

**HANA ADVISORY COMMITTEE TO THE
MAUI PLANNING COMMISSION
REGULAR MINUTES
AUGUST 29, 2017**

A. CALL TO ORDER

The meeting of the Hana Advisory Committee (Committee) was called to order by Vice-Chairperson Gale Notestone at approximately 4:00 p.m., Tuesday, August 29, 2017, at Helene Hall, 150 Keawa Place, Hana Bay, Maui, Hawaii.

A quorum of the Committee was present (see Record of Attendance).

Vice-Chair Notestone: Alright. I am the Vice-Chair, Gale Notestone, and today we have, to my left, from Corp Counsel, Jennifer Oana, and to her left, Linda Clark, and then we have Kawika Kaina, David Kawika Kaina, who will be a new member starting today, and to my right, another new member, Maya Ross, welcome you two, and then to her right will be Dawn Lono, Scott Crawford, to her right, Lehua Cosma, and then Suzie Esmeralda, who's recording the event, and we have Clayton Yoshida and Ryan Quigless, sorry about that.

B. INTRODUCTION OF NEW MEMBERS – DAVID KAWIKA KAINA and MAYA ROSS

So the introduction to our new members, David and Maya. Welcome to the Hana Advisory Committee, and I look forward to your input. That's item B.

C. PUBLIC TESTIMONY - At the discretion of the Chair, public testimony may also be taken when each agenda item is discussed, except for contested cases under Chapter 91, HRS. Individuals who cannot be present when the agenda item is discussed may testify at the beginning of the meeting instead and will not be allowed to testify again when the agenda item is discussed unless new or additional information will be offered.

And item C is our Public Testimony, and that's, at the discretion of our Chair, which we don't -- we'll be electing a new chair today, Ward Mardfin is our Chair and he's not present right now to receive the award on leaving us. You get an award for leaving. So I'll be running the meeting and I can start the meeting with public testimony now or I can have it done later. Would anybody like to do a testimony at this time? Nobody's taken the mike, so we'll move on to number D, the election of officer for the 2017-2018 board year -- board year, chair and vice-char. Do I hear any nominations for chair?

D. ELECTION OF OFFICERS FOR 2017-2018 BOARD YEAR - CHAIR AND VICE-CHAIR

Ms. Lono: I would like to nominate Gale Notestone. Well you're the Vice-Chair so it's the logical progression.

Vice-Chair Notestone: We have a nomination of myself.

Ms. Clark: I'll second.

Vice-Chair Notestone: Lehua seconds. All in favor say -- oh wait, wait, wait. Oh, any further nominations for chair?

Ms. Clark: I'd like to close nominations for chair at this time.

Ms. Lono: Second.

Vice-Chair Notestone: Thank you, Linda. And second from Dawn Lono. So all in favor, say aye? Well, you're looking at the new chair.

Ms. Oana: Okay, wait. Hold on. Hold on. One second.

Vice-Chair Notestone: Maybe not.

Ms. Oana: So that was a motion to close the nominations for chair, and the only nomination is Gale Notestone, so, at this time, all in favor of Gale Notestone being the chair for the 2017-2018 board year? Okay, and that is unanimous.

A nomination for Chairperson was made by Committee Member Lono, seconded by Committee Member Clark, then

VOTED: that Committee Member Gale Notestone serve as Chairperson for the 2017-2018 board year.

(Assenting - L. Clark; L. Cosma; S. Crawford; D. Kaina; D. Lono; M. Ross)

Chair Notestone: Well, thank you for the great honor.

Ms. Lono: Thank you for accepting, really, from me.

Chair Notestone: I can't wait. We have some exciting stuff coming up later this year. So we need a vice-chair and do I have a nomination for vice-chair? Any nominations for vice-chair?

Ms. Lono: I would like to nominate Kawika Kaina.

Chair Notestone: Dawn Lono --

Ms. Cosma: I second that nomination.

Chair Notestone: We have a second for Kawika Kaina. Any further nominations for vice-chair?

Ms. Lono: I move to close nominations.

Chair Notestone: Dawn Lono moves to close.

Ms. Clark: I second.

Chair Notestone: Linda seconds. All in favor, say aye? And there's our vice -- oh wait.

Ms. Oana: No, no. That was nominations.

Chair Notestone: All those in favor, once again, Kawika Kaina as vice-chair, say aye? We have a unanimous decision. Congratulations, Kawika, and thank you for accepting the nomination.

A nomination for Vice-Chairperson was made by Committee Member Lono, seconded by Committee Member Cosma, then

VOTED: that Committee Member David "Kawika" Kaina serve as Vice-Chairperson for the 2017-2018 board year.

(Assenting - L. Clark; L. Cosma; S. Crawford; D. Kaina; D. Lono; M. Ross)

E. RESOLUTIONS THANKING OUTGOING MEMBERS CLAYTON CARVALHO, JR. and WARD MARDFIN

Chair Notestone: Okay, moving on. Item no. E, Resolutions thanking outgoing members Clayton Carvalho, Jr. and Ward Mardfin, who are not present.

Mr. Yoshida: Good afternoon, Mr. Chair, and congratulations to Gale and Kawika on your successful election to officers of the Hana Advisory Committee. We'd like to take a moment to recognize and thank two of your former members who devoted much time to this board, one is Clayton Carvalho, Jr., who served on this Committee from April of 2012, was Vice-Chairperson in 2013 and 2014, and Chairperson in 2014 and 2015. The other one is -- gotta wait for the truck to pass - Ward Mardfin, who served on this Committee

since March of 2013, was a Vice-Chairperson in 2014 and 2015, and Chairperson from 2015 to 2017. Both of their terms expired on March 31st of this year, and we'd like to -- be it resolved that this Committee and the Planning Commission commends Mr. Carvalho and Mr. Mardfin for their dedication and untiring public service to the people of Hana, and that copies of this Resolution be transmitted to the Honorable Alan Arakawa, Mayor of the County of Maui, the Honorable Mike White, Council Chair of the Maui County Council, and Sandra Duvachelle, Chair of the Maui Planning Commission. So if you could sign the Resolutions and we will transmit them to the Mayor, the Council Chair, the Maui Planning Commission Chair, and to Mr. Carvalho and Mr. Mardfin. They also get a congratulatory letter from the Mayor thanking them for their service as well as a certificate of appreciation from the Mayor so if you could sign the Resolutions, we will transmit it appropriately.

F. APPROVAL OF MINUTES OF THE AUGUST 30, 2016 MEETING

Chair Notestone: Thank you, Clayton, for that. These two gentlemen leaving the Hana Advisory Committee will be missed. So moving on, as the signatures are being made down the row here, I would like to move on to item F, the approval of minutes from August 30, 2016 meeting. I know everybody -- Kawika, you got a copy of those? Yeah. And, Maya, you got a copy of those as well? The last year's -- last meeting's minutes?

Ms. Ross: Yes. Yes.

Ms. Lono: Mr. Chair, would you entertain a motion to approve the minutes of the meeting of August 30, 2016?

Chair Notestone: Yeah, do I hear a motion to approve the minutes?

Ms. Lono: I did it.

Chair Notestone: Oh, Dawn, you just -- okay, good job.

Mr. Clark: I'll second that.

Chair Notestone: We have Linda second. So we have an approval -- all in favor of the minutes say aye? So we have a unanimous decision on the approval of the minutes from August 30, 2016's meeting.

It was moved by Committee Member Lono, seconded by Committee Member Clark, then

VOTED: to approve the minutes of the August 30, 2016 meeting.

(Assenting - L. Clark; L. Cosma; S. Crawford; D. Kaina; D. Lono; M. Ross)

Chair Notestone: Moving on to item G, the Orientation Workshop.

Ms. Lono: Mr. Chair, could I ask if we could please take up the Public Hearing and do the Orientation Workshop following that portion? Could we do the Orientation Workshop at the end?

Chair Notestone: I -- I like your suggestion.

Ms. Lono: Okay.

Chair Notestone: May I get a motion to amend the agenda?

Ms. Lono: So moved.

Ms. Cosma: Second.

Chair Notestone: We have a second from Lehua. So we'll move that to the latter part -- oh, all in favor? I keep forgetting that to ask all in favor. I want it to be dictatorship over here. If so, we're going to move that the latter portion of our meeting today.

It was moved by Committee Member Lono, seconded by Committee Member Cosma, then

VOTED: to amend the agenda and move item G. to follow items H. and I.

(Assenting - L. Clark; L. Cosma; S. Crawford; D. Kaina; D. Lono; M. Ross)

Chair Notestone: So we're moving on to the Public Hearing and, the one event that we have:

Chair Notestone read the following agenda item description into the record:

H. PUBLIC HEARING (Action to be taken after public hearing.)

- 1. MS. BRIANNA EVERETT requesting an amendment to her Land Use Commission Special Permit in order to operate the Hana's Tradewind Cottages, a short-term rental home consisting of two (2) two bedroom farm dwellings located on approximately 2.164 acres of land in the**

**State Agricultural District at 143 Alahele Place, TMK: 1-3-009: 107,
Hana, Island of Maui. (SUP2 2012/0034) (R. Quigless)**

**The applicant currently has land use approvals to operate a bed and
breakfast home at the site.**

Chair Notestone: So if we could get a short presentation on -- on this from the Department? Thank you.

Mr. Quigless: Aloha and good afternoon. My name is Ryan Quigless, with the Maui County Planning Department. As you mentioned earlier, we're here to obtain a recommendation to the Maui Planning Commission for Hana Tradewinds Cottages at 143 Alahele Place, Hana Highway, TMK: 1-3-009:107, town of Hana, island of Maui. As it was stated earlier, the bed and breakfast is in operation now and we're requesting an amendment to this State land use special permit for the operation of a short-term rental at the same location.

A little bit of background on the property. The property is a 2.16-acre flower farm that was previously part of a 5-acre flower farm which was owned and operated or which has been owned and operated by the applicant's family for 27 years. It's where the applicant grew up. In 2008, the original 5-acre parcel was subdivided into 2 parcels and the subject parcel was purchased by the permit-holder. The permit-holder's mother retains the remaining 2.84 acres, and the parcel will be managed by the applicant's mother, Rebecca.

As stated earlier, land use designations are State land use agricultural; Maui Island Plan, it's not within the urban small town rural growth boundary; Hana Community Plan agriculture; County zoning agriculture; and, also, special management area.

I also put a handout on -- in front of each of you with slides of the property so you can get a context for the surrounding property. So again, it's just for an amendment to the existing State land use special permit. Any questions?

Chair Notestone: Any questions for Ryan?

Mr. Kaina: Can we discuss? Can we discuss? Do we have to make a motion before we can discuss?

Chair Notestone: Any questions? Lehua.

Ms. Oana: Oh wait. Hold on.

Chair Notestone: Oh, hold on. Hold on. So, Ryan, have you completed your presentation?

Mr. Quigless: Yes, that is it.

Chair Notestone: Does the applicant want to say anything on behalf of -- at this time?

Ms. Rebecca Buckley: I'm just here if you have questions. My daughter is working ... (inaudible - not speaking into the microphone)... so I'm just here representing her so if you have questions I could answer, I'd be happy to do that.

Chair Notestone: So, at this time, I'd like to open up the public hearing if we have any -- anybody from the public who would like to give their opinion on this.

Ms. Lono: I move that we close public testimony.

Chair Notestone: Dawn motions to close public testimony.

Ms. Cosma: And I second that motion.

Chair Notestone: And Lehua second. All in favor? And so we close public testimony.

It was moved by Committee Member Lono, seconded by Committee Member Cosma, then

VOTED: to close the public hearing.

(Assenting - L. Clark; L. Cosma; S. Crawford; D. Kaina; D. Lono; M. Ross)

Chair Notestone: At this time, the commission can discuss and ask questions.

Ms. Lehua: First of all, I'd like to thank you, Rebecca, for showing up on Brianna's behalf. I'm just happy she's hired again as a nurse for Kaiser, and for those of you who don't know, I'm the closest to Rebecca Buckley. My home is right cross. We've never had any problems. No complaints. Nothing. And I support, I fully support this proposal before us as the closest neighbors to you folks, and just fortunate throughout the years we always been good neighbors, I cannot say that for everybody else, but as on my part, we've always been good neighbors and that's the way I like it to continue, and it's just a statement to you and thank you for coming out today. Mahalo.

Chair Notestone: Thank you, Lehua. Anybody else? Kawika.

Mr. Kaina: I'm not sure -- I'm not sure if this question should go to Clayton or Ryan, is there -- with the amendment that's being asked for, are there any changes between the rules, like you're asking to amend the special use permit, are there any particular changes besides allowing the second B&B?

Mr. Quigless: Well, it's -- it's actually a short-term rental application so that's the only difference is -- it's currently a B&B permit approval and the amendment is for a short-term rental operation.

Mr. Kaina: Okay, so the amendment is from B&B to short-term?

Mr. Quigless: It's to include both.

Mr. Kaina: Okay. Okay.

Mr. Quigless: Yeah.

Mr. Kaina: No other changes?

Mr. Quigless: No other changes.

Mr. Kaina: No residual effects for any other adjoining land, right?

Mr. Quigless: Not adjoining land. The only difference would be that the B&B requires the applicant to live on the property and the short-term rental allows the person to not live on the property.

Mr. Kaina: Is there any precedent of this being done in Hana before or is this the first one with two on one property?

Mr. Quigless: Maybe Clayton might know some history on that.

Mr. Yoshida: I think there's been several short-term rental home permits issued but I think this is the first one that where they're kinda going from a B&B to a short-term rental home, from a B&B permit to a short-term rental home permit because of change in circumstances and the -- with the applicant.

Ms. Oana: And just to clarify, it's -- the existing B&B permit will remain, and the board is here to recommend whether they get the short-term rental home permit as well, right? So it's not turning it in from a bed and breakfast to a short-term rental, they'll have the option of operating either. Is that correct?

Mr. Yoshida: Yes, I believe the applicant wants the flexibility to be able to operate a short-term --

Mr. Kaina: Thank you.

Chair Notestone: I have a question, Clayton. Thank you, Vice-Chair. Is there a cap on how many short -- short-term rentals in Hana?

Mr. Yoshida: Yes. It was 48 when the ordinance was first adopted in 2012, but this body suggested that it be reduced to 30, and the Council went along with that, so there is a short-term rental home permit cap of 30 for the Hana Community Plan area.

Ms. Lono: And B&B is 30 as well, right, 30 short-term rental and 30 B&B?

Mr. Yoshida: Yeah, they're -- yeah, for the short-term rental home permits.

Ms. Lono: Yeah, there's a -- there's a cap -- there's a cap on the B&Bs as well, correct? Separately, B&Bs 30 and short-term rental homes 30.

Mr. Yoshida: Yeah, just 'cause the Council -- Council did not deal with the amendments to the B&B.

Ms. Lono: So that still remains at 48?

Mr. Yoshida: I believe so. Yes. Yeah. It's only the short-term rental home permit cap that's been reduced to 30.

Ms. Lono: Okay. That's -- that's all I wanted to clarify. Thank you.

Ms. Ross: Can I ask a question?

Chair Notestone: Thank you, Dawn. Maya, you have a question?

Ms. Ross: This might be a dumb question, but what would the benefit to having both be as far as why -- why are we looking at having both instead of moving from one to the other? I don't understand what the -- the flexibility will be. And there we go. I just got this right.

Mr. Yoshida: I think, as Ryan had stated, the B&B, one of the requirements for the B&B home permit is that you have an owner-proprietor, the person living on the property running the B&B operation. With the short-term rental home, you don't necessarily have to live on

the property to operate that, so I think the applicant, with the change in circumstances in employment, wanted that flexibility to be able to operate the transient rental without necessarily having to live on the property.

Ms. Ross: ...(inaudible - not speaking into microphone)...

Mr. Yoshida: Yes.

Chair Notestone: Thank you, Maya. I have a question about that, regarding that, so how is one to know if it's a B&B today or short-term tomorrow, you know, if they're having -- they can do both right, that's the -- that's what they're doing. You have the option of being a B&B and a short-term, is that correct?

Ms. Ross: Only when she lives there, then she can operate as a B&B.

Chair Notestone: But my -- my question is --

Ms. Lono: Either/or. It could be either/or.

Chair Notestone: It could be either or but, you know, it's a B&B and then the resident manager isn't on the property, is that not illegal?

Mr. Kaina: That would -- would that not be a TVR in that sense, right, if it was a non-resident renting it out?

Chair Notestone: And my question -- my point is how can they do both? I mean it's just I don't know if there could be enforcement.

Mr. Yoshida: Yes, I think until things kinda settle down, I think the applicant kinda, again, wants that flexibility to -- to do either.

Chair Notestone: So, Clayton, sorry to interrupt, but has this been done before where a property has both permits?

Mr. Yoshida: This particular property?

Chair Notestone: No, no, no. Any other, like in the Hana area. Does anybody else have the option of being a B&B one day and short-term the next? Or am I just out in the field here?

Mr. Yoshida: I would say, well, this is kind of an unusual case, but, you know, we're just

honoring the -- well, dealing with the applicant's request for that flexibility.

Ms. Oana: I think -- oh, I'm sorry. I think what the council is trying to ask is how will the Department know when they're operating the STRH and when they're operating the B&B? How -- how is enforcement going to work?

Mr. Kaina: It's the -- the governance, like the rules behind the B&B and the rules behind a short-term rental are different. How do you disintegrate or how do you discern the differences if you don't know if you're a B&B today and then a short-term tomorrow? I think that's what -- that's what I'm hearing is there are two different sets of rules to govern each, how do you discern that, and then this is my take on it is that the way I view a B&B, you're looking at something like a one-day, two-day, three-day rental; the way you view a short-term, you can do weekly, monthly, that -- is that correct?

Mr. Quigless: Yes, it's not exclusive to how many days it can be rented. That's completely up to the applicant in how they advertise their B&B or short-term rental.

Mr. Kaina: So if you're a -- if you're a B&B, then, technically, you couldn't be renting monthly, right?

Mr. Quigless: If that was -- if you had a client or guest that wanted to rent for the full month, they could. Absolutely.

Mr. Kaina: Okay.

Mr. Quigless: But to clarify the earlier question, so I spoke with the applicant and the applicant stated that they're moving to Haiku and so the only reason that they wanna hold both permits is because in case things didn't work out with the new job, she wanted to be able to come back and move back to Hana and be able to operate the B&B, so the short-term rental is what would be in operation while she's working on the new living circumstances.

Mr. Kaina: Okay. Thank you for clearing that up.

Chair Notestone: Maya, you have a question?

Ms. Ross: I just have one last question. It states that the bed and breakfast permit is only in place till 2018 anyways, do you know when exactly in 2018 it is expired?

Mr. Quigless: Yes. The applicant states it's October, but I also have a copy of the permit if you need, I have copies for all of you if you'd like to take a look at that.

Chair Notestone: So -- so, Ryan, in October next year, the B&B permit will be expired?

Mr. Quigless: That's correct.

Chair Notestone: And then it'll be strictly short-term?

Mr. Quigless: Or they would have the option to renew.

Chair Notestone: Or the option to be just a B&B.

Mr. Quigless: Or the option to be just a B&B.

Ms. Ross: ...(inaudible)...

Mr. Kaina: I think so. Yeah. I'd like to make a motion to approve with the condition being a recommendation goes to the Planning Department to review any such cases of this happening in the past. Like I said, I think it's just misinformation, we've never seen a B&B and a short-term rental application on one property in Hana, and I just think there isn't enough fine-line distinction between the two that's why these questions keep coming up. I don't see a problem in the applicant, in fact, I think they're trying to do things the correct way, they just wanna be within the law, but I do think the Planning Department needs to review that just to clarify 'cause if we had a public hearing on this matter, we'd probably have an uproar just because we have no definition between those two.

Chair Notestone: Thank you, Vice-Chair.

Ms. Oana: Sorry. Before the motion gets seconded, can I ask the motioner to just make the motion to approve, and with regard to your request to the Planning Department, you can just request for them to -- to review it just so it doesn't --

Mr. Kaina: Oh, so it doesn't have to be a part of it?

Ms. Oana: Yeah.

Mr. Kaina: Okay. Okay.

Ms. Oana: And then I also ask the motioner if you could make your motion kind of follow the recommendation, if that's what you wanna do, so I would rephrase the motion as moving to --

Mr. Kaina: Approve the amendment?

Ms. Oana: Approve the Department's reports and adopt the findings of fact, conclusions of law, and decision and order, and authorize the Director of Planning to transmit the recommendation to approve this permit to the Maui Planning Commission.

Mr. Kaina: That's a lot for me to -- sorry ...(inaudible)... so moved.

Chair Notestone: Do I hear a second on Vice-Chair's motion?

Ms. Lono: Second.

Chair Notestone: Dawn Lono seconds. All in favor? All passed. Scott, you have a question?

Mr. Crawford: Well, I just want to put on the record that, through my LLC, I do website hosting and design services for the client, for both the flower farm as well as the vacation rentals, so I have a small financial interest in this and I wanted to just disclose that for the record and then get any advisement, if needed, from counsel if I need to abstain from voting for that purpose or if it's okay if just disclosing it is sufficient.

Ms. Oana: Thank you. So your website business, basically, the applicant is like a client of yours?

Mr. Crawford: Yes.

Ms. Oana: And -- okay, so I would think that that's a financial interest that you probably should abstain from voting.

Chair Notestone: Thank you, Scott, for that. Dawn Lono, question?

Ms. Lono: So we moved to approve it but what about conditions? Will that come later?

Ms. Oana: Well, that included all of the standard conditions that the Department has. Do you have any further, then you can, because there wasn't any vote yet, you can move to amend a motion.

Ms. Lono: So you're -- so you're talking about these 16 conditions --

Ms. Oana: Yes.

Ms. Lono: Are included?

Ms. Oana: Those are the standard conditions and that's part of the report and the findings and the recommendations and the decision and order so if -- but if you have any further conditions, you can make a motion to amend the main motion and then add in another condition or two.

Ms. Lono: Would it be appropriate to have a condition that requires them to notify the Department when it turns into an STR from a B&B or when it turns back into a B&B from an STRH so that somebody knows what's operating?

Mr. Quigless: As the code reads now, it's technically their responsibility to inform the Department anytime there's any change, so they would have to do that with manager designation changes --

Ms. Lono: Right, but this is a unique situation so I just, you know, everybody seem to be having a concern about whether they're operating a B&B or an STR, or both on the same -- but they're not both operating at the same time, they're either operating one or the other. Correct?

Mr. Quigless: Correct. With the -- the short-term operation being current.

Ms. Lono: Yeah.

Mr. Quigless: And the B&B being a fallback if things didn't work out.

Ms. Lono: Okay. Well, if the Committee doesn't think it's important, I'm not, you know, I'm not attached to that condition.

Chair Notestone: Thank you, Dawn. Do we have a vote? We had a vote. Okay, we'll take a vote on the recommendation. All those in favor? I can't vote but it looks like we have a unanimous decision.

Ms. Lono: With one abstaining.

Chair Notestone: With one exception. Thank you, Scott, for disclosing that.

It was moved by Committee Member Kaina, seconded by Committee Member Lono, then

VOTED: to approve the Department's report and adopt the findings of

fact, conclusions of law, and decision and order, and authorize the Director of Planning to transmit the recommendation to approve this permit to the Maui Planning Commission.

**(Assenting - L. Clark; L. Cosma; D. Kaina; D. Lono; M. Ross)
(Abstain - S. Crawford)**

Mr. Quigless: Thank you, Committee.

Chair Notestone: Thank you, Ryan. Okay, moving on to the next item. We'll do the Director's Report and then the Orientation Workshop.

Mr. Yoshida: Thank you, Mr. Chair. Clayton Yoshida, with the Planning Department. We thought that this is the first meeting of the board, Committee year so we have a brief workshop for the new members. I guess I had passed out the section from the code, 2.28.060, regarding the Hana Advisory Committee.

Ms. Oana: Wait. Hold on, Clayton. I'm sorry. We're going to the Director's Report first and we're going to do the Orientation Workshop at the very, very end.

Mr. Yoshida: Oh. Okay.

Chair Notestone: Sorry about that, Clayton.

I. DIRECTOR'S REPORT

- 1. Scheduling of other Hana Region Applications**
- 2. Discussion of Future Hana Advisory Committee Agendas**

Mr. Yoshida: For the Director's Report, we do have an application from the Parks Department for the Nahiku Community Center SMA and other land use entitlements that we'd like to schedule for some time in October, maybe mid to late October, so we will be contacting you soon regarding your availability. We also have the -- still processing the Gary Stice special management area permit on Haneoo Road to build two dwellings on his property there. We are still processing the Public Works Department special management area use permit for the -- the Kahawaiokapia Bridge project, yeah. And we have a change in zoning for the -- for 20 acres in -- at Kawaipapa that -- from I guess William Sides is the consultant. So those are some of the upcoming applications. We do have some short-term rental home and bed and breakfast home permits also to process and if it's in the ag district, then they'll need a State special permit, so those will probably come before you also. So those are some of the projects that we're currently processing.

Chair Notestone: Thank you, Clayton. Anybody have any comments from the board, the commission?

Ms. Lono: Some of these items are going to be more controversial than others, and I would hope that we could plan the agenda so that we don't have like really big items, more than one on an agenda at a time or we'll be here till the end of the universe, so I just wanted to be consciences of that.

Mr. Yoshida: Well, maybe if you could let us know which -- I mean I think there's a lot of interest in this Nahiku Community Center --

Ms. Lono: That's one.

Mr. Yoshida: Project so --

Ms. Lono: And then the Gary Stice one as well is probably going to have some attention. Kawaipapa, I know quite a bit about that, I don't know if it's controversial or not within the community, the bridge is the bridge, we gotta do it so we gotta go through the process. But those two, I would not put those two on the same agenda if we wanna have it be a reasonably -- reasonable time in the meeting.

Unidentified Speaker: ...(inaudible - not speaking into the microphone)...

Ms. Lono: Yeah, that's true too, so they get heard fairly and everybody has their say and so on and so forth, so that's the only comment I have. Mahalo.

Chair Notestone: Thank you, Dawn, and I agree with Dawn about the Nahiku Community Center that, I feel, it will be a big event here and I think that should be set aside alone as one item for a meeting. That's my recommendation.

Mr. Yoshida: Yeah, so, yeah, we'll keep that in mind in scheduling these things 'cause I guess, you know, we wanna be able to accommodate the applicants but not go too late into the night for the Committee Members.

Ms. Lono: And not only for the Committee Members, but you guys have to travel, you know, and if you're here till like 10:00 at night, you're not going to get home till midnight; that's not okay. You know, your safety is important to us.

Mr. Yoshida: Okay, yeah, so we'll keep that in mind.

Chair Notestone: Here here on the safety.

Mr. Yoshida: So that's the Director's Report.

Chair Notestone: Well, thank you, Clayton. Any other comments on the Director's Report? And we can move on to the Orientation. Thank you, Clayton.

G. ORIENTATION WORKSHOP

- 1. Duties and Responsibilities**
- 2. Meeting Schedule**

Mr. Yoshida: Okay, so now we're moving to the Orientation Workshop, I think. So we thought that this -- we haven't had a meeting in about a year so we thought, we have some new members, and we thought this would be a good time to kinda do a mini orientation. We have circulated, from the Maui County Code, section 2.28.060, regarding the Hana Advisory Committee, that you consist of seven members appointed by the Mayor and approved by the Council, and each member is a resident of the Hana District, and so the residency requirements and etcetera, and also that I guess the terms, you serve up to a five-year term on the -- on the Committee, and your duties are as to advise the Maui Planning Commission on matters within its jurisdiction, which is the Hana Region as defined in the Hana Community Plan, so I guess that's from Kailua to Kaupo, and everything in between, so typically we would go to the Maui Planning Commission with an application in the district and ask them to designate the Hana Advisory Committee to conduct the public hearing and to make a recommendation to the Planning Commission on the land use application. You may also be consulted on legislative matters, amendments to Title 19, if we create a new zoning district, such as service business residential where several of the properties in the region are designated service business residential in the Hana Community Plan, we may consult with the Advisory Committee to get your input, which can be provided to the Maui Planning Commission and then onward to the County Council, which makes the final decision on those matters.

Let's see, we have some I guess new items, new legislation that the Council passed, Ordinance no. 4431, under section 2.28.070, of the code, that at least one member of each Planning Commission and Hana Advisory Committee shall have demonstrated expertise in Native Hawaiian traditional and customary practices as evidenced by one or more of the credentials, either a college degree in a relevant field, such as Hawaiian studies, Native Hawaiian law, Native Hawaiian traditional and customary practices, or work history that demonstrates appropriate knowledge in Native Hawaiian traditional and customary practices, or substantial experience as a Native Hawaiian traditional and customary practitioner. So that's a new, relatively new requirement for the Planning Commissions and for the Advisory Committee.

Another new requirement is that, under 2.28.080, the Council passed that training be offered to members of the Planning Commission and -- Planning Commissions and the Hana Advisory Committee in the Native Hawaiian law training course for boards, commissions, councils, and lawmakers given by the Ka Huli Ao Center for Excellence in Native Hawaiian Law, provided funding for the training is available through the Office of Hawaiian Affairs, so we are trying to -- this was passed I believe in April of this year, so we are trying to make arrangements with Ka Huli Ao Center for Excellence in Native Hawaiian Law to have this training provided to the Members.

As far as meetings, you meet on an ad hoc basis, so typically the starting -- traditionally, I guess the starting time has been at 4:00. So we would consult with you maybe about a month-and-a-half before we have the meeting about -- so we can get a quorum. Since you have seven members, a quorum consist of -- you have to have at least four members here, and to pass any motion, you need to have a majority to which you're entitled, that's four, so if there's a motion, whether there's four members here, a bare quorum, or seven members here, like there is today, you need at least four affirmative votes to pass a motion.

As far as site inspections, sometimes for certain projects, the Members may want to have a site inspection conducted so that they have a better idea as to what action is being proposed. I guess if we can -- if there is sufficient interest, if we can get -- note that beforehand so we can, maybe on the way in, we can have the site inspection before the meeting and then it's kinda like 'cause we're going to be here anyways, so before the meeting, so if you can let us know that sometimes it's not readily apparent that a site inspection is required, once you get through the public testimony, maybe it becomes apparent that site inspection, so we can handle those at a subsequent meeting, like we did for the Hoeffken quarry project out at Kawaipapa.

So Suzie is your Secretary to Boards and Commissions, so she's very important as far as attendance and materials and so forth. We try to do the mailout to you, well, hopefully, maybe about a week or more before the meeting, and we also try to put information online so that if the mail doesn't move as quickly as we hope it would, that you'd still be able to access the materials, and so would the public. So any questions so far? Yes, Dawn?

Chair Notestone: Dawn Lono.

Ms. Lono: On this, excuse me, the Native Hawaiian portion, so it's my understanding that when the next applicants, we're going to have two vacancies the end of this year or in March of next year, so one of those two people that are appointed would be required to fulfill this criteria. Is that correct?

Mr. Yoshida: Yes. The next vacancy that -- well, the next vacancy that comes up or the next vacancy that comes up before the -- for the Committee, then this requirement would kick in, so say for the Maui Planning Commission, a member recently resigned, Pua Canto, so the replacement, this legislation kicked in, so they had to find somebody that was familiar with the, you know, the cultural practitioner or traditional Hawaiian customary Hawaiian practices, so that's why the Council, to some degree, has been having additional discussion on the Mayor's nominees to Planning Commissions.

Ms. Lono: So it's important then for us to get the word out, like immediately, since it's already almost September, that applications need to be in by the end of December for consideration for next year. Correct?

Mr. Yoshida: Correct.

Ms. Lono: And then if there were a member of the Committee, on the existing Committee, that could fulfill this requirement, could that person be that designated person and then the new appointee would not need to fulfill this requirement?

Mr. Yoshida: Yes. I think the legislation calls for at least one --

Ms. Lono: One. Yeah.

Mr. Yoshida: One of the members.

Ms. Lono: Okay, I just wanted to clarify that.

Mr. Yoshida: To have -- yeah, to have this background. So if there is an existing member that has the background, then they would -- they would meet that requirement.

Ms. Lono: Okay.

Chair Notestone: I have question. Anybody have -- sorry, to interrupt, anybody on the board right now have any of these qualifications?

Mr. Kaina: We will be safe until Mrs. Lono is no longer with us.

Ms. Lono: I do have one more question though. I forgot what it was.

Mr. Crawford: Well, I guess I'm just curious what is there like a formal process for determining who that designated person is and who makes that decision?

Mr. Yoshida: Well, I guess the individuals, like with any of the board --

Mr. Crawford: Well, what I'm saying is -- I'm sorry. Go ahead and answer.

Mr. Yoshida: Oh, is, you know, from the Mayor makes the nominations and it goes to the Council, the Council may, as they're scrutinizing now, trying to see who on the -- who on the Commission meets that requirement or if this person that's nominated meets that requirement, so that's why it's taking them more time to deal with these -- the Mayor's nominees now to the Planning Commissions.

Mr. Crawford: So the -- the Council is the one who actually makes the determination that's --

Mr. Yoshida: Well, the Council is the one that approves or disapproves the Mayor's nominee. Now, they could say we disapprove the Mayor's nominee because there's a requirement that at least one of the members has to have this background and, from their perspective, as a body, they don't see it, yeah, so they may vote to not approve.

Mr. Kaina: So as long as they meet one of the three criteria in here, right, the college degree, the work history, or substantial experience, as long as they qualify within one of those three then they would be considered appropriate for the position, right?

Mr. Yoshida: Yeah, I guess that would strengthen the case for the Mayor's nominee that --

Mr. Kaina: Right.

Mr. Yoshida: They meet whatever criteria that's specified.

Mr. Crawford: I guess what I'm trying to get at is I mean these -- these are somewhat subjective criteria, substantial experience is a subjective judgment, and, you know, a work history that demonstrates an appropriate level of knowledge is a subjective judgment, so is it ultimately the Council that's making the judgment and if it's one of the existing Committee Members rather than the new applicant coming in, what is the process for that determination to be made to say we're officially designating this person as the, you know, Native Hawaiian practitioner or expert so that this requirement is fulfilled?

Mr. Yoshida: Well, I guess for the new nominees that the Mayor has put forth to the Planning Commission, it has gotten to the point where they want to know who's on the Planning Commission currently and what's their background, and if somebody on the existing commission meets the criteria, then, you know, whether somebody on the existing commission meets the criteria, or if not, then this current nominee has to meet the criteria.

Mr. Crawford: So the Council makes the decision. And I guess just in regards to this Committee, at some point, when this comes up, when the next vacancies come up, are they going to want to ask for the background of the commissioners to be able to make that determination, or the Committee Members, excuse me, or I'm just trying to understand sort of, process-wise, who it actually is going to work for them to be able to say, okay, this is the designated representative that meets this requirement.

Mr. Yoshida: Yeah, I think they normally -- the applicant normally fills out a form kinda indicating their background. I think --

Mr. Crawford: It's just that the existing Committee Members, that wasn't a requirement so they may not have indicated that in their application originally, so if they want to determine if an existing applicant -- if an existing Committee Member meets this requirement, will they need to sort of ask for more background information about the existing Committee Members?

Mr. Kaina: How soon are they implementing this? Is it immediate?

Mr. Yoshida: Yeah, I guess they have to get whatever proof that existing member meets the requirement.

Ms. Lono: It was my understanding that this training that they were going to offer was going to possibly be done remotely so that we wouldn't necessarily have to travel to some destination to take this class that it was going to be something that they could do remotely - offer remotely so we could all get together and do it at the Council office or something like that. Do you know anything about that?

Mr. Yoshida: I think that's one of the -- in the legislation that was passed, that's one of the methods, they say, like in the last sentence in 2.28.080, remote participation in training through video and audio connection shall satisfy this section's requirements, so if we did it like the Council meeting where, you know, we have the other -- the Maui Planning Commission and the other Planning Commissions available through remote and audio, then there's -- the legislation is saying that that would satisfy the requirement but, you know, we're still trying to work out the details with the Ka Huli Ao Center.

Chair Notestone: Anybody else? Lehua.

Ms. Cosma: The Planning Commission, are members all volunteer?

Mr. Yoshida: Yes.

Ms. Cosma: Nobody gets paid?

Mr. Yoshida: No.

Ms. Cosma: Okay, same like us then.

Mr. Yoshida: Yes.

Ms. Cosma: With this new implement of the Hawaiian traditional -- this new law they put in here, I think it's going to -- it might create people not to volunteer or sign up. I don't know. That's my feeling. Before you just sign up the application, you write a short history, and that was before this new requirement now, so it's hard to recruit volunteers for any vacancy 'cause -- I'm just hoping with this it won't be an impact.

Mr. Yoshida: I see.

Ms. Cosma: That's all I wanted to say.

Mr. Yoshida: Yeah, we're going through the early stages in dealing with this legislation now, but I'm sure that, you know, there'll -- there'll be interest amongst people from that sector in applying for the boards and commissions, the boards and commissions.

Chair Notestone: Thank you, Lehua. That was a good point. Anybody else? Thank you, Clayton.

Mr. Yoshida: So I'd like to turn it over to Jennifer.

Chair Notestone: Jen's got the floor.

3. Chapter 92, HRS - The Sunshine Law

4. Ethics

Ms. Oana: Thank you. So I'm going to talk about the Sunshine Law and ethics, and I just handed out a packet of things, and the first thing I'm going to go over is the Open Meetings Guide to The Sunshine Law, and this is a wonderful guide, it's done by the Office of Information Practices, it's available online, that's how I got it, and they update it regularly, every time something changes in the Sunshine Law, they update their guide pretty fast, and so if you ever need -- have any questions, you can go to the OIP website, and what I do is I just Google OIP and it's the first hit that I always get, and that's a State agency, and they administer the Sunshine Law, so they created this guide and -- and I was going to do a

powerpoint but this guide really is excellent, and I can't do a better job at kinda condensing and explaining the Sunshine Law than they do, so I'm just going to go over this, and I'm going to read a lot, so it's going to be a little bit boring, but I'm going to be reading all of things that I think that you guys would have questions about, or the members of the public may have questions about, and so bear with me, but this is very important information.

So I'm starting on page 3, in the middle, it says: This edition of the Opens Meeting Guide is applicable to all State and county boards. The Sunshine Law imposes numerous requirements and restrictions on the manner in which a State or county board can conduct its business. And then on the next page: For instance, with a few exceptions, board members are not allowed to discuss board business with each other outside of a meeting including by telephone or through email or social media. A board usually cannot consider at meeting matters not included in its published agenda. So the first part of this stapled packet of the guide to the Sunshine Law is just an explanation about certain areas of the Sunshine Law and it's really good. The second half of this stapled packet is the actual law, so you can review that as well.

I'm going to page 5. What is the Sunshine Law? The Sunshine Law is Hawaii's open meetings law. It governs the manner in which all State and county boards must conduct their business. And again, the law is codified and it's Part 1 of Chapter 92, of the Hawaii Revised Statutes, at the end of this packet. The intent of the Sunshine Law is to open up governmental processes to public scrutiny and participation by requiring State and county boards to conduct their business as openly as possible. The legislature directed that the provisions in the Sunshine Law requiring open meetings be liberally construed and the provisions providing for exceptions to the open meetings requirement be strictly construed against closed meetings. That's with certain specific exceptions, which we'll discuss. All discussions, deliberations, decisions and actions of the board relating to official business of the board must be conducted in a public meeting. In other words, absent a specific statutory exception, board business cannot be discussed in secret. There must be public notice, public access to the board's discussions, deliberations, and decisions, opportunity for public testimony, and board minutes.

So on the next page, the Sunshine Law applies to all State and county boards, commissions, authorities, task force, and committees that have supervision, control, jurisdiction, or advisory power over a specific matter and are created by the State Constitution, Statute, County Charter, rule, executive order, or some similar official act. A committee or other subgroup of a board that is subject to the Sunshine Law is also considered to be a board for purposes of the Sunshine Law and must comply with the statute's requirements. For example, if you wanted to have a standing committee, that committee would also be subject to the Sunshine Law where you'd have to post an agenda within the timeframe, get minutes, and have quorum.

So on page 7, what are meetings? Are all meetings of the State and county boards open to the public? Generally, yes. All meetings of the State and county boards are required to be open to the public unless an executive meeting or other exception is authorized under the law. The open meeting requirement also applies to meetings of the board's committees or subgroups. And this next question: Are site inspections, presentations, workshops, retreats, and other informal sessions that involve board business considered to be meetings open to the public? Generally, yes. Apart from the permitted interactions set forth in 92-2.5, the Sunshine Law requires all board business, all board discussion, deliberations, decisions, and actions regarding matters over which the board has supervision, control, jurisdiction, or advisory power to be conducted either in an open meeting or executive meeting. OIP interprets this statute to require that any site inspection or presentation regarding a matter before the board or which is reasonably likely to come before the board for a decision in the foreseeable future be conducted as part of a properly noticed meeting. So when you think about the word "board business," think about this: Is it a matter before the board or do you feel or do you know if that is reasonably likely to come before the board? If that -- if whatever you're thinking about talking is that, then I would suggest do not talk to a board member outside of a properly noticed meeting.

The next page is regarding telephonic and video conferencing meetings. Now board members may remotely participate in a board meeting through interactive conference technology, which includes teleconference, Skype, video conference, or voiceover internet protocol. Now, although the Sunshine Law allows this, my office has taken the position that we do not allow this for -- for reasons I'll discuss. One of the reasons is that it creates a little problem for the meeting that is convened in a room. If audio communication cannot be maintained at all locations, then the meeting must be terminated even if a quorum of members is physically present at one location, and members generally may only participate in a meeting from public locations listed in a meeting notice. When noticing a meeting to be held using interactive conference technology, boards must indicate all locations where board members will be physically present and must indicate that the public can attend the meeting at any of the specified locations. So this is the big reason why my office does not want anyone participating remotely. If you're going to participate remotely from home, we gotta put your address in the agenda and also allow the public to come to your home to participate in the meeting, and we don't really like that at all. We're worried about liability, the County's liability if you get hurt or your property gets hurt. So that's the biggest reason why we strongly advise not to have these other locations. Further, if copies of visual aids are brought to the meeting by board members or members of the public, they must be available to all meeting participants at all locations. If audio only interactive conference technology is being used, all visual aids must be available within 15 minutes to all participants or those agenda items for which visual aids are not available cannot be acted upon the meeting. So the public being at your house and the liability is a big one, the other

thing is if anybody brings anything to the meeting for visual aids to help you in your decision, it has to be available to all the participants even in the other locations, and if you can't get it to all participants in 15 minutes, then that agenda item cannot be acted upon as well as if audio communication is -- is not working, then the meeting is canceled. So there's a lot of logistical things, problems that can happen if we allow this.

So moving on. Testimony. Must a board accept testimony at its meetings? Yes. Boards are required to accept testimony from the public, both oral and written, on any item listed on the meeting agenda. Boards can decline to accept public testimony that is unrelated to a matter listed on the agenda. And I would highly strongly advise that this Committee just allow public testimony only on the agenda items. I've seen some boards and commissions that have had chairs in the past that just let anyone talk about anything that's bothering them at any time of the meeting, and that really disrupts the meeting; it also leads the public to believe that they can really just shout out any of their things that they don't like and that just makes for a -- just an unorganized meeting. The chair usually loses control at that point. So I would strongly advise the chair to just accept testimony that's related to any agenda item but a agenda item.

Chair Notestone: Stay on topic.

Ms. Oana: Yes. It just makes it easier for you in the long run. So I'm going to skip over a couple of pages, you should review that on your own, that's important, but I'm just gonna talk about the real important things, so I'm going to turn to page 13, discussions between board members outside of a meeting. Can board members discuss board business outside of a meeting? And board business, remember, is something, a matter that is on your agenda or a matter that's likely to be on your -- on the agenda. The Sunshine Law generally prohibits discussion about board business between members outside of a properly noticed meeting with certain statutory exceptions. While the Sunshine Law authorizes certain interactions between board members outside of a meeting, the statute expressly cautions that such interactions cannot be used to circumvent the requirements or the spirit of the law to make a decision or to deliberate towards a decision upon a matter over which the board has supervision, control, jurisdiction, or advisory power. This means that board members cannot caucus or meet privately before, during, or after a meeting to discuss business that is before the board or that is reasonably likely to come before the board in the foreseeable future. And this also goes for before meetings when you come in and say hello, and during recesses, any discussion regarding board business cannot happen until the meeting is called to order or called back to order.

Does the Sunshine Law also prohibit board members from communicating between themselves about board business by telephone, memo, fax, or email outside of a meeting? Yes. Board members cannot discuss board business between themselves when they are

outside of a properly noticed meeting by the way of telephone, or by memoranda, fax, email, or social media, such as Facebook. As a general rule, if the statute prohibits board members from discussing board business face-to-face, board members cannot have that same discussion through another type of media. A lot of times, and this happens accidentally, I think, is our board secretary may email everybody a question, if she emails you anything and you wanna respond, please just reply to her and don't reply all. It then becomes a discussion you guys are having.

Okay, can board members discuss board business with non-board members outside of a meeting? Generally, yes. The Sunshine Law only applies to boards and their discussions, deliberations, decisions, and actions. However, we do have executive sessions, closed meetings, closed meetings to the public, and board members should not discuss with non-board members any matters discussed during a closed executive session.

But social events. What about social and ceremonial events attended by board members? The Sunshine Law does not apply to social or ceremonial gatherings at which board business is not discussed so -- so as long as they do not discuss official business that is pending or is that -- or is reasonably likely to come before the board in the foreseeable future.

So on page 15, at the very bottom here's where we get to talk about when can board members talk about board business outside of a properly noticed meeting, so these are called permitted interactions. The legislator has recognized eight permitted interactions which are designed to address instances and occasions when members of the board may discuss certain board matters outside of a meeting and without the procedural requirements, such as notice, that otherwise would be necessary. So if you turn to page 16, and it goes on to page 17, here are the eight permitted interactions, and we'll go over most of them. So starting with the first one, two board members. Two board members may discuss board business outside of a meeting as long as no commitment to vote is made or sought. Nevertheless, it would be contrary to the Sunshine Law for a board member to discuss the same board business with more than one other board member through a series of one-on-one meetings, and the County did get sued for this.

The next one is investigations. A board can designate two or more board members, but less than the number of members that would constitute a quorum, so the board can designate two to three members, to investigate matters concerning board business, and the board members designated by the board are required to report their resulting findings and recommendations to the entire board at a properly noticed meeting. This permitted interaction can be used by the board to allow some of its members to participate in a site inspection outside of a meeting or to gather information relevant to a matter before the board. Sometimes this is an excellent way to get additional information, but you have to

also think about the timing of this. This requires three meetings to, basically, take action on. So the first meeting you'd be discussing some matter on the agenda and then if you guys feel that, okay, we need to investigate this more, let's make an investigative group, it's usually called "temporary investigate group," to investigate something. So at the first meeting, you guys will designate and vote on the two to three members to do this investigation and also vote on the scope of their investigation, what they're going to do. Then they'll go out. So that's the first meeting. Then they'll go out, they'll do their investigation, and at the next meeting, if properly agendized, the investigative group will present its findings and recommendations, if any, to the board. But the board cannot take action at that time because the public and maybe the members have not fully had the opportunity to really review this, so only at a third meeting can this Committee take action. So sometimes this exception is good, sometimes it isn't just because the length of time that it takes, and sometimes we come out here only once a month, sometimes longer, but we can also come out more frequently if that's needed. Okay, so that's investigations.

The next one is presentations, negotiation, and discussion. The board can assign two to three members to present, discuss, or negotiate any position that the board has adopted. So this is a situation if -- if you wanted to designate a couple of board members or Committee Members to go to the Maui Planning Commission to testify publicly about something that was on its agenda, this Committee can vote to -- to send a couple of Members to, you know, the Planning Commission or to the Council to present or discuss anything that the -- the Committee wants to. But again, it has to be voted on, who the members will be, and the scope of their presentation.

The next one is selection of board officers. Two or more board members, but less than the number of members that would constitute a quorum of the board, that would be three, can discuss between themselves the selection of board officers.

The next one is acceptance of testimony at canceled meetings. If a board meeting must be canceled due to lack of quorum or conference technology problems, the board members present may still receive testimony and presentations on agenda items from members of the public and may question them so long as there's no deliberation or decision making at the canceled meetings. The members present must create a record of the oral testimony or presentation, and at the next duly noticed meeting of the board, the members who were present at the canceled meeting must provide the record and copies of the testimony or presentations received at the canceled meeting. Deliberation and decision making on that item for which testimony and presentation was received at the canceled meeting can only occur at a subsequent duly noticed meeting of the board. So, basically, anyone who was not at the canceled meeting has to get up to speed with what was presented before that person can vote on it.

I'm going to skip the next two 'cause that really doesn't pertain to this Committee, I don't think so, but the next one is attendance at information or -- informational meetings or presentations. The Sunshine Law allows two or members of the board, but less than a quorum, to attend and informational meeting. The board members may present -- may participate in discussions even amongst themselves so long as the discussions occur as part of the informational meeting or presentation and no commitment relating to a vote on matters made or sought. At the next duly noticed meeting of the board, the members who attended the informational meeting or presentation must report their attendance and the matters presented and discussed that relate to official board business.

Does anybody have questions on the permitted interactions? That's a big one. Okay, and you guys can always call me or email me too.

So the next page is with regard to executive meetings. And executive meeting is a meeting of the board that is closed to the public. Executive meetings are authorized only in eight specific circumstances and cannot be convened for any other purpose, and the eight are listed, although the main one would be one, two -- the fourth one down, consult with board's attorney. Boards are authorized to consult in an executive meeting with their attorneys concerning the board's powers, duties, immunities, privileges, and liabilities; that's the one that boards and committees and the Council uses the most.

Okay, so I'm going to move -- okay, okay, how does a board convene an executive meeting? That's on page 20, at the bottom. To convene an executive meeting, a board must vote to do so in an open meeting and must publicly announce the purpose of the executive meeting. So then you would cite too that section with regard to consulting with the board's attorney, I believe is 92-2.5(a)(4), and it's also listed in your agendas too. Two-thirds of board members present must vote in favor of holding the executive meeting and the members voting in favor must also make up a majority of all board members including members not present at the meeting or membership slots not currently filled. The minutes of the open meeting must reflect the vote of each board member on the question of closing the meeting to the public. Can non-board members participate in executive meeting? The board is entitled to invite into an executive meeting any non-board member whose presence is either necessary or helpful to the board in its discussion, deliberation, and decision making with regarding the topic of the executive meeting, but once the non-board member's presence is no longer needed, the non-board member must be excused from the executive meeting. So, for example, if we needed Ryan to answer some of the questions in the executive meeting, he can come, we can invite him in, but once you no longer need him, then he would have to be kicked out.

May a board vote in an executive meeting? Generally, no. In most instances, the board must vote in an open meeting on matters considered in an executive meeting. In rare

instances, the Sunshine Law allows the board to vote in an executive meeting when the vote, if conducted in an open meeting, would defeat the purpose of the executive meeting, such as by revealing the matter for which confidentiality may be needed.

Now I'm going to turn to page 23 with regard to limited meetings. If a board finds it necessary to inspect a location that is dangerous or impracticable for public attendance may the board hold a meeting that is not open to the public. This is interesting and this might pertain to the bridge project because of where it is and there's no sidewalk and there's no anything. So boards may hold a limited meeting that is not open to the public when it determines it necessary to inspect a location that is dangerous or that is impracticable for public attendance. And the OIP director concurs in that determination so we would have to have a discussion about that prior. The board must deliberate on the need for the limited meeting at the prior open meeting of the board, and two-thirds of all members to which the board is entitled must then agree that it is necessary to hold the limited meeting at the specified location. If a limited meeting is held, notice must be provided and a videotape of the meeting must be made available at the next regular board meeting unless the OIP director waives the videotape requirement. No decision making can occur during the limited meeting. So in case of the bridge, I think we're going to have to have a discussion prior to the site inspection and -- and taking action on it to just discuss the dangerousness of the -- the situation and the Committee's feelings on having it closed to the public, and we'd also have to get the OIP director to agree to that before we have the limited meeting.

Okay, so turning to page 24, this is now the procedural requirements for the Sunshine Law, and the big ones are notice and agenda. A board must give at least six calendar days advance notice of any regular, special, or rescheduled meeting, or any anticipated executive meeting. The notice must be filed with the Clerk's office and posted at the meeting site whenever feasible. In addition to the date, time, and place of the meeting, the meeting notice must include an agenda, which list all of the items to be considered at the forthcoming meeting. If an executive meeting is anticipated, the notice must also state the purpose of the executive meeting. And on page 25, if the board files its notice less than six calendar days before the meeting, the meeting is canceled, that's a matter of law, and no meeting can be held.

What must the agenda contain? The agenda must list all of the business to be considered by the board at the meeting, it must be sufficiently detailed so as to provide the public with adequate notice of the matters the board will consider so that the public can choose whether to participate.

Going to the next page, minutes. Written minutes must be kept of all meetings and must include the date, time, and place of the meeting, the members recorded as either present

or absent, the substance of all matters proposed, discussed, or decided, a record by individual member of votes taken, and any information that a board member specifically ask at the meeting to be included. Boards are not required to create a transcript of the meeting or to electronically record the meeting.

And moving on page 28, what if there's Sunshine Law violations? Can a member of the public file a lawsuit for an alleged Sunshine Law violation? Yes. When the open meetings and the notice provisions of the Sunshine Law are not complied with, any person may file a lawsuit to void the board's action within 90 days of the alleged improper board action. Enforcement is in the circuit court of the circuit in which the prohibited act occurred. And what is the penalty for an intentional violation of the statute? A willful violation of the Sunshine Law is a misdemeanor, it means maximum penalty is one year jail plus fines and fees, and upon conviction, it may result in the person being removed from the board. The Attorney General and the County Prosecutor has the power to enforce any violations of the statute.

So the rest of the -- this part of the packet is the actual law, so that starts on page 31, and the most important part I think for you guys is on page 32, the 92-2.5, permitted interactions of members, which there's always questions about that one.

And moving on to the very end, there's a separate little handout, Governor Ige did sign a new law for the Sunshine Law, and that is contained in that little small little handout packet, some things have changed and -- and nothing's effective -- it's not effective I think until 2018, they wanna give some time for all the State agencies and county agencies to learn this and get onboard with this, but, basically, it makes the board packet available to the whole public, there's some things about electronic mail instead of just regular mail, so we'll be implementing all of these now probably.

So that's the Sunshine Law. A really quick overview of the guide, but the guide is excellent. It's really good. You guys probably have it in your Hana Advisory Committee binders. If you were here last year for the orientation, I handed it out then, but you should probably have it with you all the time because it's -- it's really important and really informative.

So now I'm going to turn to ethics, and that's the last part of my packet, and this is the Charter, the Charter part. This was already in your Hana Advisory binders but I just made copies, and it's not the whole Charter but the part that you're concerned with right now is Article 10, the Code of Ethics, and basically the declaration of policy is elected and appointed officers and employees, and you guys are considered officers, shall demonstrate by their example the highest standards of ethical conduct to the end that the public may justifiably have trust and confidence and integrity of the government. So there is a Board of Ethics, and they're chosen, just like how you folks are all chosen, the Mayor selects and the

Council approves, and they meet monthly, and they have a number of duties, one of the things that may -- that you might be needing to know about is the board, and that's 2.a., shall initiate, receive, hear, and investigate complaints of violations of this article. So if anyone were to violate Article 10, a member of the public can go to the Board of Ethics and initiate a complaint, or the Board of Ethics can initiate their own complaint. And then 2.c., the Board of Ethics also renders advisory opinions with respect to application of this article on request. So sometimes, with regards to advisory opinions, let's say you think you have a potential conflict with an applicant or an application coming before the board, and you don't really know but you'd like guidance on that, you can send a letter to the Board of Ethics, and detailing what your situation is with a question: Do I have a conflict? Can I vote on this? They will meet, and they will discuss your potential conflict, and then they would render an advisory opinion, it's a written opinion, you'd get it, and whatever it says, basically, you should do. If they say you can vote, then as long as you follow the board's recommendations, you cannot be held liable for -- for your action.

Now turning to page 47 of the Charter, section 10-4, prohibitions, I'm going to read a bunch of these things that you should all be familiar with at least by the end of your term, so 1.a., no officer or employee of the County shall solicit, accept, or receive any gift directly or indirectly whether in the form of money, service, loan, travel, entertainment, hospitality, thing or promise or in any other form unless under circumstances in which it can reasonably be inferred that the gift is intended to influence the officer or employee in the performance of the officer or employee's official duties or is intended as a reward for any official action on the officer or employee's part. So if an applicant wants to give you a gift, please just say no; 1.b., disclose -- so no officer of the County shall disclose information which by law or practice is not available to the public in which the officer or employees acquires in the course of the officer or employee's official duties or use such information for the officer or employee's personal gain or for the benefit of anyone. This may -- just keep this in the back of your mind when we enter executive session, that information, anything you guys discuss, anything you learn in executive session shall not be disclosed to a member of the public. And then 1.a., no officer of the County shall engage in any business transaction or activity or have a financial interest direct or indirect which incompatible with the proper discharge of the officer's official duties or which may intend to impair the officer's independence of judgment in the perform of the officer's official duties. So this is the provision that I basically went to in my mind when Scott asked the question about his involvement with the applicant's business.

I'm going to skip d, 'cause I don't think you guys are using County property or personnel. But 1.e., no officer of the County shall fail to disclose a financial interest in any matter which may be affected by an action of a County agency or vote on any matter affected by such interest. So again, this is kinda like Mr. Crawford's situation.

And then moving on to the next page, no. 4, officers and fulltime employees of the County shall not appear on behalf of or represent private interest before any County agency provided that no officer or employee shall be denied the right to appear before any agency to petition for redress or grievances caused by any official action affecting that person's personal rights or privileges or property including real property provided that members of boards and commissions may appear on behalf of private interest before County agencies other than the one on which such person serves and other than those agencies that have the power to review the actions of the agency on which such person serves or to act on the same subject matter as the agency on which such person serves so if -- yeah?

Chair Notestone: While I'm on duty -- I have a question. If I'm on duty in the Fire Department and we have a meeting scheduled on one of my workdays, I would have to come here in uniform, how's that -- how's that on no. 4? Would it be okay?

Ms. Oana: Yes. That'd be okay. No. 4 basically means let's say you were an engineer or a lawyer or a --

Chair Notestone: I always wanted to be an -- always wanted to be an engineer.

Ms. Oana: Or a planner working for Munekiyo or something, and you had -- and that was your project that the applicant is here in front of, you wouldn't be able to represent the applicant, someone else would have to do that. Okay, so the last part is penalties. Any person who violates the provisions of this Article shall be subject to a fine. In addition to any such fine that may be imposed, non-elected officers may be suspended or removed from office by the appropriate appointing authority. And that's it for ethics. Anyone have questions?

Chair Notestone: Wow. What -- what drives her? I mean such enthusiasm. I love it. Can I get a motion to adjourn? Is that what we do?

Mr. Kaina: Before we adjourn, I just wanna make sure I get on the record to have the Planning Department please review what we've done today to ensure that the difference between B&B and short-term rental are not skewed. I mean, basically, what I see is two rule books in one hand which gives the person running the business the upper hand, so I guess just to review and make sure that we shouldn't just have one designation instead of two on one property, and, again, like we all discussed in the meeting, this might be precedent, this might be first one on Maui even though I know this is the first one in Hana, so if we could have Planning Department please review that and let us know if there's any loopholes there.

Ms. Ross: I wanted to add something that I thought after all of this discussion that we had

earlier, and maybe the -- one of the provisions to having both a B&B and a short-term rental would be prohibiting that person to advertise both and that would also let the public know whether or not those people are living on the property and can serve as a B&B 'cause I think that's one of the limitations of a B&B, they have to actually be living on the property, so if they're advertising as a B&B and they're -- in the community everybody knows that they're actually living outside, that might help, not this particular applicant, but if there were future applicants that had that dual permitting accepted, that might be something that you guys could look at as far as being cognizant of what's going on.

Mr. Kaina: Yeah the -- the problem I see is the ability to flip the B&B switch on and off whenever the client feels like and that's what I think needs to be addressed.

Chair Notestone: So has this ever happened before, Clayton, in Mau County?

Mr. Yoshida: Well, I guess they would be -- if they get a short-term rental home permit, they will be issued a -- a docket number so they would have a B&B docket number, short-term rental home permit docket number. They could use that in their advertising.

Ms. Oana: Clayton, they wanna know has this ever happened in Maui County before with one person holding a B&B and a short-term rental home permit on the same property.

Mr. Yoshida: To my, yeah, to my recollection, this -- this is like the first one. Yeah.

Chair Notestone: So this -- this was presented to the Planning Commission and they didn't question it? Well, I can -- I can tell you as a B&B operator, I'd love that option to be short-term and B&B at the same time. It'd be an advantage.

Mr. Yoshida: Well, I guess there's not, like I say, any prohibition in either B&B home permit chapter of the code or the short-term rental home permit chapter of the code that would prevent you from getting the other -- to have both, but I guess the thing is that it would count I guess as a cap number for the region if they have a B&B permit and a short-term rental home permit.

Mr. Kaina: Well, it becomes a skewed number right? Yeah.

Chair Notestone: Ryan, you have a question? Thank you, Clayton.

Mr. Quigless: I'd also just like to note that, in past projects, the Committee can vote on a condition that we include from the Department in our recommendation to the Maui Planning Commission, so if you guys decide that you want to make that provision that advertising is only for the short-term rental or any other conditions, you can vote on that and then we can

include that.

Mr. Kaina: Yeah, I think, honestly, what my concern is just I don't see a need for a single property to carry both designations, so my understanding is why are we requiring them to carry both designations when one should, technically, cover what they're trying to do, so I mean that's my main reason for asking them to review it. Are we sending the client through the process twice for no reason? Can it be avoided so on? I mean those are just questions that we need to ask.

Chair Notestone: Scott, you had a question?

Mr. Crawford: Something else that may be relevant to this is that the B&B permit is coming to an end in October 2018 so would the -- would the fact that it -- if it is approved as a short-term rental and is being operated as a short-term rental, would that be taken into consideration if an extension to the B&B permit was requested so that if they're not actively using that B&B permit and rather using the short-term rental permit, then maybe that would be allowed to expire.

Mr. Quigless: My research with the code, Maui County Code, has been that it's not actually a restriction that they can't have both so, technically, they'd be allowed to renew both unless that was a condition that you all voted on that became a condition for the recommendation to the Commission.

Chair Notestone: Anything else?

J. ADJOURNMENT

Mr. Kaina: I make a motion to adjourn.

Chair Notestone: Oh, good man.

Ms. Lono: Slam the gavel.

Chair Notestone: Adjourn.

The meeting was adjourned at approximately 5:40 p.m.

Submitted by,

SUZETTE L. ESMERALDA
Secretary to Boards & Commissions II

RECORD OF ATTENDANCE:

Present:

Gale Notestone, Chairperson
David "Kawika" Kaina, Vice-Chairperson
Linda Clark
Lehua Cosma
Scott Crawford
Dawn Lono
Maya Ross

Others:

Clayton Yoshida, Planning Program Administrator, Current Division
Ryan Quigless, Staff Planner
Jennifer Oana, Deputy Corporation Counsel
Suzette Esmeralda, Secretary to Boards and Commissions II