

PLANNING COMMITTEE

Council of the County of Maui

MINUTES

September 6, 2018

Council Chamber, 8th Floor

CONVENE: 9:12 a.m.

PRESENT: Councilmember Kelly T. King, Chair
Councilmember Yuki Lei K. Sugimura, Vice-Chair
Councilmember Elle Cochran
Councilmember Stacy Crivello
Councilmember Don S. Guzman (in 9:34 a.m.)
Councilmember Riki Hokama (in 9:13 a.m.)

EXCUSED: Councilmember Mike White

STAFF: Traci Fujita, Legislative Attorney
Rayna Yap, Committee Secretary
Ella Alcon, Council Aide, Molokai Council Office (via telephone conference bridge)
Denise Fernandez, Council Aide, Lanai Council Office (via telephone conference bridge)
Dawn Lono, Council Aide, Hana Council Office (via telephone conference bridge)

ADMIN.: Joe Alueta, Deputy Planning Director, Department of Planning
Jeffery Dack, Current Planning Supervisor and Climate Commissioner Designee, Department of Planning
David Raatz, Administrative Planning Officer, Department of Planning
John "Jack" Kulp, Deputy Director of Finance, Department of Finance
Michael J. Hopper, Deputy Corporation Counsel, Department of the Corporation Counsel
(*Seated in the gallery*):
James Buika, Planner V, Department of Planning

OTHERS: Kai Nishiki (PC-13)
Tom Croly, Maui Vacation Rental Association (PC-13, PC-11)
Zandra Amaral-Crouse (PC-13, PC-11)
(3) additional attendees

PRESS: *Akaku: Maui Community Television, Inc.*
Colleen Uechi, The Maui News

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CHAIR KING: . . .*(gavel)*. . . Good morning. We're convening the...it's the...it's 9:12, we're convening...I'm convening the Maui County Council Planning Committee meeting of September 6, and thank you, Members, for being here. If we can all in this Chamber silence our cell phones and any other noise-making devices, that would be helpful. I'm Kelly King, Chair of the Planning Committee. And with us today our Vice-Chair Yuki Lei Sugimura.

VICE-CHAIR SUGIMURA: Good morning.

CHAIR KING: Good morning. Member Stacy Crivello.

COUNCILMEMBER CRIVELLO: Aloha, Chair.

CHAIR KING: Aloha. And Member Elle Cochran.

COUNCILMEMBER COCHRAN: Aloha. Good morning, Chair.

CHAIR KING: Aloha. Good morning to you. Excused...Don Guzman is excused and we are expecting Riki Hokama and Mike White hopefully a little bit later. No non-voting Committee members today. And with us today for support we have from the Department of Finance, well, we have Jack Kulp, not Mark Walker. That's who's in my notes but thank you for being here, Jack. And from the Department of Planning we have Deputy Director Joe Alueta. Good morning.

MR. ALUETA: Good morning, Chair.

CHAIR KING: Good morning. Administrative Planner Officer David Raatz. Good morning, Mr. Raatz. And we also have two representatives for our first item on the SMA revolving fund, we have Jeff Dack who's the current Planning Supervisor. Thank you for being here. And we have Jim Buika, a Planner V who's in our audience today as backup. Also, our Corporate [sic] Counsel is Michael Hopper. Good morning, Mr. Hopper. And our Committee Staff is Traci Fujita, Legislative Attorney, and Rayna Yap, Committee Secretary. Thank you.

MS. FUJITA: Good morning.

MS. YAP: Good morning.

CHAIR KING: Good morning. Also, like to thank my staff for helping put the meeting together today, Susan Foley, Kate Griffiths, and Terra Foti. And so we're going to go ahead and announce the items agenda, and right now we have PC-13 which is Amending Title 3, Maui County Code, to Establish a [sic] Special Management Area Revolving Fund. This was one of the items that was on the request from the Planning Department for this year's budget, but, you know, we're going to go ahead and try to create that without a budgetary item. And PC-11 which is an update on the Transient Vacation Rental Enforcement. And PC-17 which is Amending Chapters 2.80B and 2.90A, Maui County Code, Relating to the Kahoolawe Community Plan which I expect

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to be mostly this meeting a discussion because of the opinion that we got from Corp. Counsel on whether we have jurisdiction over Kahoolawe. So, let's begin with...oh, I'd like to recognize Member Hokama. Thank you for being here, appreciate it. And we'll begin with public testimony. We've checked in with our satellite offices and so far there's no testimony but we'll check back in. And everybody knows that we get three minutes for testimony, sign up is outside in the lobby if you're in the Chambers and wish to testify. And please when you testify, state who you are and who you're representing. So, we'll go ahead and start with our...whoever is signed up to testify in Chambers. Traci?

MS. FUJITA: Our first testifier is Kai Nishiki, followed by Tim [sic] Croly.

. . .BEGIN PUBLIC TESTIMONY. . .

MS. NISHIKI: Hi, good morning, Committee Chair, Committee Members. Mahalo very much for being here and addressing some really great and important issues today. First of all, of course I support the transient vacation rental bill here. It's great. We really need some housing inventory released for the local people here so that we have more affordable housing. So, thank you very much for doing that. Moving on to PC-13, first of all, I really want to thank the Planning Department, Coastal Zone Management. I think they are heroes in our County and they do so much work in the shoreline area, and it's our greatest resource, it's what brings everyone to Hawaii. And we really need to have more money towards taking care of our resources and addressing the issue of sea level rise and erosion events that are happening. And I just thank you guys for taking it seriously and moving forward some proactive ways to help them out. Thank you all so much very much to Kelly King and Elle for putting some emphasis on this. We really appreciate it. I first noticed this issue when we started looking at different fines that were coming in in the SMA area and that the fines are sometimes up to \$100,000 for Mahinahina Shores [sic] last year and also for some violations. There's lots of violations within the shoreline, and all of these funds could be used towards mitigating all of the problems that we currently have in the shoreline. So, I think it's a valuable resource to help us to prepare and plan for coastal retreat, and also to have some funds for land and easement acquisition for beach access. We have a real problem with everything it always comes down to money, and in the shoreline we really need to have more access to funds in order to mitigate all of the problems that we're having. So, I just want to say thank you very much. Mahalo.

CHAIR KING: Thank you for your testimony, Ms. Nishiki. And just to, for the record to state who you're representing, if it's just yourself.

MS. NISHIKI: I'm just representing myself --

CHAIR KING: Okay.

MS. NISHIKI: --as a community member.

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CHAIR KING: Okay. And I just want to say I appreciate your diligence on this issue too, because you've been working on getting the SMA revolving fund for I think a couple of years now. So, thank you for bringing it up. And, Members, are there any questions? No questions? Okay, thank you for being here.

MS. NISHIKI: Thank you.

MS. FUJITA: Our next testifier is Tim Croly.

CHAIR KING: Aloha, Mr. Croly. Did you change your first name?

MR. CROLY: Aloha, Chair. No. I think I have to work on my handwriting.

CHAIR KING: Okay.

MR. CROLY: So, I am Tom Croly and I'm testifying today on behalf of the Maui Vacation Rental Association. And I'm here in great support of any efforts to improve the effectiveness of enforcement on short-term rentals. I'm here representing the, my membership who are all permitted short-term rental or bed and breakfast owners of the 350 permitted folks. And I just want to point out that those folks, they've gone through the process, they paid permitting fees, they pay roughly double the property tax that they would pay without a permit. They pay general excise tax and transient accommodations tax. They're subject to 16 additional conditions that include naming the County as an additional insured on their liability insurance which raises those costs. So, all of our members have a lot invested in their permits and in the County and in their businesses this way, and they totally support any efforts that would go forward. I was pleased to bring forward the idea of this third party to former Chair Couch of this Committee a couple years ago, and it's nice to see that we're finally getting to the place where we would implement it. We're very interested to see exactly how this information will be administrated and how it will be used. I looked at the RFSes today and year to date there's 175 RFSes, request for service for short-term rental or bed and breakfast use that's being done without proper permits. I don't know the status of every one of those 175 but here's my point. We know there's no shortage of those to go out and enforce on, the question is having a system in place that does it effectively and consistently. It's kind of like speeding on the highway, we know every day there's people out there speeding on the highway but without some type of consistent, effective enforcement, well, then everyone will ignore it and you have nothing going on. So, this is one of the tools, and again we're greatly interested in understanding how it works. Everyone has a kuleana in this regard. Our kuleana is making sure that our members abide by their permits and that people who want to make this use get permits. Some of our members individually are the folks turning in these RFSes saying hey, we want you to do this enforcement. We as an organization can't get involved in that. We've talked to our insurers and they said if you get involved in turning people in and enforcement, we'll drop your, you know, your coverage, your liability coverage as an organization. So, we'll stay away from that. But again, in any way that we can help in this overall effort, we are here to do so. Thank you, Chair.

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CHAIR KING: Okay, thank you, Mr. Croly. Can you just state for the record your organization?

MR. CROLY: The Maui Vacation Rental Association.

CHAIR KING: All right. Okay.

MR. CROLY: Yeah.

CHAIR KING: I just wanted to get that on the record. And thank you for being here. I also wanted to say that I appreciate your support, and I know that you guys have been waiting for us to move on the enforcement side because a lot of people with permits are...were frustrated with some of the other ordinances. But I do think that this...that the intent of all of this is to support the permitted operations because right now they have an unfair advantage.

MR. CROLY: Thank you.

CHAIR KING: So --

MR. CROLY: Yeah.

CHAIR KING: --thank you. Any questions for Mr. Croly? No? Okay. Thank you.

MS. FUJITA: The next testifier is Zandra Amaral-Crouse.

MS. AMARAL-CROUSE: Good morning, Committee Chair Kelly and Vice-Chair Yuki Lei Sugimura, and Committee Members that are here. Thank you for being here. My name is Zandra Amaral-Crouse. I am the principal broker and owner of Aina Hawaii ZEE Properties. So, I am affiliated with RAM, I'm a member of RAM and the national real estate organization. And I too like Tom is, are in very much support of the transient vacation rental enforcement because...and my hat goes off to Tom and many members of our real estate organization who lobbied for this for years and along with a shout out to Don Couch who worked alongside with us in getting this started. And like was stipulated earlier, we've been doing this for some years. So, I really am grateful to see that this has come to fruition and that we're going to start enforcing this. Because as we know, there's many amongst our profession in the short-term and the vacation rentals who paid their dues many, many, many years ago. I remember as a real estate sales individual when this first came to the floor, we had many professionals within our industry working with the different entities of County and State government, trying to put together something to where we could have B&Bs, have short-term rentals, have vacation rentals. And they worked very hard on that only to have the illegals come in and circumvent our system. And that's not fair. But then I know that you know because you are putting this forward on the floor so mahalo, Committee Chair, Vice-Chair, and Committee members. I would like now to go on to PC-13, if I may? And that's the coastal management. As someone who was

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born and raised at the mouth of Iao River in Paukukalo on a farm, a pig and cattle farm, the ocean was much to us. My father had ten children. We went fishing every night. We lived off of our land, subsidized by my dad and our hard work in raising cattle, pigs, ducks and going fishing for whatever was in season at the time. But I recall my father always telling us taking care of the ocean was the most important thing for us to have, the subsidy, not only for our...to be able to subsidize us as children but our children and our grandchildren. My mother's house still stands there today. And as someone from Maui, from Hawaii, Maui nui, we all know that the ocean and the land is something that is far more than the ocean and the land to us. It is who we are. Like Kai Nishiki had stipulated, you know, it's what draws our visitors but foremost it is what sustains our people. So, I thank you for bringing this forward as well, Committee Chair and Committee members. And I do look forward to us moving forward and preserving these amenities for our people, foremost our children, our kupuna and our moopuna. Mahalo.

CHAIR KING: Thank you. Any questions? No questions. Thank you very much for your testimony --

MS. AMARAL-CROUSE: Thank you.

CHAIR KING: --and your support.

MS. FUJITA: There are no further individuals signed up to testify in Chambers.

CHAIR KING: Okay. Is there any...if there's anybody else who wishes to testify, you're welcome to come down now. Otherwise we'll go ahead and close testimony if there are no...oh. Oh, I'm sorry. We have to go check, we'll go back through and check with our satellite offices. Do we have...Ella Alcon, do we have anybody on Molokai?

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

CHAIR KING: Okay. Dawn Lono in Hana, do we have anyone waiting to testify?

MS. LONO: Good morning, Chair. Dawn Lono at the Hana Council Office and there is no one waiting to testify.

CHAIR KING: All right. And, Denise Fernandez, do we have anyone --

MS. FERNANDEZ: Good morning, Chair.

CHAIR KING: --waiting to testify on Lanai?

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

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CHAIR KING: Okay. And we have no further testifiers in the Chambers. So, if no objections, we'll close testimony.

COUNCILMEMBERS: No objections.

CHAIR KING: Okay, testimony is closed.

. . .END OF PUBLIC TESTIMONY. . .

ITEM PC-13: AMENDING TITLE 3, MAUI COUNTY CODE, TO ESTABLISH THE SPECIAL MANAGEMENT AREA REVOLVING FUND (CC 17-294)

CHAIR KING: And let's begin with our first item, so, Members, the first item is PC-13, Maui County Code...Amending Title 3, Maui County Code, to Establish the Special Management Area Revolving Fund. And we are in receipt of County Communication 17-294, from Councilmember Elle Cochran, transmitting a proposed bill to establish a Special Management Area revolving fund for the deposit of all civil fines collected pursuant to Chapter 205A, Hawaii Revised Statutes. The funds deposited shall be used for: 1) enforcement personnel; 2) acquisition of land or easements to increase beach access in relation to the violation; and 3) master planning and implementation relating to coastal realignment. Correspondence dated August 16, 2018, from the Planning Director, transmitting comments on and suggested revisions to the proposed bill establishing the Special Management Area revolving fund. And three, correspondence dated August 30, 2018, to the Department of the Corporate [sic] Counsel, transmitting a revised proposed bill entitled A Bill for an Ordinance to Establish the Special Management Area Revolving Fund. The revised proposed bill incorporates the revisions proposed by the Planning Director. And so that is what is, has been provided today, this morning. So, with that I would like to turn that, turn it over to the Planning Department for comments.

MR. ALUETA: Thank you, Madam Chair. Department appreciates the bill coming forward and Councilmember Elle Cochran for pushing forward with this as well, and for allowing us to comment and incorporating all of our suggested changes. So, from that aspect we are pleased with the bill as it is. I have Jeffery Dack here from our Department here and he also would like to make a few comments if that's okay with you, Madam Chair?

CHAIR KING: That's fine.

MR. ALUETA: Thank you.

MR. DACK: Yes, good morning. Thank you. It was referenced that during the budget consideration earlier this year, the Planning Department had proposed something along the lines of this. And the Council chose to move ahead...chose to not fund that because this bill was already in progress. And that's...and the way it's evolving is greatly appreciated by the Planning Department, particularly the, our little shoreline

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team. As this bill had originally been draft...okay, let me back up. When the Planning Department had proposed our budget item, we basically were looking for at least eight possible sources of funding for the kinds of activities that are mentioned in this bill. The bill as originally was drafted just included one of those, just the civil fines. But with the modifications that we've made and you've...and that your Committee Chair has graciously passed on to Corp. Counsel for modified bill, this bill would now include five of our initial eight sources of funding, original eight sources of funding that we were looking for. So, that in our opinion this goes a very long way towards meeting the intent of what we had requested for the budget for this year. And I'm certainly available to talk about how we would propose to possibly use the fund, if you wish to ask about that, that's up to your certainly. But again very...support the bill, it's, I think it's a very solid foundation for a robust program, proactive program of coastal and shoreline management and all the various aspects that would need to be...that will need to be involved with that going forward to, for the benefit of the County and our natural resources, et cetera. Thank you.

CHAIR KING: Thank you, Mr. Dack. Could you just iterate the sources of funding as they're being proposed just for those who don't have a copy of the bill in front of them in the Chambers?

MR. DACK: The sources of funding as it's written up in the bill include or actually is as you, Chair, have passed it on to Corp. Counsel for modification would include application fees for special management area assessments and permits, shoreline setback variances collected by the Department, and then also to receive revenue from grants, donations, and other sources as set forth in the budget in addition to civil fines. So, that's the...I'm...that's the red line...reading from the red line version that you folks sent up to Corp. Counsel that was wording that the Department had sent to you recently. Thank you.

CHAIR KING: Okay, thank you. Yeah, that is in the copy that everybody...the hard copy that we all have in front of us. I just wanted it to be read into the record. And so, Ms. Cochran, you have some comments on the --

COUNCILMEMBER COCHRAN: Yeah, thank you.

CHAIR KING: --proposed bill?

COUNCILMEMBER COCHRAN: Thank you, Chair. And thank you very, very much to your shoreline team and the Planning Department and of course Corporation Counsel and above all Ms. Nishiki who really, really has been the boots on the ground and planting the seed to create this and to move this forward like we are. So, I want to mahalo her in particular. So, it does start as she mentioned in her testimony with Mahinahina Shores [sic] and realize that they were involved with an SMA violation and paying these fines, and at the same time we were addressing some public shoreline access issues. So, what better way if possible to take those monies and to put it towards a solution-based, you know, issue which was this public access. So, that was the start of this discussion to create this fund and then to figure out how should we utilize this

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because of sea level rise, acquisition of lands for easements, and beach access, the whole coastal realignment, retreat that we're talking about, and just enforcement. Everyone talks about enforcement issues. So, we thought these types of funding which looks like an average of 60 to \$70,000 are collected annually can be put towards. You know it helps 'cause as it stands, it goes directly into the General Fund. But, you know, we should utilize these funds that come off of our shoreline issues into creating solutions for our shoreline issues. So, that's really kind of the gist of how this started, you know, what we figured out in between and then how we've come about with what we see in front of us today. I think one of the questions I guess for Department for me right now is the money comes into...well, it comes through the budget process from this Council and everything too. But who particular in your Department would have funds and choose how to...how they're utilized in this list of ways, you know, to apply it to? Who...is there...is that the Director or who would that be?

CHAIR KING: Okay. Just real quick, Department, I just wanted to recognize Member Guzman who was previously excused, but thank you for being here, Mr. Guzman, and happy birthday.

COUNCILMEMBER GUZMAN: Oh, thank you.

COUNCILMEMBER COCHRAN: Happy birthday.

CHAIR KING: So, Mr. Dack, if you could respond to the questions?

MR. DACK: Yeah, we fully expect that the uses of funds would be determined through the normal annual budget process whereby...so let me talk about a little bit what happens within the Planning Department. So, and I'll mention for the last few years our small little shoreline team has prepared proposed, a proposed set of activities to benefit the shoreline during each budget cycle. We made...in the one we submitted to our Director last year had 11 items in it. And so the process has been we have...we put together a list, we send it on to our Director, the Director chooses among those particular items a subset that they wish to put in their budget recommend...that the...or the Department recommendation onto the County's Budget Office. And then the normal process occurs there. The Budget Office coordinates and the Mayor comes out with a recommended budget. So, it goes through a few steps of that process. I would expect this would still occur in a similar way.

COUNCILMEMBER COCHRAN: Okay. And in that process...well, I'm looking at maybe community input also or community, you know, so that would be just through our own personal or this body's budget approval process. Like say for example something big comes up throughout the year and you're like, we need to take care of this right here, right now, we can't wait for our annual budget, you know, discussion. So, you could come here obviously for a budget amendment type forum, is that how something like that would work?

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MR. DACK: Yes, that...yeah, if there was a...and Department felt a need to make a request for a modification of additional appropriation during the fiscal year or but outside the regular budget, yeah, we would come in the normal way that...I would expect. Thank you.

COUNCILMEMBER COCHRAN: Okay. No, thanks again for your folks' efforts on this, Chair.

CHAIR KING: Okay, thank you. And just to reiterate conversations I've had with people who are asking about...who didn't understand the process, I see this Committee as very similar to like the Highway Fund and so it's part of the revenue of the Department of Planning, but it has to be used for these specific uses in the specific area. But it is part of their...it's additional revenue for this Department. Is that how you see it, Mr. Alueta? Speaking for Michelle.

MR. ALUETA: I think that would be great. I think it's outlined in the ordinance itself as far as appropriation so it will be through the budget process. So, obviously that's a public process and Councilmembers will have their say and input on where they want those funds. The way I look at it more is just it's just earmarking another revenue source in a specific fund to be used at the discretion for these particular purposes. And whether it's initiated by the Department or initiated by request by, from the community input or whether by Councilmembers, as long as it's used for the...appropriately and approved in the budget, we'll be able to expend those funds. And we appreciate that.

CHAIR KING: Okay.

MR. ALUETA: Thank you.

CHAIR KING: Any further questions?

COUNCILMEMBER COCHRAN: No, thank you.

CHAIR KING: Mr. Hokama, as Budget and Finance Chair, comments?

COUNCILMEMBER HOKAMA: So, more for our legal representative this morning, Chair. We state the Statute 205A, civil fines that be collected as it regards pursuant to that chapter. Just like traffic violations there's a fine. Okay. The County sees nothing in return. How do you ensure that the civil fines from this violation of State statute enters a County financial coffer?

CHAIR KING: Mr. Hopper?

MR. HOPPER: Yeah, I don't know of any case where those fines have gone to the State. I think it is different. I don't think there's anything in HRS that talks about those monies being...going to the State. So, I don't...I've never seen that as an issue with SMA fines. I could ask the Department if there's ever been a case with that, but I don't know of any case, I don't know of anything in HRS 205A that would specify that those fines would have to go to the State. And I don't think they historically have gone

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to the State. If that comes up as a problem or an issue, we can certainly address it. I wouldn't see any justification certainly for those fines going to the State. I don't know of anything that the State...

COUNCILMEMBER HOKAMA: Why does police, traffic tickets go to the State? It's only a County police officer.

MR. HOPPER: That's...we could review HRS and I'm sure that's a valid point. But...

COUNCILMEMBER HOKAMA: No, no, I just want to make sure that if we set it up, we can get the funds. I just want to ensure that --

MR. ALUETA: We currently...

COUNCILMEMBER HOKAMA: --.. *(inaudible)*.. to secure the revenue is appropriate because why spin our wheels? 'Cause, you know, I like the purpose of what we're trying to achieve through this legislation. So, I just want to make sure that if this is the revenue source, there's a good...better than likely chance you're going to get money into the fund.

MR. ALUETA: Currently, we do collect, and my understanding is that all those fines go into the General Fund. So, this is just earmarking it to a special fund that we could be able to tap into as well as use it...combine it with other funds to accomplish the goal with regards to the shoreline. I see...I understand Mr. Hokama's concerns, I just don't want to give the State any ideas at this point.

CHAIR KING: No more Constitutional amendments taking fees away from us.

COUNCILMEMBER HOKAMA: No, no, no, again yeah, Department, I like what is being proposed. And yet I just bring reminder to the Members that we also have other funds that we've established already, yeah, Open Space Fund to address beach access and other requirements, yeah. So, Council has not just waited for a proposal, you know, I like this one, it's a little bit more detailed, more focused. So, I can appreciate it 'cause I think that is something as island people our residents want access to the beaches. And I think that should just be a general policy for this County that we will go and secure appropriate beach accesses for our residents and that we will, you know, pay fair compensation if we need to acquire appropriate properties. Other than that, Chair, my other concern was on this one, I'm trying to under...get this...on the master planning side, I mean what kind of money is it really thinking of generating please, Department? Because the three things that we list for our purpose to expend will take reasonable sizes of resources, so I'm just wondering what are you thinking that this would supplement?

CHAIR KING: What is the average amount of fines that we would collect?

COUNCILMEMBER HOKAMA: Do you think you're going to bring in \$100,000 a year? You're going to bring in quarter million dollar...thousand...quarter million a year,

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50,000 only a year? I mean can we get a sense of how your expectations if this moves forward?

MR. ALUETA: Thank you. If I may, Miss...

CHAIR KING: Department?

MR. ALUETA: In our letter dated August 16, 2018 we did note Department collects on average between 60 and 70,000 per year on the above noted assessments, permits, and variance applications and an average of between 25 and 75 each year on Special Management Area violations.

COUNCILMEMBER HOKAMA: So, it's about 100,000, round number. I mean --

MR. ALUETA: Yeah.

COUNCILMEMBER HOKAMA: --yeah, just round.

MR. ALUETA: More than that, yeah.

COUNCILMEMBER HOKAMA: Yeah, so that could take at least one position, maybe one position. No, no, again, I like what I'm reading, I just want to make sure this can work. So, this will be a revolving fund. Okay. And just one caution, yeah, Chair, revolving funds unless there's a...the Committee really focuses during budget, we really don't review revolving funds per se during budget. 'Cause it's pretty much as it has been established by general practice, it's preappropriated upon receipt so we don't see it 'cause it's already approved to be expended, yeah. So, I like that this is not part of this language, 'cause I think it's important that the Council knows what the money is spent for. If you need additional support, we can understand why and justify that additional support. Or if this fund is bumbling over with monies that we cannot expend then we should look at other uses for the fund. So, I appreciate my opportunity, Chair. I, again, I think this is something that we as island people should just embrace and support in general. Thank you.

CHAIR KING: Thank you very much, Mr. Hokama. Ms. Sugimura?

VICE-CHAIR SUGIMURA: Yeah. So, I appreciate the...our Budget Chair's comments 'cause I was going to ask those questions. And of course he thought it even deeper about how the, all the traffic tickets don't come back to us so always thinking ahead. And I guess that was basically it. I like this idea also. Yesterday...one last comment is yesterday was Riki Hokama's birthday and today is --

CHAIR KING: Oh.

VICE-CHAIR SUGIMURA: --Don Guzman's birthday. How interesting, so.

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CHAIR KING: Well, the little bird who told me it was Don Guzman's birthday today didn't tell me about Mr. Hokama's birthday. But belated happy birthday to you.

COUNCILMEMBER HOKAMA: . . .*(inaudible)*. . .

VICE-CHAIR SUGIMURA: Anyway, that's it.

CHAIR KING: Okay, thank you. All right, any other comments or, Department? Okay. If we're all good then I'd like to entertain the motion to recommend passage of the revised proposed bill entitled A Bill for an Ordinance to Establish the Special Management Area Revolving Fund on first reading; incorporating any revisions made by the Committee today which we didn't make any revisions, any non-substantive revisions; and the filing of County Communication 17-294.

COUNCILMEMBER COCHRAN: Chair, so moved.

COUNCILMEMBER CRIVELLO: Second.

CHAIR KING: Moved by Member Cochran, seconded by Member Crivello. Any more discussion? Any more questions? If not, all those in favor say "aye."

COUNCILMEMBERS: Aye.

CHAIR KING: All those opposed? None opposed, measure passes with one...two...three...four...five...six "ayes" and two Members excused, Mr. White and Mister...I'm sorry?

UNIDENTIFIED SPEAKER: . . .*(inaudible)*. . .

CHAIR KING: One Member excused, right. Okay. That's right, we only have seven Members so I was...yeah. Okay. Mr. White is excused.

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VOTE: **AYES:** **Chair King, Vice-Chair Sugimura, and Councilmembers Cochran, Crivello, Guzman, and Hokama.**

NOES: **None.**

ABSTAIN: **None.**

ABSENT: **None.**

EXC.: **Councilmember White.**

MOTION CARRIED.

ACTION: **FIRST READING of revised bill and FILING of communication.**

CHAIR KING: We get all those names?

ITEM PC-11: TRANSIENT VACATION RENTAL ENFORCEMENT (MISC)

CHAIR KING: Okay, moving on to the next item. We're going to have a presentation, an update on what's happening with our Transient Vacation Rental Enforcement, PC-11. And I believe Mr. Raatz is going to do that. Was that the PowerPoint that was...we were trying to do earlier or is it hard copy?

UNIDENTIFIED SPEAKER: . . .*(inaudible)*. . .

CHAIR KING: Oh, okay. So, it's...there's a hard copy being passed out, Members, it's a one-pager. I don't know if we're going to have it on screen. We will?

UNIDENTIFIED SPEAKER: Yes.

CHAIR KING: Okay. And while we're getting that up, I just want to, I also want to thank and acknowledge Member Cochran for bringing to this body's attention the type of organization we were able to hire, the idea of hiring a consultant who could identify, you know, help us identify through technology that they already owned, some of the illegal ones. And that I think this item sat for a while until we actually had that to kick us forward with it. So, thank you very much for bringing that forward to the Council and to the Department. Mr. Raatz?

MR. RAATZ: Thank you, Chair. David Raatz from the Planning Department. I have a brief timeline of the contract that the County has executed relating to transient vacation rental enforcement. The first date we mention here is July 2017, that was the start of the Fiscal Year 2018 Budget and so the discussion that really got this going was back

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in the spring of the 2017 during the Budget Committee's deliberations on the annual budget. And \$80,000 were appropriated to the Department. So, later in 2017, a Request For Proposals was issued and the concept was to hire a firm with the technical expertise to review vacation rental websites and find the specific locations of vacation rental operations. Most websites that advertise vacation rentals will list the general neighborhood where these units are located, but it had been proven a difficult task for the Department to find exact locations of many of these properties. And we're not unique in that respect, municipalities across the country have struggled with the same issue. And we noticed...the Council had noticed and the Planning Department as well that there are firms that have developed techniques that will match up a listing with a specific address, and then that allows a comparison to be made between that address and what the zoning is, what permits have been issued. And then if there's a lack of compliance, enforcement can occur. So, that's the basic concept. We did get five submissions at the end of 2017. In early 2018, calendar year 2018, the Department reviewed and scored the vendor proposals and requested and verified vendor credentials. Then in March of 2018, a company called LODGINGRevs had their proposal accepted. This is a company based in Durango, Colorado. They're an offshoot of a company MUNIRevs which began as an entity helping municipalities make more efficient tax collections, again, using online tools, streamlining tax collection services. They've helped a lot of municipalities get a firm...a paper-based tax collection system to an online and automated tax collection system. And through the course of that work where they're helping municipalities accrue tax revenue that should be submitted, they noticed a need for enforcement in the area of vacation rentals as well. And again, it...every other State, it's a revenue issue as well as a land use issue, because the hotel room tax or as we call it the transient accommodation tax typically goes to the municipality. So, it's a revenue generation and land use compliance issue. For us, it's by and large a land use compliance issue. So, the contract was signed in March and throughout the spring, the Planning Department worked with LODGINGRevs to get our two computer systems to talk to each other. We exchanged databases and set up a communication network. And then throughout the summer, LODGINGRevs started applying their technical expertise to the website advertisements. And then also in Fiscal Year 2019 which started on July 1st of this year, the Council funded positions relating to this enforcement effort. And as of last month, we emergency hired two zoning inspector trainees so they're in the office now. We expect the Department of Personnel Services to finalize the zoning inspector trainee candidate list in November so that we can move the positions beyond the emergency status. We've interviewed clerk candidates and expect a clerk to begin work by the end of September 2018, based on the new limited-term appointment that the Council has provided to us. So, that brings us to where we are in September of 2018. We're in the final stages of working with LODGINGRevs to produce what we're calling an initial census which is a list of the vacation rental operations that appear to be operating in contravention of our Zoning Code. We're being very careful because for among other reasons we would hate to take enforcement action against somebody who is legal obviously, and LODGINGRevs again, they're based in Colorado, it...learning about the Maui County land use laws is a new endeavor for them and it's not an easy task to become an expert on the County's land use laws. And we're pouring over their initial list to again make sure that it's not marking somebody for an

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enforcement action that shouldn't be on there. But we are in what I would say is the final stages of developing that list, and we're also training our personnel, both our permanent staff and emergency hires we have. And we think there's likely to be enforcement action pursuant to this contract sometime soon. I don't have a specific date. I don't have specific numbers yet but we expect to see action soon. And we appreciate the Council's support of this endeavor. Thank you, Chair. We'd be happy to answer any questions.

CHAIR KING: Okay, thank you very much. And just to remind everybody in the public that we do have a Charter amendment that will be on the ballot this November to increase the potential for those fines up to \$20,000 from 1,000 right now. So, that will be something that will probably affect your enforcement as well. Were you able to...was this group, LODGINGRevs able to separate out in that list the legal short-term rentals that are not permitted right now like the, by zoning the condos that are allowed to do vacation rentals? Were they able to do it or did you do that based on zoning after the fact, after they gave you the list?

MR. RAATZ: Thank you, Chair. It's all a collaborative effort and we're essentially training them so that moving forward we won't have to necessarily consult with them as much, and we can kind of let them run with this program. But we are making sure they understand all the nuances of our Zoning Code and our different categories.

CHAIR KING: Okay. So, I'll open it to the Committee for questions or comments. Any Members, follow up? Ms. Cochran.

COUNCILMEMBER COCHRAN: Yeah, thank you, Chair. And thank you very much first off to the Budget Committee that approved this. If I recall going back to the start, it was via my office, in particular Autumn Ness who was researching how are other people doing it and came up with the company. During a brief break during a budget cycle, we went downstairs and had them do a videoconferencing with us and Director, then Director Spence and all the, you know, departments that were involved with this, we had a brief meeting just to see who are they, what do they do, and their effectiveness. Came back up here and then presented it to the body and it was approved and went through that first timeline date you have here. So, I just want to relay all those...the beginning history of how this came to be. And yes, would have liked it to be quicker but I mean that's neither here nor there and here we are. So, I appreciate the efforts of this thus far. And so one of the things...so it looks like the integration of databases, I know...because cyber security, you know, we talk about, we don't really...it's not at the forefront of our mind typically, but that's a huge issue when we start talking during our budget cycle and stuff. How...is that just...how are we in, you know, protecting ourselves on that particular aspect of this?

CHAIR KING: Mr. Raatz or Director?

MR. ALUETA: Just quickly, yeah, we have...work with the...MIS to integrate, to allow them to have access to our permit system. So, the standard login through the KIVA system

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that's one of the databases that they need access to track permits as well as some of our zoning information.

COUNCILMEMBER COCHRAN: Okay. But a follow-up, Chair?

CHAIR KING: Sure.

COUNCILMEMBER COCHRAN: So, but they're not able to just get in and willy...go all over to, you know, get any type of sensitive information that may not pertain...you know what I mean? Like security-wise, I guess. They're just solely, that's their access, that's all the --

MR. ALUETA: Yes.

COUNCILMEMBER COCHRAN: --information they can retrieve and...

MR. ALUETA: Primarily it's the same as if primary for a view only, you know, so they can pull the information out.

COUNCILMEMBER COCHRAN: Okay.

MR. ALUETA: Yeah.

COUNCILMEMBER COCHRAN: All right. No, and again, you know, I just appreciate the efforts thus far and looking forward to that initial census report that should be forthcoming, and I'm excited that we're at this point. So, thank you very much to the Department.

CHAIR KING: All right, thank you. Ms. Sugimura?

VICE-CHAIR SUGIMURA: Thank you. And I think always now that you've taken us to where we are basically that we have personnel and contract. So, I'm curious what the next steps are, what is your internal process and our biggie always is enforcement. So, how do we do all of that and are we equipped to do it?

CHAIR KING: Mr. Raatz?

MR. RAATZ: Thank you, Chair. And thank you, Councilmember, for the question. We're working that out as we speak on a daily basis. It's a major priority of the Department and the Zoning Administration and Enforcement Division which has primary responsibility for working with LODGINGRevs. Yeah, the best I can say is we're being diligent in coming up with a system that we will feel comfortable with that will essentially run itself after we've taken the time to establish procedures both with the company we're contracting with and our own staff. And we do have the resources we think to faithfully execute this contract and the Council's will in providing us with this personnel and the funding. Thank you.

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VICE-CHAIR SUGIMURA: One follow-up question.

CHAIR KING: Sure.

VICE-CHAIR SUGIMURA: So, normally I've always heard that we act based upon a complaint or an RFS. So, is somebody is going to then do individual, you know, request for services or is this just ongoing? I mean how does...how is the Department handling that?

CHAIR KING: Department?

MR. RAATZ: Thank you, Chair. And that's a good question, Councilmember. We've already established a policy where we don't require complaints necessarily for vacation rental enforcement so we've already kind of crossed that issue. So, we'll be taking enforcement action as warranted based on what the contractor helps us find irrespective of whether there's a corresponding complaint from a member of the public.

VICE-CHAIR SUGIMURA: Okay, thank you.

CHAIR KING: Thank you. That is really great to hear because that's one of the things that, you know, we've been hamstrung with not having enough personnel, is just being complaint driven. You have a comment, Ms. Crivello?

COUNCILMEMBER CRIVELLO: Thank you. I think this is great. And then hopefully the Charter amendment will have passage so that the enforcement process will penalize. There's some sort of hefty penalty that comes with this enforcement. So, what are the objectives that you have set that this vendor has to comply to? Have you set like maybe so many actual identification of illegal rentals or does that...how does that interrelate with your actual positions that you have?

CHAIR KING: Department?

MR. RAATZ: Thank you, Chair and Councilmember. We do have a detailed contract that's been executed that corresponds closely with Request For Proposals we put out. And we don't have numbers that we're seeking, we don't have a quota system so we're not targeting a certain number of violations. But we're asking them to provide a comprehensive list of what is shown to be an illegal operation based on what they find in their searches of all these websites and then correlating that to our permit list and our zoning designations. So, essentially we're asking for the universe of illegal operations in Maui County. We don't know what that number is but we're looking forward to establishing that.

COUNCILMEMBER CRIVELLO: Okay. My next question was going to be do you know about the average numbers that may be noted as illegal, but it sounds like the Department doesn't have that kind of information. Yeah.

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CHAIR KING: Department?

MR. RAATZ: That's correct, we don't have a number to offer at this time.

COUNCILMEMBER CRIVELLO: Well, thank you. Yeah, it's taken some time but I think this is good that we have this in place. So, thank you.

CHAIR KING: And I wanted to make a...anybody else have any questions or comments? Mr. Hokama?

COUNCILMEMBER HOKAMA: Yeah, thank you, Chair. No, I appreciate the update that you're allowing the Department to give us. I appreciate that Mr. Raatz and the Director understands the Council's urgency to address this and get some positive outcomes from our efforts and your input. For me right now, are you folks coordinating with RPT? Because I want to make sure that taxation is meeting the use. So, is there some kind of coordination with other entities whether or not if Water Department, they on the right water rate or that? Or if it RPT, if they're in the right tax category? Is there additional coordination with your Department please?

CHAIR KING: Department?

MR. RAATZ: Thank you, Chair. And thank you, Councilmember, for the question. We do closely work with RPT. I'm not sure about other departments, I can check on that and get back to you. But we understand they have an important role in the process.

COUNCILMEMBER HOKAMA: Yeah, yeah. Well, my thing is that the Council has agreed and financed us moving forward with technology to assist our operations and your departments. So, for me this thing...assistance from the RPT side is their ability on their mapping and their geospatial programming now to help also give you another type of verification in your efforts for enforcement and verification of illegal uses. So, that's why I'm asking, I think there's a great benefit of this cooperative effort, because one department has additional tools to either reverify and confirm your consultant's findings or even make us aware of additional properties that may need to be reviewed. So, that's what I'd like to ask for that continued cooperation. Thank you, Chair.

CHAIR KING: Okay, thank you, Mr. Hokama. Any other comments? Okay, I just wanted to make a comment about the Charter amendment that was approved unanimously by this body...by the full Council to increase the potential fines for illegal short-term rentals. And there are a lot of people are concerned about, you know, I talked to people that are concerned about the amount. But I want to reiterate what I think I said on the floor that day is that amount is meant to...will probably happen once or twice and then people will get onboard. And I saw this personally happen, I was...I've been around for a long time in my youth in the diving and marine world and back before there were regulations about how close we get to the whales, there was a lot of abuse. I mean there were regulations but there was a lot of abuse until a \$25,000 fine was put in place. The first person who got that fine to my knowledge was probably the last person in my diving days, because everybody else went whoa, back up. And so we

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got in compliance. And so that I think is the intent of having that number that high. I'm just hoping that the public supports it, because we really need to do something to shore up the enforcement for the Department and that's what that Charter amendment is meant to do. And then the other thing I wanted to ask the Department about is the potential for permitting all the allowable units that are allowed to do short-term rentals by zoning which right now don't have permits and that's why they show up on these lists. But if we can issue permits proactively so that we know everybody who's permitted versus everybody who's not, and we don't have to try to cull through the list to say well this condo is approved because of their zoning and that one is or that one isn't. But that's, I mean I just wanted to get your thoughts on doing something like that, that we can...do we need an ordinance to do that or, you know, do you support that idea?

MR. ALUETA: Thank you, Madam Chair. I just want to make one comment with regards to the Charter amendment. We also hope for that to pass and we have already proactively started drafting a companion ordinance in anticipation of that Charter amendment does pass so --

CHAIR KING: Okay, great.

MR. ALUETA: --we can move forward with the County side on the ordinance side to get that initiated. With regards to the ones that were so-called on the list that were either grandfathered in some fashion, they were allowed by...the way it's written is that they're allowed by right in that certain zoning, if they met that certain zoning category. I'll go back to my staff and look at if there's any way that we can flag it, flag those properties specifically in KIVA or in some fashion, not so much as a, doing some kind of comprehensive zoning or a permit, because they're allowed so that wouldn't be the appropriate method. But I'll get back to my staff and see what we can come up with.

CHAIR KING: Okay. 'Cause I know they're allowed and it's just a way of identification. So, if you can identify...if everybody who's allowed to do it has a permit number then the folks that don't have a permit number on their advertisement are the ones that, you know, just kind of an additional potential identification.

MR. ALUETA: Right. And we, Madam Chair, we did provide a or we did develop a list --

CHAIR KING: Right.

MR. ALUETA: --of those that are allowed that have...that are allowed by right through the various ordinances that were...the three ordinances, and I won't use that person's name but it's called the short-term rental approval bill. And we will make sure that the vendor does have that actual TMK list of properties that are allowed to do short-term rental --

CHAIR KING: Okay.

MR. ALUETA: --that are not specifically zoned Hotel.

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CHAIR KING: Okay. Well, we can discuss. I mean for me it's more of a matter of the general public knowing who is allowed and who isn't allowed, and they don't know what the zoning codes are all the time. So, anyway with that, are there any other questions or comments on the update? Just maybe do another update in a couple months and see how far we get. Thank you very much, Department. I really appreciate the update. Okay. I think we can move on to our next agenda item. Does anybody feel like they need a break right now or can we move on? Oh, okay. We'll take a quick ten minute...

COUNCILMEMBER HOKAMA: Chair, so we're deferring right?

CHAIR KING: What's that?

COUNCILMEMBER HOKAMA: We're deferring?

CHAIR KING: Oh I'm sorry. I'm going to...yes, I am going to defer this item if there's no objections.

COUNCILMEMBERS VOICED NO OBJECTIONS. (Excused: MW)

ACTION: DEFER PENDING FURTHER DISCUSSION.

CHAIR KING: And then we'll go ahead and take a break till 10:15 and I think the next item we'll be able to get through quickly. . . .(gavel). . .

RECESS: 10:10 a.m.

RECONVENE: 10:18 a.m.

CHAIR KING: . . .(gavel). . . Okay, we're back in session, Planning Committee, September 6th.

ITEM PC-17: AMENDING CHAPTERS 2.80B AND 2.90A, MAUI COUNTY CODE, RELATING TO THE KAHOOLAWA COMMUNITY PLAN (CC 18-109)

CHAIR KING: And, Members, let's move on to our last item on the agenda today, Amending Chapters 2.80B and 2.90A, Maui County Code, Relating to the Kahoolawe Community Plan, PC-17. While the geographical limits of the County as set forth in the Charter include the island of Kahoolawe, the general administration of Kahoolawe rests with the Kahoolawe Island Reserve Commission or KIRC, including the duty and the responsibility to establish criteria, policies, and control for permissible uses within the island reserve. And this is stated in Hawaii Revised Statute 6K-6. A copy of the memo from the Department of the Corporation Counsel, dated July 19, 2017, is being...has been distributed so you should all have a copy of the letter. In the memo, Corporation

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Counsel opined that the County has limited authority with respect to Kahoolawe because the KIRC and the State DLNR perform the land use functions that the County would normally provide. Also, in the case of conflict between the Charter and Maui County Code provisions relating to Kahoolawe land use issues, Chapter 6K HRS will govern. So, given the limited jurisdiction of the County with respect to Kahoolawe, a bill has been transmitted for this Committee's consideration to remove the requirement of a Kahoolawe Community Plan. So, I wanted to bring this up for discussion. I don't intend to move on it today, but because there has been some talk in the community and questions about what happens when we get to that, you know, go through that long list of communities and get to Kahoolawe. And we have discussed this in this Committee before just in relation to the list of all the communities. So, Planning Department, do you have comments?

MR. ALUETA: No, Madam Chair.

CHAIR KING: Okay. So, I'd like to ask Mr. Hopper to make comments since the letter came from Corp. Counsel and then we can open up for discussion. Mr. Hopper?

MR. HOPPER: Thank you, Madam Chair. I was asked to look into or our office was asked to look into the Kahoolawe Community Plan and to what extent the plan would have relevant legal effect with respect to the, basically what goes on, on Kahoolawe. And in the research that I did, we looked at...and if you've got the opinion in front of you, it's dated July 19, 2017. I don't want to go over the list of the relevant HRS sections. I'll try to summarize. Basically in HRS there are provisions that state that the Kahoolawe Island Reserve Commission which a seven-member commission has...performs many of the functions that the County of Maui would normally perform. For example, it says it shall establish criteria, policies, and controls for permissible uses within the island reserve, as opposed to County zoning. Essentially the reserve commission does that. And also states that shall...and basically that it carries out the duties and functions that the County of Maui would do in the SMA. So, under HRS 205A, essentially the reserve commission does the same role that the County would normally do for the island of Maui or other areas in Maui County for example. So, in addition there are also specific statutes on what uses are allowed. Six K dash three, that's HRS 6K-3 basically says that the reserve commission shall be used solely and exclusively for the following purposes and lists certain purposes. So, given that, the County could not through the community plan or through zoning establish permissible uses other than those that the State law provides right now. And so my conclusion in the end was essentially the last...or the second to last paragraph of the opinion, I stated that with respect to Kahoolawe, the Council may adopt amendments to the existing community plan but the revisions of HRS Chapter 6K will still govern the administration of Kahoolawe, and in the case of any conflict, Chapter 6K will apply. The plan could set forth County goals, policies, and actions with respect to Kahoolawe but County jurisdiction with respect to the area is limited. So, you know, one of the major purposes of the community plan is to set forth the land use designations of the area. Well, those really would not be effective as to Kahoolawe, because there is a State law that says the reserve commission in a specific HRS section established the permissible uses. So, that was my general conclusion. We do have a Kahoolawe

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Community Plan. There were a couple apparently. One was in 1982 and that predated the KIRC I believe. Another ordinance was passed in 1995 which was a bit after the KIRC was established. Again, it's still a valid plan, I mean the plan states what it states, but it really does not have a legal effect in a sense...in any sense that I could come up with that would affect what actually happens on Kahoolawe, because it's governed by the State, administered by the State, and so forth. So, I'm available for questions but that's essentially what I think I set forth in the opinion and you can use that information how the Council would wish.

CHAIR KING: Okay. And my biggest question before I open it up to the floor is if we were going to do a community plan review, who would be the CPAC? Because we don't have any registered residents there do we? Other than the military? Maybe military? What...do you have an answer for that?

MR. HOPPER: I think there's an exception for Kahoolawe in the Code itself. It says that the members do not have to be members of the island. I still think you establish a CPAC. I can look up the section. I think Member Hokama is nodding.

CHAIR KING: Right.

MR. HOPPER: But I think there...for obvious reasons you could not have a, you know, a CPAC made up of residents from that island.

CHAIR KING: Okay. All right. So, Members, any questions or discussion on this? Mr. Hokama?

COUNCILMEMBER HOKAMA: Thank you, Chairman. I think this is a worthy discussion to have. For me, I'm...it's very black and white, Mr. Hopper. Kahoolawe is a sister island of this County of...and therefore I don't have a problem having a plan for the island, an island plan for this sister island. And not too long ago we did have people there. We ran...we had I think it was ranching operations. Okay. So, it was an active part of this County. Again, I understand where we are after executive order that the DOD did for military requirements of Kahoolawe. And so are you...can you tell us this morning whether or not the Federal government is paying this County Federal PILT money which is payment in lieu of taxes. We get PILT money for Haleakala. Big Island County gets it for Mauna Kea, Pohakuloa. So, if the Feds are paying...should be paying us then something for the use of Kahoolawe through this local government. Is that happening?

CHAIR KING: Mr. Hopper?

MR. HOPPER: I don't know that offhand, Madam Chair.

COUNCILMEMBER HOKAMA: Okay.

CHAIR KING: We can send a --

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COUNCILMEMBER HOKAMA: Yeah, may if we can...you would consider --

CHAIR KING: --letter.

COUNCILMEMBER HOKAMA: --sending a letter to Finance Department and just asking --

CHAIR KING: Okay.

COUNCILMEMBER HOKAMA: --for clarification whether or not we receive Federal PILT dollars for the island --

CHAIR KING: Okay.

COUNCILMEMBER HOKAMA: --of Kahoolawe under the County of Maui.

CHAIR KING: Payment in lieu of taxation.

COUNCILMEMBER HOKAMA: That is correct, yeah. It's a big national thing. The biggest impact of course is the 15 western states where some areas, some counties over half of their properties is Federal lands and so they cannot operate any other way to provide services. My other thing is again also when we created the counties through the Constitution, Kahoolawe is very clearly a part of this County. And, you know, I grew up in an era from my kupunas and what I was able to learn from my public education is that as part of this County, I take my responsibility of stewardship. It has a role in our history. Okay. Whether you want to take it, just go back to the penal colony era, Lanai was women, Kahoolawe was men. But there's historical reasons why it's part of this County. I still feel that it has a place in our planning. Chairman, you know, whether or not we actually get to utilize the island in the future is something I think we should consider, 'cause I think there's opportunities for our residents and our County to have Kahoolawe be a more active part. I can see us utilizing certain portions of it if appropriate for residential use, whether it be part of an open island park component. But I for one still feel it has its appropriate place in our planning process and I would still support having it part of our review. Thank you.

CHAIR KING: Okay, thank you very much. Ms. Crivello?

COUNCILMEMBER CRIVELLO: Thank you. Thank you for bringing this up for discussion. I agree, you know, there's no residents there and we all know that and but this is identified in our Charter and I think that needs to be respected. Though this may be a very subjective discussion for me because if we look at the many discussions that or testimony that come before us today, it's the resurrection of aloha aina that came out of the Kahoolawe movement. And to me that is the history and a catalyst that we all look at today and how we talk about what is important. And especially for that of us as a host culture, you know, and the struggles that we went through to bring back the island and the...to protect the life of Kahoolawe. So, I feel that Kahoolawe is a beacon of light in raising and it has and continues to raise the political awareness that we have today, even if you go back to Hokulea and the travels of we migrating to Hawaii

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from our ancestors. I'd like to look at Kahoolawe as a very spiritual catalyst for all of us to pay attention to. And as us being Maui nui and the actual connection that Kahoolawe has to all of Hawaii is that it has a spiritual element. And, you know, without the spiritual element, our life would be like an empty breath. So, for me and I'm sure for many or most of us, Kahoolawe is part of our culture growth and but we never had the renaissance and the resurrection of our culture until that movement. And we lost the lives of two of our warriors. And it all started from Maui County. Whether or not was Molokai or Maui or Lanai, that is where the movement started and it came from there. So, to me more proudly Maui County should hold on. We may not have the full jurisdiction and it's the assignments to an entity, but it is part of our County. And maybe then legislation like Mr. Hokama said, maybe we should be talking story with KIRC or the Protect Kahoolawe ohana who also have educated thousands of young people in valuing the culture that people come here to fight about, you know, and protest and kue about. But, you know, if we go back to the beginning of times and actually the movement and how we got back the island in the '90s and then in '94 presidential order brought it back to us. That's history with our military occupation and what we're looking forward to. So, hopefully we can expand further as we, yeah, you know, maybe no more effect with the community plan, but I'm sure we have a dialogue with the entities that have some sort of jurisdiction of, including the State. I think we can come out flourishing to use for all of us to be mindful of how we must malama our, the aina, you know. I think this is...I believe it's sacred grounds that was damaged and we have...I believe the island is alive And we're entering into the Ka Makahiki season and that is when Lono-i-ka-makahiki made his appearance again. So, many cultural significance that tells us the story and we should be continuing that moololo, continue the story so that for the generations to come they too can shine with this beacon of an island that's important for all of us. Thank you, Chair.

CHAIR KING: Thank you, Ms. Crivello. That was really engaging and I've been around long enough to...where we live, the house I live out in Kihei, you know, we actually felt the bombing when it would happen. Stuff would rumble on our shelves and, you know, my daughter was one year old. So, I kind of go back that far. And also my husband was involved in some of the shrapnel removal and the, providing generator for that early operations of KIRC. But, Ms. Sugimura, you have a comment?

VICE-CHAIR SUGIMURA: Yeah, I was waiting to hear what our...what Stacy Helm Crivello was going to say, because she definitely has personal ties and lives really the aloha that comes with a lot of this. So, I was hoping that the reason...I was a little surprised to even see this on our agenda for removal of the requirement of the community plan for the island, because I think it's our responsibility. I don't think anybody needs to add more, I think Stacy said it very well, grasping history. And I think I too when we were growing up at our Kihei home, we used to hear the bombing of Kahoolawe, it was just kind of in the background always and it was not really understood why, we just sort of accepted it. But I do know moving forward that my son when he went to Seabury, he got to go to Kahoolawe as part of their Winterim program. And that was very moving for him as a student. So, it's very important, it's part of who we are. I hope you're not planning on even trying to remove this from us having the

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responsibility of looking at it the way that Member Hokama said or definitely from what Member Crivello has said. So, you're not going to take any action but I hope you're not planning on recommending us to withdraw this from the responsibility of the Council.

CHAIR KING: Are you asking me a question?

VICE-CHAIR SUGIMURA: I asking you a question, yeah.

CHAIR KING: Yeah, no, it is not a recommendation, it's a discussion. And I actually had, I had already wanted to go and set up a meeting with KIRC to discuss it, but I want to get the general feeling from the Committee first on how everybody feels about this. Because we have discussed it before and it came up early about our lack of authority, where our lack of authority is. So, I think it's a really good discussion. And I just want to...do you have anything else to add? Okay. Ms. Cochran, I believe this is in your --

COUNCILMEMBER COCHRAN: Yeah, that was...

CHAIR KING: --district which is interesting --

COUNCILMEMBER COCHRAN: Right.

CHAIR KING: --'cause you have the only the district that has two separate community plans in it.

COUNCILMEMBER COCHRAN: Yeah.

CHAIR KING: So, I'm sure you have some thoughts.

COUNCILMEMBER COCHRAN: So, yeah, thank you. So, yeah, I was browsing through the Charter and I think this is what kind of prompted the discussion 'cause I was --

CHAIR KING: Right.

COUNCILMEMBER COCHRAN: --like how does this work with West Maui residency having Molokini and Kahoolawe in its district. So, I think that's kind of why this is up here. So, would that be changing? Or I mean that just stands? I mean I'm reading who's technical jurisdiction it is via the HRSEs and what have you, and yeah we should have a say and a part and discussion when needed. But I think in the end the Chapter 6K, you know, rules over whatever in the end so it's really DLNR and KIRC jurisdiction so to speak. So, just I guess comment from Corporation Counsel in reference --

CHAIR KING: Okay.

COUNCILMEMBER COCHRAN: --to the layout of the residency area for West Maui.

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CHAIR KING: Mr. Hopper?

MR. HOPPER: I don't think the...that would change unless the Charter would change. The actual significance of that seeing as I don't know of any actual residents of Kahoolawe, I'm not sure with that...having that in the residency area, what the significance would be there. But unless the Charter would change, that's still in the West Maui residency area. The issue though is what control does the County have over that area and what laws can the County pass that actually affect what goes on there? And so that was what...the opinion I had worked on was focused on and found that there were a lot of State law regulations there seemingly intended to make sure that the area was kind of preserved in perpetuity. For example, commercial uses they say are strictly prohibited and only very few uses are allowed on the land. So, I think that the intent was for the State to say similar to the Conservation District, say we're going to severely limit the uses that are allowed rather than turning this over to the County to, you know, be able to zone it whatever the County would want to zone it. So, I think that was kind of the main intention behind those, but I don't see how that would affect...I mean the Charter says this is in a residency area, but a lot of the powers that the County would normally have with respect to areas in its residency area are limited. So, we can't really...the County can't really zone it, anything that would affect the uses. The County can't grant SMA permits for uses in the area as, you know, the Planning Commission can't do that. That's through a different body. And the uses allowed are very limited. So, that's the current status I think.

COUNCILMEMBER COCHRAN: Okay. And I think...so when...if there needs to be a rescue on the island or any County, you know, public safety type issues that may occur there, are we called upon as the County of Maui or... 'cause it looks like, you know, KIRC and DLNR would perform I guess such functions or everything, powers and duties of that nature are transferred over to the commission. So, we do not, you know, get, take responsibility on that or do we expend money towards these efforts and if so, reimburse us, help us out kind of relationship?

CHAIR KING: Mr. Hopper?

MR. HOPPER: That'd be interesting to ask if that's been...if County personnel had ever been used for that purpose. I'd honestly be curious to find that myself. But there are again, 6K-6 enumerates a variety of things that the commission would do that normally others would do. So, I'm not sure, maybe they're discussing this in meetings at the commission, and I'm not sure if historically the County has assisted in rescue efforts or not. That's an interesting question and I don't know that offhand.

COUNCILMEMBER COCHRAN: Okay, thank you. 'Cause I recall a, I don't know if it was a insurance job or what, but the kayaker got swept over there and then got...happened to find the phone and called for help and so it was kind of an odd story that happened --

CHAIR KING: Yeah, that was...

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COUNCILMEMBER COCHRAN: --years ago there.

CHAIR KING: Is that an ocean jurisdiction or is that a...I mean...

COUNCILMEMBER COCHRAN: Yeah.

CHAIR KING: Yeah, the operations that were going on 25 years ago, the, we were involved in bringing a generator over there, were definitely utilizing local businesses to come over there and support. But I think the question that Mr. Hokama rises about the PILT funds is going to be really interesting, because that would be the type of I think funding that would be used for something like that if there's somebody on that island. But I thought, you know, my recollection is that most of the military and the KIRC issues that happened over there were under that commission's jurisdiction so they paid for, they definitely paid for the generator and things like that. And that they paid for whatever personnel was over there and those...the cost of housing people over there who were working on that. Mr. Hopper?

MR. HOPPER: I would note that 6K-6.2 says that the KIRC shall approve all contracts for services and rules pertaining to the island reserve. So, presumably that would include, you know, emergency services. But again, reviewing that historically would be interesting.

CHAIR KING: Yeah, and I think the reason why I wanted to have this discussion is there, you know, it was brought up that there are resources that we use when we review a community plan so there's that. You know do we expend those resources and develop a plan that we're not able to enforce, or, you know, or do we figure out what the limitations are of those ahead of time so that we don't spend a lot of money talking about zoning and land use issues that we can't enforce anyway? And then, you know, it's good to hear from the Committee members about the connection to Kahoolawe, because that's, I think that supersedes the idea of dropping it off the list. So, this is all really good discussion. And, Mr. Hokama, did you have another comment?

COUNCILMEMBER HOKAMA: Yes, thank you, Chairman. Well, one of the things why I think this plan assists us is part of KIRC is made up of the Planning Director. Our own Planning Director sits on KIRC. We have County...Public Works Director I think sits on KIRC. We have County personnel. I think they can help provide the position of the County in the commission's meetings so that the other commissioners can understand how this County is looking at Kahoolawe. It's not just currently an island with no residents, you know, it's an island that is part of our County that has an important role and that we still feel to exercise our appropriate local governance authority whether it be in planning or in future residential considerations. I think that should be something we discuss. Because the State has enough problems if and when the last residential patient of Kalawao County expires--and I hope that's a long time in coming--what happens to that county? That's the State Department of Health's jurisdiction by Constitution. Okay. A State department. So, are they just going to say oh well, since it's on Molokai it belongs to Maui County now? Well, then why isn't Kahoolawe part of Maui County too then? It belongs with us. Why is it

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under the State's jurisdiction then? I think that this leads to bigger questions of governance down the road that neither the State is prepared to address currently, because I don't think they have a plan; although, they did enact a State plan in 1978, wherever that is currently, Chair. So, for me I appreciate 'cause I think this brings up the larger questions of how this County's going to view even Kalawao in the future. And I think we need to be clear on what our position and our outlook would be so that we minimize any disruptions. And again, if it's within our kuleana of our County then I think we should exercise appropriate stewardship. Thank you.

CHAIR KING: Thank you. And yes, this did originally, this item did originally come from the Planning Department so that's interesting that you brought the fact that they sit on that commission. So, I think...and I think these kinds of discussions help us integrate our purpose and our intent going forward. So, I appreciate everyone's comments. Mr. Guzman, did you have any...no comment? Okay. Are there any other comments on this item? If not, we'll defer it and we'll...we will...I will...we'll go ahead and make that request on the PILT funds and that, we'll share that with all the Committee Members, and also we'll let you know if I am successful in getting a meeting with KIRC based on the discussion we had today. So, thank you very much. The item is deferred.

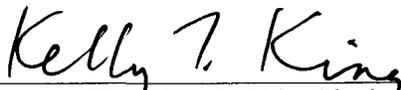
COUNCILMEMBERS VOICED NO OBJECTIONS. (Excused: MW)

ACTION: DEFER PENDING FURTHER DISCUSSION.

CHAIR KING: And the Committee business is done for today. Thank you. . . .(gavel). . .

ADJOURN: 10:46 a.m.

APPROVED:



KELLY T. KING, Chair
Planning Committee

pc:min:180906:ds

Transcribed by: Daniel Schoenbeck

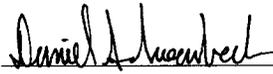
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CERTIFICATE

I, Daniel Schoenbeck, 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 13th day of September, 2018, in Kula, Hawaii



Daniel Schoenbeck