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**MAUI PLANNING COMMISSION
REGULAR MINUTES
OCTOBER 8, 2019**

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A. CALL TO ORDER

The regular meeting of the Maui Planning Commission was called to order by Vice-Chairperson Christian Tackett at approximately 9:00 a.m., Tuesday, October 8, 2019, Planning Conference Room, First Floor, Kalana Pakui Building, 250 South High Street, Wailuku, Maui.

Mr. Christian Thackett: I'm going to call to order the Maui Planning Commission for October 8th. It's nine o'clock. I'm going to be the Chair for this morning, so thank you everybody for coming. I'm going to start with introductions. I'm going to start with Dale Thompson. Good morning Dale.

Mr. Dale Thompson: Good morning Chair.

Mr. Thackett: Keaka Robinson.

Mr. Keaka Robinson: Good morning.

Mr. Thackett: Good morning Keaka. P. D. La Costa.

Ms. P. Denise La Costa: Aloha Chair.

Mr. Thackett: Good morning P. D. We have Stephen Castro. Good morning Stephen.

Mr. Stephen Castro: Good morning Chair.

Mr. Thackett: And then Michele McLean, our Planning Director.

Ms. Michele McLean: Good morning Chair.

Mr. Thackett: And Michael Hopper, our Corporation Counsel. Thank you everybody for attending. So we have a quorum today. So if we could please silence all our devices, and then we can move forward through our, through our process.

I believe the first order on the, the agenda is Todd and Valerie Mimura requesting a bed and breakfast permit to operate North Shore Cottage. We're going to have the staff report first, I believe. So if there's no objections, if we can please have the staff report.

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B. PUBLIC HEARINGS

1. **TODD AND VALERIE MIMURA requesting a Bed and Breakfast Permit to operate North Shore Cottage, a two-bedroom B&B in the County R-1 Residential District and State Urban District located at 715 Hana Highway, TMK: (2) 2-6-012:001/0000, Paia, Island of Maui. (BBPH T2019/0001) (R. Quigless)**

1 **This matter is being brought before the Maui Planning Commission for**
2 **review because there is at least one permitted bed and breakfast home**
3 **operation located within 500 feet of the subject property.**
4

5 Mr. Ryan Quigless: Aloha. Good morning Chair, Commissioners, Director. My name is Ryan
6 Quigless, staff planner, with the Maui County Planning Department. We meet here with you
7 today on behalf of the Planning Department, and the applicants, Todd and Valerie Mimura,
8 regarding a request for a bed and breakfast home permit to operate North Shore Cottage, a
9 two-bedroom bed and breakfast home in the State Urban District, and County R-1 Residential
10 District on approximately 13,765 square feet, located along Hana Highway, at 715 Hana
11 Highway, Paia, Maui, Hawaii.
12

13 The public hearing requirement is triggered by one or more bed and breakfast homes operating
14 within 500-feet of the subject property. And at this time I would like to note one correction to the
15 staff report that you all have and have gone over, and that's the home description of accessory
16 dwelling should read second dwelling, allowing the home to meet the requirement for bed and
17 breakfast. And to further clarify, the property is located in County R-1 Residential and therefore
18 is allowed two dwellings based on the property's square footage.
19

20 The applicants have no Request for Services on file. They have no neighbor complaints or
21 violations with the County on file. And the Department has not received any letters of opposition
22 to their proposed B&B from the public. After departmental review of the project, an analysis of
23 the B&B's impact to the surrounding community, the bed and breakfast home is not expected to
24 negatively affect the existing character of the community, nor be detriment to the existing
25 shoreline environment. Commissioners, do you have any questions for either myself or the
26 applicants, Todd and Valerie Mimura, at this time?
27

28 Mr. Thackett: Mr. Castro, do you have questions?
29

30 Mr. Castro: No. I'm just adjusting my mic.
31

32 Mr. Thackett: Hearing none, will we be moving on the applicant's presentation? Is that what we
33 have next?
34

35 Mr. Quigless: The only thing that we have for this project is the staff report and the updated
36 photos for you.
37

38 Mr. Thackett: Okay. That being said I guess we're moving on to testimony on the item. So we
39 have one testifier. I'm going to call you up off the sign-in sheet. Please state your name. I'll ask
40 you to tell the truth and you have three minutes. Mr. Bruce U'u.
41

42 Mr. Bruce U'u: Good morning.
43

44 Mr. Thackett: Please, please state your name and promise to tell the truth.
45

46 Mr. U'u: I will promise to tell the truth. My name is Bruce U'u. Life long resident, Paia. In fact,
47 generation resident. I would say Ku'au, Paia. First of all, thank you guys for serving on the

1 Commission. I served on the Commission years back. Thank, thank this job, that's for sure. At
2 that time we were taking up the B&B and TVRs, and it kind of struck me as a bad note, some of
3 them. And the reason is as we were sitting here discussion about the process, the TVR/B&B's
4 were all mostly illegal at the time, and operating illegally. And a lot of them were, I guess,
5 positioning themselves to go make it legal. But what bothered me was most of them wasn't from
6 here, but that's not the part. They would always use the word "aloha." How they would show
7 what we going do, and this is what we going do would be the basis of aloha. And they use that
8 word over and over, like something I not used to hearing. Not only my people say, local people,
9 Hawaiian people, but outsiders say that, and it struck me as negative note into thinking these
10 people abusing the word "aloha." And I wonder if they knew the actually meaning. Like my
11 grandmother once said, if you don't know the meaning, don't use it. And that was the word
12 aloha.

13
14 When the process came through, and the inspectors did their job, they came up, and they were
15 mocking the inspectors. So what little aloha I thought they had, I knew they didn't, came about.
16 There was none. They were looking to make a profit. And it was a complete opposite of what we
17 have today.

18
19 Todd Mimura is my neighbor, born and raised, in Ku'au, before you guys. This is the kind of
20 people I see as the intent of the B&B/TVR's is with the mom and pop. Maybe they too young to
21 be mom and pop, but they going get there one day. But that's the, that's the vision I had when
22 you come up with B&B's. And in Paia where there's a struggle for land and buildings. Michele
23 knows everybody trying to garner up buildings. These people just happy where they stay. So
24 their current resident they want to turn into a B&B is more for sustain the lifestyle that they had
25 their whole life in Ku'au, not looking at acquiring more, which is probably the norm in Paia. So if
26 I had to make a list prior or now of who would be at the top of the list to run a B&B in my
27 neighborhood that I call home would be these guys. The very top. They get good values. They
28 never going say aloha because they get 'em. They not going throw aloha in your face. They go
29 through the process. They went through the rules what should be without complaining. That's
30 aloha. You no need shove 'em in your face to say, look at me, I do what I doing. So thank you
31 for your time. I hope, with the bare quorum, I mean, you can ask the questions I guess, but I
32 fully support them. I think they one great candidate for one mom and pop B&B in the place I call
33 home. Aloha.

34
35 Mr. Thackett: Thank you Bruce. Anybody have any questions? Does the applicant have any
36 questions for the testifier? Thank you.

37
38 Mr. U'u: Aloha. Thank you.

39
40 Mr. Thackett: Is there anybody else who would like to testify? Hearing none, I'd like to close
41 public testimony. Could I --? Is there, is there any more discussion to be have?

42
43 Ms. La Costa: Thank you Chair. I would like to ask the applicants a question please.

44
45 Mr. Thackett: Please, yeah, good morning. Please state your name and then promise to tell the
46 truth.

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Ms. Valerie Mimura: Valerie Mimura, and I promise to tell the truth.

Mr. Todd Mimura: Todd Mimura and I'll tell the truth.

Mr. Thackett: Thank you.

Ms. La Costa: Mahalo for being here today and for going through the process properly. My only question is have you rented any portion of your home on a short-term basis recently?

Ms. Mimura: No.

Ms. La Costa: Thank you very much.

Mr. Thackett: Thank you. Do we have any other questions? Okay, I'm going to close the question. And then next is the Department's recommendations please.

Mr. Quigless: Ryan Quigless from the Maui County Planning Department. The Maui County Planning Department recommends approval of the B&B Home Permit subject to the following 17 conditions. Would you like me to go over those conditions at this time?

Mr. Thackett: Commission members, would you like at this time? No, I believe they're, they're all fully aware, so thank you.

Mr. Quigless: So the recommendation is for approval from the Department.

Mr. Thackett: Okay, recommendation for approval. Can we have action by the Commission please?

Mr. Castro: I move to accept the Planning Department's staff recommendation.

Mr. Thackett: Okay, motion by Stephen, and second by P.D. Discussion on the motion? Keaka?

Mr. Robinson: I support this motion. I like the fact that there's actually some local families taking advantage of the bed and breakfast ordinance. Short-term you not have my support, but bed and breakfast, I believe, is what's going help to keep us local families around so good luck to you folks. Thank you.

Mr. Thackett: I'm going to call for a vote now please. All those in favor? We have five ayes, motion carries. Thank you.

It was moved by Mr. Castro, seconded by Ms. La Costa, then unanimously

VOTED: To Approve the Bed and Breakfast Home Permit as Recommended by the Department.

(Assenting – S. Castro. P. D. La Costa, D. Thompson, K. Robinson,

1 **C. Tackett)**
2 **(Excused – K. Pali, L. Carnicelli, T. Gomes)**
3

4 Mr. Quigless: Mahalo for your time Commissioners.
5
6

7 **C. Workshop to review proposed bill amending Chapters 19.12, 19.24, 19.26 and**
8 **19.37 of Title 19, Maui County Code to prevent the conversion of long-term rental**
9 **and owner-occupied apartments to transient rental apartments in the Apartment**
10 **and Industrial Districts.**

11 **This is for information purposes only; no action will be taken.**
12
13

14 **The public hearing will be held on October 22, 2019.**
15

16 Mr. Thackett: Thank you so much you guys. Okay, next order of business will be --. Okay, I'm
17 going to turn it over to Director McLean for the next order of business.
18

19 Ms. McLean: Thank you Chair. Because today's agenda was so light, we wanted to take
20 advantage of the time and present to you a proposed bill that the Department has been working
21 on. This will come back to you as formal public hearing at your next meeting. And we're also
22 taking the bill to the Molokai and Lanai Planning Commissions. But we thought with such a light
23 agenda we'd just do a run through to make it a little easier when it come up for action at the next
24 meeting.
25

26 So this is a proposed bill to amend the Apartment Districts and the Light-Industrial Districts to
27 prevent the conversion of long-term rental and owner occupied apartments to vacation rentals.
28 We refer to this, in the office, as the loophole bill. There's some loophole language in the Code
29 that we want to close. And Ana Lillis is going to do the overview for you. She's one of our newer
30 planners in our Zoning Administration and Enforcement Division, and is working with staff on
31 drafting the bill. And this is her first time presenting to the Commission and I'm sure she'll do a
32 great job. So if there aren't any questions, then Ana can take it away.
33

34 Ms. Ana Lillis: Test. Test. Aloha and good morning. My name is Ana Lillis. I'm with the Zoning
35 Administration and Enforcement Division. So we'll be discussing, as Michele gave us a great
36 introduction, a proposed bill. We are excited to be here and share this with you. There's a lot of
37 information we'll be covering, but hopefully give you an overview and get into the details as well.
38 We do feel that these will have positive impacts in our community.
39

40 So just to separate the two topics. So as you guys just approved a bed and breakfast and -- a
41 bed and breakfast home permit, we wanted to separate the two subjects out. So no changes at
42 this time are being proposed to the B&B/Short-Term Rental Home process. No changes
43 whatsoever. So as you know, the B&B/STRH Permits may require Commission permit approval.
44 The main difference is that qualifying apartment district zoned properties may conduct TVR use
45 without a permit, without Planning Commission approval, without Planning Department
46 approval. They can just conduct the use. So that's why the two are different.
47

1 Okay, so the purpose of this bill is to prevent the conversion of long-term rentals and owner
2 occupied apartments into transient vacation rentals in the Apartment, Light-Industrial and
3 Heavy-Industrial Districts. Up until April 20, 1989, TVR use was allowable in the Apartment
4 District. This bill will make the prohibition date more enforceable. You'll see this a lot, April 20,
5 1989. So in addition, we have other changes to the Industrial District proposed, essentially to
6 prohibit standalone apartment, apartment buildings from coming up. So if a new apartment
7 building was proposed, it would have to have some sort of mixed use and commercial
8 walkability aspect with a new apartment building within the Light-Industrial District. Additionally
9 the last and final thing would be a revision to some height standards within the Industrial District
10 as well. So that's all the information. It's a lot so I appreciate your time and attention to this.

11
12 Reasons for change? Why are we here? Why change anything about the Apartment District at
13 all? On May 7, 2017, we were able to hire the vendor, Lodging Rev, to assist County zoning
14 inspectors and short-term rental enforcement efforts and identification. Many speculated at that
15 time that there were thousands of illegal vacation rentals out there. In reality, we found about
16 two to three hundred illegal vacation rentals advertising online. However, throughout that
17 process we were able to find around 10,000 legal TVR units, and these were determined to be
18 allowed because they are apartments on Hotel District zoning allowed that use. And
19 furthermore, we realized that potentially thousand more could convert to transient vacation
20 rental use under the current language. And the only reason why they would be allowed to do
21 that is because they were built prior to April 20, 1989, that ban date, that important prohibition
22 date. Thank you.

23
24 So just to give you some background numbers. We did try to analyze the Apartment District. We
25 found that in total 6,600 apartment units today are currently operated as a transient vacation
26 rental. They're located throughout Maui County as well as Molokai. The goal of this bill is no
27 new complexes to convert into transient vacation rental use. We want to protect our residential
28 long-term rentals and owner occupied units, and keep them in the long-term basis and prevent
29 short-term conversion.

30
31 So how will we do this? I know this is a lot of text; I won't read the whole thing. But essentially
32 what we are proposing in the yellow, and deleting in the white brackets above, is to more clearly
33 define a new vision for the walkability of the Apartment District. And clearly define that this
34 district is intended as a higher density housing option which provides a transition between
35 residential subdivision and to our business district to provide a more affordable housing options.

36
37 So this part, proposed revisions to permitted uses. So the yellow, it will be the new language.
38 The white language is what is currently existing. The criteria is very essentially not -- this criteria
39 is not difficult to meet at the moment. So if you were lawfully existing within the Apartment
40 District on or prior to April 20, 1989, as of right now, you can conduct the vacation rental use.
41 We want to add a criteria to ensure that the use must have actually been occurring in that
42 building structure prior to that ban date, that prohibition date. And additionally that, to keep the
43 number of bedrooms within the Apartment District that are allowed to transient vacation rent the
44 same. They can't increase the number of buildings, of bedrooms. Yes, Michele.

45
46 Ms. McLean: I just want to make one clarification for the Commission. It is the Department's
47 opinion that these properties could not convert to vacation rental. The Code, however, is very

1 unclear and we've had lots of interaction with a variety of apartment complexes who appear to
2 want to convert for the first time. And we're looking at the Code, and we do not believe that the
3 legislative intent was to allow that conversion. We believe the legislative intent was to allow
4 those that had been conducting it back in 1989 to continue, but not to allow new ones to start.
5 And so that has been the Department's position. And so because there is uncertainty, we are
6 trying to clarify that by putting this language in the Code. So there are some who would argue
7 that you could convert and before we get a legal challenge on that point, we want to change the
8 Code to make it clear.

9
10 Ms. La Costa: I have a couple of questions. How does this affect the Minatoya codification? And
11 also if there are apartments, say there are 50 units, and 30 of them have been doing short-term
12 rental. If the other 20 decide they want to do that, are they not going to be allowed to under this
13 law?
14

15 Ms. McLean: Okay, those are two great questions. First, this does not change the status of any
16 of the properties that are covered under the Minatoya Ordinances. Those were the ones that
17 were recognized all along as having that use, or to a degree, exercising that use. They will be
18 allowed to continue.
19

20 When it comes to one complex that has a combination of short-term and long-term, we do not
21 go unit by unit. We look at the entire complex. So if half are doing it, and half were not, the half
22 that were not can convert as far as we're concerned because the status runs with the property
23 and not unit by unit. The zoning goes with the whole property and not unit by unit. Great
24 questions.
25

26 Mr. Robinson: So Director, in that sense it's things are grandfathered in. So if a building of a
27 100 units have one short-term rental, the rest of the building will then become available for
28 short-term rental?
29

30 Ms. McLean: We would have to --. In that kind of extreme example, we would, and this is -- we
31 had done this with a number of properties that have come forward -- we had gone back to try to
32 determine when that one unit started. And if it did start prior to that date, then yes, the whole
33 property would be grandfathered in.
34

35 Mr. Robinson: And, and what is the criteria for a legal operation? Is in 1989 was there, was
36 there laws that they had to pay for TVR license and a tax even though it was grandfathered in,
37 or was there -- or they just have to show proof that they had rented it out?
38

39 Ms. McLean: As far as the zoning is concerned, we look for whatever evidence they can
40 provide. If they were paying taxes, we would consider that evidence. If they have guest
41 registers, employment records, anything. And this is true in any zoning district actually. But any
42 evidence that they can produce that they were operating we would accept.
43

44 Mr. Robinson: Before '89 was there a strict criteria or are we saying there wasn't so it was pretty
45 open because this was such a new thing that we weren't really looking to restrict it. And so there
46 was no tax to say that people had to have a second business if they were doing it or was it
47 always supposed to be a tax?

1
2 Ms. McLean: I don't know when the TAT tax took effect. I don't know if it was --

3
4 Mr. Robinson: What about GET, though?

5
6 Ms. McLean: Or GET.

7
8 Mr. Robinson: I mean, if you're renting out and you're doing a business, you'd have to at least a
9 GET, right, in those old days?

10
11 Ms. McLean: I would think so.

12
13 Mr. Robinson: So is there anywhere in this ordinance where we're trying to set a criteria to say
14 that the people, to be qualified would have to had a GET to qualify as a business? Or because
15 are we going to honor illegal run businesses? I mean, if you don't have a GET you're
16 considered not legal because, you know, you're collecting money and you're not paying your
17 tax, you know?

18
19 Ms. McLean: We do not enforce tax compliance, just as State tax really doesn't care much
20 about zoning compliance. And that's an ongoing issue we have with them. We look for zoning
21 compliance, and tax records can be used as evidence to demonstrate that that activity occurred
22 if they were paying those taxes. So we would consider that evidence. If they were not paying
23 taxes, and they have other evidence that they were conducting the use, we would recognize it
24 as zoning compliance, and it would be up to State tax to determine if they were not in
25 compliance with tax.

26
27 Mr. Robinson: I got you. So zoning is one thing, tax is another department's kuleana.

28
29 Ms. McLean: Yeah.

30
31 Mr. Robinson: Thank you.

32
33 Ms. McLean: Sorry Ana.

34
35 Ms. Lillis: No. Thank you. Great questions. So what is the difference between what we're
36 proposing now and what exists currently? So like Michele was explaining there is that argument
37 out there that one could ask to be added to the Minatoya short-term rental occupancy list
38 published on our website simply because they were built prior to April 20, 1989. We feel this
39 would have a negative impact on Wailuku, Kihei, all our apartment district properties that were
40 not operating as transient vacation rentals on or prior to April 20, 1989. So as a point of clarity,
41 no existing TVRs on these short-term rental occupancy list will be affected. They qualify under
42 this new criteria. Summary of the Apartment District changes, an update to the Purpose and
43 Intent, and no new TVR complexes will be allowed within the Apartment District.

44
45 So now it's a hard transition to the M-1 Light-Industrial, but here are proposed changes. We
46 want to clarify the prohibition of TVRs in the M-1 Light-Industrial District. It has always been
47 affect. It has never been allowed, unlike the Apartment District which allowed up until April 20th,

1 1989. And we additionally want to ensure that commercial uses are included with new
2 apartment development to promote mixed use and walkability. Additionally, to amend the
3 apartment building height requirements based on total units. And finally -- thank you for sticking
4 with me -- restrict the building height of roof structures such as vent pipes chimneys to no more
5 than 10-feet above the highest point of that building's roof.
6

7 Okay, so a proposed revision to the Purpose and Intent, this is including that revision that we
8 want to see of new commercial -- sorry, new apartment buildings needing to have a commercial
9 aspect to promote mixed use will be updated in the Purpose and Intent as well. So the actual
10 proposed changes will look like this. This was a notoriously difficult portion of our Code to read,
11 so we wanted to bracket out the white portions, and add in the yellow to make it a lot user
12 friendly, more user friendly. So with the apartments, like I said, one or more dwelling units
13 located in the same building, on any floor, and as long as a non-dwelling permitted use is
14 included. No new standalone apartment. So 100 percent apartment buildings will not be
15 allowable anymore. They have to have some sort of mom and pop shop, a laundry mat, some
16 sort of non-dwelling use to promote mixed use and walkability.
17

18 So in addition to that, the maximum building height, if you are in the M-1 Light-Industrial and you
19 have five units or more, you can go to that maximum 60-feet in height. And if you're -- if you
20 have apartments in the building, it will be limited to 45-feet in height if it had four or fewer
21 apartment or dwelling units. And then this is the codification of that change of the roof height
22 change of --. So essentially the reason why we're wanting to amend the roof height is you could
23 have currently if they -- if the structure cannot --. Okay, let me read that. Except that building
24 pipes, chimneys or communication systems being added on roof shall not exceed 10-feet above
25 the building roof, instead of 70-feet in total height. Because currently you could have a one-foot
26 building and a 69-foot antenna on top. So it's a little goofy, so we just wanted to clean that up.
27

28 Alright, so now, Heavy Industrial District. We are updating the permitted uses. This was again a
29 very difficult portion of our Code to read. Not really substantial change. Just making it more
30 clear that the only sort of residential use would have to be attributed to a watchman, custodian,
31 or industrial use on the property. So you can have a resident on a M-2 Heavy Industrial if it is
32 linked to that industrial use on that property. So additionally the proposed revisions are also for
33 the antennas. So, 10-feet above the building height as well. So keeping that consistent between
34 M-1 and M-2 for the roof height revision.
35

36 So just a point of clarity. TVRs were never permitted in the Industrial District, and this proposed
37 bill makes that evermore clear.
38

39 And so the very, very final loophole that we would like to close within the transient vacation
40 rental category is adding the word "and." This is currently how we administer the timeshare
41 portion of the Code. But it just makes it more clear that all of the conditions within 1937 has to
42 be met. Additionally to delete item (D). So Item (D) establishes how TVRs can be allowed with
43 CC&Rs. If the CC&Rs has to explicitly allow it, there's an argument out there that we disagree
44 with that if you were built even after the prohibition date, if your CC&R's allow transient vacation
45 rental use, it becomes allowable, which the zoning does not provide for. So we just want to
46 make that very clear for the public.
47

1 Mr. Robinson: Ana, can you say that again?

2

3 Ms. Lillis: Yes. So, for Item (D)?

4

5 Mr. Robinson: Yeah.

6

7 Ms. Lillis: Okay, so Item (D), is the portion of our timeshare code that if you have a property that
8 was built after the prohibition date, you could -- the argument is out there that if your CC&R's
9 explicitly allow it, you could conduct that use lawfully. And so that is not how the timeshare code
10 was meant to be written. That's not the legislative intent. That's not how we administer that
11 portion of that Code. So that's why we want to just delete it entirely.

12

13 Mr. Hopper: Just a comment.

14

15 Ms. Lillis: Yes?

16

17 Mr. Hopper: And I would dispute that even arguably says that. I mean, in order to have that
18 argument, you would ignore the rest of the County Code because Title 19 is very clear and says
19 you can only do TVRs where they are permitted by permit. And so this is remnant of an old
20 section. But I don't even think there's an argument. You can just amend your CC&Rs to allow
21 TVRs, and that supercedes all the rest of the zoning. So I'd just like to -- it does say arguably
22 allowed. Just because someone has made an argument, I don't think it arguably allows it. I think
23 it's a pretty weak argument. But I just wanted to get that on record.

24

25 Ms. McLean: And there have been people making that argument to us on being . . . (inaudible) .
26 . . in a case involving just that. So it's important that we clear it up in the Code.

27

28 Mr. Carnicelli: And I would also just like to state for the record that I join the conversation, or I
29 join the meeting during the presentation. And I want to thank Vice-Chair Thackett for taking the
30 reins. Thank you very.

31

32 Mr. Thackett: My pleasure.

33

34 Ms. Lillis: Thank you. So in summary, we don't want to see any new transient vacation rental
35 complexes in the Apartment District. The new criteria would be adding that the TVR use must
36 have been conducted in that unit prior to the prohibition date. Additionally TVRs were never
37 allowed in the industrial district whatsoever. New apartments with other uses would be allowed
38 in the Light-Industrial District. This is to promote walkability again. And the new standalone -- no
39 new standalone apartments would be changed. The current existing ones can stay. That they're
40 not a problem or an issue whatsoever. And then adding, of course, the -- if you have five or
41 more apartments, you're allowed 60-feet of building height. If you have four or less apartments
42 in your light-industrial zoning, you can have a building of 45-feet maximum height.

43

44 And then the roof structure on top of light-industrial and heavy industrial buildings would be
45 limited to 10-feet taller than the building.

46

1 Next steps are public hearings. I was stepping in for Jacky, our Administrative Planning Officer,
2 so she'll be handling the ones on Lanai, Maui, and Molokai. And then if we get to County
3 Council that is yet to be determined, the date of the hearing. Yes, thank you.

4
5 Mr. Carnicelli: Thank you. Any other questions? Commissioner Thompson.

6
7 Mr. Thompson: I do have one. How are tiny homes affected? Like those new homes that are on
8 wheels that you can wheel onto your lot?

9
10 Ms. Lillis: Absolutely. We get that question a lot, like, you know, tiny homes are somehow
11 different. They are not. We see them as a dwelling unit. So, everything that is the same for a
12 single-family dwelling would be the same for a tiny house on the wheels. That does not require
13 perhaps a building permit, but we still see it as a dwelling unit.

14
15 Mr. Carnicelli: Commissioner La Costa.

16
17 Ms. La Costa: If a tiny home is still on wheels, is it not personal property being that it's not
18 affixed to the land?

19
20 Ms. Lillis: I will leave that for my Director.

21
22 Ms. McLean: We administer the Zoning Ordinance, and so if it's being used as dwelling, we
23 consider it to be a dwelling. If it's on wheels, and doesn't need a building permit, it needs to be
24 registered with DMV. But if it's being used as a dwelling, then it's a dwelling, and the zoning has
25 to allow dwelling use, or however many ever many dwellings there may be, the zoning has to
26 allow that.

27
28 Mr. Carnicelli: And just a point of clarification. Does that vehicle need to be habited longer than
29 seven-days? Is that the --? Like if I just got a tiny home sitting there, it's not a dwelling. As soon
30 as somebody --? Because I guess if I got my VW bus, 1978 VW bus sitting in my driveway, it's
31 just a bus.

32
33 Mr. Robinson: What color?

34
35 Mr. Carnicelli: Tan.

36
37 Mr. Robinson: Rag top?

38
39 Mr. Carnicelli: No, but it's the pop top, yeah. So it's sitting in my driveway. As soon as someone
40 lives in that longer than seven days it's now an ohana. Is that correct?

41
42 Ms. McLean: It would still need to meet our definition of dwelling. So it would need to have a
43 kitchen.

44
45 Mr. Carnicelli: It does.

46
47 Ms. McLean: So then it could conceivably be, if it's being occupied, it could conceivably be

1 considered a dwelling, and the zoning would have to allow it. We're working with Corp Counsel
2 now on probably seeing the next chapter in vacation rentals are the RVs that are getting rented
3 out. You pick it up some place, you drive it wherever you drive it, and camp it overnight perhaps
4 unbeknownst to the property owner on his property you're staying. They're on wheels, they can
5 move around. So that's one that we're trying to get a handle on now. So, it, it keeps evolving.
6 And we're starting to get a handle on it with B&Bs and BRBOs. And it's like . . . (inaudible) . . .
7 and then this other use pops up and we're trying to figure out how to control that.

8
9 Mr. Castro: Would that also apply to trailer homes? Not that I've seen any trailer homes over
10 here.

11
12 Ms. McLean: Yeah if it, if it moves. Yeah, if it moves. Those tend to be, you know, they're
13 mobile, but they tend to then have somewhat permanent spot. But, yeah, that zoning needs to
14 allow that structure and that use wherever it ends up.

15
16 Ms. La Costa: This is probably a DLNR issue, but there are more, and more, and more, and
17 more people camping on the beach along from Ukemehame to Olowalu in mobile homes, if you
18 will, or a, you know, travel trailers and things. And so I don't know how that is taken care of on
19 its own.

20
21 Ms. McLean: Yeah, that's part of the, the issue that we're working to understand and control.

22
23 Mr. Hopper: Yeah, just a point of clarification. Is, is -- are the tiny homes or any of this affected
24 by the bills that we're looking at? The Apartment Districts or the Light-Industrial Districts? I'm
25 just trying to make this is a sunshine law issue that actually relates to this bill. I just didn't see
26 that off hand.

27
28 Ms. McLean: If the tiny home is on property that's zoned Apartment, then, or Light-Industrial.

29
30 Mr. Carnicelli: And I think that's where the Commissioners were headed with it was to try to get
31 clarification as to whether or not. It was in relation to this bill.

32
33 Mr. Hopper: And built before 1989? I mean, I don't see that as --

34
35 Mr. Carnicelli: My bus was built before 1989. It was a 1978 bus, so there we go.

36
37 Mr. Hopper: And I'm not sure it's an apartment unit.

38
39 Mr. Carnicelli: Thank you for reining us in Corporation Counsel. Anything else on this agenda
40 item? Commissioner Robinson.

41
42 Mr. Robinson: I think we touched on it earlier and I think it's always helpful if we get our criteria
43 set on what we're going to allow and not allow, instead of have people try to bring any type of
44 evidence. I think we should work with and send a letter with, with tax ramifications to help assist
45 to say, yeah, even though you might qualify in the zoning, you're not going to pass with . . .
46 (inaudible) . . . with the tax on it. I think it would only be helpful because that's where the real
47 proof is, I think, you know, in qualifications. Thank you.

1
2 Mr. Carnicelli: Thank you. Anything else? Seeing none, thank you very much. Would anybody
3 else like to testify on this particular agenda item? Please come forward Mr. Croly, and then you
4 can come after him. Okay. Please state your name for the record.

5
6 Mr. Tom Croly: Tom Croly.

7
8 Mr. Carnicelli: Mr. Croly, you have up to three minutes.

9
10 Mr. Croly: Thank you. I always like when we bring forward bills to help clarify so that the Code is
11 crystal clear and people under what they can and can't do and so forth. And this bill helps do
12 that, so I'm very supportive of it. I think some ways that it could be better in that regard -- and I
13 said this five years ago when the ordinance first came about -- was creating this list and
14 codifying the list. Okay, if you're in this building, in this building, or this building, it's okay. And
15 also doing some community outreach to say if you think you would qualify, then come see us
16 before this date. And if there are properties to add to this list, have those properties be added to
17 the list.

18
19 Talked about tax ramifications. There is the GET and TAT if you're operating a business that's a
20 tax ramifications. There's also real property ramifications to this that I think are very important. If
21 someone says I want to maintain the right to be able to do short-term rental in this unit, or this
22 building, or this home, then they've created the highest and best use for that, for that home. And
23 if they're going to say I want to be on this list, then they should be subject to the property tax
24 ramifications of other properties that would be on this list.

25
26 The folks that are currently subject to these tax ramifications are folks who have condos in these
27 units, and they raise their hand to the real property tax thing and voluntarily say, I'm making this
28 use, okay. And it's good that the Director made it clear that from Maui's perspective if the use is
29 allowed in the building, in any unit in the building, it's allowed in the whole building, that's not the
30 perspective that they took over on Oahu and it's created a real mess. Where you have floors
31 where there's one unit that's allowed to be used. And right next door, they're not. And they also
32 said the use had to be continuous. So that one unit, if it's stopped being used for short-term
33 rental, then they lost this. So they had these arguments from people, how long is too long to
34 have lost that. So I appreciate that the Director made that clear. I think it should be very clear in
35 the, in the bill, and the bill shouldn't refer to units, it should refer to lots. It should say, that the
36 building that is on this lot, that was built prior to 1989, is essentially allowed to make this use.

37
38 What I didn't hear, and I hope that there's a little more clarifications about is single-family homes
39 that are in the Apartment District, I heard a lot about apartments. There are many single-family
40 homes in the Apartment District. Some of which are making this use today. And I think the goal
41 is to not allow anymore single-family homes that may have been built prior to 1989 the ability to,
42 to make this use. So I would suggest that the Code be clear as far as these single-family
43 homes, whether or they can or can't make that use. Thank you Chair.

44
45 Mr. Carnicelli: Thank you very much. Any questions for the testifier? Commissioner Robinson.

46

1 Mr. Robinson: I don't know if the testifier or the Director knows. He brought up a good point
2 about the real property tax. So is units taxed individually or they are taxed as part of a
3 common in an apartment building? Let's take Maalaea, let's take a building in Maalaea. Do you
4 know how they are taxed, real property wise?

5
6 Ms. McLean: It's by the whole complex.

7
8 Mr. Robinson: The whole complex.

9
10 Ms. McLean: Yeah. So if you're in a complex that's allowed to do vacation rentals, and you're
11 owner occupant, you can get the homeowners exemption, but you're taxed at the, at the hotel
12 rate.

13
14 Mr. Robinson: And I, and I know there's a difference between Honolulu and Maui. In Honolulu
15 has that lease to fee conversion that they're really pushed for. And I think, Honolulu, you know,
16 which I don't disagree with them, is they're trying to get people out of the short-term rental
17 business because of the shortage. And they can always give it back in decades while, I think,
18 Maui we're trying to restrict it instead of get out of it. And so I think that's a, that's a political
19 thing. But thanks for bringing up that property tax.

20
21 Mr. Croly: And Commissioner Robinson, the way that real property tax is treating
22 condominiumized units right now, they're allowed to do short-term rental, is that each individual
23 unit owner is able to say whether or not they're making that use. And if they are making that
24 use, then they get put into the short-term rental tax classification. If they're not making the use
25 currently, they could either say or qualify as a homeowner. Or they could say I'm not making a
26 short-term rental use in which case they're put into the apartment classification. However -- and
27 this is a big however -- the Council is revamping the real property tax code as we speak. It's in
28 the Budget Committee. And an item came through Council, just last Friday, that would get rid of
29 the different treatments that condominium units are given. So if they get rid of that, then what's
30 proposed is if the building has that use allowed, all units in the building will be taxed at short-
31 term rental rate unless the owner is occupying that unit, and then they would qualify for
32 homeowner. So there wouldn't be that in between. I'm not making the use even though it's
33 allowed in my building. I may be making a long-term rental use in the building if the building is
34 allowed to be used for short-term rental, they're going to be taxed at short-term rental. And I'll
35 say, I have little bit of an issue with that because that, one's incentive then for that person to use
36 it short-term rental if you're going to tax me that way, then I want to do. But it's not a zoning
37 issue, it's a, you know, a real property tax policy issue. But I think these things, they interact,
38 you know. If the Zoning Department Planning is going to say this use is okay, then real property
39 tax is saying then we can tax it at that use, right?

40
41 Mr. Robinson: So is, is -- do you know how if it's an annual determination or is it a per owner
42 determination?

43
44 Mr. Croly: Up to this point it has been an annual declaration, okay. And the Department, the
45 Finance Department, has asked for a report from each homeowner association in the
46 condominiums to state how, which units and how they're used. And then if a unit sells, and the
47 new owner comes along, they're sent a piece of paper that says please declare your use, and

1 then send it in. I don't think the person has to declare the use every year unless the report from
2 the homeowner's association says, hey, change this guy's qualification and that guy hasn't, you
3 know, agreed with it. Then maybe they'll ask him for that declaration.

4
5 But it is -- yes, it is reclassified each year or it could be reclassified each year based on the use
6 that the owner says they're making.

7
8 Mr. Robinson: And I think that where, you know, as we're going through this, I think we have to,
9 you know, find out, are we just trying to stop growth, or are we trying to, you know, prohibit
10 growth? And let an owner determine now what they're going to be. Because again, it's
11 incentivizes. I have a unit that I've never used before, but I'm going to get charged at a TAT
12 rate. And I'm like, well, I either got to rent it out or I'm going to sell it to somebody else that's
13 going to do it. You know, I might not do it, but I'm going to get out because I'm not going to pay
14 a higher tax. And so I don't think that, I don't know if that's if that what our goal is, you know. It
15 might be, but you know, I would think our goal is to prohibit it. If we could get a criteria to state to
16 where it's maybe a onetime election, people can do it, and it's reviewed over every, you know,
17 every five years or something that they then could change the determination they can come up
18 again. I don't know. But I think tax is always the, is always what every property owner is looking
19 at.

20
21 Ms. McLean: And there are, and there are two . . . (inaudible) . . . to real property tax. There's
22 the assess valuation and then there's the rate. So the valuation is the hotel valuation for these
23 properties. And then the rate, it sounds like unit by unit, they can elect to say, you know, I'm
24 long-term, or owner occupant. But the assess valuation is to remain for the whole property so
25 that disincentive, if you will, is already there to a lesser degree than, than what might be
26 contemplated. But that's...you know, that goes through the Council Budget Committee. We
27 don't typically participate in that, but I think it would be helpful for them to understand that that
28 could be an incentive for people to, to convert.

29
30 Mr. Robinson: I mean, and I think we should try to work with it, to our criteria, and what we're
31 going to allow, you know, coincides with the tax, you know, instead of it being two separate
32 issues, we try to make it more, you know.

33
34 Mr. Carnicelli: And those are great points. And the thing is when we start going down the real
35 property tax rabbit hole, there isn't a simple solution. It's kind of like saying, okay, if we're going
36 tax highest and best use, the Harbor Lights is zoned Hotel, you know. So it's like, okay, do we
37 tax the Harbor Lights people at hotel rate because they could do, you know, by zoning, they
38 could do vacation rentals. So in trying to get as much revenue as we can by taxing short-term
39 rentals as Mr. Croly pointed out, are we going to -- is the collateral damage going to be those
40 long-term rental people that are there now? You know, like you said, if suddenly I got long-term
41 tenant, but I'm being taxed at, you know, hotel rates, I might have to go to hotel. So anyways.
42 But that's a public policy decision that happens on the eight floor of the building right next door
43 to us. And Mr. Hopper is holding his forehead right now going you guys are off topic again. So, if
44 you'd like to go ahead and come forward and testify on this item? You need to speak into the
45 mic.

46
47 Mr. Mike Accome: Hi. Hi everybody. My name is Mike Accome.

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Mr. Carnicelli: Hi Mike. You have up to three minutes.

Mr. Accome: Okay. Just a little bit -- just to give you a little bit about me, I have a --. I'm a marine naturalist, and I'm also a land base naturalist, and I also do the Hawaii programs I've learned about the . . . (inaudible) . . . of culture and just how to handle the land and the aina and the ocean and kai, the way you're supposed to in Hawaii. This is for Hawaii only where I educated at. That's just a little about me. And my particular apartment I found out, I guess, later that we should have been on this list that they're talking about, the moratorium list, but we were never put on the list. So the question I have moving forward if some of us who have been operating, and for me, my goal was to just rent a home and I own my home and I'm in the apartment district that's allowed vacation rentals. So I wanted to rent that room and for me, it made more sense to rent short-term than to rent it as long-term, just a room. What I enjoyed about it just so understand, I enjoyed that I got to, for instance, have people come stay with me that help put out fires in Lahaina a couple of years back. So they were able to stay with me to assist. So there's a, there's a nice, what I felt like I'm offering something positive to the community. And I also get a lot of people who come with me that are so interested how do I take care of the environment while I'm visiting this island. And for me, I was able, I'm able to sort of have a roommate now who I can either share that with if they are open, which most of them are, or not. So for me it was I enjoyed having new people coming in, who are happy, who are positive, who we didn't have -- know each other's habits and, and have a great experience of Hawaii. And try to do the best they can to represent the goodness and the sustainability of this island.

So moving forward my question would be for, for if you now suddenly say, if did not doing anything before 1989. Because a lot of you have to understand a lot of vacation rental knowledge we didn't -- nobody really knew. So we didn't know that we were allowed to do it really. We didn't know how we were to do it, if we could do it, when we could do it, how we could do it. It was never really determined. I came to the Planning Department. They were told I can do it. So I've been paying my TAT taxes, my GET taxes on this room, just on a room in my home. So it's -- you know, and then they don't know exactly how to qualify me now. I'm, I'm -- I should get an exemption because I live in my home, but I'm renting a room short-term. So how do you --? So now I have to -- what they've made me do now is they're making me take, like a percentage of the room, that percentage and then that part I would pay a certain amount now. That's what they're doing now because they've never had this done before. So this is all kind of new, and so I'm, I'm in this --. What I'm worried about is if people that were allowed to do it. I came in. I got the approval that I could do it and this was post 1989 because we should have been on the list. They told me we wouldn't get on the list. I don't know if we're on the list yet.

Mr. Carnicelli: Thank you Mike. That was your three minutes.

Mr. Accome: Oh so --

Mr. Carnicelli: I have a quick question for you. What complex are you in?

Mr. Accome: It's called Kalama Gardens in Kihei.

Mr. Carnicelli: Kalama Gardens. Okay, so then I have to admit, I wasn't here for the whole

1 presentation. But is there a way with which the list is going to get clarified for people like Kalama
2 Gardens prior to this being enacted?

3
4 Ms. McLean: Yes. And that's separate from this bill in a way because there could be other
5 properties that have those entitlements pre-89 and were doing vacation rentals pre-89 that
6 aren't on the list right now that would still qualify to be on the list. And I know of two complexes
7 that we will add to the list. Kalama Gardens is one of them. And I know that we've gotten at
8 least half of dozen other inquires of properties that we haven't gone all the way through yet to
9 confirm yes they're on or no they're not. But Kalama Gardens and there's one other one that will
10 be added to the list so you're good Mike.

11
12 Mr. Accome: Thank you.

13
14 Mr. Carnicelli: Okay. And so just for clarification. So, you know, the Minatoya list when it got
15 codified in 2016, it didn't say, okay well these people were doing short-term and now they can
16 do --. I'm sorry, they were doing long-term and now they can do short-term. It's just like, no, this
17 has been going on since pre-89 and it's just clarifying that. And so what this bill is trying to do is
18 saying, like, no we're not adding anybody new.

19
20 Ms. McLean: Exactly.

21
22 Mr. Carnicelli: Okay.

23
24 Ms. McLean: If you qualify. If this bill never goes forward we're still going to do the same
25 assessment. Some will get on, some will not. This bill doesn't change that at all. It just makes it
26 clear in the Code what we look at when we say you're on or you're not.

27
28 Mr. Carnicelli: Got it. Any other questions for the testifier?

29
30 Ms. La Costa: No, I just had one for . . . (inaudible) . . .

31
32 Mr. Carnicelli: For the testifier, anybody else? Thank you Mike. Thank you for coming.
33 Hopefully you can sleep a little better tonight. Commissioner La Costa.

34
35 Ms. La Costa: Thank you Chair. So with the Minotoya list, and if Kalama Gardens is being
36 added to it. What if the CC&R's prohibit it then which is the higher in power, if you will, for
37 enforcement on that?

38
39 Mr. Carnicelli: Great question. Do you want Hopper to answer or do you want to answer?

40
41 Ms. McLean: I wouldn't say that one is higher than the other. It's who enforces which one. The
42 County enforces zoning. We don't enforce CC&R's. That's up the homeowner's association. So
43 if the CC&R's prohibit it that would be up to the owners to enforce. We may say as far as the
44 zoning is concerned that it is lawful. But if the CC&R's prohibits it then that's for the owners to
45 enforce amongst . . . (inaudible) . . . I don't know if 19.37 plays into that. Mike, maybe you could
46 clarify.

47

1 Mr. Hopper: 19.37 doesn't have an effect on that. The CC&R's they exist separately from the
2 County Code. It's a private contract between the owners and they exist separately. Basically the
3 CC&R's could allow TVR use, but if the zoning doesn't, then the uses isn't allowed by zoning
4 and the County would enforce that. If the zoning allows it, and the CC&R's don't, then that
5 owner wouldn't be allowed to do TVR's under their homeowner's association rules, and the
6 homeowner's association would enforce that. But the County would say, no, you're allowed to
7 do this use, and would not enforce private CC&R's. Those are generally a private contract that
8 exists between homeowners. They could, you know, for example, there could be a complex
9 that's allowed to do TVR's right now, and CC&R's could be changed to disallow that. That's a
10 private matter that the owners could agree to among themselves, but the County doesn't
11 enforce that.

12
13 Mr. Carnicelli: Yeah, kind of like the Harbor Lights zoned Hotel, and their CC&R's don't allow
14 short-term rentals. So that's why you don't see any vacation rentals in Harbor Lights. And then
15 there's --

16
17 Mr. Robinson: Legal.

18
19 Mr. Carnicelli: Legal. Yes, thank you. Legal. And then there's the one complex village. Is it
20 Kenolio or something like that down in Kihei where there's two TMK's and one of the TMK's is,
21 is, I think, residential and the other one is hotel. And so the CC&R's don't allow it, but they were
22 having a hard time enforcing their CC&R's so they actually went for a change in zoning. So, it's
23 clear. So anyways, just as an example. Would anybody else would like to come forward and
24 testify on this particular item? Then seeing none. If there are no objections, we'll go ahead and
25 close public testimony on this item. Moving on. Director?

26
27 Mr. Robinson: I just have one question on this item and that's it.

28
29 Mr. Carnicelli: Sorry.

30
31 Mr. Robinson: Are we going to be able to get a list or map of the affected properties before we
32 vote or is that inconsequential?

33
34 Ms. McLean: We have the list posted on our website. In the next packet, we can provide that.

35
36 Mr. Robinson: It's on the website of our packet.

37
38 Ms. McLean: Of the --

39
40 Mr. Robinson: Or we have to look somewhere?

41
42 Ms. McLean: It's on the Planning Department's website. But we can include that in the packet
43 next time.

44
45 Mr. Robinson: And even if you just put a link on our, online, onto ours I can pull it up online.

46
47 Ms. McLean: Okay.

1
2 Mr. Robinson: Thank you.
3
4

5 **D. DIRECTOR'S REPORT**
6

- 7 1. **MICHELE MCLEAN, AICP Planning Director, transmitting the following**
8 **application to the Maui Planning Commission pursuant to the provisions of**
9 **the Maui Planning Commission's Special management Area Rules that the**
10 **following permit transfer has occurred by approval letter dated September**
11 **3, 2019.**
12

13 **MR. GREG WALKER OF KAI ANI DEVELOPMENT, INC. requesting a**
14 **transfer of Special Management Area (SMA) Use Permit from**
15 **Kai Ani Development, Inc., to Stenger & Cohen Holdings, LLC (transferee)**
16 **for the Cove Beach Village Apartment Condominium Complex on**
17 **approximately one (1) acre of land at 82 Kanani Road, Kihei, Island of Maui,**
18 **TMK: (2) 3-9-016:004 (SM1 2014/0005) (K. Lau Hee)**
19

20 Ms. McLean: Next we have Director's Report. The first item is a notification of an SMA Permit
21 transfer. And that's from Greg Walker of Kai Ani Development transferring the permit to, for the
22 Kai -- excuse me, for the Cove Beach Village Apartment Condo Complex to Stenger & Cohen
23 Holdings. And again, this is just for notification purposes. Any questions on that?
24

25 Mr. Carnicelli: Commissioner Robinson?
26

27 Mr. Robinson: I comment a couple of times on these transfers. I was never a fan of us going
28 through a meeting and knowing who we're giving SMA Permits to and their, and their work
29 history and they following the rule history.
30

31 Mr. Carnicelli: Credibility.
32

33 Mr. Robinson: Their credibility. And we have a transfer, and the transfer is a P. O. Box in Maui
34 which means they don't even have an office building here. That always concern me that it's
35 automatic. I wish there was some other way this would happen or some other type review
36 besides it's an automatic SMA transfer. Thank you.
37

38 Mr. Carnicelli: And just a -- when does this SMA expire? How long do they have?
39

40 Ms. McLean: It was granted in 2014. And if it has a standard condition, it would be five years to
41 initiate construction, and then five years to complete after construction is initiated.
42

43 Mr. Carnicelli: Okay, thank you Director. Any other questions?
44

45 Ms. McLean: If I could ask Commissioner Robinson. Do you want to see more info in the
46 packet?

1
2 Mr. Robinson: I think, again, it's always criteria, right? It's not that I always have to have it, but,
3 you know, it's, it's who are we giving this SMA Permit to? You know, is it just a request from an
4 owner who sold the property. So do these people have financial, you know, credibility, you
5 know? Or just because they're the new owners, they automatically get a, they get a transfer.
6 And, they don't -- like I say, they have a P.O. Box here. They don't have an office set up. So if
7 they're going to start construction here, which it has to be this year, but yet then don't even have
8 a local address, you know. That's a concern, but, yet, they have this SMA Permit, you know. Or
9 they're a real estate broker that is buying the property and going to flip it, and then we got
10 another transfer for an SMA, you know. An SMA Permit is, you know, it's an arduous task to get
11 one. It's just being, you know, signing it over. I don't know what the full review is of the
12 Department, but I would like to have bit more information. At least you have a three check
13 system. Yes, they're financially stable. They have no, no knocks against them with the local
14 contractor association or, you know, something instead of just nothing.

15
16 Ms. McLean: Okay. We can provide that. I would comment that having a P.O. Box doesn't mean
17 you don't have an office.

18
19 Mr. Robinson: Yeah.

20
21 Ms. McLean: You may just have an office that doesn't get mail delivery. So, but with this
22 particular one, I don't know. But, we can provide more information in the packet.

23
24 Mr. Robinson: Thank you.

25
26

27 2. **Reports to the Commission**

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The Department is asking the Commission if they have any preferences for possible modifications to the standard format for reports to the Commission.

33 Ms. McLean: Next item, again, we wanted to take advantage of the light agenda and ask the
34 Commission if you have preferences for modifications to our staff reports. We had some internal
35 discussions with our Current Planners, who are the ones who typically present to you. Jeffrey
36 Dack is one of the supervising planners in that division. We had a variety of ideas including a
37 table of contents, an executive summary, doing lines, numbering the lines in the margins. Or, if
38 you're happy with them the way they are, then we won't make any changes at all. Jeff is
39 distributing a sample and he can walk us through some of these examples. So, we're trying to
40 make these more user friendly for the Commission and would like to have your input.

41

42 Mr. Jeffrey Dack: Thank you. Jeffrey Dack. Yeah, as the Director mentioned there were three
43 options that were considered by the planners. One reason this is coming up now is you've heard
44 some presentations, I'm sure, a few times over the last few years, from Jacob Verkerke, of
45 Information Technology, about the MAPPS project. We're moving into updating our digital
46 processing. And we're trying to -- one of things we're going to try to do is put the staff report into
47 a template so it would be easier for planners to work with. But it would be hard to change it after

1 we do that so we have a discussion at a current recent planner's meeting. You know, if you
2 want to, if you want to make consideration -- if you want to consider changes to the staff report,
3 now would be a good time before it gets configured into the computer system. That's what
4 brought this forth this time.

5
6 These changes that are here have been talked about by planner various times in the past. You
7 know, Director Michele mentioned that this would be a good opportunity to bring to the
8 Commission. So there are three examples in here. First, if you can --. So you see in the first two
9 pages are the normal starting pages of the staff report. And then the first exhibit is an example
10 of an executive summary. And there are some -- at least there were examples of some other
11 jurisdictions that have an executive summary at the start of our staff reports. If you're interested
12 in an executive summary, this is just a sample of how it could look like. And if you wanted to
13 have an executive summary, we would want to have some guidance from you, what you would
14 like to see inside the executive summary.

15
16 So the second, if you move to exhibit two, that's an example of how the staff report, right now,
17 could look with numbering on the left hand side as a legal document, as the Director mentioned,
18 so it could be easy for people to refer to. And then some planners thought it would make it look
19 kind of dizzy, etcetera. But, again, we wanted to see what Commissioners interest was.

20
21 And then if you move on to exhibit three, you will see an example of a, again the first page of
22 the staff report. Then a table of contents at the start of the staff report. There are at least some
23 planners who actually just do this already anyway because it provides an easier means of
24 navigation around the staff report as they're preparing it. We're not absolutely sure but when we
25 think that if this were chosen that even though we would be doing our staff reports in Word, and
26 they eventually come out in PDF, we were thinking the same kind of links that we find that could
27 be available to us in Word Documents could be brought into PDF. Although we're not sure of
28 the technical capabilities of that.

29
30 So those are the three examples, and just wanted to see if Commissioners had any particular
31 thoughts on those and, or any others that you might just -- anything that's been gnawing at you
32 over the years of problems with the staff reports as the way they, the way they've been right
33 now missing something, moving things around. Thank you.

34
35 Mr. Carnicelli: Thank you Jeff. Don't go away. My first comment or question or thing that I want
36 to throw out there is I also want to look at this through the lens of the public. You know, the nine
37 of us read this stuff twice a month. We go through it. You know, there's a little bit of a learning
38 curve for each one of us when we first come on the Commission, but you sort of learn how to go
39 through this. However, the public doesn't. And so whatever we do, I think, that we need to keep
40 in mind how is this going to make it easier for the public to read it and understand it more, you
41 know, even more so. And then with that being said, most of the public won't read it, and don't
42 read it, and they show up for just to watch the, the presentation. And then they either have an
43 opinion before they get here without reading anything, or they watch the presentation and then
44 they have an opinion about. So whatever we do, you know, on paper, what I would like to see is
45 for presentations to also have a format and formula which is repeatable. You know, so I know
46 whether it's, you know, Livit, or Candace, or Kurt, or whoever that is going to come do a
47 presentation it's going to be cookie cutter. And I don't know how hard that is for you guys to do.

1 But I think that that would be really beneficial for us. And in that, I think, one of the biggest
2 pieces of it would be the "why are we here?" You know, it's like, okay, we're here because this
3 person needs a Special Use Permit and here's the criteria for a Special Use Permit. I think the
4 presentation if it could be, like, there could be a focus on why we're here, and what is the criteria
5 with which the nine of us need to make a decision on that particular item. So that's just me
6 throwing that without going into the specifics. I do love the table of contents by the way. That's
7 just --. And not just because my friend, Kyle Ginoza, is on the, the names on it. But anyways, so
8 other comments?

9
10 Mr. Robinson: . . . (Inaudible) . . .

11
12 Mr. Carnicelli: Why are we here? Just in big bold letters. First slide, right? Why are we here? I
13 can hear Kurt saying it right now. Anybody else have comments? Commissioner La Costa.

14
15 Ms. La Costa: Thank you Chair. The formatting on Exhibit (2) is I find too busy. I think that if
16 we're discussing something we can say third paragraph, third sentence, rather than line 25, just
17 from my --

18
19 Mr. Carnicelli: Feels too attorney-ish. No offense Michael. Other comments? So I guess I'll go
20 back then to --. Would, would Exhibit (1) versus (3), is sort of the table of contents, would it be
21 in lieu of an executive summary? Or could we kind of have -- or maybe like just a project
22 summary maybe as part of the why are we here in that table of contents. But I think the table of
23 contents is, is at least helpful for me. Because I tend to, like even when I write, it's more in this
24 sort of format.

25
26 Mr. Dack: Well, you know right now, we always lead off our text with a description of the project
27 which is pretty much a project summary.

28
29 Mr. Carnicelli: Right. Right.

30
31 Mr. Dack: And then we get into the --. You know, sometimes there's a brief history that's
32 relevant. But often times we just go from the project summary, then description of the land, so
33 you've got the big picture right up front. That's the way it's formatted now.

34
35 Mr. Carnicelli: Right. Right. Yeah, and then so like the power point could just kind of be, you
36 know, based on this outline format, you know. I mean, I don't know. I mean, whatever you guys
37 think. But, again, I go back to how is this more digestible for the public in general? Because we
38 tend to know how to read through this, and what to look for and not, more so than, you know,
39 testifiers, people that want to come forward and give us their mana`o.

40
41 Mr. Dack: Well, I'm hearing one favoring table of contents, and I'm not hearing any objections to
42 that so I think we can probably run that direction.

43
44 Ms. McLean: I think that we would do we would start like we usually do with a project description
45 or project summary and then a table of contents after that?

46
47 Mr. Carnicelli: Sure. Before or after; it doesn't really matter.

1
2 Mr. Dack: We'll try. We can do either way. Yeah.

3
4 Mr. Carnicelli: Commissioner Robinson.

5
6 Mr. Robinson: Yeah, I think the table of contents will help the...the Department as well when we
7 have these questions, you can refer to the table of contents instead of page-27 or, you know, it's
8 yes commissioner, table of contents, refer to Item . . . (inaudible) . . . it says this or it says that,
9 you know. Water, electric, all that type of stuff, I think that helps a lot of our interaction.

10
11 Mr. Carnicelli: Yeah, where's the TIAR? Oh, page-26. Oh, we're the drainage?

12
13 Ms. La Costa: Thank you Chair. The executive summary will be reviewed, I think, more by the
14 public rather than going into the manusha of every single page. So if you're concerned as we all
15 are about the public's perception and understanding, executive summary is very succinct and
16 they can read that and figure out what the basis of the . . . (inaudible) . . .

17
18 Mr. Carnicelli: Yeah, I would absolutely agree. That's kind of going back to the why are we here
19 thing where, you know, sometimes we're here for an SMA Permit, and people just want to stop
20 the project. You know, saying like, no, nothing should be built here. Well, it's like, that's not what
21 we're deciding. You know, we're making a decision on an SMA. So, and I don't know if that will
22 ever be clarified, but I think the more that we can help clarify that, I think, that the better it will
23 be.

24
25 Mr. Dack: I'm hearing, I'm hearing favoring of the executive summary too. We can work, we can
26 try to work on that. We can bring something to you and you can, we can --. Well, we probably
27 have some time to change things later. But we can certainly work on those.

28
29 Mr. Carnicelli: Sure. Thank you Jeffrey.

30
31 Mr. Dack: Thank you.

32
33 Mr. Carnicelli: We'll see you on the 28th.

34
35 Mr. Dack: Yes, thank you.

36
37 Mr. Carnicelli: 22nd. Sorry. 22nd, yes.

38
39
40 **3. 2019 Hawaii Congress of Planning Officials Conference (HCPO)**
41 **September 11-13, 2019 on Maui. Reports from Members who attended the**
42 **conference.**

43
44 Ms. McLean: Next item on the agenda is the 2019 Hawaii Congress of Planning Officials
45 Conference that we hosted September 11th to 13th. And if members attended that conference if
46 you'd like to report back to the Commission.

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Mr. Carnicelli: Commissioner La Costa.

Ms. La Costa: Well, except for me falling and hurting myself on the first day, I actually . . . (inaudible) . . . I really like the site visits. I went up to Kula, and I didn't even know there was an olive oil farm here on Maui, so that was really interesting, and they have killer caramel. So if you want some goat milk caramel, it's, it's delicious.

I also really like the fellow who did the traffic. The speaker who was selling books outside. Sorry, I don't recall his name.

Ms. McLean: Jeff Speck.

Ms. La Costa: Thank you. I don't have my notes in front of me. It was very interesting. I spoke with him afterwards about several issues and he suggest I read his books if I wanted more information which I thought was rather interesting. And I said, of course. But, as a whole, it was a really good conference, so I appreciate the opportunity to attend.

Mr. Carnicelli: Commissioner Robinson.

Mr. Robinson: I enjoyed the presentation, in the main room, about Kauai, and how they redeveloped the Hanalei area. And I don't know if any of you guys went there before the storm, but it was, it was terrible. You know, I went there when I was younger and I went there a few years ago, and there was no parking. There was no regard for anybody. It was just a dead end for tourists who had nothing to do on an island. And how they took advantage of that time and how all of the departments worked together. I thought it was a good testament to Kauai, and hopefully the rest of the State has those little areas that we think are that way. And when the opportunity or the iron strikes. You know, Honolulu, the Pali went down, so they jumped on that project. You know, I think that's what good planning is having these things that are in the pipeline that we'd like to do. And once the opportunity arises, you know, having the will to go ahead and did it. And I think Kauai should have. Kauai had the perfect opportunity, and I think the Pali, when the Pali went down, and they fixed that highway that was going to take a lot longer, they did that too. And I think that's, I think that's a couple of good, good instances of a good government, you know. Even the Department of Transportation, so it's pretty good.

Mr. Carnicelli: Commissioner Thompson.

Mr. Thompson: Perhaps they should do that to the road to Hana, similarly. In fact, we're not the only tourist area in the country. And I was at Lake Tahoe. It was a nice weekend out. Everyone parking all over the road, and you know, get out, and get pictures. And I'm sure the locals are like, idiots, they're parking in the middle of road, and you know they're wandering around the street. And I'm sure if you live in Hana, you tend to hate tourists for that very reason. I think we should demonism them. I think we should...you know, we should build our, our plan to fit them in instead of vice-versa. So, yeah, kudos to Kauai. They did that, and maybe we'll take a page out of their book.

1 Mr. Carnicelli: For me, I also loved Jeff Speck's talk on new urbanism. I thought that was really
2 interesting how he talked about, you know, cities sort of formed naturally, and they worked. And
3 then when the Industrial Revolution came, and all the cities filled up with, you know, pollution.
4 And so planners came along -- and he used himself -- he said planners came along and said,
5 oh, we're going to put residential over here, we're going to put commercial over here, we're
6 going to put industrial over there. And now, 70 years later, we're trying to undo that thing which
7 we did for 70 years, and we're trying to go back to smart growth, and you know, mixed use, and
8 putting everything back, you know, together as it once was which I thought was a very
9 interesting way.

10
11 The other thing too that I thought that -- I mean just kudos to you Director and your staff. In my
12 former life, I used to do in excess of like six conferences a year. Been to a lot of conferences,
13 and it was really well run. So I just want to say thank you to you and your staff. Nobody, nobody
14 got, you know, got videoed and put on Facebook. It was --. No, it was outstanding. It was very
15 well run. Everybody was polite. The facilities were great. A lot of good content. And a lot of good
16 choices too. Like, if you wanted to go, you know, one direction, you could do that. If your flavor
17 was something else, you could do that. And so I just thought you guys did an outstanding job.
18 And so, what is it, four years from now you get to do it all over again. Five years from now you
19 get to do it all over again. So, anyway, kudos to you.

20
21 Ms. McLean: And the credit goes to the staff. They did -- they worked. Started working on this,
22 many, many months ago, and it was all hands on deck. Whether people were staffing the
23 conference, or back in the office holding down the forth here, while the rest of us were over
24 there, so they get all the credit for that.

25
26 Next we have --

27
28 Mr. Robinson: And, and the venue was great.

29
30 Mr. Carnicelli: Yeah.

31
32 Mr. Robinson: You know, I've been to a couple of them. The venue was great. The, the way you
33 guys --. You know, we had the meals and there were a lot of interaction with people. And
34 everybody sort of went to their rooms next to each other so you got to see everybody at a
35 conference instead of before. It's all in different, you know, different zones, so I thought that was
36 an opportunity for everybody as well.

37
38 Ms. McLean: We had tried to --. Last time we hosted it was also at the Sheraton. We tried to go
39 to South Maui just for variety, and we could not get in. They were --. The places that had the,
40 the accommodations and facilities that we needed were booked. They laughed at the price
41 range we were talking about and so, okay, we go back to the Sheraton.

42
43 Mr. Robinson: Thank you Chair.

44
45 Mr. Carnicelli: You know, okay you bring up a good point too because a lot of times when you
46 go to conferences like that, the separate -- the break out rooms are all over the place where this

1 was it was pretty condensed. So it wasn't like anybody got scattered. So that actually was a
2 great point.

3
4 Mr. Robinson: . . . (inaudible) . . .

5
6 Mr. Carnicelli: Right. Right.

7
8 Ms. La Costa: And thank you for MC'ing the panel. You did a great job.

9
10

11 **4. SMA Minor Permit Report**

12
13 **This is for notification and review purposes. No action is anticipated.**

14
15

16 **5. SMA Exemptions Report**

17 **This is for notification and review purposes. No action is anticipated.**

18
19

19 Ms. McLean: Next we have the SMA Minor and Exemptions Reports for notification and review
20 purposes. Are there any questions?

21
22

22 Mr. Carnicelli: I have one question. How far behind is SHPD?

23
24

24 Ms. McLean: I don't know. Maybe Jeff has a --. Jeff is more --

25
26

26 Mr. Carnicelli: Look at that big smile he's got on his face right now.

27
28

28 Mr. Dack: I can't really say how far, but it's still, it's still a significant issue. It's unfortunately a
29 never ending challenge.

30
31

31 Mr. Carnicelli: Yeah. Because I mean, sometimes it's like an SMA Exemption that can get held
32 up by SHPD for months.

33
34

34 Mr. Dack: Yes. Yes.

35
36

36 Mr. Carnicelli: It's got to drive you guys crazy.

37
38

38 Mr. Dack: Yeah, and we feel badly for our, you know, for the applicants, of course. They're the
39 ones --. I mean, it's frustrating to us, but it's worse for them of course.

40
41

41 Mr. Carnicelli: Sure.

42
43

43 Mr. Dack: Yeah, it's still, it's still a significant problem.

44
45

45 Mr. Carnicelli: Thanks.

46
47

1 **6. Discussion of Future Maui Planning Commission Agendas**

2
3 **a. October 22, 2019 agenda items**

4
5 Ms. McLean: And lastly you have your memo from Mr. Yoshida with the next agenda. We have
6 a public hearing item on the bills that Ana reviewed at the beginning of this meeting. That will be
7 up for public hearing, and the Commission's recommendations. We'll also do the presentation
8 on beach restoration activities that we're involved in. And then the workshop on the SMA and
9 Shoreline Rules with Dr. Fletcher from UH Manoa. And we will have our new Commissioner
10 joining us at the next meeting. Kawika Freitas.

11
12 Mr. Carnicelli: And he is our Hawaiian Practitioner member. He works for Old Lahaina Luau.

13
14 Ms. McLean: If I could ask the Commission, do you have a preference of which items would
15 come first. Do you want to do the Apartment District bills first, and just do your recommendation
16 on that? And the rest of the time spent on SMA and Shoreline, or the other way around? It's
17 really your folk's decision.

18
19 Mr. Carnicelli: You know what, I think, let's -- since we did a workshop today, and it's not going
20 to be new, I think that the A1, let's just leave it as it is.

21
22 Ms. McLean: Okay.

23
24 Mr. Carnicelli: Because I think that we can, hopefully, not necessarily burn through it, but we can
25 get through that first, and then spend the rest of the day on the beach.

26
27 Ms. McLean: Okay.

28
29 Mr. Robinson: I have a question. Is there going to be public testimony on the items being seen?

30
31 Mr. Carnicelli: Yes.

32
33 Mr. Robinson: Maybe have that first. I'm thinking because the public will be here and as much
34 time. Otherwise we'll have to sit through the A1 which is just a recommendation. It's not really a
35 --. That's all. That's what I'm thinking. You know, he's going to fly in, people are going to come if
36 they want to come and we can get that done because that might run long.

37
38 Mr. Carnicelli: Well, and we're going to do public testimony after his presentation too. So, sure,
39 we can move Chip first, and then...do our recommendation -- yeah, and then do Title 19 and
40 then Jim can go last, I guess. Or does -- should, should --?

41
42 Ms. McLean: (B) and (C) kind of go together.

43
44 Mr. Carnicelli: They do go together? How long is, how long is Jim's presentation?

45
46 Ms. McLean: Oh, 15 or 20 minutes and then Q&A.

47

1 Mr. Dack: Yeah, we're thinking that the whole item with the presentation, Q&A, maybe about 30
2 minutes.

3
4 Mr. Carnicelli: Oh, you mean with Jim and Chip together?

5
6 Mr. Dack: No, I'm sorry. I apologize. With Jim and maybe Q&A from the Commission, maybe 30
7 minutes max, total, for the item, for the beach restoration. And then we would go into the, the
8 Chip's presentation and further discussion on that. It's separate items.

9
10 Mr. Carnicelli: So you prefer to do Jim's thing before then Chip then, not the other way?

11
12 Mr. Dack: No, just the other way.

13
14 Mr. Carnicelli: This is sort of a set up.

15
16 Mr. Dack: Yes, thank you though.

17
18 Mr. Carnicelli: Then, yeah, we can kick Title 19 until after.

19
20 Ms. McLean: Okay.

21
22 Mr. Carnicelli: Because, because there's not really going to be any testimony on that. But as
23 Keaka said, I would imagine there will be a lot of people wanting to testify on the, on the
24 workshop, so, okay, we can do that.

25
26 Mr. Dack: Thank you.

27
28 Mr. Carnicelli: Yup. So Chip needs to fly in a little earlier.

29
30
31 **E. NEXT REGULAR MEETING DATE: October 22, 2019**

32
33 **F. ADJOURNMENT**

34
35 Ms. McLean: Okay. And so the next meeting will be as we just discussed on October 22nd.

36
37 Mr. Carnicelli: Anything else? Any new business? Seeing none, we are adjourned. Although
38 before I adjourn, I want to say, again, thank you very much Vice-Chair Thackett for taking the
39 reins. We are adjourned.

40
41
42 The meeting was adjourned at 10:20 a.m.

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Respectfully Submitted by,

LEILANI A. RAMORAN-QUEMADO
Secretary to Boards and Commissions II
For CAROLYN TAKAYAMA-CORDEN
Secretary to Boards and Commissions II

RECORD OF ATTENDANCE

Present

Lawrence Carnicelli, Chair (in attendance at 9:22 a.m.)
Stephen Castro
P Denise La Costa
Keaka Robinson
Christian Tackett, Vice Chair
Dale Thompson

Excused

Kellie Pali
Tina Gomes

Others

Michele McLean, Director, Department of Planning
Michael Hopper, Deputy Corporation Counsel, Department of the Corporation Counsel