

MAUI COUNTY CULTURAL RESOURCES COMMISSION  
REGULAR MINUTES  
AUGUST 1, 2019

**A. CALL TO ORDER**

The regular meeting of the Cultural Resources Commission (Commission) was called to order by Vice-Chairperson Ivan Lay at 11:00 a.m., Wednesday, August 1, 2019, in the Planning Department Conference Room, First floor, Kalana Pakui Building, 250 South High Street, Wailuku, Island of Maui.

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

Vice-Chair Lay: The Cultural Resources Committee is now called into session. At this point, I'd like to welcome everybody and thank you for coming to our Cultural Resources meeting today. We'd like to open up by welcoming a new commissioner, and then to make sure it's pronounced right, can you please state your name to help me out?

**B. INTRODUCTION OF NEW MEMBER - KA`APUNIALI`IONALANIKI`EKI`IE AIWOHI**

Mr. Aiwohi: My name is Ka`apuni`ionalaniki`eki`ie Aiwohi.

Vice-Chair Lay: Nice. How would you like us to address you?

Mr. Aiwohi: As Ka`apuni.

Vice-Chair Lay: Ka`apuni. Welcome aboard, Ka`apuni. Ka`apuni, can you tell us a little bit about yourself? A little background history?

Mr. Aiwohi: So I started off speaking Hawaiian at home with my family. They introduced me to the Punanaleo Program. This was a little while ago, and then I went to the Kula Kaiapuni System. After Punanaleo, I went to Paia, Kalama, and Kekaulike, and that's where I get a lot of my cultural background. After that, I did go school in Arizona for four years, got my pilot's license. At the end, I realized what I really needed in my life was to move home, so I moved home and started a new chapter in my life. Yeah, I'm not sure how much you guys wanna know.

Vice-Chair Lay: Thank you, Ka`apuni. Very -- welcome aboard. We're -- a diverse group is always great, get more information in, and as a younger islander, we appreciate the -- what you're going to be sharing with us.

**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. Maximum time limits of at least three minutes may be established on individual testimony by the Commission. More information on oral and written testimony can be found below.

Vice-Chair Lay: Okay, next on the agenda, we're going to be going to our letter that was sent, that we're putting out in -- this would be item number, oh, excuse me. Yeah. First we're going to open up to public testimony. At this time, we're going to ask if anybody wants to come and testify, step forward, we're going to give you three minutes to testify. Do we have anybody that would like to testify today? Seeing none, we're closing public testimony and moving to agenda item -- agenda item -- I'd also like to say that Tanya is going to be a little late today. She has some business going on so I'm -- she's not going to make it today, so I'm going to be the Chair today. Honor and a privilege. And we're going to item number -- item E.1.

*Vice-Chair Lay read the following agenda item description into the record:*

#### **E. UNFINISHED BUSINESS**

- 1. Follow up discussion on Ke'eaumoku Kapu's presentation received at the June 6, 2019 meeting regarding issues and opportunities on lands in and around County Historic District No. 1 in Lahaina. Based on this presentation, the Commission may develop recommendations to the Mayor, County Council, and County Agencies for implementing meaningful interpretive programs for public lands in County Historic District No. 1.**

***The Commission may encourage the county, state, and federal governments, and the private sector to implement appropriate strategies, curatorships, and meaningful interpretive programs at significant historical and archaeological structures, sites, and districts pursuant to 2.88.060.M.4, Maui County Code***

Vice-Chair Lay: Annalise?

Mr. Kanahale: Just a point of order. Do we -- do we need a motion to change the agenda? It's okay with the Chair ...(inaudible)...

Ms. Desjardins: I think it's okay just 'cause we're changing the order rather than actual agenda so but --

Mr. Kanahale: Okay. Thank you. I just wanted to check.

Ms. Kehler: Thank you, Chair. So at the June 6<sup>th</sup> Cultural Resources Commission meeting, Mr. Kapu came and talked or presented on some of the challenges and opportunities for lands, particularly public lands in County Historic District No. 1, in Lahaina, and at that meeting, we had Corporation Counsel Richele Thomson with us and she pointed out that one of the Commission's powers is to sort of advise government agencies on ways that they can promote preservation, basically, essentially, so what I have done is drafted up a letter to Mr. Kapu kind of summarizing what the Commission heard in that -- in that presentation, and then so what -- what we're doing is we would be sending this letter to him so that he can confirm that we heard his recommendations accurately. And then once we get the confirmation from Mr. Kapu, we could begin sending letters out to the appropriate bodies who make decisions about budgetary items and allocating funds to implement some of these projects.

So in your mail outs, you got the draft letter, and I just wanted to put it on the agenda so that the Commission had a chance to review it and comment on it before we send it to Mr. Kapu. So, at this time, I'd just like to hear any comments or concerns or corrections that you would like me to make to the letter so that I can get the letter formally drafted for the Chair's signature.

Vice-Chair Lay: Commissioners, any comments to that draft? Commissioner Kanahele.

Mr. Kanahele: Chair? Thank you, Chair. One of the things that Mr. Kapu spoke about was something along the lines of a place -- a place to curate historic artifacts in Lahaina. You know, we, you know, I guess you call it a "museum," so I -- he had -- I remember him talking about that in his presentation, someplace to curate historic artifacts that are found in the Lahaina Historic District I think he -- he talked about, so I don't know if that's something we might wanna bring up to the powers at be. You know, a lot of things get curated privately by archaeologist. A lot things get sent to Oahu to the Bishop Museum. We have a museum here. We have the Bailey House Museum. But we have a lot of things that are at the Bishop Museum, and so if we maybe had the -- the ability to curate more things, perhaps it would stay here where they would, you know, I guess be at home.

Ms. Kehler: Okay.

Mr. Kanahele: So just a thought.

Ms. Kehler: Yeah, no, thank you for bringing that up because sometimes I can't catch everything so thanks.

Vice-Chair Lay: Commissioners, anymore comments or suggestions? Annalise, well done. I read through it. Really nice.

Ms. Kehler: Thank you. So everyone is comfortable with what's stated in the letter with the addition that Commissioner Kanahale made?

Vice-Chair Lay: We need a motion to incorporate that into this letter.

Mr. Kanahale: I guess since I was talking about it --

Vice-Chair Lay: Sell the product.

Mr. Kanahale: Yeah, I'd like to make a motion to include in the letter something along the line of a -- of beginning discussion for a place to curate historic artifacts and cultural properties in the, you know, the Lahaina Historic District, and so just to begin that discussion amongst the -- the parties that be and with a goal of maybe actually having a place where it -- it can, things like that can be curated. That's my motion.

Vice-Chair Lay: Any second?

Mr. Ropa: Second.

Vice-Chair Lay: It's been motioned and second. Any discussion on the motion on the floor?

Mr. Ropa: So I know Mr. Kapu said he had a place, a cultural center in Lahaina. Is it like -- can we use that as a curating office or someplace to store the artifacts of Lahaina?

Ms. Kehler: I believe that he does hold some items there currently. He might have things from Friends of Moku`ula. But I do know that he's currently using Na Aikane as a place to store some items.

Ms. Albino: Can you -- can we be more precise as to what proposed flag is to be raised at Kamehameha Iki Park? It just says, "proposed flag."

Ms. Kehler: Oh. In the letter, it says, "Kamehameha III's standard," which is his flag. So that's the one, I believe, that Mr. Kapu was talking about erecting the flagpole to fly that flag.

Ms. Albino: Okay.

Ms. Kehler: Yeah.

Vice-Chair Lay: Okay, all in favor of the -- anymore suggestions or comments on the motion on the floor? Seeing none, call for the vote. All -- all those in favor of adding this to our draft, say aye? Those oppose? Motion carries.

**It was moved by Commissioner Daniel Kanahale, seconded by Commissioner Michael Ropa, then**

**VOTED: to include in the letter something about beginning discussions for a place to curate historic artifacts and cultural properties in the Lahaina Historic District with a goal of maybe actually having a place where things like that can be curated.**

(Assenting: K. Aiwohi; L. Albino; I. Bassford; Y. Celiz; D. Kanahale; I. Lay; M. Ropa)

(Excused: T. Lee-Greig; M. Wagner)

Vice-Chair Lay: Now we're going to need a motion -- can we adopt the letter now which -- okay. So at this time I'd like to adopt this draft and make it a letter that we can formally send to Keeamoku Kapu, so we need a motion on the floor for that.

Mr. Kanahale: I'll make that motion.

Ms. Albino: I second.

Vice-Chair Lay: We have a motion on the floor, it's been seconded. Any comments on the motion on the floor? Okay, for me, this letter is great. Stuff that we need in Lahaina. Very important that we have our history there and it's a pinnacle of a part of Maui, a very important part of Maui, so I'm glad that we have this going -- going forward, and I hope Keeamoku Kapu can make this happen and gets the funding that he needs to make it happen.

Ms. Kehler: Thank you.

Vice-Chair Lay: We have a motion on the floor. Call for the -- call for the motion. All those in favor?

Ms. Kehler: Did you get a second? Sorry.

Vice-Chair Lay: Oh.

Ms. Desjardins: Yeah.

Ms. Kehler: Yeah. Okay. Sorry. Sorry.

Mr. Kanahele: Louella.

Vice-Chair Lay: Any oppose? Seeing none, the motion carries, and we got our draft letter going out.

**It was moved by Commissioner Daniel Kanahele, seconded by Commissioner Louella Albino, then**

**VOTED: to adopt the letter with the addition as discussed and voted on.**

(Assenting: K. Aiwohi; L. Albino; I. Bassford; Y. Celiz; D. Kanahele; I. Lay; M. Ropa)

(Excused: T. Lee-Greig; M. Wagner)

Ms. Kehler: Thank you.

Mr. Kanahele: Thank you.

Vice-Chair Lay: Our second agenda item, we're jumping back to our page one, and we got a training program that's going to be going on. Annual Commissioner Training Part I.

Ms. Kehler: Okay, so Mimi will do the first half of the training, and I'll help you with the second half.

Vice-Chair Lay: Thank you.

## **D. NEW BUSINESS**

### **1. Annual Commissioner Training Part I (M. Desjardins)**

#### **a. Contested case hearings and procedures**

Ms. Desjardins: There we go. Okay. Alright. Thank you everyone. So I'll try to make this as exciting as possible but, basically, what we're going to start with is a discussion about contested cases, and, essentially, contested cases are covered by Hawaii

Revised Statutes, Chapter 91, that's the overall Hawaii law, State law that then gives the authority to all of these various commissions to enact rules that allow you to conduct a contested case. So for this Commission, the definition of a "contested case," what do we mean by that, it's a proceeding where a somebody's legal rights, duties, or privileges are required to be determined after an opportunity for an agency hearing, so there are going to be certain types of things that are going to come before this Commission where somebody has the right to something more than just recommending things, or making suggestions to a state or federal agency, where somebody actually has, you know, like design plans or things where people are -- you're making decisions about people's rights and duties. They need to be done in a more formal way because those types of things can actually be appealed by the parties to the circuit court if they don't like the decision that this Commission makes.

Some contested cases require a public hearing and some do not. I can't think of one that does not require one right now that would appear in front of you folks, but, as commissions go, you guys have a pretty broad spectrum of things that you -- that actually come before you compared to some commissions that are more narrow, so Hawaii Revised Statutes, Chapter 91, is the Hawaii law, but Chapter 12 -- Title 12-530, subchapter 4, are your planning commission rules that govern contested cases. So do all of you have a copy of our rules and procedures for this Commission? Is there anybody that does not have a copy? You should've gotten them in your notebook. I always suggest, don't take my word for it, sit down and read those rules as you progress in your duties as a commissioner. I find even reviewing it today to do this presentation that I learned a little bit more every time that I read it. So become familiar with our own rules because there's a lot of what are authority is or your authority is in there.

So some of things that are required in a contested case involve notice, we're not going to get into the nitty-gritty of it, but I'll tell you that there are specific notice requirements, the Planning Department takes care of that, they need to provide notice to the public about contested case. The parties to a contested case have the right to submit evidence before this body, that becomes part of the record, and then that would go up to the circuit court on appeal. The circuit court can only review the facts as they are in the record, so if the party wants to submit something to you to consider, they have to admit it into evidence or ask that it be admitted into evidence. The parties have the right to cross-examine testifiers that appear. If, for example, when we do our public testimony, if somebody comes up and says I'm here to testify on contested case A, that becomes part of the record of that contested case hearing. The parties, if they're represented by counsel or even if they're on their own, they have the right to cross-examine those people that come in and testify and inquire about where they got their information or ask them questions about what it is that they're opposing or supporting.

The party who's initiating the proceeding, who's come to you and asked you take some kind of action has the burden of proof, meaning that they have to produce enough evidence to persuade you. The standard of proof that's applied is called a "preponderance of the evidence." So you've heard of like beyond a reasonable doubt, those are criminal cases. Clear and convincing evidence is sort of middle ground evidence. But "preponderance of the evidence" means more like 51 versus 49 percent, so it's a low burden. You don't have to be satisfied to the higher burdens whether something should or should not be allowed, just preponderance of the evidence. And then also intervenors are allowed in contested cases, so if somebody wanted to intervene in a particular project or something that you folks were doing, they would have to come here, there's a whole layout as to how intervenors are allowed to come in, that's a decision for the Commission to make. And if it comes to the point where we have a contested case, we'll talk in more depth about it at that time.

So you're going to consider the whole record, alright, or you're going to consider portions of the record that are cited by the parties when you're trying to make your decision. You have -- we have to make sure that the Commission's decisions are in writing so, in other words, you make a decision to say deny a certain design plan. If that -- they have the right to appeal that. You're going to get that written decision in writing. And that is what they're going to take up on appeal, so it's not just an oral decision and you're done with your job.

So let me give three important tips. One, you have to think about what facts you are going to be relying on to make your decisions. So as you go along and you listen to the evidence, I think it's really helpful for you to just sort of jot down the things that concern you or things you like about it because those are the things you're going to be putting on the record to support your position, and the reason why that's important is because you can only decide on the record, so you want to make yourself clear, so think of it like this, I -- you feel very strongly, you take a position on something, if you want your other commission members to support your position, you need to lay those things out on the record so that other people know what's in your head and why you are advocating a certain position that you should be taking whether it's to grant or deny something. It's also what the appellate court's going to be looking at, which is the circuit court. The circuit court's not the end of the story either. If the party doesn't prevail in the circuit court, they can keep going all the way up to the Hawaii Supreme Court. Another tip, we get criticized a lot for not providing parties the opportunity to cross-examine testifiers, so that's on me to remind you folks if it comes to that to allow for there to be a mechanism for cross-examination 'cause they -- we do get some criticism about that. You guys actually have really good rules that lay out cross-examination, some of the other commissions, like Molokai Planning Commission, they're a little more vague, but these

rules seem to be pretty clear. And another tip is just to make sure that everything gets done in a timely manner and, again, that's not your kuleana, that's the Planning Department's and mine to make sure that we hit all the deadlines necessary to get these, your decision done correctly in writing so that the parties can't complain later, well, you took long, you didn't meet this deadline or that deadline, but there are deadlines that we need to be following.

Okay, so what is the record on appeal or what is the agency record? In some more complicated matters, that could include things like the actual court pleadings or, in front of you folks, might be filing motions, it may be so complicated that you have to make intermediate decisions about a project before it gets to the final decision, that would be like, for example, on a motion to intervene, that would come before you long before the actual hearing to hear the project because the intervenors would wanna know are you going to let me in or not, so that would be an -- sort of an intermediate ruling granting or denying a motion to intervene. Oral testimony, any exhibits, the -- the party's maps, pictures that they want to present to you, that's part of your record that you get to use to consider how you want to -- to vote. Any offers of proof, you might have a party that says that I'm submitting this evidence because I want you to be considering, for example, A, B, and C, that's called an "offer of proof." Proposed findings. Any exceptions to those findings. So once a final decision is made, I would assist in drafting those findings based on what you folks -- how you folks handled the situation. The parties have the right to come in and say, well, I disagree that this finding is correct. All of that kinda stuff becomes part of the record. Sometimes a project might require a hearings officer, you folks are, in essence, hearing officers on things that come before you, but in some cases, you may decide we're going to hire an independent hearings officer to conduct this entire conducted case, and then that hearings officer will do all of the sort of hard work, have the hearings, make the decision, but they're not the ultimate; you have to adopt their findings because you are the authority that gets to yes or no a project. So you would get the hearings officer's decision and you would then have a motion to -- whether to adopt that decision or -- or not. There might be staff memoranda. Sometimes, as we know, Annalise will provide something from Planning, it's usually in the very beginning when she's laying out what the law is, and what the project is, and if there's recommendations from Planning, that becomes part of the record. The one thing you gotta be careful of is that you can't have matters that are outside of the records being considered as part of your thought process, so sometimes commissioners find themselves maybe they live near a project or something so they decide to go out and do their own independent research and analysis and then maybe come back and say, well, I went out on Saturday and looked at the project, here's what I did, so you're now changing your role from being a commissioner more to being a witness, and so that would be something that would be outside the record because the rest of you weren't there to consider it. There are, and we'll look at this when we talk

about open meetings, there are opportunities to have site inspections if it is a project or something that you feel would be better for everybody to look at. You have the right to say we're going to vote to do a site inspection, and then you would open it to the public. We'll talk about that later. So some of the types of things that -- so there was a case that went up to looks like the Hawaii Supreme Court where the board improperly consulted outside sources so the supreme court found that to be a violation of your rules and procedures by looking at outside evidence and, therefore, that decision was reversed. Another one that came up was there was a case where there was a letter that was received from a party, and there was a viewing of the premises after the public hearing was closed, those are not allowed because once the matter is closed, you can't add more evidence to it, so that -- that decision got reversed on appeal.

Okay, so what does the court do once the court receives an appeal from the CRC's decision? The court can affirm the agency's decision, decide you guys did a great job, you had a good record, you had evidence to support your findings, everything went well, you have opportunities to cross-examine, and they're going to give you the seal of approval on your decision. Again, the parties could then go to the intermediate court of appeals and then the supreme court; if they feel strongly about it, they could actually remand the matter back to the Cultural Resources Commission with further proceedings saying you guys did okay but you didn't, you know, do your findings and I need something in writing to justify this 'cause that's what the rules say, so sometimes the circuit court will remand something for further proceedings. They could reverse or modify the decision and order that you have entered so -- and that depends on whether or not you followed the rules, whether or not they feel that substantial rights of the parties were prejudiced because of some -- something that -- that was done. And these are some of the reasons why they might reverse. They could find that the decision of this Commission violated somebody's constitutional statutory rights; that your decision was in excess of the actual authority that you have or maybe you don't really have jurisdiction over something; you had some kind of unlawful procedure going on; there was some error of law; sometimes the court might say that what you did was just clearly erroneous when you look at the reliable probative, substantial evidence in the record on the whole, that happens a lot with planning commissions; and sometimes if they just feel like the decision was just arbitrary capricious, it was an abusive discretion, and that would be a situation where you just had like nothing on the record to support your -- your vote of, you know, granting or denying.

So that's kind of a brief overview of contested cases. Like I said, they're very involved. I'm here every time you have a meeting. If there are questions about it while we go along or if I see something happening and I want to chime in and give you guys a suggestion, then I'll go ahead and do that. Okay, so we're going to move on to Robert's Rules of Order very briefly.

Mr. Kanahele: Excuse me?

Ms. Desjardins: Yeah?

Mr. Kanahele: Are we allowed to ask questions --

Ms. Desjardins: Sure --

Mr. Kanahele: Or should we wait till the very end?

Ms. Desjardins: I'm sorry. No, no, no, go ahead if you have questions on that section.

Mr. Kanahele: Yeah, just that section. So in a contested case hearing, there's notice, I mean when the parties submits evidence, is there -- is there a filing fee?

Ms. Desjardins: I don't think there is, but I can tell you where to find that out, so let's look, because in your rules of procedure and practice, that tells the parties exactly what they have to do.

Mr. Kanahele: So while you're looking that up, Mimi, as I understand, a contested case is when a party that has standing disagrees with a decision that we've made as a body?

Ms. Desjardins: So you're having the contested case where they may disagree with what occurred during the contested case. So the contested case occurs here. We call it a "contested case." Then that gets appealed. But when it goes in front of the circuit court or one of the appellate levels above this, they don't get to retry the case. They can only rely on the record that existed; what was created in the contested case here in his room. So the contested case is happening in front of you. You are the decision-maker in that contested case.

Mr. Kanahele: So do we act as a quasi-judicial body?

Ms. Desjardins: Yes.

Mr. Kanahele: So we -- we have that authority?

Ms. Desjardins: Yes. So when we get to the part about the powers and duties, I'm going to show you exactly, layout all of the different things where you have powers and duties. Those are the things that come before this agency, and some of those are quasi-judicial powers and those are where contested cases might occur, so not

everything that you do, obviously, is a contested case, like, for example, today, you folks reviewed a letter based on a discussion you had, what you're doing is you're recommending to different authorities suggestions about what to do about Mr. Kapu's presentation, but that's not a contested case because nobody's rights are -- are at stake. Does that make sense?

Mr. Kanahale: Yeah. I'm just a little bit confused how a -- you know, there is a contested, and like in my simple thinking, I'm thinking that we make a decision and someone doesn't like it --

Ms. Desjardins: Yeah.

Mr. Kanahale: And they challenge it.

Ms. Desjardins: Yeah. So they appeal it.

Mr. Kanahale: So they go to -- they appeal it --

Ms. Desjardins: First to the circuit court.

Mr. Kanahale: I see. Okay.

Ms. Desjardins: And then all the way up the chain.

Mr. Kanahale: Oh, it goes up, and then it comes back down.

Ms. Desjardins: And then sometimes it comes back down; sometimes it doesn't come back down. If it comes back down, it could come back down 'cause the appellate court or decided that we did something inappropriate or, you know, they might remand it for further proceedings and give very particular instructions, or they'll affirm it and say, no, the Commission did a good job and acted within the scope of their authority and so we're going to affirm your decision say to grant a design plan or deny a design plan probably.

Mr. Kanahale: So more of what you're explaining is when it -- when and if it comes back to us.

Ms. Desjardins: Right.

Mr. Kanahale: This is what --

Ms. Desjardins: Yeah.

Mr. Kanahele: Happens.

Ms. Desjardins: So there's a good example, I'm sorry I don't remember the name of the case, but it's a famous one from Kailua-Kona and it was in front of their planning commission many years ago, and it had to do with a contested case, and the end result of that was it was remanded because the appellate court didn't feel that the commission had flushed out a particular justification for denying this permit, and so rather than just say, oh, we don't agree. We're going to deny it. They gave the commission the opportunity to reevaluate one particular element of what they were supposed to do and to add that to the record. Okay, so then those parties could be satisfied at that point, and that's the end of it, or it could go back up, and then they could say, well, okay, now we are satisfied that you did the right thing, or no, you still did the wrong thing. We're going to deny -- we're going to reverse your decision. Any other questions about contested cases? Really good idea to read that Chapter 530. I don't see anything in here about a filing fee offhand, but I'll look and if I find it, I'll let you know.

#### **b. Basics of Robert's Rules of Order**

So Robert's Rules of Order is a book that is designed for parliamentary procedure. It is adopted by pretty much all boards, commissions, agencies across the United States but -- and it's huge and it involves a lot of procedure but what we do is we just sort of try to give you an understanding of the kind of things that come before just procedurally and how you folks operate on a procedural level. If it gets more complicated, then I can jump in and help explain, but, basically, it's -- it comes down to this.

You have a chair, and your chair can make motions, your chair can speak in debates, and vote, okay. The role of the chair is to control the flow and order of the meeting, alright. So procedurally speaking, a lot of chairs prefer that the commissioners, like, for example, your Vice-Chair today is saying I'll entertain a motion on A, B, C, a lot of chairs will ask that somebody else in the body actually make the motion, and then that motion has to be seconded, but chairs can, in fact, make motions. There's nothing that requires them to not do that. The other thing that's important too is that a lot of times what commissioners -- some commissioners do is they forget to turn to the chair and ask if it's okay if they ask questions, and the only reason why that's important is because it not only acknowledges sort of the authority of the chair that you voted in, but the chair is controlling sort of the duration of the meeting, the length, and so the chair has to keep sort of in mind how far am I going to let this particular subject matter go, and so a lot of times it's really helpful if you just remember to look at the chair say is it okay if I ask another question. Lots of chairs like to have everybody else speak first and

ask, you know, commissioners, some chairs go, you know, we're going to start right over here with Ian, we're going to go around the room, does anybody have questions. It really depends on your chair and how they want to conduct the flow of the meeting. In really contested situations, I see some chairs being more controlling and really just trying to keep things in order, giving people first rounds, and then maybe second rounds of asking questions, and then asking for the motion if it's something that, you know, could be -- otherwise, some of these things can drag on for a really long time. So we like to ask people to ask the chair's permission to speak or debate.

A little bit just about the flow of a motion, if you aren't familiar with the way motions work. A motion is made either by the chair, or at the suggestion of the chair, or simply by any commissioner can just say I move to deny this permit. If that motion is going to go any further, the motion belongs to the commissioner who's made it. If it's no longer going to belong to the commissioner but belong to your body, somebody has to second that motion; that means there's somebody else in the room that agrees that this should be put before the body. So once a motion is seconded, they -- it's characterized as no longer belonging to the maker of the motion, now it belongs to you folks. After the motion is seconded, then the chair normally opens it for discussion because, at that point, although you've had a lot of discussion before, you haven't really focused yet on what your motion is, so, at that point, the chair will say do we want to discuss this any further. At that point, what a lot of commissioners like to do is you've had your discussion, this is your opportunity to really sort of take your position, so if it's something very controversial amongst commissioners, that's where you're making your position known, this is how I feel about what we've done and this is why I'm going to encourage you, as my fellow commissioners, to deny this or to grant this, okay, so that's your opportunity to sort of put your position out there so other commissioners can be persuaded by, you know, what your feeling is on a motion. After that, then after all discussion has been exhausted or at least enough discussion that the chair's comfortable that -- that enough has gone on, and that, again, is a point for the chair to take control of the meeting, then it has to be put out for a vote, and, at that point, a vote is taken on the motion.

If you do not vote, that's considered an affirmative vote. So if the motion is to deny something, and you don't speak up, then you are voting to deny something. The only way that that isn't the case is if you are disqualified from voting because you have a conflict and you have made that conflict known and it's been acknowledged. Otherwise, I see commissioners sometimes say I'm going to recuse myself from voting, but if you don't have a conflict, your recusal is considered in favor of whatever the motion is. So just kinda keep that in mind.

So there's also a thing called a "friendly amendment to a motion." So let's take this morning, for example, it could have been that your Vice-Chair said I will entertain a motion to adopt this letter. Okay. So somebody makes that motion and it's seconded. So now that letter is hanging out there, okay. Then we have a commissioner who had a -- Commissioner Kanahale had a amendment and wanted to add something to the letter, you could have then made a motion to amend the motion to include other language, so you have your main motion, which is adopt the letter, then you have a friendly amendment, which is to amend the letter itself a little bit, and it's not controversial, so that could have been done in that order as well. But it doesn't matter. You guys did it the other way and that's perfectly fine. You made an amendment to include this new item in the draft, and then you made a motion to adopt the letter as amended. Okay, so friendly amendments are, you know, something that can be dealt with within the body of the main motion. Some amendments to motions are more substantive and those aren't considered friendly amendments. They really have to be sort of their own stand alone motion. So if that happens and somebody else doesn't come up with it or mention that, then I would ask the chair permission to let you folks know that I think that's like a separate motion that should be made.

Any questions about Robert's Rules of Order? Those are the kinds of things that I would hope you'd ask questions of during meetings.

**c. Roles and duties of Cultural Resources Commission members**

Okay, so let's talk a little bit about roles and duties of commissioners and, like I said, this Commission has a pretty broad bunch of duties and fun things that you guys get to do. What I really suggest you do, and I've tried to lay this out so that you can take your handout with you, but you want to be familiar with the rules of procedure and you want to be familiar with the particular Maui County Code provisions that apply to you folks 'cause that'll make it easier if you understand what you're doing here. So Chapter 12-530 is your Rules of Practice and Procedure, and 12-530-18 sets forth the different officers that you have and all of your duties. It also lays out the rules for contested case procedures and what you can and cannot do. What happens in post-hearing procedures after the contested case is over. There's also a little section in there about rule making, so sometimes the commission might decide that it wants to amend its rules, so there's a whole process behind how rules get amended.

You also want to be familiar with, for example, Chapter 12-531, those are standards and criteria relating to duties and authorities, having to do with things like general guidelines, like, for example, you folks have adopted general guidelines and principles that you're going to be looking at when you're, for example, determining whether to have a design plan adopted or whether to include something in the State or National Historic Register

of places. So, again, you should have copies of all of these. If anybody doesn't have them, I'm happy to scan and email them to you at any time.

And then, also, I put in there Chapter 13-531-10, that's the review process for properties that are nominated for inclusion in the Register of Historic Places, those things that are found within the County. They're just nice things to be familiar with. Chapter 13-531-12, you have advisory and review functions over certain things. And then also, again, Chapter 13-531-13 allows you to adopt standards and criteria for different subject matters that come before you.

So trying to piece all of it together, these are the three Maui County Code provisions that I came up with that I think are important for you to have in front of you during meetings. Most particularly Chapter 2.88 and, specifically, 2.88.060, that sets out, again, the powers and duties of commissioners, sets out your guidelines. Chapter 19.48 gives you the authority to review plans within the historic district; 19.52.090 is really important, we've already had one of these this year, that has to do with giving authorization for people to sell things in public historic places. Chapter 16.13 applies to variances. And there's so many different things that you folks can do, mostly under Chapter 2.88, that I didn't want to list them all here, but I do encourage to go through and look at those so you know.

But let's talk a little bit about how things get before you because they don't just come in the door and anybody can come in and ask you to review plans, they have to go through the Planning Department, and then they get agendized through Annalise, who's your Planning representative, and then she will give you materials and things to look at and, you know, to guide you through your decision-making process. You may or may not agree with whatever her bottom line recommendation is. That's up to you folks. She can give you a recommendation, but what I think is important is to look at the value of what she's laid out because she's really good at giving you the law, what sections apply, and then it's up to you to freely determine how you want to apply those 'cause you may or may not agree with Planning Department's position. Any questions about that? Okay.

## **2. Annual Commissioner Training Part II (M. Desjardins)**

### **a. Chapter 92, Hawaii Revised Statutes – “Sunshine Law”**

Let's talk about open meetings, this is also referred to as the “Sunshine Law,” Hawaii Revised Statutes, Chapter 92, governs the Sunshine Law. We have a mandate in the State of Hawaii that all governmental meetings are to be open, so that's the general bottom line mandate. There are exceptions. We're going to talk about that. But this is

something that is super important because there are ramifications if a meeting that should be public is not held in public or isn't noticed properly. There is a State Office of Information Practices. I've given you their website. They have tons and tons of good material on the Sunshine Law. They have training videos. They have written materials that you can review. I often go, probably every other week, and just make sure that I'm updated on the things that they post 'cause they're really good at laying out what our obligations are in open meetings in the State of Hawaii. Sorry that the writing's so small on this. I can barely read it myself.

Okay, so the general policy behind the Sunshine Law is we want to open up government process to the public because it is absolutely true that the more the public sees of how decisions are made, the less likely people are going to feel the government is making decisions behind their backs. I can only speak to decisions that apply under the Sunshine Law, I'm sure there's lots of other things that government does that people feel are done, you know, behind closed doors, but the other interesting thing is the Sunshine Law doesn't apply to our State Legislature, they have taken themselves out of that, so where we have a mandate to do everything in the open, State Leg. can have as many behind the scene closed door meetings as they'd like and I think it, in my humble opinion, it's sort of shows in some of their decision-making processes. Let's see.

Okay, so what -- what are we talking about when we say we have to have an open meeting? It means everybody has to have the opportunity to not only attend, but they also have to have the opportunity to be heard, to submit data, views, and arguments in writing on any agenda item, so if you follow the County Council, you'll see that people write in written testimony, people can do that here. We've had testifiers come here and give us things that they want to make -- be made part of the record. They are accepted by you folks as part of the record of a public meeting. They have the right to come in for up to three minutes and to give their mana`o about whatever it is that you folks are talking about as long as it's on the agenda for that day. Let's see. You can make reasonable time limits if you want. So agendas have to go out at least six calendar days prior to the meeting, and if an agenda is not posted six days prior, then the meeting has to be canceled. The agenda also has to be posted at the physical location six calendar days prior to the meeting, otherwise, again, the meeting will have to be canceled, and sometimes there are people that don't have access to the internet and so they will notify the County that they want to be notified by mail, and so that mailed agenda to that person also has to go out within six days. So all of those things have to happen behind the scenes before you can even have the meeting. The agenda has to be very clear and specific. You can't put vague things on there, like new business, and then just have people come in and start talking about things that aren't specifically on the agenda, and the reason why is because when you post an agenda, you're telling the world here's what we're going to talk about, and if somebody came in and just started

talking about something that's not on the agenda, somebody from the public might not have the opportunity to know that and maybe they wanna come in and give you folks their opinion about that. Agendas have to be very specific about the date, time, and place of the meeting. You can't add things to agenda, okay, unless two-thirds of all members of the board agree to do that, but you can only add things -- I mean you have to have that much of a vote to add them but they can't be real substantive things so, again, two-thirds if you couldn't decide, well, today we're going to talk about, you know, a design plan in Lahaina when nobody had any notice. There's not -- you guys don't have that much authority to do that but you could change other things on the agenda, TMKs or something on there that isn't -- wasn't written out properly but doesn't really affect the actual subject matter itself. I saw this a couple times on Molokai where Planning would have the incorrect TMK number, so rather than say, okay, well, we're not going to have this meeting 'cause the TMK is not on there but the address was clearly set forth, and there were other identifying factors. To amend the agenda, it takes two-thirds of a vote to do that and we would do that. So you have to keep minutes. They're mandatory for all meetings. Minutes also have to be posted within a certain period of time, 30 days for a public meeting. They have to be posted on the website so that the rest of the public can see those meeting minutes and understand what went on during the minute -- during the meeting. A lot people ask, well, what's a "meeting," I mean when do we know we're actually having a meeting, and it's whenever the board convenes over something that you have jurisdiction over so that would qualify as a meeting. And so you folks have nine members. A quorum is required before you can have a meeting, and that would be five of you have to be present, but all actions of the commission have to be approved by five of nine of you, so if you only have a bare quorum of five, and something comes up, all five of you have to agree to it before you -- before the vote would be yes or no, so you can't have five and have it be, you know, two-three and that works. Makes sense?

Okay, so what can't you do? Two -- more than two of you cannot gather together to discuss any board business at all, and you also can't have serial communication, so sometimes, I handle a lot of appeals to the Office of Information Practices where a member of the public will say, hey, I have a feeling that two members of the County Council not only met and talked about something, but then they used their staff or they used one of those members to go around and have what we call a "serial communication" so that, in essence, you really are violating the Sunshine Law because you're talking about something amongst all of you as opposed to just two of you getting together, but even when two of you get together to talk about it, you can't make commitments to vote in a block, so you can sit down and talk about a subject that's coming up, but you can't make commitments like that. You also can't talk about things by phone, fax, email, social media, such as Facebook, so here's another way that that happens is that one of you might see that there's an item on the agenda and you have

something you wanna say about that so you decide you're going to send an email out to everybody, that's a violation of the Sunshine Law 'cause you've just had contact with everybody, so don't get into the habit of sending emails. I know some council members had questions about things like text messages, can we all text message each other, same thing. It's not just limited to having face-to-face contact, but other types of communication. But you can definitely all attend a social gathering. As long as you're not talking about board business, it's fine for all of you to be in one place. But it gets kinda tricky 'cause one of our favorite examples is the Native Hawaiian Law Training, which is not open to the public, so there becomes questions about the Sunshine Law, so we've gotten into the habit and practice of that happening twice a year and then -- but only two members of a board or commission can attend, not -- less than a majority, so sometimes if it's a nine-member, you folks could actually send three, but then you're going to report back the next time you have a meeting, one of three of you is going to give a little presentation about having attended the training, what was, you know, basically, give an outline of the agenda 'cause, remember, the public was not allowed to attend that meeting and board business does get discussed at those trainings because, more likely than not, the types of situations and the types of information that they're giving you is stuff that could potentially come before you. Another example is we occasionally have like a housing summit in Maui County where we talk about affordable housing, homelessness, we want to be free talk about, you know, solutions to those problems, but we have to be careful 'cause a lot of that stuff ends up being board business in front of the Affordable Housing Committee. You can discuss board business with non-board members. I have a lot of commissioners who come up to me and say, you know, members of the public know that I'm on the Cultural Resources Commission and they say, hey, you know, I really feel strongly about what's happening at Kamehameha Iki Park, you know, I don't like the commercial operations there, you can talk to that person because that's not a Sunshine Law violation 'cause that person's not a board member, okay, so don't feel like you can't talk but, ethically, I would be careful just about making commitments or telling them, yeah, I think I'm going to vote this way or that, or, oh, I totally agree with you. Just listen with an open heart, take in, you know, what they have to say, but I would just caution you to give too much of your opinion. I've had commissioners come back later with good intentions and say, oh, it got plastered on Facebook, somebody said, you know, Commissioner Ropa told me that this is what he wants to see happen on Lanai and you're like I never said that, or I'm so sorry I said that.

Okay, so we talked about what is board business. What other kind of permitted interactions can you have? Sometimes commissions decide that they're going to put together what's called a "TIG," or "temporary investigative group," and it's two or more but less than a quorum of members who will get together and do sort of like a mini investigation of something, so one example of a TIG would be if you folks decided that

you have read your rules 'cause I told you how exciting they are and you were like, wait, you know, these rules are kinda out of date. These are your rules. Your Commission adopts these rules, the Mayor signs off on them, but you have the right to have a TIG or a temporary group of a minority of you get together maybe on the side and start going through the rules. So if you're going to do something like that, what you would do is you -- the chair would say, okay, we're going to form a temporary investigative group, are there three of you that would like to volunteer for this, you get the members of the TIG specifically laid out, and then there are deadlines from when that subcommittee has to come back to the commission, and you have to do two things, you have to have one meeting where you just give your presentation to the commission as a whole as to what you came up with, then you have to have a second follow-up meeting where you guys start deliberating and discussing, but you can't do those things at the same meeting 'cause, again, think about we want the public to know what's going on and to have as much opportunity as possible to come in and to watch you folks make your decisions in a public place.

Okay, so sometimes meetings get canceled 'cause there's a lack of quorum but you've had all these people show up 'cause they have this great presentation they want to give you, you can still accept the presentation. You can ask questions of the presenter. You cannot deliberate about the presentation. You can't ask each other questions. But you can definitely take in and absorb what the presenter had to -- had to provide to you, and then at the next available meeting, again, one of you that was present would then give a brief presentation to the rest of them, we -- we attended the meeting on August 5<sup>th</sup> and there was a presentation by the Department of Transportation regarding the bridge, you know, project out in Hana, and then you'll present that, and then it'll also have to be memorialized or taped somewhere for those members to be able to go and watch later. So you don't have to cancel your meeting for that reason. That actually happens fairly often.

You can also attend other meetings, informational meetings. This happens a lot, for example, like the Kula Community Association often has meetings where council members shows up and they wanna present different things that are going on, less than a quorum of people from a commission can appear at those, and, again, you're going to come back and you're going to give a presentation as to what was discussed. What you can't do is you can't make commitments to vote on something during that process while you're, for example, on Molokai for a meeting or Lanai, we have a meeting over there, or you have a meeting over there, you don't wanna make decisions or commitments about how you're going to vote.

So every once in a while we might have to have an executive meeting. Executive meetings, recently, the Hawaii Supreme Court has narrowly, narrowly defined when you

can have one and what you can talk about, and this really important because it came out in a case that occurred on -- in front of the Honolulu Police Commission having to do with Mr. Kealoha's retirement package, and that apparently was done during some -- several executive sessions the result of which is that that retirement package is suspect because nobody really knows what was talked about, so the supreme court gave us really excellent guidance on executive sessions. The one that's probably going to come up the most in front of boards and commissions has to do with when your legal liabilities, responsibilities, or rights suddenly become an issue and I, as your Corporation Counsel, decide to recommend that maybe you wanna have a brief discussion in executive session, but you can only talk specifically about that liability and then you have to go back out of executive session. So part of my responsibility is to make sure that when we are in executive session that we really only are there to talk about the one thing or the two things that need to be done in private 'cause I'm giving you the essence of attorney-client counseling, and then you have to go back out. You can vote in executive session, I highly discourage it unless it absolutely has to be done in private in order to preserve the confidentiality of it. It -- I've never seen it happen in front of this Commission. It happens a lot in front of the County Council. One example might be that somebody from Corp Counsel shows up and the County's been sued, and rather than tell the world on Akaku what the terms of the settlement are and what my, you know, legal recommendation is, that's going to be done in executive session 'cause Council's the client, they need to hear what the attorney has to say in a forum where it's kept private, and if, for example the County Council is -- the lawyer says, well, I think you should settle this for a hundred thousand dollars, maybe the Council say, well, that's too low or that too high, you can vote in session in private to raise the amount or lower the amount and that -- of what you would propose as a settlement, but you're not going to do that public, but then you have to get out of executive session and go back to your regular business, so it's very narrow, you know, we don't like to overuse it.

So if there is a Sunshine Law violation, people can complain either to the Office of Information Practices or they can actually just go right the circuit court to complain, but some of things that can happen if a Sunshine Law violation is found by the court, not by OIP, but by an actual court is they can void the decision that was made during that executive session, so going back to the example of Mr. Kealoha's retirement, that could actually be voided as a result of a violation of the Sunshine Law; the court could issue an injunction against some action actually going forward, for example, if you gave a permit on a very controversial item, the court might say you violated the Sunshine Law, I'm issuing an injunction, that permit is not to be -- to be granted or -- or given out; you could actually face criminal charges, that is extremely rare, and you have to have really willfully violated the Sunshine Law knowing darn well that you were -- that's exactly what you were doing. I can assure you that if you have an open meeting, and maybe you shouldn't have had an open meeting, that is not a Sunshine Law violation according

to the Hawaii Supreme Court, you never going to get in trouble for having an open meeting, you might get in trouble for having a closed one, but never erring on the side of an open meeting. You could also be removed by the commission as a result of violating the Sunshine Law. Okay, are you guys like okay if I continue on or -- you okay? You all look good. Didn't scare anybody too much to leave.

**1.d. Ethics for Cultural Resources Commission members, including dealing with conflicts of interest**

Okay, let's talk about ethics a little bit. I'm going to encourage you to get out your County Charter. Does everybody have a copy of the County Charter? The yellow book? You don't have to get it out now but just if you have it or you've got -- you've got a copy of it, at some point, I want you to go to the Article 10, Code of Ethics, 'cause that's what applies to board, commission members, and all employees of the County of Maui equally.

The real basic things to remember, ethically, is you want to avoid accepting gifts, except what we refer to as "gifts of aloha," which are gifts of nominal value, but even a gift of nominal value is directed at you to try to influence you, okay, because the person who's giving it to you intends to influence you, you cannot accept that gift, but if it's just somebody being, you know, like we do, we bring mangoes to work, or avocados, or whatever, and people are disseminating that, that's fine, but you can't take other kinds of gifts. Another example of that is there was a group, a private charter company, I think it was in Lahaina, who gave tickets, free tickets to council members to go out on their boat to look at the environmental impact of something that was happening. The reason why that was a no-no was because the group that took them out was taking a position, was advocating a position, wasn't just simply saying let me just take you out on the boat because I like you guys, and it's a beautiful day, there was an agenda there, so they couldn't take those tickets or get that ride for free. Another example that came up was the Maui Invitational Tournament in Lahaina, used to be that the MIT guys, just out the goodness of their hearts, decided they wanted to give free tickets to council members; again, those folks have a license agreement with us to rent the Lahaina Civic Center, the council has to vote on that, so you can see where it would look kinda funky to be given free tickets to this event when you're the one who's voting whether to have the event or not so -- so you kinda know it when you see it. The good news is if you're unclear whether something is a gift that should you accept or not, you can always ask the Board of Ethics for an opinion about that, and they will let you know whether or not it's something that you should be able to accept. There's also some Board of Ethics opinions that have already been written that are so general that they would apply to everybody. If you feel like you have an ethical situation going on, you can always call

me and I'll work you through it as well and give you some advice about what you should do.

If you fail to disclose something on your financial disclosure statement, which you are all required to fill out but is not public, some financial disclosure statements, like council members, are public, but for you folks, you have to submit those but they are just retained by the County, but if you failed to disclose say a financial interest in something, that could be considered an ethical violation as well.

So some of the penalties. Fine. You can get fined for violating of the ethics or be removed from office. I'll give you one more slide example that came up recently and that had to do with a commission member who was invited to a conference on Oahu about something that had to do -- it was a planning conference so they were on a planning commission, and whether or not they can pay their way and their travel for free, now that commissioner was also going to be a presenter at the conference, so it was determined that that commission member, it was okay for them to accept the travel roundtrip because they were actually presenting and they would be assisting in educating the, you know, the convention as a whole, but they can't do things then like get taken out for dinner, but if there's coffee and donuts and other free things that are given to everybody, yes, you can definitely partake in that. But if somebody says they want to pay your way to do something that you're not actually participating in, I would be cautious of that.

So here's what your rules says about a conflict of interest, Rule 12-530-21, it says: Whenever a conflict of interest or other ethical question is raised by anyone regarding any member of the commission, the affected member shall promptly make a full disclosure of that circumstance to the authority. So an example of that might be that a project comes before you and one of you who may be is an archaeologist on this Commission actually worked and was paid privately to work on that, so you're going to want to say something on the record at the beginning of that meeting and say I have a financial relationship with this company that's doing this presentation and I wanted to put that out there; now that may -- it may be determined by the body that maybe you shouldn't participate in voting on that project but that doesn't mean that can't participate in discussing that project but maybe you want to hold off on voting. We had an example in front of the Molokai Planning Commission where one of the members was actually the person who complained to the Planning Department about a violation within an SMA area, so it was determined that that commissioner would not be voting, ultimately, on whether to approve the SMA after-the-fact permit but that certainly didn't mean that she couldn't participate in the discussion. When in doubt, get an advisory opinion from the Board of Ethics, and say something out loud, and then it can be determined by the body

whether or not you have an issue. And that is the end of my presentation. So did anybody have any questions about anything that we discussed? No?

Mr. Kanahele: Chair?

Vice-Chair Lay: Commissioner Kanahele.

Mr. Kanahele: Yeah, on the open meeting, regarding reasonable time limit of oral testimony, and there's HRS 92-3, I guess that's found in that, and then it's followed by it shall not be limited to less than three minutes per person, and then there is in parenthesis MOPC?

Ms. Desjardins: Oh, I'm sorry. That was for the Molokai Planning Commission.

Mr. Kanahele: Oh, that's what it means?

Ms. Desjardins: Yeah, sorry. I should have put Cultural Resources Commission 'cause I used that slide when I did a presentation --

Mr. Kanahele: Oh, I see.

Ms. Desjardins: Yeah, but you bring up a good point because I didn't -- I didn't mention this, and that is that the minimum is three minutes by law, but if you want to allow somebody to give more testimony than that, you can make the decision to do that, the chair can actually make the decision, but then you have to let every other person who testifies testify for at least that same period of time, you can't just be like, oh, that guy's got something I want to hear, and then cut somebody off at three minutes, so if you're going to go into the realm of expanding it beyond the three minutes, it has to be equally applied at that meeting to everybody.

Mr. Kanahele: Okay, thanks for clarifying that.

Ms. Desjardins: Yeah. Sorry about that. I thought I got all my Molokai Planning Commission things out of there. Darn. Okay, any other questions? You can always ask question too as we proceed in the meetings as well if something comes up.

Vice-Chair Lay: Commissioner Kanahele.

Mr. Kanahele: Yeah, one -- one last question. So are most conflicts of interest related to financial interest? Are there --

Ms. Desjardins: I would say 50 percent financial, 50 percent connections, relationships maybe with somebody who's appearing before the commission, not to testify, I don't think you have to say, oh, that's my cousin, but if somebody, for example, has a business and you're related to them, you may want to just mention, you know, this is my daughter's archaeological company.

Mr. Kanahele: Oh, I see.

Ms. Desjardins: It doesn't mean that you can't participate, but it's better to put it out there because somebody will figure it out if it's controversial enough and use it against you later if you don't just come right out and just put it on the table so everybody knows.

Mr. Kanahele: So just to be clear, some of them are financial related and others are relationship related --

Ms. Desjardins: Right.

Mr. Kanahele: I'm related to this person, my daughter, my son, or my best friend, you know.

Ms. Desjardins: Right. Or maybe you have a -- yeah, or maybe you have an interest in a piece of property, you're part-owner or something, but I guess that would fall under financial.

Mr. Kanahele: Yeah.

Ms. Desjardins: So I would say, yeah, you're probably right, but most of them are probably financial and then some of them are --

Mr. Kanahele: Okay.

Ms. Desjardins: Familiar relationships.

Mr. Kanahele: Thank you, Mimi.

Vice-Chair Lay: Commissioners, anymore questions for Mimi?

Ms. Albino: Yes, I have one. Is it a violation when -- when we serve as a commissioner here to be serving on other cultural -- cultural boards or entities while we're serving as a commissioner 'cause I -- I have questions, when I think about I was asked to serve with the Molokai Land Trust as a consultant, cultural consultant, and I -- there are other

groups on Molokai, with all of the -- the fervor that's happening regarding Mauna Kea, there's been an increase amount of wanting to know, and I'm employed by -- by Maui Community College as a lecturer, so would there be violations if I'm on a certain board and issues come up that -- that are going to presented ...(inaudible)... commission?

Ms. Desjardins: So that's a really good question because it happens. I mean you might be, you know, retired and you want to, you know, give your time to a lot of different groups. I would say that if it's a board, if it's sub-board or some like with the Urban Design Committee, for example, on Molokai happens a lot, you might have, if you're a member on that, your decision there might be something that would come before the Molokai Planning Commission, if it's something that's going to happen a lot, I would say it's not so much a conflict as it's going to be a big inconvenience, but if it's a board, a separate board that doesn't have business in front of this board, I don't see a problem with it. I can't speak to the policy perhaps of the Mayor's office as to whether they would be seeking commissioners that don't have that sort of cross-relationship, but you would certainly, if it was something you reviewed, then you would want to, of course, let this board know, by the way, this did come before the, you know, Lahaina Action Town Committee and I'm a member of that, so I'd tend to stay away from things that you know for sure will probably land up here, but we had a situation where we had I think the spouse that was on one board that would be reviewed quite a bit by the other board, but it didn't prohibit either one of them from participating.

Ms. Albino: Okay, thank you.

Ms. Desjardins: Okay? Thank you.

Vice-Chair Lay: Commissioners, anymore questions? If not, thank you very much, Mimi. Annalise? Oh, does -- does anyone need a break at this time? We're good? Okay.

### **3. Annual Commissioner Training Part II (A. Kehler)**

#### **a. Maui County Code, Chapter 2.88 – Maui County Cultural Resources Commission**

Ms. Kehler: Okay, so thank you, Mimi, for doing that training. That's all the mechanical sort of how to conduct a meeting stuff that's important that is better left to an attorney to discuss rather than me. What I'm going to talk about is kind of more in-depth with what Mimi kind of talked about a little bit and those are the laws that guide your work as members of this Commission.

So, on the screen, this slide, it just summarizes preservation laws at the federal, state, and county level that protect historic properties and make your work, as commissioners, possible. So my presentation mainly focuses on these laws, and they include the National Historic Preservation Act, the Hawaii Historic Preservation Act, and then Chapters 2.88, of the Maui County Code, and Title 19, Article III, of the Maui County Code. Mimi already talked about your administrative rules so I'm not going to go over those.

Okay, so quickly, before I get into a discussion on the laws, I wanted to talk about historic properties, I know that you guys probably already know this stuff, but I figured it would be good just to give a refresher. So historic properties can be officially designated on any of the three types of historic registers: There's the National Register of Historic Places, the Hawaii Register of Historic Places, and then there's also County Historic Districts. So County Historic Districts are where Mimi was talking about the Commission having quasi-judicial powers, that's where you folks have quasi-judicial powers is within County Historic Districts, okay. So to be eligible for a historic register, historic properties, they have to meet certain criteria based on historical, archaeological, or cultural significance. There's five general categories of historic properties and they include sites, so sites, many archaeological properties fall under this category. There's also structures and that includes bridges, tunnels, roads, and they're different from buildings of which are meant to shelter human activity. And then there's buildings, and those can include things like homes, stores, schools, and churches. Districts, and those are just geographical areas with concentrations of historic properties, so that can be concentrations of buildings, structures, sites, objects. And then there's objects, and objects are usually artistic in nature and small in scale, and they include things like statues and sculptures.

So the National Register, it's an official list of historic properties at the national level, and it's a program that's managed by the National Park Service. This register includes properties that are significant at the national, state, and local levels, and it's a designation that's mostly honorific, so that means that it doesn't generally come with legal property restrictions, there are some nuances to that, but, generally, it doesn't come with property restrictions. There is a financial benefit to having a property being listed in the National Register. So income-producing properties that are in this register can receive rehabilitation tax credits, and you, as members of this Commission, can review and comment on projects that affect properties in this register, so you do have advisory review powers for these properties. And the -- the photo that's up on the screen now, that's the Fred Baldwin Memorial Home, it's on the National Register, and it -- the former property owner, he rehabilitated this building, and he received the Federal Income Tax Credit for that work. So this is another example of a property that's listed in the National Register, and the property owner of this building, or former property owner,

he received the Federal Income Tax Credit for rehabilitating this building as well. So the National Register, it includes a special category of historic properties, and these are known as “National Historic Landmarks,” so this category is really only reserved for properties that are nationally significant, so the Park Service, who, again, administers this program is really particular about National Historic Landmarks and it’s a complex process to designate one. There are a few National Historic Landmarks in Maui County, so this is an example of one on Molokai, and there’s also one on Lanai. So on Maui, we have several National Historic Landmarks as well, and that includes a large portion of Lahaina. So the map on the screen, that shows a boundary outlined in orange, that’s the boundary of the landmark district in Lahaina. So the landmark district is a little bit different than other National Historic Landmarks in Maui County because this Commission can review and approve changes to architecturally and historically significant buildings in this area, so, in other words, you have quasi-judicial powers in this NHL, this National Historic Landmark.

Okay, so at the state level, we have the Hawaii Register of Historic Places, it’s like the National Register, but it’s managed by the State Historic Preservation Division. It’s similar to the National Register because, again, the designation is mostly honorific. Like the National Register, you, as a Commission, have advisory review authority over properties in this register. Homes in -- only homes in this register are eligible for County property tax exemptions, so this is an example of a home that receives a Historic Property Tax Exemption from the County, it’s in Lahaina, this is the Searle house. Okay, so this is another example of a home that’s on the Hawaii Register, it’s the Haiku Fruit and Packing Company manager’s house. This one does not receive a property tax exemption because it’s used as a bed and breakfast, so it has to be only for homes.

So the third level of designation is at the County level, and we designate things here as County Historic Districts. So the County Historic Districts are a little bit different than the National and Hawaii Registers because designation at the county level affects a property owner’s ability to change their property in ways that may harm its historic character, so, again, you have quasi-judicial powers over properties in these districts.

Okay, so getting back to preservation law, at the National level, the National Historic Preservation, and this is just to give you an overview and understanding of how this Commission functions by the way, this is kind of like the high level to specific level, so the National Historic Preservation Act, it does a couple of things, and those are listed on the screen, but there is one important part of the Nation Historic Preservation Act, and that establishes the Certified Local Government program, and that is a historic preservation partnership between the National Park Service, state historic preservation offices, and local governments. So to become a Certified Local Government, a local municipality has to have a historic preservation commission and a preservation

ordinance, so we have both. You guys are the preservation commission, and you use the preservation ordinances to perform your duties. So we've been -- Maui County has been a Certified Local Government since the early '90s, and there are certain benefits that come with being a Certified Local Government, it's supposed to improve communication between us and the National Park Service, I don't how much it actually does that, but it's supposed to. It makes us eligible for Federal historic preservation grants, and it also allows you, as a Commission, to review nominations to the Hawaii and National Registers before they're considered by the State Review Board.

So at the State level, we have the State Historic Preservation Act, it's similar to the National, and a key part of chapter -- so it's codified as Chapter 6E, for the Hawaii Revised Statutes, an important part of Chapter 6E is that it gives the County the power to adopt ordinances to protect historic properties, so that's what allowed us to adopt Chapter 2.88, in Title 19, Article III, of the Maui County Code.

Okay, so at the County level, we have Chapter 2.88, in Article III of Title 19, and these are the ordinances that we use to protect historic properties, okay. So they allows us to designate historic districts, regulate changes in historic districts through a permitting process, and prevent incompatible changes in historic districts, and these ordinances are administered by you, the Commission, and the Planning Department.

So Chapter 2.88 is -- Mimi talked about this is where all of your duties are established, okay, so it gives you both -- its specific code section is 2.88.060, so if you're ever curious about what all of your powers and duties are, that's where it's listed, and you have a lot of advisory powers, and sometimes advisory powers are looked at by some people as being not important, but I beg to differ, and I think that when we -- when you function in your advisory capacity, you're -- you're playing a really important role in the County and you're advising decision-makers on their responsibilities to preserve and protect historic and cultural resources, so I just wanted to let you guys know that I appreciate you and the work that you do, and being on an advisory board is important, so thank you.

So again, the -- you have like a lot of different powers, and they're pretty broad and varied, and, you know, there's lots of issues that you, as a Commission, can focus on, so if I'm not focusing on an issue that you're particularly interested in and you would like the Commission to discuss, you can call or email me anytime and I can see if we can fit it into one of these powers and duties and get it on a future agenda.

So that is Chapter 2.88. Chapter 2.88 also -- so it also, not only does it talk about your powers and duties, it also list out all of these guidelines, and that -- those are all in your binder as well, and those guidelines are what we refer to when we're making decisions

or when we're functioning in an advisory capacity, so if I write a staff report for you guys, I'll usually refer you to some document in that list in 2.88 so to help you kind of inform your decision.

**b. Maui County Code, Title 19, Article III – Historic District Ordinances**

So moving on from Chapter 2.88, we have Article III, of Title 19, and Title 19 is the County zoning code, so Article III is referred to as the historic district ordinances, and Mimi already explained this, but, basically, Chapter 19.48 gives the County the authority to create or expand -- create new historic districts or expand or change existing ones; Chapter 19.50, that just describes the boundaries of existing County Historic Districts. And then Chapter 19.52 is what we use to ensure that things that happen in County Historic Districts do not harm its character. So County Historic Districts 1 and 2 are in Lahaina. Historic District 1 is the green shaded area, and that encompasses places like Moku`ula, and the Banyan Tree Park, and Kamehameha Iki Park. And then Historic District 2 is the yellow shaded area and that's most of the historic area along Front Street. And then these are examples of properties in Historic District 1. And then Historic District 2, these are old photos of Front Street. All these buildings are still there. And then Historic District 3, which is in Wailuku, and these are some buildings in Historic District 3. So Mimi already covered this stuff so that pretty much sums up my presentation.

Vice-Chair Lay: Commissioners, any questions for Annalise?

Ms. Albino: Yes, I have a question. When there is a -- an attempt to identify a specific or more place for consideration for preservation, how does that begin? Do we bring that to you as the result of community meetings? Okay.

Ms. Kehler: Yeah.

Ms. Albino: Okay. I was just worried because one of the places I wanted to identify is Pakui Heiau on Molokai and there was a conflict when the -- the Maui County Fire Department wanted to build very close to the area, and there was an EA done but it wasn't thorough enough to include even the name of the place, so that's going to come up in an EIS.

Ms. Kehler: Yeah, so anytime that you have a question, you can call or email me. I'm going to give everybody my card just I don't -- I think you guys have my contact information, but if you don't, I'll give you my card.

Ms. Albino: It's nice to know we can call someone and not like you're the only kupuna over there who's talking about a heiau that nobody knows about anymore. Thank you.

Vice-Chair Lay: Commissioners, if no more questions, thank you very much, Annalise.

Mr. Kanahele: Thank you.

**F. NEXT MEETING DATE: September 5, 2019**

**G. ADJOURNMENT**

Vice-Chair Lay: We've gone through item training one and two. Unfinished Business we've covered already. Our next meeting is on September 5<sup>th</sup>. Motion to adjourn?

Ms. Albino: Motion.

Vice-Chair Lay: Seconded? Okay, thank you. Be safe you guys with those storms out there especially our Molokai and Lanai Commissioners, get home safely. Welcome aboard.

Mr. Aiwohi: Mahalo.

**The meeting adjourned at approximately 12:35 p.m.**

Submitted by,

SUZETTE ESMERALDA  
Secretary to Boards & Commissions II

**RECORD OF ATTENDANCE:**

**Present:**

Ivan Lay, Vice-Chairperson  
Ka`apuniali` ionalaniki` eki` ie Aiwohi  
Louella Albino  
Ian Bassford  
Yvette Celiz (Arrived at 11:05 a.m.)  
Daniel Kanahele  
Michael "Kaleo" Ropa

**Excused:**

Tanya Lee-Greig, Chairperson  
Mary Randall Wagner

**Others:**

Jennifer Maydan, Planner VI, Long-Range Division, Department of Planning  
Annalise Kehler, Cultural Resources Planner, Long-Range Division, Department of Planning  
Mimi Desjardins, Deputy Corporation Counsel, Department of the Corporation Counsel  
Suzette Esmeralda, Secretary to Boards & Commissions II, Current Division, Department of Planning