

PLANNING AND SUSTAINABLE LAND USE COMMITTEE

Council of the County of Maui

MINUTES

December 3, 2020

Online Only Via BlueJeans

CONVENE: 9:01 a.m.

PRESENT: VOTING MEMBERS:

Councilmember Tamara Paltin, Chair
Councilmember Shane M. Sinenci, Vice-Chair
Councilmember Kelly Takaya King
Councilmember Alice L. Lee
Councilmember Michael J. Molina
Councilmember Keani N.W. Rawlins-Fernandez (in 9:11 a.m.)
Councilmember Yuki Lei K. Sugimura (out 11:30 a.m.)

NON-VOTING MEMBERS:

Councilmember Riki Hokama (out 10:50 a.m.)

STAFF: Ana Lillis, Legislative Analyst
Alison Stewart, Legislative Analyst
Laksmi Abraham, Legislative Analyst
Wilton Leauanae, Legislative Analyst
David Raatz, Supervising Legislative Attorney
Richard Mitchell, Legislative Attorney
Clarita Balala, Committee Secretary
Jean Pokipala, Council Services Assistant Clerk

Kate Griffiths, Executive Assistant to Councilmember Kelly Takaya King
Michele Del Rosario, Executive Assistant to Councilmember Kelly Takaya King
Sarah F. Pajimola, Executive Assistant to Councilmember Rawlins-Fernandez
Trinette, Furtado, Executive Assistant to Councilmember Rawlins-Fernandez

ADMIN.: Michael J. Hopper, Deputy Corporation Counsel, Department of the Corporation Counsel
Michele McLean, Director, Department of Planning
Jacky Takakura, Administrative Planning Officer, Department of Planning
Linda Munsell, Deputy Director, Department of Housing and Human Concerns
Clyde "Buddy" Almeida, Housing Administrator, Department of Housing and Human Concerns
Corey Tom, Police Officer, Department of Police

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

December 3, 2020

OTHERS: Stan Ruidas (PSLU-68)
Junya Nakoa (PSLU-54(5))
Denise Tjarks (PSLU-68)
Tom Schnell, Principal, PBR Hawaii and Associates, Inc.
Michael Hotta, Chief Financial Officer, Maui Land & Pineapple Company, Inc.
Paul Subrata, Vice President, Maui Land & Pineapple Company, Inc.
Senator Gil Keith-Agaran
(2) additional attendees

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

CHAIR PALTIN: ...*(gavel)*... Will the Planning and Sustainable Land Use Committee meeting of December 3, 2020 come to order. The time is now 9:01 a.m. If I can ask everyone to please silence their cell phones and any other noisemaking devices. My name is Tamara Paltin, and I'll be your Chair for today's Planning and Sustainable Land Use Committee meeting. I'd like to introduce my Vice-Chair, Councilmember Shane Sinenci. Aloha.

VICE-CHAIR SINENCI: Aloha kakahiaka, Chair. Malalo a mauna ka lā. And mone kākou.

CHAIR PALTIN: Mone. And we have Councilmember Mike Molina from his new pad.

COUNCILMEMBER MOLINA: Hey, good morning, Madam Chair. Yes, the virtual bridge is undergoing some repairs right now, so I've been forced to...I've been forced to move into some temporary quarters. It's still in the permit process with the virtual Planning Department, so hopefully it gets approved soon. But good morning, Madam Chair, to you, my colleagues, and everyone else who are on. Broadcasting to you from Makawao.

CHAIR PALTIN: Good morning. And we have Council Chair Alice Lee with us today. Good morning, mone.

COUNCILMEMBER LEE: Mone, and here's another one, Madam Chair. Ko na mauri. Ko na mauri. And this is from the Christmas Island in the Pacific. Yeah, there's two Christmas Islands, one in the Indian Ocean, one in the Pacific Ocean. So ko na mauri, everyone.

CHAIR PALTIN: Ko na mauri to you too. We have, from South Maui, Councilmember Kelly King.

COUNCILMEMBER KING: Ko na mauri, everybody. And I just want to say to Councilmember Molina, good luck getting that permit. It might be a while before we see your bridge again.

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

December 3, 2020

CHAIR PALTIN: And we have Councilmember Yuki Lei Sugimura, who found a bridge that wasn't under construction.

COUNCILMEMBER SUGIMURA: Just so Mike remembers where he has to go back to. Good morning, everybody.

CHAIR PALTIN: Good morning. And I'm not sure where Councilmember Rawlins-Fernandez is, but I'm sure she'll be along shortly. I haven't heard anything otherwise. And our non-voting Committee Members, we have Councilman Riki Hokama with us. Good morning.

COUNCILMEMBER HOKAMA: Aloha. Good morning, Chair. Thank you for letting me participate.

CHAIR PALTIN: Aloha, glad to have you. And we also have Tasha Kama not with us, but she's a non-voting Member, and she's also welcome to join us at any time. With Corporation Counsel, we have Deputy Corp. Counsel Michael Hopper this morning. From the Department of Planning, we have Director Michele McLean, Administrative Planning Officer Jacky Takakura, and Planner Kurt Wollenhaupt. From Department of Housing and Human Concerns, we have Linda Munsell, Deputy Director, and Buddy Almeida. Let's see. From Maui Land and Pineapple Company Kapalua Mauka compliance report, we have...I think I seen Tom Schnell join the call. And all I see...our Committee Staff, we have Committee Secretary Clarita Balala; Council Services Assistant Clerk, Jean Pokipala; Legislative Analysts Ana Lillis, Alison Stewart, Laksmi Abraham, Wilton Leauanae; and Legislative Attorney Richard Mitchell. On the agenda today, we have five items, and I mentioned to some of the Members, I wanted to go in reverse order today. But we have PSLU-68 Amending Chapters 19.64 and 19.65, Maui County Code Relating to Bed and Breakfast Home and Short-Term Rental Home Permits on Lānaʻi; PSLU-26 Renewals for Conditional Bed and Breakfast Homes and Short-Term Rental Home and Special Use Permits; PSLU-51 Status of Active Conditional Permits; and PSLU-54(5) Annual Compliance Report on the Change in Zoning for Kapalua Mauka, Ordinance 3358; as well as referral recommendations. Let's see. So I have four people signed up to testify right now: Stan Ruidas, Corey Tom, Junya Nakoa, and Denise Tjarks. Oral testimony via phone or video conference will be accepted. Testifiers wanting to provide video testimony should have joined the online meeting agenda via BlueJeans meeting link as noted on today's agenda. Testifiers wanting to provide audio testimony should have participated via phone conference by dialing 1-408-915-6290 and entering meeting code 944504421, also noted on today's agenda. Written testimony is encouraged by sending your comments to pslu.committee@mauicounty.us. Oral testimony is limited to three minutes. When your name is called, please unmute yourself by clicking the microphone icon, or if calling by phone, please press star 4 to unmute yourself. If you are still testifying beyond that time, I will kindly ask you to complete your testimony. When testifying, please state your name. If you are testifying on behalf of an organization or are a paid lobbyist, please inform the Committee. Staff will post the link to the testifiers log in chat so testifiers will be able to see where they are on the list. However, please be

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

December 3, 2020

mindful of the use of chat during the meeting. Chat should be limited to items on the agenda...or wait...and should not be used to provide testimony or chat with other testifiers. If providing testimony, please be courteous to others by muting your microphone while waiting for your turn to testify. We have a little change. Once you're done testifying, you will be asked to disconnect from the call. However, you are welcome to continue to view the remainder of the meeting on *Akakū* channel 53, Facebook Live, or on mauicounty.us. Participants who wish to view the meeting only without providing testimony, please also disconnect at this time, and instead view the meeting on *Akakū* channel 53, Facebook Live, or on mauicounty.us. Only Councilmembers, Staff, and designated resource personnel will be connected to the video conference meeting once testimony concludes. I remind Committee Members, Administration, and the public to please be patient with us as we continue to navigate through this new platform. Members, I'd like to proceed with oral testimony. Staff has been monitoring people joining today's meeting by phone and by video, and we will do our best to take each person up in an orderly fashion. So Mr. Stan Ruidas, I believe you're up first. If you can unmute yourself.

. . .BEGIN PUBLIC TESTIMONY. . .

MR. RUIDAS: Hello, good morning. I was just looking at this. I don't know what this was about. But can I do it after, or you guys going to do a presentation first?

CHAIR PALTIN: No presentation today.

MR. RUIDAS: Okay. Then I guess I'll start my testimony as far as I can read it.

CHAIR PALTIN: Okay.

MR. RUIDAS: So I don't know anything about this, but then I can testify to what happened on the Planning Commission about 15 years ago, where we deferred everything on the...regarding housing on Lānaʻi to the community plan. Then when we reached the community plan, we found out that the Long-Term Division had put it in the community plan. But then when that went up to review by the Council, something happened. But anyway, you know, we were trying to make something unique for the housing market on Lānaʻi. And, you know, like the...I guess like what you can say, like, the TVRs, right now it looks like the short-term rentals is taking over what TVRs used to be. And as far as the market for regular people...so if we look at the housing market, and 80 percent is ran by kupunas. And if you look at the short-term rentals, 90 percent is run by non-residents of Lānaʻi. So I just was wondering how...you know, and it's a good thing that we can look at this and try to make something that would work for the people of Lānaʻi because you wouldn't want the hunter, you know, walking into the Four Seasons. Or, you know, like the...I don't know. When people come back to Lānaʻi, you know, they want someplace to stay, and they cannot afford to stay at the hotels. Not like you, probably you guys can afford them. So that's all I wanted to say. Thank you.

PLANNING AND SUSTAINABLE LAND USE COMMITTEE MINUTES

Council of the County of Maui

December 3, 2020

CHAIR PALTIN: Thank you, Mr. Ruidas. And I just was wondering, the last meeting we had on the Lānaʻi bed and breakfasts, I had mentioned the Lānaʻi Planning Commission had put forward 21 TVR or short-term rental, and 21 bed and breakfasts, and I had proposed dropping the short-term rental number down to about 15 or so. And I was wondering if you had seen that, and what you had thought about it? Or if you had seen it, what you thought.

MR. RUIDAS: Yeah, I seen it, but I couldn't attend the meeting because I was working. But then, you know, going back when the short-term rentals started, I warned the Planning Commission that, you know, a lot of short-term rentals that were coming up wasn't Lānaʻi people. And, you know, then the thing got out of hand, and that's why you had all these people, you know, against it. You know, if...it's kind of like, you know, the TVR coming back again, but it's only on Lānaʻi now. Because we never did have something regulated except for the B&Bs.

CHAIR PALTIN: Okay. Thank you. It looked like--oh, if I can just take a moment and recognize Councilmember Keani Rawlins-Fernandez. Thank you for joining us this morning.

COUNCILMEMBER RAWLINS-FERNANDEZ: Aloha kakahiaka, Chair. Mai Molokaʻi nui a Hina.

CHAIR PALTIN: Aloha kakahiaka and ko na mauri from Christmas Island in the Pacific.

COUNCILMEMBER RAWLINS-FERNANDEZ: Ko na mauri.

CHAIR PALTIN: And now, sorry, Mr. Hokama, did you have a question for Mr. Ruidas?

COUNCILMEMBER HOKAMA: Yeah. Thank you, Chair, for allowing me to participate. Good morning, Stan. I appreciate you calling in and sharing your manaʻo with the rest of the Committee this morning. Mr. Ruidas' family is an old, old family on the island. Generations, generations, yeah. And Mr. Ruidas is a long-time of course resident besides, you know, I consider him an essential worker. He provides power to the island, assists us with power, electricity. And I...he was on the Planning Commission previously, and I take his comments very seriously because I share it...greatly his sentiments. I think for Lānaʻi, we appreciate this Committee, how it's approached the B&Bs because we know there's a full-time Lānaʻian, Lānaʻi resident, still on property for the B&B. As Mr. Ruidas said, and for many of us on the island, the issue is with the off-island owners that do STRs that for us has pretty much no sympathy or empathy for the island. They're just...they try to just make choke money off a residential housing in a city that was geared for pedestrian use and not vehicular use. So now we got to deal with their vehicles on the road at night. The County still has no overnight parking in the County, and yet on Lānaʻi, we are basically a majority of one-way streets. Stan's home, parent's home, is one-way street. Okay? Most of us live on one-way streets, and yet, we got to deal with cars now from visitors parking overnight,--illegally, according to the County Code--and creating issues for the long-time resident that's abutting the short-term rental. So Stan, I still think the

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

December 3, 2020

Committee would appreciate...and if you do have a comment, because we understand the difference between the B&B and the STRs. We understand there is a difference and I think Chair Paltin was concerned if you feel that the proposed number for STRs, the short-term rental at 21, is still a reasonable number for our community. Or would you prefer a different number? Higher? Lower? Moloka'i went to zero. Okay. We supported that because that's what the community wanted. So we supported zero for Moloka'i. You have any comments you want to share with the Committee this morning, Mr. Ruidas?

MR. RUIDAS: Thank you, Riki. Nice to see you. You know, I don't mind the concept of short-term rentals, but, you know, it's like...it has to be run by the residents. And like everything else, you know, money goes in, money goes out and doesn't circulate within the State because most of them is not, you know, from Hawai'i. And, you know, if the concept can keep the...be the same, but allow more flexibility for the residents to participate in these kind of things. So maybe the criteria doesn't match, or it doesn't match what the Lāna'i residents is requiring as far as housing. Because, you know, like I say, you know, it's...it's among...you got to look at price, you got to look at the...how Lāna'i is so, you know, small that we cannot, you know, allow people to come in and just run around. But, you know, I would say like modify it. You know, modify it so that it'll be easier for the, like I said, the 80 percent of the non-regulated housing right now is run by kupunas. And, you know, they live on a fixed income and this is, like, extra, you know, money for them. But that's not like they want to be illegal, it's just that the criteria doesn't meet what the County has regulated. Thank you.

COUNCILMEMBER HOKAMA: So Stan, just so the Committee Members that is...they're not clear. You're talking about more under the B&B side, where the kupunas still at home are trying to look at maybe some supplemental income by renting a room or something to pay the bills or something? Is that what you're concerned about?

MR. RUIDAS: Yes, yes, yes.

COUNCILMEMBER HOKAMA: Oh, okay.

MR. RUIDAS: You know, it's more of the residents running the B&B rather than someone else not living on the island running the B&B or the short-term rental.

COUNCILMEMBER HOKAMA: So Stan, this Committee under Chair Paltin is recommending that the Lāna'i Planning Commission makes the decision on the permit applications, not the Planning Director. Lāna'i residents on the Planning Commission is going to decide to approve or deny the application. You okay with that?

MR. RUIDAS: Is that separate for the B&B, or separate for the short-term rental?

COUNCILMEMBER HOKAMA: Anything for Lāna'i for B&B or short-term is going to be decided by the current bill before this Committee by the Lāna'i Planning Commission.

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

December 3, 2020

MR. RUIDAS: I would say that's good. But then, you know, it depends on the voting because you might have somebody that doesn't want their neighbor, or, you know --

COUNCILMEMBER HOKAMA: Yeah.

MR. RUIDAS: -- it's so small on Lānaʻi.

COUNCILMEMBER HOKAMA: Yeah. Well, you would rather have our people, yeah? Or maybe what you would recommend that at least part of the commission have someone that represents the kupuna sector on our Planning Commission?

MR. RUIDAS: Yeah. Yeah. You know, it's like...okay, the Commission got nine guys. But some of them, they got different roles, like Native Hawaiian background --

COUNCILMEMBER HOKAMA: Right, that's right. Yeah.

MR. RUIDAS: -- a lot of them work for Pūlama. Yes, someone that is non-jeopardized, I could say, you know, that they don't work for any of them.

COUNCILMEMBER HOKAMA: I understand, Stan.

CHAIR PALTIN: Not conflicted?

MR. RUIDAS: Yes, yes. That's the word.

COUNCILMEMBER HOKAMA: Thank you, Chair. You said it well, Chair. Thank you. Yeah. Thank you, Stan. No, I appreciate you being very upfront with myself and the rest of the Committee. So thank you for caring about Lānaʻi. Mahalo.

MR. RUIDAS: Thank you. I look forward to seeing this through. And if you guys need anything from me, just...you guys know where to find me. Thank you. Aloha.

CHAIR PALTIN: Aloha. Thank you so much for your testimony today. I believe our last testifier today, we had some changes on the list, is Junya Nakoa. Let me...

MR. NAKOA: Oh, howzit?

CHAIR PALTIN: Oh.

MR. NAKOA: Howzit, howzit, howzit.

CHAIR PALTIN: Oh, aloha.

MR. NAKOA: My bad. Yeah, I thought I was like number five or something.

CHAIR PALTIN: Everybody else dropped off.

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

December 3, 2020

MR. NAKOA: Yeah. Well, I came on top here for Kapalua Mauka. When I used to work for Maui Land and Pine, yeah, this thing came up long time ago. So kind of don't know, kind of gotta refresh the mind about, you know, what they was supposed to give. I think at that time, it was...I think was like 50 percent? I don't know, I forget. But I wanted for listen to one presentation about 'em so I can educate myself and get back on 'em. But I going talk about 'em anyway. The Pulelehua Project, when they went come, I went to the Hyatt meeting. I went to the...all the meetings in all the stuff. And then when I went ask the developer about if he using, like, housing credit from the Kapalua Mauka, he told me no. So I know he gets housing credit stuff, I did double checking. What else is...yeah, Maui Land and Pine, I'm glad that you guys on top here too, and you guys listening. This old...all the hard workers that went work over there and the people of Maui, the affordable houses that you guys kind of went small kine owe us and then, yeah, I going listen up to this whole process, and I going be on 'em to follow all the way. As of December 1st, I going be active, be very active on your guys' Zooms and the public of Lahaina. I going educate all the voters because had choke voters, yeah, this year, about all the issues and what our politicians say doing. Yes, no, whatever. So I going be...I going educate our voters 'cause I tired them asking me who to vote for every day...every time come election. I like them make up their own mind. I like them, you know, think for themselves. I tired have to tell them the kine. But mahalo, you guys, for you guys' time. But Kapalua Mauka, yeah, give us what we owed. Mahalo.

CHAIR PALTIN: Thank you so much, Junya. And before I ask if anyone has any questions, I just...you know, I wanted to apologize to you on behalf of the County of Maui. I recall when you was coming down when Director Reimann was in charge of Housing and Human Concerns, and you was coming down every day and fighting for what we were owed, and I hope that, you know, we can clarify some things today. Thank you. Members, any questions for the testifier? Mr. Sinenci.

VICE-CHAIR SINENCI: Mahalo, Chair. No, I just wanted clarification. The testifier mentioned a presentation from Kapalua Mauka, so we don't have one today, Chair?

CHAIR PALTIN: Well, we have Mr. Tom Schnell, their consultant. And I was going to allow him to give opening remarks.

VICE-CHAIR SINENCI: Oh, okay. All right. Thank you.

CHAIR PALTIN: And...

VICE-CHAIR SINENCI: That was my question.

CHAIR PALTIN: Okay. And, you know, just to clarify for everyone, I know that Member Hokama, Member Lee, and Member Molina were all there through the proceedings in '03, '04, '05, '06, and so I had a lot of the documentation for Granicus. We pulled out, you know, the Land Use Commission changing, and the original ordinance with the conditions, and things like that. So if you did want to read up on things, there's a lot

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

December 3, 2020

of reading material on the item in Granicus there. And I can walk us through it as we get to that item.

VICE-CHAIR SINENCI: Okay. I guess, did Mr. Nakoa have anything about the conditions that was added to the Granicus? Were you able to access the conditions, Mr. Nakoa?

MR. NAKOA: No, I goin' check 'em out, though.

VICE-CHAIR SINENCI: Okay.

MR. NAKOA: I'm going to educate myself now for look for that Granicus stuff. But yeah, I goin' check 'em out.

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

MR. NAKOA: Thank you.

CHAIR PALTIN: Any further questions for the testifier? Seeing none. I think we had somebody else that was on maybe? Is there a Denise Tjarks on?

MS. TJARKS: Here. I'm here, thank you.

CHAIR PALTIN: Okay.

MS. TJARKS: Can you hear me?

CHAIR PALTIN: We can. We can hear you.

MS. TJARKS: Oh, thank you. I'm so sorry, I...thank you. The only thing I wanted to add is about the 15-year ownership requirement for the B&Bs and the language for the short-term rental...I'm sorry, for the B&B. I would ask respectfully if you could consider to mirror the language for the short-term rental and keep it the five years? I know Mayor Victorino was very strong about changing it to 15, but, you know, one way you could ensure that we have local residents owning for five years would also be to look at your homeowner's exemption status on the taxes, and that would ensure that we're getting people applying for B&B permits that have owned for five years. So that's just all I had to say, and I would really respectfully ask you to consider that.

CHAIR PALTIN: Okay. Thank you, Mrs. Tjarks. I hope I'm saying your last name correctly.

MS. TJARKS: Yes --

CHAIR PALTIN: Okay.

MS. TJARKS: -- you are. Thank you. Thank you very much.

CHAIR PALTIN: Do we have...we have a question for you from Member King.

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

December 3, 2020

COUNCILMEMBER KING: Aloha --

MS. TJARKS: Sure.

COUNCILMEMBER KING: -- Ms. Tjarks. Thanks for coming. I just wanted to get --

MS. TJARKS: Aloha.

COUNCILMEMBER KING: -- trying to...are you an owner of a short-term rental on Lānaʻi?

MS. TJARKS: No. No, I'm not. We do...my partner works in Lānaʻi, and so he is over there once a week...well, a week for about a month at a time. And so we do spend time there, and I do really feel very strongly about what you're saying about not allowing other people, the regular working class, to participate in the island. And I really see that. So --

COUNCILMEMBER KING: Okay.

MS. TJARKS: -- it's tough.

COUNCILMEMBER KING: Okay.

MS. TJARKS: It's a very hard situation.

COUNCILMEMBER KING: I just wanted to get some perspective on your experience. So thank you for sharing that with us.

MS. TJARKS: Sure, sure. And I'm...I...yes, I appreciate that. Thank you.

COUNCILMEMBER KING: Thank you. Thank you, Chair.

CHAIR PALTIN: Thank you. Any further questions from the Committee? Seeing none. Thank you so much for joining us and providing us with your testimony today, Ms. Tjarks.

MS. TJARKS: Thank you. Thanks for being here. We appreciate you.

CHAIR PALTIN: Seeing if there's anybody else. Looks like that's all of our testifiers for today. Let's see. Is there anyone else on the line wishing to testify on any of our agenda items? Hearing no one. Members, seeing there is no more individuals wishing to testify, without objection, I will now close public testimony.

COUNCILMEMBERS VOICED NO OBJECTIONS.

CHAIR PALTIN: Any objections, Members, on receiving written testimony into the record?

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

December 3, 2020

COUNCILMEMBERS VOICED NO OBJECTIONS.

CHAIR PALTIN: Okay, so done.

. . .END OF PUBLIC TESTIMONY. . .

CHAIR PALTIN: Members wishing to speak during today's meeting should say my name, raise their hand, and ask to be recognized so I may call on you. If there are no objections, the Chair would like to change the order of agenda items and take up the referral recommendations first, to be followed by the Kapalua Mauka compliance report.

COUNCILMEMBERS VOICED NO OBJECTIONS.

CHAIR PALTIN: . . .(*background noise*). . . Okay. Somebody is not muted. Okay.

MR. SCHNELL: Hi, I'm sorry. Is it time for Kapalua Mauka? This is Tom Schnell.

CHAIR PALTIN: Mr. Schnell, thank you very much for being with us, you will be the second one up. I'm just going to go over --

MR. SCHNELL: Oh.

CHAIR PALTIN: -- Committee referrals real quick.

MR. SCHNELL: Okay, thanks. Sorry, misunderstood.

CHAIR PALTIN: No problem. No problem.

**COMMUNICATIONS FOR REFERRAL TO THE COUNCIL CHAIR
FOR THE 2021-2023 COUNCIL TERM**

CHAIR PALTIN: Okay. So the Committee may recommend the following communications be referred to the Council Chair for the term beginning January 2nd, 2021 in accordance with Rule 23 of the Rules of the Council. So before I...the list is on Granicus, but before I go through it, I just wanted to let Members know that any item that has gone through Planning Commission review or is going through Planning Commission review automatically gets referred on to the next term. So if you don't see your item listed here that has gone through Planning Commission...like, I know Ms. Sugimura was a bit concerned about the zipline ordinance, but those will automatically be referred to the next term. And the ones that I have chosen on the list, those are...would otherwise auto-file. Member King. Oh, you're muted. Can't hear.

COUNCILMEMBER KING: Sorry about that.

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

December 3, 2020

CHAIR PALTIN: No problem.

COUNCILMEMBER KING: Button wasn't working. So does the, oh, now I have to pull that back up again. Does that include PSLU-63, the South Maui Community Plan Update, Bell Collins Hawai'i Contract? I noticed that wasn't on the list.

CHAIR PALTIN: No, it doesn't.

COUNCILMEMBER KING: Is there some reason...yeah, I was hoping to get an overview of that because, you know, that's been a contracted entity to help with the South Maui Community Plan Update, and we're right now in the beginning of that community plan.

CHAIR PALTIN: Okay, would you like us to add that to a PAF or...did you have a PAF of all the items in all the Committees that you wanted to add on that you wanted to do it on yourself or did you want us to make a --

COUNCILMEMBER KING: Yeah, if you could --

CHAIR PALTIN: -- PAF on it?

COUNCILMEMBER KING: -- if you could add that one on, that would be great. That was the main one...

CHAIR PALTIN: Okay. Sure.

COUNCILMEMBER KING: All right. Thank you.

CHAIR PALTIN: Members, any objection to the items that I've chosen? I have transient vacation rental enforcement, monitoring and enforcement of conditions of development and use of County funding, advisory committee to the Maui Planning Commission, impacts of mobile vacation rentals including campers, trailers, and RVs, status of active conditional permits, compliance reports, legislation and discussion on the effects of coronavirus pandemic and related issues, and then all the ones that went through or are going through the Planning Commission.

COUNCILMEMBERS VOICED NO OBJECTIONS.

CHAIR PALTIN: All right. Oh.

COUNCILMEMBER KING: Do you need a vote? You need a motion and a vote?

CHAIR PALTIN: Yes. The Chair will entertain a motion to recommend the communication listed on the agenda as I've read to you to be referred to the Council Chair for the term beginning January 2nd, 2021, in accordance with Rule 23 of the Rules of the Council.

December 3, 2020

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

December 3, 2020

**PSLU-54(5): ANNUAL COMPLIANCE REPORT ON THE CHANGE IN ZONING FOR
KAPALUA MAUKA (ORDINANCE 3358) (CC 20-485)**

CHAIR PALTIN: All right. So next up we have PSLU-54(5) Annual Compliance Report on the Change in Zoning for Kapalua Mauka (Ordinance 3358). The Committee is in receipt of the following: County Communication 20-485 from myself relating to annual zoning condition compliance reports for Kapalua Mauka in accordance with Ordinance 3358; correspondence dated November 27 from myself, transmitting a copy of Ordinance 3358 to change zoning from County Agricultural District and Interim District to West Maui Project District II for property situated on the southeasterly side of Honoapiʻilani Highway at Honokahua, Napili, Lahaina, Maui, Hawaiʻi. So the Committee may receive a presentation from the developers of Kapalua Mauka and may discuss the matter. No legislative action will be taken. And just yesterday and the day before, we did receive some correspondence from Mr. Schnell and Mr. Subrata. I scheduled this item because I had some inquiries from constituents at the Ironwood Ranch area. And when I started looking into the documents, I was unable to find any compliance reports over the last 14 years. And I had sent some correspondence back in October, and we just got some correspondence back yesterday. And so, you know, my...it...when this passed in '05...I mean, '06 as Member Molina, Member Hokama, and Member Lee may recall, it was a little bit contentious, divisive in our community. But there were a lot of benefits that were promised to our community that I feel that we haven't received 15 years later. In going back over the minutes from '05, '06, and '04, a lot of the things that testifiers had hoped to avoid by passing this project were not at all avoided. And a lot of the benefits that our community was set to receive have never been realized to this day. And so, you know, I just want to get on the record my opinion that this project is not in compliance with the conditions of zoning. So Mr. Schnell, if you would proceed with your...oh, Chair Lee, yes.

COUNCILMEMBER LEE: For the record, Madam Chair, I just want to say that I completed my term as a Councilmember in 1999. So I...you know, I'm...you know, you giving me credit for something I wasn't involved with. I was the Housing Director until 2006, so I have very little action...interaction with the people on this particular project. So, you know, you don't have to mention my name because I wasn't a Councilmember at that time. Thank you.

CHAIR PALTIN: Oh, okay. I just was mentioning your name because you're all up in the minutes as the Director.

COUNCILMEMBER LEE: Yeah. Yeah, but remember, I left in 2006, so it's not like I stayed on to receive compliance reports, et cetera, et cetera. Okay? Thank you.

CHAIR PALTIN: Mr. Schnell, you can proceed with your presentation.

MR. SCHNELL: Okay. Good morning, Chair and Committee Members. Thank you for having us to provide some information about Kapalua Mauka. I apologize for getting the information to you late. I think we a little bit misunderstood some of the letters that came in, and we did respond to a letter that was addressed to Housing Director

PLANNING AND SUSTAINABLE LAND USE COMMITTEE MINUTES

Council of the County of Maui

December 3, 2020

Lori Tsuhako, and then I had assumed that got forwarded on to the Committee. But Chair Paltin, I understand that you also wrote a letter directly to Maui Land and Pine, which we did respond to this week and then you're correct, yesterday I emailed out a more complete report regarding all of the conditions of Kapalua Mauka, not just the affordable housing conditions. So hopefully you've had that...I have it on my screen if I need to pull it up, but it does detail compliance with all of the change in zoning conditions. Just note that the change in zoning ordinance does not require annual reports on all of the conditions to be presented to the Planning Department or to the Council, unlike maybe some other ordinances do. So Maui Land and Pine has provided compliance reports on the change in zoning at the time they were going in for compliance for subdivision for Mahana Estates. And so there were compliance reports submitted in February 2006, December 2006, and August 2013. Since Mahana Estates is the only thing that was developed in Kapalua Mauka so far, it's 51 units on about 125 acres, there was not the need to provide updated compliance reports. The reason we did that for subdivision is that when you go in for a subdivision or a different type of approval, the Planning Department wants to know that you've been in compliance with the conditions to date. So...however, the State Land Use Commission decision and order on Kapalua Mauka does require annual compliance report, and as you know, it has 27 conditions that are somewhat similar, but also could be a little bit different than some of the change in zoning conditions. We have provided the annual reports to the LUC every year. I think this year was the 15th annual report that's been provided. So we have complied with compliance reports that have been, I guess, mandated by the ordinances by the LUC. I don't really have a presentation for Kapalua Mauka, you know, the gist of it is that it's 925 acres, 690 homes were allowed, you know, potential to be developed in the total area, but only 125 acres and 51 lots have been subdivided and built in Mahana Estates at this point. So the balance of the project remains largely undeveloped. So the compliance with conditions that I've provided in the letter yesterday notes the compliance to date, and that's mainly in compliance with developing Mahana Estates and measures that they took to comply with the conditions when that was developed. I should note that Mahana Estates, it was subdivided into 51 lots, and those lots are available for sale. But I think maybe only two or three people actually bought lots and actually built homes. So they're subdivided vacant lots with maybe two or three homes on it so far. With that, I think I'll stop rambling and allow you folks to ask questions if that's the most efficient way to go.

COUNCILMEMBER LEE: You're muted.

MR. SCHNELL: Yeah, there you go. Yeah.

CHAIR PALTIN: Thank you for that. Thank you, Mr. Schnell, for your rendition of the situation. You know, each condition of the County, when we pass a change in zoning ordinance, it's...has the force and effect of law. And so condition 11(H) requires annual compliance reports on the status of housing to be sent every single year to the Department of Housing and Human Concerns and to the County Clerk. And that was not done. If you can send the Committee copies of those reports that you had sent to the Planning Department, we will accept them, and that would be awesome. But for

PLANNING AND SUSTAINABLE LAND USE COMMITTEE MINUTES

Council of the County of Maui

December 3, 2020

the record, there was not compliance in condition 11(H). When I asked the Department of Housing and Human Concerns, their reply was they hadn't received any, and neither had the County Clerk. So to me, this is not what we talk about with compliance and annual reports. And since condition 11 is the one that has the annual compliance, I'd like to start there, Members. And I'm going to be referencing the...either the November 30th or the December 2nd document. They're pretty much the same, but the November 30th document, I believe, from Paul Subrata, the cover page...if Members can pull that up on your Granicus, I'd like to question the bottom paragraph there, where it says, when approvals for Mahana Estates were sought in 2006, Maui County Code Chapter 2.96 Residential Workforce Housing Policy was recently enacted and required residential workforce housing units equivalent to at least 50 percent of the total number of market rate lots of a development, a greater number of affordable workforce housing units than condition 11. Thus, by the expressed terms of condition 11, MCC Chapter 2.96 supersedes condition 11. Now I've checked with our County attorneys, and they feel that supersedes is not the correct term, and that MCC Chapter 2.96 refers to the amount of housing and not the timing of housing. So if you're referring to 11(G), that you've gotten out of 11(A)1, (A)2, (A)3, (B), (C), (D), (E), (F), (H), and (I), I have to disagree. And so even if we were to agree to what you, Maui Land and Pine, fulfilled its housing, affordable housing obligation for Mahana Estates by providing 26 affordable housing credits as detailed in the Mahana Estates Subdivision Residential Workforce Housing Agreement executed on December 29, 2006, attachment 1, which I don't agree, but let's just say that we're believing you right now, if you turn to article 2, section A, number 1, small a on the fifth page of your November 30th transmittal, in reading through the minutes, Mr. McNatt repeatedly said that we would be getting more housing. Kapua Village was already built before the change in zoning was ever granted. So to me, it's questionable that those credits count as providing new housing. But even if we agree with that, and take your word on that, going further down it says, MLP shall satisfy the remaining 11 required units by developing 11 residential workforce housing units at MLP Site 6-O Project, also known as Pailolo, or other site approved by the Director within the West Maui Community Plan Region, and renting those 11 units in accordance with Chapter 2.96 and this agreement. Four of those units shall be rented to qualified renters in the 120 to 140 percent income bracket, and seven of those shall be rented to qualified renters in the 140 to 160 percent income bracket. First of all, rental...affordable rentals are 120 percent and below, so this isn't even considered affordable by our standards for rentals. We go up to 120 to 140 for ownership, but rentals is 120 and below. Secondly, it says rental units will be offered for rent and occupancy no later than the time at which homes at Mahana Estate are made available for occupancy by purchasers. Certificates of occupancy shall not be issued and/or final inspection shall not be passed for the market rate units at Mahana Estate unless certificates of occupancy are issued and/or final inspections are passed for the residential workforce housing units provided pursuant to this section concurrently or sooner. Subject to the approval of the Director, the units may be rented to special housing target groups identified by MLP as provided in MCC 2.96.080(a)3 in accordance with MCC 2.96.070(e). Such residential workforce housing units shall remain affordable for the life of the unit. So I guess my question is, we don't have any

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

December 3, 2020

Pailolo units available for rent. Pailolo hasn't been finished. So I find that this...even this version of the truth is not compliant. Any comment on that?

MR. SCHNELL: Well, I think there's only one version of the truth, and it's to be determined, you know, what the truth is. I...you know, what happened was that for Mahana Estates, a residential workforce housing agreement was executed with the County. It was executed between Maui Land and Pine. The Mayor signed it, the Housing Director reviewed it and recommended it, and Corporation Counsel reviewed it to form and legality. And Maui Land and Pine has followed the residential workforce housing policy for Mahana Estates, and that's why we say we are in compliance because that was agreed to and moved forward with the affordable housing required under that residential workforce housing agreement, whether it was by credit or other means. But those credits that Maui Land and Pine used to satisfy the workforce housing agreement were accepted by the County and, you know, was deemed in compliance at that time, the subdivision was granted because they were in compliance. So maybe there's a, you know, a miscommunication or there's a...something is not clear that needs to be rectified. But technically, I think by the agreement of the Mahana Workforce Housing Agreement, they followed that, and that they are in compliance. But there could be some...maybe it's an issue about that, I understand, and it might not be completely clear.

CHAIR PALTIN: Mr. Schnell, no agreement made by County employees has the capacity to supersede the law. And when we passed...or when the former Council passed Ordinance 3358, it became law. So regardless of this agreement, it does not supersede the law. I'd like to consult with our County attorney, Mr. Mitchell, as to your legal opinion about MCC Chapter 2.96 superseding condition 11. My interpretation is that it would apply to the number of units, and not the timing and the rest of the (A) through (I) conditions. Can you clarify for us your legal opinion?

MR. MITCHELL: Thank you, Chair Paltin. We reviewed this yesterday, and I have the same conclusion. It refers to the amount, not timing. And the use of the word "supersedes" is incorrect by the proponent.

CHAIR PALTIN: Thank you, Mr. Mitchell. Ms. Lee.

COUNCILMEMBER LEE: Okay. Appreciate the background, but could you just repeat again which condition...what the condition is that was not satisfied?

CHAIR PALTIN: Okay. Condition 11(A)(i). Forty affordable dwelling units must be completed prior to or concurrently with the completion of the first market-priced dwelling unit. And for Members' reference, on our 11/27 transmittal from the Chair is Ordinance 3358, conditions start at number 14. Condition 11(A)(1) which I'm referring to starts at page 16. So I'm saying that that was not in compliance, as there's been a couple houses built, and maybe one sold at Mahana Estates. And my community received no additional affordable housing. Kapua Village was completed prior to the change in zoning granted for Kapua, Kapalua Mauka. We didn't gain anything more in exchange 15 years later. I wonder, Mr. Schnell, if Maui Land and Pineapple Company has

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

December 3, 2020

completed condition 11(I), if a \$500,000 first-time homebuyer and rental assistance fund has been created by Maui Land and Pine for its employees?

MR. SCHNELL: So again, by our understanding of condition (G) that it superseded all of the conditions in condition 11, we've complied with the...or Maui Land and Pine complied with the Mahana Workforce Housing Agreement. If that was interpreted incorrectly at the time, then, you know, we can look into that and we could come to agreement on what needs to be done. But at that time, the Mahana Workforce Housing Agreement was executed, it was followed, and, you know, the project moved on. So if there's a determination that, you know, Kapalua Mauka has not been in compliance, then we'll try to rectify...we'll rectify that situation. But we understood that it was in compliance because ultimately, the subdivision approval was granted and it moved forward, and everything checked out at that time. If there's a different interpretation now, we need to revisit and find out how we can rectify things.

CHAIR PALTIN: Mr. Mitchell, can you please clarify for us if a residential workforce housing agreement has the ability to supersede conditions set forth in a change in zoning ordinance?

MR. MITCHELL: Thank you for the question, Chair Paltin. I think you actually answered that question earlier on.

CHAIR PALTIN: Oh, I'm asking for an attorney's opinion.

MR. MITCHELL: Oh.

CHAIR PALTIN: I'm just a lifeguard.

MR. MITCHELL: Okay. So the answer to the question is no.

CHAIR PALTIN: All right. So Mr. Schnell, I'm not sure how you can rectify the situation because I believe Mahana Estates had their first house finished about five years ago or so, and we should've had 40 affordable units in our community. That's 40 families that could've moved away from the rest of their families, and I'm not sure how that can be rectified.

MR. SCHNELL: I'm not sure of the solution now either, but I think Maui Land and Pine does want to be in compliance with all requirements, and we need to work out how we can, you know, rectify situations if Maui Land and Pine's understanding in the approvals granted before were not correct.

CHAIR PALTIN: I'm just not seeing what's in it for the West Maui community. We're trying to diversify our economy. The idea of 500 acres of luxury homes, another 200 acres of rural luxury homes, it's just not something that we need anymore. We needed affordable housing. In the minutes, Mr. McNatt said that we should've gotten the affordable housing within three years. Maui Land and Pine tore down Kapalua Bay Hotel, built up the Montage, you know?

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

December 3, 2020

MR. SCHNELL: That was a separate project, yeah.

CHAIR PALTIN: I'm going to say it's not for lack of money that this affordable housing wasn't provided. Mr. Sinenci, you had a question?

VICE-CHAIR SINENCI: Thank you, Chair. Yeah, just for clarification, so...for Mr. Schnell. Kapalua Mauka, is that the next phase on this particular development? Has it been approved? Have you started construction, or has there been any, I guess, permits being granted for this phase?

MR. SCHNELL: So the answer is yes. Let me explain a little bit. So, you know, originally, there was the Kapalua Resort, which was makai of the highway. And then in the early 2000s, there was a golf course mauka of the highway. And that area was always called Kapalua Mauka. And in the early and mid-2000s, Maui Land and Pine decided, or, you know, desired to expand the resort mauka. We went in for approvals for the Kapalua Mauka area, which is mauka of Honoapi'ilani Highway. And the former golf course that was there was shut down. The whole thing was going to be redeveloped into a resort extension with resort homes and a new golf course, but in around 2006 or 2007, after approvals were obtained, in 2008 the financial crisis hit. Even the Montage Hotel that Councilmember Palin [sic] mentioned was under duress at that time. It almost didn't get finished. And since then, you know, it's taken some time for Maui Land and Pine to get back on its feet and to, you know, continue with, you know, improving the Kapalua Resort. To backtrack a minute, in the mid-2000s, there was different ownership at Maui Land and Pine, and there was different income too, because pineapple was still coming in, or still being grown, and they still had...you know, they were the second largest employer on the island at that time with all the pineapple workers. Pineapple was also phased out. But the point I'm getting to was they were very aggressive and pro developing the resort, and they had also proposed Pulelehua at that time. And that's near the Kapalua Mauka...oh, sorry, the Kapalua Airport. So they owned both projects, and Pulelehua was always meant to be an affordable housing community. And in fact, there is a requirement for 125 affordable units at...as part of Kapalua Mauka to be built in Pulelehua because Maui Land and Pine owned both of those pieces at that time. And the decision was to be majority of the Kapalua Mauka affordable homes would be built in Pulelehua. Hence, you know, at that time, Maui Land and Pine sold Pulelehua to Paul Cheng, a different developer, who has taken Pulelehua to a different level, and is ready to proceed with that. However, the agreement between Maui Land and Pine and Mr. Cheng is that Pulelehua needs to fulfill Kapalua Mauka's 125 affordable housing units. So if you look to the Pulelehua residential workforce housing agreement, it does state that 125 affordable units will be part of Pulelehua, but those are in requirement for Kapalua Mauka. So...

VICE-CHAIR SINENCI: Thank you, Mr. Schnell. Chair, I just had a question for Corporation Counsel, I guess. So I get that the conditions run with the 'āina, and so if Maui Land and Pineapple had sold to Mr. Cheng, Pulelehua, does that mean that they are not...does, like, they're not responsible for the affordable home section? Mr. Schnell

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

December 3, 2020

mentioned that Pulelehua would address the affordable units, sounds like it's part of this...the conditions.

CHAIR PALTIN: Before we call on Mr. Hopper, I just wanted to clarify that I think there was 170 total requirements, 170-something, and 125 of those are required to be built at Pulelehua. And that is a Land Use Commission for the amendment that Paul Cheng recently got. And so I'm not concerned, I know Paul Cheng personally. We've had many conversations, and he's committed to building those affordables. The part I'm concerned about is we haven't seen anything from Maui Land and Pine, specifically 40 affordable dwelling units that must be completed prior to or concurrently with. But Mr. Hopper, do you have any comment for Mr. Sinenci?

MR. HOPPER: Just generally speaking, the intention with the zoning conditions is that they're recorded on the property, so they do run with the land. I'm not sure which conditions are. I think Pulelehua may have separate conditions that run with the land that are recorded there. If there are conditions that require for one project to build units in another project, then that still would run with the land of that original project. And so, I mean, we've seen that with other projects. It can get tricky sometimes if you say you've got to build the units for this project in this specific area, and then the ownership of that area changes, you can have issues with that. But in general, if the conditions are on the one project, and says you've got to build units in this other area, the obligation would still run with that original project unless that project's sold. So obviously, land ownership can always change hands, and if it does, the new owner would have to be responsible because the conditions run with the land. I think the intention is to make sure that no matter who the owner is, the obligations continue.

VICE-CHAIR SINENCI: Thank you, Mr. Hopper. And then just a follow up. So in these conditions, it specifically mentions Maui Land and Pineapple Company. Does that absolve them from anything? They're actually mentioned in the conditions in Exhibit B.

MR. HOPPER: Yeah. I think in both...I think somewhere in the conditions, and also the unilateral agreement, it makes clear that the reference to the developer is intended to mean their successors and assigns also. So if they sell it to somebody else, the conditions still apply to them. So it's not just...it's not like Maui Land and Pine, if they sell to somebody else and it's not Maui Land and Pine anymore, they're not responsible. It runs with the land, and the successors are required to comply with the conditions, even if they...even if they're a different owner than the one that originally got the approval.

VICE-CHAIR SINENCI: One more question, Chair. And then...so I don't know what the process is to...if it's...how do we rectify it, but are there repercussions, possibly violations that also if they're not in compliance?

MR. HOPPER: There's a variety of things under the Code that can be done if there's noncompliance. I don't want to say if...I'm not going to make a decision on compliance

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

December 3, 2020

without, you know, consulting with, you know, with agencies on where they're at with the conditions. But in general, there are...there's the ability to impose fines, there's the ability to, I think, withhold future develop approvals if there's a lack of compliance. There may even be the ability to, you know, undo the zoning. That can be a little more complicated if there's already been development of the property, but those are all options, I think, that exist in the Code. There's language, I believe you'd find it in 19.510 of the Maui County Code. In those sections, it goes into enforcement, and 19.530.030. So there are enforcement options, in general, generally speaking, if there's compliance issues with zoning conditions.

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

CHAIR PALTIN: Thank you, Mr. Sinenci. We have Councilmember King with a few questions.

COUNCILMEMBER KING: Yeah, thank you, Chair. And maybe we can get Mr. Hopper back because I kind of wanted to do a follow up on the idea of compliance and who's responsible for enforcing. I just did a presentation to a group of young people last night on County Government, and we generally say, and it's in the civic engagement video I'm working on, that the Council sets policy, you know, enacts ordinances, approves the budget, and it's up to the Administration to implement and enforce. So wouldn't it be the departments that are supposed to be enforcing compliance? And which department would be in charge of enforcing zoning condition compliance? Is that Planning?

MR. HOPPER: Well for...I think for zoning conditions in general because they can deal with a lot of different areas, depending on the condition, it can be a variety of different agencies. I think what does happen a lot of times is that before...if there's a subdivision, before subdivision approval, that the conditions should be reviewed to see if they're in compliance with various agencies. In general, as far as issuing violations, the Planning Department would do that under 19.530.030 because that's a...that's part of the zoning code, and so that's where that would be. And so it's generally the Planning Department, although, if there's a variety of conditions with...that deal with different areas, it can be other departments as well.

COUNCILMEMBER KING: Okay. But overall, if we're granting...because we've been doing this all term, you know, we've been granting zoning changes based on a myriad of conditions. And isn't it correct to expect the Planning Department to track those conditions and compliance with those conditions? I don't think it's...it doesn't seem like it should be the Council's responsibility to have to follow up on all these conditions.

MR. HOPPER: Yeah, yeah. Generally speaking, enforcement of zoning ordinance is by Administration. You do, like this item, get...if there's a requirement for compliance reports or other things, those, I think, are generally sent to the Council. But I think that's mainly so the Council is aware of what's going on. But yeah, generally

PLANNING AND SUSTAINABLE LAND USE COMMITTEE MINUTES

Council of the County of Maui

December 3, 2020

speaking, Administration does do enforcement of zoning conditions and compliance with zoning conditions.

COUNCILMEMBER KING: Okay, that's kind of what I thought. So Chair, I just wanted to ask if at, you know, at some point, can we get the departments to give us report on compliance because they should be the ones tracking. The Department should be tracking the compliance conditions, compliance of conditions, you know, for all of these types of projects. I'm not...I don't...I feel like we're doing oversight, that we're kind of jumping ahead of the departments, and I'd like to see what the departments have to say about, you know, why these projects are...and it's not just this project, but other projects have been allowed to fall out of compliance. You know, what is the procedure for them tracking compliance and, you know, they should be bringing this information to us, and then us, you know, if we have to decide on an ordinance. But I feel like we're doing their work.

CHAIR PALTIN: Thank you, Member King. I do feel like I'm working above my pay grade, and I was confused when I saw the Director and Mr. Yoshida signing off on the Land Use Compliance Reports with no thought as to our County condition compliance. I believe Director McLean is on the call. Director, would you care to comment on Member King's question?

MS. MCLEAN: Thank you, Chair. I think it was more of a statement than a question. But yes, I agree, it is the Department's responsibility to track compliance. The...and we have learned from past mistakes. When you look at projects that were entitled as long ago as this project, and there are many others in a similar situation, the wording of the conditions isn't necessarily tied to certain actions or with certain time frames. And so when projects don't promptly proceed with buildout, it's hard to say when each condition is supposed to be fulfilled. As they've indicated in their compliance report, it's basically compliance with this condition hasn't been triggered yet because development hasn't proceeded. That's a generality. When it comes to specific conditions, we approach it with as much common sense as we can as to when those need to be fulfilled. But without triggers in the language of the conditions themselves, it becomes a discussion with the applicant as to when they will achieve compliance. We are in a major undertaking right now, a couple of projects in Central Maui that are close to build out, getting to the final conditions, and making sure that they're fulfilled. Even that's challenging, even when the project has been built out. I think the Council will recognize that in recent projects that you've approved, the conditions are a lot more specific, and have milestones or time frames for compliance, which really helps us determine whether or not there's been compliance. Having said all that, absolutely, we have not been on top of this like we should be, and I recognize that and acknowledge it. And when things are brought to our attention, we get into them. We rely on applicants to submit their compliance reports to check over things. When applicants don't do that, we don't necessarily contact them and say, hey, we're waiting for a compliance report. So there are deficiencies on our end, for sure, with tracking these and I fully acknowledge that.

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

December 3, 2020

COUNCILMEMBER KING: Well, thank you so much for that, Michele, I really appreciate that response. Have you ever given a fine to any developer for not being compliant with, you know, annual compliance reports and things that are, you know, supposed to be coming regularly?

MS. MCLEAN: I'm not aware that we have issued fines for failure to submit compliance reports. I don't believe we have. That's not to say that we can't, but I don't believe that we have in the past.

COUNCILMEMBER KING: Okay. I just...you know, we're trying to figure out how do we enforce this. So we're definitely going to need your help, and I really appreciate your honesty and being forthright about, you know, needing to so thank you for that. Thank you, Chair.

CHAIR PALTIN: Thank you, Member King. Chair Lee.

COUNCILMEMBER LEE: Thank you, Madam Chair. Good morning, Michele. Okay, we may not fine people on a regular basis or even at all, but what we did in the past, and what you probably do now, is you don't allow the developer to advance. So in other words, until you complete your requirement, you can't continue your subdivision, or you can't continue something. That's how we would, you know, negotiate with the developer, and that pretty much...but unfortunately, you know, without really specific milestones in the past, we would run up against problems where people could interpret conditions very generally, very broadly. And that lead to, you know, more complications. But, thank you for your candidness. Appreciate it.

MS. MCLEAN: Thank you, if I could comment. And thank you for bringing that up, Chair Lee. We did put forward a bill a few years ago that did get adopted to put in the Code that we do have the authority to not issue approvals if there is outstanding noncompliance. We...that had been a practice from time to time, and we were challenged on that, saying that we didn't have the authority to do that. So we did put forward a bill, and it is now in the County Code that we are able to withhold approvals if there is noncompliance. So thank you for bringing that up, that has been an effective tool in some cases.

CHAIR PALTIN: And if I may just interject on the subject of annual compliance reports, I did also let Mr. Paul Cheng know that we're waiting for his annual compliance reports. So if you can be on the lookout for those. Member Molina, before I recognize Member Hokama, did you have any questions?

COUNCILMEMBER MOLINA: Thank you, Madam Chair. No, not at this time, but I may have some as we progress. Thank you.

CHAIR PALTIN: Okay. Member Rawlins-Fernandez.

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Chair. You know, similar to the questions that are being asked of Planning, is Public Works on? Because some of

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

December 3, 2020

these, you know, Public Works Department is also responsible for ensuring compliance as well before signing off on subdivision approval, right?

CHAIR PALTIN: Yes, Member Rawlins-Fernandez. When I agendized this time, we didn't have anything from Maui Land and Pine at that point. And so my intention a week back when we were agendizing was just to get on the record that we haven't received any compliance reports. I'm thankful that Maui Land and Pine is taking this seriously and scrambled to get us this information, but we only received it yesterday. And so I didn't even request, actually, the Housing Department, and Director Baz was kind enough to allow them to come today. I didn't request the Public Works, but we can continue this conversation into the future. So Public Works is not here at this time.

COUNCILMEMBER RAWLINS-FERNANDEZ: Okay. Mahalo for explaining --

CHAIR PALTIN: Although --

COUNCILMEMBER RAWLINS-FERNANDEZ: -- Chair.

CHAIR PALTIN: -- you know, in 2014, when Mahana Ridge was getting this subdivision approval, I was working at Honokohua, and I called Director Goode almost daily because of the runoff that we were getting at DT Flemings. Former DSA supervisor Lesli Otani actually hiked up the gulch because the developer continued to say this was regular runoff. And she found that from the grading, dirt had been pushed into the gulch, and that's what was causing the brown water runoff under unusual circumstances. And Mahana Ridge was the first development, I believe, that was ever issued a stop work order for violation of the Clean Water Act for seven months. And Nan, Inc. was calling Ms. Otani up daily to try and get back to work, but they had a lot of things that they needed to do to be in compliance with best management practices. So the Director at the time was well aware of the situations being created and, you know, like I apologized to Mr. Nakoa, I feel like the County really dropped the ball on this.

COUNCILMEMBER RAWLINS-FERNANDEZ: Yeah, I was actually...so you called, what did you say, 2013? And it...

CHAIR PALTIN: 2014.

COUNCILMEMBER RAWLINS-FERNANDEZ: 2014, and it persisted to 2017 and beyond? Because I was working at former Councilmember Elle Cochran's office, and was receiving those complaints about this. So it...I know firsthand that it continued, and that the County did nothing at that time, Chair. Mahalo, Chair.

CHAIR PALTIN: Member Sugimura, did you have any questions before I call on Mr. Hokama? Mr. Hokama, you had a question for us?

COUNCILMEMBER HOKAMA: Yeah, Chair. Thank you. Thank you for letting me participate, and thank you for jogging my memory. I do recall this project and

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

December 3, 2020

associated projects that were tied by the belly to other components at the Kapalua area. So I would just say though, Chair, I appreciate you following up on compliance of conditions because I think that's very important. And that's the only reason they got approval is because Council placed conditions that if they didn't agree, they wouldn't get the approval. One of the things I've learned over my tenure is that Council's failure to put triggers on timing is one of our shortcomings, especially on delivery of the affordable units. And that is where I support you, your efforts to try and get compliance in this area, and maybe that is something you got to require them to do first before they do anything else. And if they say, well, I need the markets to do the affordables...but they do the markets, but we still don't see the affordables, so so much for that argument. I can tell you when I started Council, Chair, one of the things that was in the Maui County Code under conditional zoning, conditional zoning is what we do, and this is one of them, Kapalua Mauka. There was a portion in the Code that if there was no compliance within five years, Council could initiate down-zoning.

CHAIR PALTIN: I believe it still exists.

COUNCILMEMBER HOKAMA: That is something that the Council should still consider, that if you don't perform by your agreements, why should you still retain the up-zoning? You just trying to increase value to increase your margin of profit, yet the community gets zero benefits. So my suggestion would be consider that, Chair. And the other one that I say, I think in listening to your Committee's discussions, I would recommend that this Committee requests Council to audit ZAED. Why is this Division not following through on compliance requirements of conditions of conditional permit and conditional zoning? That is our biggest areas of . . .(inaudible). . . as a County, no follow through on conditions as approved by Council. They hoping that people like me disappear so I don't remember. I still remember the 1983 conditions for Manele and Koele, okay. Thirty-seven years ago, and people hoping I forget. And when you get new County employees that wasn't part of the history, they not going to recall the conditions that the community demanded and got approval for. So that in the end, the developers going outwait the County and that community, hoping everybody forgets what needs to be complied with. That is not good governance. Thank you, Chair.

CHAIR PALTIN: Thank you, Member Hokama. Member Rawlins-Fernandez.

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Chair. I...just for clarification, I don't know if it's a question for you or a question for Member Hokama based on his comments about not, you know, putting timing on the conditions. And condition 11 looks like it does have timing, that the 40 affordable dwelling units must be completed prior to or concurrently with the completion of first market-priced dwelling unit. So that...is that the timing, and at least one affordable dwelling unit for every four market-priced dwelling unit.

CHAIR PALTIN: Yeah. You know, actually, I think the correspondence on Granicus dated 11/30 from myself is actually a 2008 U.S. District court case where Maui Land and

PLANNING AND SUSTAINABLE LAND USE COMMITTEE MINUTES

Council of the County of Maui

December 3, 2020

Pine had tried to get out of their conditions of zoning, and they asked for summary judgment, in which Susan Oki Mollway denied their request. I guess Director Lee and Mayor Arakawa signed off on a bilateral agreement that would prevent them from having to comply with 2.96 and other things, and then I guess maybe the Tavares Administration came in with Director Medeiros, and then following Director Tsuhako, I guess, a previous time. And, you know, the Court said that they needed to comply with it. So I thought it was pretty clear from that court case that they were made aware that they needed to comply with it. And 2.96 goes to the amounts of housing, and not the timing of it. So, you know, the situation, in looking at the 2005, July 13 meeting minutes, page 19 and 20, Director Lee and consultant Bob McNatt continually said, you know, as one market value home gets built, we'll get an affordable home. This project is not tied to Pulelehua. On August 31st, 2005 Committee meeting, a reference was made by Director Lee that the affordable housing rentals could be built at the old Rainbow Ranch location, which is across from Napili Market, zoned M-1 industrial. And in 2013, Maui Land and Pine sold that for 5.4 million to the Bach Developers. And for the last, I don't know, about five years or so, it's a half-developed townhome luxury project. You know, so I mean, they had opportunities to make this happen. And it feels to me, at every turn in the road, our community got the shaft, and they continually chose to go with either spending their money on luxury resort development, selling their land for luxury townhome development, while we received zero affordable housing for the last 15 years. And, you know, I feel they're substantially noncompliant. I wanted to get on the record. I would appreciate if all of the departments follow through and investigate the conditions, and if the lawyers write down their legal opinions, and we can proceed. But I really, at this point, do not see benefit to my community for what was proposed in 2006. There is a sticky situation, I believe, in February of this year. Some of the Kapalua Mauka was sold for 40-something million. I believe it's the commercial area in the middle. But, you know, it is what it is. It's...they're not compliant by these conditions. They're not compliant with submitting annual reports. They're not compliant by providing housing. And I'm just, at this point, getting it on record.

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Chair. I just, you know, this Council has taken more of an effort to ensure that timing is included in the conditions when we pass any kind of housing projects to help the departments to enforce the conditions since Director McLean has expressed that that's been one of the difficulties on her end in enforcement because timing isn't included. But for this particular one, I mean, it...the timing seems pretty clear. So I just wanted to reiterate that I know you said it earlier, and Member Hokama was just saying that, you know, that was one of the shortcomings, but I think it's not a shortcoming here because it's clear. Mahalo, Chair.

CHAIR PALTIN: Thank you, Member Rawlins-Fernandez. Chair Lee.

COUNCILMEMBER LEE: Yeah, I would appreciate it if people would look at this project and its history in context. You talked about an agreement that was signed in December of 2006. Normally agreements are executed after zoning is approved by the Council, and the Council's conditions, et cetera. Chapter 2.96 was approved in December of 2006.

PLANNING AND SUSTAINABLE LAND USE COMMITTEE MINUTES

Council of the County of Maui

December 3, 2020

So it's quite possible that this project was not subject to the new ordinance 2.96. And by the way, there were no administrative rules at that time promulgated because it was just passed in December 2006. So the rules, administrative rules weren't passed until 2007. So, you know, as you throw people's names around and dates and times, et cetera, you need to know the chronology of all of these events. And what I'm telling you is the truth. 2.96 was passed in December of 2006. I left in December...December 31st, 2006. So all of this history, I don't know how relevant it is to getting people to comply. I think we need to focus on how do we get people to comply. And I think that's a tremendous direction to go in. And I appreciate your leadership in that regard. Thank you.

CHAIR PALTIN: Thank you, Chair Lee. I just...you know, in throwing people's names around, I wanted to give thanks to Member Anderson, Member Johnson, and Member Mateo, who in their wisdom realized that the County was working on 2.96 and included 11(G), which said that prior to final subdivision approval, any affordable housing policies adopted by the County of Maui, which would result in a greater number of affordable dwelling units, shall apply. So...

COUNCILMEMBER LEE: Yes. I was part of that whole process. It took Danny 18 months to pass, and I remember Mr. Hokama and Mr. Molina being on...on the Council that passed 2.96. Yeah. But what I'm saying is you need to take things in context. I'm pretty sure 2.96 wasn't retroactive. You see, because the zoning for Kapalua Mauka was probably approved prior to 2.96. So, you know, I...that's why I ask you to take things in context and follow the chronology of how things unfolded and happened. But it's...to me, the whole thing is irrelevant right now. Because what we need to do is fix the current problem and an ongoing problem. That's all I'm saying. And I appreciate all the people you mentioned who were part of 2.96.

CHAIR PALTIN: Oh. And Member Molina. Sorry, Member Molina. Any...Member Hokama.

COUNCILMEMBER HOKAMA: Thank you, Chair Lee, because you got some great institutional knowledge, Chair Lee. So thank you for recalling that, and thank you for sharing that perspective. I appreciate it. But one thing, Chair Paltin, I just wanted to share with the Members, especially this, your Committee now, is that that was how frustrated Council was. Council kept trying to figure out how to make revisions or adjustments to County policy because everyone, including Ms. Lee who was Director, we all wanted housing for the community, and we were all frustrated that we weren't getting the units built. And so we kept trying to figure out by policy how to keep adjusting or assisting the housing market. And of course, we're still frustrated. You know, we not getting the units that we had hoped for or we had expected. But nonetheless though, what it shows to me today is the Council is still trying to work on it and find answers to this situation, and it's something that we're going to need the business community because part of the cost that we're facing is the actual pricing of the projects. And so, you know, I just wanted to share that comment, Chair, that various Councils of the past and now kept trying to deal with getting units built. Thank you.

PLANNING AND SUSTAINABLE LAND USE COMMITTEE MINUTES

Council of the County of Maui

December 3, 2020

CHAIR PALTIN: Chair Lee.

COUNCILMEMBER LEE: Yeah, one last comment. You know, one of the...the trend during those days was to do large-scale planning. Looked like smart growth, okay. But it turned out it wasn't that smart because these projects would traverse decades. And we'd be gone, you know, the original people that approved the project and even initiated enforcement. Maui Lani, Kehalani, all these big projects took 25, 30 years, and some of them are not even complete. So that's the danger of when you establish conditions. It's not the same people doing the enforcement. And not the same people who approved the project from the beginning. There's a lot of changes in personnel, in policy, in a lot of things, the economy, et cetera. So it's...what we thought was smart planning in those days is not turning out to be that way because it takes too long. When something takes 25 or 30 years for a build-out, it's hard to track. It really is. Thank you.

CHAIR PALTIN: Thank you, Chair Lee. And it's even harder when all the directors turn over with each new Administration and I guess that's one of the reasons I supported not having a Managing Director tied to the political cycle because all of that knowledge that occurred during that term, like you said just previously, goes away. I did specifically last minute request Director Munsell and Mr. Almeida to be here, and I don't want to waste their time. I had some specific questions for them on the 11/30 item from Paul Subrata about their compliance on page 5 of the transmittal, it's page 4, where it says article 2, residential workforce housing program A(1) small a. And I was wondering, you know, Kapua Village was built before this 2.96 condition was...or 2.96 ordinance was created. It was built before the change in zoning from Kapalua Mauka, and I would even say it was represented throughout the meeting minutes that this project, this change in zoning project, would bring additional low income, moderate-low income housing to the West Maui community. So when they shortly thereafter tried to satisfy their low-income, low-moderate income requirements by a project that had previously been built, it seems a little disingenuous, you know, based on what was represented to the County Council at that time. But I was wondering if you could share with us how...what the mechanism was prior to 2.96 for the earning of the 15 credits from Kapua Village? Either Mr. Almeida or Ms. Munsell.

MS. MUNSELL: Thank you, Chair. I'm Linda Munsell, I'm the Deputy Director for the Department of Housing and Human Concerns. I think that...and I'll defer to Mr. Almeida to respond to most of the questions. I think that the initial credits that we see this early in some of our projects are State credits. So the State had gone through and passed law that allowed for developers who were developing on Department of Hawaiian Homelands properties to earn credits in order to encourage that development. And so these credits that I'm seeing referenced here, for the most part are, I think, Department of Hawaiian Homelands credits, but let me defer to Mr. Almeida to respond further if he's got some additional comments.

CHAIR PALTIN: Oh, and just to clarify, Kapua Village is not a Hawaiian Homelands project. It was employee workforce housing. It's across of Pohaku Park in West Maui. So it --

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

December 3, 2020

MS. MUNSELL: Yeah.

CHAIR PALTIN: -- was for their workers, not Hawaiian Homes.

MS. MUNSELL: Yeah. And I'm sorry, I referred specifically to the credits. I wasn't referring specifically to that portion of the project.

CHAIR PALTIN: Oh, okay. Thank you. Mr. Almeida.

MR. ALMEIDA: Thank you, Chair. Buddy Almeida, Housing Administrator. Ms. Munsell is correct with regards to the fact that these were State credits. I'm not familiar with the project you mentioned off the top of my head, but I believe the question you asked was prior to 2.96, how were these type of things determined with regards to requirements. And before 2.96, the discretion of...basically at the discretion of the Director of the Department of Housing and Human Concerns, they had the ability to enter into agreements with the developers. And for whatever reason, you know, sometimes, you know, those conditions varied with regards to requirements. And I think that's what led eventually to the creation and adoption of 2.96, was to have a standardized requirement process by law. So hopefully that answers your question. Thank you.

CHAIR PALTIN: Thank you. And I had a follow-up question for the next point, where it's offering 120 to 160 percent AMI rentals. Would that correspond to the LUC's condition, where they were supposed to provide low income and low to moderate income housing?

MR. ALMEIDA: Yes. From what you stated previously, what the State Land Use Commission imposed as a condition on this project is not a condition in 2.96. It is capped at 120 percent for rentals. We did go up to 160 percent for for sale projects until 2015, when we made changes to the ordinance and we removed what was considered at that time the gap group, the 140 to 160 group. But at no time did the rental, per 2.96, go to that AMI level.

CHAIR PALTIN: And to follow up, so by today's standards, 11 residential workforce housing units from the 120 to 160 percent wouldn't even be considered affordable.

MR. ALMEIDA: Per 2.96, correct.

CHAIR PALTIN: Thank you. Members, any questions for Ms. Munsell or Mr. Almeida? Seeing none. Thank you so much, Mr. Almeida.

MR. ALMEIDA: Thank you, Chair.

CHAIR PALTIN: Member Rawlins-Fernandez.

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Chair. I just wanted clarification on something that you mentioned earlier about 2.96. And I don't know if you would want to have...did you say that 2.96 was retroactive?

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

December 3, 2020

CHAIR PALTIN: Well, condition 11(G) on page...you're on it?

COUNCILMEMBER RAWLINS-FERNANDEZ: Uh-huh.

CHAIR PALTIN: It says that prior to final subdivision approval, any affordable housing policies adopted by the County of Maui, which would result in a greater number of affordable dwelling units, shall apply. So once 2.96 was adopted, even after the change in zoning, condition 11(G) says that 2.96 shall apply.

COUNCILMEMBER RAWLINS-FERNANDEZ: Okay, I understand. Mahalo for that clarification.

CHAIR PALTIN: Sure. Mr. Schnell?

MR. SCHNELL: Hi, just a moment. Hello.

CHAIR PALTIN: Hello. I did have an additional question about the condition that says the State Historic Preservation Division shall accept the preservation plan. And I guess my question is, has that preservation plan, which you say the State Historic Preservation Division accepted, ever been submitted to the County?

MR. SCHNELL: I could double check. I'm not sure of that, but I know the State Historic Preservation Division has approved it, and the letters from SHPD are included as the attachments to the letter I submitted yesterday.

CHAIR PALTIN: Okay. According to my interpretation of the condition, the acceptance...written verification from the State Historic Preservation District Division should have been submitted to the County before any ground altering activities occurred. So that we don't know that anything's been submitted to the County, is that we're not in compliance with this condition.

MR. SCHNELL: So yeah, I read that condition recently too, and we're following up with Nan, Inc. to find out...because they ultimately built Mahana Estates. So we're following up with Nan to see what their documentation is.

CHAIR PALTIN: Thank you for that. Are you aware if...oh, sorry. Vice-Chair Sinenci.

VICE-CHAIR SINENCI: Oh, I can wait until your line of questioning, Chair.

CHAIR PALTIN: Oh, no. Please go ahead.

VICE-CHAIR SINENCI: Sorry, just for follow up. So under that condition 3, it lists 39 historic sites. And so I was just wondering, of those 39, you know, is it part of the Pulelehua? How many is that was sold to Pulelehua or current in Kapalua Mauka?

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

December 3, 2020

MR. SCHNELL: Chair, if I can clarify that. So 39 sites are limited to the Kapalua Mauka area. It's not...the report doesn't have to do with Pulelehua.

VICE-CHAIR SINENCI: Oh, okay.

MR. SCHNELL: And then --

VICE-CHAIR SINENCI: Thank you.

MR. SCHNELL: -- most of the historic sites in Kapalua Mauka are in the gulch areas. I think 38 out of the 39 are in the gulch areas because historically, you know, the plateau areas were the pineapple fields, so the archaeological inventory survey didn't find anything in the previously rated pineapple fields. So most of the things are in the gulches, and the preservation plan for the sites that were identified was primarily as-is preservation, don't disturb.

VICE-CHAIR SINENCI: Okay, and I can...Chair, I can wait for Nan, Inc., their report. Thank you.

CHAIR PALTIN: Okay. Thank you, Vice-Chair Sinenci. I hope it wasn't the gulch that the dirt was pushed into. I guess another question I had was, do you have record of the education contribution or the traffic mitigation fees being paid?

MR. SCHNELL: I have the agreements that were included with the letter that I've provided. We can find if there was documentation of those fees being paid. I'm certain that they were paid.

CHAIR PALTIN: Okay, I didn't read the whole document that was submitted yesterday evening before today, so my bad.

MR. SCHNELL: Sorry, we didn't give you much time. I apologize for that.

CHAIR PALTIN: Members, so at this point, I guess, you know, the follow-up actions were, you know, there's been substantial noncompliance, but we'll need to look further into it. If we do choose that we want to move forward with a reversion of zoning, I guess the next steps would be to, you know, document all the noncompliance, which we've begun to do here in this meeting. We have a record of noncompliance. The next step would be to, you know, introduce a reso to revert the zoning, and send that to the Planning Commission. So I would hope between now and that action, all of the Administrations within the Department, as well as the developer's representative, would have a sit down and a long talk with their lawyers and whomever else, and let's get a comprehensive updated status, you know. Because it's a little bit...to see the Land Use Commission have great compliance with getting all their annual compliance reports, and to see how we do not have that, it's a little bit disappointing. And in this case, I feel my community truly suffered, you know, in reading through all those minutes, the promises made, the testifiers' hopes that with the passage of this project, they'd get affordable housing. That agriculture would continue on Maui with Maui

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

December 3, 2020

Land and Pine. All of that, they got their change in zoning, but the testifiers never saw anything in the last 15 years that they testified in support of this change in zoning. All the workers, like Mr. Nakoa, they've all been laid off, you know. If Maui Land and Pine does create a \$500,000 affordable housing fund, they don't have too many employees in the 120 percent and below AMI left. Maybe just the Pu'u Kukui Watershed Crew. So to me it's a little bit too little, too late. And the price that they want hasn't been paid, and the trade-off...all those luxury short-term rental timeshare homes, West Maui has enough of that. We needed affordable houses 15 years ago, and we still need affordable houses today. So if there's no further questions, at this time I'd like to defer this item. Or, I'm --

MR. SCHNELL: Could I...

CHAIR PALTIN: -- deferring it and referring it to the next term. Yes, Mr. Schnell?

MR. SCHNELL: Could I just make a closing statement on this? So at the...I think that the process...you know, Kapalua Mauka is a product of a Project District. So when you approve a Project District, there's three steps. The first step is the Project District ordinance and the change in zoning. So that's when change in zoning was imposed, or created, and the conditions were created on the change in zoning ordinance. The next step was a Project District phase II. The Mahana Estates was subject to a Project District phase II approval, and in that application was a detailed compliance report of the conditions of zoning. The Planning Commission approved the Project District phase II. And then the next step in the process was the planning Project District phase III, and the Planning Director approves the phase III. So as part of the phase III approval, a detailed compliance report of the conditions were provided. So my point is that at this...the critical step for Project District II and III, compliance reports were provided, and those approvals did move forward. And I...assuming it was based on the Planning Commission's review of the compliance with the conditions at that time, and the Planning Director's at that time review of compliance with the conditions. But since Mahana Estates was developed, there has been no further development in Kapalua Mauka. So, you know, there have been no other permits applied for. So at the time that Mahana Estates was approved, it was determined, I believe, that the conditions of zoning had been complied with.

CHAIR PALTIN: Thank you, Mr. Schnell. I think we've established that no County employee, elected official, appointed official, volunteer can supersede the ordinance. No agreements...nobody can make anything above the law and the ordinance is the law. The conditions in the ordinance is the law. And, you know, it's pretty much established case law, so we can take it to court if you'd like. But...

MR. SCHNELL: I'm not trying to be contentious, I was just trying to point to history because you had the discussion with Michele that the Planning Department is responsible for, you know, monitoring and compliance and enforcement of the conditions. And at the critical points where approvals were sought, it was determined that the project was in compliance with those zoning conditions, or else the next subsequent approvals would not have been approved.

PLANNING AND SUSTAINABLE LAND USE COMMITTEE MINUTES

Council of the County of Maui

December 3, 2020

CHAIR PALTIN: So my community has not realized any benefits of affordable housing to date. And if you go through the minutes, over and over and over, the developer's representative, Mr. McNatt, promised affordable housing. He agreed to build it concurrently or before any luxury home was built. That's a agreement that members of my community desperately needed, and we still need because nothing has been fulfilled. Member Rawlins-Fernandez.

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Chair. I support your proposal in following this process. I think, you know, just because the landowners have gotten away with noncompliance for so long, you know, doesn't make it okay. Which is what I'm hearing that, you know, they got signed off and for noncompliance and we should, you know, just turn our cheek and allow that to continue. But we're a different Council and we're not going to put up with noncompliance. So I support this process in what you're doing, in holding promises made by landowners to our communities, and holding their, you know, feet to the fire. And it's been a really long time that it's just...they haven't followed the conditions. And it's the landowners that should be following the conditions, even if it's not the County officials at the time that are enforcing it. It's the landowners that are responsible for these conditions they promised the community. They promised the County to do it, and they didn't. Mahalo, Chair.

CHAIR PALTIN: Thank you. And, you know, I wasn't on the Council at this time, but I did live in West Maui. And I was somewhat paying attention to what happened. So, you know, I was there. I knew the sentiment of the people and, you know, the workers especially. They came out en masse for this project because it brought them hope that they might have affordable housing themselves. It brought them hope that it would save their jobs in agriculture for Maui Land and Pineapple. And none of that happened. They got their change in zoning, and they were all let go. And so we don't have any Maui Land and Pine employees coming out to speak in support of Kapalua Mauka today because there's only a handful of them left. So despite the County giving them a shot, I feel like we were all let down. So I'll defer today, and refer to next term as well without objections.

COUNCILMEMBERS VOICED NO OBJECTIONS.

ACTION: DEFER PENDING FURTHER DISCUSSION.

COUNCILMEMBER KING: Chair, do you need a vote to refer...to add this to the list of referrals?

CHAIR PALTIN: Oh, it was on the list --

COUNCILMEMBER KING: Okay.

CHAIR PALTIN: -- that we voted on earlier. Yeah. And thank you, Mr. Schnell. I apologize, it was a bit of a uncomfortable conversation, but maybe we're moving forward.

PLANNING AND SUSTAINABLE LAND USE COMMITTEE MINUTES

Council of the County of Maui

December 3, 2020

MR. SCHNELL: I hope so. I hope so we can, you know, move forward in a positive way and that we could, you know, come to agreement on what compliance means and, you know, hopefully move forward. Thank you. It wasn't uncomfortable, I expected tough questions. I understand. Thank you.

CHAIR PALTIN: I'm glad you weren't uncomfortable, and I look forward to hearing what your company and the Administration comes up with as far as compliance and steps to move forward, and we'll revisit. Thank you.

MR. SCHNELL: Okay.

CHAIR PALTIN: Member Lee?

COUNCILMEMBER LEE: Yes, I just wanted to ask Mr. Schnell, are you with Maui Land and Pine, or are you a consultant for various projects?

CHAIR PALTIN: Oh, my bad.

COUNCILMEMBER LEE: Haven't we seen you before?

CHAIR PALTIN: Sorry, PBR Consultants.

COUNCILMEMBER LEE: Oh, okay.

MR. SCHNELL: Yeah, sorry that wasn't clarified. I think the lines get blurred sometimes, but I work for PBR Hawaii, we're a land use planning firm. And we've been the land use planning consultant for Maui Land and Pine for 20 years. So I wasn't...

COUNCILMEMBER LEE: In another project, right? And another project recently.

MR. SCHNELL: And the other projects too. Maui Land and Pine is not my only client, yes.

CHAIR PALTIN: Thank you, Members. And you worked so hard, I think you deserve a ten-minute recess. Any objection?

COUNCILMEMBERS VOICED NO OBJECTIONS.

CHAIR PALTIN: Okay. This meeting will be in recess and will return at 11:11. . . .(gavel). . .

RECESS: 11:01 a.m.

RECONVENE: 11:14 a.m.

CHAIR PALTIN: . . .(gavel). . . Will the Planning and Sustainable Land Use Committee meeting of December 3rd return to order. The time is now 11:14. We're just a little bit behind schedule. And if...let's see. The next item is PSLU-51, Status of Active

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

December 3, 2020

Conditional Permits. And if Members don't mind, I'd like to call up together PSLU-26, Renewals for Conditional Bed and Breakfast Homes, Short-Term Rental Homes, and Special Use Permits. I'm not really planning on passing anything today, but I think we need to discuss the two in context of each other if that's all right, if there's no objection.

COUNCILMEMBERS VOICED NO OBJECTIONS.

CHAIR PALTIN: Thank you, Members.

COUNCILMEMBER KING: Could you repeat that? Which two were those again?

CHAIR PALTIN: The next two on the agenda, the PSLU-51 and 26.

COUNCILMEMBER KING: Okay, we're going backwards.

PSLU-51: STATUS OF ACTIVE CONDITIONAL PERMITS (CC 20-561)

**PSLU-26: RENEWALS FOR CONDITIONAL, BED AND BREAKFAST HOME,
SHORT-TERM RENTAL HOME, AND SPECIAL USE PERMITS**
(CC 19-67)

CHAIR PALTIN: All right. PSLU-51 is Status of Active Conditional Permits. The Committee is in receipt of County Communication 20-561 or 261...20-561 from the Planning Director relating to the status of all active conditional permits. The Committee may receive a presentation from the Department of Planning and discuss related matters. No legislative action will be taken. And I wanted to also call up Renewals for Conditional, Bed and Breakfast Home, Short-term Rental Home, and Special Use Permits, PSLU-26. The Committee is in receipt of the following: County Communication 19-67 from the Planning Director, transmitting a proposed bill to conditionally allow for a grace period to temporarily extend various permits with applications for extension or renewal are being processed. Correspondence dated 12/12/19 to the Department of Corp. Counsel transmitting a proposed bill, "A BILL FOR AN ORDINANCE RELATING TO EXTENSIONS FOR CONDITIONAL PERMITS." And Members, if you'll remember, this was a bill proposed by the Planning Department, and we deferred it because we hadn't received any quarterly reports prior to our term. And so there was a kind of uncomfortable...uncomfortability [*sic*] in passing that legislation. And now we're on our fourth quarterly report that we've received, and you can find that on your Granicus 20-561. And Director McLean has taken our feedback--thank you so much, Director McLean--and put it in this spreadsheet. You know, we asked for like the initial approval date, some notes, some expiration date, and activities permitted. And I feel like, you know, we're getting really close to understanding the scope of what these conditional permits are. On our first quarterly transmittal, I thought that we were getting new ones each time, but it's just, you know, an update. And currently, it looks like we have 47 active conditional permits from things ranging from short-term rentals, special events, telecom facilities, and concrete batching plants, you know. So to start off with, I don't know if Members

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

December 3, 2020

have reviewed this quarter's report and have any questions for the Director, or if...Director McLean, if you wanted to open up with a few comments about this new format that we had asked for, and you had provided for us?

MS. MCLEAN: Thank you, Chair. Sure. As you all may recall, this was news to us when you pointed out the section in Chapter 19.40 that says that we're supposed to be submitting quarterly reports. That was something that had never been done. So thank you for making it clear that that's one of our responsibilities. So we put together the first one, and it will continue to evolve as more information is needed and requested and, you know, I'm sure we'll find some errors here and there. So we're happy to keep updating the format, and making it usable and understandable. So yeah, we welcome the feedback. It looks like the last 15 or so permits that were granted are still in their first period of duration. They haven't gone through their first time period yet. The rest, some of them have been around for quite a long time. And just to comment on the proposed bill, it's...the latest version is really quite different than what we had transmitted. We had transmitted a bill that we called the grace period bill, and that was to codify a long-standing practice for all kinds of permits that as long as the time extension request is submitted to the Department before the permit expires in the time that it's supposed to be submitted, we consider the permit to still be valid until that time extension can be acted on. So there could be delays, the permit expiration date could come, but we consider the permit to still be valid, regardless of who approves the time extension. So that was the original intent of that bill. And now it seems the Chair's proposing to include a provision related to that, but to say there's no more administrative approval, Director approval of conditional permit time extensions, if I'm reading the bill correctly.

CHAIR PALTIN: Thank you, Director McLean. To clarify, that's kind of why I wanted to take the two up together. And I wanted to clarify my intent, and I believe we're not quite there yet, and that's why I'm not proposing we pass this legislation. We do need to work on it a little bit more. But to clarify, my intention was, for example, I think when the bill first came up and there was some uneasiness about passing it, there was a situation, like say there's one of these conditional permits, and we want to flag it for Council review before the Director just goes ahead and gives a renewal. And so we're looking at trying to include that into the legislation, the process. Like, for example, maybe item 45, which is a telecom facility in the apartment zoning district. I think that when that one passed, many members in my community, it kind of slid by them. The Planning Commission meetings were in the middle of the day and on the other side. And so, you know, before something like that that was controversial in the community gets renewed, I wanted a process within the bill...like, as we get these quarterly reports and we see something coming up for a renewal, if the Council can review it prior to the Director giving approval. So, you know, kind of that's why I called the two bills up together, to propose that type of idea. And I don't think the legislation is there yet, but just to get some sort of feedback from you on that intention.

MS. MCLEAN: Thank you, Chair. Yeah, I'd be happy to work with you and your Staff on coming up with language to achieve that goal. And I think that's fine. It's...as you

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

December 3, 2020

know, when Council approves a conditional permit, Council at that time can determine what the renewal process is. So even if the Council were to say, okay, the Director can approve time extensions for this, but then some years later, Council feels like, oh, shoot, you know, we'd like to see the renewal. Then when you review these quarterly reports, there can be a process for you to inform the Department that the Council would like to see the renewal. So I'd be happy to work with you and your Staff on that. Thank you, Chair.

CHAIR PALTIN: Thank you, Director McLean. And I'd like to open up the floor for questions from the Members. We have the conditional...quarterly conditional report. And Director McLean was so kind to include status of active conditional permits on the September 25th transmittal. And it does give a little bit of a background as to how conditional short-term rentals and B&Bs are included in the overall count for short-term rentals and B&Bs, and a listing of all of that as well. So plenty of information for us to better understand the processes. Thank you so much, Director McLean. Any questions or comments about the new format? Member King.

COUNCILMEMBER KING: Thank you, Chair. Thank you, Director, for putting this together. It's very impressive how you got this together. And my one thought about this was, is this something that can be made available to the public so that, you know, if you are in a neighborhood, say, where you might have issues with a bed and breakfast or some special permitted operation, you can go online and check to see if they're compliant before you call your local Councilmember maybe? But just some information that's available to the public so that they can see that these items are being tracked, you know, we don't just give out permits and then, you know, wait and see if anyone complains.

CHAIR PALTIN: Director McLean? I believe it's on their website, but I'll let Director McLean respond.

MS. MCLEAN: Thank you, Chair. Yeah, I do think it's on the website. I'll double check. We do also have a listing of bed and breakfast permits, short-term rental home permits, and there's also a page of conditional permits for bed and breakfasts and short-term rental homes on the website. Admittedly, they're not always easy to find, so I'll touch base with Staff and see if we can make those documents a little more accessible and easier to track.

COUNCILMEMBER KING: Okay. If you can give us some kind of a direct link that goes to that and then...just so we can...you know, I'd like to let the public know because there's a lot of these kinds of operations in South Maui. But, you know, not to alarm anybody, but just to let them know, hey, this information is online if you need it. And, you know too, they can double check and make sure that the compliance is being tracked so that they know that that's the first line of defense.

CHAIR PALTIN: I'm sure the Director will follow up with us. I just wanted to clarify as well that, you know, there's a difference between conditional permit, short-term rental home permits, and bed and breakfast permits. Those aren't the entirety of transient

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

December 3, 2020

operations because we have, you know, Minatoya List, the planned developments. So just because it...a unit doesn't have a permit doesn't mean it's illegal at this point because we have short-term rentals that are allowed by zoning and whatnot. Although I do believe that is also up...that list is also up on the Planning Department's website. It's just navigating...

COUNCILMEMBER KING: Yeah, and those are not generally the ones that the people, you know, are complaining about. It's usually the ones that they know about because they've been contacted that...within...they're within the 500 feet, the location where they've gotten contacted and they know someone's got a permit, and then they want to make sure, you know, hey, if they're doing this, are they still in compliance. And it's good for them to be able to go online first before...you know, I have three around me that are probably too...closer than they're supposed to be, but they've been around for a long time, and one of them stopped doing it. But, you know, I have gotten a couple of complaints, and I would like to be able to show people...you know, to give them a site to go to to say well, here's where you can check and see if they are in compliance. And if they are, then there's really not too much I can do about it, you know, if they're in full compliance.

CHAIR PALTIN: And so Director McLean has posted links to the B&B and STRH list, as well as conditional permits and the short-term occupancy Minatoya List are on the main page under hot topics.

COUNCILMEMBER KING: Awesome. Okay, thank you so much, Director. Appreciate it.

CHAIR PALTIN: Vice-Chair Sinenci?

VICE-CHAIR SINENCI: Chair, I just had a quick question for the Director. So if the Council does flag a permit for renewal, would the renewal application have to go to the Planning Commission first before coming back to the Council?

MS. MCLEAN: That's a great question. Thank you, Councilmember Sinenci. My thought is yes, because conditional permits are a Land Use Ordinance, and the Charter requires that those get reviewed by the Planning Commission. But we can check that with Corp. Counsel when we work with Chair Paltin and her Staff on the bill to see if there might be a streamlined way, but I'm not sure if the Charter would allow that.

VICE-CHAIR SINENCI: Okay. Thank you, Director. And then if...during that process, is there like a neighbor notification that the renewal is in process?

MS. MCLEAN: That's something that could also be clarified in the bill. Right now, I believe that there is notification of the notice of application for renewal. If there isn't though, that is something that could also be required.

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

CHAIR PALTIN: Director, I had a question on number 12 of the list that you had

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

December 3, 2020

transmitted. In the notes at the very last sentence, it says an application for time extension was timely filed on September 27, 2017, and is in process. Is that a typo that's it's been in process for three years?

MS. MCLEAN: Oh, probably not because the permit was due to expire. In the expiration date column, it looks like it was due to expire in 2017. So it would've had to have been filed by then. I don't know why that has taken so long to be processed. I might be able to find out before the meeting finishes up, I can poke around a little bit and see.

CHAIR PALTIN: Thank you. Don't want to hog Director McLean. Other Members have any questions? Member Molina?

COUNCILMEMBER MOLINA: Yeah. Thank you, Madam Chair. Just one quick question for Director McLean. First of all, thank you for the report. Very nicely done. And I know we're meshing this with PSLU Item 26, so my question maybe more relates to that. Typically how long does it take for an applicant who wants to get a B&B or short-term rental request, I guess, from the time you apply until the time you have a decision made, what's the time...estimated time it should normally take, barring any unforeseen circumstances.

MS. MCLEAN: It should...connotes a number of things. It shouldn't take very long. Oftentimes, though, the applications that we receive aren't complete. They're substantively complete, but there's still required items that are missing. Our planners always do a site visit to make sure that what's on the floor plans is actually what's there because oftentimes we find that's not the case, and so there's back and forth for the applicant to correct their floorplans and whatnot. But let's say we got an application that was perfectly complete and accurate, we did the site visit and everything was exactly as shown, we had clear documentation that all the structures were permitted. There were no problems at all. With our workload right now, it would still take a couple of months. But usually we don't get a perfect application, and everything doesn't check out, and we don't have all that documentation. So it can often take quite a long time.

COUNCILMEMBER MOLINA: Right. Yeah, those are a few and far between, yeah. Yeah. In case... 'cause you know, sometimes you have constituents that express concerns about the County taking so long to do this or that, and sometimes they bring this up, but, you know, this is why it's important for us as Councilmembers to inform the constituent that, well, must understand, sometimes the applicant does not do their part, which was why things take time and there's delays. So it's not always just the County's fault for things taking time...more than it should. So anyway...okay. Thank you very much for that. Thank you, Madam Chair.

CHAIR PALTIN: Thank you, Member Molina. Okay, I'll slide in another one of my questions. Director McLean, in light of the previous item and discussion, it's my understanding that conditional permits are also ordinances with the force and effect of law, and if there is conditions on the conditional permit, I don't know about my colleagues, but

PLANNING AND SUSTAINABLE LAND USE COMMITTEE MINUTES

Council of the County of Maui

December 3, 2020

I'm not feeling super comfortable that...how the compliance in those conditions are being verified. Just...and it's not personal, it's just, you know, based on the previous discussion. And until we get comfortable at what the process is on checking compliance, like I believe one of the...the Fairbanks Permit, when I looked up the ordinance, they were required to, like, receive a historic designation or something like that. And, you know, each conditional permit would have different conditions. And if you could run through for us how compliance is tracked, and reported, and just ensured just for like a little bit of our piece of mind. Or if there is a way...I know this spreadsheet takes up the whole page right now and it would be difficult to add another column, but how can the Council be ensured that compliance is being tracked and enforced and whatnot.

MS. MCLEAN: Thanks for the question. And this actually ties into your previous question about the twelfth one listed. I'm...I've been poking around in our files, and it seems that there are some compliance issues. And so that's why it hasn't been finalized. There was also a protest letter submitted. And so this will likely trigger...wouldn't qualify it for administrative review...or administrative approval. With compliance, usually we...sometimes there are conditions that require compliance reports, so that's easy if the applicant has been submitting those. If there isn't a condition like that, then we still go ahead and ask them to submit compliance statement or compliance letter, which is essentially a compliance report, when they come in for renewal because we can't renew unless they are compliant. So that's when we check compliance. If the permit has a long duration, however, then that typically doesn't get checked during that period until they come in for renewal, or unless there's a complaint or a question.

CHAIR PALTIN: And I guess I'm wondering, in light of the previous item where the developer thought that they're in compliance, and so their compliance report that they for the first time submitted, that we're in compliance because of this. And I, as a layperson, disagree with their compliance, is there a mechanism by which the Planning Department or enforcement verifies the report given by the applicant?

MS. MCLEAN: Yes. Similar to zoning conditions, if it relates to another agency, then we send the report to that agency and ask them to verify. Oftentimes...and there was so much discussion on that first item I didn't want to jump in, but what complicates things...and, you know, I'm reluctant to bring this up because this can really be a challenge. You have a zoning condition or a conditional permit condition that says you have to do these specific things as approved by, I'll just say, the Parks Department. Then that applicant contacts Parks, and develops a Parks agreement with Parks. And then Parks ensures compliance with that agreement, but that agreement is not necessarily identical to the zoning or conditional permit condition. It's like what you were talking about with affordable housing. There was an affordable housing agreement that DHHC makes sure you're in compliance with the affordable housing agreement or 2.96. But if the conditions go further than that or are different than that in some way, the applicant has to comply with both. It...you can't say one supersedes the other. Because as you said, the ordinance cannot be superseded. And so it's...that's where it can become difficult. Not so much with conditional permits

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

December 3, 2020

because it's usually one use, it's usually really straightforward. But for zoning conditions, that can get really complicated. Because there's an agreement with Public Works, and agreements with Housing, and an agreement with Parks. And they work really hard to achieve compliance with those, and they kind of forget about the zoning conditions. But...sorry to get all roundabout on that, but we do transmit to...compliance reports to agencies, and ask them to verify compliance with the zoning condition. And if they respond to us and say, oh, we have an agreement with them, they're in compliance with the agreement, we're like, that's not what we asked. We need to know they're in compliance with the condition. And so that's...you know, it can get more complicated and be more burdensome for the applicant, but they have to comply with both.

CHAIR PALTIN: Thank you, Director. I think that's very helpful for us to know as policy makers. I see Chair Lee has a question for you.

COUNCILMEMBER LEE: Michele, how many people are in ZAED?

MS. MCLEAN: ZAED has, I think, 24.

COUNCILMEMBER LEE: So, I notice...

MS. MCLEAN: Wait, 26.

COUNCILMEMBER LEE: Yeah.

MS. MCLEAN: Twenty-six Staff.

COUNCILMEMBER LEE: Looking at the list of only these conditional permits and so forth, are we looking at hundreds of conditions that they have to monitor? Twenty people?

MS. MCLEAN: Well...oh, if you look at conditional permits, and zonings, and SMA permits, I mean, there are thousands of conditions out there. When it's a permit that goes through a discretionary review process, the compliance review is usually done by our Current Planning Division. They're the ones who process the permit in the first place and who process the renewal. If there's enforcement though, then that's ZAED. Current has even fewer people than ZAED does though. But...

COUNCILMEMBER LEE: So, wait one second.

MS. MCLEAN: Yeah.

COUNCILMEMBER LEE: So Current is in charge of compliance? And ZAED's strictly enforcement when something is done wrong.

MS. MCLEAN: In general, correct.

COUNCILMEMBER LEE: When somebody violates something.

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

December 3, 2020

MS. MCLEAN: Right.

COUNCILMEMBER LEE: So your compliance section has how many people?

MS. MCLEAN: Current has 25.

COUNCILMEMBER LEE: Twenty-five.

CHAIR PALTIN: Did you say 25?

COUNCILMEMBER LEE: I mean, are we asking you to do something that you're not able to?

MS. MCLEAN: Well, I don't know that you're asking us to do...

COUNCILMEMBER LEE: Well, we're asking you to do whatever you're doing now plus all the conditions that were overlooked going back decades. So I mean, I just want to know, is that something you can do, or do we have to add more people, or what.

MS. MCLEAN: We can't do it overnight. I think that it'll take a little bit of time to get caught up. But I think that we can create a better system. And once we create that system and get caught up, then it shouldn't be all that difficult to stay on top of. But we haven't had a good system, and we're behind. So it'll take some time to get it together, but then once we can, establish that. And with technology and all that, you know, we have more tools now to help us than we did before. Yeah.

CHAIR PALTIN: Thank you, Director McLean. And just a follow up to your earlier point, for us as policy makers, if we were to ever say to the satisfaction of the Parks Department, would it be preferable to add on Parks and Planning, since Planning is in charge of compliance and enforcement so that it...even if they satisfy Parks, they realize that they also have to come in compliance with Planning as well? Would that be a better way to go about it...to satisfaction of Public Works and the Planning Department, or Parks and the Planning Department.

MS. MCLEAN: I don't think it would hurt. I guess depending on the nature of the condition, we might not really have a say in it. Because we...we're still the ones responsible for overall compliance. So...but it, you know, it couldn't hurt. I can't see how it would hurt.

CHAIR PALTIN: Member Rawlins-Fernandez?

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Chair. Aloha, Director. So it looks like...or what kind of software do you use for the reporting? Is it Excel?

MS. MCLEAN: I think so. The report that we transmitted for this Item? Yes. Yeah. That was in Excel.

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

December 3, 2020

COUNCILMEMBER RAWLINS-FERNANDEZ: So is it...what would it, would you be able to kind of describe what your system of reporting looks like right now? Like, is it on someone...is quarterly reporting assigned to one person and it's, you know, put on their calendar and they have, like, an Excel spreadsheet that they update quarterly and then submit that to the Council?

MS. MCLEAN: I do think it's that simple. The first report did have to go through the OneDrive where we have all of our permit documents, and go through all the conditional permits to put the initial report together. And now that the report is completed, they only have to go through the permits that are listed in the report to check on the status. So the updates, the quarterly updates are pretty easy, because there aren't that many conditional permits issued every year, or renewals issued every year, or every quarter even. But it's just as we, you know, find mistakes or want to add more information that we spend a little more time on it.

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Director. So if there was a software that made it easier for compliance performance, quarterly reporting to the Council, is that something that you would be interested in?

MS. MCLEAN: Sure. Any tools that could help us do a better job, we'd be interested in.

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

CHAIR PALTIN: Thank you, Member Rawlins-Fernandez. And I know that conditions and compliance are tracked in other jurisdictions and, you know, one of the methods that I had previously brought up to Director McLean when we were talking about, I think, community plan implementation was having a GIS layer on the RPT site, you know, for each TMK or whatever. When you clicked on it, you could have, you know, the County zoning layer. You can have, you know, the conditions on that TMK so that it's easily accessible by the public, by the various Departments and things like that. And it's been brought to my attention that some jurisdictions use something like that while, you know, it doesn't have to be that way, but that's one option. And I have kind of brought it up in Committee to Director McLean, as well as spoken on the phone with Director Teruya, and he was open to it. But, you know, anything really that would work and promote transparency and compliance, I'm certainly open to. But that's another option that I've heard of. Maybe it's something that we want to, you know, try and poll other jurisdictions of the different methods that work and choose one that might work really well for Maui County. That's kind of the only one I've heard of so far, but I'm sure there's other ways.

MS. MCLEAN: Chair, if I could comment that the MAPPS program is supposed to have a significant...present a great opportunity for the public to access permit information and status. I don't know if it has a GIS component. I know that there is a GIS team involved in MAPPS. But it...we haven't really looked to improve our current permit system because we've been waiting for MAPPS to happen, and the launch date for that keeps getting pushed farther and farther back. But that should be really helpful for

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

December 3, 2020

anyone to be able to access permit conditions, permit status, enforcement, and I think if there isn't a GIS component to that, that would also be a great tool.

CHAIR PALTIN: Thank you, Director. So I'm going to possibly put something like that on my Budget wish list. Members, if no one else has any questions...oh, Member Rawlins-Fernandez.

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Chair. I support the effort of utilizing technology to make systems easier and not just easier for the, you know, Council's information but also easier to...or which would basically reduce the reliance on the dependency that we have on who is in the seat doing the work. Because if institutional knowledge can be built into systems and then it would make it easier for us when there's projects that span over decades rather than years. So I support that effort. I guess I just wanted to remind you that I support technology, but it does come with people to input the data and all that work. So when purchasing the software, we have to be mindful of the Staff, the...you know, the human capital and time that it'll take to, you know, you make the software work. Also that OpenGov...one of the reasons I had supported using OpenGov was for its compliance and performance reporting component. Mahalo, Chair.

CHAIR PALTIN: Thank you, Member Rawlins-Fernandez. You have time for a few more questions maybe. I had one. Going back to number 12, that's it's been in process for three years and that there's compliance issues. Is there any sort of, like, cutoff? Like, we're trying to renew your permit for the last ten years, and at what point do we say, like, it's not going to happen? Like the effort to try and bring them into compliance versus just, you know, ripping off the Band-Aid. Is there any time frame or anything like that, or we just keep trying as long as the applicant is willing?

MS. MCLEAN: Thanks for that question. As long as there seems to be progress, and this is a generalization, I...the files that I could find, the most recent were 2018, so that still is quite a long time ago. I can follow up with the planner on this one. But in general, as long as there's back and forth and progress being made, we'll continue to keep the application open. But once we haven't heard anything or haven't seen progress, we'll send a letter that says, you know, we contacted you on this date, we haven't heard from you since this date, if we don't hear from you or get whatever information we're requesting within 30 days, we're going to close your file. And then we are good about tickling that. And then if we don't receive the information or don't hear from them, then we close the file. And I'll check in with staff on this one in particular, and see if it's time to send that kind of letter on this.

CHAIR PALTIN: Thank you. And if you can just jog my memory, PSLU-26 did go through the Planning Commission, so it's going to auto-refer to the next term; is that correct?

MS. MCLEAN: That's the grace period bills?

CHAIR PALTIN: Yeah.

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

December 3, 2020

MS. MCLEAN: Yes, those did go through the Planning Commission. Yes.

CHAIR PALTIN: Okay. If there's no further questions or comments from Members, I'd like to defer both of these items. And as we...I believe the quarterly reports have been referred to next term. And because this one went through the Planning Commission, it's auto-referred to next term. And so for today, I'd like to defer both items, 26 and 51, if there is no objection.

COUNCILMEMBERS VOICED NO OBJECTIONS. (Excused: YKS)

ACTION: DEFER PENDING FURTHER DISCUSSION.

PSLU-68: AMENDING CHAPTERS 19.64 AND 19.65, MAUI COUNTY CODE, RELATING TO BED AND BREAKFAST HOME AND SHORT-TERM RENTAL HOME PERMITS ON LĀNA'I (CC 20-484)

CHAIR PALTIN: And being that we have about six minutes left, I don't feel that's sufficient to go into detail on the Lāna'i bill. My apologies, but I was very happy that we had Member Hokama for our second item and that we had two testifiers from Lāna'i. That could be a record for our regularly scheduled meeting. So stoked to have the involvement from our Lāna'i community. But if there's no objections, I'll defer this item which has also gone through Planning Commission review so it will auto-refer to the next term, and we can take it up. I think we got some valuable feedback today from our testifiers, and my apologies for running out of time. It was an ambitious agenda and we made good progress. Thank you, guys, for all your hard work.

ACTION: DEFER, NO DISCUSSION.

COUNCILMEMBER KING: Chair, maybe we can...if we're taking this up next year, we can encourage Mr. Hokama to testify as a citizen of Lāna'i.

CHAIR PALTIN: I thought that's what he said he was going to do, come testify at all our meetings. So with no further comments, questions, or suggestions, this concludes today's Planning and Sustainable Land Use Committee meeting. Thank you very much, Committee Members. The time is now 11:56, and this meeting is adjourned. ...*(gavel)*...

ADJOURN: 11:56 a.m.

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

December 3, 2020

APPROVED:



TAMARA PALTIN, Chair
Planning and Sustainable Land Use
Committee

pslu:min:201203:cs

Transcribed by: Crystal Sakai

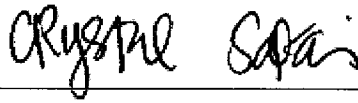
PLANNING AND SUSTAINABLE LAND USE COMMITTEE MINUTES
Council of the County of Maui

December 3, 2020

CERTIFICATION

I, Crystal Sakai, hereby certify that pages 1 through 45 of 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 30th day of December 2020, in Wailuku, Hawai'i

A handwritten signature in black ink, reading "Crystal Sakai", is written over a horizontal line.

Crystal Sakai