

PLANNING AND SUSTAINABLE LAND USE COMMITTEE

Council of the County of Maui

MINUTES

March 18, 2021

Online Only Via BlueJeans

RECONVENE: 11:10 a.m.

PRESENT: Councilmember Tamara Paltin, Chair
Councilmember Kelly Takaya King, Vice-Chair
Councilmember Gabe Johnson, Member (out 12:05 p.m.)
Councilmember Alice L. Lee, Member (out 12:28 p.m.)
Councilmember Michael J. Molina, Member
Councilmember Keani N.W. Rawlins-Fernandez, Member
Councilmember Shane M. Sinenci, Member
Councilmember Yuki Lei K. Sugimura, Member

EXCUSED: Councilmember Tasha Kama, Member

STAFF: Alison Stewart, Legislative Analyst
Richard Mitchell, Legislative Attorney
Clarita Balala, Committee Secretary

Kate Griffiths, Executive Assistant to Councilmember Gabe Johnson
Evan Dust, Executive Assistant to Councilmember Tasha Kama
Davideane Kama-Sickels, Executive Assistant to Councilmember Tasha Kama
Michele Del Rosario, Executive Assistant to Councilmember Kelly Takaya King
Axel Beers, Executive Assistant to Councilmember Kelly Takaya King
Sarah Pajimola, Executive Assistant to Councilmember Keani N.W. Rawlins-Fernandez
Gina Young, Executive Assistant to Councilmember Shane M. Sinenci

ADMIN.: Michael Hopper, Deputy Corporation Counsel, Department of the Corporation Counsel
Jordan Hart, Deputy Director, Department of Planning
Pamela Eaton, Planning Program Administrator, Department of Planning
Jennifer Maydan, Planning Supervisor, Department of Planning

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

PSLU-1: **WEST MAUI COMMUNITY PLAN** (CC 21-70)

CHAIR PALTIN: . . .(gavel). . . Aloha and welcome to the reconvened meeting of March 4th, 2021. The time is now 11:10 a.m. And we're a little bit late because the agenda was for

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10:30, but the previous meeting ran a little bit long and whatnot. So will the Planning and Sustainable Land Use Committee meeting come to order. The time is now 11:10. My name is Tamara Paltin, and I will be the Chair for your Planning and Sustainable Land Use Committee meeting. At this time if everyone can please silence their cell phones. I'd like to...and Vice-Chair's not on yet, so I'd like to introduce Chair Lee. Li ho and aloha, aloha awakea.

COUNCILMEMBER LEE: Aloha awakea, and li ho.

CHAIR PALTIN: And we also have Member Molina, li ho, and aloha awakea.

COUNCILMEMBER MOLINA: Li ho and...li ho and awakea and aloha to you, Madam Chair, my colleagues, and everyone else, from under the bridge.

CHAIR PALTIN: And we have Member Rawlins-Fernandez, aloha awakea and li ho.

COUNCILMEMBER RAWLINS-FERNANDEZ: Aloha awakea mai Moloka'i nui Ahina and li ho kākou.

CHAIR PALTIN: And Member Shane Sinenci, li ho, a me aloha awakea.

COUNCILMEMBER SINENCI: Aloha awakea, Chair, a me na li ho kākou.

CHAIR PALTIN: And we have Member Sugimura, aloha awakea and li ho.

COUNCILMEMBER SUGIMURA: Li ho and good morning. Now it's raining in Wailuku. It looks like an interesting day.

CHAIR PALTIN: Thank you. And we also have Member Johnson just joined us. Aloha awakea a me li ko...li ho.

COUNCILMEMBER JOHNSON: A me li ko, aloha. I know I'm terrible, I'm sorry. I'm...it's also raining here up in Lāna'i City and...look forward to an interesting meeting. Mahalo.

CHAIR PALTIN: Mahalo. And I see...I thought I had seen Committee Vice-Chair King. Are you on the call? You're muted, video and audio.

VICE-CHAIR KING: Yeah, somebody keeps muting my video. I don't know why they do that, but I've had that happen before. So, Staff, OCS, could you please not mute my video.

CHAIR PALTIN: Okay. Aloha awakea, and li ho. With us also we have Deputy Corp. Counsel Michael Hopper; from the Department of Planning, we have Director Michele McLean, Planning Program Administrator Pam Eaton, as well as Senior Planner Jen Maydan. Committee Staff, Committee Secretary Clarita Balala; Council Services Assistant Clerk Jean Pokipala, Legislative Attorney Richard Mitchell, Legislative Analyst Alison Stewart. And we have one item on the agenda from our reconvened meeting, it's PSLU-1, West

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Maui Community Plan. Oral testimony is still closed, but the public is welcome to submit written testimony at any time. This online meeting is also being conducted in accordance with the Governor's most recent Emergency Proclamation on COVID-19. The Proclamation partially suspends the Sunshine Law, and meetings can be conducted without Councilmembers or members of the public being physically present in the same location. If the connectivity affecting quorum is lost, the Committee will be in recess. It will not be considered a loss of quorum unless connectivity cannot be restored within 30 minutes. If connectivity affecting quorum cannot be restored within 30 minutes, the meeting will automatically reconvene to Friday, March 12th at 9:00 a.m. using the same virtual connections unless the Committee announces a different date and time. Committee Staff will...oh, not March 12th, sorry, I'm going to say March 23rd because March 12th passed. Committee Staff will make good faith efforts to keep the public informed. 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. For PSLU-1, West Maui Community Plan is...we're in receipt of the following County Communication 21-70 from myself, relating to West Maui Community Plan, as well as correspondence dated January 19th, 2021 from the Planning Director, transmitting the plan, and correspondence dated January 29th, 2021 from Committee Chair transmitting a proposed bill entitled, "A BILL FOR AN ORDINANCE AMENDING SECTION 2.80B.070, MAUI COUNTY CODE, TO ADOPT THE UPDATED WEST MAUI COMMUNITY PLAN." The purpose of the proposed bill is to adopt the updated West Maui Community Plan. The Committee may consider whether to recommend passage of the proposed bill in paragraph 3 above on first reading, with or without revisions. The Committee may also discuss the draft West Maui Community Plan in paragraph 2(b) above. And so, if Members wanted to email additional amendments, I know that Member Rawlins-Fernandez and Member Sugimura's amendments have been received by our Committee Secretary and uploaded to Granicus at the start of the meeting. So if you want to refresh your Granicus or have Staff print those out for you, now would be the time. And I see Member Rawlins-Fernandez had a hand up.

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Chair. Real quick, I submitted a revised amendment sheet. There's just one item that I slightly revised. So if Members can use the updated one from today. Mahalo, Chair.

CHAIR PALTIN: Sounds good. And did anyone besides Member Sugimura or Member Rawlins-Fernandez have either amendments or revised amendments to submit? No? Oh, Member Sinenci.

COUNCILMEMBER SINENCI: Let me check. I know I had to revise my last one from the last meeting. So I'll get back to you about that one.

CHAIR PALTIN: Okay. Thank you. And I've just been informed by the Planning Program Administrator, Ms. Eaton, that it will be Deputy Director Jordan Hart on the call with us instead of Director McLean. And so picking up where we left off, Members, we're on page 128, that's Section 4, it's 2.4. And let's see, going in order, it would be, let's see...

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VICE-CHAIR KING: Chair?

CHAIR PALTIN: Yes, Member King.

VICE-CHAIR KING: You know, I was just looking at Member Sugimura's submittal, her latest ASF, and it looks like it goes back to page 126. Is that correct, Member Sugimura?

CHAIR PALTIN: Mine says page 122. Are we looking at the same document?

VICE-CHAIR KING: I'm not looking at the same thing.

CHAIR PALTIN: We're not looking at the same thing?

VICE-CHAIR KING: I don't think so. I must not have the right document here.

CHAIR PALTIN: Member Sugimura, does yours start on page 122?

VICE-CHAIR KING: Your newest one.

COUNCILMEMBER SUGIMURA: Let's double check. The number should be...

CHAIR PALTIN: It...

COUNCILMEMBER RAWLINS-FERNANDEZ: Chair?

COUNCILMEMBER SUGIMURA: It goes back.

CHAIR PALTIN: Member Rawlins-Fernandez.

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Chair. So wait, are we going back to page 122, or are we --

CHAIR PALTIN: That wasn't my intention. I was just trying to clarify Member Sugimura's ASF because it says page 122 --

COUNCILMEMBER SUGIMURA: Back.

CHAIR PALTIN: -- but then it says Table 4.2, and then it says Action 2.03. So I mean, I don't...all of those don't really line up to be...they line up to be three different places, and I'm not sure. Just trying to clarify the ASF, not going backwards.

VICE-CHAIR KING: Okay. I've got the right one now, but yeah, you're right, it does say 122.

CHAIR PALTIN: Okay. Yeah, and I'm not sure. I mean, I guess we're just looking where to find where these amendments apply to because it's not clear from the submitted ASF.

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COUNCILMEMBER RAWLINS-FERNANDEZ: Chair?

CHAIR PALTIN: And I think it's page 116 for 2.03 and 2.08, so it would be going backwards. Member Rawlins-Fernandez, did you call me?

COUNCILMEMBER RAWLINS-FERNANDEZ: I did. I was thinking perhaps while Member Sugimura tries to assess that out with her office that we can move forward on page 128, and then when it's figured out then, you know, we can take her proposed amendments up. Okay. We get the thumbs up from Member Sugimura.

CHAIR PALTIN: Okay.

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Chair.

CHAIR PALTIN: Thank you. Okay. So the only amendment summary form that I see that applies to page 128 that we're on now is on page 5 of my Section 4 amendment summary form. So it's page 128, Action Number 4.04, and my amendment would read, Support farmers through increased funding for education and investment...and I just added, in infrastructure as clarification of where the investment would be assigned to or something, just to provide a little clarity. Any discussion from any of the Members? Does anyone want to hear from the Department on that, or are we ready to call for a vote without a motion because that's been our process.

COUNCILMEMBER MOLINA: Consensus.

CHAIR PALTIN: Any discussion? Member King.

VICE-CHAIR KING: Just a question. Was that the...so was that the intention of the CPAC putting that in there, or are they looking for an investment directly into farming?

CHAIR PALTIN: Okay. Let's go to Ms. Maydan as the Senior Planner on this project. Can you answer Member King's question?

MS. MAYDAN: Mahalo, Chair. Mahalo, Member King, for your question. I would say that the CPAC's intention perhaps was broader than just infrastructure since they left it...since they just have the word investment. But I cannot recall specific conversations around that. I think infrastructure investment is absolutely really critical for agriculture as you of course know, Member King. But I don't think CPAC was necessarily specifying it to that.

VICE-CHAIR KING: Okay. I just wondered if they wanted, you know, if they were looking at, you know, investment beyond infrastructure as well.

CHAIR PALTIN: Okay. Further discussion from the Members? No? So I guess...yes, Member Lee.

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COUNCILMEMBER LEE: I support the notion of flexibility. You know, they say they meant more than infrastructure.

CHAIR PALTIN: Okay. So then shall I withdraw this proposed amendment?

COUNCILMEMBER LEE: Okay.

CHAIR PALTIN: Is that kind of the consensus? Okay.

VICE-CHAIR KING: Yeah, consensus.

CHAIR PALTIN: All right. Okay. That will not pass, that amendment. Okay. That was the only one, the only amendment for Section 2.4. We're done with one whole section, gang. Good job. Okay. Flipping the page, we're all, we're on to page 130, which is our last section for...last portion for Section 5. On page --

VICE-CHAIR KING: Section 4...yeah Section 4.

CHAIR PALTIN: Section 4, Subsection 2.5, I guess. So the first one would be on my amendment summary form, also page 5, Action Item 5.03, my proposed amendment would be, work with other public agencies and the community, and then I added in, to identify wetlands and implement the Pali to Puamana Master Plan. And the reasoning I put down is, there are likely some wetlands within the Pali to Puamana stretch, and they should be cared for as wetlands for their ecological importance. Any discussion, Members, on that proposal? No? Everyone in favor, raise your hand and say aye.

COUNCILMEMBERS: Aye.

CHAIR PALTIN: And that is one, two, three, four, five, six, seven, seven ayes. Member Sugimura, did you want to vote...eight ayes, and one excused. That amendment passes.

COUNCILMEMBER SUGIMURA: Tamara, can I have a...ask you a question?

CHAIR PALTIN: Sure.

COUNCILMEMBER SUGIMURA: Where's your amendments?

CHAIR PALTIN: It was uploaded at the first meeting.

COUNCILMEMBER SUGIMURA: Oh.

CHAIR PALTIN: That one, let's see, it was my Section 4 amendment summary form that we were working off of last time.

COUNCILMEMBER RAWLINS-FERNANDEZ: Chair?

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CHAIR PALTIN: Yes, Member Rawlins-Fernandez.

COUNCILMEMBER RAWLINS-FERNANDEZ: I put it in the chat.

CHAIR PALTIN: Oh, thank you. The link...Member Rawlins-Fernandez put the link in the chat. So maybe your Staff can reprint it out for you if...or if you have two computers going, you can follow us on the second computer. Okay. So next up, we're moving on to page 132.

COUNCILMEMBER MOLINA: Madam Chair?

CHAIR PALTIN: Yes, Member Molina.

COUNCILMEMBER MOLINA: Yeah, thank you. And staying on page 130, looking at 5.08, I'm just going to kind of throw it out there, maybe adding the word...well, it reads, proposed legislation to make more housing units available for long-term occupancy. As the area representative, your thoughts of just adding the word affordable housing units to that. And also, if we could get comment from Ms. Maydan as far as the nexus for this, I guess, this Action Number.

CHAIR PALTIN: I have no objection to adding the word affordable because as you know, my District is flush with luxury homes that are for sale but, you know, no one can afford them. So I have no objection to that. Ms. Maydan, did you hear Member Molina's question...about the nexus.

MS. MAYDAN: Mahalo, Chair. Mahalo, Member. And this is 5.08; is that correct?

CHAIR PALTIN: Correct.

MS. MAYDAN: Okay. I believe Member Rawlins-Fernandez has a recommendation on this action. I don't know if you want me to respond now, or if you would like her to go forward because there is quite a difference between what you're seeing in this version and what CPAC had.

CHAIR PALTIN: Sorry, my bad. It was on another page, and it wasn't in page order on the ASF site. My apologies. I'll just read also Member Rawlins-Fernandez's proposal, and then we can enter into more discussion and see if there's like some sort of friendly amendment with Member Molina's suggestion. So her proposal for 5.08 is to revert to CPAC version, which states, proposed legislation to amortize the short-term occupancy list and phase out short-term rental use to make more housing units available for long-term occupancy. And I guess if we did want to take Member Molina's suggestion, it would be, make more affordable housing units available for long-term occupancy. So discussion on that. I would start with Member Rawlins-Fernandez, and then take it from there. Member Rawlins-Fernandez, any discussion points you wanted to make on your proposal?

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COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo. Chair. Yeah, I think it's something that we heard from the community, and as you stated, would support your district in getting more housing. I mean, I'm not opposed to Member Molina's amendment, but adding in my proposed amendment would help to provide housing for all AMIs. So I guess for the affordable, I'm not clear on what AMIs that would be. Sorry, I know you asked me to speak to my proposal and not Member Molina's, but I was --

CHAIR PALTIN: Oh no, that's fine.

COUNCILMEMBER RAWLINS-FERNANDEZ: Okay.

CHAIR PALTIN: Yeah, that's fine.

COUNCILMEMBER RAWLINS-FERNANDEZ: Yeah, so...yeah, so I think it's self-explanatory, and it's something that the community has consistently stated (*audio interference*). Mahalo, Chair.

CHAIR PALTIN: Thank you, Member Rawlins-Fernandez. Member Molina, any comment?

COUNCILMEMBER MOLINA: No, Madam Chair, I'm open to either. I mean, if Member Rawlins-Fernandez's proposal reaches that objective, I'm fine with it. I just thought I'd throw in that word affordable, maybe more as a window dressing. I mean, we all generally know we want more affordable units. But if our Member Rawlins-Fernandez certainly achieves that goal, I'm fine with that. Thank you, Madam Chair.

CHAIR PALTIN: Thank you. And as to your original question to Ms. Maydan, I think the original CPAC language is the answer as to the nexus of it. Maybe it makes more sense when you look at the original language as to the MPC modified language. Ms. Maydan, would you agree with that, or did you have something else to add?

MS. MAYDAN: I absolutely agree, Chair. The, going back to the CPAC language provides that explanation and that action, yeah. You're absolutely right.

CHAIR PALTIN: Okay. Thank you. Any further discussion on this proposal? Okay. All those in favor, raise your hand and say aye.

COUNCILMEMBERS: Aye.

CHAIR PALTIN: Member...okay, I see you. That will be eight ayes with one excused, Member Kama, and the proposal passes. And before we move on to page 132, any further questions, comments on page 130? Seeing none, let's flip the page. And on page 132 there's a 512, 518, 519. Okay, so let's start with Action Item 5.12, and that will be on my ASF form page 5. And the proposal would read as follows, identify, and then I added, and proposed amendments to, and then, existing language is, existing barriers in laws, rules, and processes that prohibit the construction of safe, sanitary, and affordable on-farm employee housing for farm workers, with special consideration given to non-

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permanent modular housing as a solution. And this brings back a little bit of the original CPAC vision, and I believe it was a recommendation that came out of the previous TIG that my predecessor had put together, specifically non-permanent modular housing for farm workers. Because we've seen all, you know, the gentlemen estates and the fake farm whatnot's, and so that was the suggestion, I guess, to prevent like more fake farm situations. Any discussion, Members? Seeing none, are we ready to take a vote? All those in favor, raise your hand and say aye, or give a thumbs up, whichever you prefer.

COUNCILMEMBERS: Aye.

CHAIR PALTIN: Okay. So that's eight ayes, one excused, Member Kama. The amendment passes. Next up, on Member Rawlins-Fernandez's 5.18, page 2 of her amendment summary form. She has, obtain funding, and design and build a new community center to augment the facility within the Lāhainā Civic Center. And as previously noticed, this is also on page 126, 3.21. She requests, please explain the purpose and meaning of this Action Item. So I think we'll go to Ms. Maydan to answer this question.

MS. MAYDAN: Mahalo, Chair. If I'm remembering correctly, at your last meeting...well, this Action is a duplicate of one in Section 3. I believe it was Action 3.21, and I believe your Committee addressed that at that point in time and edited that Action. So perhaps this action should be deleted since it was a duplicate.

CHAIR PALTIN: Member Rawlins Fernandez.

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Chair. My understanding was that it was an unintended duplicate, meaning that there...initially it wasn't a duplicate until it went to the Planning Commission, and then the way that it was amended, it became a duplicate. But if it reverted back to the CPAC's version, then it wouldn't be a duplicate.

CHAIR PALTIN: Ms. Maydan.

COUNCILMEMBER RAWLINS-FERNANDEZ: So it was kind of a clerical error.

MS. MAYDAN: Yes, it was absolutely just a mistake on our part that we were trying to decide which goal it fit better under. And when we decided, we did not delete it out of the one that we thought it didn't fit under. So it was not intended to be in there twice.

CHAIR PALTIN: So I guess the question is, are Members okay with it saying...staying on page 126, as opposed to page 132.

COUNCILMEMBER RAWLINS-FERNANDEZ: Chair?

CHAIR PALTIN: Somebody called me.

COUNCILMEMBER RAWLINS-FERNANDEZ: Me.

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CHAIR PALTIN: Oh, Member Rawlins-Fernandez.

COUNCILMEMBER RAWLINS-FERNANDEZ: Sorry, I'm freezing. Okay. I'm going to turn my video off. Okay. Oh, this technology, it's making it even more challenging to focus. Okay. So we amended it in the other section, in Section .2 or 3, 2.3.

CHAIR PALTIN: Point two.

COUNCILMEMBER RAWLINS-FERNANDEZ: So it's actually not a duplicate anymore.

CHAIR PALTIN: Okay. So...so then page 126, 3.21 adds in the hula hālau portion. So if we keep this, it wouldn't be amended, it would just say, obtain funding, and design and build a new community center to augment the facility within the Lāhainā Civic Center. Member King.

VICE-CHAIR KING: So does this...this creates that...two additional facilities besides the Lāhainā Civic Center then? Is that what we're saying?

CHAIR PALTIN: That would be what I interpret it as. Ms. Maydan, is that how you see it as a Professional Planner, Senior Planner?

MS. MAYDAN: Mahalo, Chair. Yes, if you were to leave both of these Actions in, it does appear that this would be requesting the development of two new community centers.

CHAIR PALTIN: Okay.

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

CHAIR PALTIN: And so...Member Rawlins Fernandez?

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Chair. So I think we amended it so that it wasn't a community center, it was like a cultural center. So a hale for a canoe and/or hula.

CHAIR PALTIN: Yeah.

COUNCILMEMBER RAWLINS-FERNANDEZ: And then this one would be a community center.

CHAIR PALTIN: Okay. So one cultural center, one community center. Any further discussion? Are we okay with leaving it as it is here and amending the one in 3.21, which is a cultural center for a canoe and hālau? Further discussion, questions, comments, suggestions? Seeing none. Shall we take the vote? All those in favor of, I guess, leaving it here as written, 5.18, raise your hand and say aye.

COUNCILMEMBERS: Aye.

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CHAIR PALTIN: And that will be eight in favor, one excused, Member Kama, and we're just leaving it as it is written. Okay. So next up, I believe Member Rawlins and myself both have proposals for additional Action Items. Member Rawlins-Fernandez, if you don't mind, I'll do mine first. Okay. So continuing on, on page 5, page 132, I'd like to add an additional Action Item 5.19, and the language would be, develop a system to ensure compliance with conditional zoning enforced in a timely manner. And I'm pointing to the reason why situations like Kapalua Mauka, Type would be a project, Priority would be high, Timing would be mid, County Lead Agency would be Planning, Estimated Cost would be To Be Determined, and the Funding Source would be the County. And just a little background on this. You know, 2.96 Workforce Housing Agreement as originally proposed was for 50 percent affordable. And so at that point, they interpreted the...that to say, take the place of Condition 11 in Kapalua Mauka, for example, whereas I think it was 2012 or 2013 where that Residential Workforce Housing Agreement was lowered to 25 percent. And so in that case, then it would no longer take the place of Condition 11. And so then all the conditions in Condition 11 were not met. And so, you know, just...that's not the only example of conditional change in zoning, conditions not being met. And, you know, at least this way, it's stated that, you know, the conditions that we put on a change in zoning should be complied with and enforced. So that's my reasoning for the proposal, and that's my discussion. If anyone else would like to add on to the discussion. Member Sugimura.

COUNCILMEMBER SUGIMURA: Just your example. So in that case, because of the change of zoning...at the time project complied, but because the change of zoning happened, or happens, and if it doesn't comply anymore, are you saying that you have to comply regardless, or are you able to...or is a development project able to comply, or would be in compliance, regardless, right? It's when the ordinance was made, they were in compliance, and it changes, so what is the impact then? Maybe I'm not understanding your example.

CHAIR PALTIN: Okay. So I mean, regardless of 2.96 changing or whatever, the intention of this Action Item is that there's some sort of methodology that we can see what the conditions in the change in zoning are. So my suggestion, and I'm not going to dictate to the Planning Department how to do it, but maybe add an additional layer on the Real Property Tax Map Key where if a TMK, or a portion of a TMK is changed through conditional zoning, there's a layer on the TMK that states what all the conditions are on that TMK that led to the zoning. So anybody issuing building permits or subdivisions can easily see this TMK changed zoning on this date, and these were the conditions on it. They don't have to look for some ordinance with all the conditions. They'll know that there was something on it. Now I'm not trying to dictate to the Planning Department how to do it, but I'm saying that as of right now, there's not a comprehensive system to say like a particular TMK that had a condition put on it in change in zoning, if you have a new Planner that just started with no historical knowledge, how are they supposed to know that Ordinance 4338 passed in 2012, has these conditions of zoning on it, and they need to be complied with. So I'm just trying to say there needs to be a way where someone just coming into the Planning Department, or Public Works, or wherever they

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are can easily see that there's these conditions on it, and that they need to be complied with. It's not buried on the Council Services page where they have to look through every ordinance or whatever it is. You know, I'm just asking for a way to ensure compliance with conditions of zoning. Because as we make up those conditions for a change in zoning, we put a lot of effort into it, we consult with Corp. Counsel, and then to see that some of them don't get complied with, but the project is still moving forward, is kind of disheartening to our community, as well as to me as the Chair who, you know, facilitates these conditions in change of zoning. So that's kind of maybe a better...

COUNCILMEMBER SUGIMURA: Your thought process. Well, thank you for explaining that. Can I ask the Department for...is Jordan Hart here? He's Jordan Hart.

CHAIR PALTIN: Sure, Deputy Director --

COUNCILMEMBER SUGIMURA: Thank you.

CHAIR PALTIN: -- any comments for Member Sugimura?

MR. HART: Clarification comments in response to what specifically? Like there was quite a bit of conversation that just occurred. I just want to make sure I understand which portion I'm responding to.

CHAIR PALTIN: Member Sugimura, any clarification for Deputy Director Hart on what you want him to comment on? We can't hear you.

COUNCILMEMBER SUGIMURA: On what Tamara was saying, her rationale as to why she wants to make this new amendment, and would the Department be able to comply.

MR. HART: Sure, sure. So just to say a few things. First of all, you know, we do have a process of documenting conditional zoning using KIVA. KIVA's going out and MAPPS is coming in. So you know, I'm hopeful that kind of the method that Councilmember Paltin referenced would be kind of convenient to implement in MAPPS. We'll have to see how that rolls out and what the features are there. You know, with regard to the, you know, new Staff coming in and not really understanding, I think that, you know, we do do training, and people who are accountable to enforce conditions and things like that do understand how to use the County's existing system to look things up. So it's not necessarily completely convenient for everyone or members of the public, but, you know, our Staff is able to do that. I guess the short answer is that the Department is completely open to this. We are already trying to figure out how to do this more comprehensively. It's kind of a long challenge just because of how many ordinances there have been over the life of the County. But it's also important to note that most of those are construction related, and only a specific few are long-lived or perpetual conditions that are more difficult to track. And then there's the odds and ends where projects don't kick off. So we're open to it, and we are trying to --

COUNCILMEMBER SUGIMURA: Okay.

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MR. HART: --figure out how to make this user friendly.

COUNCILMEMBER SUGIMURA: Thank you. I'm satisfied. Thank you.

CHAIR PALTIN: Thank you, Deputy. I'll take Chair Lee, followed by Member King.

COUNCILMEMBER LEE: Thank you. Again we have the issue, Jordan, of thousands of units that haven't been built because the whole project has not been initiated, or it started and stalled due to various reasons. It could be the economy, it could be a war, it could be a pandemic, it could be a number of things that prevents a project from moving forward. And we've seen this in the past where, let's say, 500 affordable units were due from a project concurrently with market units, and if only ten market units are built, then only ten affordables, you know, are due. So it's incumbent upon the Council as well to make it very clear on what every condition is. And so it's hard to require a developer to build in a timely manner when he has no control over what Public Works wants, over what the Water Department wants, maybe a reservoir, a new...you know, drill a new well or whatever. There are many, many requirements put on a project, not only housing, tons of other requirements. And so for instance, Hale Mua in Waiehu, I'm sure you're familiar with that project, Jordan, where they were required to build a bridge, and a brand-new road, and a traffic signal, and this and that, that the Council put on it, and it never left...got off the ground. So these are the kinds of things I worry about when the Council puts conditions on a project, and then ten years later, looks at the projects and...what happened? You guys owe us 500 units. Well, maybe some of the conditions were overly restrictive that made it difficult, if not impossible, for a project to move forward. So that's the reason why I'm concerned about language that doesn't take into consideration not only the Council's specific conditions, but all the other conditions that come with any project that are imposed by every single Department. So would you like to comment on that?

MR. HART: Chair, thank you very much. I...you raise some really good points, you know, interpreting the economic feasibility of any condition and whether or not it'll kill a project, it's a really tough challenge for the Councilmembers. But I do...you know, the comments that you make about how we interpret and implement the conditions, I think that just basically careful wording...we're only going to be able to implement whatever the language says. And so if that...you know, if that's complicated, then our implementation's going to be complicated. Or if it allows for interpretation, for instance, a gray area of whether or not a revision to an ordinance pertaining to affordable housing would supersede the condition, or whether or not the specific language of the condition holds regardless of any ordinance changes; you know, those kinds of things have to be interpreted. And it's just a project by project, condition by condition process. And you know, as much as the Council can do to make the conditions clear to the applicant and to the Department, you know, we can try to avoid misunderstandings. And there's always going to be expectations of the community as far as what they heard, or what they read in the newspaper, or heard on *Akakū* versus what actually unfolds and, you know, the process is very complicated and can take decades to go. And so, you know,

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what was specifically said or remembered can, you know, get blurred. And it's a human process, and I do think that basically establishing a clearer process of cataloging and administering the conditions will be helpful for everyone.

COUNCILMEMBER LEE: So do you have verbiage to that effect?

MR. HART: To amend the proposed...the proposed language? No, not specifically to fine tune it. I think that...I think to develop a system to ensure compliance with conditions, conditional zoning enforced in a timely manner is totally fine. I think that the issue is the clarity of what the conditions are, and whether or not timeliness is established as part of the condition. You know, those would be...what we're able to enforce is going to be based on the language of the condition. I'll add that there --

COUNCILMEMBER LEE: . . .*(inaudible)*. . .

MR. HART: -- oh, I'm sorry. One point that I think is relevant is that there's also representations that can become conditions. And so, you know, all of that is something that we track anyway.

COUNCILMEMBER LEE: If we leave the words, timely manner, that's fine with me because it's...it doesn't hold the applicant or developer to a specific time, especially if it's beyond his or her control. I mean, if the Water Department is holding something up, or the Public Works Department is holding something up, you know, timely can mean anything, actually.

CHAIR PALTIN: Okay. I'm okay with taking out timely manner because I believe by ordinance if things haven't occurred within five years, we do have the option to resolution it back to what it was. Okay. So I will accept, in a timely manner remove...in a timely manner removal as a friendly amendment from Chair Lee.

VICE-CHAIR KING: Oh, I thought she wanted to keep that in there.

COUNCILMEMBER LEE: No, I said if it stayed in there...it's really not enforceable, you know, what is timely. Timely to whom? You know, the developer has only so much control over his project. Once you go through the gauntlet of the Administrative Departments, you're at pretty much...you have to comply with every requirement by them, which may hold up your project, you know, for one month, one year, two years, three years. So --

CHAIR PALTIN: Yeah.

COUNCILMEMBER LEE: -- that's why I questioned the word timely. Because if there's that five-year, you know, restriction or limit, then that's fine.

CHAIR PALTIN: Yeah. So the friendly amended proposal would read, develop a system to ensure compliance with conditional zoning be enforced.

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COUNCILMEMBER LEE: Yeah.

CHAIR PALTIN: Okay. And then Member King was next. But if it's on a different subject, and somebody else has more comments on this issue --

VICE-CHAIR KING: No, it's on this same subject.

CHAIR PALTIN: Okay.

VICE-CHAIR KING: And I think Jordan Hart kind of spoke to a little bit of what I wanted to say, which is the setting of conditions is something that the Council does, and possibly recommendations from the Planning Department. This really speaks to enforcement of compliance with those conditions. So I don't want...I think we're getting confused with, you know, yeah, we have to make sure that we set clear conditions that are understandable. And sometimes the conditions I think should have timelines on them because when I look at what happened with Wailea 670, and there's an atrocious list of noncompliance on those conditions, and yet they were marching forward. At some point, it should've just been stopped because...and the zoning reversed because it was so far out of compliance. And I think that's what this...to me, this is a Countywide issue, not just a West Maui issue that we need to do. And, you know, when we spoke to...when we had the review in PSLU of the Wailea 670, and I think that was right after they had lost their main advocate for it, and we didn't have the presentation from Charlie Jencks, but the Planning Director did say, you know, we haven't been as good as we should be with keeping...you know, with monitoring compliance and that they need to do...she said we need to do a better job at that. So to me, you know, we're...we've got...we've got...there's the one issue of external forces, but there's also things that aren't happening that have been allowed to slide over the last few decades, and projects go ahead regardless of noncompliance. So I think that's...what this speaks to me is that...is that we need to develop a system so that the public can see what the conditions are. And if we can do that through the MAPPS program, that'd be great. And that way they know what the conditions are and they don't have to guess. You know, we don't get these calls like, aren't they supposed to do this, aren't they supposed to do that, what happened to the water reports...you know, what happened to the clean water reports, what happened to the culturally significant sites that aren't mentioned on here. And if the public knows what those conditions are that the Council put on them, then they'll be part of helping us monitor too, so that maybe the Planning Department will get some assistance on what isn't happening. But I understand about external conditions. What I don't understand is the blatant, you know, disregard for some of these conditions that has been happening over the last few decades by developers, and then getting to finish their projects without having been in compliance. So that's the part I see this addressing. And it's not...and I do think it's incumbent upon the Council to make clear conditions and sometimes to put timelines on those conditions so we don't get ten years down the road and the developer puts all this money in, and then we go hey, you haven't done this part of it, and now we're going to pull your zoning. So we have to be responsible from our end as well. So yeah, I support it as amended. And I think it should go in every Community Plan. Then they can do one thing, and they can tick off

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the...this item from every Community Plan.

CHAIR PALTIN: Okay. Thank you. Member Rawlins-Fernandez. I think after that was Member Sugimura again, was...did you have your hand up again? Okay. So Member Rawlins-Fernandez, then Member Sugimura.

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Chair. I wanted to propose an amendment to your amendment --

CHAIR PALTIN: Okay.

COUNCILMEMBER RAWLINS-FERNANDEZ: -- for more clarity, and I will put it in the chat. Develop a monitoring, enforcement, and public reporting system that ensures more transparency and compliance with conditional zoning. And then I took out the timely manner part since that was something that we all (*audio interference*).

CHAIR PALTIN: Yeah, I'm open to that as a friendly amendment. I have no problems.

COUNCILMEMBER RAWLINS-FERNANDEZ: Okay.

CHAIR PALTIN: Member Sugimura.

COUNCILMEMBER SUGIMURA: I just wanted to say that what we're all talking about is truly the MAPPS program. I can hardly wait for that to happen because then this discussion will become less relevant. Thank you.

CHAIR PALTIN: Nothing like being less relevant to make your day. Member Lee.

COUNCILMEMBER LEE: Okay. I think that's a terrific amendment. I think it's clear, and it reinforces the idea of enforcement is important. And I just...I am a realist, and I've experienced a lot of County government operations. And I guess you folks are...don't realize how much the other Departments have influence over every single project. And I...I'll give you an example. In spite of our conditions on the projects for conditional zoning, every Department also imposes conditions of their own. And one in particular I remember. I remember lots, but one in particular is an affordable housing project in that Waiehu area which required a bridge. The developer agreed to it. I don't know why these developers agree to these conditions when they don't know if they can afford it or not, but anyway, the guy agreed to this bridge. So he figured, okay, a two-lane bridge. But it went...it got to Public Works...after the zoning was approved, it got to Public Works. One guy in Public Works says oh, no, we want a four-lane bridge. See, so right there, it broke the project. So these things happen. You folks are not aware of it. But these things happen that on a regular basis, where the Departments...I mean, they have good intentions, who wouldn't want a four-lane bridge, right, but just so happens it makes projects no longer feasible in some cases. So this is the kind of thing that happens with almost every project. Okay. Thank you.

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CHAIR PALTIN: Thank you, Chair Lee. Member King, followed by Member Sinenci.

VICE-CHAIR KING: Thank you, Chair. Yeah, I'm fully aware of what you just said, Chair Lee, because we had a project, the Kaiwahine Village one, that the Department of Public Works put a condition on that they had to pave that road. And so they went bankrupt, and they never paved the road. And yet Public Works wouldn't come in and pave it because it was a condition of the development that was in bankruptcy. So they had this Catch-22 and, you know, my thought is, is there a way to make it so that the Departments who put the various conditions on--and they're not the ones that the Council puts on, but the Departments have to enforce their own conditions so that the Planning Department doesn't have to run around and figure out what all the other Departments said and enforce what they were asking for. But, you know, Public Works should've been enforcing that. If Public Works had been more involved in that paving issue, maybe they could've come in and said oh, the developer's bankrupt now, so we need to come in and pave the road instead of just leaving that condition unenforced and the residents up in arms about...and that...that road was horrible. So luckily, the new developer was willing to come in and pave that road. But I understand what you're saying, and I know that that happens. I just think that one of the hard things on the Planning Department is that they have to enforce all the conditions put on these developments by the other Departments. So if there's a way to have each Department, if they're going to put a condition on, to enforce it.

CHAIR PALTIN: Okay. Is this a question or just an example?

VICE-CHAIR KING: It's an example, but it's also something that the Planning Department may want to consider if they're going to...because what we're asking them to do is...we're not...we're not...it doesn't look like we're trying to legislate, we're just trying to make a suggestion to the Department to help to step up enforcement. And so I would just say, you know, if all these other Departments are an issue with their conditions, I'm just wondering why they can't--maybe Jordan can answer that--why they can't enforce their own conditions, or can't Public Works --

COUNCILMEMBER RAWLINS-FERNANDEZ: Point of order, Chair.

VICE-CHAIR KING: -- enforce...

CHAIR PALTIN: Yes, Member Rawlins-Fernandez, point of order.

COUNCILMEMBER RAWLINS-FERNANDEZ: I think the...you know, the...well, it's not a motion, but the item that we're speaking to is the language of the amendment, and I feel like we're kind of like slowly going into more of like a rabbit hole into the weeds. And so, you know, like I know this is an issue, and then, you know, we can take up how we can support the Departments on like carrying these things out. But for now, we're talking about the Community Plan. And if we can just talk about the language and if we like it, we just vote for it; if we don't, let's not vote for it. Mahalo, Chair.

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VICE-CHAIR KING: I guess my issue is that it speaks to the County lead agency. But maybe it shouldn't just be the Planning Department, you know, maybe it should be the County Departments that are putting these conditions instead of just having the Planning Department be the main Department that has to enforce.

CHAIR PALTIN: That's kind of their role. Planning does enforce. So it...I mean, I guess Deputy Director Hart, would it be appropriate to put more than Planning as the County lead agency, or your thoughts on who the County lead agency would appropriately be.

MR. HART: You know, from my personal opinion it has to be Planning because . . .(inaudible).
.. --

CHAIR PALTIN: Okay. Thank you.

MR. HART: Yep.

CHAIR PALTIN: Member Sinenci, did you have a question?

COUNCILMEMBER SINENCI: I just support the proposed amendment specific to Lāhainā and to this CPAC presentation. We're talking about some other ones, but for specific to Lāhainā, I...I encourage for that added enforcement. Thank you.

CHAIR PALTIN: Thank you, Member Sinenci. So all those in favor of the proposed amendment as amended by Member Rawlins-Fernandez, and written in the chat, raise your hand and say aye.

COUNCILMEMBERS: Aye.

CHAIR PALTIN: Okay. That's eight ayes with one excused, Member Kama. That amendment passes. Moving on to Member Rawlins-Fernandez's page 1 of her amendment summary form that she submitted this morning. I'm going to say this would be for 5.20...okay, Member Johnson would like to be excused, and I'm going to excuse him for medical reasons. Thank you, Member Johnson.

COUNCILMEMBER JOHNSON: Thank you, guys.

CHAIR PALTIN: Thanks for hanging out with us. Okay. Next up, so this would be a further goal, and we'll call it 5.20 because the last one we passed was 5.19. And her new Action Item would read as follows, require public shoreline access to be provided through establishment of both vertical and lateral access through public rights of way and public transit corridors as a condition of any discretionary County permits for properties that lie within the Special Management Area or abut the shoreline. And the justification reads, the new Action Item complements a related policy which does not currently have an accompanying Action Item. The corresponding policy would be 2.5.21 on page 57, which reads, support public and private efforts to inventory, evaluate, and expand public shoreline access, require shoreline access to currently privatized shoreline areas

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by gates and walls. This Action Item would trigger any shoreline property which currently does not provide public access to develop it whenever they come in for any permit. Currently, it is a discretionary decision by a Coastal Zone Management Planner. And this is very relevant to the west side with Puamana Beach Park being shut down due to shoreline erosion and the discovery of iwi kūpuna. A lot of folks are unable to access the shoreline over there. And, you know, Puamana gated subdivision is right next door, but there is some issue with accessing shoreline. So as the proposer of this added Action Item, would you care to speak more to it, or would you like comments from the Department, or what would you like?

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Chair. I'll just quickly say that this would support Chief Justice Richardson intent of making beaches, you know, a public trust, and so I'll just keep it at that. I don't need any comment. Mahalo, Chair.

CHAIR PALTIN: Thank you. Any further discussion from any of the Members? Member King.

VICE-CHAIR KING: Just a question, what is vertical access?

CHAIR PALTIN: I think mauka to makai would be vertical, and lateral would be along the shoreline.

VICE-CHAIR KING: Okay. But yeah, I don't understand shoreline access if you're mauka. Are you talking about having a throughway down to the beach or something?

CHAIR PALTIN: Yeah, you know when you have gated subdivisions, and it's a large subdivision, and you are trying to get to the shoreline, but you can't. I believe that's what's being referred to. Or if there is multiple private properties along the beach and there's no shoreline access within the multiple properties, and you see like, you know, tourist or condo rental people getting to park in there and go to the beach, but local people are not given anywhere amongst where they could go through and get to the beach, I guess. Kind of...it's a common situation.

VICE-CHAIR KING: Yeah, I know, I understand what you're talking about now because I have one right next to me that's gated that keeps people from driving through off of Kenolio down to the beach. So yeah, I was...when you said vertical, I was thinking about drones and stuff ,but --

CHAIR PALTIN: Oh, like up and down --

VICE-CHAIR KING: -- yeah, yeah, you're --

CHAIR PALTIN: -- instead of mauka-makai.

VICE-CHAIR KING: -- so you're talking about access, yeah, that kind of access. Okay. I get it. So yeah, I completely agree with that. Thanks for the explanation.

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CHAIR PALTIN: Sure. Any further discussion? Member Lee --

COUNCILMEMBER LEE: No, I see --

CHAIR PALTIN: -- followed by --

COUNCILMEMBER LEE: -- Michael Hopper's hand up.

CHAIR PALTIN: Okay. You want to hear from Mr. Hopper first? Okay. Mr. Hopper.

MR. HOPPER: Yes. Madam Chair, in certain cases it's certainly...you can require as a condition of development permits to provide public beach, or public shoreline access. That has been done from time to time. However, it may not be permissible in all cases. There are U.S. Supreme Court decisions on this that talk about if you are exacting from a landowner a public access right, that has to be proportional to the development that they're doing, and have a nexus toward the permit that's being granted. So there may be certainly cases where, as a condition of an SMA permit, public shoreline access is required. However, there may be cases where that would be problematic and potentially unconstitutional. If there's cases like Member Rawlins-Fernandez had talked about where there are public trust issues or there are gathering issues involved in a particular case, that can certainly be an item that's allowed. So this would appear to just say blanketly, no matter what the facts are of a particular case, that you can't have an SMA permit granted unless there's some type of public access on every single parcel involving that. So I don't know if there is a way to maybe more closely tie this to the Hawai'i State Constitution dealing with public trust or gathering right issues in particular cases, and have language that states maybe to the extent permitted by law. I know that the goal is to try to get away from the discretionary review of the permit, and a situation where the access might be required versus cases where it's not, but I think whether the County will be able to require that access will depend on the facts of each particular permit and what they're doing coming in. So maybe there's a way to adjust the language. Maybe just the simplest way would be in the beginning maybe say, to the extent permitted by law, require, you know, to have that at the beginning, or maybe there's some other way to do that. But it's just...I can picture there are cases where it would be difficult to require a landowner to make a portion of their property available to the public in every single case somebody obtains a Special Management Area permit. That's the only concern that I would have.

CHAIR PALTIN: Okay. And then as the proposer, Member Rawlins-Fernandez, any discussion on what Corp. Counsel has just shared with us?

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Chair. I would think that when we develop policies and Action Items that our intention is not to break the law.

CHAIR PALTIN: So you're open to the opening, to the extent permitted by law, or no?

COUNCILMEMBER RAWLINS-FERNANDEZ: I don't see...I don't really see why it's necessary.

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But if I were to add it, I would put it at the end --

CHAIR PALTIN: Okay.

COUNCILMEMBER RAWLINS-FERNANDEZ: -- and not at the beginning.

CHAIR PALTIN: Mr. Hopper, any problem with putting that language at the end instead of the beginning?

MR. HOPPER: I think that's fine, as long as...as long as the understanding is that for each case, there would need to be an analysis done of being, you know, consistent with the U.S. Constitution on the...what the project is doing--I mean, in some cases it's not affecting shoreline access at all--and what is being required of the developer. I think that's what to the extent permitted by law would mean. But as long as that's clear, then I think that that can be added in.

CHAIR PALTIN: Thank you, Mr. Hopper. It looks like Mr. Hart has something to add.

MR. HART: I just want to...thank you very much for recognizing me, Chair. I just want to basically request clarification of the Council, just because we're going to be implementing this. So just to go over some brief things, you know, there's SMA exemptions that do not require a permit, there's SMA minor permits that are considered to be development but under \$500,000 in value and require a permit, and then there's SMA major permits. So I guess I would just basically ask for some --

CHAIR PALTIN: Guidance.

MR. HART: -- the way this reads, every single minor permit requires shoreline access if it's a shoreline property, or if it hypothetically would lead to shoreline access. So I just want to make...that's a very broad and far reaching. So for instance, let's say you were building a new tool shed on your property. That's not an exempt action --

COUNCILMEMBER RAWLINS-FERNANDEZ: . . .*(inaudible)*. . .

MR. HART: -- but may require a permit. So clarification or direction for the future will be helpful.

CHAIR PALTIN: Okay. Member Rawlins-Fernandez.

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Chair. If we add the, to the extent provided by law, I think it would satisfy Deputy Director Hart's concern.

CHAIR PALTIN: Deputy Director Hart.

MR. HART: Yeah. So, you know, basically, this is an ordinance, it's part of the General Plan. In the Special Management Area, there needs to be consistency with all County Plans.

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So, you know, this says all or any, you know, it doesn't really seem like there's discretion of the Department or the portion of the Department. Maybe I'm misunderstanding that.

CHAIR PALTIN: Okay. I think the West Maui Community Plan refers to the West Maui Community area. But Member Rawlins-Fernandez had her hand up.

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Chair. Yeah, you're correct. And I think Deputy Director Hart, as he misread it, may have misinterpreted it as all, but it says any. And then it says to the extent provided by law. And the County should be doing this anyway. So any that would trigger this, and not all permits.

CHAIR PALTIN: So then the Planning Department would need to identify the types of triggers is what we would be kind of putting on the Planning Department, Deputy Director?

MR. HART: Right. So when you...earlier I talked about what the permit types were, and when it says any, and then it says permit, you know, that...unfortunately, I would interpret that to mean anytime somebody applies for a permit, we take shoreline access from them. And I just want to...wanted to point out that there are some very small permits that get issued by the Planning Department and that, you know, I would interpret this as meaning we're taking shoreline access from anybody who does anything that triggers an SMA permit. And that can be very large projects, but that can also be very small projects that just so happen to not qualify for an exemption. And so, some level of scale in order to interpret this would be helpful. Otherwise, you know, the way it reads now we would be basically telling everybody, you know, that you're going to have to carve out a shoreline access through your side residential lot because you're proposing to do something that may have triggered a permit.

CHAIR PALTIN: Okay. Before I call on Member Lee, Deputy Director, I just wanted to make a clarification for your tool shed example. That wouldn't meet the criteria of the extent permitted by law according to what Mr. Hopper kind of said because of the relationship. I believe is that correct, Mr. Hopper? Like would a tool shed fit the criteria of that U.S. Supreme Court situation that you had referenced?

MR. HOPPER: It would not. And maybe there's a...instead of just saying to the extent permitted by law, or in addition to that, you could say where...maybe to...basically, you can require potentially shoreline access if the application, what they're doing in their application, could potentially impact shoreline access. So if you're doing something that could potentially cut off access where there is existing access, those are the types of cases where you would say...you would need to provide that public access. So I don't know if there's a way to be more specific on to that, other than just to the extent permitted by law, but I can understand why the Planning Department would maybe want that additional type of clarification. So we could potentially work on language to make that clearer.

CHAIR PALTIN: Thank you, Mr. Hopper. And I think I've put off Chair Lee long enough. Go ahead, Chair Lee.

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COUNCILMEMBER LEE: All I wanted to say was what about any major SMA permit.

CHAIR PALTIN: Okay. Mr. Hopper, would that...Mr. Hopper or Deputy Director Hart, would any SMA major permit resolve the issue?

MR. HART: I think that would be much more helpful. I do think that basically, you know, I would interpret...in the context of Mr. Hopper's comments, my only question would be whether or not this is a pre-established requirement of these types of permits by the County. So it's not an impact interpretation, it's basically a standing statement of what is required to get these permits. So I would wonder whether or not that would be different from analyzing impacts and taking an appropriate mitigation condition. So setting that aside, I do think that saying all major's would be helpful for scale. It would be helpful. Some level of relevant analysis may be more helpful, but I will also add that all majors go to the Planning Commission, which is the final decision-making authority on those permits. But, you know, have some sort of language about an analysis of existing shoreline access in the vicinity, or relationship to the nearest existing shoreline access because, you know, there can be major...there can be one after another SMA major along the shoreline. Some level of scale would be helpful in the future for...

COUNCILMEMBER LEE: You're muted. You're muted.

CHAIR PALTIN: Thank you. Member Lee, followed by Member Rawlins-Fernandez, followed by Member Sinenci, followed --

COUNCILMEMBER LEE: Okay.

CHAIR PALTIN: -- by Ms. Maydan.

COUNCILMEMBER LEE: Okay. SMA major permit within X distance.

CHAIR PALTIN: And I guess to add on to you, Chair Lee, isn't there like an established distance between shoreline access points already? I'm not sure if it was 50 feet or 50 yards or...I kind of recall 50 as being a number. Okay. Member Rawlins-Fernandez, or Deputy Director Hart.

MR. HART: From the Subdivision Code, my recollection is just 1,500 feet --

CHAIR PALTIN: Oh, 1,500.

MR. HART: -- is what they're looking for between.

CHAIR PALTIN: Okay. So SMA major within 1,500 feet of existing shoreline access point.

MR. HART: My earlier...based on my earlier comments, that would be much clearer for us to understand how to...when to apply this.

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CHAIR PALTIN: Okay. Thank you. Member Rawlins-Fernandez.

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Chair. I have a question for Deputy Director Hart.

CHAIR PALTIN: Go ahead.

COUNCILMEMBER RAWLINS-FERNANDEZ: Do you have any clients in the area that...on the shoreline?

CHAIR PALTIN: Do you mean former clients? Because I think he --

COUNCILMEMBER RAWLINS-FERNANDEZ: Sure.

CHAIR PALTIN: -- sold his share.

MR. HART: Yeah. So Chair, thank you very much. So I did have to divest all my ownership of Chris Hart and Partners, and did go to the Board of Ethics for direction on how to, you know, perform my duties as Deputy. And so I don't...I basically recuse myself from all projects that are associated with Chris Hart and Partners, or previously worked on. But there were...yeah, there were definitely clients. So I do have a good amount of experience on this subject.

COUNCILMEMBER RAWLINS-FERNANDEZ: Okay. Mahalo for that information. So you have to recuse yourself when discussing former clients? And so would this discussion involve former clients.

MR. HART: Actually, I did ask the Board of Ethics for direction on how to handle government plans that I might have participated before entering the County. For instance, the SMA and Shoreline Rules for the Maui Planning Commission, and I was instructed that because I was monitoring that on behalf of clients, I had to recuse myself. So, you know, this was not something that I had been working on or monitoring prior. So as far as my past direction from the Board of Ethics, you know, this wouldn't pertain on that.

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

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

COUNCILMEMBER SINENCI: Mahalo, Chair, for the opportunity. I did want to ask Director...Deputy Director Hart, the County has specific public beaches and have rights of way to the beaches in all areas. However, so this amendment would be to include the continuation of access to the shoreline. Because I know that for cultural purposes, especially for cultural practitioners and subsistence and gathering, access to shorelines is also one of the native tenant rights in different areas, specific to Lāhainā as well. So, you know, I know that the County has a website with specific easements or access to

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the shoreline, correct?

MR. HART: Yeah, there is...there is a study that was produced that identified all the existing shoreline accesses.

COUNCILMEMBER SINENCI: Okay. And --

MR. HART: It's a map.

COUNCILMEMBER SINENCI: Okay. And I can go look up that too, Chair. I just wanted to make sure that there is...there's existing access and easements to shoreline already. Thank you, Chair, for the opportunity.

CHAIR PALTIN: Sure thing, Member Sinenci. Ms. Maydan, did you have something to add? I thought I seen you pop up, just checking in.

MS. MAYDAN: Mahalo, Chair. Yes, whatever language your Committee settles on, I just want to point out that this language is a Policy, it is not an Action. So I would recommend whatever you settle on, that it should be incorporated within the Policy Section, and that's how the Department could implement it. It would not be implemented through an Action.

CHAIR PALTIN: Okay. Member Rawlins-Fernandez, are you okay with this being a Policy?

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Chair. I have to think about that for a little bit, if you don't mind.

CHAIR PALTIN: Sure. And Member Sinenci, I'm entering the website information for the shoreline access atlas in the chat. It's www.mauishorelineaccess.net for you. Oh, and Deputy Director Hart put it better than I did.

VICE-CHAIR KING: Chair?

CHAIR PALTIN: Chair Lee has to leave at another meeting at 12:30, so...

VICE-CHAIR KING: Mr. Hopper had his hand up.

CHAIR PALTIN: Oh, sorry. Mr. Hopper, go ahead.

MR. HOPPER: Just...I did pull up the Coastal Zone Management Act, the State law on this issue, and there's various goals, objectives, and policies. They generally would serve the basis for the Planning Commission or the Department for putting conditions on a project. And under recreational resources, it says, provide adequate accessible and diverse recreational opportunities in the coastal zone management area by, and Subsection 3 is, providing and managing adequate public access consistent with conservation of natural resources to and along shorelines with recreational value. So

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that is a goal, objective, and policy of the Coastal Zone Management Act. So I think it's consistent there. But I don't know if maybe pulling some of that language into here would...it would be something we can look at. Right now, I think it just says for every single SMA permit you have to have access. And I think the Coastal Zone Management Act is basically saying, the goal is to maintain a...where there's shorelines with recreational vehicle...recreational...sorry, value, that that's something that should be...that that's something to be preserved. So I don't know if there's a way to look at this as part of the existing thing that the Planning Commission is already required to look at and reference that in there, you know, or what --

CHAIR PALTIN: Mr. Hopper, I just wanted to say I thought we had settled on instead of every single SMA, SMA majors, shoreline access within 1,500 feet.

MR. HOPPER: Oh, okay. If there's --

CHAIR PALTIN: And then --

MR. HOPPER: -- yeah, if there's a revision like that, then we can look at that. If it's SMA major permits, there's probably less of a chance that there would be a relatively minor project. And I didn't know if there was consensus on that either. But you would still need to look at each case and see if the impact of that project is such that you could require by law them to dedicate land to...either to the County or to be open to the public for access in a given case. And so I would want that to be clear. I think with the extent permitted by law, that may help to clarify that. But I wanted to just point out that there is this language in the Coastal Zone Management Act that already supports the idea of doing this, and it's something that hopefully can be folded into the existing permit review framework.

CHAIR PALTIN: Thank you. And Ms. Maydan, I just wanted to clarify, what makes...what distinguishes this as a Policy versus an Action. Because I think the Action would be in the issuing of an SMA major that doesn't have an existing public shoreline access within 1,500 feet would be the Action, like to not issue the SMA major permit unless the...there's an existing public shoreline access within 1,500 feet.

MS. MAYDAN: Yeah. Thank you, Chair, for the question. So the Actions are meant to be discreet projects, or initiatives, or CIP projects that are taken on by the County Departments, and basically, something that you can complete, check off the list, and you move on, whereas the Policies are guidance that Planners and everyone go to when they're assessing projects. So this, as written, would definitely be a Policy that would be used by the Planners to review, as you have it written now, SMA major permits. And so that way it's...while it is an Action statement in the sense of, you know, grammar, absolutely, but that Action will be taken every time that the appropriate project gets reviewed against this Policy. If it's put in as an Action, the Planners in current doing SMA permits would not look to the Action section. So it would basically get ignored.

CHAIR PALTIN: Okay. And then to follow up on that, this would have the force and effect of

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law because it applies to the SMA area, whether it's a Policy...I mean, if it's a policy.
Deputy Director Hart.

MR. HART: Yeah, Chair. You know, I do think so. And I just want to clarify, like I totally support this. I was just trying to point out that it would've been difficult to implement the way it was worded earlier. So an example, the Community Plans establish height limitations that are lower than zoning for certain use types, and that just becomes a force and effect of law. So it's not an impact analysis, it's basically a statement of what will be in this region. And so I think that, you know, it's...from my perspective, or the way I would interpret it, it's solid as it is. I'm not your attorney, but I would feel comfortable, you know, with how the Planning Department is supposed to carry this out the way it's outlined.

CHAIR PALTIN: And you're referring to it in the Policy Section as opposed to the Action Item Section?

MR. HART: Right, right.

CHAIR PALTIN: Okay. And Ms. Maydan, did you have a suggestion of where in the Policies, or what section of Policies it would go to?

MS. MAYDAN: Sure, absolutely. Member Rawlins-Fernandez noted the policy 5.21.

CHAIR PALTIN: Uh-huh. Oh, we can't hear you. Are you still talking?

VICE-CHAIR KING: It looks like she's frozen. Oh, now you're moving. Oh, you're frozen again.

CHAIR PALTIN: Maybe if you mute your video, we can hear you better. It's weird like that.

VICE-CHAIR KING: And just for the record, Chair, Member Molina is on, but his video isn't working. So he's still in the meeting.

CHAIR PALTIN: Yeah, he direct messaged me that.

COUNCILMEMBER MOLINA: Can you guys hear me okay?

CHAIR PALTIN: Yes, we can.

COUNCILMEMBER MOLINA: Oh, okay. All right. Thank you.

CHAIR PALTIN: We can't, however, hear Ms. Maydan, even with her video off. Ms. Eaton, can you --

MS. MAYDAN: Can you hear me now, Chair?

CHAIR PALTIN: Oh, yes, we can. We can hear you now.

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MS. MAYDAN: Okay, terrific. I was saying that you could put this new Policy in the section with the Policy that Member Rawlins-Fernandez pointed out, 2.5.21, that Policy. It could follow that, it could replace that. The second sentence in 2.5.21 reads, require shoreline access to currently privatize shoreline areas by gates and walls. I would say that the language that you all are discussing perhaps provides more guidance and specificity than that sentence. So maybe that sentence could be taken out. But basically in that area, in Section 2 under Goal 5.

CHAIR PALTIN: Okay. Member Rawlins-Fernandez, as restated by our Planning resources, it would be more enforceable in Policies. Any objection to the suggestion to put it there?

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Chair. I would like there to be an Action Item to the corresponding policy.

CHAIR PALTIN: Okay.

COUNCILMEMBER RAWLINS-FERNANDEZ: So I'm working on amendments to make it more actionable.

CHAIR PALTIN: Okay.

COUNCILMEMBER RAWLINS-FERNANDEZ: And in light of time, I am also open to marking this as a revisit. We already have three, I think. So --

CHAIR PALTIN: Okay.

COUNCILMEMBER RAWLINS-FERNANDEZ: -- if you'd like to do that, I can work with the Planning Department to get language that will be more supported by everyone.

CHAIR PALTIN: Sure, sure, I'm amenable to that. We'll revisit this one. And then that just leaves us back to Member Sugimura. And by the will of the body, I think that these are from page 116. I'm not sure if Member Sugimura did --

COUNCILMEMBER SUGIMURA: Thank you.

CHAIR PALTIN: -- find that out. But since we're still open on one, two, and four, and she somewhat put it in, if it's correct it's for page 116, I would abide by the will of the body if they're willing to go back for these two amendments.

COUNCILMEMBER SUGIMURA: So are you going to --

COUNCILMEMBER RAWLINS-FERNANDEZ: No objection, Chair.

COUNCILMEMBER SUGIMURA: Oh, thank you.

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CHAIR PALTIN: Okay.

COUNCILMEMBER SUGIMURA: Yeah, it's the wrong page number.

CHAIR PALTIN: So was it page 116, Member Sugimura?

COUNCILMEMBER SUGIMURA: Yeah.

CHAIR PALTIN: And it would be still 2.03 and 2.08.

COUNCILMEMBER SUGIMURA: 2.03 and 2.08, right, right, correct.

CHAIR PALTIN: Okay. All right.

COUNCILMEMBER SUGIMURA: Thank you.

CHAIR PALTIN: So her first amendment would be for Action Item 2.03, she would like the priority from medium to high, and her reasoning is accidents and injuries have already occurred in this area. And I agree, I do realize some of the problems are that it's a County road sandwiched between two State roads that were not allowed to...you know, it's just difficult --

COUNCILMEMBER RAWLINS-FERNANDEZ: Consensus.

CHAIR PALTIN: Okay. Consensus.

COUNCILMEMBER SUGIMURA: Thank you.

CHAIR PALTIN: And everyone that wants this, raise your hand and say...or say aye.

COUNCILMEMBERS: Aye.

CHAIR PALTIN: One, two, three, four, and then five, six. So that's six with Member Lee excused, Member Sugimura excused, and Member --

COUNCILMEMBER SUGIMURA: I'm here.

CHAIR PALTIN: -- I mean, not, sorry, sorry Member Sugimura, Member Lee, Member Kama, and Member Johnson excused.

COUNCILMEMBER SUGIMURA: Right, right.

CHAIR PALTIN: And then, six, four. Okay. Her next amendment is Action Item 2.08, and she'd like to add ferry passes in, identify opportunities to partner with larger employers, such as hotels, to sponsor bus passes, shuttles, ferry passes, ride share, or other shared ride programs to connect employees to jobs. And her reasoning is, adds another possible

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transportation option for resident workers to get to and from West Maui. Any discussion, Members? Member Rawlins-Fernandez?

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Chair. So just a quick question for Member Sugimura. So you're thinking that West Maui residents would go to Lāna'i to work?

COUNCILMEMBER SUGIMURA: Yes --

COUNCILMEMBER RAWLINS-FERNANDEZ: Does that happen?

COUNCILMEMBER SUGIMURA: -- it's a two-way street.

COUNCILMEMBER RAWLINS-FERNANDEZ: Oh, okay.

COUNCILMEMBER SUGIMURA: That's a possibility.

CHAIR PALTIN: I do know of --

COUNCILMEMBER RAWLINS-FERNANDEZ: West Maui residents go to work?

CHAIR PALTIN: I do know of some people who live in Honokōhau and like that, working on Lāna'i right now because of --

COUNCILMEMBER SUGIMURA: Construction.

CHAIR PALTIN: -- the construction going on. And they usually spend a week in Lāna'i and then come back on the weekends. But I guess if, you know, there were ferry passes, they might come back daily. I believe their employer does provide housing and food while they're on Lāna'i from the one folk that I know. But I...actually, I know two people maybe, at least, and...I mean, I'm not saying I know everybody, but I do know that it...there are folks that live in West Maui and work on Lāna'i.

COUNCILMEMBER SUGIMURA: So we have Gabe Johnson has to go back and forth, right?

CHAIR PALTIN: He lives on Lāna'i and he works on west --

COUNCILMEMBER SUGIMURA: I mean, yeah. Anyway, that's living proof.

CHAIR PALTIN: Kind of opposite but yeah.

COUNCILMEMBER RAWLINS-FERNANDEZ: Okay.

CHAIR PALTIN: So further discussion?

COUNCILMEMBER RAWLINS-FERNANDEZ: Nope, in support.

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CHAIR PALTIN: All those in favor, raise your hand and say aye.

COUNCILMEMBERS: Aye.

CHAIR PALTIN: Okay. So same thing, six in favor, measure...amendment passes, and we have Member Lee, Johnson, and Kama excused. Okay. Members, we finished Section 4 first pass through, and we do have a couple of items to follow up on our second go around. But yay, before Budget, good job. Any burning need to discuss, say, anything more? I think we've done Section 1, 2, and 4 first pass around. There are some additional revisits that we've mentioned specifically for 1, 2 and 4. But we'll take all of that up after Budget, as well as...so the schedule moving forward, we'll adjourn this meeting, then after Budget, the first meeting we'll take up is Community Plan designations. And either we'll word it in such a way that we're only talking about Community Plan designations and not the rest of the Community Plan so that we can understand Community Plan designations without the pressure of Maps bearing down on us. And then after we decide on that Community Plan designations and understand it fully, then we'll take up Section 3 and 5, which is the Maps and the Appendices. I did want to note that some of the information that Members had asked for has been uploaded already. Member Sugimura asked for the list of Alaka'i, and I just wanted to note that there's quite a few typos in folks' names of the Alaka'i that were uploaded. And if anyone wants to know their proper spelling, I can try and provide it. And then I think we provided...Member Rawlins-Fernandez, she asked for the accuracy of the Esri data, and we had provided that to her Staff, so...and I...and so any questions about the process moving forward? I feel like we've laid it out pretty well. Everybody understand where we're going from here, any questions?

COUNCILMEMBER SUGIMURA: Question?

CHAIR PALTIN: Okay. And Staff, is there anything else I need to do before I adjourn today? Do I need to defer this?

COUNCILMEMBER RAWLINS-FERNANDEZ: Member Sugimura has a question.

CHAIR PALTIN: Oh, sorry. I'm not seeing her picture on the screen. Member Sugimura.

COUNCILMEMBER SUGIMURA: Thank you for the maps, by the way, and I am...my office did get copies of it in the 11 by 14 format, which is way easier to read than what's in our West Maui Community Plan booklets. Do you also have the Maui Island Plan maps separate? Could we...could I ask for that?

CHAIR PALTIN: I think...is that not publicly available information, the Maui Island Plan maps?

COUNCILMEMBER SUGIMURA: I...it is, and it's probably harder to access. And I was just wondering if you could ask the...whoever created your maps that we just received to also put a copy of that also...send over a copy of that also.

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CHAIR PALTIN: Okay. Ms. Maydan, or Ms. Eaton, any comment on that request? You're still --

MS. MAYDAN: I was giving...I was giving Pam a moment, if she wanted to respond. Oh.

CHAIR PALTIN: Oh, I see her.

MS. EATON: They might prefer your response, Jen. My initial reaction is these are publicly available, everybody has the Maui Island Plan, and this was a major effort. So am I to understand that you now want Maui Island Plan maps for West Maui, right, 11 by 17 size, hard copy?

COUNCILMEMBER SUGIMURA: And that's what I'm asking for. But if it's easily accessible, then I'm fine.

MS. EATON: Jen might have the friendlier response.

CHAIR PALTIN: My preference would be if you can just provide us the link.

COUNCILMEMBER SUGIMURA: Link.

CHAIR PALTIN: I think, you know --

MS. EATON: Absolutely.

CHAIR PALTIN: -- we don't need to get a little bit carried away there.

MS. EATON: Sure.

COUNCILMEMBER SUGIMURA: Thank you.

MS. EATON: I know Council Services has that as well, but we'll double check.

CHAIR PALTIN: Okay. Thank you. And then, do I need --

VICE-CHAIR KING: Chair?

CHAIR PALTIN: Yes, Member King.

VICE-CHAIR KING: Thank you. Real quickly, maybe Pam...I just wondered if anybody else...my copy of the Plan has pages 161 to 168 upside down in the...it was bound that way. Did anybody else get that? And if not, can I ask Planning if I could get a copy that has all the pages correctly bound? I just had to rip them out and I am afraid I'm going to lose them, but they were upside down...upside down and backwards.

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CHAIR PALTIN: I see a message from Pam Eaton. She said, sure thing, Member King. And I see the link to the Maui Island Plans has been provided. I just am checking, do we need to make a formal motion to formally accept all the amendments we agreed on by vote without a motion, or are we okay to just straight defer at this time?

VICE-CHAIR KING: Chair?

CHAIR PALTIN: Member King.

VICE-CHAIR KING: You know, when we do the corrections for...and Member Rawlins-Fernandez probably remembers this because she was in good attendance most of the time, but when we did the Moloka'i Community Plan, we did all the amendments by consensus. And so they all got put in there, and then the vote that was taken was on the amended Plan, so they were all...you know, we did one...I guess everybody did a review to make sure all the changes were in there that we had done by consensus. But we can do it either way. If you need a vote, we can take a vote. But personally, I don't think it's necessary at this point.

CHAIR PALTIN: Okay. Mr. Mitchell, any legal opinion on that? No need for formal motion? I can just defer this item.

MR. MITCHELL: I'm sorry, Chair, could you repeat the question again? I was multitasking there and so I didn't hear exactly what was going on.

CHAIR PALTIN: Oh, no problem. I just was wondering; we made all these amendments by vote without any motion. Is there any need whatsoever to make a formal motion to accept all the amendments that we voted on without a motion?

MR. MITCHELL: If you're operating as a small board, under Roberts Rules, you can proceed without making the motion, Chair.

CHAIR PALTIN: Okay. So I --

MR. MITCHELL: But that's up to your discretion.

CHAIR PALTIN: -- can go ahead and defer now?

MR. MITCHELL: That's correct.

CHAIR PALTIN: Okay. All right. Committee Members, if there are no objections, the Chair will defer this item.

COUNCILMEMBERS VOICED NO OBJECTIONS (Excused: ALL, GJ, and TK)

ACTION: DEFER PENDING FURTHER DISCUSSION.

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CHAIR PALTIN: Okay. Cool. This concludes today's Planning and Sustainable Land Use Committee meeting. Thank you very much, Members. And I understand that there was some question, HCP will still be continuing at 5:30...or occurring at 5:30 under the direction of Vice-Chair Sugimura; is that correct?

COUNCILMEMBER SUGIMURA: Yes. In fact I was going --

CHAIR PALTIN: . . . *(inaudible)* . . .

COUNCILMEMBER SUGIMURA: -- to announce it.

CHAIR PALTIN: Oh, okay, go ahead, announce it. Don't let me steal your fire.

COUNCILMEMBER SUGIMURA: Yeah. So not all of you are Members, so it's Chair Kama, of course, I'm going to be Chairing the meeting, Alice Lee, Tamara Paltin, and Shane Sinenci. So all the rest are welcome to join us. It's a meeting regarding the Pā'iā Youth and Cultural Center and their lease. And we're hoping for community input, which is the intent of this, as well as you can hear a summary of what's happening with Parks. So thank you.

CHAIR PALTIN: Thank you for that update and precursor. The time is now 12:49. Good work, Members, and this meeting is adjourned. . . . *(gavel)* . . .

ADJOURN: 12:49 p.m.

APPROVED:



TAMARA PALTIN, Chair
Planning and Sustainable Land Use Committee

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CERTIFICATION

I, Marie Tesoro, hereby certify that pages 1 through 35 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 20th day of April 2021, in Wailuku, Hawai'i

A handwritten signature in black ink, appearing to read "Marie Tesoro", written over a horizontal line.

Marie Tesoro