

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

**MINUTES**

**June 16, 2022**

**Online Via BlueJeans**

**CONVENE:** 9:00 a.m.

**PRESENT:** Councilmember Tamara Paltin, Chair  
Councilmember Kelly Takaya King, Vice-Chair  
Councilmember Tasha Kama, Member  
Councilmember Alice L. Lee, Member (out 12:00 p.m.)  
Councilmember Michael J. Molina, Member  
Councilmember Keani N.W. Rawlins-Fernandez, Member (in 10:51 a.m.)  
Councilmember Shane M. Sinenci, Member

**EXCUSED:** Councilmember Gabe Johnson, Member  
Councilmember Yuki Lei K. Sugimura, Member

**STAFF:** Wilton Leauanae, Legislative Analyst  
Jerry Paredes, Legislative Analyst  
Lesley Milner, Legislative Analyst  
Richard Mitchell, Legislative Attorney  
Clarita Balala, Committee Secretary  
Lenora Dinneen, Council Services Assistant Clerk

Lance Taguchi, County Auditor, Office of the County Auditor

Mavis Oliveira-Medeiros, Council Aide, Hana District Office.  
Denise Fernandez, Council Aide, Lanai District Office  
Christian Balagso, Council Aide, Lahaina District Office  
Anabelle Hernandez, Council Aide, Makawao-Ha'ikū-Pā'ia District Office  
Daniel Kanahele, Council Aide, South Maui District Office

Roxanne Morita, Executive Assistant to Councilmember Gabe Johnson  
Evan Dust, Executive Assistant to Councilmember Tasha Kama  
Davideane Kama-Sickels, Executive Assistant to Councilmember Tasha Kama  
Lois Whitney, Executive Assistant to Councilmember Tasha Kama  
Ellen McKinley, Executive Assistant to Councilmember Kelly Takaya King  
Kainoa Kaumeheiwa-Rego, Executive Assistant to Councilmember Keani N.W. Rawlins-Fernandez  
Dawn Lono, Executive Assistant to Councilmember Shane M. Sinenci  
Jordan Helle, Executive Assistant to Councilmember Yuki Lei K. Sugimura

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

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Sandy Baz, Managing Director, Department of Management  
Marcy Martin, County Real Property Tax Administrator, Department of Finance  
Michele McLean, Director, Department of Planning  
Jacky Takakura, Administrative Planning Officer, Department of Planning  
Gail Davis, Supervising Zoning Inspector, Department of Planning  
Johann Hall, Geographic Information System Analyst, Department of Planning

**OTHERS:** Don Dempsey  
Michael Baskin  
Rory Frampton  
Bob Fondiller  
Junya Nakoa  
Thomas Croly

Tyler Kimura, Partner, Spire Hawaii LLP  
(6) additional attendees

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

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CHAIR PALTIN: . . .*(gavel)*. . . Will the Planning and Sustainable Land Use Committee of June 16th come to order. The time is now 9:00 a.m. And if I can request everyone please silence their cell phones or any noisemaking devices, that'll help our cause. My name is Tamara Paltin and I'll be your Chair for today's PSLU meeting. And I'm in the Council Chamber with our Staff, and that's it, nobody else. Members, in accordance with the Sunshine Law, if you are not in the Council Chambers, which you're not because I don't see anyone, please identify by name who, if anyone, is in the room, vehicle, or workspace with you today, and that only applies to our Members, not anyone else. Also, please see the last page of the agenda for information on meeting connectivity. So, we have with us this morning our Vice-Chair, Councilmember King. Sannu and aloha kakahiaka.

VICE-CHAIR KING: Okay. Sannu and aloha kakahiaka to you. Boy, you have to...when you're...when you're in different areas you have to bounce back and forth between the buttons you use so you don't create that echo. I am today at my home office, and there's actually no one else in the house with me at this point. Our district office has no testifiers this morning. And I just would like to say that I love Mr. Sinenci's, what we used to call, shocking pink shirt. Nice color. All right. Thank you, Chair.

CHAIR PALTIN: Yes, very trendy. Next up we have Gabe Johnson, who's excused until 6/24. And then from the neighborhood we have Member Tasha Kama. Sannu and aloha kakahiaka to you.

COUNCILMEMBER KAMA: Aloha kakahiaka, Chair, and sannu to all of my colleagues. I'm home in my workspace, and I am alone in this workspace, but Lena is home because

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she has...she's sick, and so she's in the next room. So, if you hear songs, it'll be her. Thank you, Chair.

CHAIR PALTIN: I love songs. Okay. And next up we have Chair Lee. Sannu and aloha kakahiaka to you.

COUNCILMEMBER LEE: Good morning, aloha, and sannu. And that comes from West Africa, which is close to where Benin is, the...this is Nigeria, Africa. Sannu. I'm home in my office alone, and will be in the main office in the County Building at lunchtime. Thank you.

CHAIR PALTIN: Nice. Okay. And next up we have, from under the virtual bridge of Makawao, Councilmember Mike Molina. Sannu and aloha kakahiaka.

COUNCILMEMBER MOLINA: Sannu and aloha kakahiaka to you, Madam Chair, my colleagues and everyone else tuning in for our PSLU meeting today. And yes, I'm transmitting out of my residence here in Makawao, and there's no one present here with me. And looking forward to a...a very productive meeting. And I've been informed there are no testifiers at the Pā'ia District Office. Aloha.

CHAIR PALTIN: Aloha. And next up, Councilmember Keani Rawlins-Fernandez informed us that she is in transit, so she'll be here a little bit later. Next up, Councilmember Shane Sinenci in the shocking pink attire. Aloha kakahiaka and sannu.

COUNCILMEMBER SINENCI: Sannu, Chair, and aloha kakahiaka. I'm broadcasting from my home office today. And Ms. Medeiros just chatted that there are no testifiers at the Hāna District Office. It's actually red, but I think it's just --

CHAIR PALTIN: Oh.

COUNCILMEMBER SINENCI: -- sun's coming...

CHAIR PALTIN: Technology. The digital pixels or something. Okay. And last, but not least, from jacaranda country, we got Councilmember Yuki Lei Sugimura. She did inform us she'll be a little bit late, and she also needs to leave early, so there is that. From the Administration...oh, and we don't have any testifiers in the West Maui District Office I've been informed. From the Administration we have Planning Director Michele McLean on all items. From the County Auditor we have Auditor Lance Taguchi for PSLU-14, and Tyler Kimura, Partner of Spire Hawai'i LLP, also for PSLU-14. And Sandy Baz, our Managing Director or a representative, also for PSLU-14. Our Deputy Corporation Counsel is Michael Hopper on all items. And it looks like we have the lovely Ms. Marcy Martin from Finance for PSLU-55. Our Committee Staff for today, we have Clarita Balala, our Committee Secretary; Legislative Analysts Wilton Leauanae and Jerry Paredes; and our Legislative Attorney is Richard Mitchell, with Assistant Clerk Lei Dinneen also helping out. On the agenda today we have four items, being a little ambitious here...got to catch up with Member Molina...PSLU-14, Review, Assessment, and Audit of the Department of Planning, ZAED Division; PSLU-55, Resolution 22-149,

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Relating to Amending the Kihei-Mākena Community Plan Land Use Designation and Change in Zoning for Wailea Point Village, from Councilmember King; also PSLU-51, Status of Active Conditional Permits; and our standing item for this time, PSLU-53, South Maui Community Plan Update. And Members, that's just if you had any process suggestions that you wanted to email to the Committee, we can upload it during Committee time. So, we're not necessarily going to discuss, but if you had any process suggestions, we'll accept it during Committee to upload for other Members to read. Because we're still accepting applications, so we can do a little plug for that...still accepting applications. All right. Testimony. Let's begin with public testimony. Oral testimony via phone or video conference will be accepted. Also, as noted on today's agenda, in-person testimony will be accepted in the Council Chamber and at the six courtesy testimony sites. Testifiers wanting to provide audio testimony should call 408-915-6290 and enter meeting code 149 341 846, also noted on today's agenda. Written testimony is encouraged and can be sent via eComment. Search for the meeting date on [mauicounty.us/agendas](http://mauicounty.us/agendas), click on the eComment link, then select the agenda item to submit comments on. Oral testimony is limited to three minutes per agenda item. When your name is called, please unmute yourself by clicking the video and microphone icons, or if calling in, press star four to unmute yourself. Please be courteous to others, muting video and audio while waiting for your turn. And if we have some static with the audio, we might ask you to mute your video because sometimes that helps with bandwidth issues. When testifying, please state your name, please also state if you are testifying on behalf of an organization or are a paid lobbyist. If you have joined this online meeting, Staff will assume you wish to provide testimony and will add you to the list of testifiers. Once you are done testifying, or if you wish to view the meeting without providing testimony, please disconnect from the BlueJeans meeting. You may continue viewing on *Akakū* Channel 53, Facebook Live, or [mauicounty.us](http://mauicounty.us). Once oral testimony concludes, only Councilmembers, Staff, and designated resources will remain online, and all others will be dropped from the BlueJeans connection. A link to the list of testifiers is posted in the chat. Please be mindful that chat should not be used to provide testimony or to chat with others during the meeting. Members, I would like to proceed with oral testimony. We have about 11 names on the list, so...and a full agenda, so please stick to clarifying questions that narrowly ask the testifier to clarify something the testifier actually said. And in answering clarifying questions, an appropriate response to a clarifying question clarifies what the testifier previously testified to without adding additional or expanding testimony. And...okay. So, our first name on the list is a testifier with the handle of Guest. The first...there's actually two guests, but one just showed up and one showed up early on in the beginning. Guest? We're...we're ready for your testimony.

UNIDENTIFIED SPEAKER: Hello?

CHAIR PALTIN: Oh, there's three guests. I'm unmuting some Guests. And you will need to unmute yourself on your end if you're the first Guest that logged on. Okay. Hearing nothing. Let's move on to our next testifier by the name of Tara. I have unmuted you on our end, and you may proceed with your three-minute testimony. I have Staff ready with the timer. And if you are wanting to give testimony, now is your opportunity, Tara. Okay. I can't unmute you, I've unmuted you on our...our end. So, then moving right

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along, it says Paul Critchlow, but I think he works with Planning. So, Mr. Critchlow, did you want to testify or were you just watching? Just watching. Right on. Thank you. Okay. Next up we have a testifier with the name Renee. Renee, were you wanting to testify or...no, just watching. Okay. And next up we have Don Dempsey. Don Dempsey, were you wishing to testify? It's your turn if...if you did.

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

MR. DEMPSEY: Can you hear me?

CHAIR PALTIN: We sure can. Go ahead.

MR. DEMPSEY: Oh, okay. Yeah, I just wanted to tell our story. We bought at Wailea Point in 1999 and have been in Maui now for 23 years. We rent our unit, and have...I bought the unit with the idea that I could rent it for one month minimums, which we've been doing for 23 years without incident. Now, I guess the...a lot of the residents...I already pay the highest property tax rate, but I guess the residents who don't rent have now been kicked up to that rate, and as a result, they want to rezone Wailea Point, which would mean I could not rent my unit for less than a year, which means I would have two choices. One, my wife and I could no longer visit Maui, which we do six months out of the year, five-and-a-half months out of the year because the unit would be rented for a year, which would be useless for us. Or I would forgo the revenue which allows me to stay there. So, as a result of this legislation or the tax rate, if this rezoning goes through I will, I guess, lose my unit. That seems very unfair to me. It seems unfair to me, first of all, that I bought the unit with the idea that I could rent it, now people are going to tell me that I can't rent it. That seems unfair to me. So, anyway, that's my situation. There's other people in that situation at Wailea Point. The majority, I guess, do not rent, therefore that's why this rezoning started, I guess, because they are...want to reduce their...the price...the tax increase that's been imposed on them. So, anyway, I think the real problem is the tax increase itself, which to me...ridiculous actually...I guess it's...I guess 70 percent tax increase for the people that...that...that don't rent have been kicked up to the level they can. And so nobody...not only has their...has their cost increased dramatically, but they're prevented from renting, which may offset that...that increase. So, that's my situation. So, I would just like to plead to the...to the Councilmembers that we either do not approve rezoning and leave things as they've been for the last, in my case, 23 years, or reconsider the tax increase for...for the people that are...that are there and don't rent. Thank you for your time.

CHAIR PALTIN: Thank you, Mr. Dempsey. Let me see if we have questions for you. Member Sinenci, you have a question for Mr. Dempsey? Followed by Member King.

COUNCILMEMBER SINENCI: Thank you, Chair. And aloha, Mr. Dempsey. I did receive your email, but just for clarification, so if 67 percent of the rest of your unit owners agree to this, then you would have to also comply; is that correct?

MR. DEMPSEY: Yeah. The first there's an internal vote that's...that would require 67 percent

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majority to change...to...to solicit a change in the...in the zoning requirements. And if that passes, which I think it most certainly would because there's, I think, only maybe 15 units or something, I'm not exactly sure of the amount...exact numbers of units in Wailea Point that do rent on a monthly basis. So, yeah, that's...that's...that's correct.

COUNCILMEMBER SINENCI: Okay. Thank you. Thank you, Chair.

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

VICE-CHAIR KING: Thank you, Chair. Aloha, Mr. Dempsey. I did receive your email. So, this...this request that we're considering today is coming from the HOA, so just wanted to find out what...what, if any, HOA meetings that you attended to discuss this matter?

MR. DEMPSEY: No, I...I just...I just...to be honest, I just found out about it myself recently. So, I...I have...I have not heard about the...I did not hear about any meetings to discuss this, pro or con. I did ask for the legal rationale behind this, and was told by the community manager that I couldn't have it because it was a private...it's a private matter, even though I helped pay for the lawyers that...that gave him the opinion. So, I was told that, and I was also told that the 67 percent majority was accurate because I had heard from another source that it might be 100 percent from the original documents. So, that's my source of information.

VICE-CHAIR KING: Okay. It was just in a conversation with the management. You didn't attend the HOA meeting to address this?

MR. DEMPSEY: No, I was not aware that there were HOA meetings to discuss it. I was not informed that there were HOA meetings to discuss it.

VICE-CHAIR KING: Okay. All right. Thank you for your testimony. Thank you, Chair.

CHAIR PALTIN: Thank you, Member King. Anyone else, questions for the testifier? I did have one question. So, Mr. Dempsey, like just, you know, to clarify and make it simple for everyone watching that didn't receive the email, you're not in support of the Change in Zoning --

MR. DEMPSEY: No, I'm not.

CHAIR PALTIN: -- and Community Plan Amendment?

MR. DEMPSEY: Because like I say, if they change the --

CHAIR PALTIN: Yeah.

MR. DEMPSEY: -- zoning so that I could not rent...

CHAIR PALTIN: Thank you. I just wanted to clarify, you're not in support, correct?

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MR. DEMPSEY: Yeah. No.

CHAIR PALTIN: Okay. All right. Thank you. We'll...we'll take that into consideration when we get up to this item. Thank you. Next up it looks like we have Leslie Toro. Leslie Toro? Let me unmute you on our end. Oh, just watching. Okay. Next up, Michael Baskin. Michael Baskin? Michael Baskin, it's your turn to testify. You're not muted on our end.

MR. BASKIN: Good morning. Can everyone hear me?

CHAIR PALTIN: Yes, we can.

MR. BASKIN: Thank you kindly. Good morning. My name is Michael Baskin, and thank you for the opportunity to testify regarding the audit, County Communication 21-97. I've been saying for many years that Michele McLean, the Planning Director, has had a personal vendetta for the past eight years against me and my companies. We are one of the largest employers on the North Shore of Maui, and we employ over 100 local people on the North Shore. Michele McLean has been making an all-out effort to shut down our businesses for the past eight years. This goes back to when her husband, Paul McLean, gave a proposal to build on a property that we designed. When we found out he was not a licensed contractor, we gave the project to someone else. He then assaulted me on three different occasions, and a restraining order was ordered by Judge Blaine Kobayashi. We requested that Michele McLean recuse herself from all the matters relating to our projects, but instead, her personal vendetta was used with the County's own resources against us, using her power to try to shut down our businesses. These County resources cost the County millions of dollars in legal fees that the public had to pay, and the millions of dollars that were...that we had to pay in our attorney fees to defend our small businesses could have instead benefitted the town and charities that we support. Now, the County's own Building Supervisor has circulated a report showing Michele and her husband Paul McLean have been buying houses, doing major improvements with no permits, and flipping them for profits...the last house for over \$385,000 in profits, all while Michele McLean is working for the County. This is no surprise to me. The audit that you have today now clearly shows her true colors when her own Staff in the report is saying you can get a promotion by helping her and her personal gains or vendettas. I hope that you all will take this report very seriously today, and at minimum, there should be a consideration for an indictment against the Planning Director based on the County's own ordered audit. Mahalo.

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

MR. BASKIN: Thank you.

CHAIR PALTIN: Next up we have two individuals with the handle of Guest. So, I don't know that it matters who goes first, but you're both unmuted on our end. Anyone using the handle Guest, it's your turn to testify. Or you can type in the chat that you're just watching. Just observing. Okay. One guy said just observe...or guy or girl. And the

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other one also said watching. Okay. Moving on, we have Rory Frampton, it's your turn to testify, followed by Gail Davis, who is with Planning, so maybe just watching as well, and then Brittany. That's our last three. Rory Frampton, Gail Davis, then Brittany. And if you don't intend to testify, it helps our cause if you write it in the chat. Mr. Frampton?

MR. FRAMPTON: Aloha...aloha, Chair. Can you hear me?

CHAIR PALTIN: We sure can.

MR. FRAMPTON: Okay.

CHAIR PALTIN: Go ahead.

MR. FRAMPTON: Aloha. My name is Rory Frampton, I'm a planning consultant, and I'm assisting Wailea Point Village AOA with their processing of the Change in Zoning in the Community Plan Amendment. This item was put together by...with the assistance of Councilmember King's Office, and we want to thank Councilmember King for helping move this along. I'm available if there's any questions. I don't have anything specific to offer at this point.

CHAIR PALTIN: Okay. Member King has a question for you.

VICE-CHAIR KING: Oh, actually a question for you, Chair. Thank you for being here, Mr. Frampton. Can we...if there are no objections, can we ask Mr. Frampton to be a resource when we get to the item?

CHAIR PALTIN: Any objections, Members?

**COUNCILMEMBERS VOICED NO OBJECTIONS.**

VICE-CHAIR KING: Can you do that, Rory?

CHAIR PALTIN: Okay. Mister...Mr. Frampton, are you available? We're...this is second on the agenda. We're going to be taking up the assessment first.

MR. FRAMPTON: Yes, I...I can be available.

CHAIR PALTIN: Okay.

MR. FRAMPTON: Would I just...would I just stay on BlueJeans then?

CHAIR PALTIN: Sure. Yeah.

MR. FRAMPTON: Okay. Thank you.

CHAIR PALTIN: Unless you want Member King to call you when your item comes up.



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MR. FRAMPTON: That's okay, I can monitor.

CHAIR PALTIN: Okay. All right.

VICE-CHAIR KING: Thank you.

CHAIR PALTIN: And Gail Davis and Brittany have indicated that they are just watching and not intending to give testimony. I do see Mr. Nakoa said he would like to testify on PSLU-14. It's your turn to testify. And then after that, we have testifier with the...oh, he left the call. Okay. So, we have testifier with the last four digits 2211 is next. And I will unmute you on our end. Go ahead, 2211.

MR. FONDILLER: Yes, hello. This is Bob Fondiller, full-time Maui resident living at Wailea Point.

CHAIR PALTIN: Okay. Did you wish to give testifier [sic], Bob Fondilla? Is that Fondilla, how you spell that?

MR. FONDILLER: Yes, Fondiller, F-O-N-D-I-L-L-E-R.

CHAIR PALTIN: Fondiller. Okay. Thank you. If you'd like to testify, you can proceed.

MR. FONDILLER: Press C?

CHAIR PALTIN: Proceed like start, begin, commence. Three minutes.

MR. FONDILLER: Okay. Oh, you want me...you want me to go now?

CHAIR PALTIN: Yes.

MR. FONDILLER: Sure. Yes, I have been working with Councilmember King for three or four months now, trying to resolve this particular property taxing issue with...with Maui County through Councilmember King. And we have polled our own, there's 90 percent of the Wailea Point owners do not rent, they are simply part-time residents who have a main residence in Washington, in California, usually someplace on the mainland. We have approximately 10 percent of our owners who do rent on a short-term basis, short term for us being 30 days or more. With the passage of ordinance, I think it was 5160, approximately a year and a half ago, our...most of our owners again try to...90 percent or so saw their property taxes increase 70 to 80 percent. We tried to figure out what we might be able to do to help the people who don't rent, who do not have the ability to increase their...their rental fees to offset some of those tax increases. And then working with Councilmember King, the one thing we decided upon is if we changed our zoning ordinance from Hotel to Apartment/Residential, then most of our owners again who are part-time residents but do not rent would be able to come back into the Non-Owner Occupied classification as opposed to the Short-Term Rental classification which Ordinance 5160 placed them into. So, we basically been working with the

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Councilmember trying to push this through with us being willing to give up short-term rentals at Wailea Point. We certainly would still allow long-term rentals, which we understand now to be effective July 1st, one year or greater. But we...we took a vote of our owners and approximately 75 percent of them said they would like to do this. I believe it was 13 percent said no, and 12 percent did not register an opinion, so we had fairly overwhelming support for going ahead and doing this. And I've been the primary person within Wailea Point who has been coordinating with Councilmember King and her Staff as we've tried to, you know, move this through the County process. So, in...in a nutshell, that's how we got here and, you know, that's where we stand, and that's what we are hoping to achieve with the particular resolution that Councilmember King has...has put forward with the two associated ordinances. . . .*(timer sounds)*. . .

CHAIR PALTIN: Okay. Mr. Fondiller, does that conclude your testimony? The...the timer just --

MR. FONDILLER: Yes.

CHAIR PALTIN: -- went off. Okay. Members, any questions for the testifier? Councilmember King?

VICE-CHAIR KING: Thank you, Chair. Since Mr. Fondiller was the original proponent of this proposal, could we have him also as a resource person if there are no objections from the Committee? And if you can stay on, Bob?

MR. FONDILLER: Yes, I'd be happy to do that.

CHAIR PALTIN: Members, any objection?

**COUNCILMEMBERS VOICED NO OBJECTIONS.**

CHAIR PALTIN: Okay. All right. You can go ahead --

MR. DEMPSEY: I...I have a --

CHAIR PALTIN: -- and stay on the call.

MR. DEMPSEY: -- question.

CHAIR PALTIN: Who is that?

MR. DEMPSEY: This is Don Dempsey. I have a question, or just maybe a point of clarification.

CHAIR PALTIN: Mr. Dempsey, testimony is not the time to do that, but you know, in all fairness, if you would like to be a resource as well. Members, is there any objection to Mr. Dempsey also being a resource?

**COUNCILMEMBERS VOICED NO OBJECTIONS.**

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CHAIR PALTIN: Okay. Mr. Dempsey, was that kind of along the lines of your point of clarification?

MR. DEMPSEY: Yeah. Well, I mean I could tell you in 2...30 seconds what I...what I...

CHAIR PALTIN: No, no, you cannot right...not right now.

MR. DEMPSEY: Oh.

CHAIR PALTIN: You'll have to wait with the other resources because you already had your testimony time. So --

MR. DEMPSEY: Oh, okay.

CHAIR PALTIN: -- when this item comes up, we have three resources so far.

MR. DEMPSEY: Okay. Fine.

CHAIR PALTIN: Okay. Thank you.

MR. DEMPSEY: Thank you.

CHAIR PALTIN: Okay. Next up we have Junya Nakoa, to be followed by Tom Croly.

MR. NAKOA: Good morning. You guys can hear me?

CHAIR PALTIN: Yes.

MR. NAKOA: Yes, sir. Yeah, I going talk about the assessment yeah. Oh, shit. I going turn off my TV.

CHAIR PALTIN: Perfect.

MR. NAKOA: Okay. Yeah, so I went receive the assessment, I went send 'em to all you guys, I went read 'em. You know, I mahalo...I think...I think it came from Mike Molina's Office for have the...for the guys do the audit or the assessment, so was...mahalo, Mike. You guys know how long I been asking for this. I also think we still need one TIG because, you know, reading that, all those pages about that report, it pretty much pointing the finger to the leaders, and it starts from the top, you know. It starts from the top. To...I sorry, Mayor Victorino, Sandy Baz, the...the Tyson Miyake guy. I try call their office and I get nothing, no response from that office about this kind issues. Zero. I talk to Sandy Baz's assistant, and she tell me she going tell 'em, and I still da kine, no get nothing. You know what I mean? So, I mean and then for sure it's Michele McLean. I...I...yeah, I lucky I...you know, like she said in private meetings, you know, she does answer my emails, she answer my calls, she return my calls. But sometimes I think that buggah is not working, you know. Tell me...she tell me certain things, she email me certain

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things, giving some false...false expectations by the Department that...you know what I mean, that the local applicants--just remember this, brah--local applicants get hard time for get their permits. And then because of the screwups and the flawed system by the permitting guys, these guys they lose...they lose the...their building loans because takes so long because of the whole inflation or whatever you want to call it for the banks and whatnot. Okay. And Michele...I get emails of Michele McLean talking about one recent thing that I been working on for the past two months because I figure I go try...I go try be the...I try be the guy to help these locals get these permits because I know all these million-dollar developers, they get people, they pay people to do this, call up the departments every day, check on the County, this and that. So, I went go try do 'em, yeah. And the two properties that I been working on lately, I getting pointed left, right, up, down, don't know where to go. Okay. And I wanted for talk to this...about this to Michele McLean and...and then, you know what, I mahalo Jordan Molina, he came up at the meeting too. . . .*(timer sounds)*. . . Just us two guys. And yeah, I going just say I get plenty more stuff for say, but I going just...I going try finish 'em up here. Is this thing needs to be investigated more deeply. Like I tell you right now, the ZAED, tell this applicant something and then I call up Michele McLean, I email Michele McLean, she tell me, oh, that's wrong. And then after that, one month later, she tell me oh, no, you know what, they was right. You know what I mean? It's what, yes, no, whatever. So, I think they should come up with one timeline so they know where the...the applicant know where to start, who to go next, where...where...and each person to go next to instead of going back and forth, up, down, left, right. That's the problem with this permitting process and this Department. You know with Greg Brown, no problem, no problem. They...they went all of a sudden lose some square footage in one house. The one applicant I'm dealing with is to do with square footage of a garage, one garage, and we have built this guy's house right next door --

CHAIR PALTIN: Mr. Nakoa --

MR. NAKOA: -- to his house *(audio interference)*.

CHAIR PALTIN: -- if you can conclude your testimony.

MR. NAKOA: They...they...yeah, I going finish right now. And you know what, the house next door get one 1,200-square-foot garage. We just...that's what we like in the next...the next...the next property that we building right now. And you know what, we getting the run around by this Department. It needs to be checked on, it needs to be changed. Mahalo.

CHAIR PALTIN: Thank you. Members, questions for the testifier? Seeing none. Thank you for your testimony today. Next up we have Mr. Croly on PSLU-55.

MR. CROLY: Aloha, Committee Members. Tom Croly. I have nothing to do with Wailea Point, but I heard a couple of the testimonies and I just wanted to kind of add something to it that might help the Council and might help the...the folks at Wailea Point. And that is as everyone knows, the tax classification for those folks in Wailea Point who don't rent short-term was changed to Short-Term because of, you know, what happened two years

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ago. Now, I think some of those folks who are asking for the zoning change right now may be expecting that their tax rate is going to go back down to what it was before at the Non-Owner Occupied rate. And I think that it should be explicitly stated in this meeting that the rates get set every year, and the rates that the Council decided on this year were quite a bit higher than they used to be. So, if this change goes through, those folks are not going to go back down by 60 percent from where they are right now. And of course, next year things could be different. But specifically, these are very high-value properties. They go from 2 million to \$10 million, so these are ones that will be hit by the highest tier...some of them at least will be hit by the highest tier that the...that the Council set this year, which was \$12.50, which was actually higher than the...the rate for the short-term rentals. So, just, you know, on...on the idea of everyone understanding what might be the effect of the zoning change, make sure that's clear. I think the other thing that should be made clear would be the options that people have, and one of those options, of course, is to live in their unit full-time and they would get the extremely low Homeowner rate, or rent their unit for more than a year, and they would get the new extremely low Long-Term rate. Of course, most of those folks aren't planning to do that because most of those folks, as was stated, are part-time residents and want to use their units for up to six months a year themselves, so they're not going to do that. And again, I just want to point out one more thing relative to that. All those part-time residents in Wailea Point that use their units for six months, they are counted in our visitor count, okay. So, even though they're here for six months and they kind of act like a full-time resident when they're here, they are counted as part of our visitor count when we're...when we're doing those calculations. That's all I had to add. Thank you, Chair, for the opportunity.

CHAIR PALTIN: Thank you, Mr. Croly. As always, very informative. Members, questions for the testifier? Chair Lee?

COUNCILMEMBER LEE: Hi, Tom. Okay. So, you're saying that in the Non-Owner Occupied category, their taxes...their tax rate would be...what did you say?

MR. CROLY: Well, you know, that...that particular class, the Non-Owner Occupied class, has three different rates associated with it. There's the rate up to a million dollars, I guess it is --

COUNCILMEMBER LEE: Right.

MR. CROLY: -- that is...

COUNCILMEMBER LEE: Let's...let's go with the 1.5 million and above.

MR. CROLY: But right, at...at the above \$4 million range it's \$12.50 per 1,000 is the rate that you set for this year...or this upcoming year. And it was \$8 per 1,000 in the middle rate range. And both of those are significantly higher than it used to be, that...that these folks may be thinking that they would go back to. So, that's all I wanted to make sure everyone understood.

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COUNCILMEMBER LEE: Okay. Thank you. I didn't think it was that high but thank you.

CHAIR PALTIN: Member King also has a question for you.

VICE-CHAIR KING: Thank you, Chair. Aloha, Tom. Thanks for being here --

MR. CROLY: Aloha.

VICE-CHAIR KING: -- as always. So, just to clarify, the Non-Owner Occupied is higher than it used to be, but it's not higher than the Short-Term Rental tax rate that we set this year?

MR. CROLY: It...it's...it's not higher in the first two tiers, but in the top tier, I think 4 million or 4-1/2 million and above, it is higher, it's \$12.50 now. And the...and the Short-Term Rental is \$11.85. So...so for the really high-value properties, and there's a few in Wailea Point that are up in the \$10 million assessed range, it actually would be a higher rate on the...the value above 4.5 million.

VICE-CHAIR KING: For short-term rentals. Okay. Because we...we...just to clarify, we did...we did ask the Financial Director for...the Finance Director for an assessment, and the assessment was that they would overall save a couple million dollars on the tax rates.

MR. CROLY: Right, right, as...as a group. Right, right. There would be an overall drop, but...but not everyone's going to see them go back to the rates that they used to be, like 40 percent lower or 60 percent lower than what they are now. Yeah.

VICE-CHAIR KING: Oh, yeah. Correct. All right. Thank you. Just wanted to clarify that point.

MR. CROLY: Thanks. Yes.

CHAIR PALTIN: Okay. Any further questions for the testifier? Seeing none. Thank you for your testimony, Mr. Croly. So, that concludes our list. Is there anyone else on the line that hasn't already provided testimony that would like to provide testimony? All right. I'm not hearing anyone. Seeing that there are no more individuals wishing to testify, without objection, I will now close oral testimony and receive written testimony into the record. Any objections?

**COUNCILMEMBERS VOICED NO OBJECTIONS.**

CHAIR PALTIN: All right. Thank you to those testifiers and observers who logged or called in. You may view the remainder of today's meeting on *Akakū* Channel 53, Facebook Live, or on [mauicounty.us/agendas](http://mauicounty.us/agendas).

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

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CHAIR PALTIN: Members wishing to speak during today's meeting should say my name and raise their hand so that I may recognize you.

**PSLU-14                    REVIEW, ASSESSMENT, AND AUDIT OF THE DEPARTMENT OF  
PLANNING** (CC 21-97 and CC 22-128)

CHAIR PALTIN: Our first item up today is PSLU-14, Review, Assessment, and Audit of the Department of Planning. The Committee is in receipt of the following: County Communication 21-97, from Councilmember Michael J. Molina, relating to a review, assessment, and audit of the Zoning and...Administration and Enforcement Division of the Department of Planning. Number two, County Communication 22-128, from the County Auditor, transmitting a document entitled "Assessment of the Zoning Administration and Enforcement Division, Department of Planning." Status: The Committee may receive a status update on the recommendations in the reports and may discuss related matters. The Committee may also consider the filing of County Communication 22-128 and other related action. So, this is just, you know, following up on what we started last year. This assessment of ZAED was authorized by Council Resolution 21-63, and the assessment was prepared by a third-party independent contractor, Spire Hawai'i LLP. The assessment includes an examination of ZAED's application processing and enforcement, a survey of Staff morale and customer satisfaction, and a review of the report of the Planning Department, also known as the Zucker Report. Today I have also uploaded to Granicus the Department's strategic plan. I think it's a five-year plan from '21 through '26 for the public and Members' reading pleasure. And I would like to briefly discuss the findings of the assessment, but have our focus be on steps for implementing change...positive change going forward, with input from both the Department of Planning, Department of Management, as well as input today from County Auditor Lance Taguchi and Mr. Tyler Kimura. So, at this time I'd like to request opening comments from our Auditor, Lance Taguchi, and he can introduce Mr. Tyler Kimura.

MR. TAGUCHI: Thank you, Chair and Members. Good morning. The Office of the County Auditor engaged Spire LLP to conduct an assessment of the Zoning Administration and Enforcement Division of the Department of Planning. Spire LLP is a Hawai'i certified public accounting firm that provides auditing, accounting, and consulting services to several Hawai'i State and County agencies. The scope of the assessment, as you said, was based upon Council's Resolution 21-63. Here with us today is Tyler Kimura, a certified public accountant and partner of Spire LLP, and he will present their findings and recommendations. Thank you.

CHAIR PALTIN: Thank you, Mr. Kimura. And before we proceed, I would like to designate Mr. Tyler Kimura as a resource. He's a partner with Spire LLP and has over 15 years of experience in Hawai'i and California with forensic accounting, litigation support, and fraud investigation services. If there are no objections, I would like to designate Mr. Kimura as a resource person in accordance with Rule 18(A) of the Rules of the Council.

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**COUNCILMEMBERS VOICED NO OBJECTIONS.**

CHAIR PALTIN: Okay. Mr. Kimura, if you can please proceed with your presentation, and whatever you got ready for us this morning, we'd love it. I like the nice hardcopy booklet that you gave to us as well. That's very much easy on the eyes, more than the screen all the time, so thank you for that as well.

MR. KIMURA: Okay, great. Thank you. Aloha, Chair and Members of the Committee. I'm glad you got the presentation ahead of time. And thank you for the opportunity to present our findings and recommendations from our assessment of the County of Maui Department of Planning Zoning Administration and Enforcement Division. So, I have a brief presentation, as you mentioned, that covers the highlight of our report, which was issued in early May and posted on the County Auditor website. I would like to thank members of the Department of Planning and ZAED who assisted throughout this engagement. And I will be happy to answer any questions following the presentation. So, I will share my screen so people can see. Just want to make sure I'm sharing the right presentation. Maybe not. Can you see the presentation view?

CHAIR PALTIN: We can. Maybe can you maximize your screen? And it's not on presentation, it's...it's not...it's like on...

MR. KIMURA: I see, show my notes.

CHAIR PALTIN: We can see your screen...yeah. And then if you can click that square, it's --

MR. KIMURA: All right. One second here.

CHAIR PALTIN: -- kind of small.

MR. KIMURA: There's always issues with different...

CHAIR PALTIN: And Members, it's, I believe, the revised version, if you want to pull it on Granicus...pull it up and see it bigger, I guess, too.

MR. KIMURA: All right. One second.

CHAIR PALTIN: And Mr. Kimura, you don't need to stress if you can't work it out because our Staff over here...oh, maybe you got it.

MR. KIMURA: Okay, that was the whole presentation.

CHAIR PALTIN: Right now we see a black screen with a blue line down the middle.

MR. KIMURA: Okay. This is...sorry, I'm having some issues on...on...on this presentation.

CHAIR PALTIN: Okay. Would you like our Staff to share the presentation for you?



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MR. KIMURA: Yeah, that...that would be very helpful. Thank you very much.

CHAIR PALTIN: Okay. No problem. This...this isn't our first rodeo, so...

MR. KIMURA: I'm used to some other applications.

CHAIR PALTIN: Hold on just a second, folks. All righty. Here we go.

MR. KIMURA: Thank you very much. Okay. If you can please go to the next slide. Thank you. So, the objectives of our assessment were to evaluate ZAED's processing of permits and land use compliance, and determine if there are any backlogs. We're also tasked with evaluating ZAED's enforcement of zoning and land use regulations, and also determine if there are any backlogs. And through an employee survey, as well as customer survey, determine Staff morale and the level of customer satisfaction with the services provided by ZAED, and to make recommendations for improvement as appropriate. Next slide please. So, in order to achieve our objectives, on...on the next slide we have our methodology, and what we did was we interviewed past and present ZAED employees and the Planning Department Director. We sent the voluntary employee survey to all ZAED employees and analyzed the results. We also sent a voluntary customer survey to approximately 3,100 people or companies who had contact with ZAED between Fiscal Year '17 and 2021. And we also examined ZAED application and complaint files, electronic records of permitting activities in the KIVA system, which we obtained through Information Technology Services. And we also reviewed Department annual reports. And we also conducted research on best practices and other legal requirements. So, the next slide shows our...our first finding related to the permit application process. And our finding was that the conditions under which ZAED is required to process applications contribute to lengthy permit review times and inconsistencies, and ZAED does not have performance measures for reviewing applications, and a backlog of permit applications exists. And what we determined was that internal conditions that affect ZAED's permit review time include Staff turnover and vacancies, the assignment of additional duties to ZAED Staff, and applicants who do not provide timely responses to requests for additional information. The County and State requirements that ZAED must follow when reviewing applications can be unclear and inconsistent, and ZAED lacks quantifiable performance measures related to its application review. On the next slide, we have the first two recommendations related to our first finding, and the first recommendation is that the Department and ZAED should jointly create and adopt quantify performance...quantifiable performance measures that reflect good or poor performance. Our second recommendation, to address delays caused by a system that requires the involvement of multiple County and State agencies...in the application review process, the County should consider implementing the recommendations in the 2018 Title 19 report, and explore the formation of technical review committees that include State and County agencies to shorten review times. In the next slide, our third and fourth recommendations relate...first is to...related to delays caused by the applicant's failure to respond to requests, and to consider developing how-to instructions and explanations that will help applicants understand the permitting process and requirements from the outset. The fourth recommendation is that the Department should consider accelerating the revisions to Title 19, County

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plans, and other policies and documents to the extent relevant and feasible. And on the next slide, to address its backlog and loss of institutional knowledge, ZAED should...the ZAED sections reviewing applications should quantify their personnel and resource needs and make them known to the Director so that, you know, budgeting purposes are, you know, addressed so that appropriate staffing is met. And in general, the Planning Department agreed with our finding and recommendations for finding number one. The Department disagreed with recommendation four, stating that it's not feasible to accelerate implementation of the recommendations of the Title 19 audit. And the Department partially disagrees with recommendation two, stating that a technical review committee, as recommended in the Title 19 audit, will not reduce delays since ZAED's internal review is rarely affected by outside agency review. On the next slide, we have finding number two related to enforcement. And our finding was that ZAED's enforcement of land use and zoning regulations is hindered by a lack of training, forms, and processes, and a backlog likely exists. Employees and stakeholders recognize the need for ZAED to improve its ability to enforce...enforce, including training on land use regulation and enforcement, clearer and more understandable forms and procedures, and attorney support. The backlog for enforcement actions is caused by various reasons, including insufficient personnel, the requirement that ZAED conduct inspections for other divisions, the need for inspectors to do more paperwork, increase of appeals, and the increase of attorney involvement in enforcement matters. We had three recommendations related to finding two. First, that the Department [sic] of ZAED should consider providing inspectors with additional tools to improve their ability to enforce, including training applicable to enforcing laws, clearer and more understandable forms and procedures, and more legal support from Corporation Counsel. Our second recommendation is that the Department and ZAED should jointly create and adopt quantifiable performance measures that reflect good or poor performance. And our third recommendation on the next slide is in order to address its backlog, the enforcement section should quantify its personnel and resource needs and make them known to the Director. So, this is a similar recommendation as related to finding number one. On the next slide, finding number three is a result of the internal employee survey that was sent to all ZAED employees, and returned a 96 percent response rate, which is very good for an organization such as ZAED. And the high response rate usually indicates that employees have high expectations that the survey results may result in some positive outcome. The ratings and comments in the survey clearly indicate that employees have little confidence in Department's leadership, and Departmental leadership is described as heavily politicized and unconcerned with the welfare of Staff. On the next slide, our recommendations start related to the employee survey. The first recommendation relates to just the importance that we understand that the survey is...tends to be one sided, right, it...it's...it's a survey that is asking for the employees' opinions on how they view the...their work at ZAED and the Department. And even though they portray a very negative view of Department leadership and its relationship to political forces, it is also important to validate and verify whether this is a valid view to...to understand both sides here. The survey results do indicate that the division has many...many assets. A lot of positive ratings, the high response rate. It suggests that the morale and performance of the division could be significantly improved as long as the issues that were brought up are addressed. Recommendation number three, this recommendation is more of a tone at the top directional recommendation

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that addresses the responses from the survey that questions the objectivity of leadership, and it encourages the Departmental leadership with establishing an objective, principle, and policy-based operation to address the responses that indicate that employees question the objectivity of leadership. On the next slide, recommendation number four. This recommendation addresses the need to have honest dialogue between Department and division leadership to address the most improvable factors in the organization, which include clarification of the mission of ZAED and its relationship to the other divisions; improvement of the processes that are an impediment to positive morale and effective service to the public; and enhancement of the training, information access, and materials required for Staff to do their jobs properly. And our last recommendation for the employee survey was that a guiding coalition made up of leadership, management, and Staff should be formed to plan and execute the required changes in the Department and the division. And again, this is to ensure that multiple views are...are heard, and so that any problems can be addressed and fixed, making sure that all...all...all the different views are...are taken into account. The Department generally disagreed with the finding number three, stating that the negative results regarding Departmental leadership are because of a controversial project in Nāpili. And the Department does agree with recommendations one and two, but questions the evidentiary basis for recommendation three, and objected to portions of recommendations four and five. And just so it's clear, the Department's response is attached to the end of our report, which is posted so you can read more about their responses as well. On the next slide we have finding number four, which relates to the customer survey that was issued, and our finding is that the positive survey responses point to the knowledge and capability of the ZAED Staff. Many of the negative responses and comments point to issues with Staff empathy with customer issues, responsiveness and timeliness, inconsistencies and varied interpretations within the application process. Again, the...the survey was sent to approximately 3,100 customers that interacted with ZAED, including applicants for permits and individuals who submitted requests for service. The survey asked participants to identify in what capacity they interacted with ZAED--for example if they were a homeowner, architect, et cetera--as well as the type of permit they were requesting. The questions are all listed in the report, but for example, the questions included questions like, during my interactions with ZAED, I found the division to be reliable, ensuring that it met all parties' expectations from the outset. With a scale of one being strongly disagree to seven being strongly agree. On the next slide we have our recommendations. And the first is that the Department and ZAED can use the analysis, which looked at the customer survey responses and segregated it by application type, and also the applicant type, and develop solutions where there were more negative responses for any particular group. And also to jointly meet and discuss with the applicant types to understand where concerns are, and determine whether issues are valid or invalid, and provide a better basis for future solutions. Generally, the Department agreed with our finding and the recommendations related to the customer survey. And finally, finding five related to the status of the implementation of recommendations for the Zucker Report. The Zucker Report had 128 recommendations for the Department of Planning, of which ZAED was assigned 25. And this slide shows that 7 of the 25 are completed, 2 were still pending, 5 were not...no longer relevant or can't be completed, 10 were outside of ZAED's jurisdiction, and 1, the...the ultimate resolution we were not able to determine. And the two

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recommendations related to finding five were...just that...for the recommendations that are not completed, ZAED needs to continue to scan old case files and prepare administrative rules and procedures for plan reviews, which may be difficult with the loss of key Staff with institutional memory. And in general, Planning and ZAED should not only focus on the Zucker Report, but also the Title 19 audit report which was done in March of 2018, as well as a user fee study which was conducted in 2009 [sic], and to make sure that those resources are also leveraged to make the overall system more effective...and ultimately cost effective as well. And the Department agreed with our finding and recommendations related to the Zucker Report. So, that concludes our...our presentation on the findings and recommendations. So, at this point, I'd be happy to answer any questions that the Committee may have.

CHAIR PALTIN: Thank you, Mr. Kimura. Okay. Thanks. Before we jump into questions, I did want to point out, as Mr. Kimura said, that the Department's response is in the appendix, and it's dated April 6, 2022, and we did upload the strategic plan for...I think it's 2021 through 2026. I did want to give the Directors of Planning and Management a chance to speak briefly because we do have the response in writing, as well as the strategic plan uploaded. So, Director McLean, did you...would you like a few minutes to respond orally?

MS. MCLEAN: Sure. Thank you, Chair. Just a couple brief remarks. And I don't know that this came through clearly in the audit of what a wide variety of duties ZAED handles, more than any of our other divisions, and possibly more than any other division in the County. They're a very tight-knit group, which really helps them perform all of the duties that they handle. Building permits, subdivisions, enforcement, a flood program, and variances and appeals for all departments, not just the Planning Department. They're dedicated, professional, committed and diligent, working overtime when needed, and conscientious of how their work affects each applicant. They have the hardest jobs of everyone in our Department because they have to tell people no every day. You can't build what you want, you can't subdivide how you'd like. They don't just say no though, they say no, but, you can build like this instead, or you can subdivide like this instead. I was certainly dismayed to hear some of the comments about communication and support. Sometimes it wasn't always clear to me if that dealt with division management, or if it involved the Director and my...or the Deputy and myself. Regardless, I certainly take those to heart. I think the timing...a couple of things affected the results of the audit due to timing. One was because this was in the thick of preparing for the MAPPS conversion, so there was just an extra amount of stress and work on ZAED. Also, this was also done in the wake of the Nāpili house situation where more than one person in ZAED told me they did not agree with how I handled that. I don't think anybody agrees with how I handled it, but ZAED felt that...at least the people who spoke to me felt that I should have backed up Staff 100 percent, and generally that is my...that is my MO. In this case, I found flaws in what Staff did, and actually much, much, much later Staff told me that they had made errors, but at the time the audit was conducted they still felt that I didn't back them up in that case. And because they're such a close-knit group, I think that really cast a cloud throughout ZAED. They saw my actions in that case as being political, which it was not. So, I think the timing, given MAPPS and given the Nāpili beach house situation...had the audit been conducted at a different time there

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might be some different results. Nonetheless, as...as Tyler said, we agreed with almost all of the findings and recommendations. And even those we don't agree with, we will certainly learn from. So, I'm happy to answer questions as the Committee (*audio interference*). Thank you, Chair.

CHAIR PALTIN: Thank you, Director McLean. Member Sinenci, if you could hold your question until we hear from Managing Director Baz as the oversight of the Planning Department, if he would like to say a few words.

MR. BAZ: Yeah. Thank you, Chair. Thank you, Members, for the opportunity. So, yeah, Sandy Baz, Managing Director of the County. And I did review the assessment audit and generally concur with the findings as well. You know, I believe this is a good opportunity for us to improve certain areas. We have been working on improvement. As Director McLean mentioned, you know, the...the MAPPS software system was a...a big lift for the Department, for the whole County, to be able to shift from a...the KIVA program, which had been in place for the last almost 25 years to...to a new software system. And I think there's some...already some improvements in transparency and accountability with that software system. In certain areas of either Staff accountability or consultants' accountabilities, you know, stuff that usually comes to my level when it comes to either building permits or planning permits. Generally, you know, it's because they are, you know, frustrated because there's delays or...or things like that. And...and actually, in the majority of the times that I review the cases, there's generally an issue with consultants responding or, you know, the...the consultant will respond on, you know, June 15th, and then the owner will call me on June 16th saying oh, you know, I need this rushed to review, or how come it's taking so long to review. And...and, you know, unfortunately that is the majority of the cases. So, the accountability with the MAPPS program and...and transparency in that is significantly increased, and...and we hope that that does help assist. When looking at the staffing levels in ZAED and Planning Department in general and the County in general, we have significant recruitment problems. The pay that the County employees are afforded through collective bargaining is...is decent, but definitely a challenge to compete with the private sector, especially in professional instances like planners. You know, the...the private consultants get paid significantly higher. And so those opportunities lead to some retention issues, also recruitment as well. So, you know, those are specific problems. You know, management and communication, you know, always has challenges, especially when ZAED is looking at specific things, or a specific division is looking at specific things that they're related to and may not understand what either other divisions like Current or...or leadership or even the Mayor have input on larger scope of the...the issues and problems that they have to deal with. And...and so, you know, those are concerns, and sometimes, you know, we can...we can all be better at communicating the why of...of things. Sometimes we can't communicate the why of things if there's litigation or other issues, but those...those are big points. I've also been working on reducing the workload of the Planning Department and ZAED in general. The building permit processing, there's a checklist that we have that basically assigns the routing of building permits to different departments and different agencies based on the type of permit. And currently, the Planning Department gets all building permit reviews. And you know, there's some...some challenges between Public Works and

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Planning as we go through and review this, and I've been working with them for a number of months, as well as Corporation Counsel, on reducing the number of building permits that are assigned to the Planning Department so that it'll reduce their workload. They'll be able to be more efficient in their actions. And...so we're...we're working on that. It hasn't quite been completed yet, but it's something we have been working on for...for a little while. So, Chair, thank you for the opportunity. I really appreciate the...Spire and their review and analysis. They did a very deep analysis of this. And I think a lot of the challenges that we see are because...especially in ZAED because it's an enforcement division, right. I mean they...like...like Director McLean mentioned, they say no, or they say you're doing something wrong a lot. And even when...you know, one of the testifiers, we've been notifying them that they've been in noncompliance for years actually, and we just actually filed a court order to see if we can do an injunction on their operations because they continue to operate illegally. So, you know, there's...there's certain challenges. It's definitely not a nice thing to do all the time, and definitely doesn't make everybody happy, but it's something we have to do. It's something that we're...we're required to do by Code, by the things that you set aside and, you know, SMA and short-term rental compliance, you know, all of those things. And you know, we may look...and I haven't talked to Director McLean about this, but maybe we should look at restructuring ZAED itself and take out the enforcement side of things from the...from the zoning administration side of things. And you know, that way, you know, we can focus on...they're very related, and I can see why they're in the same division, but something that we might want to look at in the future. So, thank you, Chair, for the opportunity. And I'll be here to answer questions.

CHAIR PALTIN: Thank you, Mr. Baz. This is a really important issue obviously to our community, and so I would say, you know, I want to put a clock on us, but we can go as many rounds as Members feel they need. Member Sugimura did inform me that she won't be able to make it today, so that gives us her time slot as well. So, first round, we'll do three minutes on the clock. And I did see Member Sinenci's hand up, so Member Sinenci, followed by Member King --

COUNCILMEMBER SINENCI: Oh, thank you, Chair.

CHAIR PALTIN: -- Molina, and then Kama.

COUNCILMEMBER SINENCI: Yeah, I just had a question for Sandy...Director Baz, excuse me.

MR. BAZ: Sandy is fine. Thank you.

COUNCILMEMBER SINENCI: I keep forgetting. Yeah, Director Baz, so it looks like the report had mentioned that the time to...to get your permits or complete permits, part of it was incomplete permits. So, is there a...like an effort to try and educate those that...applicants prior to them submitting? Making sure that they...they're submitting full applications . . . (inaudible) . . . ?

MR. BAZ: Yeah. Thank you, Chair. We've been trying that, and over a number of years we've had discussions at Council about adding a resubmittal fee, and I think that we may

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have added some specific things. But basically because applicants...and I...I don't...I don't want to disparage consultants and, you know, but many times they're rushing to get stuff to us, right. They want to start the clock. And so they may submit something to us and...and...and it may be an oversight. I don't think it's, you know, intentional most of the time, but it may be an oversight, that they missed a certain instance, and so our...our building plans reviewers have to go through and review Code for building documents, our planners have to review Code...you know, make sure that these submittals are...are complete. And so, yeah, we ask for resubmittal on certain things. With MAPPS it's much clearer. We have a program called Bluebeam that we actually can write comments directly on the plans themselves as far as okay, this is the issue with this. And so those resubmittals then are...are in...within the system. They're timestamped of when they got submitted, and...and then come back to us as well. So, I think there is some improvement, but yeah, that is a part of the issue.

COUNCILMEMBER SINENCI: Thank you, Director Baz. And then my second question was for Director McLean. And mahalo, Director, for your comments. Do you feel that there is a need for more training of Staff that are reviewing construction plans? I know that all of this that happened with the Brown was probably...you know, however it came out to be was oversights of...of reading the plans. Is there a need to do more training for personnel when it comes to reviewing the plans?

MS. MCLEAN: I think that periodic refresher training would certainly be helpful, and then perhaps more structured training for new employees. And this is true throughout the Department. We have . . .*(timer sounds)*. . . I'll say a loose process for...for training new hires, it's not very structured. So, I think that could be beneficial throughout the Department, and including for plans reviewers.

COUNCILMEMBER SINENCI: Thank you for that. I'll...I'll wait for the second round. Thank you, Chair.

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

VICE-CHAIR KING: Thank you, Chair. My...I have a whole list of questions, but I'll see what I can get through in three minutes. So, Mr. Kimura, if you could...my first questions are for you. If you could try to keep the answers brief because I only have three minutes, and I'll see how many I can get through. But my first question is on, you know, you mentioned performance measures and the performance measures need to be quantified and...and implemented. And so could you share what you found in the current...when you look at the current budget and the...maybe even...I don't think you looked at the Fiscal '23 Budget, but...that was problematic with the performance measures from Planning?

MR. KIMURA: Well, right now, the performance measures are more just data...so, for example, like number of permits reviewed --

VICE-CHAIR KING: Right.

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MR. KIMURA: -- and number of zoning verifications performed. So, it...there's a lot of other factors that may contribute to just some number, so it's just straight data, but what we were recommending was taking a look at performance measures of how ZAED actually performed. So, like how long do they take internally, just so that they have a better idea over the efficiency of the process and what can they do better rather than just reporting on data that they've done or completed at the end of the year.

VICE-CHAIR KING: Okay. Thank you. That kind of goes along with some of the observations I've been making on the performance measures in general that are in the budget for the departments. So, thank you for that. And...and then you talked about in finding three, recommendation five about strategic planning. And there's also some feeling that the Staff are not involved in...you know, on all levels. So, did you find that there was some strategic planning going on, but it was just too...too much just management and not involving folks at all levels?

MR. KIMURA: Yeah. So we understand that the Department was going through a strategic planning exercise and actually contracted that out almost concurrently with when we were doing the assessments. We did not have access...we...we were able to speak with that consultant, but we didn't have access to everyone that they actually talked to, but it...it did seem that it was at a...more of a higher level in terms of leadership and at least division head as opposed to the...you know, really the employee survey and the level of detail that we went to. That's my understanding. If that's incorrect, I'd be happy for Director McLean to clarify my understanding there.

VICE-CHAIR KING: Okay. Thank you for that. I'm going to stick with you right now, and I'll hopefully get a second round to ask questions to...follow-up questions. But you also said that you...there was a statement that you felt that it was kind of a one-sided survey, and when you spoke to the employees, and that it needs to be...you need to verify or we need to verify . . .(timer sounds). . . the validity. Can you explain that?

MR. KIMURA: Sure. We...the survey was sent to the ZAED employees, and so this type of exercise is really gathering their input and, you know, that tends to be...you know, because of the sheer number of Staff compared to leadership, the responses can appear to be one-sided. And so in order for any progress to be made with these types of surveys, it's just important that leadership understands and...understands the viewpoints, determines whether or not they...they agree with them. And you know, to try to avoid the results just being taken at face value, just understand that the number of Staff outnumber the leadership, right, so you just want to be able to look at the results objectively and...and be able to make progress and get something positive out of the survey results.

VICE-CHAIR KING: Okay. Thank you so much. My time's up. I'll circle back around. Thank you for the responses. Thank you, Chair.

CHAIR PALTIN: Thank you, Member King. I think it was Member Molina was...

COUNCILMEMBER MOLINA: Thank you, Madam Chair. Aloha, Mr. Kimura, and thank you



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for doing this audit. And let me just preface first by saying that I was the Councilmember that, in responding to concerns from the community about this division, persuaded my colleagues, and I thank them for commissioning this audit. And again, as I said before, audits are a tool that's meant to help, it's not meant to punish. And, you know, we all are in this process, you know, the Executive Branch and the Legislative Branch because our duty as Councilmembers is to respond to concerns not only from this Department, but any of our other departments. And as you know, audits are...are again, are meant to look at ways to improve efficiency from all departments. Can I ask first, have you done audits of other counties and various departments? And if that being the case, is it maybe a common finding that you need better communication between staff, management, and...and in this case, maybe the Mayor and Administration to help address these problems?

MR. KIMURA: Yes. Thank you, Councilmember Molina. We...we have conducted other performance audits for County of Maui, as well as the County of Kaua'i. And yeah, close to ten, maybe a dozen for the County of Kaua'i. And...and some of them did involve similar issues, such as employee morale. And yes, communication is a key issue that does come up and, you know, similar circumstances. You know, just making sure that Staff are on the same page and understand, you know, what the mission of the organization is, and that leadership is taking the appropriate steps to communicate that clearly to the Staff. So, yes, we...we have seen similar issues elsewhere.

COUNCILMEMBER MOLINA: Okay. And in this case, for...for this audit, is it your recommendation that maybe Administration or maybe the Mayor or Managing Director should have taken a more active role in trying to address these problems? Did...did you find that in that survey that maybe that might have been lacking, and that more intervention from above might have been helpful?

MR. KIMURA: We...I believe we saw some comments at...at that level which, you know, go above the Department leadership, but in general, most of the responses were within the Department of Planning itself. And I guess the...the communication and how information then trickles down to the ZAED Division and the Staff within ZAED. So, we did not conclude or have any ultimate findings about, you know, higher up, you know, from the Mayor or...or Managing Director, but it was more contained within ZEAD or...and Department of Planning.

COUNCILMEMBER MOLINA: Okay. All right. Thank you. And it was good to see that there were some positives that you found, you know, with...with the division . . . *(timer sounds)* . . . as well. And I know there were some limitations. And all of the delays are not...cannot only be attributed to ZAED, there's some measure of responsibility on the applicants as well that potentially cause these delays. So, okay, anyway, thank you. I'll...I'll have more questions later, but thank you, Madam Chair.

CHAIR PALTIN: Thank you. And just a note, to avoid confusion, I got is to refer to report as assessment, not audit. Audit is a tax term that may be misunderstood. So, just to avoid confusion, the advice is to call it an assessment. And I thought...was it...Member Kama, were you next?

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COUNCILMEMBER KAMA: Yes, I was, Chair. Thank you.

CHAIR PALTIN: Okay.

COUNCILMEMBER KAMA: So, my question is going to be directed to...to Mr. Baz. So, the report mentions...at least the second item about the enforcement portion, and you mentioned in your...in your testimony that there might have to be a restructuring of ZAED. And so are you saying that maybe removing the enforcement part would be able to alleviate ZAED from that issue so that they can continue to work on the more pressing issues of permitting and those kinds of things? Can you go deeper into that please?

MR. BAZ: Yeah, a little bit. I mean, I...I don't want to say that, you know, the...the permit applications are more important than enforcement, I think enforcement is incredibly important as well.

COUNCILMEMBER KAMA: Yeah.

MR. BAZ: The biggest problem is staffing issues. You know, we don't...we don't have enough Staff in general to do the responsibilities that are put on the division or the Department. And so if we can overcome that then, you know, maybe a restructuring isn't required, but I do want to discuss that with the Director as far as the capabilities of, you know, whether it's...it's creating different sections in there that...I think there is already is different sections. But just...just really focusing the staffing on the requirements that, you know, the...the community and the Council request of us for enforcement. And then also --

COUNCILMEMBER KAMA: Yeah.

MR. BAZ: -- making sure that we're processing applications in a --

COUNCILMEMBER KAMA: Yes.

MR. BAZ: -- *(audio interference)* matter. Sorry. Thank you, Chair.

COUNCILMEMBER KAMA: So...so...Mr. Baz, so you know, when processing applications and permits and...and those kinds of things are important and...but that takes a particular mindset of people who are just concentrating on that. The enforcement side, I think, takes a different kind of a mindset and a different type of training. So, we've got an employee who has to do both, right. But if we separated those things out from the employee, would be less stress on them, right, and maybe...I don't know, I'm just thinking that, you know, in our County, we have enforcements in many of our own departments, right, and if we put them all into kind of like one enforcement kind of division or...or whatever we want to call that, then at least they'd all be in the same enforcement. And that when something occurs, they'd be able to help each other to...to mitigate who gets what and who's going to resolve what enforcement issue. That's what my thought is. Because when I think...and I read this report, the four issues that come

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up, I think, are four distinct issues, and taking a deeper dive into it, to me, looks like what I think you're already alluding to. But without more further investigation or further looking into, you can't make that determination yet? . . . *(timer sounds)*. . . Oh, geez.

MR. BAZ: Yeah, Chair, if I might just respond quickly?

COUNCILMEMBER KAMA: Sorry. Thank you.

MR. BAZ: Yeah, so just real quickly, to a certain extent having, you know, those that are reviewing applications and enforcement, they're kind of doing the same thing because they have to know the same information. I...I don't think that a consolidated enforcement division would necessarily be appropriate because of the differences in...in analysis that's required. Corporation Counsel assists all the departments with enforcement as far as knowing the...the Code and all that, but yeah. So, thank you, Member Kama. Good...good questions though.

COUNCILMEMBER KAMA: Thank you. Thank you, Chair.

CHAIR PALTIN: Thank you, Member Kama. Up next we have Chair Lee.

COUNCILMEMBER LEE: Yeah, a question for Michele, Director McLean. Director McLean, hi. What is the SR range for ZAED inspectors and...and those who receive the applications, review?

CHAIR PALTIN: I think it's SR-16.

MS. MCLEAN: Our zoning inspector trainees start at SR-14 and go up to SR-19. Plans examiners start at SR-15. The supervisor is SR-21.

COUNCILMEMBER LEE: Okay.

MS. MCLEAN: Planners start at SR-16, Planner I is SR-16.

COUNCILMEMBER LEE: Do you have trouble filling...do you have trouble filling those positions?

MS. MCLEAN: The zoning inspector positions are very, very difficult to fill. We actually several years ago had to really fight to get the position description for an inspector trainee changed because the inspector trainee position required experience, which makes no sense. Inspectors are...they're tough, tough jobs. We have a very...we have a great group now, but trainees are hard to find.

COUNCILMEMBER LEE: Maybe it's time to redescribe.

MS. MCLEAN: We have tried. We...you know, the pay scales are done Statewide, so to change those, you need cooperation from the other three counties and the State. We tried that

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a few years ago, we weren't successful, but we have been discussing recently about trying again to get those *(audio interference)*.

COUNCILMEMBER LEE: Because I think that might be something to revisit, especially with wholesale shortages everywhere.

MS. MCLEAN: Right.

COUNCILMEMBER LEE: You know, so now it's...it's...you're competing for your workforce, and if...you can't compete if you're not paying them enough. Thank you. That's all the questions I have. Thank you.

MS. MCLEAN: Thank you.

CHAIR PALTIN: Thank you. For my three minutes, I think I had a question first for Mr. Kimura, and then if the Department administrations wanted to answer. You know, when we're talking about customer service and it's...you know, whether it's the permitting or the enforcement end of it, are we defining the customer as the individual that is being enforced upon, or the individual that is applying for a permit or, you know, the community as a whole that has to live with whatever is being constructed or denied...how do you...how do you identify who is the customer in customer service?

MR. KIMURA: Thank you. Great question. So, our population of customers was based on application data primarily, and that was data that we received from Information Technology, and it was the most efficient way that we were able to disseminate a survey to members...or to members of the community that we knew interacted with ZAED because they had actually filed a...a type of permit that was reviewed by ZAED. The contact information that we received for requests for services was not as readily available to disseminate a survey to multiple...or to...to a lot of members of the community that submitted a request. So, in general, our customer population...

CHAIR PALTIN: Can you clarify why it wasn't readily available? Was it wrong information, or you just didn't have access?

MR. KIMURA: The way that the data was maintained for RFS and...and the requestors was primarily phone numbers. And so our methodology was email addresses which were contained within the permit application themselves. And in order for efficiency purposes, in order to obtain results and answers, the best way that we determined to get those answers was to send out an email survey rather than try to call hundreds or thousands of...of individuals. So, there were...

CHAIR PALTIN: And then to --

MR. KIMURA: Yeah, yeah.

CHAIR PALTIN: -- follow up. In...in your professional opinion, who is the...the...the customer that we're seeking to satisfy? Is it the individual seeking to file a building permit to do

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what they want, or the community that expects their community plan to be upheld or, you know, a mixture of the two? And how do you identify the balance of who is the customer that the County . . . *(timer sounds)* . . . is trying to serve?

MR. KIMURA: Yeah. Again, good question. For here, we identified the customer because we were looking...and part of our objective was to determine the service that individuals that interacted with ZAED, and...and their experience with interacting with ZAED, and what their experience was and...and...and to try to quantify that. So, in this case, we determined that people who actually submitted an application would have more actual interaction with ZAED. And we understand that yes, ZAED does impact the community as a whole, but in order to actually try to focus on actual customers of ZAED and how their experience was, that's why we focused on those application applicants.

CHAIR PALTIN: Thank you. It appears my time is up. Before we go into our second round, I did see in the chat that Ms. Takakura would like to give us an update, I guess, since they were consulted about the results was like around March. And so that's April, May...like about a couple months, couple...few months ago, and so what's been done in the interim I...I suppose. So, Ms. Takakura, could you limit your update to a few minutes?

MS. TAKAKURA: Yes. Thank you, Chair Paltin. So, I've been the temporary assignment for the Planning Program Administrative for zoning division since last year, so I'm in the thick of things. And I just want to share with you some of the things that we've been working on. First and foremost, as mentioned, is MAPPS turning the entire permitting, and request for service process upside down. So, a lot of the . . . *(inaudible)* . . . and complaints I think are going to be addressed with MAPPS. Part of the process was actually writing out processes for MAPPS. I think that's going to solve a lot of those problems. In the fall, our zoning inspectors are going to be attending code enforcement classes. That's going to really help them get standardized training that, you know, is nationwide. Recently, we had a new Plans Review Supervisor, we're going to have a new Planning Program Administrator. We have a new Inspector Supervisor, so there's been a lot of change in management. I do agree, we need higher pay. One thing that's different about our group is a lot of them are Bargaining Unit 3, which is generally lower pay. So, some of the intake people, like as Chair...Council Chair Lee had asked about, they were at SR-10, which is very low pay. They're fielding calls from customers, you know, and all of us take calls from customers, but generally speaking, the Bargaining Unit 3 pay is...is lower than 13. So, higher pay would be helpful because the positions are very technical, hard to fill. We have streamlined the comprehensive sign permit process. Flood program, which keep in mind, flood program is super critical for the lower flood insurance rates. That, we're in the process of moving to Public Works where it makes more sense to be with the building inspectors. And we have...proud to say we have scanned 2,000 boxes of documents. That's not just for ZAED, that's the whole Department, but we had 2,000 boxes of documents. I still have one hard drive that I'm working on, but we are trying to get a lot of those old documents into AX, which is the public portal, and there's now a link, thanks to IT, where a person can go and search on their own and not have to wait until we find the document. And I hope that with this audit, it shows the need that we need changes to our Residential zoning district which

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transmitted to the Council. Be working on the Ag District updates. I even have updates for parking. And then coming to you folks will be the Title 19 rewrite, which is super important. That will help resolve a lot of problems. And then, of course, the fee increases. If you could please approve fee increases because the cost of reviewing these permits and...you know, it's not just the Zoning Code, Title 19, there's Title 16 for signs, and HRS and, you know, coastal zone, and there's so many other things that we do. So we really need your...your support, but we have been doing quite a few to try to address these concerns. Thank you.

CHAIR PALTIN: Thank you, Ms. Takakura. And I just realized we are beyond our morning break time. So, if there's no objection, we'll...we'll take a ten-minute recess, come back at about 10:51 --

COUNCILMEMBER KAMA: No objections, Chair.

CHAIR PALTIN: -- and then we'll do another round of questions. Okay. So, this meeting is in recess until 10:51, 5-1. . . .*(gavel)*. . .

**RECESS: 10:41 a.m.**

**RECONVENE: 10:51 a.m.**

CHAIR PALTIN: . . .*(gavel)*. . . Will the Planning and Sustainable Land Use Committee meeting of June 16th return to order. The time is 10:51, and I'd like to recognize Councilmember Keani Rawlins-Fernandez, who has joined us at this time. We're still on item one, and we're going into our second round of questions of two minutes each. Since Member Rawlins-Fernandez didn't hit her first round, do Members have any objections of combining first and second round to give her five minutes total right at this time?

**COUNCILMEMBERS VOICED NO OBJECTIONS.**

VICE-CHAIR KING: If she wants it.

CHAIR PALTIN: Okay. Go ahead, Member Rawlins-Fernandez. I believe we have Director McLean, Ms. Takakura, and the Auditor, as well as Mr. Kimura of Spire on the line to answer questions.

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Chair. Aloha awakea kākou. Mahalo, Members, for allowing me the opportunity to combine my round one and two time. Okay. So, I think Managing Director had to step away, and so we have the Planning Director and Staff.

CHAIR PALTIN: And Director McLean said we also have Supervising Zoning Inspector...oh, newly hired, Gail Davis.

COUNCILMEMBER RAWLINS-FERNANDEZ: Aloha, Ms. Davis. Okay. So, I've been listening to the discussion, and it's...it's...it's been a very optimistic, I think, discussion.

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Everyone's onboard with trying to figure out how to address the concerns and the recommendations from the assessment. And so I guess...yeah, I've been...I've been thinking through...I heard Managing Director talk about restructuring, and it sounds like that's an idea that the Councilmembers are open to. I also think that that might address some of the concerns that we heard through the assessment and through the Department. I...I heard Member Lee suggest redescribing positions. I know that in budget this last session, we asked the Department if they needed more Staff in order to carry out the job, and...and I understand and acknowledge and...and recognize the hard work that the Department put into getting MAPPS up. I know that was a very heavy lift, and likely distracted them from their daily job. They had to do double duty in carrying out their, you know, everyday work, and more work in order to get MAPPS up and running. So, I...I guess some of the things that we had talked about during budget is, you know, can we get more Staff into ZAED, can we help to, you know, reduce some of that burden that the...the Staff have by adding more hands to make the work lighter. And one of the things that I understand is the workspace is very limited, and so whenever we come up with some ideas, there are more challenges that we face. And so it...it sounds like there's just a comprehensive look that we have to...approach that we have to take at this because if...if we add more Staff, then we need more workspace, and...and it sounds like we're...this Council at least is supportive of...of that effort. Director McLean, is...is that something that we should work on this year and try to figure out together? And then come next budget perhaps, you know, we can allocate more funding toward that end.

MS. MCLEAN: Thank you for the question, and I'll be brief. Starting in FY'23, ZAED will get two new positions, a Plans Examiner or a Technician, and a Zoning Inspector Trainee. They do have space...generally have space for them, and we're talking about having...possibly having a flexible work area since some folks are working at home and also, the inspectors are out on the road a lot of the time. So, we might be able to work with the space that we have and not need more space for those two expansion positions. We're also talking about maybe using that inspector trainee position to actually be a planner that would support enforcement efforts, doing a lot of the research and background so that the inspectors could be more free to do their inspections, and work in concert with the planner. So, those are some ideas that we're working with...with ZAED on. Certainly, more people would help, but as you said, that goes with...you know, that would mean more space. I think once MAPPS is underway, that will alleviate some of the pressure, but I'll...I'd need to hear more from ZAED folks about how normalized things get with the two new hires and MAPPS, the...the heavy lift of MAPPS being over.

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Director. I think those are great ideas and I'm happy to support them. So, I guess a follow up on the restructuring and the...the pay. Okay. So, I understand that you tried redescribing positions. Have you tried creating new positions that would isolate some of that work that it is not, you know, the most favorable kind of work, the...the having to tell people no and the enforcement work. And...and possibly being able to provide a higher pay for that...that kind of work.

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MS. MCLEAN: Yeah, I'd ask Jacky to jump in too because she's very familiar with the personnel and HR aspects. What we did before was to contact the other planning departments to see if all of the counties would support just boosting the pay . . . *(timer sounds)*. . . per the contract for those positions. We weren't able to get that done. I'm...I'm supportive of looking at it any which way we could, whether it's redescribing positions, but you have to find ones that are in the system already. You know, it's a very rigid system, but you know, I would support any way we...we could find to...to pay our folks more money. It's just a really, really restrictive system. In terms of reorganization, I...my...my guess is that the inspectors do not want to be separated from the rest of ZAED. We'd need to hear that directly from them and from the other folks in ZAED, but I don't think they would want to be split off, that's my guess.

CHAIR PALTIN: Ms. Takakura, did you have something to add?

MS. TAKAKURA: Thank you, Chair Paltin. So, the Director is correct, with the existing positions in the class specification system, it's pretty rigid. The difference with the zoning inspectors is that they don't just have the Zoning Code, they have the Special Management Area Code, they have State law, they have Sign Code, as compared to say a waterworks inspector who just has water system standards, or the electrical inspector just has electrical standards, or plumbing inspector, and so forth. They just have one code versus the zoning inspectors have many they have to enforce. Creating a new class can take years, so that's...that's really hard to do because of the consultation. And yeah, I've seen it take three years to create new classes. It can be done, but it's just very difficult. And we don't want to lose our inspectors, we love our inspectors.

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Ms. Takakura. Mahalo, Director. Mahalo, Chair.

CHAIR PALTIN: Thank you. Member Sinenci, your two minutes.

COUNCILMEMBER SINENCI: Thank you, Chair. And yeah, I'm not sure if this is for Mr. Kimura or Director McLean. In the audit, it refers to Title 19 and making some significant changes to Title 19. Can you kind of give us a brief summary of those changes?

MS. MCLEAN: Thank you, Councilmember Sinenci. A few years ago, we--and this came from the Zucker Report--we did an audit of Title 19, which is the entire comprehensive Zoning Code, and that audit suggested that the Code be completely rewritten. It was adopted in, I think, 1960 or 1958. There have been many, many, many Band-Aids since then and some major surgery, but it really needs to be completely reworked, given the way that planning is...is practiced today. So, we did hire a consultant a couple of years ago to do a complete rewrite of the Zoning Code, and that's well underway. I think the first draft is expected either later this year or early 2023. From the beginning, we knew it was going to be a multiyear project. It's not going to be a form-based code that we proposed, it's a hybrid, so that it won't be a rigid list of uses. It'll have a combination of uses and mixed-use districts like the community plans are doing, but with a form component that considers impacts and design. So, I'll...I'll leave it at that for now, but



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that...that has been underway for a couple of years already. . . .*(timer sounds)*. . .

COUNCILMEMBER SINENCI: Thank you, Director. Thank you, Chair.

CHAIR PALTIN: Thank you, Member Sinenci. Next I believe was Member King for her two minutes.

VICE-CHAIR KING: Okay. Thank you. I'll try to talk fast. I wanted to follow up real quickly, Director McLean, on the...the issue of upgrading...updating and revising Title 19. In the...you know, because this was...this was talked about in the assessment as well, and in the assessment it...it talked about the need, but did they give you...did you discuss any specific policies for expediting out of the report on revamping Title 19? Like you know, are we just going to get one whole revamp of the Title 19 and have to go through it page by page, or are there some more urgent policies or ordinances that we could pass to improve things in the short term? Were you...did you discuss any of that in the assessment?

MS. MCLEAN: I don't recall being asked that myself in the assessment. We do try to put forward, and the Council has also been very energetic in this regard, in proposing amendments to Title 19 to correct or...to correct problems or address flaws that we see along the way.

VICE-CHAIR KING: Okay. But when we...when we...I know that we're doing that, but when we do that, we don't necessarily get a report of how it's aligned with the revision...you know, the total revision that you're working on. You know. like this is...this is coming out of the report of...and recommended. So, I just wondered if you had been given any...any advice or any opportunity to say, you know, yeah, we need to put these policies forward now because we...you know, it's like going through the Comprehensive Affordable Housing Plan, we're going through it bit by bit and we're trying to pull out the most important pieces that are going to help us get to the action quicker.

MS. MCLEAN: Yeah, I think that the...the Band-Aids that keep being made to Title 19 will be encompassed in the overall rewrite, but I don't see us putting bits of the rewrite . . .*(timer sounds)*. . . forward in pieces. I think it would come as one comprehensive document.

VICE-CHAIR KING: Okay. Well, that two minutes went really fast. I guess my time's up. I don't know, are we doing...are we doing another round, Chair, or is that...

CHAIR PALTIN: I think we'll let folks follow up on their own.

VICE-CHAIR KING: Okay.

CHAIR PALTIN: You can always send transmittals. Because we do have a couple other items.

VICE-CHAIR KING: Yeah.

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CHAIR PALTIN: Chair Lee?

COUNCILMEMBER LEE: Member King can have my time. Thank you.

CHAIR PALTIN: Okay. Go ahead, Member King.

VICE-CHAIR KING: Thanks.

CHAIR PALTIN: Two more minutes.

VICE-CHAIR KING: Thank you, Chair Lee. Thank you, Chair Paltin. My...my next question is for Managing Director Baz. If you're still on, Sandy?

CHAIR PALTIN: He returned. Go...go ahead.

VICE-CHAIR KING: Okay. Thanks for being here by the way, really appreciate your input. You know, when we're talking about the...the assessment...which is actually listed as assessment and audit, I think that's why we started calling it an audit, it's on the agenda that way. But the assessment talks about staffing, and is...so as the Managing Director, do you feel that the positions are there? We're having a hard time filling them? Do you feel like we need to add additional positions after we get those filled? What is your assessment of that...that...that finding?

MR. BAZ: Basically, what I see is that it...both. You know, we need to...to do recruitment, and we've been doing...we just had a job fair, and doing other types of recruitment opportunities, and trying to be as creative as possible in recruitment. I also believe that there could be additional Staff there, but you know, sometimes it's hard to get justification to add positions if you can't fill the positions you have.

VICE-CHAIR KING: Okay. Well, when we were talking about the permitting process you made the statement that we need to reduce the workload on Planning. So, I'm not sure, can you specify what you...did you mean by adding more people, or how are you...or disbursing the...the Planning...the permit duties out among more...more people who are already there? What was the intent on that?

MR. BAZ: Well, specifically, it's related to building permits and how they're routed. They're...we have a building permit checklist, routing checklist that we go through...or I shouldn't say we, the Department of Public Works goes through, and depending on the type of permit that's applied for, it goes to different agencies for approval. Right now, all building permit applications go to the Planning Department, and that's what I would try to revise. . . .*(timer sounds)* . . .

VICE-CHAIR KING: Okay. So, change the order of what departments they go to first.

MR. BAZ: Basically yes.

VICE-CHAIR KING: Okay. All right. Thank you. My time's up. Thank you so much, Chair

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Lee. And thank you, Chair Paltin.

CHAIR PALTIN: Thank you. Member Molina?

COUNCILMEMBER MOLINA: Yeah, thank you, Madam Chair. I don't know if Mr. Kimura is still on, but one good thing with this assessment, what it's done is jumpstarted the process to address these concerns and the...you know, I guess the...to help restore a better, more positive image of the Department to the public. I guess, Mr. Kimura, in recommendation three, page 8 from the...from Director McLean, there was some disagreement with your assessment that I'll just briefly mention says when a government entity that is tasked with a service and compliance mission that is heavily influenced by politics and the potential for financial gain, there is an inevitable crisis and test of the morality of the leadership involved, usually at the level of the County Council and the Departmental leadership. The Director expressed disagreement with that. Can you tell us what led you to...you know, make you come up with these thoughts and this recommendation?

MR. KIMURA: Sure. Thank you, Member Molina. The...the evidence and the source for that recommendation were the responses that we got in the custom...sorry, in the employee survey where there were comments and concerns about the objectivity of...of leadership and the political nature of...of some decisions that, at least from the employees' perspective, may have influenced how decisions were ultimately made. In general...our...our comment is also a general comment, right, that whenever an entity is involved with making decisions that...that are highly visible, high stakes, you know, in terms of issues of, you know, deciding permits or, you know, who gets a permit or not, you know, there...there are concerns that, yeah, are there other influences that may impact those decision-making processes. So . . .*(timer sounds)*. . . sorry, the long answer, but that...the...the...the employee responses and comments were...were the main source there.

COUNCILMEMBER MOLINA: Oh, okay. Thank you, Mr. Kimura. And just in short, Madam Chair, just you know, thank you for this assessment because it also reflects the positives of this Department, the employees as well. A lot of these individuals could have been making more money elsewhere, but they're dedicated, and they're asking for help. And I thank Director McLean also for acknowledging and accepting these recommendations, and whether she agrees or not, at least she's making an honest effort to address this. And this is where we now need to move forward. And also to Managing Director Baz for their efforts at trying to implement changes to support the employees. And you know, again, change that perception, the...some members of the public's perception they may have of this Department. Thank you.

CHAIR PALTIN: Thank you. Member Kama, did you have any questions?

COUNCILMEMBER KAMA: Chair, no, I didn't have any questions, but I'm...I'm hoping that at some point in time, if not today, at a different time, that we can work on having some of the solutions that were recommended in this report. And I see a lot of really good solutions that were mentioned just with some of the questions that our Members were

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asking, so I'm looking forward to that, Chair. Thank you so much.

CHAIR PALTIN: Okay. And then I guess for Director Baz, in light of the audit and the recommendations, have you identified anything to be addressed via budget amendment?

MR. BAZ: No, not necessarily through --

CHAIR PALTIN: Okay.

MR. BAZ: -- a budget amendment.

CHAIR PALTIN: Just yes or no --

MR. BAZ: Yeah.

CHAIR PALTIN: -- is good.

MR. BAZ: Okay. Yeah.

CHAIR PALTIN: And then, Director McLean, I just was wondering, when was the last time the administrative rules have been updated?

MS. MCLEAN: The administrative rules relating to ZAED, I think the last time they were updated with were the Agricultural District rules, and that was, gosh, maybe 2018. There are enforcement rules that have not been updated for a little while, but I think those are still pretty sound, and I think those are the only administrative rules we have specific to ZAED.

CHAIR PALTIN: Okay. And, you know, given that the audit was saying that there's more guidance needed, policies and procedures, are there any plans to update the administrative rules in relation to ZAED or the Department as a whole?

MS. MCLEAN: Yes. Our ongoing efforts with Title 19 amendments is an example of taking policy memos --

CHAIR PALTIN: Okay.

MS. MCLEAN: -- and interpretations and trying to codify them. In...in...

CHAIR PALTIN: Okay. Thank you.

MS. MCLEAN: By ordinance where --

CHAIR PALTIN: And then...

MS. MCLEAN: -- it's applicable, sometimes by rule.

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CHAIR PALTIN: Okay. And then, Director Baz, just wondering, so you know, this was a sampling of the Planning Department. Do you see any need to look into the Department as a whole, or do you think that by doing just this division we can carryover into the entire Department how to better assist them, or any of the other departments?

MR. BAZ: Well, you know, definitely things like recruitment and retention are a significant challenge . . . *(timer sounds)*. . . in all departments, and also the idea of communication, and enhanced communication, I think could always be improved. But in general, I think it would have to be separate assessments or reviews because each department functions very, very differently, and each section within departments functions differently.

CHAIR PALTIN: And...and do you see a need for further reviews in *(audio interference)*.

MR. BAZ: Oh yes, definitely. I...I...I would like to do reviews throughout the departments. And you know, we've done some cursory reviews in different areas based on mostly complaint driven, you know, like everything else, but you know, something that within my Department, with additional staffing--thank you very much for supporting that performance evaluation piece of it--we can look at doing assessments of departments and operations just from an internal standpoint, let alone an external standpoint. But we always --

CHAIR PALTIN: Thank you.

MR. BAZ: -- yeah, I always support assessments like this.

CHAIR PALTIN: Thank you. Thank you, Members. Well, you know, maybe we can check back in towards...as they've had more time to work on this. So I was thinking that we would defer this item, and if we want to come back to it later and see how their progress is coming. Okay. So, with no objection, we'll defer this item.

**COUNCILMEMBERS VOICED NO OBJECTIONS.** (Excused: GJ and YLS)

**ACTION: DEFER PENDING FURTHER DISCUSSION.**

CHAIR PALTIN: Okay.

**PSLU-55 RESOLUTION 22-149, RELATING TO AMENDING THE KIHEI-MAKENA COMMUNITY PLAN LAND USE DESIGNATION AND CHANGE IN ZONING FOR WAILEA POINT VILLAGE**

CHAIR PALTIN: So, next up we have PS LU-55, Resolution 22-149, Relating to Amending the Kihei-Mākena Community Plan Land Use Designation and Change in Zoning for Wailea Point Village. The Committee is in receipt of Resolution 22-149, from Councilmember King, entitled "REFERRING TO THE MAUI PLANNING COMMISSION PROPOSED BILLS TO AMEND THE KIHEI-MAKENA COMMUNITY PLAN LAND USE DESIGNATION TO...MULTI-FAMILY AND OPEN SPACE AND CHANGE THE ZONING TO APARTMENT-1

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OR APARTMENT DISTRICT"--or sorry--"A-1 APARTMENT DISTRICT FOR REAL PROPERTY SITUATED AT KIHEI, MAUI, HAWAII, TAX MAP KEYS (2) 2-1-023:004, (2) 2-1-023:005, AND (2) 2-1-023:006 (WAILEA POINT VILLAGE)." The purpose of Resolution 22-149 is to refer proposed bills to the Maui Planning Commission for a Kihei-Mākena Community Plan land use designation amendment and a Change in Zoning for Wailea Point Village. The Committee may consider whether to recommend adoption of Resolution 22-149, with or without further revisions. The Committee may also consider the filing of Resolution 22-149 and other related action. So, at this point we do have a resource here from the Finance Department, Ms. Marcy Martin. And I believe, despite our late request, she did have a small presentation planned for us. Good...or aloha awakea, Ms. Martin. If you would like to present.

MS. MARTIN: Thank you, Chair. So, I'm here to provide you with data on Wailea Point that will assist you in analyzing this resolution. I also can provide you comments on challenges. Currently, there are 128 residential units at Wailea Point, 2 long-term rentals, 7 with home exemptions, and 119 are classified as short-term rental.

CHAIR PALTIN: I'm sorry. Can you repeat that one more time? I wasn't ready to take notes.

MS. MARTIN: Okay. 119 units are classified as short-term rental. The average assessed value for this year is 3.9 million, and the maximum assessed value is 10.7 million. I anticipate this to change next year as the average sales price this past year was 6.5 million, with 1 unit selling for 20 million. If this bill were to pass, it would cost the County about \$1.7 million this year...I...or next year. And I would anticipate it to cost more in the long run, as I would expect other projects would also like to have their zoning changed so that they may pay less taxes. You know, so the questions will be if these owners get the tax reduction, who will make up the difference? Another question would be, will this make it more difficult for this body to deliberate on tax rates if Wailea Point, which is in a resort district on the shoreline and has been zoned Hotel for many years, is now in the same tax rate category as say a ten-acre family farm in Kula. These are some things to think about when analyzing this resolution.

CHAIR PALTIN: Thank you, Ms. Martin. Committee Vice-Chair King, did I see your hand up?

VICE-CHAIR KING: Yeah, I just didn't want to...I didn't know if you were going to have questions after or if you wanted me to introduce the reason for the bill as the person who (*audio interference*).

CHAIR PALTIN: Oh, sure. Yes, go ahead.

VICE-CHAIR KING: Okay. Yeah, I had a question for Marcy Martin, but...how Non-Owner Occupied applies to a family farm. But the reason this came up to me was it was kind of a prelude to the bill we just sent to the...and I don't think we knew it was coming up, the bill that we just sent to the Planning Commission to allow Hotel-zoned apartments that are now doing legal short-term rentals to change their status because we're trying to reduce the number of short-term rentals. So, we went from a potential requirement for those...the...the condos and apartments that are right now allowed to do short-term

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rentals to allowing them to opt out. This happened to fall into the opt-out category, and this is the first one I think that's going to test that rule. Because if we do get a lot of...a lot of these from the Minatoya List opting out, then it is going to cost the County a lot of money going forward. And so I think we talked about that as where we would replace that funding. But anyway, this...what I...what...I guess I would like to ask Mr. Frampton at some point when you're ready, Chair, to discuss the reasons why Wailea Point brought this forward and was willing to change their status to eliminate all short-term rentals at their...at their condo.

CHAIR PALTIN: Okay. And just to clarify, you're...you're referring to the transient vacation phaseout for Apartment class categories on the Minatoya List --

VICE-CHAIR KING: Yeah.

CHAIR PALTIN: -- not Hotel-zoned properties?

VICE-CHAIR KING: No, but it's *(audio interference)*.

CHAIR PALTIN: But your bill relates to --

VICE-CHAIR KING: Sort of that *(audio interference)*.

CHAIR PALTIN: -- this Hotel-zoned property?

VICE-CHAIR KING: Yeah, they're...that...sort of that same concept of them wanting to opt out, so that's why they came to me about this. But it was...this was...this was actually proposed to me before we sent that other legislation to the Planning Commission.

CHAIR PALTIN: Okay. All right. Mr. Frampton did offer testimony. Did he have a specific presentation, or was he just answering questions?

VICE-CHAIR KING: I think the...the question is...and maybe in response to Mr. Croly's testimony was, do they still feel like they'll be saving tax dollars and, you know, wanting to go ahead with this? And maybe if...when anybody has any more questions for him on how they approach the homeowners' association and included everybody in the decision.

CHAIR PALTIN: Okay. Staff, I guess we're going into questions now, can you set a three-minute timer? Okay. Go ahead. Mr. Frampton, are you on the call?

MR. FRAMPTON: Yes, I am.

CHAIR PALTIN: Did you hear the question?

MR. FRAMPTON: Yes. Sorry. Okay. Yes, I did hear the question. The...the...the rationale as described by the testimony from Mr. Fondiller--he's no longer on the phone...on the phone by the way.

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MR. FONDILLER: No, I am back on, Rory.

MR. FRAMPTON: Oh, okay. Well, and I think you addressed the...you know, kind of the background rationale. At...in terms of the...the new rates that were adopted just last month, we've...we're going to be looking at that. That is new information that I'm not sure if the...the association was aware of, but I did review that while we were...while you were on your other item. And it is as, Mr. Croly discussed, you know, for...for units that are over \$4-1/2 million, the new rate is now 12.50, which is second only to Timeshare, but that...that will be discussed. You know, right now the item is to...the request is to transmit this item to the Planning Commission and that's what we're hoping can be done. And...so then we can...you know, we'll...we'll be having further deliberations internally with the AOA.

CHAIR PALTIN: Okay. Any further questions, Member King?

VICE-CHAIR KING: Maybe just if we can ask Bob Fondiller to confirm that, you know, he's still on...he still wants this to go forward.

MR. FONDILLER: Yeah, so we do. I mean, I'm sure that everybody knows the...you know, the 4-1/2 million with the \$12.50 per 1,000 only applies to the amount above 4.5, so you are into those \$8, and I forget the other number offhand. I...believe it or not, riding in a car in...in Arkansas right now as I'm listening, so I do not have the numbers in front of me. But we still think that it will result in a savings for our non...non-short-term-rental owners. And you know, we...we aren't a hotel, we really are just a condo with, you know, a reasonable number of full-time residents and certainly, the majority of part-time residents, and a minority of short-term rentals. And we've certainly, you know, read the newspapers, listened to, you know, all of the articles that we've, you know, seen in the newspaper, on the radio where the County is trying to have more long-term rentals for the citizens . . . *(timer sounds)*. . . and less short-term rentals, and we thought this was an opportunity for us and the County to, you know, kind of move in the same direction. We were having a number of our owners wanting to move to short-term rental so that they were able to recoup some of the additional tax dollars that they were going to be paying out in the property taxes, and clearly that was not something that Wailea Point wanted to see happen, and we thought it was going against the direction of the County. So, that's when we chose to go to Councilmember King to see if we could do something to, you know, reduce the...the potential of approximately 130 units could go into the Short-Term Rental category if we didn't do anything. So, that got us to where we are, and we are still comfortable moving forward even with the...the new *(audio interference)*.

CHAIR PALTIN: Okay. Members, further questions for our resources? Member Sinenci?

COUNCILMEMBER SINENCI: Chair, just a clarifying question for Ms. Martin. The...I believe you said 1.7 million was...would be the difference in this tax change?

MS. MARTIN: Chair?



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CHAIR PALTIN: Go ahead, Ms. Martin.

MS. MARTIN: Yes. 1.7 for this year, and that's if it only involves this project.

COUNCILMEMBER SINENCI: Just for this project. Okay. All right. And then you...you made reference to a ten...ten-acre farm. I didn't quite hear that.

MS. MARTIN: Well, Wailea Point is zoned Hotel, it's next door to the Four Seasons on the ocean, you know, the values are high. The Non-Owner Occupied class is going to contain Ag zoned, Residential-zoned properties that don't have the home exemption for whatever reason. And then those properties, say with the larger acreages, are going to have higher values, so you're going to have, you know, a mix of resort properties in the Non-Owner Occupied classification.

COUNCILMEMBER SINENCI: And even if they switch to long-term rentals, they would still be getting the rental rates?

MS. MARTIN: If they've qualified for the long-term rental exemption, they will be in the Long-Term Rental classification. You know, however, you are going to have properties that are in between exemptions, and in between long-term rental exemptions and homeowner exemptions, and that default class for those will be Non-Owner Occupied.

COUNCILMEMBER SINENCI: But...but they would still have their own rental rates, they could...I mean they would set those rates themselves? Yeah.

MS. MARTIN: Yeah.

COUNCILMEMBER SINENCI: Okay. Thank you. Thank you, Chair.

CHAIR PALTIN: Member Molina?

COUNCILMEMBER MOLINA: Thank you, Madam Chair. Aloha, Ms. Martin. So, in your opening comments you mentioned that, you know, if this bill is passed, then it will start to set...potentially set a precedent. Can you clarify...expound on that a little bit more? In other words, so if this goes through, then others could follow this as an example that could result in less revenue for the County? Am I correct with that assessment?

MS. MARTIN: Based upon our experience with talking to taxpayers, I would say yes. In this price range, in this location you are dealing with very expensive properties. These owners, you know, even people who would rent there, they can choose to live anywhere, they prefer to live on the ocean. So, I would think that other projects in similar situations, in similar locations to this, may choose to take advantage of this. And that's a reason why it might not be a zoning issue. I know that they're looking for the zoning. You know, these are second homeowners, and if someone in Wailea Point is renting and they aren't allowed to rent, at that price point, I don't...I'm not sure if it will be a tourism reduction because they could probably just go next door to stay at the Four Seasons.

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So, I could foresee other projects taking advantage of...of this if this were approved.

COUNCILMEMBER MOLINA: Okay. Yeah, thank you. And I'm just kind of curious now, if the residents decide they want to go long-term rental, I guess it will add to the inventory of rentals. What would the rental amounts for properties like this be? I mean, I don't know if the average local person could afford, you know, whatever rents these individuals would charge. But anyway, just --

MS. MARTIN: Yeah, I...I think it's...

COUNCILMEMBER MOLINA: -- interesting food for thought.

MS. MARTIN: Yeah, yeah.

COUNCILMEMBER MOLINA: Oh, okay. Yeah, it just kind of spurs another discussion. But anyway...but thank you for your comments. Thank you, Madam Chair.

CHAIR PALTIN: Thank you. Members, anyone else, questions for our resources? No one else on first round? Member Rawlins-Fernandez?

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Chair. Aloha, Ms. Martin. Mahalo for being with us today on short notice. I'm not sure if you have the number on you right now. One of the concerns you have about passing this legislation is that it could set precedent. Do you have the number of properties that could...or the...the maximum amount of properties that could potentially want to follow this lead?

MS. MARTIN: I don't have the number that could potentially follow this lead; however, in this location there is Mākena Beach Resort that was primarily the Prince. There's Maluhia, Polo Beach, there's quite a few, and then the same in Kapalua and Kā'anapali. You know, as you heard in the testimony, this is happening because of a vote of majority of owners, so it will be hard to predict what the end result of this will be.

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Ms. Martin. Mahalo, Chair.

CHAIR PALTIN: Thank you. For my three minutes, I think my question will be for one of the attorneys. Is it possible...either Mr. Hopper or Mr. Mitchell to...this could be done through the applicant initiating a Change in Zoning rather than a Council or Administrative Change in Zoning. And so I was wondering if you could briefly run down the differences if it's a Council initiated versus the applicant initiated. Because I'm a little uncomfortable about getting involved when, you know, we had a testifier testifying strongly against it, and then it's...it would be like we're taking sides and getting into this situation when...when not everybody's onboard. So, I was wondering if you could briefly run down what is the difference if it's a Council-initiated Change in Zoning or if it's an applicant-initiated Change in Zoning. Go ahead, Mr. Hopper.

MR. HOPPER: I had done a written opinion on this a while ago and actually provided it in conjunction with the last comprehensive map update that you had in this Committee.

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There's some differences. I think maybe the key difference is that there's not notification of property owners within 500 feet. There's actually not a requirement to notify property owners in general. I think in the case of that map update, the Planning Department notified the property owners, but there wasn't like a 500-foot-notice requirement as it would be required for an application. In addition, there's no actual application filed, so there is...generally, if an individual asks for a Change in Zoning, they have to provide an application with a lot of additional things. If it's done by...by the Council, which has certainly been done from time to time, it's sort of more of a comprehensive zoning type of update, so that's...the application isn't required. I mean that makes sense, a Councilmember generally wouldn't file an application like a property owner would do. So, I think those are some of the...the key differences. The notice requirements are different. Obviously, a resolution has to be passed to send it to the Commission, whereas if an applicant does it, it's...just goes directly to the commission. There may be some other small differences, but I think those are the major ones, and...and the differences between Council initiated. The...the map update actually wasn't Council initiated, it was Department initiated, but that's got the same...same sections deal with the notice requirements. So, in those cases, whether it's Council initiated or department initiated, there's not a requirement to notify owners within 500 feet or the property owner. So, in this case I don't know if the...all the condo owners have been notified of the change or things like that. It will have to go out for public hearing, so there'd be a notice in the newspaper . . .*(timer sounds)*. . . that would...that would go to the...to...for the Planning Commission meeting. But I think those are some of the key differences. And sorry not to be more brief, but I think I covered them.

CHAIR PALTIN: Okay. Thank you. Members, anyone else in the first round of questioning, anyone have any first-round questions? If not, I'll continue on to Committee...oh, Chair Lee, go ahead.

COUNCILMEMBER LEE: So, Corp. Counsel, Mr. Hopper, this amounts to a downzoning, right? This application? And so...

MR. HOPPER: It would...yes.

COUNCILMEMBER LEE: So...so, I'm wondering why the requirements would be the same as up-zoning or additional zoning. Could you explain that?

MR. HOPPER: Well, the...the Code doesn't really make a distinction between those two with, I think, one important exception. The Council can only impose conditions when there are essentially negative impacts from the proposed new use. And so normally, if you're up-zoning, you would have a use that's different from Ag to Residential, for example, that would have impacts. In this case, you're...you would be going from Hotel to Apartment, which would essentially be residential. In that case, I...I think it would be difficult to justify conditions that would be recorded on the property. That's why I attached an opinion dealing with nonconforming uses, which I think would apply in this case to anyone who's lawfully conducting a...a vacation rental or a hotel use. And I think that that's why I...I included that. But I think that's one key difference is that it may be difficult to impose conditions if the new...the new district is actually more

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restrictive than the old one.

COUNCILMEMBER LEE: Right, exactly. Okay. Thank you. Thank you, Madam Chair.

CHAIR PALTIN: Thank you. Anyone else first round? Seeing none. Committee Vice-Chair King, did you want to go second round?

VICE-CHAIR KING: Sure. Thank you, Chair. A couple questions. One, just to...just to reiterate, Mr. Hopper, to be clear, if the...I kind of looked at this as an applicant-initiated change because they came to me. But if they had initiated this directly with the Planning Department, you're saying they wouldn't need to...it could go directly to the Planning Commission, they wouldn't need to come to Committee first, they could have sent it directly to Planning...the commissions, I mean?

MR. HOPPER: That's true. If it's not Council initiated, there's no need for a resolution; however, they have to prepare and file an application, and I'm sure Mr. Frampton can talk to you about the --

VICE-CHAIR KING: Sure.

MR. HOPPER: -- you know, what that involves.

VICE-CHAIR KING: Okay. Okay. I just wanted to make sure I heard that correctly. And then the other question is for Ms. Martin. So, I understand the concern about loss of revenue, but if we...if we...if this other bill that we have sent to the Planning Commission passes allowing all of these, you know, the Minatoya List to voluntarily change, we're going to lose a lot of revenue there. Are you less concerned about that, or are you equally concerned about that bill passing and all of the...I think I heard over 10,000 on the Minatoya List at one point.

MS. MARTIN: Chair?

CHAIR PALTIN: Go ahead, Ms. Martin.

MS. MARTIN: The concerns are the same.

VICE-CHAIR KING: Okay. Because this is sort of the first test of that, the idea...it's not the same zoning change, but the idea of switching over which is something that the Council has been talking about for years. And yeah, it is going to be...I...I, you know, I totally acknowledge it's going to be problematic when this starts happening, but I don't know if they'll go, you know, one by one, but if we allow them voluntarily, there has to be some...you know, some expedition, I think, otherwise there's no point in that...in that law. And then the other question I have maybe you can answer is if...for those who are concerned about doing short-term rentals, they can still apply for a special permit for short-term rental if there's room in the cap; is that true?

CHAIR PALTIN: Maybe that's a question for Mr. Hopper.

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VICE-CHAIR KING: Oh, okay.

MR. HOPPER: I think the Planning Department can clarify that too. But yeah, if they were Apartment zoned...I don't know if Apartment zoning allows short-term rental home permits or bed and breakfast permits, you'd have to check on that; however, with the nonconforming use law, if someone's lawfully doing that, the...the default rule under the Code is that they can continue to do that use lawfully. It's just new...new units could not start to operate.

VICE-CHAIR KING: Okay. And then also, they would have to follow their own CC&Rs. So if their own CC&Rs said they couldn't do it, then they probably wouldn't be able to do it anyway.

MR. HOPPER: Yeah, even if the zoning...yeah, even if the zoning would allow it, the CC&Rs can be more restrictive, that's correct.

VICE-CHAIR KING: Okay. Great. All right. Thank you. Thank you, Chair.

CHAIR PALTIN: Did you want to hear from Director McLean as well?

VICE-CHAIR KING: Oh, did she come...yeah, I thought I just saw her come on. Director McLean, do you have anything to add to that?

MS. MCLEAN: Thank you. Just that B&Bs and STRHs . . .*(timer sounds)*. . . are only issued for single-family homes, not for multifamily. So, if --

VICE-CHAIR KING: Okay.

MS. MCLEAN: -- if a unit wasn't allowed to do it by the zoning they'd, I think, need a conditional permit in order to do it.

VICE-CHAIR KING: Okay. And then they'd have to...there'd have to be room in the cap as well because I think we're at the cap for South Maui. Okay.

MS. MCLEAN: Correct, yeah.

VICE-CHAIR KING: Thank you. Thank you, Chair.

CHAIR PALTIN: Okay. Members, any further questions? I think I have a question for Mr. Frampton. I haven't ever been to Wailea Point, is it a gated property?

MR. FRAMPTON: I believe it is. I haven't been down there recently either, but I believe it's...there is a gate. I know there's a security guard.

CHAIR PALTIN: I'm sorry, can you repeat? Can you repeat?

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MR. FRAMPTON: I believe...I'm not sure if there's a gate, but there is a security shack out front.

CHAIR PALTIN: Oh, okay.

VICE-CHAIR KING: Chair, Mr. Fondiller can probably tell you.

CHAIR PALTIN: Mr. Fondiller, is it...

MR. FONDILLER: Yes, there is...I'm sorry.

CHAIR PALTIN: Go ahead.

MR. FONDILLER: Yes, there is...there is a gate.

CHAIR PALTIN: Okay. And then I guess my next question for Director McLean. If there is an RFS put in about an illegal short-term rental, and the inspectors are not allowed to go past the gate or not permitted by the owners, what is the next step?

MS. MCLEAN: Our enforcement of illegal vacation rentals is...is mostly driven by advertisements. So, not being able to access the property wouldn't necessarily prevent us from conducting enforcement if we have ads to go on. We like to access the property just in case the enforcement activity gets to...gets through litigation, we need to be able to say that we did visit, but that doesn't necessarily preclude us from enforcing if we have other evidence to go on.

CHAIR PALTIN: And if they need to access the property and the gate prevents them to, what is the mitigation for that?

MS. MCLEAN: That's something we've been discussing with Corp. Counsel for a while, to try to get some kind of warrant, an administrative warrant. We've been cautioned against doing that for a number of reasons, so for the time being, if we can't get access to a property then we don't go on, we don't have a way of accessing it otherwise.

CHAIR PALTIN: Okay.

MR. FONDILLER: In the case of Wailea Point, there is a person at the gate who would --

CHAIR PALTIN: Thank you, Mr. Fondiller.

MR. FONDILLER: -- let someone come in who...who had the right to come in.

CHAIR PALTIN: Please wait until you're called. Thank you. Mr. Frampton --

MR. FONDILLER: Okay.

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CHAIR PALTIN: -- is there opposition to the...your client applying directly for a Change in Zoning rather than having us make this decision and getting in between the various homeowners' desires?

MR. FRAMPTON: I think because it was a downzoning, that's the main reason why, and it was...seemed like something that was in line with the County policies for trying to reduce transient vacation rentals. I believe that was the . . .*(timer sounds)*. . . justification for requesting the...for it to be County initiated. The...the owner initiated as...as Mr. Hopper mentioned, it is a lot more complex in terms of the requirements and the submittals and...that are usually required when you're going to be doing an up-zoning in terms of analysis of all the impacts and everything. You know, we are prepared...

CHAIR PALTIN: Thank you. Mr. Frampton, my...my timer rang, but I guess, you know, my concern, like you said, is a downzoning, we've been told how many times that, you know, it's like a taking, and here we have not all of your parties onboard with it from what we heard from testimony. So, I mean, if you folks want to initiate it yourself, that's one thing, but if we're initiating it, and not everybody's onboard as we heard in testimony, it's a little spooky to me, I guess, to move forward this route. I don't want folks to be saying like...you know, accusing us of a taking when it's kind of initiated by you folks, but then when we have this hearing, it seems like there's folks within your unit that weren't aware, per se. And then I guess there's the Mr. Croly point, you know, the trend seems to be with the highest tier at least of Non-Owner Occupied to go up, up, up. So, I don't want to have folks come back and say that, you know, we did this to them for tax relief, and then they don't get tax relief, and then, you know, not fully understand our role in it. So, that's some of my concerns. Members, any further comments or questions from...yes, if nobody else wants a first or second round, Member Sinenci?

COUNCILMEMBER SINENCI: Chair, yeah, just have a question for Ms. Martin. What constitutes long-term rental? Is this...excuse me, is it just for Apartment zoning for...for long-term rental?

CHAIR PALTIN: Ms. Martin?

MS. MARTIN: Chair, thank you. So, property owners in Wailea Point can apply for and be granted the long-term rental exemption. And in fact, we have two properties in this project who are getting the long-term rental exemption and classification, so they are eligible for both the long-term and homeowner classifications if they meet the requirements.

COUNCILMEMBER SINENCI: How are you guys...and how...how...how does the Department enforce that?

MS. MARTIN: Well, that's a good question. We've had to already engage in some enforcement issues. We are asking for copies of the leases. If we're questioning whether someone's living there, we are checking where the lessee resides permanently. There are some enforcement issues. You know, we have some tools. A physical inspection is a tool, and

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looking at if they have a homeowner exemption somewhere else is another tool.

COUNCILMEMBER SINENCI: Okay. Because...right, I'm just kind of looking at if we are changing it for Wailea Point, but we wanted to make sure that it's...it's been...the exemption is being given for what the intention made for, and not just for tax breaks, but to increase the...the housing availability on the island. Thank you. Thank you, Chair.

CHAIR PALTIN: Thank you. Member Kama, followed by Member Molina.

COUNCILMEMBER KAMA: Thank you, Chair, so very much. I just wanted to comment. Sorry. Lena's home and she's playing Dancing Queen. I told her lower the volume, but...sorry. But real quick, I think...I'm onboard with you, Chair, that I kind of like don't want to have to make a decision unless a...an entity unto itself has come to an agreement among themselves what they want. And that I think that the easiest thing for them, and for us, is for them to go straight to the...to the...to the Planning Commission, and whatever that issue might be that they just need to resolve it themselves and not put us in the middle of this or that and...you know, because we don't know, right. We don't even know where we all are on this, but that's my sense, Chair. Thank you.

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

COUNCILMEMBER MOLINA: Yeah, thank you, Madam Chair. Just maybe under your signature, if we could get a request from Finance to...in writing about how many of these units currently claim to have short-term rent...rentals. And, you know, I...I kind of echo the sentiments of what's been said about us getting involved in this. I...better to have the applicant do this rather than us getting involved. You know, these are exclusive properties, yeah, and you know, certainly the residents have a right to ask for a...for tax relief, but you know, with everybody else in this community struggling and lack of inventory for long-term rentals, I think better for us to stay out of it. But that's just me, Madam Chair, and I await your recommendation. Thank you.

CHAIR PALTIN: Okay. I think Ms. Martin did tell us there were 119 classified as Short-Term Rentals; is that correct, Ms. Martin?

MS. MARTIN: Currently, there are 119 classified as Short-Term Rentals because that's based on the zoning. But in 2020, when we had the self-declarations, we had 15 owners self-declare that they were doing short-term rentals. I think that was the same as what they reported in the testimony earlier.

CHAIR PALTIN: Okay. Member Molina, does that satisfy your request, or did you still need a written?

COUNCILMEMBER MOLINA: Nah, okay. I guess I probably missed that earlier, but just in case anybody from the public wanted to know specific details, we have it in writing. So, that's kind of why I asked for it in writing, but you know...anyway, I'll...I'll leave it to you, Chair. Thank you.



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CHAIR PALTIN: Okay. Yeah, it should show up in the meeting minutes. Committee Vice-Chair King, did I see your hand up?

VICE-CHAIR KING: Yeah, thank you, Chair. I just wanted to reiterate the reason that I brought this forward is because of our push...this Council has been pushing for less short-term rentals, less vacation rentals for our tourists because we're addressing the overtourism. So, to me, that they were trying to eliminate the short-term rentals from that...from that...the condo unit. I wasn't looking at it as a tax break necessarily, but I was looking at it as an opportunity, since we're going forward trying to remove a lot of the short-term rentals that are allowed right now legally by the zoning. You know, we made that...we sent that...the...a proposed ordinance to the Planning Commission to do that. So, to me, this...that's why I...I thought this was an opportunity to kind of test the waters. And if we're going to require 100 percent of the people...you know, we had that conversation before we sent that legislation on, your legislation with the...allowing folks to do this voluntarily, and we talked about 100 percent being too much, we were going to change it to 67. So, if we're going to still be worried about, you know, the minority people, then perhaps that...that bill should stay at 100 percent, and we can only voluntarily change...you know, allow the ones to change voluntarily that get 100 percent. But I think we have to be fair and, you know, and...and kind of keep with that original vision that we had, and that was to reduce the number of short-term rentals, hotel rooms, especially not expanding hotel rooms so that we don't continue to increase the number of tourists. So, you know, I mean the idea that oh, if they don't rent here, they're going to go to the hotel, well, there's a limited space, and I think that's what we were trying to create is a limited space for people to visit because we have so much extra space with all these other short-term rentals. So, that's all, that's why I brought this forward. I thought it fit into this Council's, you know, direction of limiting and kind of removing some of the short-term rentals. And if...if the...the will of this Committee is to ask the applicants to go directly to the Planning Department and put in an application, go directly to Planning Commission, then I think that's what we should do with the other ones too, the other voluntary ones too, is just allow them to go directly to the Planning Commission and not come to the Council first. So, as long as we're fair in the way that we apply our...our rules and our...you know, our intent, I think I...I would support your recommendation. But I just want to make sure that when the other bill comes back, you know, we pass it, and we allow folks to do this voluntary that we...we aren't having this...this same discussion about, you know, there's two people who don't want it, so we shouldn't pass it. So, that...that's going to be key to that number right now that's in the bill of 100 percent versus 67 percent.

CHAIR PALTIN: Thank you. And...and if I could respond to that. My distinction is that in the other bill, it would be the properties themselves initiating it, it wouldn't be the Council putting it on somebody else. And it's almost --

VICE-CHAIR KING: That's what I (*audio interference*).

CHAIR PALTIN: -- as though that's what we're doing here. Because if they want to initiate a Change in Zoning, they can initiate a Change in Zoning. For the Minatoya properties,

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the Apartment class and, you know, many of them on the West Side used to actually be long-term rentals for our residents, people used to live at Mahinahina Beach, it's not in the \$10 million range. But that legislation will enable them to go about that process self-initiated. So, I mean the...the difference to me is not whether we're not being fair or not, it's if you want to do this, you take it upon yourself and you do it, not we're taking...we're getting in the mix of taking sides. If their HOA initiates it and they follow through, that's one thing, but if we're getting in the middle of the HOA members and initiating it for them, that's the...the distinction between the voluntary TVR phaseout in Apartment properties versus the Change in Zoning in Hotel property. So, that's...that's the difference I see. I'm not comfortable being the entity that initiates it when there's, you know, this hoo-hoo that we saw in testimony.

VICE-CHAIR KING: Okay. And that's exactly what I was saying, you know, as long as we're treating the others the same, we're asking them to initiate it as well, then I'm okay with it. That...that's basically what I was saying is that I don't want to have to, you know, decide this for all of the Minatoya List as well if...if we're...you know, if we're not going to do it for this. So, you know, I think that's a good...you know, that's probably a good way to move forward is just ask the applicants to initiate it themselves.

CHAIR PALTIN: Okay. Member Rawlins-Fernandez?

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Chair. I guess this question is for Mr. Frampton. I don't know. Or whoever can answer this question. So, Ms. Martin said that there's about 15 who self...15 property owners who self-declared that they do short-term rentals. Are the 15 property owners part of the property owners who support this zoning change?

MR. FRAMPTON: There was a poll that was done--and maybe Bob can add in--a poll that was taken where over 70 percent of the owners, as he mentioned earlier, were in support, and I believe it was only something like 12 percent that were against. But I don't know if there was a...if they actually sorted that out to determine, you know, who...who the opposition...who...who...who were opposed and if they were indeed the STR rentals. I'm...I'm assuming that it's probably the case that the people who would be opposed were the ones that were using it as STRs, but that's just an assumption, and Bob can chime in.

MR. FONDILLER: Yeah...yeah, this is Bob Fondiller, adding on to Rory. Yeah, all we know is 75 percent said they were willing to eliminate short-term rentals in Wailea Point, and I forget whether it was 12 or 13 who weren't, and that the 12 or 13 who just simply didn't respond to the survey that we took. I would guess it to be the majority of people who were doing short-term rentals didn't want to see this happen, but we...we didn't see it broken out by unit. We had it done by an independent survey firm so that, you know, owners would not feel as though the board was trying to impose something upon the owners. But I would guess the 15 or so who are renters, again, approximately 10 percent, probably most of them didn't want to see it change, they wanted to see it go on, but we had roughly 90 percent of people who don't rent who clearly, you know, see that as a disadvantage to the association.

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COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo for your responses for those...on my question. And I'm sure you understand why I asked that question is for those --

MR. FONDILLER: Yeah.

COUNCILMEMBER RAWLINS-FERNANDEZ: -- that aren't, you know, conducting or do short-term rentals, it's no loss to them if the zoning change is passed because they're not doing STRs anyway. And those that are doing STRs, of course, would be in opposition because they would loss that opportunity to do so. So, Chair, I support the direction that I believe you're taking this. Mahalo.

CHAIR PALTIN: Okay. Seeing that it's 12:01, and we're probably going to lose quorum soon, the Chair will entertain a motion to recommend filing of Resolution 22-149.

COUNCILMEMBER KAMA: So moved.

CHAIR PALTIN: It's been moved by Member Kama --

COUNCILMEMBER RAWLINS-FERNANDEZ: Second.

CHAIR PALTIN: -- is there...seconded by Member Rawlins-Fernandez. Member Kama, any discussion?

COUNCILMEMBER KAMA: No, Chair. Thank you.

CHAIR PALTIN: Okay. Member Rawlins-Fernandez, as the seconder, any discussion?

COUNCILMEMBER RAWLINS-FERNANDEZ: Mahalo, Chair. Just echoing the sentiments shared in discussion. Mahalo, Chair.

CHAIR PALTIN: Okay. Anyone else care to give discussion? Member King?

VICE-CHAIR KING: Thank you, Chair. I will support the motion, and I...and I...I'm sorry for the folks if they feel like they spent a lot of time on this, but I think this was a really good discussion. And maybe a condition that needs to put on the bill that comes back to us from the Planning Commission about voluntary change...you know, the change in status that should be applicant initiated because, you know, otherwise we'll be going through this umpteen times potentially. But you know, I...I really want to thank the...Bob Fondiller and Rory Frampton for your initiating wanting to stop doing short-term rentals because that is the direction. It seems funny that we're now protecting the ones who want to do the short-term rentals, but you know, that is the direction that this Council has been leading everybody to think that we're going in. And I think we do want...because we want a reduction to normalize numbers of tourism, you know, along with our diversified economy. So, I...I appreciate...I just want you to know that I appreciate your willingness to step up and voluntary...voluntarily do that. I do understand Mr. Molina's concern that it's not necessarily going to allow for long-term

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affordable rentals because that's not really an affordable unit, but it does do what we've been trying to do, which is keep down on the number of short-term rental accommodations so that we can have a more manageable tourism number. So...so, thank you for that. I...I appreciate that, your coming forward. Thank you, Chair.

CHAIR PALTIN: Thank you. And just to clarify, that is the bill that we referred to the Planning Commission. It is them initiating it, it is voluntary. So, that's already in there. Member Rawlins-Fernandez, did you have your hand up for second and final?

COUNCILMEMBER RAWLINS-FERNANDEZ: I did for second and final. Mahalo, Chair. Just really quickly, my vote for this is, as we stated in discussion, for the property owners to initiate this themselves, and not for us to impose this upon those. It's not to protect short-term rentals. Mahalo, Chair.

CHAIR PALTIN: Okay. Seeing no further discussion. Will all those in favor of the motion on the floor raise their hand and say "aye."

COUNCILMEMBERS: Aye.

CHAIR PALTIN: Okay. Motion passes unanimously with six "ayes," with Member Lee, Member Johnson, Member Sugimura, oh, excused...three excused, six "ayes," three excused.

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

**NOES:       None.**

**ABSTAIN:   None.**

**ABSENT:     None.**

**EXC.:       Councilmember Johnson, Lee, and Sugimura.**

**MOTION CARRIED.**

**ACTION:     Recommending FILING of Resolution 22-149.**

CHAIR PALTIN: And so we'll defer also the Status of Active Conditional Permits, PSLU-51. We can probably take it up on our next agenda. And as I mentioned in the beginning of this meeting, PSLU-53, South Maui Community Plan Update, is intended to be deferred. The reason we have it as a standing item is if Members wanted to email to the Committee suggested process, and then we'll upload it during the meeting and Members can take a look at it. So, the next PSLU, I believe, is June 30th, which would be the deadline for the South Maui Community Plan Update to be postmarked or emailed, timestamped by.

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So, just putting a little advertising out, deadline, June 30th. We're still working on the selection process and procedures.

**PSLU-51                    STATUS OF ACTIVE CONDITIONAL PERMITS** (CC 20-561, CC 21-121,  
CC 21-250, CC 21-396, CC 21-519, and CC 22-129)

**ACTION:        DEFER PENDING FURTHER DISCUSSION.**

**PSLU-53                    SOUTH MAUI COMMUNITY PLAN UPDATE** (CC 22-102)

**ACTION:        DEFER PENDING FURTHER DISCUSSION.**

CHAIR PALTIN: And if there's nothing else...3:30? There is a Budget signing at 3:30, I believe, so Member...if Member Kama is so gracious, maybe she'll let us take our recess at 3:30 to watch the Budget get signed upstairs possibly.

COUNCILMEMBER KAMA: I have a plan. Hopefully, more gracious is to let you all go before 3:15.

CHAIR PALTIN: Oh, that will be nice as well. I'm hoping that there's not a lot of testimony. I did see some folks rallying, but okay --

COUNCILMEMBER KAMA: Yes.

CHAIR PALTIN: -- 3:15 sounds great.

COUNCILMEMBER KAMA: Yes. Thank you.

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CHAIR PALTIN: All right. And then with no further ado, I will adjourn today's meeting. The time is 12:05. Sorry, I went into your lunch break a little bit, and this meeting is now adjourned. I've deferred the other two items. . . .*(gavel)*. . .

**ADJOURN:** 12:05 p.m.

APPROVED:



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TAMARA PALTIN, Chair  
Planning and Sustainable Land Use Committee

pslu:min:220616:ds

Transcribed by: Daniel Schoenbeck

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CERTIFICATION

I, Daniel Schoenbeck, hereby certify that pages 1 through 55 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 22nd day of July 2022, in Kula, Hawai'i



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Daniel Schoenbeck