

**PLANNING COMMITTEE**  
**Council of the County of Maui**

**MINUTES**

**Council Chamber**

**November 20, 2014**

**CONVENE: 9:04 a.m.**

**PRESENT: VOTING MEMBERS:**

Councilmember Donald G. Couch, Jr., Chair  
Councilmember Michael P. Victorino, Vice-Chair (left at 11:40 a.m.)  
Councilmember Gladys C. Baisa  
Councilmember Elle Cochran  
Councilmember Stacy Crivello (left at 10:57 a.m.)  
Councilmember Don S. Guzman  
Councilmember Mike White (arrived at 9:06 a.m.)

**STAFF:** Chancy Hopper, Legislative Analyst  
Pauline Martins, Committee Secretary

Ella Alcon, Council Aide, Molokai Council Office (via voice conference)  
Denise Fernandez, Council Aide, Lanai Council Office (via voice conference)  
Dawn Lono, Council Aide, Hana Council Office (via voice conference)

**ADMIN.:** Richelle Thomson, Deputy Corporation Counsel, Department of the Corporation Counsel  
Michele McLean, Deputy Director, Department of Planning  
William Spence, Director, Department of Planning  
Gina Flammer, Planner, Department of Planning  
David Goode, Director, Department of Public Works

**OTHERS:** Dick Mayer  
Bryce Buchanan  
Jack Riley  
Russell Murakami  
James Patrick  
Eve Hogan  
Froyam Edel  
Catherine Clark  
Larry Shapiro  
Thomas Croly  
Plus (16) other people

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

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CHAIR COUCH: ... *(gavel)* ... Good morning. Will the Planning Committee meeting of November 20, 2014 please come to order. It is now 9:05, my name is Don Couch, I'm the Chair of the Committee. And before we go any further can we please have everybody turn their cell phones on to silent mode. Please we don't want to have phones interrupting our meeting. Joining me today is Committee Vice-Chair Michael Victorino.

VICE-CHAIR VICTORINO: Good morning, Mr. Chair.

CHAIR COUCH: Good morning. And Council Chair, Gladys Baisa.

COUNCILMEMBER BAISA: Good morning, Chair.

CHAIR COUCH: Good morning. Councilmember Elle Cochran.

COUNCILMEMBER COCHRAN: Aloha, good morning, Chair.

CHAIR COUCH: Good morning, Chair, Ms. Cochran.

COUNCILMEMBER COCHRAN: Chair Couch.

COUNCILMEMBER BAISA: Chair Couch.

CHAIR COUCH: And Councilmember Stacy Crivello.

COUNCILMEMBER CRIVELLO: Good morning, Chair.

CHAIR COUCH: Good morning. And Councilmember Don Guzman.

COUNCILMEMBER GUZMAN: Good morning, Chair.

CHAIR COUCH: Good morning. And excused is Councilmember Mike White. Alright, we don't have any non-voting members with us today. From the Administration we're going to have, probably Will Spence and we have Gina Flammer, and both from the Planning Department and Michele McLean --

MS. McLEAN: Good morning.

CHAIR COUCH: --from the Planning Department. Good morning. And also we think David Goode's going to be coming down here soon from the Department of Public Works. We have from Corporation Counsel, Richelle Thomson, good morning. And Committee Staff we have

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Legislative Analyst Chancy Hopper, good morning, and Committee Secretary Pauline Martins. Good morning. Alright, we have a couple items on today's agenda. First is PC-56 which is Amending Chapter 2.8B, 2.80B, Maui County Code, Relating to General and Community Plans; and PC-60 Amending Title 19, Maui County Code, Relating to Short-Term Rental Homes. And I just want to mention in the review of the short-term rental home ordinance we are looking for ideas that would help streamline the process and improve compliance. This isn't about enforcement. We had our enforcement discussion last meeting and we got some good information from there. So we understand there's an issue with enforcement and we've discussed it and the Administration is working to get that beefed up. And I want to welcome Councilmember Mike White.

COUNCILMEMBER WHITE: Good morning, Chair.

CHAIR COUCH: Alright, first off we're going to start public testimony. Let's get this set up. Okay, we're going to have public testimony here and anybody who wants to testify, please sign up in the back at the desk back there and you're limited to three minutes on the items that are on the list and which is PC-56 and -60 and also you have three minutes. The light will be green for three minutes, it'll turn yellow for a minute, and when it turns red at the end of your fourth minute please end your comments. Also when you come up please state your name, we need that for the record even though I call your name please state your name because we may mispronounce it or whatever. But for the record we need you to state your name and any organization you are representing. Members, without objection we'll start testimony.

COUNCIL MEMBERS: No objections.

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

CHAIR COUCH: Okay, first one that signed up to testify is Dick Mayer, followed by Bryce Buchanan.

MR. MAYER: Good morning, Chair, Members. I'm going to be speaking on the first item on your agenda regarding the Maui County Plan, the General Plan and the effort to separate out ministerial decision making. Let me briefly describe what I'm talking about. The, most of you have gone through the material I assume but what we're talking about now is taking some of the decisions being made by County staff members in the Planning Department, the Public Works, or wherever approvals are given to bypass the Community Plans. As we all know, the Community Plans are the result of a lot of effort by the members of the community, by Planning Commission, and by you folks approving those Community Plans and they're carving out a section of that Community Plan and saying we don't have to follow it. And I think this is a very dangerous precedent. Let me give you a couple of examples of what I'm talking about. Imagine in your district, Ms. Crivello, that the people of Molokai had decided that areas that are near sandy beaches and you don't have huge numbers of them but you have them, that there should be buildings within let's say 50 feet of a sandy beach. But there's a parcel of land that has been put in the Community Plan as let's say urban in that general area and the project comes up to the

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people in the Planning Department to look at, review that project and it's going to be a 20-story building or 10-story building or a 50-foot building. And they say we would like to build it and it's within that 50-foot limit but it's legal in an urban area and they are not required to look at that Community Plan if this thing were to pass, and all they would have to do, all they would be able to do is say yes, it meets the right height limits of the Building Code, it's the right setback of 20 feet or 30 feet or whatever it is from the boundary of the property and they go ahead and approve it even though the Community Plan had said it should be a 50-foot setback from a sandy beach area. Similarly, Mr. White pushed very hard in our Maui Island Plan to have rights, to have view corridors along certain highways of the island. Upcountry and Kula we have along the Kula Highway a 50-foot setback from the highway to prevent construction. If this were to pass as it's being proposed, they would not have to look at that 50-foot setback if it was a building that wants to go up within that setback as long as it's within let's say 20 feet of the boundary or 10 feet of the boundary they could go ahead and build that building. I don't think the people in your, in our communities, all the communities on the island, when they looked at the Community Plans, when they designed the Community Plans, thought that anybody would be able to override that plan if it were stronger than the Building Code and that's what this would allow you to do. So I urge you strongly to reassess the proposal coming from the Planning Department to just say okay these are ministerial items we don't have to look at them. There's another issue here and that is whether this ordinance should even be before you today. I believe that the Charter says that issues that deal with land issues should go to the Planning Commissions and for it to come directly to you without ever having gone to the Planning Commission, any of the Planning Commissions, I think is incorrect and I would urge you to consider and consult with your attorney whether this should even be here today, whether it first should have gone by resolution to the Planning Commissions for a hearing by the general public. I don't think anybody else in the audience probably read this today. I happen to be aware of it because I was on the GPAC about this idea of ministerial decision making, but I think it's a real problem and I would urge you to consider whether you should even be handling this issue today before it has gone out to the Planning Commissions for review on each of the islands and it deals with both the Maui Island Plan and all of the Community Plans. Thank you.

CHAIR COUCH: Thank you, Mr. Mayer. Members, any questions to the testifier? Mr. Mayer, just to let you know we did consult with Corporation Counsel on the fact that it can come before us now and they agreed.

MR. MAYER: And what I'm saying as a testifier I'm saying I don't think that decision was correct even though that was the advice to you.

CHAIR COUCH: Yes.

MR. MAYER: It is a land use decision and I believe land use decisions are required to go to the Commissions.

CHAIR COUCH: Thank you. Okay thank you, Mr. Mayer.

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MR. MAYER: Thank you.

CHAIR COUCH: Next to testify is Bryce Buchanan, followed by Jack Riley.

MR. BUCHANAN: Hi, I'm Bryce Buchanan and I have a single-family home in Kihei and I've had a vacation rental permit for about a little over a year now, and thank you for the ordinance that allows me to rent the home, you know there's a ton of one-bedroom condos in Maui but single-family homes offer a different kind of experience for vacationers and so I appreciate the opportunity to join the tourist industry with a single-family home. I'm just here to address one aspect of the law that I think needs to be changed and that is just before I was ready to submit my application I discovered that because I'm a condominium division with my neighbor rather than a legal lot we were only allowed to only have one permit and so we submitted our applications together. If you looked at our two houses, they just look like two large single-family homes next to each other on the street and it's just because it's a condominium division rather than a legal lot division. The lot only allowed us to get one permit and here's the problems. We've had no problems with the rental, we've had no complaints. We have off-street parking but we have completely separate businesses and different managers and there's really no tie to our business relationship even though we share one permit. So it would be like you issuing one business permit to two separate businesses and I think it would be more logical to have two permits for our two businesses. I could see a problem where let's say I didn't do a good job with my rentals and I created a nuisance enough that you thought that I required discipline for what I did. My neighbor would be punished unjustly for that because if my permit is revoked then his is revoked as well. So there's a basic injustice in having our separate businesses tied to one permit just because we have a condominium lot division and that's it. That's the only point I wanted to make and I'm happy to take questions about it if any of you have questions.

CHAIR COUCH: Thank you, Mr. Buchanan. Members, any questions to the testifier? Seeing none, thank you.

MR. BUCHANAN: Thank you.

CHAIR COUCH: Next to testify is Jack Riley followed by Russell Murakami.

MR. RILEY: Good morning, Mr. Chairman and Members of the Council. I'm here, I'm a homeowner, I've been involved with --

VICE-CHAIR VICTORINO: Mr. Chair.

MR. RILEY: --the STR.

VICE-CHAIR VICTORINO: Can he identify yourself please.

CHAIR COUCH: Can you, can you.

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MR. RILEY: Oh, Jack Riley, sorry.

CHAIR COUCH: And can you bring the microphone up to your?

VICE-CHAIR VICTORINO: Thank you, thank you.

MR. RILEY: And one of the issues I'm facing is I have a home, I've complied with everything, I've put in my application over a year ago. My CC&Rs say I can do short-term rental, the HOA rules say I can do short-term rental but I still can't get a permit because the ordinance as written I believe really nicely protects the people that are in conventional residential developments but my house is in Kapalua. It's a resort area, 90 percent of the people use their homes as vacation homes, it's not a single-family subdivision per se and some of the way the ordinance is written has a lot of really nice protections and things that protect conventional residential subdivisions and their owners, but we're vacation homes and the purpose of me coming today is when I was made aware that you're going to revisit the ordinance and try to streamline it, is it possible to carve out with possibly a leaner set of requirements or at least processing time for homes that are in resort areas. And I know of at least a dozen other owners on West Maui in resort areas that would like, they want to come in and get their permit and they call me up and say, Jack, you've been in there, have you got your permit yet? And I say no. And so we're hoping that as this ordinance gets worked on here because I recall in 2011 the initial staff report from Will Spence's office recommended to the Council that resort area operations simply being outright permitted use, it doesn't waste staff time, you can just go ahead and go in, get your permit, do what everybody else is doing which is using your vacation home. We're happy to pay the new tax rate, and we can get on the books. You know personally I pay tens of thousands of dollars to TAT, GET. And lastly I do want to let you know that our home and I have some experience here, over half of...are renters, and we generally rent to grandma, grandpa, the kids and the grandkids. I've had well over half the rentals in the last 12 months of people over 80 years old. I get the calls you know I'm going to bring the grandfather, my grandmother, it could be their last trip, we don't want to climb stairs, we don't want to deal with elevators, you know can we rent your house? And that's who we rent to and that is a need that I think that you know they don't want to stay in a hotel, they don't want to stay in a condo and elevators and big common areas. So we provide something that I think is useful to the community, it's obviously not a high density use but again you know the main reason is I think it's great that the Council is working to try to streamline this and if you can at all you know work towards maybe treating the resort areas which are you know 80-90 percent of vacation home residents who are all vacation, on vacation there. Maybe give us a little subcategory that staff could come together on so we can go and get our permits, be legal, you know West Maui 88 permits, only 24 have been granted but we know there's demand so it seems there's a bit of a disconnect there. So that's what the, what I have to say today and there's most of the people in the audience here are from West Maui hoping that we can get some consideration. Thank you.

CHAIR COUCH: Thank you. Thank you, Mr. Riley. Members, any questions to the testifier?

VICE-CHAIR VICTORINO: Chair.

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CHAIR COUCH: Mr. Victorino.

VICE-CHAIR VICTORINO: You know, do you and/or your group have some suggestions in how we could be a little different than maybe some place else because we're saying you're resort okay and we got that.

MR. RILEY: Yes.

VICE-CHAIR VICTORINO: And probably that makes good sense, but how would we do that, what would suggestion, do you have anything that you would suggest and if you don't have it, if you could write something down and give it to us and that way we have something to work with. I mean I've got some ideas and I think many of us have ideas.

MR. RILEY: Beautiful.

VICE-CHAIR VICTORINO: But it's good to hear from you --

MR. RILEY: Yes.

VICE-CHAIR VICTORINO: --the specific people that are impacted.

MR. RILEY: Absolutely. I'm planning to stay here for a month and right after Thanksgiving holiday to get together and we'll come up with some suggestions because we live it.

VICE-CHAIR VICTORINO: Yeah.

MR. RILEY: And I've been a developer by trade. I've done some projects here on Maui, Front Street Apartments, affordable deal, I was the one that did that.

VICE-CHAIR VICTORINO: Okay.

MR. RILEY: So I've been volunteering to put some effort into this, to try to get it right.

VICE-CHAIR VICTORINO: Okay.

MR. RILEY: And we will get you some written comments. I would hope that at the latest by the end of the first week of December if that's your timeframes?

CHAIR COUCH: Yeah.

VICE-CHAIR VICTORINO: It does, Mr. Chair? I don't know, I'm asking you.

CHAIR COUCH: Yeah, that's fine.

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VICE-CHAIR VICTORINO: Okay.

MR. RILEY: Thank you for the invitation.

VICE-CHAIR VICTORINO: Thank you.

CHAIR COUCH: Hang on. Ms. Cochran. Mr. Riley, we still have more questions.

MR. RILEY: Yes.

COUNCILMEMBER COCHRAN: Good morning, thank you for being here.

MR. RILEY: Yeah.

COUNCILMEMBER COCHRAN: So you're in Kapalua --

MR. RILEY: Yes.

COUNCILMEMBER COCHRAN: --Resort proper itself?

MR. RILEY: Yeah, we pay fees to the resort KRA, the shuttle bus, I'm in Pineapple Hill. So the shuttle bus you know comes in and it'll take you to the airport. I bought the home and my family and I, we live there and I was one of the founding trustees of Maui Prep Academy because I had a little daughter. But it turned out the school didn't work for us. So I helped make the school but we didn't benefit it. But what happens in Pineapple Hill for example, when we lived there out of 120 lots, there were 6 families that lived there. It's all vacation rentals or empty houses and that's kind of been the situation up there for a long time. It's probably not going to change and the CC&Rs provide for the short-term rental, and those were written back in 1987, the HOA rules and I actually came up with a set of rules for the guests to follow, submitted it to my HOA Board, they liked them enough to say can we distribute these to the other people that are renting because we run a very tight ship. You know it's a nice house, we're very careful. I talk to them personally before I rent out the house and I'll tell you 80 percent of the people you know if I hear you know party, you're done. We like grandma, grandpa, the kids, and the grandkids.

COUNCILMEMBER COCHRAN: Okay.

MR. RILEY: And if I don't have a 50-year old grandma in the house, we don't rent.

COUNCILMEMBER COCHRAN: Thank you. Thank you for your time. Thank you, Chair.

CHAIR COUCH: Mr., I have a couple of questions. You said you're having an issue, do you know what that issue is, why it's held up because it shouldn't take a year. I know that there are things that happen.



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MR. RILEY: Yeah, there were some things that happened.

CHAIR COUCH: Okay.

MR. RILEY: But the way I understand it today is the only thing holding me up is Pineapple Hill is a subdivision that's tiered and it's about 30 feet vertical from each street, this street, this street, and this street. I live, or my house is on Cook Pine Drive and it's a single loaded street so cut to the chase, someone that lives on Pacific Drive who's never there can't even see my house, filed an objection.

CHAIR COUCH: Oh.

MR. RILEY: And because of that and I'm saying, he doesn't even have the same street address. But the Planning staff, which I think they've asked for direction from Council, needs a determination of what across the street means. You know to most of us it means if you're across the street we live on the same street and we have the same address. But from my understanding, that is the only thing that's holding it up.

CHAIR COUCH: Okay.

MR. RILEY: But I just think for many of the other people, if you would take the time to streamline it, it would be a good thing.

CHAIR COUCH: The other question I, the comment I had and thank you for offering to do that language, keep in mind that the other big resort on the island Wailea asked us not to allow them outright in a resort. So we have to weigh those.

MR. RILEY: Great point, and what we were hoping you know is we're West Maui and we understand Wailea has different concerns. But West Maui has different concerns. We're not asking for an island-wide, we're just looking for Kapalua and Kaanapali.

CHAIR COUCH: Okay.

MR. RILEY: Just those resort areas and Wailea can come and do whatever they would like. We want to be specific.

CHAIR COUCH: Okay. Thank you.

MR. RILEY: Okay.

CHAIR COUCH: Members, any further questions? Seeing none. Thank you, Mr. Riley.

MR. RILEY: Thank you.

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CHAIR COUCH: Next testifier is Russell Murakami, Russen Murakami, I think its Russell, followed by James Patrick.

MR. MURAKAMI: Hi, good morning. My name is Russell Murakami, I'm a realtor/broker in West Maui and I'm here representing three property owners, two in Kapalua, and one in Kaanapali. I'd like to start with the Community Plan. It is my, and please correct me if I'm wrong, it is my understanding that the reason for this Community Plan is to keep the businesses in one area, to keep the residential in one area, to keep the agricultural in one area, to keep the vacation rentals in one area, the transient rentals, the guests that we have that generates all these revenues for the County. I'd like to start with that. Over at Kapalua, the Kapalua Resort Association, the whole Kapalua entity, in the CC&Rs they allow short-term rentals. The owners that have purchased into the resort areas, whether residential, condominiums, raw land, or whatever, buy, purchase with the understanding that these are transient vacation rental areas. The Pineapple Hill, where my clients have two lots, purchased into the property knowing that short-term rentals were allowed because in the Pineapple Hill CC&Rs it stipulates that short-term rentals are allowed. I would like to see, to make it in all fairness for everyone and I realize what you're trying to do is keep the zoning, enforce the zoning where it's Residential keep it residential. Resort properties are zoned for transient, basically for transient rentals. If the, I'd like to see the exemption for these and it is my understanding that when you were first enacting the short-term rental laws that your staff recommended that the resort properties be exempt. I'd like to see that happen. The properties generate a lot of revenues, creates a lot of jobs for independent people that can't find jobs, examples are maids, maintenance people, et cetera. They create a lot of jobs. If you look at Pineapple Hill, 80 percent of the homeowners that they're not full-time residents, these are all part-time residents. They purchased with the idea of a vacation home and it's, I don't think it's fair to make these properties that are in resort areas which are designated for these transient rentals, to have to jump through all these hoops because I've been putting in an application and it seems to me like the party who wants to rent their home is having to jump through all these hoops and you almost, if you're not from here you make it quite difficult and I know that a lot of homeowners have quit doing it because of the process that was put before them.

CHAIR COUCH: You've got one more minute.

MR. MURAKAMI: I'd like to, my wish is that for the City Council to take up their staff recommendation and to exempt all these resort properties that are in the resort property exempt from having to go through the permitting process. Also, and then leave it up to their associations to either deny or allow short-term rentals. That's all I have to say.

CHAIR COUCH: Okay, thank you Mr. Murakami. Members, any questions to the testifier? Seeing none, thank you. Next up to testify is James Patrick, followed by Eve Hogan.

MR. PATRICK: Good morning. My name is James Patrick and I'm a homeowner at the Kaanapali Golf Estates at Kaanapali and I just wanted to lend my assistance to all of the recommendations that Jack Riley made earlier with regard to resort properties. And just to, you're probably already

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aware but the homeowners association at Kaanapali Golf Estates has recently passed an amendment to its CC&Rs which prior to the amendment allowed short-term rentals. They passed an amendment I think in the attempt to mirror the provisions of the County regarding short-term rentals. However they did not, as the County has in its permitting ordinance, allowed for any procedure to get a short-term permit, short-term rental permit from the County so there's no ability with the passing of this amendment for somebody to be in compliance at the County level but then you'd be in violation with the CC&Rs at Kaanapali Golf Estates. I have in this past year and a half rented my home and it's been in compliance with the earlier provisions of our CC&Rs, I really was not aware of the County ordinance and the 180-day rule. But in an attempt to get to be in compliance there's only one person in the Kaanapali Golf Estates, there are 378 lots in total, I'm not quite sure how many homes are built. But one person has applied for a permit and it was denied. It was, and I'm not quite sure why it was denied. But it has scared everybody else who might be renting from applying for a permit because they just think it's a useless exercise. So anything that was done to streamline the process or to have the resort communities designated in some different way that made it easier to get a permit I think would help out a lot of people. The current amendment to the CC&Rs at the Kaanapali Golf Estates is being very, very strictly enforced. Fines are being imposed, ten thousand dollar fines are being imposed and it has resulted I know in two cases now where people are forced to sell their homes and when they get into a situation where they can't pay the fine, they were relying on some rental income to defray costs, expenses for maintaining their home, they're having to almost fire sale their homes and I don't think that's a desirable thing to happen. It's not a good thing for the individual, it's not a good thing for the community. So anything that can be done to designate resort properties where people really are using their homes as a vacation spot and not as a permanent residence, anything done to designate those areas and streamline the process for getting a permit would be very useful. Thank you.

CHAIR COUCH: Thank you. Members, any questions to the testifier? I have one, Mr. Patrick. You said that the CC&Rs that at your, at the Kaanapali Golf Estates had been changed to disallow short-term rentals now?

MR. PATRICK: The CC&Rs prior to this amendment allowed for rentals for a period of 30 days and now it's been changed to 180 days.

CHAIR COUCH: Okay. Whether or not this law gets changed and allows for it in resort areas, CC&Rs still have a greater effect, it can be more restrictive. So that wouldn't change your situation even if we did that, just to give you a heads-up on that.

MR. PATRICK: Yes.

CHAIR COUCH: Okay.

MR. PATRICK: Thank you.

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CHAIR COUCH: Thank you. Thank you, Mr. Patrick. Last person who signed up to testify is Eve Hogan, then we'll go to the District Offices.

MS. HOGAN: Thank you. Good morning and welcome back, you all. It's nice to see you all again. My name is Eve Hogan and I'm a member of the Ag Working Group and the owner of the Sacred Garden Property Upcountry which houses two nurseries, one retail and one wholesale, as well as grows coffee, flowers, and fruit and I'm testifying on the ordinance 14-278 relating to short-term rental homes. As someone who's been attempting to go through both the Bed and Breakfast permit process and the STRH process on Ag land on two adjoining properties over the last two years, I have quite a lot of firsthand experience to share on why the proposed bill is a bit out of touch with the people it's supposed to serve. I would really love to have the Planning Department come, or the Planning Commissioner or whoever needs to do is work with the Ag Working Group to go over the proposal so we can better understand the issues that the Planning Department faces and help them brainstorm solutions in consideration of the problems that we too face or allow some of us to come and meet and shed light on these problems. The Ag Working Group has been working hard on EAR-13 and the Ag Tourism Bill and if and when these are adopted, this will also change some of the items in question on this bill because it will bring the County Council into alignment with the State laws and the bill would be needing revision again. So I would love to see the County Council working proactively on those other two ordinances that are being brought up or bills that are being brought up. In the opening remarks on Page 4 of this bill it says that the proposal regarding STRH properties says quote, without an owner living on the land it's hard to see agricultural activities as the primary activity, unquote. While clearly the owners of Dole and HC&S do not live on the property where they grow ag, it's important to realize that not all small farm owners or landowners live on the land where we farm. Ranchers may also ranch on land that they don't live on, are on a different TMK. In my case, and in my neighbor's case, we both live and farm on one TMK and have an adjacent TMK where we farm and have an STRH. We are actively doing ag on that property that we do not live on. It also appears that this bill requires the \$35,000 ag income in order to have an STRH. I run a 10,000 square foot nursery open seven days a week and we do not even come close to making \$35,000 a year in plant sales. The number is unrealistic for a small family farm that needs a B&B or an STRH to supplement their ag income to allow us the luxury and the requirement of doing of doing ag. The mortgage on a two- to four-acre parcel on Maui is way more than we can make selling ag products and in many cases the cost of employees far exceeds what the income. The County needs to understand that just as a great artist not, may be not great at selling their art, we may be great at growing ag, but that doesn't necessarily make selling it easy, especially when we're competing with Home Depot and Lowes. I have a lot more to say on this so I'm going to skip around really quick. There's some other issues in this ordinance that say that you can't have multiple vacation properties unless your property is assessed at 3.2 million dollars or higher and then you can have more and it seems like this is really a very strange ordinance to permit the very wealthy to have multiple vacation family, multiple vacation homes but not the lesser. In the also in Subsection K, this proposal says the total number of guests staying in the short-term rental home at any one time shall be no greater than two times the number of bedrooms and as Mr. Riley pointed out, almost everybody who rents a vacation rental away from a resort area is doing so for their grandparents, their kids, their grandchildren,

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their keiki and that would be making it illegal for us to allow them to have their kids sleep in their room with them. It also says that there can be no parties unless you're staying on the property which is also out of touch. I'll stop, but I have a lot more to say but I put it in writing so you guys could read it.

CHAIR COUCH: Yeah, we did get it in writing, thank you.

MS. HOGAN: Okay, thank you.

CHAIR COUCH: Members, any questions to the testifier? Seeing none, yes, Ms. Hogan we did see some of that stuff that was passed on by the Department. That's why we're having this meeting today.

MS. HOGAN: Thank you, cause I only read the first ten pages and it was about a hundred so I could go on and on and on. Thank you.

CHAIR COUCH: We're going to go to the District Offices first in Hana.

MS. LONO: Good morning, Chair. This is Dawn Lono at the Hana Office and I do have a testifier this morning, it's Mr. Froyam Edel testifying on PC-60.

CHAIR COUCH: Okay.

MR. EDEL: Good morning, everyone that's there at the meeting. Froyam Edel, Principal Broker for Whale Song Realty with an office, physical office here in Hana Town.

VICE-CHAIR VICTORINO: Mr. Chair, I cannot hear very well.

MR. EDEL: ...and reported by the Council.

CHAIR COUCH: Hang on a second, we're getting, hang on a second Mr. Edel.

MR. EDEL: Sure.

CHAIR COUCH: Go ahead, try now.

MR. EDEL: Okay, can you hear me now?

COUNCILMEMBER BAISA: Yes.

CHAIR COUCH: You bet.

MR. EDEL: Okay. So it has been reported several times in the last two years to realtors and other people, Hana Business Council that there are no licensed real estate offices in Hana able to

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handle rentals and I have tried to have this corrected, I even had Will Spence was in my trolley office and it still persists that people are being told there's nobody to contact in Hana which is definitely not helping my business. There are several unlicensed people handling multiple rentals in Hana and I'm not sure if anything is going to happen with that, if you're ever going to be doing inspections. There's non-permitted rentals which you know I'm not fighting them, if they are okay with the County then that's what it is. The problem in Hana is that there are very few long-term rentals because everybody wants short-term rental, that's where the money is and they don't care if they're legal or not and I get calls every single week from nurses, from firemen, from policemen, from people moving here, from teachers. We need a place to rent and I say gee, I'm sorry, I've been here two years and I've only got only one place to rent on long-term and the reason is because everybody is going for short-term. So I would like to get a more fair playing field and I'm going to listen to your meetings as they go along because I know there's more information coming up. I would just like to know if the rules are going to change specifically for Hana or 'cause I know that so many people on this island love Hana. Hana is a special place and it gets special treatment. I would just like to know what the special treatment is going to be as far as the short-term rental industry and the 30-day rental businesses here in Hana.

CHAIR COUCH: Okay. Thank.

MR. EDEL: In doing the short-term rental in Hana and the Planning Commission, the HC and the Hana Community Plan says that they want to be able to rent without licensed agents selling more than one property but that's I believe against the State law. So I'd just like to --

CHAIR COUCH: One minute left.

MR. EDEL: --let you know that I hear, that I am here, I'm in business, I have an office, I have new property management coming on board and I'd love that business. So thank you very much for your cooperation, your future cooperation and that's about it. Thank you.

CHAIR COUCH: Thank you, Mr. Edel. Members, any questions to the testifier? Seeing none, thank you, Mr. Edel.

MR. EDEL: You're welcome. Thank you.

CHAIR COUCH: Thank you. And Dawn, was he the only one that you had, that you said?

MS. LONO: Yeah, there are no other testifiers waiting in Hana at this moment.

CHAIR COUCH: Okay, thanks. Let's go to Molokai then.

MS. ALCON: Good morning. This is Ella Alcon on Molokai and there is no one here waiting to testify.

CHAIR COUCH: Thank you, and Lanai?

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MS. FERNANDEZ: Good morning, Chair. This is Denise Fernandez on Lanai and there is no one waiting to testify.

CHAIR COUCH: Okay, thank you, ladies. We have a couple more people who have signed up here so hang in there for a little bit. Alright, the next person who signed up to testify is Catherine Clark, followed by Larry Shapiro.

MS. CLARK: Good morning, Chair Couch and fellow Council members. My name is Catherine Clark and I am a Board Member of the Maui Vacation Rental Association. The current STR ordinance has been successful largely due to the cooperation of the Planning Department. They've gone out of their way to assist applicants and most have been surprised and pleased at the welcoming attitude. As you'll see in Gina Flammer's report, the Department has spent a lot of time on this one segment of their workload. Recognizing that the current enforcement efforts are bringing more applicants forward, and combining this with the Department workload we strongly encourage further streamlining. A permit makes a good neighbor. We've actually seen it happen. Permit holders are anxious to retain their permit and for the most part play strictly by the rules. This being the case, we feel that streamlining the application process while strengthening the enforcement process could work very well. Encourage compliance by making it easier to get the permit, but force compliance by making the enforcement actions swift and decisive. To streamline the application process consider the two elements that take the most time. First, the neighborhood notification, this step alone takes 45 days. Do some neighbors protest? Yes they do. But in many cases it's a matter of you didn't trim your trees so I'm going to protest your application. Give an operator a chance to operate under the permit rules and then assess his impact. If it's too great, revoke the permit. The second part is the Planning Commission. With permitted operators now scattered across the island, many if not most of the new applications will need to go before Commission being within five hundred feet of somebody else. It can take months to get on the calendar and when an applicant gets to Commission, they are subject to the personal biases of the Commissioners. Imagine an application with full neighborhood support, letters from their neighbors, squeaky clean building permit history, yet had a difficult time getting five votes and what was the reason? Because the nightly rental rate was a thousand dollars a night. It's exactly the type of home that pours money back into the community through service providers. Keep in mind that there's an overall community protection in place. The caps guarantee that no one area of the island will be overrun by vacation rental homes. On the enforcement end, the bulk of the focus should be on the unpermitted operators. This is the segment of the industry that is taking housing from long-term inventory, it might be operating unsafe homes, and in some cases not paying appropriate taxes. I realize there need to be provisions to revoke a permit if an operator is not following the rules. But this will be a tiny number compared to those that don't bother to apply. Time and energy should be focused on the larger picture with an ultimate goal of a fully legal industry. We want to reach a point where nobody would even consider operating a rental until they have a permit. Thank you.

CHAIR COUCH: Thank you, Ms. Clark. Members, any questions to the testifier? Seeing none, thank you. And the last person now to sign up to testify is Larry Shapiro.

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MR. SHAPIRO: Thank you, Members, for the opportunity to comment on the ordinance and I guess from what I've heard it seems as though the people who have gotten permits already have been in compliance. I don't know if that's entirely true but I have heard that rumor, Chair, I'm not sure if that's correct. But assuming that it is, I and my wife who's here would like to I guess address a question or an issue that's come up with us which is that we live here full-time and we would like to occasionally rent our house out to help cover our mortgage and expenses while we are away. But we live here full-time, we want to maintain our good relations that we have with our neighbors. We're not interested in being in the full-time short-term rental business and we also feel like there should be some accommodation for us in some fashion. Number one I think where I live, we have a small house in Maui Meadows, we would like to occasionally rent as I said when we travel, but there's a very limited number of permits and they're all taken. There's also an issue about I guess I'm not sure exactly what the tax rate is but I've heard people talking about the tax rate for short-term rentals being the Hotel rate which would really be prohibitive for us if we're only going to be renting our house out occasionally it just won't work out. So I guess I would like to say we would not be removing our house from the, it's not a matter of our taking our house out of what would ordinarily be a long-term rental pool because we still live in the house and we live on Maui. We would help contribute to the economy by perhaps having a higher tax rate say Commercial tax rate which I think would be reasonable, and also we could provide a service because I think there are people, I know from our, we have a neighborhood website next door which I see many people looking for rentals for sometimes they're doing remodeling or they have family in town, that sort of thing, not necessarily vacationers. And I don't think we'd necessarily would even want to do like even daily or weekly rentals because that's really a big hassle for us but maybe a little bit longer term but less than six months. So if there was a way to have more permits issued, streamlining the process to make it easier, it would also eliminate I think some of the shadow market, we don't want to have an illegal rental. I don't think that's appropriate. We want to try to follow the rules. But if there was a way to have more permits and perhaps a special category for those who want to rent occasionally that would give us the, be fair to us and give us the benefit of being able to rent it out on a part-time basis but still live here and respect our neighbors is something that we'd really like you to take into consideration. Thank you.

CHAIR COUCH: Okay. Thank you, Mr. Shapiro. Members, any questions to the testifier? Seeing none, thank you.

MR. SHAPIRO: Thank you.

CHAIR COUCH: Alright. District Offices, if you have anybody just chime in. If not we're going to dismiss you in just a minute. Members, I don't see anybody, anybody else in the gallery would like to come testify? Please come now or we're going to be closing testimony. Going once, okay. So, not hearing from the District Offices again and seeing nobody coming down, Members without objection we'll close public testimony.

COUNCIL MEMBERS VOICED NO OBJECTIONS.



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CHAIR COUCH: Okay, public testimony is closed. Thank you, everybody.

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

**PC-56 AMENDING CHAPTER 2.80B, MAUI COUNTY CODE, RELATING TO  
GENERAL AND COMMUNITY PLANS DISTRICT (CC 14-202)**

CHAIR COUCH: Okay, let me fix this, okay. Sorry, I've got to get all my notes in order here. Alright Members, we're going to start with PC-56 which is Amending Chapter 2.80B, Maui County Code, Relating to General and Community Plans. This Committee is in receipt of the following: 1. County communication 14-202, from the Planning Director, transmitting a proposed bill related to the application of the General Plan to ministerial actions and the processing of ministerial permits; 2. Correspondence dated October 31, from the Department, 2014, from the Department of Corporation Counsel, transmitting a revised proposed bill entitled A Bill for an Ordinance Amending Section 2.80B.030 of the Maui County Code, to Clarify the Applicability of the General Plan to Ministerial Permits and Approvals; and 3. correspondence dated November 5, 2014, from me, transmitting a proposed bill entitled a Bill for an Ordinance Amending Chapter 2.80B, Maui County Code, Relating to Public Hearing Requirements for Amendments to the Maui Island Plan. First we'll go over some background. The purpose of the revised proposed bill is to clarify how the General Plan is applied to ministerial actions and the processing of ministerial permits and we'll have both Mr. Goode and Ms. McLean talk about how that works. And in the bill I just wanted to point out and I do have it here, it says the Countywide policy plan ordinance 3732, 2010 states that it is quote, not intended to be used in the review of applications for ministerial permits, closed quote. This revised proposed bill clarifies that this intention should apply to all components of the general plan and that ministerial actions and permits are not required to comply with the General Plan. And then we can go through the other one, basically it's, it says that the Maui Island Plan needs to go to all three islands in order to be, all three islands' Planning Committees in order to be passed, any changes to the Maui Island Plan. So we've asked that we don't have to send it to Lanai or Molokai for anything on the Maui Island Plan. So that's what the other one is about but we'll come back to that. I'd first like to talk about, or have the departments talk about the first bill if you could and come on down, Mr. Goode while Ms. McLean is talking.

MS. McLEAN: Thank you, Chair. This proposed bill really just clarifies and codifies what has been long-standing practice, and by long-standing I mean decades and decades. It's very clear that the Community Plan is followed very closely when an applicant applies for a change in zoning or if the Council initiates a change in zoning, that change in zoning can't be granted unless it's consistent with the Community Plan. Also, the Capital Improvement Project Program is pointed out as having to follow the General Plan and Community Plans. Also, the subdivision ordinance is specific with regards to consistency with the Community Plan and the Special Management Area process also has very clear language about land use designation and use consistency. The ministerial permits that are being talked about, building permits and so forth, just to give an

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example, part of the challenge for this, I'll just back up for a second, part of the challenge with this is that because our zonings are stacked like in the Light Industrial Zoning District for example, you're allowed Light Industrial uses but you're also allowed the Business uses and in the Business Districts you're allowed some Residential uses. So if you have Light Industrial zoned property that's also community plan Light Industrial, and you're conducting one of those lesser intensive uses like a Business use or a Residential use, if a building permit comes in we don't look at the Light Industrial community plan designation because the Light Industrial designation says Light Industrial, period. So for example in the Wailuku Industrial area you have union halls, you have churches and places of worship. In Kihei in the Ohukai area you have Kihei Charter School. All of those are Light Industrial on the Community Plan and so if they come in for building or plumbing permits we don't say oh, you're not consistent with the Light Industrial community plan designation. We look at the zoning and those are just a couple of examples. But again this is long-standing practice that by the time you get to your ministerial permits, that we follow the zoning rather than the Community Plan designation.

CHAIR COUCH: Okay. Mr. Goode.

MR. GOODE: Thank you, Chair. Good morning, Members. Ms. McLean just told me ditto. But we obviously administer the Subdivision and Building Codes and those two instances on subdivision, every single subdivision that's proposed goes to the Planning Department and so they would review and assist us on the consistency, interpretation and so we just follow Planning's lead on that and with building permits, probably 70 percent of the building permits go to the Planning Department. Those that don't are typically single-family type renovations in an existing single-family residential area. And so again we would follow Planning's lead as it relates to any consistency or Community Plan interpretations. So in our view, if there's, it's not like a handful of instances where this comes up. Those typically would then possibly delay building permits or subdivision applications that we might receive phone calls on. So this streamlining effort for those types of permits would benefit our Department as well. So ditto.

CHAIR COUCH: Okay, thank you. Ms. McLean, you mentioned doing your ministerial permits, we had a testifier mention a potential misinterpretation. Is that, can you kind of go through a scenario like that? Could that happen, would that happen kind of thing?

MS. McLEAN: You can never say never but I think that it's extremely unlikely. Our staff is very mindful of the Maui Island Plan and the Community Plans and when things come to our office, we do look above and beyond the parameters of the application that's been given to us. Oftentimes that is very frustrating for applicants but we endeavor to give applicants a heads-up. If someone comes in and applies for a building permit, we'll say oh, you also need SMA and flood development permit review for example even though that's not what they're coming in for we say oh, you need to be aware of these things. So if there is broader Community Plan or Maui Island Plan language it's pretty likely that if there is some ministerial action that would involve that that we would catch it and be able to administer it appropriately.

CHAIR COUCH: Okay. Members, any questions for the Department on this?

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COUNCILMEMBER COCHRAN: Chair.

CHAIR COUCH: Mr. Victorino, then Ms. Cochran.

VICE-CHAIR VICTORINO: I guess the question begs to be asked, Ms. McLean, the word ministerial, I mean that's something that becomes real difficult to define and okay ministerial in my mind, ministerial in your mind, someone else's mind could be tremendously different and I understand what you're trying to, you know some of the red tape, I'm all for that. Streamlining the system and getting things done, more expediently I wholeheartedly agree, but where do you draw the line? I mean you just said, you and your Department are mindful of what this Council and the Island Plan and other issues. But somebody else comes along who maybe is not so mindful. I guess that's what I'm asking. Where, how do we draw a line, or where is the line drawn, if there is a line to be drawn? And that's not a trick question I promise.

MS. McLEAN: I'll start with what I said in my initial comments which is, this is not changing current practice or long-standing practice. I don't consider this to be streamlining because this is the practice that has been in place truly for decades. Ministerial permits are ones that don't require discretion. They're black and white. If the applicant meets the requirements and the boxes are checked, it gets issued. Those are ministerial permits and I think it's, I don't believe there is any dispute between Planning and Public Works what's ministerial and what isn't.

VICE-CHAIR VICTORINO: Well thank you for that clarification so now myself and the public understands what ministerial means in your realm. It means everything that is clearly black and white. There's no grey areas, am I correct?

MS. McLEAN: Correct.

VICE-CHAIR VICTORINO: Thank you very much, Chair. That's all I needed to know.

CHAIR COUCH: Thank you. Ms. Cochran.

COUNCILMEMBER COCHRAN: Thank you, Chair, and thank you for your opening question. But I still had questions for that question.

CHAIR COUCH: Okay.

COUNCILMEMBER COCHRAN: And I guess it's in relation to Mr. Mayer's queries and the whole view corridors, you know if something is Park and Open Space and I know you brought up the Industrial zoned area and there's other underlying layers and permitted uses in that. So I'm just allay my curiosity as to his questioning, Mr. Mayer's I'm referring to, can something of that nature happen ministerially I guess is what you folks are saying. I mean I know the other Commercial, Industrial, Business districts, but these are the more preservation, protection, you

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know more sensitive areas. Can those things be you know, I don't know changed in to something else that wasn't the intent and vision of the community plan?

MS. McLEAN: Like I said, I would never want to say never. And it's hard to, it would be easier to have a specific scenario laid out because I don't know what would come to our Department where we would have the opportunity to review the Community Plan. If it's a building permit that comes to us we check the zoning, we check SMA, we check flood development status, we check other things and for the example with the Maui Island Plan we check protected areas and sensitive areas. If it's as Director Goode said, if it's subdivision application that all subdivisions come to our Department, if it's a plumbing permit, we probably wouldn't see it. If it's an electrical permit, we probably wouldn't see it. I don't know how a plumbing or electrical permit all on their own could violate the intent of a sensitive area or a view corridor. But if it's subdivision, if it's a building permit that comes to us, then we would review those.

COUNCILMEMBER COCHRAN: Okay. So I mean his example I guess the beach and then the building, it's not in the --

MS. McLEAN: In the beach.

COUNCILMEMBER COCHRAN: --general.

MS. McLEAN: That's an easy SMA.

COUNCILMEMBER COCHRAN: Right, SMA.

MS. McLEAN: The beach is SMA so absolutely it gets, there's a review process for consistency and applicability of the Community Plans.

COUNCILMEMBER COCHRAN: And I guess, Chair, the one example falls in Lahaina where it was Park and Open Space for the Kahoma Subdivision and now it's a subdivision. So the initial community through decades thought that's what it was going to be, was Park and Open Space. But today that's not so. So for me that's an example of what had happened.

MS. McLEAN: That was a Council action --

COUNCILMEMBER COCHRAN: No, I know.

MS. McLEAN: --for the 201H project. That isn't...

COUNCILMEMBER COCHRAN: So, and I understand in this ordinance it has to go through Council, right? It can be through Council and through Planning Commissions so and I thank god for the process that public can weigh in and it's brought forward to the community. But you know, Chair that's, it was one of my things that didn't sit well at the time because we have spent many years here and many countless hours in drawing up these plans, and then all of a sudden years

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later people can sit in these chairs and flip it, change it around. I mean I know that's the purview of this body but I hear Mr. Mayer, I hear GPAC, I hear people in this community who say listen, we put a lot time and energy into this and then all of a sudden a few people can just change it all around. So I know there's not a magic answer here to everything. But that's just...

MS. McLEAN: The bill does not change anything relating to Council's authority to amend Community Plans or the General Plan.

COUNCILMEMBER CRIVELLO: Chair.

COUNCILMEMBER COCHRAN: Right.

MS. McLEAN: That authority remains with the Council.

CHAIR COUCH: Thank you.

COUNCILMEMBER COCHRAN: Okay. Thank you, Chair.

CHAIR COUCH: Ms. Crivello.

COUNCILMEMBER CRIVELLO: I guess I would like to have some clarification with ministerial plans or permits or discretionary. So do I understand it's more for the construction of or for the building portion, and land use, actual land use assignments or zoning comes through the purview of the Planning Commission according to our Charter or and with Council. So when you come in with those approval, where does that, does that fit in more with the actual construction because the Planning Commission or Council already approved the land use?

MS. McLEAN: That's exactly right.

COUNCILMEMBER CRIVELLO: Okay. So I just needed to get that clarified because land use goes through its process, the assignment of the land use. Then we come to this process of permit where I'm to understand it deals more with the actual construction of the building that's allowed according to the land use assignment?

MS. McLEAN: That's correct.

COUNCILMEMBER CRIVELLO: Okay. Thank you.

CHAIR COUCH: Thank you. Chair Baisa, and Mr. Guzman, you look like you may want to? Okay, then Mr. Guzman.

COUNCILMEMBER BAISA: Okay. You want to let him go first that's fine.

CHAIR COUCH: No, I. Okay.

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MR. GUZMAN: I will yield.

CHAIR COUCH: Okay.

COUNCILMEMBER BAISA: It sounds here that one of the things that's happening is this unease with definitions, the word ministerial I think is kind of hard to understand for some people. There is this tone of church involved here.

VICE-CHAIR VICTORINO: Hallelujah.

COUNCILMEMBER BAISA: And it really is administering, I think is the concept right? Administering and that's where the ministerial comes in. If I understand this correctly where we are now, we have actions that are discretionary where Planning Department can kind of at their discretion make decisions one way or another. And then there are nondiscretionary decisions and these are ministerial. Do we have a semantic problem here and the word ministerial is the problem and maybe we should say discretionary or nondiscretionary, which makes it a heck of a lot clearer. You know when you say it's discretionary, I know that you have some latitude to use your discretion. But when I say nondiscretionary, it's black and white and you follow. I think the ministerial causes some of the unease that we have with this legislation, Chair. We had it during the General Plan, when we were looking at the General Plan I remember this big discussion on this word and it's back again.

CHAIR COUCH: Ms. McLean.

MS. McLEAN: I believe an earlier version of the bill used the term nondiscretionary, or used that language.

COUNCILMEMBER BAISA: This is the second round on this unease.

MS. McLEAN: Ministerial is a very common term used with Public Works and Planning. I don't know if Director Goode wants to comment on other terminology. I suppose if you wanted to change it to nondiscretionary you could. Richelle is nodding, I think she wants to comment as well.

MS. THOMSON: Chair, if I may. I believe that our Department has some issues with identifying ministerial as only nondiscretionary because it would come into play in instances such as conditional permits where discretion is used but compliance where the General Plans and Community Plans are not necessarily applicable or special permits, Special Use Permits. There is no State law that requires that actions by an agency or government necessarily conform to the General Plan or the Community Plan. There are certain specific instances that are in the laws or ordinances that do require consistency on, as Deputy McLean said subdivision, Coastal Zone Management, zoning, and Capital Programs. So when a project comes in it is, it has to be consistent with zoning. Zoning has to be consistent with the Community and General Plans. So there's a layer but the General Plan and Community Plans don't rise, they're not regulatory in

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nature. They're planning in nature. So consistency, but we've advised over the decades is similar with the, it's consistent with the application by the departments that its consistency is required in certain circumstances but not in all. So that's where our problem with identifying ministerial as being only nondiscretionary comes in if that wasn't too circular.

COUNCILMEMBER BAISA: Chair, I just heard an interesting statement that the General Plan may not rise to the regulatory level. This was the big discussion when we were doing all of these plans is are they just references or are they, or guidance, or do they have any legal clout. Don't they? Didn't we decide that was why we wanted a General Plan, a Maui Island Plan?

CHAIR COUCH: It's my recollection that parts were regulatory and parts were not. Let me just before we get too much further, read from the Countywide Policy Plan, Section 4, Goals, Objectives, Policies and Actions. It says this Countywide Policy Plan is not intended to be used in the review of applications for ministerial permits. Ministerial permit means a permit that does not involve judgment or discretion and is issued based on the established criteria or a set of adopted standards as established by law. So in our discussion in the Maui Island Plan and the General Plan we referred back to this ministerial permit definition and decided to leave it as ministerial because that definition is in the Countywide Policy Plan.

COUNCILMEMBER BAISA: I remember that discussion about ministerial. That's where everybody was you know --

CHAIR COUCH: Right.

COUNCILMEMBER BAISA: --not quite sure what this was. Now we're at a different crossroads where we're trying to separate and clarify what is ministerial and what isn't and where do you draw the line and I think that's why it's now is the practical application. You know it's one thing when you're talking theories and philosophies, it's another story when you get in and the rubber hits the road and that's where we are now in making and clarifying in an ordinance. And I just am a little concerned about, I just think the General Plan, the Maui Island Plan considering the work, and considering the thousands of hours and dollars and paper that were put into this thing, it really has to have some oomph and I can understand black and white. But there's that line you know what is black and white and what isn't.

MS. McLEAN: Chair, if I can comment. Again, as Councilmember Crivello stated very well, these are more construction-related permits after land use entitlements have been granted. The bigger impacts that you're going to see are either when zoning is changed or when land is subdivided. The types of permits we're talking about here, building permits, grading permits, those are for a single lot. The bigger picture issues that we're talking about will absolutely come into play when we're talking about zone changes or subdivision. That's really when, those are I would call those more development-related actions versus construction-related actions. Again, I never want to say never, is it possible that you could have a single lot outside of the SMA that let's say is zoned Residential, that is Community Plan Business, that building permit would not come to the Planning Department and that building permit would be issued for a house despite the

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Business designation on the Community Plan. And that's what we're saying should be okay under this ordinance because if we looked at the Community Plan and it said Business and there's a building permit for a house, we would have to say no, we can't issue that building permit and if that constituent went to one of you and said I can't build my house, you know I think you would be calling us asking why not. So it's, there might be a case here, a case there but again it would be on a single parcel, it wouldn't be a broader development that comes with changes in zoning or with subdivision.

COUNCILMEMBER BAISA: Okay. Chair.

CHAIR COUCH: Okay. Mr. Guzman, you wanted.

COUNCILMEMBER GUZMAN: Thank you, Chair to bringing up that definition for the Countywide policy. I clearly understand what's going on so I was going to ask you if you could read that out loud.

CHAIR COUCH: Okay.

COUNCILMEMBER BAISA: Good.

CHAIR COUCH: Well and you know.

COUNCILMEMBER GUZMAN: Well I think it's a, you know for me and for some of the Members if you look at kind of like the big picture even when we do our own processing here before we even pass a bill we go oh, nonsubstantive changes.

CHAIR COUCH: Right.

COUNCILMEMBER GUZMAN: So, if you think of it as like a general, nonsubstantive changes to the General Plan that's what we're kind of dealing with. It's not going to go to the heart of the General Plan. It's not substantive. So if you kind of in a layman's term kind of put in that kind of category. That's what we're kind of dealing with.

CHAIR COUCH: Thank you.

COUNCILMEMBER GUZMAN: Just for clarification.

CHAIR COUCH: Thank you, Mr. Guzman. Now I have, Members I have a couple definitions, I just quickly looked up on a legal dictionary. It says ministerial act is an act particularly of a government employee which is performed according to statutes, legal authority, established procedures, or instructions from a superior without exercising any individual judgment. So that's one definition of legal, of ministerial. I've got another one here, I love these little hats. There's a difference, an administrator of which does not include the exercise of discretion, i.e. ministerial and the, what that means key qualities is the implement, policy or law by applying the facts in a



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particular circumstances to the law or policy versus administrative which includes the exercise of discretion which is limited discretion delegated by a governing body to a power, to a lower body or officer to apply specific standards or set of facts. So those are some of the distinctions between ministerial and discretionary and then if you look in your packets behind the October 31<sup>st</sup> memo to me from Mr. Hopper, October 31, 2014, there's the bill and right behind it is another July 11, 2014, and then the June 29, 1999, Department of Corporation Counsel to Dain Kane, the Chair of the Committee the Whole, talking about this very subject and on Page 2 basically the short answer is the General Plan and Community Plans are intended to guide the decisions of County officials and do not themselves regulate the uses of the land. Ministerial approvals such as the issuance of a building permit may be issued without reference to the General Plan and applicable Community Plan unless an ordinance or statute specifically requires consistency therewith. And we had that discussion and then there's a few other opinions and minutes to some Council meetings talking about this very subject. So take a look at that and that's where the basis of this bill came about. Any other questions or comments to the Departments or, go ahead, Mr. Guzman.

COUNCILMEMBER GUZMAN: Thank you, Chair. I understand that this bill was actually I guess drafted to clarify. If this bill wasn't to be passed, could you still operate under the previous past practices? Because you just mentioned that you've been doing this practice --

MS. McLEAN: We would continue.

COUNCILMEMBER GUZMAN: --for the...

MS. McLEAN: We would continue the long-standing practice that we've had and I thank the Chair for reading those excerpts because that's the legal advice that we have gotten. What it would do is really help the County in the instance that one of those decisions is challenged. Then it would be codified in the County Code that that practice is, was established by ordinance by the Council rather than it being in a Corp. Counsel opinion or long-standing practice.

COUNCILMEMBER GUZMAN: Okay, very good.

CHAIR COUCH: Thank you.

COUNCILMEMBER GUZMAN: I understand. Thank you.

CHAIR COUCH: Members, any other questions or comments? Okay. Now we have two bills that are similar but distinct enough that I'd like to make some, make an action on the one bill and then we'll discuss the next bill if that's okay with you guys?

COUNCILMEMBER BAISA: Sure.

CHAIR COUCH: Okay. Then it's, it would be my...if you're ready for a recommendation?

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COUNCIL MEMBERS: Recommendation.

CHAIR COUCH: Okay. It's my recommendation to entertain a motion to recommend passage on first reading of the revised proposed bill entitled A Bill for an Ordinance Amending Section 2.80B.030, Maui County Code, to Clarify the Applicability of the General Plan to Ministerial Permits and Approvals.

VICE-CHAIR VICTORINO: So moved, Mr. Chair.

CHAIR COUCH: I have a motion by Mr. Victorino. Do I have a second?

COUNCILMEMBER WHITE: Second.

CHAIR COUCH: Okay. Okay and discussion. It seems like there might be some discussion to still go on. No discussion?

COUNCILMEMBER BAISA: No.

CHAIR COUCH: Okay. In that case, all those in favor, please say "aye"

COUNCIL MEMBERS VOICED AYE.

CHAIR COUCH: Opposed? Okay, let the record show that the measure passes with seven "ayes" and zero "noes". Thank you, Members.

**VOTE:**           **AYES:**       **Chair Couch, Vice-Chair Victorino, Councilmembers Baisa, Cochran, Crivello, Guzman and White.**

**NOES:**       **None.**

**ABSTAIN:**     **None.**

**ABSENT:**      **None.**

**EXC.:**        **None.**

**MOTION CARRIED.**

**ACTION:    FIRST READING OF REVISED BILL.**

CHAIR COUCH: Now we'll go on to the other bill in this same Communication item and this one is, I talked about it a little bit but it's meant to establish that public hearings on amendments to the Maui Island Plan need only be held only on the Island of Maui. Basically we talked about this a while back and we caught this and wanted to clean this up. So, if you take a look at it, Members

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it's on the October, or November 5, 2014 transmittal to the file from me. Currently Section 2.80B.060, Maui County Code requires the Council to hold public hearings on all non-decennial amendments to the General Plan on Lanai, Maui, and Molokai. The Maui Island Plan is part of the General Plan so non-decennial amendments to the Maui Island Plan require hearings on all three islands. Again, this proposed bill changes the requirement so that hearings on the amendments to the Maui Island Plan need only be held on Maui. Any comments from the Department first?

MS. McLEAN: We support the bill. No other comments, Chair.

CHAIR COUCH: Okay. Members, any comments? Mr. Guzman.

COUNCILMEMBER GUZMAN: Chair, what if that amendment to the Maui Island Plan specifically is in regards to one particular district like Lanai or Molokai.

CHAIR COUCH: They have their own island plans.

COUNCILMEMBER GUZMAN: Okay.

CHAIR COUCH: There's the Lanai Island Plan and the Molokai Island Plan.

COUNCILMEMBER GUZMAN: Right. So we're dealing with just Maui.

CHAIR COUCH: Just the Maui Island Plan, yup.

COUNCILMEMBER GUZMAN: Okay, thank you.

CHAIR COUCH: Ms. Crivello, being a member of the Molokai Island Plan, any comments?

COUNCILMEMBER CRIVELLO: Not at this moment, Chair.

CHAIR COUCH: Thank you.

COUNCILMEMBER CRIVELLO: Not at this moment.

VICE-CHAIR VICTORINO: Recommendation, Chair.

CHAIR COUCH: Okay, well that was quick. Yes, Mr. Guzman.

COUNCILMEMBER GUZMAN: One more question.

CHAIR COUCH: Sure.

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COUNCILMEMBER GUZMAN: Chair, so when Molokai and Lanai, when they were doing their, when they do or when they've completed their Island Plan, does that need to be circulated to the Maui...

CHAIR COUCH: Planning Commission.

COUNCILMEMBER GUZMAN: Planning Commission?

CHAIR COUCH: No, no.

VICE-CHAIR VICTORINO: They have their own plans.

COUNCILMEMBER GUZMAN: Okay, I just wanted to see the contra, I mean the reverse of that.

CHAIR COUCH: Right.

COUNCILMEMBER GUZMAN: Very good, thank you.

CHAIR COUCH: Okay, if there's no...Ms. Crivello.

COUNCILMEMBER CRIVELLO: Chair . . .*(inaudible)*. . . before Mr. Guzman's understanding is Molokai and Lanai, they have their own Planning Commission.

CHAIR COUCH: Correct, and we'll find out in the next term that Lanai and hopefully Molokai's Community Plans will be coming up and they went through only that island's respective Planning Commissions. They didn't go to the Maui Planning Commission. So, does that help?

COUNCILMEMBER GUZMAN: Yeah, yeah. I just was inquiring whether it gets circulated all.

CHAIR COUCH: The other way, right.

COUNCILMEMBER GUZMAN: Yeah, and so if it doesn't I'm fine with that.

CHAIR COUCH: Okay. If there is no further discussion, I will entertain a motion to recommend passage on first reading of the proposed bill entitled A Bill for an Ordinance Amending Chapter 2.80B, Maui County Code, Relating to Public Hearing Requirements for Amendments to the Maui Island Plan.

VICE-CHAIR VICTORINO: So moved, Mr. Chair.

CHAIR COUCH: Thank you.

COUNCILMEMBER WHITE: Second.

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CHAIR COUCH: And actually I want to include the following County Communication 14-202; and any nonsubstantive revisions.

VICE-CHAIR VICTORINO: No objection.

COUNCILMEMBER WHITE: No objection

CHAIR COUCH: Okay, so we have a motion from Mr. Victorino and a second from Mr. White to pass that bill and file the County Communications. All in favor of the motion, oh, any discussion? All in favor, say "aye".

COUNCIL MEMBERS VOICED AYE.

CHAIR COUCH: Opposed? Let the record show that there are seven "ayes" and zero "noes" and zero Members excused.

**VOTE: AYES: Chair Couch, Vice-Chair Victorino, Councilmembers Baisa, Cochran, Crivello, Guzman and White.**

**NOES: None.**

**ABSTAIN: None.**

**ABSENT: None.**

**EXC.: None.**

**MOTION CARRIED.**

**ACTION: FIRST READING OF BILL AND FILING OF COMMUNICATION.**

CHAIR COUCH: Thank you, Members and we will do our mid-morning break before we go into the next item. So let's all be back here at 10:40. This meeting is in recess. . . .(gavel). . .

**RECESS: 10:26 a.m.**

**RECONVENE: 10:47 a.m.**

CHAIR COUCH: . . .(gavel). . . Will the Planning Committee Meeting of November 20<sup>th</sup> please come back to order. Alright, Members, now we're going to talk about PC-60 which is Amending Title 19, Maui County Code, Relating to Short-Term Rental Homes. Believe it or not it's, we're

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at our two-year review. It was almost two years ago, or a little over two years ago that we passed this bill, yeah. So time flies when you're having fun.

## **PC-60 AMENDING TITLE 19, MAUI COUNTY CODE, RELATING TO SHORT-TERM RENTAL HOMES (CC 14-202)**

CHAIR COUCH: We are in receipt of County Communication 14-278, from the Planning Director, transmitting a proposed bill entitled A Bill for an Ordinance Amending Title 19, Maui County Code, Relating to Short-Term Rental Homes; and a summary of the comments from the Lanai, Maui, and Molokai Planning Commissions. Basically we're going to update the requirements and permitting procedures for short-term rental homes, which is exactly what we wanted to do when we created Ordinance 3941 in 2012. That ordinance amended Title 19 of the Maui County Code to establish procedures to permit short-term rental homes in certain areas subject to appropriate restrictions and standards. The ordinance states that it is the intent of the Council to implement land use policies consistent with General Plan and the State's Land Use laws to retain the character of residential neighborhoods and to allow for varied accommodations and experiences for visitors. Actually, we passed the ordinance May 23, 2012, so we're a little bit over our two-year review. Alright, we created Chapter 19.65, Short-Term Rental Homes in the Maui County Code and it's Section 16 of that ordinance requires that the Planning Department will review the chapter and transmit a report with comments, recommendations, and proposed amendments to the Planning Commissions for review and transmittal to the Council. So, they did that and we're going to have a presentation from Gina Flammer who's been the workhorse behind short-term rental home legislation and also from Ms. McLean. Ms. McLean, do you have any comments before we start?

MS. McLEAN: Thank you, Chair. No, you did an excellent introduction and we're happy to let Gina take over with the presentation.

CHAIR COUCH: Okay, fire away, Ms. Flammer. And Members you have a copy of the presentation as well if you want to make notes.

### ***... BEGIN PRESENTATION ...***

MS. FLAMMER: Okay, good morning, everyone. Thank you for coming today. Thank you for giving us this opportunity. So I'm just going to start with the big picture, the background. In Maui County there's currently five different types of visitor accommodations that can occur in a single family home. You can have those that are in a Hotel zone so there're zoned Hotel, you can have a legal non-conforming, those are grandfathered and that's when it's confirmed by the Department. You have those that are authorized by a conditional permit, that's the permit that was used prior to a short-term rental home permit. You have bed and breakfast homes, that's when an owner lives on-site and obtains a B&B permit, and then short-term rental homes when the owner does not live on-site, they have a local manager and they obtain a short-term rental

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home permit. This last option, the short-term rental home permit became legal as Chair Couch said on May 23, 2012. It was initiated by the Council, by you folks. Chair Baisa was the one that introduced the bill. The Department and the Planning Commissions reviewed it and then the Council Planning Committee, this Committee spent six months discussing the bill. It was a really nice process to go through and develop the whole process with you. So it was a big step forward. The old way was the conditional permit process which is kind of a catch-all permit that we have for anything that's not outright approved. That permit requires your approval and a specific ordinance to be written. It takes a year, year and a half, to seven years, long process. There's only 13 of those that were issued that are still in effect. So the new way that came in with the bill is a specific permit just for short-term rental homes. It can be administrative or it can be a Maui Planning Commission approval and so far we've approved about 121, so big difference. So why are we here today? You don't often put in a two-year review clause but I want to thank you for that. It's been very useful. It's been good for the Department staff as we're implementing this to know, here's a little tweak we can make, let's write that down. We know we can actually make that in two years. So thank you for that. So this two-year review is coming in the form of a report that's been submitted to you. It's a written report. We did make comments. We've made some recommendations and we put together a draft bill so that you have something to actually act on. So in the report narrative I went through in the beginning and just kind of described the long process that the bill went through. Some of the provisions have been very successful and some are kind of worth revisiting. So there were some stronger neighbor protest provisions put in the bill, there was the addition of the private home inspection form which has been very well received, you folks put a clause in, no parties, no non-registered guests and the link to house parties on the website, and I know when I talked to neighbors that they appreciate this. There's also the provision that the home must be constructed within five years prior to filing an application and you put that in there because you didn't want homes being built for this use. You wanted homes being built for residential use, and when I talked to people on the phone, we do get comments from people that I'm here on Maui, I'm looking to buy a home, but I'd like to rent it, I'm thinking of building. So when I explained to them this clause they understand right away the meaning behind it and they say that's fine, I understand, thank you. The next thing that was done was the short-term rental home use for properties in the Ag District. Originally it was an accessory use, we moved it to a special use, we didn't have a farm plan requirement, we're going to come back and talk to you a little bit about this. It's one of our unresolved issues. In 2011, the original bill that went before you, it started with the three-year permit like the bed and breakfast. I think it came through testimony and then it was picked up by you to make the bill, to make the original permit just one year. We tried something new, with trying to renew it with the Department initiating that renewal. We'll talk a little bit about that, we've made some suggestions on that. The original bill was introduced, had a caretaker provision but as we went through this process only a realtor as a manager or a family member, if not the applicant could be allowed. There are also three temporary provisions that were put in, those have all expired. The first one really helped streamline those initial permits. It was a waiver of the Planning Commission trigger for review when there's another permitted operation within 500 feet. That was done until the end of the first year and boy, we've learned over and over people react to a deadline. So we got 30 applications at the end of the year. It's great for getting compliance. There was also a waiver of one permit per person, for the first year, and

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that's only if the house is worth more than 3.2 million dollars and that's because it was felt that those houses would be out of the reach of the regular residential market. We've only had two people that have been able to apply with that and interestingly they're both in West Maui. We also had a temporary permit provision but I'm glad to say we didn't need it. We were able to get the permits done quick enough that we didn't need to use that procedure that we have. So included with the report are lots of exhibits. I just wanted you to have lots of background information. I included a full copy of our application form, full copy of the home inspection form, list of all, list of, so you could see the names of each one of the permitted operations by community plan region. I also included the map so you could see where they are. I have updates here that I'm going to show you a little bit later. I wanted to show you how much work it's been for the Maui Planning Commission and Hana so I'll show you, and I'll show you a couple slides in a second here about all of their agenda items, just how much it's taken up their schedule. I also put in all the agency comments and then the proposed bill as we presented to the Commission. So then after that for your transmittal I included memos describing each Planning Commission meeting, just kind of a cheat sheet, you could turn to it and see what they recommended, what the public testimony and what some of the other discussion items were. I put the minutes and the testimony in your transmittal and then I put the proposed bill after the Commission Review. There's a couple minor changes that we made. And then as background for our discussion on what to do with properties in the Ag District I put in copies of our State Land Use, Special Use permit application which they are required to, applicants are required to apply for that permit now. And then I also put in the County Use Special Permit so that if we talk about changing it in the Code it could trigger that application. So, what was our very first step on I guess it was May 24<sup>th</sup>, the day after the bill was passed. We had to implement the ordinance and we're required by the IT Division to, whenever you create new KIVA features you're required to do a permit process flowchart. I don't think we knew how complicated the bill was until we did the chart and then we went oh, boy. So this is what we're working with and this is what applicants are working with. So we're all for streamlining. So how do you establish a permit process? It's a whole new permitting system. We had to work with KIVA but then we also had to come up with the Department for procedures out of the ordinance. We used this as an opportunity to become a model for all the permits so we really spent a lot of time thinking about how we want to do this and the first step was to make an application that an average person can fill out. Sometimes our applications, they're older, they're a little more vague, you need some knowledge in order to submit or you need to hire somebody. We didn't want to have to do that. We wanted people to be able, if they're diligent, if they're patient, if they're good with paperwork, they can read the overview, it's about three pages, and then they can go step by step through the checklist. And then we had to work to add some features to KIVA so that we'd be able to track and issue permits. We had to actually buy some new software to implement the Maui Meadows sub-cap and then we had to buy some software to do the mapping features and all this takes time. We also as part of our model for other permits is we started a no surprises policy with the public. In the past, people would have no idea if they had building permits until they submitted and it went to Public Works, and they were often very surprised to find out. So what we do with this application is we have people find out up front and make sure that everything's in order before they come in. It saves a lot of headache and it lets people know right away what they're getting into. So all the tax licenses, the proof that the home was built in



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compliance with the Code, they have to have already passed the private home inspection or the County miscellaneous inspection before they can come in for the permit and that's so it doesn't just sit there while we're waiting for them to clean up some other things and that's been fairly well received. And then also what we do is that the applicant or the consultant can come in and meet with the planner when they submit. They don't just mail it in and then wait to be contacted. They can come in, we go through the application with them, if it's fully complete we'll sign what's called the Neighbor Notice form and then you're off and running, you've already done a big step right there. If it's not fully complete we'll explain to them how to fix it, what to do and then they'll come back in. We will have meetings with people ahead of time to help them prepare the application also. So developing the application, I wanted to show you this application and I wanted to show you on the bottom because it's 14 pages. So in our effort to over explain and simplify we made the application kind of long. I do tell people it's intimidating but if you take your time, you can get through it. We call it the take home final is what it is. So I tell people to work through all the different sections when they're ready, call us with the questions that they have. But I want everybody to know up front when they're applying what they're going to go through. So the first three pages are just the overview process and then after that we go in to the checklist items that they need to complete. So the Home Inspection Form, that was something brand new that came out of the Committee while we were working, it was kind of a safe when built but also still safe. I know there was some talk about maybe using a HUD form back then but what we did is something that's a little more complete. So with the help of the Department of Public Works we had some ASHI home inspectors that helped us. We developed the Home Inspection, we did some rules also and then we had a hearing to adopt it. The response has been very positive from people. I usually tell people print out the inspection form and walk around your house before the inspector comes. You can find most things on your own, and that way when the inspector comes you know you're ready. And applicants really appreciate knowing ahead of time, and I tell them your insurance agent is going to love you for having the inspection because you're going through and you're looking at safety items and you're going to have guests in your house. So you're reducing your risk and they really appreciate that. So you've got the full form in there and it does go through just by each section what you're looking at. We kind of call it a super safety form. The Department did a lot of outreach for this permit. In addition to just information documents that went on the web, we had various Department staff go out and speak at community events and then we held a workshop with the Maui Vacation Rental Association and it was really nice to work with them. They gave us the perspective of the applicant and how we should communicate what we're doing to them. So we had that workshop in October 2012, it was filmed by *Akaku*, shown on TV so people that weren't there could watch even watch it and see. And one of the purposes was just to really encourage people to come in and show them, look the process is much different than what it used to be. So maybe before it was hard, you didn't want to come in. But now you know you have no excuse, the process is here and it's something that's doable. We also did a community workshop in Hana. There's a lot of vacation rentals out there, a lot of interest from the community. We had about 30 residents, and we've had a lot of really good compliance out in Hana and there was a workshop sponsored by the Realtors Association of Maui, another really good group to work with. That one was more to just inform the potential managers of what their responsibilities are under the bill and that was well received as well. We also let the public know that you can call

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and speak with a planner and I'll tell you I didn't expect the result that we had, they really did call. I tracked phone calls for the first year I think, we had over a thousand phone calls from people. Yeah, big response to it. So when this bill passed there were people out there going thank you for this and we got to talk to them and that was nice and it also helped them realize that we're here to help you with this and to help you get compliant. And I think it's really a good way to start off how we started off the permit system. We asked a lot of people to come in for meetings where we walked them through their own personal application too, and I know that's been appreciated. So the permitting system, it's been very successful. We've had over 160 applications so far, and as I mentioned, with that deadline that we had, we had 30 all on December 31, 2012. We even had one faxed in at, I think it was 4:32, I mean people, they wanted to get in so they could meet that provision. So we've had about 121 approved so far, only five of them denied by the Maui Planning Commission. And of those, so that makes it 126 applications that have been fully processed and of those, ten did meet the trigger to go to the Maui Planning Commission. So I know your intent in the beginning was to make this mostly administrative and just have a couple go to the Commission, and that's kind of how it worked out. I don't know if it's going to be that way in the future because that waiver of going before the Commission when there's one within, of not going when there's one within five hundred feet, that's lapsed, so we have quite a few now that are coming up just because of that. But if we look back, of those ten that went before, five were for neighbor protests, and of that four of those were denied. And then five were, went for having another one within 500 feet, and four were approved, one was denied. Interestingly, the one that was denied, the applicant decided not to come to the Commission hearing. I think that probably did play a role. It was kind of unusual that that happened, but I think it was the day before she had just decided I just, I'm too nervous, I can't do this and it wasn't very well received. In addition, our outreach caused a lot of B&B permit applications to come in which is good. It's more compliance, it's what we wanted. So we've had 40 new applications and of those the Planning Commission has reviewed eight of them and all of them were because there was another one within 500 feet. None of them were for neighbor protests and all of those were passed by the Planning Commission. So also we've had a huge influx of State Land Use, Special Use Permits. Now that's the permit that's required for all properties in the State Ag District. So if you have a property, you want to do a B&B or a short-term rental, you have to not only apply for that permit, you also have to apply for the State Land Use, Special Use Permit and all the project areas have been less than 15 acres so they're all reviewed by the Maui Planning Commission. Fortunately they don't go to the State Land Use Commission. So, in the first year and a half we had 36 new State Land Use Permits and since they're all reviewed by the Planning Commission they all went to the Planning Commission. So that was almost half of all the public hearing items for our Planning Commission. And they've all been approved and I think the reason they've all been approved is because we now require an implemented farm plan to be in place before they even file the application. And I know our bill when we first wrote it, we moved the use to a special use which didn't require an implemented farm plan. It seemed like maybe we were streamlining. However, when we sent those applications to the State Office of Planning to review, they came back and said whoa, wait a minute, you know you should have, you really should have an implemented farm plan requirement. And we said you know what we can do that. That makes sense to us, and everybody has kind of agreed that okay, that makes sense, even the applicants themselves. I

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haven't had too many comments about that. So as an update we've had six more come through just in these past six months and they were all approved also. And I just put a couple slides in here just to show you just how much time it has been taking. This is just the Maui Planning Commission. All Agenda Items, we have 57 percent, and then if you really look at the items that take long, it's the Public Hearing Items, 67 percent have been related to either a B&B or a short-term rental. It's a lot of time for that Commission, and if you look at the Hana Advisory Committee who advises the Maui Planning Commission, they've had ten items there. We've met more on these issues than on any other issue out in Hana. So a lot of time, staff time and just the Planning Commission Members. If you take a look at just the staff resources, the Planning Department, we estimated that about 50 percent of the Current Division staff time was needed to implement the bill and then also to process all the applications that came in during the first two years. It took five full-time planner positions, a portion of the three supervisors that we have, one to two clerical spent, we have three or four clerical that spent half their time working on this and then half of an information specialist position. And I'm happy to say that our team was chosen as the 2013 Team of the Year. That was nice, yeah, it really felt good to us, it was a hard year. We got a free lunch, we got recognized, that's important.

VICE-CHAIR VICTORINO: A free lunch is better than nothing at all.

MS. FLAMMER: Yeah, and the recognition goes a long way in terms of morale.

VICE-CHAIR VICTORINO: Congratulations.

MS. FLAMMER: Yeah, thanks. And we kept a good attitude during the whole thing. I mean it's hard when you're working that much and it just keeps piling on. But we're doing a good job and we're happy to be doing it. So, what have the results been? Well, we've issued a lot of permits for people, 121 so far. I wanted you to see kind of the breakdown. So the biggest areas are pretty much Paia-Haiku, and West Maui and Kihei, our three beach communities. I think it's to be expected. Oh, I did want to let you know, we're looking at Hana here. So we've had eight so far but there are six applications that are ready to be approved but there's no qualifying manager to go with those applications. And at this point we've stopped taking applications in Hana where there's not a qualifying manager. We didn't know in the beginning we were going to have a problem and once we realized that, we've stopped. So I've gotten a lot of calls from people that do want to come in. So that number will be higher in the future. The Maui Meadows cap of five is full. It was full almost immediately and we're not accepting applications for that area anymore. And then we do have about 40 permits right now that are in the process. And we're getting them, you know every week we get a couple. So where are they concentrated? Well, I just told you where the most are and you can see them right here. It's pretty much our beach, north shore, and then our beach communities, and then even out in Hana too, you can see the presence out there. So as I mentioned, we've got eight already out in Hana with more coming. They're kind of evenly spread out in Hana. Kihei, they're kind of, you know they're spread out. They're in the different areas as you can see. So North and Central Kihei they're kind of spread out, you can see down at the bottom, that's Maui Meadows. But most of them are really close to the beach. I think that's just demand, that's where people want to stay. The cap is full in Maui

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Meadows but you can see how they're, it's nice, they're kind of dispersed throughout there. Makena, you've got quite a few down in Makena and it's been really interesting to work on those because those are kind of multigenerational properties. Those have been passed down through the years and I think in some cases we're even dealing with the grandchildren and it's such a part of their family history it's so fascinating to hear what that area, how it means to them and many of them don't live there but they come and they spend long periods of time and they bring their family members too. So it's a little bit different than in some of the other areas. Not so popular Upcountry. The Olinda, that's kind of where we, we have four up there right now. And then the North Shore, that's where we have 36 and they're kind of evenly split between Paia and Kuau you can see it's a smaller area so they're much more concentrated there. And the other half is kind of spread out through Haiku. The Wailuku-Kahului Community Plan District, we do have four but they're all located in Spreckelsville right now. We do have a couple B&B's in Wailuku but for the most part it's Spreckelsville or Airport Beach, that whole area. West Maui, we've had 29 permits issued. Interestingly I think the three denials all came from West Maui. A lot of interest over there. Lahaina-Front Street, I suppose that could be expected, that's one of our big tourist areas so you can see. One of them was denied actually up in the other areas. I think they were kind of looking and thinking that's quite a bit right there. Kaanapali and Kahana, not so many applications, but then when you get up to Napili we have one street that has five and it was kind of an interesting study of character of the neighborhood. I believe there's only one woman that, family, I think she lives by herself, well there's one family that lives on the street full-time, she did not have any problems with the vacation rentals and the rest of them are pretty much families that share them or they're permitted operations as you can see there. This is where we had one of the ones that was, somebody holds two permits and both houses are worth more than 3.2 million dollars. It's quite a street right there, you can see where the water goes all the way around. All of them have amazing views. Molokai has had excellent compliance and their Commission has been very supportive. We've got ten issued so far, most of them, or they're kind of concentrated in the Waialua area. The Commission, because they're within 500 feet they do, they have approved, I think two have gone after the initial ones were approved and they've been fine with them there. I think that area must have a, I think they have a long history of vacation rental. And Lanai, only one permit's been issued. There're a lot of interest in Lanai, a lot of support. I think they're finding the process, it's just a little too complicated and they're having major problems with finding a qualified realtor to be a broker. That's what I heard at the meeting. Okay, so you know the carrot is an easy permitting system, or at least I can say it's an easier permitting system. We'd like to get to easy but at least we're closer. So what's the stick? The stick is enforcement and you've spent a lot of time talking about that when we were discussing the bill originally. So you put in the proactive enforcement provision where the Department is required to compile an annual list of operators advertising on the internet. In 2012 and 2013 we did go ahead and compile that list, more towards the end of the year. However, now we're looking more regularly for advertising. We were a little slow to get started but now we're up and going and part of that is because we had a new ZAED Program Administrator hired in 2013 and his first task was to hire inspectors and that's not so easy we learned. I will tell you though that, I know you've talked about this with that Division in here recently. But we recently have started some proactive enforcement and it's been more of an information outreach to alert advertisers of the need for a permit and with that we've had a big increase in calls to the Current

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Division for people wanting to apply and that's just the nicest thing when people realize I've got to come in, they call us, we say yes, you can come in, we're happy to help you and then we get them started. So as standard Department procedure whenever we're reviewing something we will send it out to the agencies for review. We have three agencies that regularly comment or are involved in our review of short-term rental homes. The State Office of Planning as I mentioned earlier, we had that discussion with them about the farm plan requirement so they very strongly support codifying the farm plan requirement right into the bill. They did, interestingly they did recommend lowering the farm plan income requirement and they gave you some information which is in your packet about small farms in the U.S. and what their real income is. I do want to let you know that our requirement right now is either \$35,000 or the implemented farm plan. So you have one or the other. We have had nobody come in with the \$35,000. I will tell you I've only had one application where they did make \$35,000 and it was a plant nursery, it's the former director of the Honolulu Botanical Gardens. So you can just imagine what kind of nursery he runs. I think he was only able to qualify for that two of the years. However he had an injury and wasn't able so even he couldn't have met that three year to have that. And the State Office of Planning also suggested that the County of Maui adopt the Ag Tourism Law too which I found refreshing. So the Real Property Tax Division, they perform a very important function. They reassign the tax classification of the properties once they're approved. So we cc them on all of the approval letters. They do like to see the applications though, they typically don't comment. I'm not sure what happens internally. Sometimes they'll send an inspector out, an ag inspector. Not all the time though but we do continue to send them the applications. And then the Police Department, the Police Department was initially for each application they were going in the computer, assigning a staff person and they were reviewing whether or not there had been any complaints. They did tell us that this was very time consuming and perhaps not the best use of their personnel. They recommended that we go online and use the County RAIDS Online system which can show police reports by address. So they recommended, it's the same information that they were tapping, only they know, they have, they can pull up the person where you know we just see the property address. So we've been doing that and that saved quite a bit of time, I know they're very appreciative of that. So we also, like you instructed us in the ordinance we took it to the different Planning Commissions. Hana, I love working with the Hana Advisory Committee. They ask so many good questions, they're so thorough, they really take their job seriously. We had two very long meetings in May and it was a great introduction, a great way to start. They had eight recommended amendments. Out in Hana the biggest issue is the lack of an adequate number of Hawaii State Licensed Realtors and they talked about this during a lot of the different meetings. There are several managers out there, one had a license before but isn't able to find a Realtor Broker now to work under and then two others that have expressed interest in getting a license but the Commission strongly supported those managers that were there. They recommended that we adopt the State Law Requirements which do allow for a caretaker. That provision only allows the caretaker to manage one property, one person, one property. It's not a total solution. We're still going to need more licensed realtors in Hana but it will help. They also recommended that applicants own a property for five years, not just that the property was built, but that they've had ownership for it. They're concerned about people coming into Hana and buying new houses, perhaps the houses had been in long-term rental and they turn it over to vacation rental. They also wanted to reduce the cap from 48 to 30.

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They liked the incentive that the cap provided in the beginning for people to come on in and they wanted to kind of create that urgency again with people. They also felt that B&Bs and short-term rentals are similar enough that in terms of the Planning Commission trigger for neighbors that they thought maybe they should combine them and then like all the Commissions, except the Maui Planning Commission but they wanted to see all the initial applications. They know their community the best so they'd like to comment on each of them. The Department, for number six here, we're recommending that when we need to do a compliance inspection for a problem that we give the applicant an hour for us to get on to the property. Out in Hana they thought that just wasn't enough time and they recommended a 24 hour notice for inspections. Hana was also interested in reserving part of the cap for Native Hawaiians. They wanted them to be able to participate in this permitting process and then they also recommended a prohibition on having an ownership interest in multiple short-term rentals. And when we went to the Maui Planning Commission they also agreed with that. The Department, we're proposing a new trigger for a Planning Commission hearing and that is when one owner has, or a trustee, or a partner, a corporate shareholder, is also an owner of another property that has a permit. They may not be the applicant but they might have an ownership interest and the Department felt that we should send that to the Commission for further review. Hana and the Maui Planning Commission both thought instead of sending it for review it should just be an outright prohibition. They didn't want people creating a business out of multiple rentals. We do have, I think we have one case now where it's a grandfather, granddaughter in a family trust that may have two. It's not as clear cut as you would think. That's why we thought Commission Review is a good idea. Husband, wife would also trigger this if they owned the properties together. We have a lot of faith in our Commissions to take a look at things so we feel like granting them the ability. We're comfortable with that though the Commission like I said, they just thought an outright prohibition would be fine. The Department also, we initially recommended making the trigger to go to Planning Commission whether there's another one within 500 feet, we recommended making that discretionary instead of an automatic trigger. We're very concerned about the schedule and the time. The Commission however told us they're fine with the workload. I think it's going to get more because we had that waiver before. However they said we're here to review these. We're fine with doing that. We don't want you to remove that trigger and make it discretionary. We'd like to see them. One thing I've learned that Commissions, they like to review things, they like to do their jobs, they always want to take on more. I think it's just a natural. Okay so then we went to Molokai and we had a whole lot of interest out there. They're very supportive of them, it's a big part of their economy. No controversy. They only had one comment and that is the Department is recommending, we're trying to bring consistency between all the islands, it just makes it easier to remember when you're processing applications. Currently the maximum number of bedrooms are three. We're recommending that it go to six so that it can match everything else. But the Commission felt that Molokai's different. They understand the consistency, but in doing that they feel like Molokai loses some of its uniqueness, it's not recognized. So they would like to keep the number of bedrooms at three. Lanai, we had a big turnout. Lots of support on Lanai for this. They had I think it was five different recommendations. We spent two meetings talking about it. We also talked about the B&Bs. First of all, Lanai City is very small so to them to notify somebody several streets away just didn't seem right. They were also concerned about the mailing costs for people to do that. So

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they just wanted to have notice only go to adjacent neighbors. They also felt the notification sign, especially the B&B, but also the short-term rental is just too big for a small city like that. And property managers, they're facing the problem where they just don't have enough Realtor Brokers that are willing to take on the property management business. They just don't want to do it and they have qualified managers there now and they feel support for them. So they're also supporting that caretaker provision. They also would like to review all of the applications as well and then interestingly they felt different about multiple permits. They wanted people that owned, that have a business, families that may have inherited some of these short-term rentals and that they would like to give them a chance to submit an application within one year and they could hold multiple permits. So a little different than some of the other islands. So I just wanted to say thank you very much for allowing us to do this. You have all the information with you now from us. We're very supportive of streamlining efforts and we're excited to see what you're going to do with the bill. So thank you.

*... END PRESENTATION ...*

CHAIR COUCH: Thank you, Ms. Flammer. Members, take a look at your item in your binder. You'll have the comments from, immediately from Mr. Spence and then there's the Department's proposed bill, a summary of amendments that they're requesting and then further on down into that is number three is Report Memorandum with Exhibits which is what Ms. Flammer was talking about. So that's some of the things we'll be taking a look at. The intent today is to go over a few of the major issues that Ms. Flammer brought up, see what we can build, some sort of consensus. We're not going to pass anything out today. We just don't have time for that. So this will carry over to the next term. I'm going to make sure that this gets referred to the next term for the Planning Committee. So, but I would like to get, since most of the people here will probably be on the Planning Committee I would like to get an idea of what the Members think and maybe we can make some changes before we get it back to, in front of this Committee again. So if you have any questions first of all let's go with that, on the presentation of Ms. Flammer or Ms. McLean I'll be happy to entertain those. So anybody have any questions on the presentation at all? Chair Baisa and then Mr. Victorino.

COUNCILMEMBER BAISA: What jumps out at me and first of all I want to thank you for a very good review and very well thought out you know recommendations for change. That makes our job a lot easier because you're the one that's been dealing with these laws. I mean we had great ideas but we didn't know how they were going to work out and thank you for a very clear report and for all the hard work and congratulations again on the award. I think well deserved. But one of the things that jumps out at me as I look at this is I've had several calls and I'm sure Member Couch, Chair Couch at the moment has also received a lot of these calls and that's in regards to Maui Meadows and the fact that we've reached the cap that was set there. Everybody else seems to be under and able to function with you know what is available. But because that's reached its cap already I'm kind of concerned that we kind of take a look at that and I'm sure Mr. Couch will be looking at it. But do you have any comments on that?

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MS. McLEAN: Thank you for the question. When the initial bill was passed, the Planning Department advocated a cap for the Kihei-Makena Region and not one specific for just the Maui Meadows subdivision and that change came about by the Council, I believe based on testimony from some of the residents or property owners of Maui Meadows, and we would continue to support the idea of just having one cap for the region and not specifying Maui Meadows separately from the rest of the region.

COUNCILMEMBER BAISA: Okay. I just was curious to know you know what you thought. Chair, I'll back off for a while here.

CHAIR COUCH: Oh, okay. To just answer your question, too, you're right I did get a lot of calls there and I just got a call from the president of the Maui Meadows neighborhood association this morning and he said if they had a choice between removing the cap or moving it up to something like 15 that they would prefer still a cap but go ahead and move it up a little bit, higher than the five and certainly higher than double.

COUNCILMEMBER BAISA: Thank you very much. I'm going to of course be very interested in your recommendation, as the area representative you probably know a lot more about this than I do. If you want to talk about Upcountry, I can help.

CHAIR COUCH: You bet. Alright, Mr. Victorino.

VICE-CHAIR VICTORINO: Thank you, Chair and I had the same concerns because I've had people down there calling me, friends, family and friends that I know that are quite concerned and I said well, the thought was those who came and testified said let's limit and so we went in accordance to the testimony that we received. So with that in mind you know and if you look at Central Maui we have very few. You know and again mostly in Spreckelsville. You may find a few more as time goes on spread out around the, around Central Maui. But a lot of the CC&Rs and the HOAs don't allow it. You know so that's why I think you're not going to find too many, but my other question and again thank you, job well done. Congratulations on the award. On the applications itself, and I know you made 14 pages and you try to clearly disseminate what's needed to be done. But I've heard people say whoa, and I don't know how to answer that question but I mean is there any way that we can get it more simplified? In other words, maybe an instruction book with all the nuances that need to be done and then this would say refer to Page 7, refer I mean the application would just actually say refer to this if you have a question on it and that way the application instead of 14 pages may be only 2 pages. But you still have some kind of guidelines either online and/or printed out that you know you can refer to this page. Because I've seen a number of applications move in that direction that everything's not spelled out, that if you have a question turn to page whatever it may be three, five, whatever it may be and you can find the question or the specific item that you're questioning or you're in doubt of. So has any thought been given to that?

MS. McLEAN: We regularly review our application forms to try to make them, and this is all of our application forms, we process roughly 60 different kinds of permits to make all of our



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application forms more user friendly, more understandable. As Gina described in the presentation, with this application form in particular, because it was a brand new thing we, as she termed it, the no surprises application form because we knew that we were going to be inundated with applications and what has been a long-standing problem with the Department is we'll get an application that's not complete.

VICE-CHAIR VICTORINO: Right.

MS. McLEAN: And so it takes a little while for the planner to review it, ask the applicant oh we need this, we need that and the applicant gives some of the information and it's this back and forth and the feeling from the applicant is god, I've submitted my application months ago and it's, I'm still waiting for it. So with this application, we put the responsibility on the applicant before we even accept the application for everything to be in there. And we are going to shift that way for our other applications as well. I'm not giving you the answer you want which is in fact our other applications are going to become more like this one because we want applicants to know all the requirements, very clearly up front so that when we get an application packet we know everything is in there. I do think that they can be, that it can be simplified, that it can be made more user friendly and we haven't initiated that process at the moment but assuming that changes to the ordinance happen, that would be the opportunity to go in, make changes to the application form and then we can look at that time about making them not as intimidating.

VICE-CHAIR VICTORINO: Yeah, thank you, Ms. McLean. And again you hit the nail on the head, not making it so intimidating. You know somebody walks in and wants to do something and they get this stack that's 14, 18, 20 pages long. I mean first thing they're going to holy Kamole, then what am I going to do with all this? So, and you know I like the idea that you're trying to leave doubt, leave any gray areas out so that you need to answer this, you need to answer that, and this is why. I can understand that. So with that being said, Mr. Chair, I'm glad that they're going to take a look at it as we move on in this process and all the other applications I believe the best way is to make sure there's very little in area of doubt. In other words, hey, this is what you need, you need to do this and get it done. If you don't, don't hand in your application, I agree with that. Because I think all of us find a lot of wasted time. Something's submitted, then you've got to turn around and you know ask for the answers for those questions and people are lazy. I mean I'll be the first to admit. Sometimes I'll skip something and say let's see if they don't need this answer, and then you get that right back. Right, I mean human beings being what they are, right? So, thank you. I appreciate it, Mr. Chair.

CHAIR COUCH: Thank you, Mr. Victorino. And before I get to you, Mr. White I just, to follow up on Mr. Victorino's comments, the fact that you've made these changes to the application and made it the way it is, how effective has that been?

MS. FLAMMER: It's been extremely effective in that we get complete applications now. And when you have a complete application you can turn it around in half the time. And I've seen that, I've seen the times drop for turning things around as we started this it has to be complete. And then

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as we've started working with people to explain to them what they need to get put in it to make it complete.

VICE-CHAIR VICTORINO: Okay, and again, Mr. Chair, I'm glad to hear that and I'd like them to keep moving in that direction. But if we can make it simpler here and there, that just helps the people at large, the public at large, thank you, Chair.

CHAIR COUCH: Yup. Mr. White.

COUNCILMEMBER WHITE: Thank you, Chair and thank you for the presentation, great job. The question that comes to my mind seeing that we have roughly eight people assigned to processing the permits and still not enough assigned to going after the folks that are operating illegals, to what degree are we, would we be able to switch resources from applications to go after the folks that are operating illegally, by virtue of what changes we're looking at making to the bill to streamline? And I know that they're separate positions, but.

MS. McLEAN: That initial, the number of planners devoted to processing permits was at the initial, the initial portion when the ordinance was first adopted. It was creating the application form, doing the flowchart, and then processing this huge volume of applications that came in. That isn't the same assignment load now. There are fewer staff people spending less of their time on short-term rental home permits alone. At the same time we, it's been an incredible struggle trying to fill all of our zoning inspector vacancies. We still have one vacancy that we're working to fill and, but they have started the proactive enforcement. I guess what I'm saying is at the moment we don't feel the need to shift resources. We, our Current Division regularly spends a fair amount of overtime trying to keep up with the volume. So we wouldn't want to pull any planners out of the Current Division and our enforcement team still isn't fully staffed. But we have initiated the proactive enforcement and we'll be continuing with that. So additional personnel in either or both Divisions would be wonderful but I don't see moving staff from one to the other.

COUNCILMEMBER WHITE: I'm looking, I'm just talking about resources in general. But what is the challenge you've had with filling the enforcement positions?

MS. McLEAN: The, our first attempt we had a very short list. We interviewed all the eligible candidates, offered the position and two of the people to whom we offered the position declined. They had accepted other positions. The third candidate and the only, the third and final candidate who we were interested in accepted. So we were able to hire one person for three vacancies. Then one of our existing zoning inspectors was hired for an interdepartmental promotional opportunity. So that created a vacancy that we didn't know we had. It took us a little while working with the personnel department to allow us to re-recruit because the list that we had we didn't want to offer the position to anyone else on the list. We offered it to the ones who we felt would work out. We didn't want to offer it to anybody else and so because there was an existing list, that list had to expire before they would re-recruit and get us new candidates. So we're in that process now of getting new candidates.

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COUNCILMEMBER WHITE: Okay, and do you have a sense, or does personnel have a sense of why you had such a low number of applicants?

MS. McLEAN: They're, the requirements, there are some unusual requirements, it is an unusual position. I think it's a combination of the requirements for the position and being able to qualify plus it's not a particularly high salary.

COUNCILMEMBER WHITE: Anything being done to adjust?

MS. McLEAN: Not so far. We haven't, we haven't asked for any of those things to be changed. We just asked for a new round of recruitment.

COUNCILMEMBER WHITE: Okay.

MS. McLEAN: Because we actually have heard of a couple people who might be interested, so we have to open up recruitment again to see if they'll apply and see if they qualify.

COUNCILMEMBER WHITE: Okay, thank you. Thank you, Chair.

CHAIR COUCH: Thank you, Mr. White. Ms. Cochran.

COUNCILMEMBER COCHRAN: Thank you, Chair, and thank you, Ms. Flammer and Department, for a very thorough, clear, concise PowerPoint and thanks for all the good work and congratulations on your award too, very well deserved. One of my just general question is do you folks have any idea of how many of these permitted, or people applying for STRs actually went from long-term and now seeking this type of permitting use instead?

MS. FLAMMER: I can't give you exact numbers, but I was really curious when we started this. I don't handle all of them but when I talked to, when the first wave came in, I'd say almost all of them were existing operators. So the number was very low. As we've kind of started to exhaust that I'm having new people come in. What I find happens most, I don't see so many, so much of a long-term being kicked out and then starting, what I find is people buy a house and then they decide to turn it into short-term rental. So it's hard to measure what the impact is with the long-term rentals but it's not as great as what I would've thought when I first entered into this. I don't know what the future holds though because we're, I mean the first wave with everybody operating, it kind of makes it easier, you have a track record, you know what's going on. It's harder when you have people just coming in brand new to know what they're doing, what they've done in the past, what the history of the house is.

COUNCILMEMBER COCHRAN: Right, and I guess it's prohibited to purposely build a home for this in particular, right?

MS. FLAMMER: Yes.

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COUNCILMEMBER COCHRAN: I mean you can't, it has to be existing and a five-year, I guess residence in order to apply.

MS. FLAMMER: That's only for building it, that doesn't apply to buying an existing home. That was, the home has to be constructed for five years, we don't look at it, how long you've owned it for.

COUNCILMEMBER COCHRAN: Okay, and so any reference to B&Bs as in my question going from that cottage or whatever it was that turned into a B&B was a long-term rental? Was that looked at or does that cross your mind as to a...

MS. FLAMMER: I do hear of that. Again, we don't collect those kind of numbers.

COUNCILMEMBER COCHRAN: Okay. It would be interesting though.

MS. FLAMMER: It would be. I think maybe more common with the B&Bs than with the short-term rentals.

COUNCILMEMBER COCHRAN: Okay, thank you. And then my other question is how many of I guess the non-permitted, how many have we cracked down on or actually been able to shut down or enforcement wise, how has that been going?

MS. McLEAN: I might sound like a broken record, but the goal of our enforcement efforts is compliance and so we have been successful. I don't have a number for you, but we have been successful in getting a number of operators to apply for proper permits. Our recent proactive effort where we simply went online to find places that were advertised where we could identify, determine that they were not permitted operations, we got to about 1,300 and then we stopped and we're now in the process of trying to verify the locations of those operations because as you know the law allows for advertising to serve as evidence of operation. So that's all we need to initiate enforcement action. So we're in the process now of determining where those properties are located so that we can issue the first rounds of notices of warning. And typically after that initial contact, the applicant will either stop operating or will put together a permit application.

COUNCILMEMBER COCHRAN: Okay, and so you said you stopped at 1,300 and is that just, I mean that's an indication that there's quite a few or do you need more assistance as in people in your office to continue the search and to continue the investigations or whatever you need done?

MS. McLEAN: We are working with some interested members of the community who have offered that their assistance that if we do have trouble locating the physical address, that they offered to help, just people who are concerned about compliance and wanting to find more compliance. So I mean certainly if we had unlimited resources we could do it a lot faster. But we're pretty comfortable with the pace that it's taking right now.

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COUNCILMEMBER COCHRAN: Okay. Thank you, just thinking of budget around the corner if this is something that could you know have some LTAs assigned or something to that effect to get the job done quicker and more efficiently and then you know release those positions until needed once again or something. So anyway just a thought, thank you, Department, thank you, Chair.

CHAIR COUCH: Okay, any other initial questions? Chair Baisa, you sounded like you had a few more.

COUNCILMEMBER BAISA: Yeah, I do. One of the things that I hear a lot about and of course I know most of the operators, I've had the opportunity to work with a lot of the B&B people and I also know STR owners and one of the things I hear is that in the process, in this complicated process is we're all trying to figure out how to make as easy as possible, concerns about the implemented farm plan requirement. Can you kind of talk about that and are there any plans to try to make that a little easier or are you going to stick to what you're asking for?

MS. McLEAN: Right now that's a requirement for properties that require a State Special Use Permit on State Ag Land.

COUNCILMEMBER BAISA: Right.

MS. McLEAN: And in order for the permit to comply with the criteria of State law, we felt that an implemented farm plan was a way to achieve that and also to demonstrate and gain support of the Planning Commission in reviewing the application that the structure and its use is accessory to agricultural use of the property and that was, that's an existing sound way to demonstrate agricultural activity. It's a process that we have in place already.

COUNCILMEMBER BAISA: So there's no pending way of I don't know, modifying what you ask for?

MS. McLEAN: Well as Gina mentioned in the presentation, if the County were to adopt an Agricultural Tourism Ordinance that might be a way to alleviate that requirement.

COUNCILMEMBER BAISA: That'd be nice you know we've been talking about that Ag Tourism bill since I've been here and I certainly would like to see that move ahead 'cause I think it's really important. You know it's become a very important part of our tourism that people come here and they like doing that kind of stuff and so maybe something else for us to work on, Chair. We don't have enough to do.

CHAIR COUCH: Madam Chair, that item is in my Committee but it's also kind of waiting on Mr. Guzman. Mr. Guzman?

COUNCILMEMBER GUZMAN: It's drafted, Chair.

CHAIR COUCH: Excellent.

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COUNCILMEMBER GUZMAN: I'm going to send it down to Council Services and then meet with Planning. I have a copy. I haven't done that because of election and all that.

CHAIR COUCH: Yeah.

COUNCILMEMBER GUZMAN: But it is done, I'm sending it down. Thank you.

CHAIR COUCH: Okay.

COUNCILMEMBER BAISA: One more.

CHAIR COUCH: Yes.

COUNCILMEMBER BAISA: The other is, talk to us a little bit about the RFSs that you've had or have you received any, what kinds in regards to the permitted B&Bs or STRs.

MS. FLAMMER: There's almost none.

COUNCILMEMBER BAISA: Good. That's good news.

MS. FLAMMER: Yeah, I mean I jokely they get scared straight going through the process but I think the truth is they want to be, they don't want to upset their neighbors. One of the most interesting ones is I got a complaint that they weren't providing the proper breakfast. And I thought of.

COUNCILMEMBER BAISA: The proper breakfast?

MS. FLAMMER: Breakfast, for the Bed and Breakfasts and I thought wow, if we're at the point of getting these types of complaints that's a good thing.

COUNCILMEMBER BAISA: Well now they can go down to the Manapua Bakery and we'll get over that.

MS. FLAMMER: And then the other one that I recall dealt with trash. I got a photo, actually it turned out the owner had been in town and was cleaning out and it filled up six trash bins and we came to learn you can have six trash bins. So there's the two that I'm aware of.

COUNCILMEMBER BAISA: I think it's really interesting 'cause you know when we were passing these permit processes, there were people that were just really afraid of doing it and felt that it was going to destroy the neighborhoods and that you know it was just going to be a total mess and I don't see that and I definitely don't hear that when you tell me that you've had that few Requests for Service and you know maybe there are complaints we don't hear about because some people don't want to call and complain. But I don't see it as a, there would be a major outcry if it was happening and I haven't heard it. Thank you.

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CHAIR COUCH: Thank you. Members, we do have Mr. Croly here who's offered to be a resource as far as their side of the, he's helped with quite a few people get their applications through and some of the processes that on their side so if...you know however we're running out of time, it's time to go to lunch and I, so just if Mr. Croly can come up to the --

COUNCILMEMBER COCHRAN: Chair.

CHAIR COUCH: --podium.

COUNCILMEMBER COCHRAN: I have a real quick question.

CHAIR COUCH: Sure.

COUNCILMEMBER COCHRAN: In reference to the slide.

CHAIR COUCH: Okay.

COUNCILMEMBER COCHRAN: For Ms. Flammer I think could probably a little bit more and this is in regards to the Hana Advisory, one of their amendments, number seven it says reserving part of cap for native Hawaiians. Can you just elaborate briefly on that, what they meant by that in Hana?

MS. FLAMMER: Yeah, they wanted to make sure, I mean they've had, in the beginning there was such strong demand for it they wanted to make sure that the whole cap didn't get eaten up by people that didn't live in Hana and they recognized that, I think they thought that 50 percent of the population is native Hawaiian in Hana and they wanted to make sure that some permits were reserved so when they come in later they'd be available for that community.

COUNCILMEMBER COCHRAN: Okay. But they're far from exceeding their cap at this point right?

MS. FLAMMER: They are, and part of that is just because of they don't have enough managers. And I'm not sure so much of it is the demand and I think those committee members recognized that too. And they talked about, they weren't sure it was a very realistic recommendation but they just wanted to show the support.

COUNCILMEMBER COCHRAN: Sure, okay. Thank you. Thank you, Chair.

CHAIR COUCH: Thank you. And I just would ask Mr. Croly to come up to the podium for just a five-minute overview of your side of the process.

MR. CROLY: I don't want it to be my side and their side. We've been working in conjunction with the Planning Department and we've seen this ordinance work very well for some folks. I'm very pleased that for the folks who have gotten permits, and I'm very pleased that the ones who have gotten permits have not created problems and that's a really good sign. Unfortunately there is a

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whole group of people who are trying to get permits right now and the Planning Department hasn't always even seen those because of the, you have to have a complete application before we're ready to come in. For example, a farm plan, there's folks who are just trying to comply with their farm plan before they even make application for over a year and they're, that's one of the barriers keeping them from getting to the point of actually submitting. In the meantime you know they're trying to keep their house afloat if you will and it's difficult that way. I want to give one example of one of the difficult parts of getting through this process. The 500-foot rule that was waived during the first year of application, it said if there was another one within 500 foot, a B&B or a short-term rental within 500 foot of your application you would normally have to go to Planning Commission but during the first year of application that was waived so a lot of people got through. But now with them spread out as Gina pointed out there's going to be a lot more having to go to Commission just because of the existence of one within 500 foot. And I want to make an example of someone who this happened to in Maui Meadows specifically, it happened to be a B&B. He made his application in April, the 45-day review of the notice window closed out and he didn't have enough neighbors complaining that would push him to a Planning Commission hearing. However, there was a Bed and Breakfast within 500 feet so the Planner did the, came and did the inspection and by early July he was ready to have his permit issued. If there hadn't been another one within 500 feet, April to July it was about a three-month processing time. There was about a month before putting together the permit application, but because he had to have a Planning Commissioner review then we picked a date 60 days out, he had to make notice, he had to publish notice in the newspaper, those two things in and of themselves ended up costing the applicant around \$2,000 to make notice in the newspaper and mail out the notices to everyone. Then he had a Planning Commission hearing and at that Planning Commission hearing there was a lot of talk about unpermitted operators. So the Planning Commissioners weren't confident in granting this permit with this talk about the unpermitted ones so they deferred, okay. So he then came back a month later and finally got his application granted in October. But the point was, if not for a short-term rental or a Bed and Breakfast within 500 feet, his permit would have been approved three months earlier and about \$2,000 less in cost in doing that. That one example discouraged a dozen other people from bothering to come forward. When they saw how difficult it was for that guy, they said oh man, he may have gotten his permit, it may have been a good thing in the end. But they looked at it and said this process is too complicated. I made mention of Austin, Texas, who used our ordinance to develop their own ordinance. On their website they show that once you submit a complete application, you can expect to have your permit in three to five days. I would really like us thinking in terms of, could we do something like that? Could we get to that? They incorporated in their ordinance much of the same requirements that we do. They said you have to have an inspection to make sure the place is safe, we have to show that you're paying your taxes, what they didn't incorporate in that we did was the whole up front having everyone in the neighborhood weigh in on whether these, this should be allowed and that streamlined their process tremendously. So I'd like us to think about the fact that those who've gotten permits, they're being accepted by the neighborhoods. They're being good neighbors. The provisions that we put in there, no parties, the you must park on-site, that's all working. Do we need to have all the upfront stuff that's causing many applicants years in the process? Even though some of the folks are getting through, some of the applicants are spending years in the process. One



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applicant who's sitting in the room right now made an application literally the day it was allowed. He ended up getting to Planning Commission, the Planning Commission denied his application and he's still trying to get a permit. But the point is that, that one denial leads to dozens or hundreds of others saying I'm not going to bother to try to get through this process, and I know that this applicant would have been a good operator. That's not in any question that I would have. But the process made it such that he ended up having to go to Planning Commission, there was a question at the Planning Commission, it became an arbitrary decision at that point and they denied the permit. So that's the streamlining that I'd like to see us considering and I thank you for the opportunity to express that.

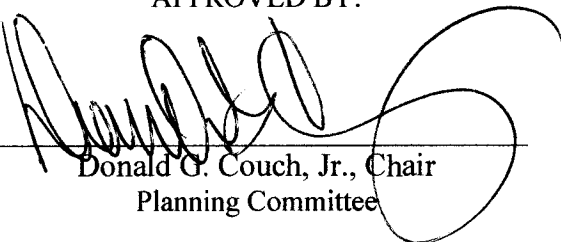
CHAIR COUCH: Okay. Members, any questions for Mr. Croly? Okay, thank you.

**ACTION: DEFER.**

CHAIR COUCH: We will certainly bring this up, well if things were working out we'll bring this up when we come back in the next term. I intend if I'm here to do that rather early as opposed to later. I'm hoping January or February to get this going and so you have the important page right now is the summary of changes that they're proposing. Take a look at that between now and that next meeting and put your notes down, listen, you know take into account what you heard today and let's maybe we can get through that and get it done in a single meeting. So thank you very much, Ms. Flammer and Planning Department for a good presentation. Thank you Staff and Corp, Counsel for helping us out, and Members, thank you for hanging in there until just about lunch time and thank you all out there for your testimony and we will get this sooner rather than later. So with that, this meeting is adjourned. . . . *(gavel)* . . .

**ADJOURN: 11:55 a.m.**

APPROVED BY:

  
Donald G. Couch, Jr., Chair  
Planning Committee

pc:min:141120

Transcribed by: Marie Tesoro

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**CERTIFICATE**

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

DATED the 9<sup>th</sup> of December 2014, in Wailuku, Hawaii

A handwritten signature in cursive script, appearing to read "Marie Tesoro", is written over a horizontal line.

**Marie Tesoro**