RESOURCE EXTRACTION OR PROCESSING (MISC)**

CHAIR PALTIN: So first up on the agenda we have PSLU-16, Amending the Comprehensive Zoning Ordinance Relating to Resource Extraction or Processing. The Committee is in receipt of the following miscellaneous communication dated October 9, 2017, from the County Clerk, reporting that the Council referred the matter relating to resource extraction or processing and attaching a copy of Resolution 17-140, and correspondence dated December 17, 2019 from the Committee Chair transmitting an informational document titled 2018 Update, Maui Inland Sand Resource Quantification Study prepared by SSFM International, Inc. And I scheduled this item, I think this is maybe the third or fourth time I scheduled it, but this is the first time we're actually getting to it because I put it at the front of the agenda. And the reason

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

February 19, 2020

why was because since the report came out at the middle part of 2019 and then there was the Council term change, it...the study release kind of got lost in the shuffle of the term ending and the new term beginning and like six, eight, something...plenty new Members on so I didn't want it to just get lost in the shuffle. But there's no legislative action scheduled for today, it's just to go over the results of the study that the previous term had released and at this time too, I'd like to distribute some resource material for the Members to have as we go over the presentation by Deputy Director Molina. So, Director Molina, are you ready to proceed with your presentation? Okay, let's do it then.

MR. MOLINA: Good morning, Madam Chair, Members of the PSLU Committee. My name is Jordan Molina, I'm the Deputy Director with Public Works. I'm here to talk to you folks about this 2018 Sand Quantification Study at the request of the Chair. I do not have any presentation set up, I just was here to come talk about what the study was and answer any questions. And for the record, this is the third time that I got to finally talk about this matter. So, thank you. So, yeah, in 2018, the Department commissioned this update of the 2016 study, which was to get a rough estimate of the sand resource on Maui, particularly in the Central Maui area. What prompted this was, of course, the moratorium that was passed on sand mining. As identified in the ordinance that created the moratorium was a sunset provision that talked about that had a drop-dead date at the end of 2018, and also an update to that resource study from 2006. So this study is very high-level guesstimate at best. There's a lot of assumptions that are made to get the quantities they estimate. Yeah, essentially it wasn't our understanding to go and do full-blown inventory with geotechnical analysis to determine the depth of sand that the true extent of what might be recoverable. So this is very high-level estimate, which just built off the 2006 study. So, of course, you know, it's been recognized that the sand has significant value on many facets. And, of course, it's a unique feature here on Maui to have these large sand dunes and this large stretch of sand essentially from North Shore all the way down to South Shore. One significant update in the 2018 study was the addition of a third soil type. So the first two, or the 2006 study looked at two types of soil which was the Jaucas Sand and the Pu'uone Sand. This 2018 study also included this Qdo Sand, which typically underlies both the Pu'uone and the Jaucas Sand. So that added to the estimated quantity of sand that may be available. So with that addition of that third type of sand, it essentially expanded the area, the region of where sand was available outside the 50 or so parcels that were identified in the moratorium. So, yeah, based on the assumptions made in the study, and again, it varies because of the...yeah. This plan was based on essentially some educated assumptions. One for the depth of what we requested as well as just the timing of getting the study completed. So there's a range of 650,000 tons to 3.2 million tons of sand potentially that could be extracted from Maui sand resources. And I guess, yeah, just to reiterate that number is a best guess at best at this point. The study also talks about the potential uses for sand. One of which is in construction, primarily for concrete production, as well as utilizing it for beach nourishment as far as the actual reuse of the sand. So, yeah, I mean, of course, this is a limited resource. It took thousands of years for this supply to be created, and we're likely not going to get more of it anytime shortly. So, in conclusion, the study kind of puts it, you know, to the policymakers to decide what is the best use

PLANNING AND SUSTAINABLE LAND USE COMMITTEE MINUTES

Council of the County of Maui

February 19, 2020

for this sand and how do we want to move forward with either preserving or utilizing it. And I guess that's...that concludes my comments at this point. I'd be happy to answer any specific questions about the study itself, but I mean that's kind of the gist of it. It did a rough estimation of what might be available, identified what the potential reuses might be, but it doesn't answer the question of what is the best option to manage the sand resource at this point. So, thank you, Chair.

CHAIR PALTIN: Thank you, Deputy Director Molina. And I just wanted to go over the handouts that the...Ms. Lillis had passed out. The first one talks about Qdo Sand, you know, which outside of the study is defined as older dune deposits from the Holocene and Pleistocene era, and they are only found in areas within Central Maui. And, you know, the Pleistocene era lasted from about 2.5 million years ago to 11,700 years ago, so this is a...this Qdo dunes and inland sand are really beyond being a resource, it's kind of like a remnant cultural geological feature found only in Maui that took basically millions of years to create. The second handout is a article produced in 2017 entitled The World is Running Out of Sand. So, you know, the less of a resource or a future that you have, the more valuable it becomes to everybody. And the third article talks about how sand dunes can communicate with each other. And this is kind of, you know, something that we see at the beach too a little bit, you know, when you build a seawall or something, it always affects the areas around it, you know. So the sand dunes communicate with each other, and so just some additional information that I thought was good to go along with this presentation. So at this time, if there's questions? Chair Lee, yes?

COUNCILMEMBER LEE: Thank you, Madam Chair. Deputy Director, so I have two questions. One from reading the study and the previous study, can we surmise as a policymaking body that we should direct, redirect development to Upcountry, and to West Maui, and to South Maui, where these sands do not exist if the goal is to preserve and protect these sands? What is your opinion?

MR. MOLINA: Madam Chair, Member Lee, so if...yes, if the goal is to preserve these sands as is...so primarily we're talking about the balance of Maui Lani, Waiale, and everything going towards Ma'alaea, in effect, you would be prohibiting development in those areas and so you would...I don't believe there's much more growth areas identified in Central Maui other than infill. So if you were to preserve that area, yeah, your options in Central would be very limited and you'd likely, I mean nothing prevents you now from developing in Upcountry or West Maui.

COUNCILMEMBER LEE: Oh yeah, there's plenty that's stopping us Upcountry.

MR. MOLINA: Well, yeah.

COUNCILMEMBER LEE: There's like the people.

MR. MOLINA: As far as sand is concerned, yeah.

COUNCILMEMBER SUGIMURA: How about water?

PLANNING AND SUSTAINABLE LAND USE COMMITTEE MINUTES

Council of the County of Maui

February 19, 2020

COUNCILMEMBER LEE: Okay, and the second question is so I'm sure that your Department has given this a lot of thought and what would be your collective recommendation with regard to how we deal with this resource?

MR. MOLINA: Madam Chair, Member Lee, I would say the Department doesn't have a clear recommendation at this point. There are many competing interests in these particular lands that contain the sand. As a matter of operation, Public Works per se, doesn't differentiate on the type of soil you build on. Our concern is more health and safety of what you're building and constructing. I would more defer to Planning as someone or an agency that would identify unique resources that should be either protected or special considerations made for that build-out. But, I mean from a health and safety standpoint, we have no particular direction.

COUNCILMEMBER LEE: Okay, maybe we can ask her then. Director McLean?

MR. MOLINA: If I may just, I guess, you know the real life example is we have areas like Old Sand Hills, Waiehu Terrace, Waiehu Heights that build right on top the sand dunes as opposed to Maui Lani that flattened them more. So there's a mix of existing uses on sand dunes and types of development on sand dunes. From our perspective they're all safe. Whether one is more preferred or beneficial over the other is really a policy decision at this point. Thank you.

CHAIR PALTIN: Did you...would you like to hear Director McLean's answer?

COUNCILMEMBER LEE: Yes, please.

CHAIR PALTIN: Sorry, Director McLean was here for another subject, but she may be willing to entertain you.

MS. MCLEAN: If you promise to be nice. The easy answer would be, well, this is a policy decision for the Council to make and fundamentally that is the right answer. But there're a couple of issues involved in this. It's sand as a natural resource like your handouts show, but it's also the cultural implications that we've seen, and that's really what's brought this issue to the forefront more so than just the resource of, oh, we can use this on our beaches or other things. And I would say that from what I've heard, there would be support for saying that you can't disturb certain deposits of sand from the cultural perspective. The Planning Department's role in all this has been, you know, through this definition of resource extraction, which I think has been appropriately applied in recent situations, but that definition needs to be modified, and that's also something before your Committee. So from the development perspective of preparing a site for development, the definition of resource extraction also includes dirt and rock and other things that don't have that degree of cultural sensitivity. So amending that definition to allow development of areas that don't have sand is something that still needs to happen. But then talking about sand itself, you know, there are a couple of reasons that the Council may want to consider limiting development there. And I don't know if it would be so far as to saying you can't have

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

February 19, 2020

any development in Central Maui, but directing development away from areas where there are sand deposits or really limiting the kind of development that can occur there might be the direction you want to go in. We rely on the State Historic Preservation Division to give us guidance, but there's nothing in the law or their rules that say you cannot disturb those cultural resources. You have to study it, you have to monitor it, but it doesn't say you can't disturb them. But from what I understand, the feeling is no disturbance, you know. Folks want to see no disturbance at all. So that's a much bigger step from where we've been. Thank you, Chair.

CHAIR PALTIN: Thank you, Director McLean. And I'm sure we know that some rock in Hawaii also does have a cultural relevance, as well as other resources, but I'll take Vice-Chair Sinenci, followed by Member Molina.

VICE-CHAIR SINENCI: Thank you, Chair. I just had some clarification questions. So sand still can be extracted as a resource, is that correct?

CHAIR PALTIN: Director?

MR. MOLINA: Madam Chair, currently the Zoning Code provides for resource extractions within limited zones, which I believe in your documents before you, there is a report from the Planning Department as part of the Planning Commission's review that discusses those various areas where resource extraction is allowed. In addition, there's always the special use and/or the conditional use process that would permit resource extraction.

VICE-CHAIR SINENCI: And then, Jordan, you said that the sand moratorium has already sunset so there is no more moratorium on sand extraction?

MR. MOLINA: That's correct.

VICE-CHAIR SINENCI: Okay. And I had received some written testimony that said that in 2018 there was legislation put forth to, I guess, to make it legal to extract 100,000 cubic yards in any zone without a permit. Are you aware of that legislation?

CHAIR PALTIN: I believe that didn't pass --

VICE-CHAIR SINENCI: That didn't pass?

CHAIR PALTIN: --at the end of the year. Yeah.

VICE-CHAIR SINENCI: Oh, okay.

CHAIR PALTIN: And so there's not a moratorium currently, but I think there's not extraction going on because of the definition of resource extraction hasn't been codified...hasn't been codified. So it's kind of like a little bit of a de facto moratorium outside of what the special use and conditional use permits allow for in those other certain areas that

PLANNING AND SUSTAINABLE LAND USE COMMITTEE MINUTES

Council of the County of Maui

February 19, 2020

Deputy Director Molina was speaking to. Did you want to add on anything to that or is that accurate to your knowledge?

MR. MOLINA: Madam Chair, that's correct. And I would just point to the Director...or point to the Committee that those proposals are all before you as part of this file. Thank you.

VICE-CHAIR SINENCI: Okay, thank you.

CHAIR PALTIN: Yeah, they're all before us but today we're not taking legislative action. Yes.

VICE-CHAIR SINENCI: Okay, maybe one more question for Mr. Hopper. So could the County potentially make stronger policies that would be outside of SHPD, the State's purview?

CHAIR PALTIN: Mr. Hopper?

VICE-CHAIR SINENCI: Because the Director said that there was none, SHPD doesn't have --

MR. HOPPER: Well, you --

VICE-CHAIR SINENCI: --those protections.

MR. HOPPER: --I think you're talking about a couple of separate issues. There's resource extraction definition in the zoning ordinance, which by itself does not have anything to do with the HRS 6E that's dealing primarily with the issue of are you doing some sort of mining or extraction. There's the State law that deals with the issue of iwi, they can intersect, I think, in certain cases. If iwi are more likely to be found in sand that's being done as part of the resource extraction. As part of this zoning definition, it generally does not involve the same issues that the State law deals with. I do believe there's some language in the State law that can potentially allow more restrictive action to be taken in certain cases. We can look at that more directly. But I don't believe that any of the proposals that I know of before you deals specifically with that issue. They deal with primarily with the zoning ordinance has dealt with, and that is the issue of sand as a resource, you know, which can be separate from the issue of iwi, which as you know, can be found in areas that may not involve sand or those resources, that there could be a risk of that in a variety of areas. So I think the County would potentially have options, but I don't believe any of that's covered under the current resource extraction proposals. Those are mainly focused on sand as a resource and looking at the issue of mining, which is why it may be difficult sometimes to address those issues by looking at what's in the current zoning ordinance. Because you've got the current zoning ordinance which deals with one thing, and then you have a State law and a large scheme under State law that deals with cultural finds and other issues on a broader scale, not just dealing with the issue of a resource, of resource extraction. So I think that's one of the challenges.

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

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

February 19, 2020

CHAIR PALTIN: Member Molina?

COUNCILMEMBER MOLINA: Yeah, thank you, Madam Chair. You know, Madam Chair, we've had some really good lessons the last day or two. Yesterday we had in Member Sinenci's Committee a discussion on plastics and its effect on the ocean. Today we're having a nice science and geography type of lesson about types of sands and everything else. So, very interesting topic. Staying on the exportation of sand, who keeps...who makes those verification of the numbers or the amount of sand that's going out on the barges? Is that the DOT Harbor's Division? Or is that us? Or is it the cement company? I don't know if Director Molina or Director McLean can answer that.

MR. MOLINA: Madam Chair and Member Molina, so the information used in the study was collected from DOT Harbors who track the barge shipments going out.

COUNCILMEMBER MOLINA: Okay. And then our Department gets involved in the calculation of numbers as well with this or is this strictly the State?

MR. MOLINA: Madam Chair, Member Molina, we do not track any...I mean we would issue the grading permit if applicable, but I believe past extractions were under special use permits. So there's nothing requiring or that we do currently where we're tracking or counting each truck coming out of a site at this time.

COUNCILMEMBER MOLINA: Okay. And, you know, in the study it said a lot of the beach nourishment projects are coming from, you know, offshore sources. But then the study also recommends that the County allow over excavation or stockpiling of sand for beach nourishment purposes. So, it's like if we're getting the sand from outside sources, then why is it recommending that the County also stockpile? Is this for, maybe, future shoreline erosion for those purposes?

CHAIR PALTIN: Director?

MR. MOLINA: Madam Chair, Member Molina, so the study references a 2008 study I believe, the Maui Beach Nourishment Management Plan, which one of the recommendations of that plan was to basically use inland sand as a resource for beach nourishment in addition to offshore excavation. Of course, it's likely that trucking it on island is cheaper than sending a barge to suck it off the bottom of the ocean, but I guess I've heard recently there's concern about the quality of the inland sand for beach nourishment. But that indication to use it for beach nourishment came out of that Maui County beach nourishment plan --

COUNCILMEMBER MOLINA: Okay.

MR. MOLINA: --which I'm not sure has been updated --

COUNCILMEMBER MOLINA: Okay.

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

February 19, 2020

MR. MOLINA: --recently.

COUNCILMEMBER MOLINA: Okay. So staying on that, one of the recommendations about the equipment, I guess, to rent that equipment, what would be the cost to the County I guess, you know, to extract all of that sand?

CHAIR PALTIN: Are you speaking from offshore or --

COUNCILMEMBER MOLINA: Yeah, I think it --

CHAIR PALTIN: --inland?

COUNCILMEMBER MOLINA: --I think, I forgot where it said in the study, but it recommended that the County, I guess, hire private sources to extract the, you know, a lot of the sand. I would guess out in the open sea.

CHAIR PALTIN: Oh.

MR. MOLINA: Madam Chair and Member Molina, those projects in the ocean do not involve Public Works jurisdiction, so we wouldn't have any data --

COUNCILMEMBER MOLINA: Okay, so...

MR. MOLINA: --on what those costs might have been. I know Planning was involved in some beach nourishment projects so maybe they might know. But, yeah, we are unaware at this time.

COUNCILMEMBER MOLINA: Okay. Yeah, I was just wondering about the cost, you know, based on the recommendation. And lastly, just with regards to Maui Lani, is it their intention as far as you know if they will continue to extract sand in the future? Is...have they made any statements about that? Or is the Department aware?

CHAIR PALTIN: Deputy?

MR. MOLINA: Madam Chair, Member Molina, that is part of the discussion that's ongoing right now.

COUNCILMEMBER MOLINA: Yeah, it's currently in litigation, yes.

MR. MOLINA: It's how to view the handling of sand.

COUNCILMEMBER MOLINA: Oh, okay.

MR. MOLINA: Because it's...it can get very convoluted really fast.

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

February 19, 2020

COUNCILMEMBER MOLINA: Okay, sensitive subject, yeah? And lastly, has there been any analysis of any potential burial sites, I mean, other sites for extraction that may not have iwi? Has a Department or either department looked at that possibility?

MR. MOLINA: Yeah, Madam Chair, so archaeological inventory surveys have been done in the Waiale area, which included subsurface investigations. However, this is not, you know, a full-blown GPR, ground penetrating radar, analysis of all these hundreds of acres of land. So to say no more burials would be hit is, I don't think, appropriate.

COUNCILMEMBER MOLINA: Yeah.

MR. MOLINA: And that's the best information we have at this time.

COUNCILMEMBER MOLINA: Yeah, it's hard to say if there's any place that don't have any burials, yeah. So, okay. Well, thank you.

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

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Chair. And mahalo, Deputy Director Molina, for going over this study with us. So I have a few questions on the study. Based on the April 2018 update from the study, is HC&D exporting any sand for any purpose from Maui currently?

MR. MOLINA: Madam Chair, as far as I am aware, no, they have stopped exporting sand at this point, and they are actually importing sand from North America.

COUNCILMEMBER RAWLINS-FERNANDEZ: Oh. Who monitors that? Well, I mean, if we're bringing in sand, are they checking for like invasive species coming in? I mean, who monitors that? I'm...this is the first I'm hearing of it, sorry.

MR. MOLINA: Oh, yeah, so it's mentioned in the study that they started importing sand from Canada once the Central Maui resources were essentially...they were blocked from them. I would assume that the State Department of Ag would oversee those imports of aggregates, but that is not something that we the County manage.

COUNCILMEMBER RAWLINS-FERNANDEZ: So, probably not. Okay, number two, regarding the July 2018 update from the study, what is the status of the Kaanapali Beach restoration and berm enhancement project?

MR. MOLINA: Madam Chair, I would defer to the Planning Department.

COUNCILMEMBER RAWLINS-FERNANDEZ: Okay.

MR. MOLINA: Public Works has no involvement with that project at this time.

COUNCILMEMBER RAWLINS-FERNANDEZ: Okay, mahalo. I don't know if Director McLean has any information on that?

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

February 19, 2020

CHAIR PALTIN: Director McLean?

MS. MCLEAN: Thank you, Chair. The project is proceeding. They...I don't know if they've completed their environmental studies and their permitting. They did get, I believe, it's 50 percent funding from the State Legislature and then 50 percent private. And they will be using offshore sand resources. So, there's...there are quite a number of permits that need to be obtained. I can get detail and forward it to the Committee because I don't know the details offhand, but I'd be happy to do that.

CHAIR PALTIN: Thank you, Director. Okay.

COUNCILMEMBER RAWLINS-FERNANDEZ: Okay, mahalo. Do you know offhand, if you don't know, it's okay, when the State granted that half of the funding for the project?

MS. MCLEAN: It was either...so, we're in FY '20 now, it was either FY '19 or FY '18 I believe. But I'll confirm that in writing as well.

COUNCILMEMBER RAWLINS-FERNANDEZ: Okay, mahalo. And then, Director, do you know why a 1988 shoreline condition restoration proposed...allowed for this project to proceed?

CHAIR PALTIN: You're asking Deputy Director Molina or...

COUNCILMEMBER RAWLINS-FERNANDEZ: Oh, I was asking Director McLean since I guess Public Works doesn't really have too much to do with this.

MS. MCLEAN: What were you referring to? I'm not clear what you were referring to.

COUNCILMEMBER RAWLINS-FERNANDEZ: A 1988 shoreline condition report?

CHAIR PALTIN: Is that for Kaanapali?

COUNCILMEMBER RAWLINS-FERNANDEZ: Yeah.

CHAIR PALTIN: Oh.

COUNCILMEMBER RAWLINS-FERNANDEZ: I can send the question.

MS. MCLEAN: Okay, yeah, I'm not familiar with the report. Are you saying that the report says that they shouldn't be doing beach nourishment at Kaanapali?

COUNCILMEMBER RAWLINS-FERNANDEZ: No, just that's it's an old report.

MS. MCLEAN: Oh.

COUNCILMEMBER RAWLINS-FERNANDEZ: Yeah.

PLANNING AND SUSTAINABLE LAND USE COMMITTEE MINUTES

Council of the County of Maui

February 19, 2020

MS. MCLEAN: Okay.

COUNCILMEMBER RAWLINS-FERNANDEZ: So, if it was used as data to move forward, then that probably was...wouldn't be too appropriate.

MS. MCLEAN: Okay.

COUNCILMEMBER RAWLINS-FERNANDEZ: Yeah. But I can send that information --

MS. MCLEAN: Yeah.

COUNCILMEMBER RAWLINS-FERNANDEZ: --because I know you didn't come here for this item.

MS. MCLEAN: That's okay, but I'm not familiar with the report --

COUNCILMEMBER RAWLINS-FERNANDEZ: Okay.

MS. MCLEAN: --so we can look into it and respond.

COUNCILMEMBER RAWLINS-FERNANDEZ: Okay, and then last question, Chair. I think for Deputy Director Molina. What is the status of the Maui Lani phased projects currently being contested in court?

MR. MOLINA: Madam Chair, Member Rawlins, I'm not familiar with what the status of the court actions are. I can speak to the grading permit for Maui Lani Phase IX. At this point the permit is still valid, but in a suspension...status of suspension, pending clarification on the resource extraction question, and the notice of violation or warning, I believe, from the Planning Department. So one of the provisions of the grading ordinance is that we shall suspend or revoke permits when other violations have been noticed, and so we are aware of the notice from the Planning Department and so the permit is suspended at this time.

COUNCILMEMBER RAWLINS-FERNANDEZ: Okay, mahalo. Mahalo, Chair.

CHAIR PALTIN: If I may just follow up on that. Do you know what the notice of violation was for?

MR. MOLINA: Madam Chair, it was for resource extraction.

CHAIR PALTIN: Oh.

MR. MOLINA: And I understand it's a warning, not a violation.

CHAIR PALTIN: Okay, thank you. Member Sugimura, did you have any questions?

PLANNING AND SUSTAINABLE LAND USE COMMITTEE MINUTES

Council of the County of Maui

February 19, 2020

COUNCILMEMBER SUGIMURA: So the study, thank you for bringing it forward and a lot of discussion was held last term regarding this issue and Maui Lani and penalties, and I learned a lot about the culture and iwi kupuna and SHPD through the process. I was just wondering if you have plans of...the study was related to that whole, you know, proposal over the bill and I was just wondering if you were going to...if you're planning on taking it up.

CHAIR PALTIN: Probably not before budget. I still working on hiring a staff. This was her...my former staff's assignment so this is just kind of finishing out what she was currently working on and moving forward I gotta reassess once I'm up to full speed --

COUNCILMEMBER SUGIMURA: Okay.

CHAIR PALTIN: --of employees.

COUNCILMEMBER SUGIMURA: So thank you for making that sacrifice. Appreciate it. As you know, because this is all tied to the proposed bill that was going through last term by Ms. Cochran, as well as Don Guzman, and I just wondered if the Department felt that the study that was done warranted or answered the questions that came up because of the proposed bill, because that was the purpose of it getting revised.

CHAIR PALTIN: Deputy Director?

COUNCILMEMBER SUGIMURA: What is the Department's position on this since we've never had a discussion.

MR. MOLINA: I guess the study does not answer the question of what to do with the sand. So, from what I've briefly reviewed as far as what proposals are in the Committee's file, it would still allow resource extraction to some extent and development over these sandy soil areas.

COUNCILMEMBER SUGIMURA: I guess the important information from what you said to the other Members is that the study then because of the DOT Harbor's reports, it shows where sand is or is not being extracted or sent off to other islands. So at least that part is verified that has stopped. That was one of the major thresholds that created this proposed legislation. So for me that's good to see it in, you know, in writing and confirmed because that was a big concern. And it's interesting to hear that Maui Lani is still not able to proceed based upon, I guess it's a lawsuit that has created this.

MR. MOLINA: Madam Chair and Member Sugimura, from the Department of Public Works standpoint, we will not unsuspend the grading permit until we get clarification that the notice of warning from the Planning Department has been resolved.

COUNCILMEMBER SUGIMURA: I wasn't asking you that question --

MR. MOLINA: Oh.

PLANNING AND SUSTAINABLE LAND USE COMMITTEE MINUTES

Council of the County of Maui

February 19, 2020

COUNCILMEMBER SUGIMURA: --but that's an interesting point. Okay then, if that's your answer, what would cause the notice of warning to be lifted? I don't understand the process, so...

CHAIR PALTIN: Director McLean?

MS. MCLEAN: A notice of warning stays in place until the violation is cured. And right now it's not clear if or how the project would move forward without any further resource extraction. And so, until that's made clear that will stay in place because if those activities resume, then we could issue a notice of violation. But if they do not resume and the project can proceed in some way without resource extraction, then we would close...we could close the file.

COUNCILMEMBER SUGIMURA: So, are you waiting for the court's decision? Is that...that's what's the latest I've seen in the paper, but I don't know what else is going on.

MS. MCLEAN: I don't believe, and maybe Mike Hopper can correct me, I don't believe this particular matter is in litigation. We've had meetings and the attorneys have exchanged correspondence, but there...as far as I know there has not been any formal legal action filed.

COUNCILMEMBER SUGIMURA: Okay.

CHAIR PALTIN: Mr. Hopper, did you want to add on anything to that?

MR. HOPPER: I believe there's another phase of Maui Lani that's in court action. I think Phase VI is involved. This current notice of warning for resource extraction is...involves Phase IX, which was previously the subject of a court action that I believe has been resolved or at least it's in the process of being resolved by a settlement agreement that involves parties other than the County. But that...the Phase IX issue right now is with the developer and the Department of Planning, and the Department of Planning's issuance of a notice of warning and ongoing discussions related to that notice of warning for resource extraction. My understanding is there's a different phase, and I'm not personally involved in the case, but I believe Phase VI does involve the County and other parties and you could potentially get a more comprehensive update on those cases as well if need be. I'm not necessarily familiar with every aspect of all of them. I am familiar with the Phase IX issue because that's an ongoing issue with the Department and the developer, but as far as the phase, I believe, Phase VI or any other phases that are involved in litigation, I think you could ask for an update and our office could, to the extent the County is a party to any of those cases, provide you an update.

COUNCILMEMBER SUGIMURA: Thank you. So, Chair, if you're going to take it up again after budget or at some point, the actual bill, it would be nice to find out where we are in all of this if the County is involved. If Staff could send something to Corp. Counsel?

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

February 19, 2020

CHAIR PALTIN: Mr. Hopper, would that fall under this Committee's purview or would it need to be under GET --

MR. HOPPER: Yeah, I think it's --

CHAIR PALTIN: --because it's litigation?

MR. HOPPER: --I think the litigation matter would probably be under GET more specifically, so, I mean, I was...I'm speaking generally that if the Council wants an update on that issue on the specific litigation. I think saying here are the cases if any that exist may be under this Committee's item if it's...the issue deals with resource extraction in general. But normally specific, the status of specific cases where the County is a party is dealt with in GET Committee. So that is correct.

COUNCILMEMBER SUGIMURA: Yeah, I meant as it relates to the bill. So if you find that you're going to take it up again and if it's appropriate, if you could ask Corp. Counsel where they are in relationship to the bill, to the bill that may come up in your Committee if you take it up again, the resource extraction.

CHAIR PALTIN: Okay, so can you send a letter asking if there is any ongoing litigation with the County, and then if there is ongoing litigation we'd probably hear it in...

COUNCILMEMBER SUGIMURA: Yeah. Actual details of the lawsuit as it would relate to Mr. Molina's Committee that's fine, but I'm just saying that if you take it up again --

CHAIR PALTIN: Let us know --

COUNCILMEMBER SUGIMURA: --regarding the bill.

CHAIR PALTIN: --if there is --

COUNCILMEMBER SUGIMURA: Yeah.

CHAIR PALTIN: --litigation ongoing?

COUNCILMEMBER SUGIMURA: Yeah. That would affect this decision and...yeah. And just kind of in summary to Chair Lee if she would like to suggest that the development come Upcountry, I think Mr. Molina and I would need some water. But we will gladly go through our water meter list and our residents would be grateful, so.

CHAIR PALTIN: Oh, lucky thing you Chair the Water --

COUNCILMEMBER SUGIMURA: Yeah, just so happens.

CHAIR PALTIN: --Committee.

COUNCILMEMBER SUGIMURA: So...but thank you. Thank you.

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

February 19, 2020

CHAIR PALTIN: Okay, I did have a couple...I don't know if it's questions or comments, but my interpretation of the study is it was like Deputy Director Molina said just a high-level guesstimate about how much sand it is and that there is remaining and although it does go into some detail about it being a valuable cultural resource and, you know, a cultural geological feature within Maui County unique that took thousands to millions of years to create, it wasn't the study itself, I think, we expected different things than what it provided. And so, I'm not sure if through the EACP Committee or another committee there can be some sort of a cultural overlay or looking at the resources from a cultural perspective on the significance of, you know, it being a geological feature that is found nowhere else in the world, so that might be another avenue to pursue. Council Vice-Chair Rawlins-Fernandez?

COUNCILMEMBER RAWLINS-FERNANDEZ: That sounds like a budget item.

CHAIR PALTIN: Oh, okay.

COUNCILMEMBER RAWLINS-FERNANDEZ: Budget's coming up.

CHAIR PALTIN: Yeah. Whoever would like to pursue it, I'm glad to hand off the aspect of cultural or money and sand and studying it, but I think that what we expected originally of the sand study and what we received didn't quite align, but not that it's wrong or anything or anyone's fault, it's just expectations and reality didn't really match up. So, any further questions for our resources at this time? Okay. Sure thing. If there's no objections, I'll defer this item at this time.

COUNCILMEMBERS VOICED NO OBJECTIONS. (Excused: KTK)

ACTION: DEFER PENDING FURTHER DISCUSSION.

CHAIR PALTIN: Okay, so consider that deferred. Thank you very much, Member [sic] Molina, for your assistance today.

COUNCILMEMBER RAWLINS-FERNANDEZ: Both Molina's.

CHAIR PALTIN: Oh, Director...Deputy Director Molina and Member Molina for your present...presence.

**PSLU-53: OPERATIONAL AND BUDGETARY REVIEW OF THE DEPARTMENT
OF PLANNING (CC 20-84)**

CHAIR PALTIN: Okay, so next up on the agenda, we have in honor of Council Vice-Chair Rawlins-Fernandez we have PS LU-53, which is the Operational and Budgetary Review of the Department of Planning. The Committee is in receipt of County Communication 20-84, from Council Vice-Chair Rawlins-Fernandez, relating

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

February 19, 2020

to an operational and budgetary review of the Department of Planning. And I scheduled this item because we're anticipating the budget season coming up and I did ask the Department to come prepared ready to speak of specific things such as, you know, staffing and vacancies, you know, any kind of update on...I don't think they had CIP projects, but, you know, the status of projects from the previous year's budget, the conditions of vehicles that they might have had, and maybe even some high-level estimates on what advisory committees could cost, the difference in fines as they were assessed and collected, and whatever else that they thought was important for us to know before we go into budget season. So, with no further ado, Director McLean?

MS. MCLEAN (*PowerPoint Presentation*): Thank you, Chair. I did just a pretty general overview but then did address some of the specific questions that you had asked. So briefly, just as a refresher, our Department has four divisions plus our administrative group, so we have 70 personnel all together. We staff seven standing boards and commissions plus the CPACs and the Maui Redevelopment Agency. The Maui Redevelopment Agency was actually moved two fiscal years ago from Planning to the Department of Management, partly because they're overseeing that major CIP project in Wailuku Town, but we still staff it with clerical support and we still process the discretionary permits that need to go to the MRA. Our Zoning Administration and Enforcement Division has 27 personnel, the division chief and administrative planning officer, planners, plans reviewers, permit clerks, inspectors, and clerical positions. We have two vacancies, one of those was an expansion position that was approved in FY '20, and as you are surely aware, expansion positions can take a really long time to fill. So there's only one longstanding, or one position that's been with the Division for a while that's currently vacant, and we're waiting for the list from Personnel to fill that position. ZAED reviews building permit subdivisions and certificates of occupancy for zoning compliance. They process zoning confirmations and answer inquiries, whether those be in person or on the phone or by e-mail. They issue a variety of administrative permits. They staff the Board of Variances and Appeals and those are our inspectors who respond to RFS's and conduct investigations.

CHAIR PALTIN: Director?

MS. MCLEAN: Yeah?

CHAIR PALTIN: Sorry to interrupt, but would you prefer folks hold their questions or answer them, or ask them by slide?

MS. MCLEAN: Any time, it doesn't matter.

CHAIR PALTIN: Okay, I had one question.

MS. MCLEAN: Sure.

CHAIR PALTIN: Your vacancies, was that in secretaries clerical or was it in...what was the specific title of the vacancies?

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

February 19, 2020

MS. MCLEAN: The expansion position is a planner, and then the other vacancy is an office operations assistant. A front desk position.

CHAIR PALTIN: Office operations. And then, do you know if that's Bargaining Unit 3, the office operations?

MS. MCLEAN: Yes.

CHAIR PALTIN: And the planner is also?

MS. MCLEAN: Planners are 13.

CHAIR PALTIN: Thirteen. Okay. And the length of time of the vacancies?

MS. MCLEAN: I think that's been vacant since October.

CHAIR PALTIN: The planner or the...

MS. MCLEAN: The planner, again, that was an expansion position. It took us a while to draft the position description and we also had some movement of personnel so we were trying to figure out what level planner to put it in with different positions moving around. So, some of that delay was on our side. The office ops assistant, I believe that person left in October, then we had to, you know, go through the process to recruit. We did receive a list and interviewed. It was a short list. We interviewed the people on that list. There was, I believe, only one candidate that we thought would be appropriate for the position and we made the offer, and they had already accepted another position. So we're waiting for another list.

CHAIR PALTIN: Thank you. Members, any questions on this slide?

MS. MCLEAN: Okay. Sorry.

CHAIR PALTIN: Council Vice-Chair Rawlins-Fernandez?

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Chair. Okay. So, Director, you said that one new position was a planner and one was a office assistant?

MS. MCLEAN: The expansion position is a planner, and so that is still vacant. And then the other vacancy is an office ops assistant, and that's a position that we've had in the Division for a while.

COUNCILMEMBER RAWLINS-FERNANDEZ: Oh, okay. So, for the expansion position, did we not approve the 2.5 E/Ps, two additional Planner III, and a part-time Planner IV?

MS. MCLEAN: For FY '20 --

COUNCILMEMBER RAWLINS-FERNANDEZ: Yeah.

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

February 19, 2020

MS. MCLEAN: --yes. Yes.

CHAIR PALTIN: This is just vacancies. So that's what hasn't been filled, right?

COUNCILMEMBER RAWLINS-FERNANDEZ: Oh, okay. So, these have been filled?

MS. MCLEAN: I'm sorry?

COUNCILMEMBER RAWLINS-FERNANDEZ: These expansion positions, the half-time Planner IV and the second...

MS. MCLEAN: No, the three expansion positions that we got are still in...we're still in the process of trying to fill them.

CHAIR PALTIN: But this is just for the ZAED part.

MS. MCLEAN: And this is just in ZAED.

COUNCILMEMBER RAWLINS-FERNANDEZ: Got it.

MS. MCLEAN: Yeah.

COUNCILMEMBER RAWLINS-FERNANDEZ: Thank you. Mahalo, Chair.

MS. MCLEAN: Yeah.

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo for the clarification.

CHAIR PALTIN: Member Molina?

COUNCILMEMBER MOLINA: Yeah, thank you, Madam Chair. Ms. McLean, this is the Division that's doing the crackdown on the illegal vacation rentals --

MS. MCLEAN: Yes.

COUNCILMEMBER MOLINA: --correct? Okay, do we need more enforcement staff? I mean, I'm...maybe that's an easy answer, yeah? But currently it's sufficient as it is or...because I know the expansion's a planner, right, that you're looking at. But how many more if you...how many more inspectors on your wish list if you really...

MS. MCLEAN: We did receive two expansion inspector positions in the prior fiscal year, and as with all positions, those took a while to fill. Those have been filled, so we now have eight inspectors when before we had six. And there is sort of a team that focuses on the short-term rental and working with the contractor. We feel like our enforcement efforts have been pretty successful, but the...it...enforcing these operations is like that game Whack-a-Mole, you know? We'll find one and shut it down, and --

PLANNING AND SUSTAINABLE LAND USE COMMITTEE MINUTES

Council of the County of Maui

February 19, 2020

COUNCILMEMBER MOLINA: Another one...

MS. MCLEAN: --they'll remove the advertising, but then one that we did that a week or two before pops up again, and so we have to go back after that one and --

COUNCILMEMBER MOLINA: Yeah.

MS. MCLEAN: --they're just constantly figuring out different ways to evade our --

COUNCILMEMBER MOLINA: So, having --

MS. MCLEAN: --investigations.

COUNCILMEMBER MOLINA: --more personnel would alleviate or reduce that problem then?

MS. MCLEAN: It would --

COUNCILMEMBER MOLINA: Yeah, okay.

MS. MCLEAN: --you know, it depends on where you, you know, there are so many things --

COUNCILMEMBER MOLINA: Yeah.

MS. MCLEAN: --all departments in the County could be doing with more people and more resources.

COUNCILMEMBER MOLINA: Yeah.

MS. MCLEAN: But it's really...

COUNCILMEMBER MOLINA: So to this point, though, what the Council's giving you has been money well spent. Because you know, Madam Chair, I'm kind of looking at we can keep investing in this then, you know, the return will be good to the County. Because one, it, you know, it decreases people's motives for wanting to do illegal short-term rentals and at the same time we hit them with the fines, it brings money to the County, yeah? And what about the people who did the consultation on that. Do you need more insight from them as well? The people that did the consultation on the illegal vacation rentals?

MS. MCLEAN: The contractor that we have?

COUNCILMEMBER MOLINA: Contractors, yeah.

MS. MCLEAN: We have funding to--

COUNCILMEMBER MOLINA: Oh, okay.

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

February 19, 2020

MS. MCLEAN: --extend that contract.

COUNCILMEMBER MOLINA: You have enough, okay.

MS. MCLEAN: We are actually putting it out to RFP again because our initial contract only had so many extensions in it and we've exhausted those. But we do have funding this fiscal year to continue either with the same contractor or with a new one.

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

CHAIR PALTIN: Member Sugimura?

COUNCILMEMBER SUGIMURA: Yeah, I was just going to ask a question regarding the short-term vacation rentals and do you know how many fines we've collected, the Charter amendments that were made, and how successful has that been?

CHAIR PALTIN: Did you have a section on fines or did you want to go into that?

COUNCILMEMBER SUGIMURA: Oh.

MS. MCLEAN: I do have a section on fines, it's not separated out by --

CHAIR PALTIN: Oh, okay.

MS. MCLEAN: --vacation rentals, but we are working on a summary report from the short-term rental enforcement activities in calendar year 2019. So, that's something that we can, that we'll be issuing soon.

COUNCILMEMBER SUGIMURA: Okay.

MS. MCLEAN: That has that information.

COUNCILMEMBER SUGIMURA: Good. Yeah, I would love to hear the results because it sounds like it made a difference.

MS. MCLEAN: It has made a difference and it's a little bit unbelievable because you still feel like there're so many illegals out there. But the contractor reviews an average of about 30,000 ads a month. And those ads operations advertise on multiple platforms so dilute those down to individual properties and then separate out the ones that are lawful by a variety of means, the number of potentially illegal properties is down to just a few dozen. But like I said, it's like Whack-a-Mole, there're going to be other ones that pop up. It's not as if that's done and then they're going to stay so it...we feel encouraged by that, but we're just waiting for the next technological twist that they find to evade us again. So...

COUNCILMEMBER SUGIMURA: So have we collected any of the penalties from them?

PLANNING AND SUSTAINABLE LAND USE COMMITTEE MINUTES

Council of the County of Maui

February 19, 2020

MS. MCLEAN: We have cited people under those penalties, but we haven't collected yet because they have either appealed or there's...we've sent it to Corp. Counsel for collections. So, there're a number that are...that we are pursuing but they're still unresolved.

COUNCILMEMBER SUGIMURA: Okay, thank you.

CHAIR PALTIN: And that summary report that you were talking about, is that going to be issued like a press release?

MS. MCLEAN: Uh-huh.

CHAIR PALTIN: Okay, cool.

MS. MCLEAN: Yeah.

CHAIR PALTIN: Okay.

MS. MCLEAN: Okay?

CHAIR PALTIN: Yeah.

MS. MCLEAN: Next is our current Planning Division that has 24 personnel: a division chief, 15 planners, 5 secretaries and clerical positions, and then 3 board and commission secretaries. And these are the folks who process...they process both administrative and discretionary permits. And these are the folks you see appearing in front of you with projects or in front of the Planning Commission with projects. And they staff the three Planning Commissions plus the Hana Advisory Committee, the Urban Design Review Board, and the MRA, and process about 1,500 permits each year. And there are no vacancies in this Division right now.

CHAIR PALTIN: Oh, Member Sinenci?

VICE-CHAIR SINENCI: I know there was something about adding more advisory committees in some of the other districts. Would you require additional personnel if that happened, Director?

MS. MCLEAN: I have a slide on that a little bit later.

VICE-CHAIR SINENCI: Okay.

MS. MCLEAN: Okay.

VICE-CHAIR SINENCI: Thank you.

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

February 19, 2020

MS. MCLEAN: Next, our Long-Range Division has 13 personnel: the division chief, 6 planners, 4 GIS, a public information specialist, and a secretary. And there's one vacancy in this Division, and that's one of the expansion positions. And I believe recruitment has closed for that, and we are expecting a list from Personnel soon.

CHAIR PALTIN: And can you tell us the title of that?

MS. MCLEAN: That's a planner.

CHAIR PALTIN: Planner.

MS. MCLEAN: I think that's a Planner III if I'm not mistaken.

CHAIR PALTIN: Do you think that somebody will be hired before the end of the fiscal year?

MS. MCLEAN: I really hope so.

CHAIR PALTIN: Cool.

COUNCILMEMBER MOLINA: Chair? Oh, sorry.

CHAIR PALTIN: Member Molina?

COUNCILMEMBER MOLINA: Just a question for Director, this is the Division that oversees the community plan reviews, yeah --

MS. MCLEAN: That's right.

COUNCILMEMBER MOLINA: --and I guess over the years the concerns about, you know, the community plan review taking long, longer than anticipated. How much more personnel would you need to help expedite the review process? Again, one of your wish lists.

MS. MCLEAN: Well, it...there're two different ways to tackle that. One is to do it in-house as we've been doing, or to contract it out. And in another couple slides, we'll see the funding that's been awarded or has been budgeted to us this fiscal year includes \$400,000 for us to get started on the South Maui Community Plan. That RFP has been issued and we are waiting to review bids and hire the contractor. And the scope of work for that at least is contemplated in the RFP, is our staff would conduct the public outreach similar to what they've done in West Maui because we feel that that's been pretty successful and well received, and then the majority of the rest of it would be handled by the consultant with the term I use is us looking over their shoulder to see that it's proceeding how we want to. So we need to see how those bids came in and if that's going to cover it, because the choice would be to keep putting that kind of money aside to contract out, to contract the majority of one, while our staff in-house is working on another so we have two going kind of at the same time. But if the desire is

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

February 19, 2020

to have it all be done in-house, then we would almost need to double the size of this Division.

COUNCILMEMBER MOLINA: Yeah, might be more cost-wise more feasible to contract out then?

MS. MCLEAN: Right.

COUNCILMEMBER MOLINA: Yeah.

MS. MCLEAN: We might, I mean, depending on how quickly the Council and the public want this process to go. We might need one or two more people to manage the contract and still oversee it and still participate in the community engagement part. But until we really have a good sense of how that 400,000 is going to work, it's hard to estimate, you know, whether that's a good model to continue with.

COUNCILMEMBER MOLINA: Okay, thank you.

MS. MCLEAN: And what the cost would be. Yeah.

COUNCILMEMBER MOLINA: Thank you, Chair.

MS. MCLEAN: So, as we just discussed, this is the Division that does our community plans and other long-range plans. They also staff the Cultural Resources Commission and maintain the Department's GIS land use database. Then our newest division, the Plan Implementation Division, only has four personnel: the division chief, two planners, and one GIS position. And one of those planners is one of the expansion positions. And I believe that one we were going for a Planner II, and the recruitment has closed for that and so then we're waiting for the list.

CHAIR PALTIN: So to clarify, you have currently three personnel, a division chief, one planner, and one GIS?

MS. MCLEAN: Correct.

CHAIR PALTIN: Okay. Thank you. And the planners are all in Bargaining Unit 3...13?

MS. MCLEAN: Yes. Yes. And PID shares clerical with Long-Range. So, if there are clerical needs, then the Long-Range secretary supports PID as well. And this is the Division that does the implementation reports, they're doing the Title 19, they did the Title 19 audit and are now doing the rewrite, they head up the DSSRT project, and they also did the SMA boundaries for Lanai. And then our administration, it's not really a division, but our admin team is myself, the Deputy, the secretary that we share, our main front desk person, our account clerk who pays all of our bills, and then...oh, excuse me, the administrative officer is our one personnel person. She does...she handles all of the recruitment and HR issues for the Department, and then the office ops assistant is our front desk person. And we oversee all the rest of it. For our

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

February 19, 2020

budget, the majority of our budget comes from the General Fund. We have a little bit that comes from grant revenue, and the grant revenue is from the State Coastal Zone Management Program. So, they give us funding for four personnel, that's the salary budget. And the...but as I said the majority is from the General Fund. You'll see the majority of our budget is for salaries and I'll...we'll do a breakdown on the next slide. But this is just a comparison of this fiscal year with the prior two fiscal years. So, for FY '20, the...we have just over \$7 million in general funding. Salaries and wages account for 64 percent of that, and operations is about 34 percent of that. And the majority of operations is for professional services, and I have a breakdown of that on the next slide, and rent. And when we talk about any expansion personnel, we have room for the expansion personnel that we have for FY '20, but if we add any more personnel, we are bursting at the seams. We would need more office space, and desks, and computers, and all of that. So, I mean, we would love to have more personnel, but it's not just the salary cost. It's also these additional costs that go along with it. Also, the funding for important agricultural lands, the TOD master plan, permit cost recovery, shoreline management, and Sea Grant. So, those are all the things that fall under the operations budget. And on the next slide I go into status of these items.

CHAIR PALTIN: Director?

MS. MCLEAN: Yeah?

CHAIR PALTIN: I'm not...the 125,000 for important agricultural lands, how is that expended. Is it like ensuring compliance with the IAL designation?

MS. MCLEAN: No, we received the 125 from the Council and also 125 from the State Legislature, so a total of 250. And that is for the County to proactively designate additional important agricultural lands. So, we are drafting the RFP to issue that for a consultant to propose potential additional lands for designation, and also to recommend incentives that the County might offer. And the designation process has a important community component to it, so it's more than just a mapping or research exercise. So, the 250 together we've put in the request to the State for the Governor to release the State funds, and then the RFP that we're scoping out is contemplating spending that total amount of 250. Similarly, with the TOD, there's the 100,000 from the County and 500,000 from the State Legislature. We've also submitted the request for the Governor to release the money and we're scoping out the RFP. We have, as you may know, Jeff Speck, who was our keynote speaker at HCPO is here, and he's going to review that for us and potentially make suggestions on how that might be modified so that we have a really good list of deliverables for that master plan. So, that's a total of 600,000 that we would be spending on a consultant to lay out a master plan for the TOD corridor from Wailuku to Kahului, along Kaahumanu Avenue. The permit cost recovery item, I actually have a draft report from the consultant with me. They updated the fee study that was done by Matrix Consulting Group several years ago. They've updated that and put their report all together, I just need to go over it one more time and then we hope to be able to submit that to the Budget Committee with a proposed fee schedule starting in FY '21. And that line item in the Budget for 75,000

PLANNING AND SUSTAINABLE LAND USE COMMITTEE MINUTES

Council of the County of Maui

February 19, 2020

was for the cost recovery study as well as traffic impact fees and development impact fees. Those were two studies that were done that we, we're also interested in updating. The fee study was only \$20,000 to update, so we still have 55,000 left of that money that would be enough for the development impact fee, but I think that there's more interest in the traffic impact fee. The estimates that I'm getting from the contractor who did that before is that that would be in the range of \$150,000, so we're waiting to see what our other RFPs come in at, and if there's any balance then we would put that together with the balance from this and go for the traffic impact fee study update. If we don't have any remaining funds, then we might just go with the development impact fee because we would have sufficient money for that.

CHAIR PALTIN: Vice-Chair Rawlins-Fernandez --

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Chair.

CHAIR PALTIN: --followed by Member Sugimura.

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Chair. That's awesome that the cost recovery update was...came in at 20,000.

MS. MCLEAN: Yeah.

COUNCILMEMBER RAWLINS-FERNANDEZ: So we have, what is that, 55,000 left. Will you need a budget amendment for that? Because I think that was a proviso, yeah?

MS. MCLEAN: The proviso was for the cost recovery fee.

COUNCILMEMBER RAWLINS-FERNANDEZ: Yeah.

MS. MCLEAN: So we can't spend that on anything else, but we could spend leftover money from somewhere else that wasn't provisoed and add it to that. Otherwise, we would just use the remaining 55 for development impact fee and that would still be in line with the proviso.

COUNCILMEMBER RAWLINS-FERNANDEZ: Okay, and so you said that the update has been completed?

MS. MCLEAN: For the --

COUNCILMEMBER RAWLINS-FERNANDEZ: For the...

MS. MCLEAN: --fee study?

COUNCILMEMBER RAWLINS-FERNANDEZ: Yeah.

MS. MCLEAN: Yeah.

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

February 19, 2020

COUNCILMEMBER RAWLINS-FERNANDEZ: Oh, okay.

MS. MCLEAN: Yeah, they did a draft report. I had some corrections and then they send it back and I'm just going through it now. And once it's final, then we'll be able to transmit it.

COUNCILMEMBER RAWLINS-FERNANDEZ: Okay. So, when you transmit it, you're going to send it to the Council?

MS. MCLEAN: Yes.

COUNCILMEMBER RAWLINS-FERNANDEZ: Okay, great. Okay.

MS. MCLEAN: Well, I'll find out from the Budget Office if...that's what I'm guessing they'd want to do, but, yeah, one way or the other it would get to the Committee. Whether it's through the Budget Office and then to the Committee or from us directly --

COUNCILMEMBER RAWLINS-FERNANDEZ: Oh, okay.

MS. MCLEAN: --I'd need to check with them.

COUNCILMEMBER RAWLINS-FERNANDEZ: Okay, so I...as an individual Councilmember, I wouldn't be able to request that myself? I would have to wait 'til it gets through Committee?

MS. MCLEAN: I don't know. I don't want to not follow the Budget Office's protocol.

CHAIR PALTIN: I think you can request anything. Whether they deliver is the question.

COUNCILMEMBER RAWLINS-FERNANDEZ: Yeah. Okay. And then really quick on the TOD, we said that that was...the master plan was going to be \$600,000?

MS. MCLEAN: Well, that's how much funding we have.

COUNCILMEMBER RAWLINS-FERNANDEZ: Oh, okay.

CHAIR PALTIN: Five hundred from State.

COUNCILMEMBER RAWLINS-FERNANDEZ: From the State, and 100 from us?

MS. MCLEAN: Right.

COUNCILMEMBER RAWLINS-FERNANDEZ: Okay. And that will be completed this year too?

MS. MCLEAN: The contract will be executed this fiscal year so the funds can get encumbered, but I would imagine that the time of performance would be a year or maybe two.

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

February 19, 2020

COUNCILMEMBER RAWLINS-FERNANDEZ: Okay, so you haven't set a deadline for that, our, the proposal, the TOD to be completed?

MS. MCLEAN: Not yet, I'd have to see...I think in the RFP we have a...we would ask the contractors in their bids to submit a timeline. So that would be part of what we evaluate in awarding the contract.

COUNCILMEMBER RAWLINS-FERNANDEZ: Okay, but you would give them like a maximum time to get the project done?

MS. MCLEAN: I don't think we would need to. But that might be, you know, if someone...if we receive a bid for example with a really aggressive and we feel unrealistic timeline, then that would be points against that bidder. So that's one of the things that we would evaluate.

COUNCILMEMBER RAWLINS-FERNANDEZ: Okay, and then last question, Chair. Sorry. For the IAL study, plan, project, will the...so then you said the RFP hasn't been posted yet.

MS. MCLEAN: Correct.

COUNCILMEMBER RAWLINS-FERNANDEZ: But you're confident that it will be posted and the contract executed before the end of June?

MS. MCLEAN: Yes.

COUNCILMEMBER RAWLINS-FERNANDEZ: Okay, cool.

MS. MCLEAN: Yes.

COUNCILMEMBER RAWLINS-FERNANDEZ: Thanks. Mahalo, Chair.

CHAIR PALTIN: Member Sugimura, followed by Member Molina.

COUNCILMEMBER SUGIMURA: Thank you, Chair. So, regarding the development impact fees and the traffic impact fees. So, can you explain that --

MS. MCLEAN: Uh-huh.

COUNCILMEMBER SUGIMURA: --and what...I guess you're saying that there's a interest in the development impact fees, but what would fall under the...that?

MS. MCLEAN: Okay, the development impact fee is for Police, Fire, Wastewater, and Solid Waste.

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

February 19, 2020

COUNCILMEMBER SUGIMURA: Oh, okay, so not new things. I just thought there was more.

MS. MCLEAN: Right.

COUNCILMEMBER SUGIMURA: Oh, okay.

MS. MCLEAN: And that...it was similar concept if you build a new home, or a new hotel, or a new commercial square footage, then you get assessed a fee, and traffic impact fee is the same. The traffic impact fee model, because, you know, roads work differently than those other services, looked at three different ways to assess the fee, either Countywide, or by community plan region, or by grouped community plan regions. And because some areas are much more expensive than others, and it would be quite burdensome for those areas to stand on their own rather than being grouped together. So if we're able to update the study and those recommendations remain, then that would be a significant part of the decision is how to assess those. So...but right now we don't...we only have the old studies and we couldn't use those because they're...the data's too old. The numbers are too old.

COUNCILMEMBER SUGIMURA: So, just last question, Chair. So do you think that we need to do the traffic impact fee as well as all of it? I mean, do you think we need to...cause it sounds like you're picking one or the other, do you think that we need to support you and have you finish the traffic and also do the traffic impact fees for planning purposes?

MS. MCLEAN: We have to see what some of the, how some of these RFPs come out because...so, there's the professional services line item. I haven't gone into detail about everything that falls under that --

COUNCILMEMBER SUGIMURA: Okay.

MS. MCLEAN: --910,000. The IAL, the TOD, the permit cost recovery, those are provisos so we can't...if there's money left over from any of those, we can't spend that on anything else. The items under professional services, which I'll go into on another slide, those are the RFPs we're waiting to see --

COUNCILMEMBER SUGIMURA: Okay.

MS. MCLEAN: --if they don't get contracted --

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

MS. MCLEAN: --at the full budget amount, then we can use that excess --

COUNCILMEMBER SUGIMURA: Okay.

MS. MCLEAN: --and apply it to the permit cost recovery.

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

February 19, 2020

COUNCILMEMBER SUGIMURA: Okay.

MS. MCLEAN: So --

COUNCILMEMBER SUGIMURA: Thank you. Thank you.

MS. MCLEAN: --the shoreline management, that was...the idea that we had for that was the South Maui Volunteers, Bob and Lisa Richardson who are doing great work with shoreline access and dune recovery, they are going to retire at some point. And so, this was thought of as seed money for an individual or entity to take over that work. And we tried to find people, we tried to find entities, we couldn't find anybody. Sea Grant, however, is interested in hiring a dune management coordinator for Maui, another Tara Owens, but specializing in shoreline and dune management and recovery, and so we are going to award that to them. We have a contract being drafted now for them for this fiscal year to see how it works with Sea Grant contracting for that instead, and we will be asking for that to continue next fiscal year since we're getting started so late this fiscal year. But that would be someone available the way Tara is to...they're not County employees, but they work closely with us on permitting and so forth, but then available to the community to do these projects.

CHAIR PALTIN: Member Molina?

COUNCILMEMBER MOLINA: Thank you, Madam Chair. You know, Madam Director, you have so much stuff to oversee. You know, people say the Mayor's job is the toughest. If it is, I think you run a close second so I give you a lot of credit. Sorry if I didn't mention it earlier about the rewrite for the Title 19 and your existing staff, so I know we had the consultants here the other day. So their role would be just to oversee what they're doing and it wouldn't impact their own daily activities, right, as far as, for example, causing any delays with processing permits and so forth? So, they should be fine, right?

MS. MCLEAN: Right, the Plan Implementation Division --

COUNCILMEMBER MOLINA: Right.

MS. MCLEAN: --that oversees that contractor, right. They themselves are not doing the rewrite --

COUNCILMEMBER MOLINA: Oh, okay.

MS. MCLEAN: --they're managing the contractor. But they have a lot of interaction with them. I mean, that does require work on their part. But, yes, they have other duties that they are tending to.

COUNCILMEMBER MOLINA: Okay, so then it shouldn't impact their abilities to do their other duties --

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

February 19, 2020

MS. MCLEAN: Right.

COUNCILMEMBER MOLINA: --on a timely basis, yeah?

MS. MCLEAN: Right.

COUNCILMEMBER MOLINA: Okay.

MS. MCLEAN: Thank you.

COUNCILMEMBER MOLINA: Thank you. Thank you, Chair.

CHAIR PALTIN: Committee Vice-Chair Sinenci?

VICE-CHAIR SINENCI: Thank you, Chair. I was just going to ask about the Kahana Condominium Association, they were doing that district funding. Is that coming up anytime soon, and will you, the Planning Department, also be helping with that process?

MS. MCLEAN: We will be helping with it. They are at the point now where...we interact with the Finance Department on this because it requires input from bond counsel. I mean, this is a whole realm of the County that is brand new to me, so we rely on Finance and then the people that they contract with, bond counsel, and then their municipal advisor, on the, on crafting the community facilities district ordinance, and the petition and all of that. It may be that the Planning Department does a small contract with a municipal advisor type to assist us directly so that we're not stealing from Finance's contractor all the time. That's kind of been happening in recent months where we've been asking for assistance and they've been responsive to us and then Finance gets a bill and says, you know, what are you guys doing? So, we might end up doing, just, you know, a relatively small contract ourselves for someone so that we can really get this going and we, you know, we can be in the driver's seat with it. Because right now we're out of our comfort zone and could use that kind of help. And so, instead of stealing from Finance or overstaying our welcome with Finance, we might just do a small contract with someone to, on that project specifically.

VICE-CHAIR SINENCI: Would that require additional funding, Director?

MS. MCLEAN: I don't think so. I think with some of the excess we have, I mean, I don't imagine it being a big scope of work or very time consuming. And also, the Kahana Bay folks have funding available to pay for some of that as well. So, when they themselves need assistance, they can pay for the assistance that we need, that, excuse me, that they need. We just need a little bit on our side too. They are well into the process of doing their EIS, so that's really the linchpin of all of this because that will determine what alternative is to be pursued. And we've been imagining t-head groins and beach nourishment, but until you get all the way through that environmental process, you know, the impacts of those kinds of physical improvements need to be

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

February 19, 2020

evaluated against other potential solutions. So, we're hoping it'll end up being something like that but until that document is finished, then they can't get into the permitting.

VICE-CHAIR SINENCI: Okay, great. Thank you for that update. Thank you, Chair.

MS. MCLEAN: In FY '20, because we were given two new zoning inspectors in FY '19, in FY '20 we asked for two new vehicles for those inspectors so they could have their own cars, and that's...Public Works is overseeing the purchase of new vehicles because they got a good deal doing a large purchase. So purchasing those new vehicles is underway. That's not the only thing the money pays for, it's also for our copiers and leased equipment.

COUNCILMEMBER RAWLINS-FERNANDEZ: Chair, real quick before we move to the next slide.

CHAIR PALTIN: Vice-Chair Rawlins-Fernandez?

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo. So real quick, Director. The Sea Grant and the shoreline management, so Sea Grant will likely get the contract to do the shoreline management and dune restoration. So the 104,000 is for something different?

MS. MCLEAN: The UH Sea Grant line item is...that's specific to Tara.

COUNCILMEMBER RAWLINS-FERNANDEZ: Okay.

MS. MCLEAN: So, her position continuing and then the shoreline management is the new dune coordinator position.

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

CHAIR PALTIN: I was wondering how many vehicles you had total?

MS. MCLEAN: Total we have eight inspectors, so each of them have a vehicle. And then the Current Division has one on Maui and one on Molokai that we need to replace. And then --

CHAIR PALTIN: Only the Molokai one --

MS. MCLEAN: --the Long-Range has one...

CHAIR PALTIN: --needs to replace?

MS. MCLEAN: Sorry?

CHAIR PALTIN: Only the Molokai one needs...

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

February 19, 2020

MS. MCLEAN: Well, we used to have two on Molokai and one of them finally passed away and we want to replace that one.

CHAIR PALTIN: Okay.

MS. MCLEAN: So, eight inspectors, Current on Maui, Current on Molokai, Long-Range. So, I think 11.

CHAIR PALTIN: Eleven total. And so you just got two new and you'd like one more?

MS. MCLEAN: Well, that count of 11 includes the 2 new ones that we're in the process of buying.

CHAIR PALTIN: Oh, okay.

MS. MCLEAN: Yeah.

CHAIR PALTIN: And so, the other nine vehicles are in good condition?

MS. MCLEAN: I think in FY '21 we might be asking for two replacement. I need to check.

CHAIR PALTIN: Okay. I'm sure we'll get that --

MS. MCLEAN: Yeah.

CHAIR PALTIN: --when the Budget comes up.

MS. MCLEAN: Yeah. So, that professional services line item, the key cost under that are the South Maui Community Plan update, and that RFP has been issued. It may have closed by now, but we haven't reviewed bids or made an award. The Maui Island Plan baseline monitoring report, that is for the Maui Island Plan has quality of life indicators in it, and so that is a report to study the latest information on those indicators. In addition to that, we also want to do a quality of life survey because those indicators are just going to be data, and that's helpful information. It can talk about employment or homeownership or things like that, but that doesn't really tell you how people feel. So you could have, you know, high employment, but if people are struggling to make ends meet, you know, high unemployment might indicate or suggest something that the survey is going to show otherwise. So we have an RFP out for the survey for conducting that survey. Then on the Coastal View Plane Study, that's something because the SMA review process is supposed to consider impacts on view planes, and it does. But we don't have a baseline study of where those scenic view planes are. So that would be for a contractor to prepare that study for us. Shoreline Permitting is to hire a contractor to propose a way to streamline and consolidate the permitting process for beach nourishment and those kinds of activities so that it doesn't take so long. Those two RFPs have been drafted, they're awaiting my review. I haven't been able to review them yet, but those should be going out soon.

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

February 19, 2020

Then the Historic Preservation Plan is the second phase of...the first phase has been completed, which is like an existing conditions report. And then this is the second phase to prepare a new Historic Preservation Plan, which is the name that we're using rather than Cultural Resources Preservation Plan. We already talked about IAL and TOD and the Permit Cost Recovery and Shoreline Management. Okay, fees and fines in all of FY '19, we collected just over \$865,000 in fees and fines together. Fines alone were \$509,500, fines alone. We don't have those separated into SMA and non-SMA. To date, fees and fines so far is 413,000. Fines alone...oh, we do separate out SMA, sorry. I...we don't have the separation for FY '19, but FY '20 we do. So, 253,500 in fines this year to date. The SMA Special Fund, so all of our SMA application fees and fines collected for SMA violations go into the SMA Special Fund, and the balance that I got from Finance today was almost \$88,000.

CHAIR PALTIN: So the fees collected and the fines other than the SMA fines, does that go into the General Fund?

MS. MCLEAN: Yes.

CHAIR PALTIN: Okay.

MS. MCLEAN: And then advisory committees, this is just a ballpark guess but if the two new advisory committees are created that are being proposed right now, our Department would need another supervising planner, a staff planner, and a board or commission secretary. So, we'd estimate the salaries for those three positions to be about 200,000. And then, the Chair had asked what it would take to issue permit or registration numbers for lawful vacation rentals in the apartment districts, and if we were to do that, that would have to be unit by unit, it couldn't be per property. Because if you have a property with, you know, it doesn't matter if it's 10 or 100 units in it, each of those advertise, so each of those would have to have their own permit number. So, there are roughly 100 properties that in total are about 6,700 units in the apartment districts that are lawful for vacation rental. And so to give each of them a registration number, I'd guess it would be about \$10,000 to hire someone to do that.

CHAIR PALTIN: Wow, that seems reasonable. And for the advisory committees, you mentioned that space is an issue.

MS. MCLEAN: Yes.

CHAIR PALTIN: Was that not part of the 200,000?

MS. MCLEAN: Correct.

CHAIR PALTIN: Okay.

MS. MCLEAN: That's not part of the 200,000.

CHAIR PALTIN: And do you have any estimate on how that could be estimated?

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

February 19, 2020

MS. MCLEAN: Yeah. I can come up with a figure and send that to you. Let's see...

CHAIR PALTIN: And then at the rate that we're filling the expansion positions, it could be about as long for these expansion positions as well?

MS. MCLEAN: It could be. The way hiring works is if there's an existing list created, then you request recruitment, they send you the existing list and you can start interviewing right away. That's really fast. But if those lists don't exist, then they start from scratch and they have to advertise and then Personnel collects all of the resumes, certain positions require a test, so they have to administer the test, then they put together the list and then you get it, and that's what can take a while. So the staff planner that we might hire for this, right now we're going to have lists for a couple different levels of planners, so if that's a level of planner we want, then that's going to be out there. Supervising planner, I don't think there's a list. There aren't that many Planner VI's in the County. So, I doubt there's a list for that, so that would have to be created. Board and commission secretary, I don't know what other department...we haven't hired one in a very long time. I don't know if other departments have them, so there may be a list for that position. I don't know. I don't know.

CHAIR PALTIN: And do you know an idea of what the staff planner number would be? Like II or III?

MS. MCLEAN: I would need to check with the Current Division, because my guess is that that new planner wouldn't be tasked with advisory committees and nothing else, you know. They'd fold into the mix of our other planners, and our other planners might staff items there, or they might. So we'd be looking at the Division as a whole. But I would guess somewhere...the Division right now has a couple of IIIs, a number of IVs, and a lot of Vs. So, probably a II or a III, you know, we'd want to start a little bit lower. We don't want to start super high. But that would be my...I'd need to talk to the division chief and see what he would recommend.

COUNCILMEMBER RAWLINS-FERNANDEZ: Chair?

CHAIR PALTIN: Council Vice-Chair Rawlins-Fernandez?

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Chair. Director, so these three new positions, how many advisory committees would they be able to manage? Or, like, I guess my first question is what...who currently manages the Hana Advisory Committee? Like, is it like its own dedicated staff like this or do they share --

MS. MCLEAN: No --

COUNCILMEMBER RAWLINS-FERNANDEZ: --with like the Commission?

MS. MCLEAN: --we don't have...we have, in the Current Division we have three secretaries to boards and commissions. One does the Maui Planning Commission only, because the

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

February 19, 2020

workload of that is so high. She'll back up for the others if needed, but generally that's her one primary duty. Another one staffs the MRA, Lanai Planning Commission, Urban Design Review Board, I think that's it. Then the other one staffs the CRC, the Molokai Planning Commission, the Cultural Resources Commission, and I think that's it. So, it depends on workload and how frequently they meet. So, I think one commission secretary could handle the two new advisory committees, I think that's reasonable. Part of it, though, depends on what duties they have, what duties the advisory committees have. Because what their duties are will drive how often they meet and how often they meet will determine what the workload is for the secretaries, and how long the meetings are. So, that's not...that hasn't been confirmed yet how...what their duties are going to be and how often they're going to meet so it's a little hard to say. But I think, you know, one secretary could serve the two. I think the equivalent work would be for one, the equivalent of one staff planner. But that planner wouldn't be dedicated only to those.

COUNCILMEMBER RAWLINS-FERNANDEZ: Okay, and then so seeing that we're, you know, the Council's heading in a direction of creating these advisory committees, do you think...so if we...so are you planning to put this into the Budget? And if...I...it's almost chicken before the egg kind of thing, yeah? Because then we would need...it would take time for you to get the...I guess my question is, so if we pass the legislation to create these advisory committees, would they need to wait until Planning has appropriate number of staff to staff the advisory committees before they could meet?

MS. MCLEAN: We would appreciate that.

COUNCILMEMBER RAWLINS-FERNANDEZ: Okay.

MS. MCLEAN: Yeah, it would be difficult for us otherwise. It would be a lot of overtime until then. But we didn't put money in the budget because we had to prepare our budget at the end of the calendar year before this --

COUNCILMEMBER RAWLINS-FERNANDEZ: Right.

MS. MCLEAN: --really came to the forefront. So, we didn't plan for that.

COUNCILMEMBER RAWLINS-FERNANDEZ: Okay, so the Council will have to plan for that then. Okay, thank you for that. Mahalo, Chair.

MS. MCLEAN: And as I've mentioned I...and maybe Mike wants to comment on it, but I would guess that Corp. Counsel might need another position too because they staff all of these along with our personnel.

COUNCILMEMBER RAWLINS-FERNANDEZ: That's right. Okay, mahalo. Mahalo, Chair.

CHAIR PALTIN: I had a question on that. Being that the CPAC doesn't need to continuously be staffed by Corp. Counsel, do you think that the advisory committee is in a different

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

February 19, 2020

level than CPAC in that they would need to be continuously staffed by Corp. Counsel as their opinion would be only advisory to the Planning Commission?

MS. MCLEAN: Again, it's not clear to me what their duties and responsibilities are going to be, but as we've talked about before, the CPAC isn't handling anything that would be considered a contested case, whereas the advisory committees likely will be. And so, that's why the legal guidance can be important to make sure that those procedures are carefully followed. The CPAC still has to follow Sunshine Law, and our staff and the CPAC itself has a pretty good understanding of what that means. Beyond that, there aren't the same considerations that there might be when they're reviewing permits or things like that. So, I don't know if Mike wants to add anything to that.

CHAIR PALTIN: Mr. Hopper?

MR. HOPPER: I think a lot will depend on if there are committees formed, what their roles are and what they end up doing. Right now I think there's a lot of discussion and a variety of different possibilities. Whether we would have a deputy attend every meeting or do training and monitor on an on-call status or things like that, there's a lot of potential ways to deal with that situation. We can consult with those boards as well as the department who staffs on how to provide the best service that we can. A lot will end up depending on what the groups are actually going to discuss. I know Hana Advisory Committee right now, they do hear things that are considered contested cases and that's sort of part of the record. But it's going to depend on what these boards end up reviewing and what their capacity is.

CHAIR PALTIN: Thank you. Member Sugimura?

COUNCILMEMBER SUGIMURA: I don't...I wonder if this can be put on Granicus? I don't see it on our...

CHAIR PALTIN: Oh, can you transmit a copy for Granicus?

MS. MCLEAN: Yeah.

COUNCILMEMBER SUGIMURA: Yeah.

MS. MCLEAN: I just finished it this morning, so that's why it's not on Granicus --

COUNCILMEMBER SUGIMURA: Oh, thank you.

MS. MCLEAN: --but I'd be happy to send that.

COUNCILMEMBER SUGIMURA: Yeah, thank you. It's great information. And I also want to say I really...I had always assumed that the Minatoya condos, I guess, were...had assigned numbers to it. But this is a really good idea.

CHAIR PALTIN: Thank you.

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

February 19, 2020

COUNCILMEMBER SUGIMURA: Yeah. Very good. Yeah. Then that'll, you know, differentiate and help our contractor. Yeah. Thank you.

COUNCILMEMBER RAWLINS-FERNANDEZ: Chair, real quick.

CHAIR PALTIN: Vice-Chair Rawlins-Fernandez?

COUNCILMEMBER RAWLINS-FERNANDEZ: For the commission staffing, do the secretaries do the minutes? And are they verbatim minutes for the commissions?

MS. MCLEAN: Yes, they do the minutes and they do verbatim minutes.

COUNCILMEMBER RAWLINS-FERNANDEZ: Okay, mahalo. Mahalo, Chair.

MS. MCLEAN: And lastly in our budget we have three different goals for performance measures. The first is improving customer service and streamlining permit application procedures. Then increasing public participation and access to information. And improving the administration of our land use ordinances and long-range plans by revising and updating ordinances and rules, and by implementation. So, we have performance measures in the budget narrative for each of these goals.

CHAIR PALTIN: I had a question on the previous slide when it says, you know, increase public participation and access to information by conducting public meetings. And kind of the, I guess, a . . .*(inaudible)*. . . the impetus in the court case surrounding the Planning Commission where we can no longer take testimony at the front end and it needs to be taken up as the item is heard, was that court case based on, like, administrative rules or was it, like, how was the...how did the change come about if you can...as it relates to increased public participation? 'Cause I think from the advisory committee meetings that we've held, some people feel that it has had the effect of decreasing their ability to participate in the process. So, if you could briefly explain how we got to that point where we're at.

MS. MCLEAN: Okay. The change in the procedure with the Planning Commission was, it was the result of the court case, but the court's decision didn't say you must take testimony only when the item comes up. So, that is something that we can change back. The reason that they are taking testimony only when the item comes up is to be very, very cautious and very precise in these contested case proceedings. The court case brought to head an issue that we had been grappling with for a while, which is the Sunshine Law and people's right to testify and participate in proceedings versus the Administrative Procedures Act and the contested case process, where the applicant has certain rights. And those two things conflict in a way. And up until then, when people testified, the applicant was not given a chance to effectively cross-examine them, and that's what we have to do for contested cases. And by allowing testimony at the beginning of the meeting even if the item isn't coming up 'til the last, we need to make sure that the applicant is there at the beginning so they have the opportunity to cross-examine that person even if the applicant wasn't planning to come until much

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

February 19, 2020

later on because their item's last on the agenda. So, it was really just a way to make sure that each item is handled at one time rather than some testimony at the beginning of the meeting and then some testimony later when the item is actually deliberated. So, I think in the interest of public participation, we can and we should shift back to allowing it. But we need to make sure that the Commissioners are aware, and that the applicant or their representatives are there at the beginning so that their rights are not...so that their rights are protected and they have the opportunity to cross-examine. So, that's why the change took place, it's just an easier way to control it. But if it's had a negative effect on participation, then it's...we should change it back.

CHAIR PALTIN: Member Sugimura?

COUNCILMEMBER SUGIMURA: It makes a lot of sense that, I never understood that portion, so thank you for sharing it. So, just not understanding how many contested cases you have every time you have a Planning Commission meeting. Can you put the contested cases up front so you can handle it like that, and then still continue on with your process? Because it...I think what we've found is lot of times when in Committee if, I think, Member Paltin did it. I think it...or was it...where you had the presentation first and then you had the testimony after so that people would understand what the facts are, you know, or it was manipulated in that way so that it would logically make sense in terms of presenting information. I don't know what your, if your Planning Commission meetings could have the contested cases first on the agenda. Or I don't know how...

CHAIR PALTIN: And maybe specifically the contested cases with interveners, because you said not all contested cases have interveners.

MS. MCLEAN: That's correct. A contested case is, the easiest way to describe it is when the Commission has final approval authority over the request and it's a contested case whether or not there's intervention. And so, if it's a Change in Zoning application that comes to the Council, we don't have to allow for cross-examine, or I should say the Commission doesn't have to allow for cross-examination and the witnesses or the testifiers don't get sworn in. But if the Commission is making the final decision, then testifiers have to get sworn in and the applicant has the opportunity to question them. We do...when each project comes up in turn, we do have the presentation first before we take testimony because that is helpful so that a lot of times people's questions or concerns are addressed or somehow touched upon in the presentation. So that does happen now. We try to...on the, on putting together any meeting agenda, we think about whether we think there's going to be a lot of testimony and we try to put those items upfront so that people don't have to wait. Or if there's one big contentious item and a couple potentially fast, easy ones, we'll put the fast, easy ones first so that they can go first. So there's, there're a number of things that go into putting the agenda together. But generally, the action items go first. It...just the order we change depending on a variety of factors. So, also when if there's one planner who has a couple of items that day, we'd try to put those together so the planner could be there

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

February 19, 2020

all through instead of having to go back and forth or wait in between. So, there're a number of things that go into putting the agenda together.

COUNCILMEMBER SUGIMURA: Thank you.

CHAIR PALTIN: Vice-Chair Rawlins-Fernandez?

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Chair. And mahalo, Director, for going to Molokai last week for the Planning Commission meeting. It was...I know that the Commission appreciated having the Director there for the presentations, and at that meeting, the presentations occurred before testimony was taken so that those there to testify could see the presentation and provide more meaningful testimony. So, mahalo. So for the change in testimony timing and structure in putting it...taking testimony strictly on items as they come up, would the commissions be able to...so before, they would ask if anyone would like to testify on any items, and then if they would prefer to wait before the item comes up on the agenda, they had that option too. So it sounds like the option number one was taken away where if, you know, they have to go to work and they wanted to testify on multiple items on the agenda, they wouldn't have that ability too. So do you know how soon we would be able to change back to giving testifiers the option of testifying on multiple items if, you know, they cannot stay for the entire meeting?

MS. MCLEAN: The next Commission meeting is next Tuesday, so I can confirm with the Commission then if they want to go back to that, if they'd be willing to go back to that. And then if they are, I mean, they could start that day or then at the following meeting. So it can be right away. Almost right away.

COUNCILMEMBER RAWLINS-FERNANDEZ: Awesome. Okay, that...I really like that. Okay, I'm sure the testifiers will appreciate that too. So then the, my second question is can we, you know, to be fair to the testifiers that would like to testify on, you know, contested case items to ensure that the petitioner or the representative is there at the start of the meeting to...so that they don't hold those items hostage basically? We could do that? Okay. And then, you know, in questioning the testifiers cross-examining, how would the petitioner do that? Would they...when the testifier is there, after they provide their testimony, the petitioner or representative would have the opportunity to then question that testifier immediately?

MS. MCLEAN: Yeah. What happens now is the testifier comes to the podium, the Chair says, "do you swear to tell the truth" and the testifier says, "yes" or makes a quip, and then they give their testimony and then the Chair says, "wait a second," asks if there are questions from the Commission, and then after the Commission finishes its questions, they ask the applicant, "do you have any questions for the testifier?" And the vast majority of the time, they do not. But they have to be given that opportunity.

COUNCILMEMBER RAWLINS-FERNANDEZ: Okay. So it's kind of like the Land Use Commission how that, the State Land Use Commission --

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

February 19, 2020

MS. MCLEAN: Exactly.

COUNCILMEMBER RAWLINS-FERNANDEZ: --is generally run?

MS. MCLEAN: Exactly.

COUNCILMEMBER RAWLINS-FERNANDEZ: Okay. Okay, great. Thank you. Mahalo, Chair.

CHAIR PALTIN: If I may just follow up on her, Member Rawlins-Fernandez question. If the Planning Commission chooses not to go back to the old way with the modification that applicant is there in the start, does the Council have any recourse as a policymaking body to create that situation?

MS. MCLEAN: I don't know. I don't know if that's something that could be required by ordinance. I don't know, I'd defer to Corp Counsel on that.

CHAIR PALTIN: Any thoughts, Mr. Hopper?

MR. HOPPER: I'd say definitely not with anything involving the SMA, that's within the Commission's exclusive purview. Outside of that, I generally don't think so. That's something that on a meeting-by-meeting basis, generally the, under Robert's Rules of Order and law in general, that's something that the chair of the commission or that, or the board or commission would generally with the body set forth their procedures for things like taking testimony and things like that. We can look at that in more detail, but I think I don't know of any board or commission where, you know...ordinances do get into things like the training requirements and other things like that and the qualifications of members. But to get into how you take testimony and when you take testimony, especially when there's the separate State law, HRS 91, that says how you have to administer contested cases that could get complicated if you get into those kind of details. So, you know, generally speaking I...that's not something, I don't think I've seen where anyone other than the members get to decide the, you know, the procedures for taking testimonies and things like that. That would be highly unprecedented and I'm not certain it would be legal. I don't think it could be done for SMA permits and shoreline setback variances and State special permits, which are things through State Law, they directly delegate to the commission itself to give them the authority to deal with.

CHAIR PALTIN: Okay. Thank you very much. Sorry, Member Sinenci, for cutting in line.

VICE-CHAIR SINENCI: Oh, no, great discussion. Thank you, Chair. My question was on performance measure number one about streamlining the permitting process. The Council had okayed an affordable housing project in East Maui, and so I was wondering are these affordable housing projects being given special priority, I guess? I know in Hana in I don't know how many building permits, building construction permits are in East Maui, but oftentimes, you know, sending out an inspector out to rural sites like East Maui has been a concern, a challenge for us.

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

February 19, 2020

MS. MCLEAN: My understanding is that with certain affordable housing projects, and I believe the Hana project would be among those, that when the Department of Housing and Human Concerns has a role in seeing that permits are processed quickly and when the building permits or any permit, grading, any associated permit, when that comes in it gets prioritized. Essentially it gets put on the top of the pile, so my understanding is yes. And so, with building permits particularly, those get routed to a number of County agencies and including Planning, and we need to be aware that those are priorities and they get put on top of the pile.

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

CHAIR PALTIN: And then one last question I had for follow up maybe was the other thing that I wanted to know on fines was what the original amount was versus the settlement amount, and I don't know if it could be broken down on a case-by-case basis, or...and as well as the total like what the fine amount was and what the settlement amount was?

MS. MCLEAN: We had a discussion about this. First of all, we don't keep track in that way. I mean, we could go into each file and find that information. And then we talked about whether we should start tracking that and making that information readily available, and we were concerned about doing that because we don't want to give the impression that, oh, just ignore all the fines that are racking up because you can eventually get a settlement. We want the...those looming, accruing fines to get compliance, and if there's the belief that, oh, you know, look at all these cases and how they settled, then it wouldn't have that same effect.

CHAIR PALTIN: So, the reason that I was asking was my office did get some complaints and we were looking into a sort of settlement authority similar but not exactly the same as what Corporation Counsel has where the amounts that they settle over \$7,500 come to us and it would be kind of different because the settlements that we make with Corp. Counsel is money getting paid out. But, in the mindset that, you know, if it's such an amount that deviates from what the amount is on paper, that maybe that should come to us for final authority too, but without the data it's hard to anticipate.

MS. MCLEAN: Okay, okay. The...

CHAIR PALTIN: Could it be like a executive session type of thing?

MS. MCLEAN: I was just asking Mike if we could go into executive session and he --

CHAIR PALTIN: Discuss...

MS. MCLEAN: --feels like this is going outside of the --

CHAIR PALTIN: Agenda.

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

February 19, 2020

MS. MCLEAN: --agendized budget item.

CHAIR PALTIN: Oh.

MS. MCLEAN: I think it's a worthwhile discussion to have because I was interested in going into executive session to elaborate more on what I was just saying and, you know, that would be a worthwhile conversation to have because then I can go into detail about how these end up --

CHAIR PALTIN: So maybe when the --

MS. MCLEAN: --getting worked out.

CHAIR PALTIN: --settlement authority item comes up, then we can go into executive discussion.

MS. MCLEAN: Do you have that in your Committee? You have a settlement or in another Committee if you want to --

CHAIR PALTIN: We have a --

MS. MCLEAN: --request that we attend.

CHAIR PALTIN: --PAF currently.

MS. MCLEAN: Oh, okay.

CHAIR PALTIN: Working on drafting it.

MS. MCLEAN: Okay.

CHAIR PALTIN: So it's quite far in the future, but I thought that information in terms of the budget and what's been collected might help with the drafting of the PAF to see the spread and like what is, you know, kind of more ministerial versus what is we should look into the situation. But I can understand that it might be deviating too far from the scope of budget discussions. I just mentioned it because it was one of the items that had been requested, and I thought maybe it got lost in transmission. Any further questions on the budget presentation? And we'll have it on Granicus shortly. If there's no...oh, Member Rawlins-Fernandez?

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Chair. Okay, do you have the status on the ADA and public shoreline access improvements? Or is that Public Works? That was Planning too, yeah?

MS. MCLEAN: I...that was...I don't believe that was in our FY '20 Budget.

CHAIR PALTIN: Maybe we can send a letter?

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

February 19, 2020

COUNCILMEMBER RAWLINS-FERNANDEZ: Yeah, the 75,000...

CHAIR PALTIN: Oh.

COUNCILMEMBER RAWLINS-FERNANDEZ: Oh, okay, for the ADA shoreline access improvement. Yeah, so it was 75,000 under administration and planning program. But I guess I can send that question over.

MS. MCLEAN: Let's see.

CHAIR PALTIN: You see it under the administration budget?

MS. MCLEAN: Okay, that wasn't in the final approved budget, I don't believe. It's not in the sheets that I got from the Budget Office.

COUNCILMEMBER RAWLINS-FERNANDEZ: Okay.

MS. MCLEAN: I think what happened was we had proposed that and then we found out that the Parks Department was putting in 500,000 --

COUNCILMEMBER RAWLINS-FERNANDEZ: Oh, okay.

MS. MCLEAN: --for a similar thing, so I think that was in our original proposal, but then that was sort of overlapped with Parks. So, I think that ours got dropped and I believe Parks got funded.

COUNCILMEMBER RAWLINS-FERNANDEZ: Okay. Okay, and then one last correction. This is the item before the sand extraction, it wasn't a 1988 study, it was just a 1988 shoreline condition restoration. So, it wasn't a study, sorry. That was my bad.

MS. MCLEAN: I will mention that we got some grant funding left over from the CZM project, CZM program last fiscal year on updating the shoreline inventory, the shoreline access inventory. And we haven't launched it yet, but it is awesome. It has all of the public shoreline access points with photographs and information. You can get it on your phone.

CHAIR PALTIN: Yikes.

MS. MCLEAN: It's really...and you can pass along information so if it's in poor condition, you can send comments in so that it can be taken care of. But that's really, a really great product that we should be releasing soon.

CHAIR PALTIN: Would it, sorry, would it include safety and hazardous information like direction of swell that is...

MS. MCLEAN: There is all kinds of great information in there. Yeah.

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

February 19, 2020

CHAIR PALTIN: Oh, okay.

MS. MCLEAN: Yeah.

CHAIR PALTIN: Alright, so any further questions on PSLU-53? Thank you very much, that was a very thorough, well done presentation, Director McLean. If there's no objections, I'll defer this item.

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

ACTION: DEFER PENDING FURTHER DISCUSSION.

CHAIR PALTIN: And we went a little bit past our morning break time so if Members don't object to like a ten-minute recess before we take up our final item, I'll go and recess at this time. . . .*(gavel)*. . .

RECESS: 11:15 a.m.

RECONVENE: 11:30 a.m.

CHAIR PALTIN: . . .*(gavel)*. . . It is 11:30 on February 19 and will the Planning and Sustainable Land Use Committee return to order.

PSLU-51: STATUS OF ACTIVE CONDITIONAL PERMITS (CC 20-34)

CHAIR PALTIN: We have one final item on the agenda. That's PSLU-51, Status of Active Conditional Permits. The Committee is in receipt of County Communication 20-34, from the Planning Director, relating to the status of all active conditional permits. And I scheduled this item, it's been a long time since we have received the status of active conditional permits. And if you might remember, the reason was a little confusion between the Public Works and Planning Department. So this is the first one that we've had in a long time and it should be on your Granicus. Director McLean, did you want to go over a little bit of, you know, I think initially the Council approves a conditional permit or the Planning Commission, and then how maybe extensions are carried out or not carried out and so forth for the Members' review or update?

MS. MCLEAN: Thank you, Chair. The list in front of you was organized by conditional permit number, so starting from the oldest one going down to the most recent one. We can organize this list however it would be most useful to you, but I thought doing them in chronological order made sense starting with the oldest one. It lists the ordinance number, well, it lists the TMK, the initial approval date, the ordinance number, the activities permitted, who the permit holder is, and the current expiration date, and then in the last column there are notes, but not everyone has notes. A

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

February 19, 2020

conditional permit does need final approval by the Council. If the activity is in the Urban District, then it probably doesn't need another permit. But if the activity is in the State Rural District or the State Agricultural District, it most likely also needs a State Special Permit. The County Code right now allows the Planning Director to approve the conditional permit time extension administratively. That was a change that was made several years ago as a streamlining effort. When the Council first approves a conditional permit, the first paragraph in the ordinance says the permit is valid until whatever the date, subject to extension pursuant to Chapter 19.40 of the County Code, and that chapter is the one that allows the Director to approve them, approve extensions administratively. If a new permit were to come to the Council, you could depending on the use, or the applicant, or whatever your reasons might be, if you don't want that extension to be handled administratively, then that first paragraph could say, time extension shall be granted by the Council. So, you can establish that on an application-by-application basis if you choose to. Right now, the County Code allows those to be approved administratively, so all the ones on this list could be approved administratively. You could change that law and take that authority away so that all these extensions come to you if you wanted to do that. So, you know, that's for you folks to decide. The ones that are in the State Rural or Agricultural District though as I said most likely also need a State Special Permit, and that does have to go to the Planning Commission for time extension. And in the notes column, you'll see a couple there where the State Special Permit was approved by the Commission, and then the Director approved the conditional permit administratively. So in those cases there is that one public review opportunity at the Commission level. And I...that's about all I have to say for introductory remarks. Thank you, Chair.

CHAIR PALTIN: Thank you. Just one clarification. So that SUP-2, that's the State's Special Use Permit code that you were talking about or acronym?

MS. MCLEAN: Yes.

CHAIR PALTIN: Okay.

MS. MCLEAN: Yes.

CHAIR PALTIN: And MOLPC would be like Molokai Planning Commission, MPC, Maui Planning Commission?

MS. MCLEAN: Exactly.

CHAIR PALTIN: Okay. Members, any questions to start off with? Council Vice-Chair Rawlins-Fernandez?

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Chair. So, there are some expiration dates that are really far into the future like 2033, 2034, and those...a few of them are concrete batching plant, hot mix asphalt plant, concrete batching plant, rock quarry and batching. I think, and what is that, number 26, is that one on Molokai?

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

February 19, 2020

MS. MCLEAN: Yes.

COUNCILMEMBER RAWLINS-FERNANDEZ: Goodfellow's?

MS. MCLEAN: Yes.

COUNCILMEMBER RAWLINS-FERNANDEZ: Okay. And then do you know when the initial expiration or how is the expiration determined to be so far into the future?

MS. MCLEAN: For that one in particular, and I can...if I'm wrong on this I will let you know, I, my guess is that the applicant requested that long timeframe and the Molokai Planning Commission approved that for the State Special Permit, and then the conditional permit followed that same timeframe.

COUNCILMEMBER RAWLINS-FERNANDEZ: Okay, so in the notes it says Director approved CP extension.

MS. MCLEAN: Right.

COUNCILMEMBER RAWLINS-FERNANDEZ: So you're saying that the Molokai Planning Commission approved the State Special Use Permit until 2023...2033. And so, the Director at the time approved that extension to match the State Special Use Permit?

MS. MCLEAN: That...I would...I don't know for sure but I'm reasonably confident that's what happened. But if I'm incorrect, I will check on that and if I'm incorrect I'll let you know.

COUNCILMEMBER RAWLINS-FERNANDEZ: Okay, mahalo. And then for, you know, the 1, 2, the 3 below where it has the concrete batching plant, so that's number 31, 32, and 35, and it goes to the expiration is in year 2032, 2033, and 2034, and there aren't any notes to indicate what happened there.

MS. MCLEAN: That's because that was the original permit term. The Council approved it for the, for 20 years.

COUNCILMEMBER RAWLINS-FERNANDEZ: Okay. And then last one, Chair.

CHAIR PALTIN: Uh-huh.

COUNCILMEMBER RAWLINS-FERNANDEZ: Number 14, that expiration is 'til 2044. That is a fruit roadside stand in ag. That was something that the Maui Planning Commission approved the State Special Use permit 'til 2044 and then the Director approved that extension?

MS. MCLEAN: Right, that would be the same.

CHAIR PALTIN: Is that the Halfway to Hana one?

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

February 19, 2020

MS. MCLEAN: I believe so.

CHAIR PALTIN: Oh, the best banana bread.

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Chair.

CHAIR PALTIN: Okay.

COUNCILMEMBER RAWLINS-FERNANDEZ: And mahalo, Director.

MS. MCLEAN: And I believe that was relatively recent and the applicant asked for a shorter period than the Commission gave. The Commission gave a longer period than the applicant requested.

CHAIR PALTIN: 'Cause the banana bread is winner over there. Okay, okay. Members, Vice-Chair Sinenci followed by Member Molina.

VICE-CHAIR SINENCI: Oh, okay, thank you. So these are revolving permits? Or, like does it come back to you every so often or no?

MS. MCLEAN: When the permit is about to expire, then the applicant needs to apply for renewal.

VICE-CHAIR SINENCI: Okay.

MS. MCLEAN: And if they fail to, then the permit expires. But if they come in prior to expiration, then it can be extended.

VICE-CHAIR SINENCI: Okay. And then for those that are listed as TVRs, what's normally the conditions on the majority of them? Like they're out of...they're within SMA?

MS. MCLEAN: These were, looking at their original approval dates, these were approved before the STRH law was adopted, and so the only way to do it...way back when there was a different B&B Ordinance, and I remember when the Fairbanks came in for the Old Wailuku Inn. The number of bedrooms that they have exceeded the number that was allowed by the B&B law, and still does, the B&B and STRH laws right now only allow six bedrooms. So, if you have more than six bedrooms, then you would need a conditional permit. And these were granted at a time when there wasn't an STRH process. And so, if someone wanted to do that, then a conditional permit was the only way to do that. I'm not familiar with all of these, but when the STRH permit process was created, there was a mechanism for conditional permits to convert to STRHs if they met the standard and because these didn't convert, I would guess that these didn't meet something about those standards.

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

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

February 19, 2020

CHAIR PALTIN: Member Molina?

COUNCILMEMBER MOLINA: Thank you, Madam Chair. Director McLean, you know in Section 19.40, there's basically no limits for you as the Director on the number of extensions that you can approve if I'm correct. Do you yourself have your own personal criteria? Because I know directors can be, some can be lenient, some can be more strict. Do you have a certain set of criteria as to how many extensions you'd grant like a general rule like no more than three times, or is it more on a case-by-case basis as how you look at an applicant comes in asking for an extension. How do you deal with that and what's your criteria?

MS. MCLEAN: That's a great question. I haven't had one of these yet so I don't know. I will say that if there seems to be even a little bit of reason that some kind of public review is needed, then I go in that direction. There are issues that have come up like an amendment to an existing SMA permit that staff may consider non-substantive, and I'll say, no, I want the Commission to look at this. If there's no change in the operation and we're not aware of any complaints, any negative impacts, and so forth, you know, we'd need some sort of justification to...the solution wouldn't be to deny it or to say you can't get any more extensions, it would be to forward it to the Council for action. So, it would really be case by case if it's, you know, this thing's been going on for a very long time and it's probably appropriate for there to be public review, you know, just to check back in again, then I would have no problem forwarding it to the Council.

COUNCILMEMBER MOLINA: Okay.

CHAIR PALTIN: Mr. Hopper?

MR. HOPPER: And then, just to also point out, any time extension does have to be the notice, there does have to be a notice provided to owners within 500 feet of that time extension. And it also says that no protests have been received from the owners and lessees of record located within 500 feet of the parcel. So there are existing criteria in the Code that would allow the Planning Director to grant an extension. So just to follow up on that, your question.

COUNCILMEMBER MOLINA: Okay, good, very good. And my last follow up. So, are there any conditional permits that can be done administratively other than by the Director? Extensions? Or just everything has to go through the Director?

MS. MCLEAN: Technically, any administrative approval that the Department issues is technically by the Director --

COUNCILMEMBER MOLINA: Oh, okay.

MS. MCLEAN: --even though I don't sign everything.

COUNCILMEMBER MOLINA: Okay.

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

February 19, 2020

MS. MCLEAN: These, however, are significant enough that they would come to me for my signature. There're a number of, you know, SMA exemptions for example that the staff processes that never come to me. But these would come to me for extension.

COUNCILMEMBER MOLINA: Okay.

MS. MCLEAN: For sure.

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

CHAIR PALTIN: Thank you. And then along the lines of Member Molina's question, I see one of the most upcoming ones is it looks like Oprah Winfrey Ranch on May 31, 2020, a 12-unit TVR and events facility. And just wondering if that was, I mean, that's like an upcoming one. So, is that one you would think, do you know if there's any complaints within 500 feet or it's something that the public should weigh in on?

MS. MCLEAN: I'm not aware of any issues concerning that, but those would be routed to staff first. And I assume that they have submitted for extension, but I don't know if they have. And if they've submitted for extension as Mike read from the Code, they would've had to have notified surrounding property owners.

CHAIR PALTIN: Okay. And so, we're going to get a list from you like this, like four times a year? Is that what the Code was quarterly updates?

MS. MCLEAN: Yes.

CHAIR PALTIN: And then, so it probably wouldn't have too much change each time?

MS. MCLEAN: Right. It should be pretty easy for us to do those regularly now since there wouldn't be that many updates each time.

CHAIR PALTIN: Okay. Member Sugimura, did you have any questions? Anyone else? Vice-Chair Sinenci?

VICE-CHAIR SINENCI: Just following along the lines of Member Molina, so would there be a process if we did want oversight by this Council? Maybe...

MS. MCLEAN: If there is a particular permit that you're concerned about, if you wanted to let me know then I wouldn't have any concerns with forwarding that to the Council for approval.

VICE-CHAIR SINENCI: Okay.

MS. MCLEAN: But otherwise, the Code right now allows for the Director to give --

VICE-CHAIR SINENCI: Sure.

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

February 19, 2020

MS. MCLEAN: --extensions. And so, unless the Code is changed, I wouldn't have reason other than what I described earlier, to not issue them administratively.

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

CHAIR PALTIN: Okay, and I'm not, sorry, I'm not sure and I'm not sure if you know. But as you send us the quarterly updates, do we need to have them agendized to go over it or do you send it to each Member as opposed to the Committee?

MS. MCLEAN: If you were to keep the item in Committee, then we would send it straight to the Committee. Or if you filed it, we would send it to the Council Chair and then it would follow the regular process from there.

CHAIR PALTIN: So, Mr. Hopper, if we defer this can people just go look to the Committee item to get the quarterly updates or would we need to agendize it to get the quarterly updates?

MR. HOPPER: I do, well, I think the Director said that there's also, that would also be on the Planning Department's website. But I think in general if it's an ongoing Committee item, you know, it could be...I don't know if this item in particular...

CHAIR PALTIN: PSLU-51?

MR. HOPPER: I guess it says quarterly status of active conditional permits. I mean, it's a, you know, if you want to have it agendized as a quarterly update for, you know, whatever quarter, then it may be better to get it through the Council Chair and then transmit it. If it's going to be, we just want to have it added as a status of active conditional permit, which it does seem to be broad enough to encompass it. I suppose you could get the updates and then have them put on Granicus. You can check with OCS Staff and confirm that's all okay, but I think that if it's just an update to the item and you put it on Granicus under the item, it would be like any other ongoing item you have where you receive additional information.

CHAIR PALTIN: Okay, so I guess maybe the easiest way if Members wanted to track certain items would be to look on your website for the updated quarterly update?

MS. MCLEAN: Yes, we will be posting it quarterly as well as sending it to the Council.

CHAIR PALTIN: Okay, thank you. Members, any additional questions on this item? Okay. Wow, three items, no testimony. So, my recommendation is if there's no objections, I will defer this item.

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

ACTION: DEFER PENDING FURTHER DISCUSSION.

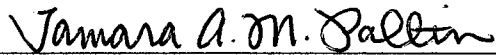
PLANNING AND SUSTAINABLE LAND USE COMMITTEE MINUTES
Council of the County of Maui

February 19, 2020

CHAIR PALTIN: All right. You guys are so pleasant today. This concludes today's Planning and Sustainable Land Use Committee meeting. Thank you very much, Members. The time is now 11:48. We're 12 minutes ahead of schedule and this meeting is adjourned. ...*(gavel)*...

ADJOURN: 11:48 a.m.

APPROVED:



TAMARA PALTIN, Chair
Planning and Sustainable Land Use
Committee

pslu:min:200219:cs

Transcribed by: Crystal Sakai

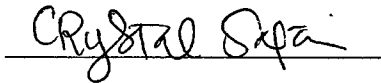
PLANNING AND SUSTAINABLE LAND USE COMMITTEE MINUTES
Council of the County of Maui

February 19, 2020

CERTIFICATE

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

DATED the 10th day of March, 2020, in Kahului, Hawaii



Crystal Sakai