

MOLOKAI PLANNING COMMISSION
REGULAR MINUTES
MAY 27, 2020

A. CALL TO ORDER

The regular meeting of the Molokai Planning Commission was called to order by Chairperson Lori Buchanan at approximately 11:07 a.m., Wednesday, May 27, 2020, via BlueJeans Meeting No. 958882554.

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

Chair Buchanan: Okay, everybody. I see we have quorum today. I wanted to welcome everybody to the meeting of the Molokai Planning agenda via BlueJeans link online. Today's date is May 27. We have several things on the agenda today. But before we start, I wanted to ask if anybody -- any Commission Members had any corrections, additions, or amendments to the agenda? But everybody's muted, how can I tell who -- okay. Oh, there. You can unmute.

Mr. Poepoe: Chair?

Chair Buchanan: Commissioner Poepoe.

Mr. Poepoe: Suggestions to amend.

Chair Buchanan: Okay. Commissioner Poepoe, what are your amendments?

Mr. Poepoe: To move item D, Unfinished Business, up before item C.

Chair Buchanan: So your amendment is to or suggestion is to move, after item A, B, you wanted to move item D up, before item C, and then place item C after item D. Is that correct?

Mr. Poepoe: Affirmative.

Chair Buchanan: Commission Members, you guys have any comments?

Ms. Espaniola: None.

Ms. Mowat: None for me, Bridget.

Chair Buchanan: Any discussion? Okay, I just giving people time to find out that they muted or un-muted. Okay, seeing none, we will amend the current May 27th agenda to reflect items A, B, followed by items D, and then item C. Can I have a motion to reflect that?

Mr. Pele: So move.

Ms. Mowat: I move. Then I'll second.

Mr. Pele: Second.

Chair Buchanan: Okay, it's been moved and by Commissioner Mowat and I believe seconded by Commissioner Pele.

Mr. Pele: That's correct.

Chair Buchanan: I'm trying to interpret your body gestures. Okay, all those in favor just maybe raise your hands, yeah. Okay, okay. Any opposed? Seeing none. So thank you.

It has been moved by Commissioner Bridget Mowat, seconded by Commissioner John Pele, then

VOTED: To amend the agenda by moving agenda item D to follow agenda item B, and agenda item C to follow agenda item D.

(Assenting - L. Buchanan, L. Espaniola, W. Moore, B. Mowat, J. Pele, L. Poepoe,
J. Sprinzel)

(Absent - J. Perez, III)

(Excused - J. Bicoy)

Chair Buchanan: We're going to move on to item B. And I notice that our agenda is different today because we don't have that public testimony portion that we usually have. Is there a reason why I guess, Planner Lopez? I just asking.

Ms. Lopez: I --

Mr. Sprinzel: Well, it does make more sense to have public testimony for each item when the item comes up. We get so confused when people try and talk at the front of it, but they can't have any excuse to say they're off to work can they?

Chair Buchanan: Okay. We'll bring it up again at one later time.

Ms. Lopez: Chair, if you read the first page, then they have actually options for testimony. You got the oral testimony, the video testimony, the written, and then public testimony will be taken on each agenda, and then, as the Chair, you can call out the testifiers, and so that -- that is how you can take testimony, Chair.

Chair Buchanan: Okay. And I see that they can sign up for through the chat.

Ms. Lopez: Right. Yes, and I was just going to mention the chat box --

Chair Buchanan: Okay.

Ms. Lopez: On the right as well. Thank you.

Chair Buchanan: Alright. So moving on, item B:

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

B. WAIVER OR NON-WAIVER OF SPECIAL MANAGEMENT AREA (SMA) ASSESSMENT REVIEW

1. **MS. MICHELE MCLEAN, Planning Director, notifying the Commission pursuant to the provisions of Section 12-302-13.1(a) of the Molokai Planning Commission's Special Management Area Rules that the following proposed action located within the Special Management Area is not a "development" and therefore exempt from the requirements of the Molokai Planning Commission's Special Management Area Rules:**

- a. **MRS. ESTRELITA CACATIAN requesting to install a 224 square foot deck addition to a single family residence located at 365 Kupa Place, Ranch Camp Subdivision, Kaunakakai, Molokai, TMK: (2) 5-3-011: 045, (SMX 2020/0113) (Valuation: \$15,000) (S. Lopez)**

The Commission may act to waive or not waive its review or defer. If the Commission votes to not waive its review, it may review the subject SMA assessment and act to approve or disapprove a SMA exemption, or defer

Chair Buchanan: Planner Sybil.

Ms. Lopez: Thank you, Chair. This is Sybil Lopez, the Staff Planner on this project that we have before you today. The Director is requesting to waive the review for the SMA assessment review. This project is located in the Ranch Camp Subdivision. Mrs. Estrelita Cacatian is requesting to add a deck to her single-family residence. It is in the interim zone. So you can click the link on the right-hand, lower right-hand of the project description, the SMA assessment, and you can see the assessment before you. So if

you the Commission has any questions, I'm here to answer. Mahalo.

Chair Buchanan: Commissioners, you guys have any questions for Planning Staff or for the applicant? And please unmute and speak up because my screen is only covering, one, two, three, four, five, only six people so, yes, Commissioner Sprinzel?

Mr. Sprinzel: No problem with this at all. Happy to have --

Chair Buchanan: Thank you.

Mr. Sprinzel: Waive it.

Chair Buchanan: Okay, anymore comments? I have a comment and a disclosure, Corp Counsel, Stephanie.

Ms. Lopez: Chair, I think, sorry, Chair, I think Commissioner Pele had his hand up and his mute is on mute, his microphone is on -- so I don't know if Commissioner --

Mr. Pele: I was just going to share the same sentiment as Commissioner Sprinzel. I have no problem with this but --

Chair Buchanan: Okay.

Mr. Pele: Go ahead, Chairman. I apologize.

Chair Buchanan: I sorry. I trying to watch. I believe this applicant is an acquaintance, and I believe she is a member of the church I go to so -- but I don't believe that it will have any effect on my voting and that is my statement for the record.

Ms. Chen: Thank you. Noted.

Chair Buchanan: Okay. Any Commission Members have one issue with that, on my disclosure?

Ms. Mowat: I have no problems with that. Lori, this is Bridget.

Chair Buchanan: Hi, Bridget.

Ms. Mowat: You can hear me? Hi.

Chair Buchanan: Yes, I can hear you.

Ms. Mowat: She -- she one member of my church too, and I have no problems with --

and I don't think that's going to change my vote or, you know. I'm all good.

Chair Buchanan: Okay. Okay, anymore disclosures? If not, we would move, and I believe we have enough members that I will not -- I will recuse myself from voting just to be extra -- extra sensitive and whatever. Okay? Moving on, do I have a motion on the -- I mean --

Mr. Sprinzel: Public testimony.

Chair Buchanan: Public testimony. Suzie, was there any public testimony on this matter?

Ms. Esmeralda: I did not receive any.

Chair Buchanan: Okay, thank you. If not, recommendations? Huh, Planner Lopez?

Ms. Lopez: I was just going to state for the record that Sybil Lopez, Project Planner, did not receive any testimonies in our office. Thank you.

Chair Buchanan: Okay, thank you very much. If there's no more testimony, Planner Lopez, recommendations from Staff?

Ms. Lopez: The recommendation from the Planning Director is to recommend to waive the SMA assessment before you. Thank you very much.

Chair Buchanan: Thank you, Staff. Is there a motion on the floor?

Mr. Sprinzel: Propose to waive.

Chair Buchanan: Is there a second?

Ms. Mowat: I second. This is Bridget.

Chair Buchanan: Okay, there's been a motion to waive by Commissioner Sprinzel, and second by Commissioner Mowat. Any discussion? Seeing none, we'll call for the vote, and I will do a roll call vote because we are doing an online and I can't see everybody. Commissioner Poepoe, your vote?

Mr. Poepoe: Aye.

Chair Buchanan: Commissioner Mowat?

Ms. Mowat: Yes.

Chair Buchanan: Commissioner Pele?

Mr. Pele: Yes.

Chair Buchanan: Commissioner Leonora?

Ms. Espaniola: Yes.

Chair Buchanan: Commissioner Sprinzel?

Mr. Sprinzel: Yes.

Chair Buchanan: Commissioner Moore?

Mr. Sprinzel: Yes.

Chair Buchanan: Is Commissioner Julie on?

Ms. Lopez: Chair, Commissioner Julie emailed and notified the Department that she will not be able to attend today's meeting.

Chair Buchanan: Okay, thank you. Are there any other Commissioners that we missing? Okay, just myself, and I will not be voting on this matter. So unanimous. Motion carried. Thank you very much.

It has been moved by Commissioner John Sprinzel, seconded by Commissioner Bridget Mowat, then

VOTED: to waive its review of agenda item B.1.a.

(Assenting - L. Espaniola, W. Moore, B. Mowat, J. Pele, L. Poepoe, J. Sprinzel)
(Recuse - L. Buchanan)
(Absent - J. Perez, III)
(Excused - J. Bicoy)

Chair Buchanan: Moving on -- we moving on to item D, Unfinished Business, the public hearing was open and conducted at the May 13, 2020 meeting, but it was deferred, so item 1, Planning Director McLean transmitting the proposed amendments to Title 19, and you all see the Summary on item number 1, number 2, and number 3. So we can take that one at a time, and then I will turn that over to Director McLean or Planner Lopez.

D. UNFINISHED BUSINESS (PUBLIC HEARINGS CONDUCTED AT THE MAY 13, 2020 MEETING. MATTERS DEFERRED AT THE MAY 13, 2020 MEETING. (Please refer to documents distributed with the May 13, 2020 Agenda.)

1. **MS. MICHELE CHOUTEAU MCLEAN, AICP, Planning Director, transmitting proposed amendments to Title 19 of the Maui County Code, Chapter 19.69 relating to Urban Reserve District regarding permitted uses, minimum development standards and height regulations. (J. Takakura)**

The entire text of the proposed bill for ordinance is available at <https://www.mauicounty.gov/1127/Legislation---Proposed>

SUMMARY:

1. **Section 19.69.020.B: Permitted uses.**
 - **Amends language regarding uses and structures that are accessory to a single-family dwelling and language regarding accessory dwellings**
 - **Removes short-term rental homes and adds bed and breakfast rental homes as a permitted use**
 - **Adds buildings or premises used by federal, state, or county governments for public purposes.**
 - **Moved language from 19.69.020.C regarding structures used for public purposes and on land which the community plan designates as open space or park.**
2. **Section 19.69.020.D.1: Minimum development standards.**
 - **Amends language regarding subdivisions**
3. **Section 19.69.020D.2: Height regulations.**
 - **Removes language regarding two stories.**

Ms. McLean: Thank you, Chair. This is a Department initiated effort and I believe our Administrative Planning Officer, Jacky Takakura, is on the call, and she will give the presentation. Thank you.

Ms. Takakura: Thank you. Good morning, Chair Buchanan and Commission Members. Hello from Maui. The urban reserve district is part of the comprehensive zoning code, but we don't see it very often. It's intended to be used for lands that are in the State urban district and are set aside for future development. This district, urban

reserve, is purposely restrictive and it's used when land is not ready to be developed in a manner consistent with its community plan designation. We have found, however, that it's overly restrictive, we'd like to make some amendments, and that's what we're bringing before you today.

Just a little bit of background information about this part of the code, and it's Chapter 19.69, of the zoning code. On the island of Maui, we have over 40,000 parcels; of that, 84, 84 parcels are zoned urban reserve, and only on part of the parcel for most of them. And of those 84 parcels, 61 have less than 1 acre zoned urban reserve, and the remaining 23 have urban reserve zoning ranging from 1.07 acres up to 36 acres on the parcel, and these parcels are located in Hana, Upcountry, and along the north shore, and I'm going to share my screen and just show you a map, so please hold on for a second while I bring up this map so you can see where these parcels are.

So can you give me a thumbs up so if you are seeing this greenish colored map of Maui. I can see you very small so I can see if you can see it. So this is the northeast shores of Maui, and you can see the red dots where the urban reserve district parcels are at. On the right side, that cluster of red, that's Hana, and then you kinda see in the middle Kula, and then like Makawao, and then, as you get closer to the shore, Haiku and Paia. So that's where these parcels are located. Okay, so I'm going to stop sharing my screen, and I can bring this back up if you have any questions about the locations of these parcels.

Okay, so back to this, continuing with this. Just FYI, there's no urban reserve zoning on the islands of Molokai or Lanai, but we do want to bring this before you because it is a change to the comprehensive zoning code.

What we have before you, the attached bill, tries to simplify the existing language regarding single-family dwellings and accessory dwellings, it removes short-term rentals as a permitted use, but it allows bed and breakfast homes, and it allows government buildings or premises, and it also ensures that structures on the land are designated as - - as land -- structures on land designated as open space or park only for public purposes. We did check with the Department of Public Works and they gave us some recommendations about subdividing for developable versus non-developable lots, so we included their recommendations so that in the event a utility or a park or road widening or other non-developable lot may be needed, that they can do -- we can do that. So that's what we have before you today. Do you have any questions on this?

Ms. Espaniola: So the rule apply to Molokai, Maui County I assume?

Ms. Takakura: Yes, if -- if there were any urban reserve parcels on Molokai or Lanai, yes, it would apply. It just so happens that these 84 parcels are all on the island of Maui. But, yeah, it would be across the board for any parcel that has this zoning.

Ms. Lopez: Chair, your mike is on mute. I don't know if you're talking but your mike is on mute, Chair Lori, so we cannot hear what you're saying.

Chair Buchanan: Okay, you guys can hear me? I going try switch to the actual PDF of the -- the bill, and I'm assuming, Jacky and Michele, that the underline is the new language, and the brackets are going to be omitted. Is that correct?

Ms. Takakura: That is correct. Yes.

Chair Buchanan: Okay. So I have a question, and it's about -- what is the definition because items 7 and 8 -- actually, 6, 7, and 8 -- you know what? Go back to 2. Because I read in something else in the other part of Title 19 that you going use, for number 2, you adding new language that says, "Uses and structures that are accessory to the single-family dwelling, such as garages, carports, and storage sheds," that would also -- you would also be able to do in the other new language like a watchman shed for security guard. Is that correct?

Ms. McLean: If it was a watchman for a -- a residence, I suppose, but only -- there aren't any commercial uses allowed in urban reserve, so I can't think of any occasions where -
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Chair Buchanan: So the other one is for the other part 2 of the Title 19 amendments that we going be -- that going be coming up?

Ms. McLean: The other item on --

Chair Buchanan: Right?

Ms. McLean: The agenda is a different --

Chair Buchanan: Yeah.

Ms. McLean: A different chapter of the zoning code.

Chair Buchanan: Right.

Ms. McLean: Yes.

Chair Buchanan: Okay. So on items 6, 7, and 8, you deleting the short-term rental homes, and you adding bed and breakfast homes subject to the provisions of 19.64, and then on number 7, you have buildings or premises used by the federal, state, or county governments for public purposes, and is "public purposes" defined somewhere?

Ms. McLean: I will look really quickly. The wording of number 7 is pretty common in other districts in the code. It's in the business districts. It's in the residential districts. And so we just use the same language that we see in other districts. The idea being that if there is a need for any kind of government facility whether it's a community center or a school that those should be allowed to be located in those districts.

Chair Buchanan: And then item 8, new language, "Only structures used for public purposes are permitted on the land the community plan designates as open space or park," what is the purpose for that? To ensure clarity?

Ms. McLean: If you -- if you look at, on the following page, language that's being bracketed, letter C, the district already says that no structures are permitted on lands designated for open space or park use by the community plan, and so we just reworded that same concept to say that if it's designated as open space or park, you could have a structure but only if that's a structure used for a public purpose. So right now --

Chair Buchanan: And then --

Ms. McLean: Go ahead, Chair.

Chair Buchanan: Okay. And you omitting the two stories and you just using the 30-foot height restriction? Yeah.

Ms. McLean: That's an effort that's common throughout the code now.

Chair Buchanan: Okay.

Ms. McLean: Because, for some structures that might have a mezzanine or a loft, and it can get confusing, is that a story, is it not, we -- the concern is the height from an outside appearance, you know, how big you want structures to be.

Chair Buchanan: And really quick, what is the purpose of the designation of urban reserve in the community plan, in the Maui County plan?

Ms. McLean: Well, as Jacky said at the beginning, usually zoning is established to be consistent with the community plan, and, actually, if you change a zoning, it has to be consistent with the community plan. We have areas that are in the State urban district that have whatever community plan designation they have whether it's business or single-family that are -- that are large enough that the County zoned urban reserve because they weren't ready with any sort of -- without any particular development concept, and so it's kind of like interim but urban reserve is even more restrictive than interim, it's just like a placeholder designation until there is some better idea of how that property might be developed, and it's purposely -- it's purposely restrictive because the lands aren't ready

to be developed yet.

Chair Buchanan: So in terms of zoning and, like you said, it's more restrictive because I notice we have urban, State urban designations on Molokai, but they're not urban reserve, so I just trying to figure out how that can be developed or saved and I think it looks like most of these are good in a sense that they trying to define, and in that bed and breakfast, on item 6. Okay, that's it. Thank you very much.

Ms. Mowat: I have a question. This is Bridget.

Chair Buchanan: Commissioner Leonora. Oh, Bridget.

Ms. Mowat: Bridget.

Chair Buchanan: Okay.

Ms. Mowat: Yes. I was looking at the current urban reserve district, and your 7 and 8 was added in, yeah, and this is building or premises used by the federal, state, or county, I am a little bit questionable about the public purposes. I, too, want to know what that means, public purposes, 'cause any building that may be the federal government can build in that area a building and say it's office space for a homeless shelter, or is that what that is saying? I mean public purposes could be anything, right, as long it's going to benefit the public?

Ms. McLean: It is -- it is broad. There is a definition in the code already for public facility or public use means a use conducted by or a facility or a structure owned or managed by the government of the United States, the State of Hawaii, or the County of Maui which provides a governmental function, activity or service for public benefit. The County, typically, doesn't operate homeless shelters. There are nonprofits that operate those that the County gives funding to. Those would be suitable in an area that's zoned public/quasi-public, but those wouldn't be considered allowed under this language 'cause that wouldn't be used by the government for a public purpose.

Ms. Mowat: Okay, I --

Ms. McLean: Or that would be more like a school or a community center or a DMV office, a park, things like that.

Ms. Mowat: Or -- or any kinda State office?

Ms. McLean: It could be a State office, yup.

Ms. Mowat: Okay, I was just using the homeless shelter just as a -- as a example or,

you know, of what that meant. Okay. Thank you.

Chair Buchanan: Anymore questions? I have one last question if anybody doesn't have a question. Director, on item number 3, you guys are omitting the lot size and adding new language that the accessory dwellings are subject to the provisions of Chapter 19.35. In Chapter 19 -- 19.35, is there a lot size for an access -- permitted for accessory dwelling?

Ms. McLean: Yes. Under Chapter 19.35, if a lot is 7500 square feet or larger, it can have two --

Chair Buchanan: Okay.

Ms. McLean: Accessory dwellings. If it's smaller, then it can one accessory dwelling, and that was a change made at the end of 2018, I think, to create more --

Chair Buchanan: Wow.

Ms. McLean: Opportunities.

Chair Buchanan: No wonder we in trouble. Okay. With two accessory dwellings on 7 -- 7,500 square foot lot. Okay. Commissioner Pele.

Mr. Pele: But, if I'm not mistaken, didn't we not vote that for Molokai during that meeting that we talked about the accessory dwellings?

Ms. Lopez: Yes. Hi, Chair, this is Sybil Lopez. I just wanna concur with Commissioner Pele that only for Molokai they have no more than one accessory dwelling per lot. Thank you.

Chair Buchanan: Oh, you on it, Commissioner Pele. Awesome. Okay.

Mr. Pele: Yeah, I was a little emotional at that meeting about my daughter and my mo`opuna.

Chair Buchanan: Okay. Good. That's enforcement. Okay, anymore questions on item D, number 1, for Staff? Okay, so I'm going to open it up for public testimony, and checking with Suzie because I cannot see the chat box if anybody signed up for testimony. I don't think we --

Ms. Esmeralda: This is Suzie. I haven't received any.

Chair Buchanan: Okay. Sybil, you too? Same for you? You got any correspondence or --

Ms. Lopez: Hi, Chair. This is Sybil Lopez and I see no one in the chat box and there was nothing submitted to the Department on my -- on my end regarding any testimony regarding this -- this item, however, I did have a phone call but it was just questions, that's about it, but nothing set in stone. I did have a phone call having questions regarding this topic.

Chair Buchanan: Okay, thank you very much.

Ms. McLean: If I could -- if I could note, I believe Commissioners received testimony that we received --

Chair Buchanan: Yeah.

Ms. McLean: From the Expedia Group for the change to take away short-term rental homes. That's the only written testimony that the Department received.

Chair Buchanan: Okay, thank you. And there was a link on the agenda, memorandum link as well as a testimony link for Commissioners to review, and I'm sure they had an opportunity to review that. If anyone did not have an opportunity to review that, please let me know if you want to. Okay, I'm seeing none. If there's no more discussion, this item was a Communication item. Corp Counsel Stephanie, do we have to make a motion on this item 1?

Ms. Chen: Yeah, I would make a motion, so the, as I understand it, the Commission can recommend approval to -- they can recommend to Council that this -- these items be adopted, or the Commission can also provide recommendations to the Department, or can recommend none -- not approving them to Council.

Chair Buchanan: Can we just move on that our comments or the record be provided to the Department?

Ms. Chen: Sorry. Could you --

Chair Buchanan: Can we have --

Ms. Chen: Everything that you were discussing ...(inaudible)...

Chair Buchanan: Would it -- yeah, would it be appropriate for the maker of a motion to just suggest that we provide the Department with the communications or the discussions from this meeting today and that's it?

Ms. Chen: Well, perhaps, Michele, were you writing down the suggestions would -- perhaps it'll be a good idea to read them back and then make the motion incorporating the comments that you have.

Chair Buchanan: We have a recording yeah?

Ms. McLean: We do have a recording. I don't know if Jacky noted any particular comments. Really, the only -- you asked a number of questions and clarifications, but the only indication that I got was thinking that the current law about accessory dwellings allowed too many of them, but as you pointed out, that doesn't apply to Molokai. I didn't really take away any particular comments; it was more questions.

Chair Buchanan: Okay, well, I leave it up Commission Members then. They can make a motion to approve or concur or whatever they wanna do. Okay, thank you very much. So if there's no more discussion or questions from the floor, which I cannot see right now, I can only see four people, three of them is Staff, so speak up --

Mr. Poepoe: I have some discussion first.

Chair Buchanan: Unmute and speak up if you like say something. Commissioner Poepoe?

Mr. Poepoe: I like -- I just wanted to ask the -- the -- speak on the relevance of this change as applied to Molokai Island. Is there any -- a map, it's not going to pull up any of this? Would it be -- make more sense to be accepted -- I mean exempted from the changes rather than approve a change to another island from the Planning Commission? I was just having that kinda clarified by the Department, if can.

Ms. McLean: That, in a sense, Molokai is already exempted from it because there aren't any lands on Molokai with this zoning, so the only lands in the County that have this zoning are on the island of Maui. If urban reserve were ever to apply to Molokai, that would have to go through the Commission and then the Council before it would get applied, so it really doesn't, right now, it doesn't have any applicability to Molokai.

Chair Buchanan: Good question.

Mr. Poepoe: But I thinking if it's implied that we -- we're not included in this, how do we get ourselves out of being niele, you know, voting on something that doesn't apply to our island?

Ms. McLean: That's a requirement of the Charter that this has to go to all three planning commissions even though lands on Molokai or Lanai don't have urban reserve zoning, it's a change to the zoning code, so I guess the -- the thinking is maybe some day you might have lands with this zoning so you get to comment on it, but again, if you were ever to have lands with that zoning, you folks would have to see it and the Council would have to see it, it's not just something that the Planning Department can -- can apply.

Chair Buchanan: Commissioner Poepoe, oh, hang on. You can hear me? Were you asking the question because you, like what we've done in the past, if we just added "except for Molokai," then the -- it doesn't pertain to us? Is that -- you shaking your head in the affirmative since people on the line cannot see, and the purpose of that was to avoid some future conflict should Molokai, in the future, have urban reserve zoning, then all of these changes would apply to Molokai. That's a good question. It's a good thought. And I don't know, unless Staff can reply how that would negatively impact Molokai, the current proposed changes, had we have urban reserve. I don't think it would be substantive. Director? But I think, Commissioner Poepoe, that's an option to opt out.

Ms. McLean: Some of the changes are really just making it more clear. The change to number 2 doesn't really change the substance of number 2. Number 3 does allow properties on Maui, and as you've pointed out, not Molokai or Lanai actually, to have the additional accessory dwellings, but Molokai is already exempt from that so that wouldn't -- there wouldn't be a reason to make a -- a different statement for Molokai for number 3. For number 6, by the end of this year, Molokai will not have any short-term rental homes so deleting that won't have much of a change. Changing it to bed and breakfast homes would be different, so you could say "except for Molokai" for B&Bs for number 6. Number 7 and number 8 are -- are new, so you could say "except for Molokai" for number 7 and number 8 if you wanted to. And D is like a restatement so there's not a whole lot of change there either. So if you wanted to get to the substantive parts where Molokai might not want to be covered by this, I would say number 6, 7, and 8 you could say "except for Molokai" if you wanted to, if you didn't want those things to be allowed on Molokai.

Chair Buchanan: Okay, John Pele, Commissioner Pele.

Mr. Pele: Yes, I have a question along that line, so if we put in language that says - can you guys hear me? - "except for Molokai," does that stop urban reserve district from applying for that zoning on this island in the future? Or it's still -- they could still, even though we have a -- we put "except for Molokai," in 30 years, could they come and apply for that urban -- is it urban reserve district and they would still have to come to the Commission and the County?

Ms. McLean: That's correct.

Mr. Pele: Or this is just --

Ms. McLean: If you said "except for Molokai" for whatever parts that you didn't want to apply to Molokai, urban reserve zoning could still be given to a parcel in Molokai but those particular uses would not be allowed.

Mr. Pele: Oh, okay. Alright.

Ms. McLean: On Molokai.

Mr. Pele: So once we vote, it's set in stone?

Ms. McLean: Yes. Well, I shouldn't say that. Those comments would go to the County Council and if the Council chooses to pass this bill, they could include those comments or not. It would be up to the Council. So what you're doing today is giving a recommendation to the Council.

Chair Buchanan: Yeah.

Mr. Pele: Okay.

Chair Buchanan: So, Director McLean, I wanted to -- I wanted the Commission to fully understand, like item 4, in the urban reserve district, you can -- an allowable use is the pasturing of animals and the cultivation of crops including, but not limited to, greenhouses, flower and truck gardens, nurseries provided that there should not be any retailing or transaction of business on the premises, so when it says "pasturing of animals and cultivation of crops," the urban reserve, the allowable uses in the -- would seem to conflict with types of businesses that may not appreciate pasturing of animals and cultivation of crops, and I'm thinking about several cases that came out throughout the State with the islands of Kauai, even on like Waianae Valley where you have the cultivation of crops next to residential areas, spraying of pesticides of those crops, and also I don't know if pasturing of animals would be different than say a dairy, maybe not a full on dairy, but pasturing of animals would be cows, chickens, horses, pigs and that -- that's correct. You're shaking your head yes in the affirmative. Okay.

Ms. McLean: It wouldn't include dairy and it wouldn't include an egg farm, but just animals in the pasture, yes.

Chair Buchanan: Okay. Okay, I can see how -- I can see how that would be kind of a conflict on the allowable uses adding uses that may or may not appreciate the pasturing of animals.

Ms. McLean: So what that means is that if there is a parcel anywhere in the County, that the County is considering zoning urban reserve; part of that change in zoning process is to look at the potential impacts to surrounding properties so --

Chair Buchanan: Okay.

Ms. McLean: If there was a property next to businesses or next to homes that, for whatever reason, we were thinking to zone urban reserve, it would be decided through the process, oh, maybe we're going to put a condition on that zoning to not allow pasturing of animals. The other uses are okay, but not that. So urban reserve isn't established on a widespread basis, it would be specific to a parcel, it would get reviewed by the

planning commission, it would get adopted by the County Council, and in the analysis would be the potential impacts of all of the uses listed here on surrounding properties, and if any of those would be problematic, you put conditions on them to minimize the impacts.

Chair Buchanan: So then is item 6 appropriate within the district?

Ms. McLean: Item 6, the B&Bs?

Chair Buchanan: Yeah.

Ms. McLean: Well, right now, again, we approach this as changes to the existing code and the existing code allows short-term rental homes, which are generally falling out of favor, and so we replaced it with bed and breakfast homes because there tends to be more --

Chair Buchanan: Okay.

Ms. McLean: Support for bed and breakfast homes. So we didn't really make a call on whether any of these things are good or bad, we just looked at how we could change it and make it better.

Chair Buchanan: Okay, so if we omitted short-term rentals, it seems that the offering up of the bed and breakfast was a compromise, I don't know, I mean I would appreciate deleting item 6 from the urban -- I mean not having both of those as allowable uses only because they are allowed uses in other districts, and the urban reserve district is -- is what it is, it's to reserve urban type of uses, and so I guess my -- my suggestion would be to not have both of those as an allowable use in the urban reserve district because justification is it's allowed everywhere else except for conservation district and like this urban reserve where you have to reserve the pasturing of animals and cultivation of crops and stuff, so thank you for giving me time to think about it.

Ms. McLean: And that's -- that can be the Commission's recommendation.

Chair Buchanan: Okay.

Ms. McLean: You can recommend whatever you want to.

Chair Buchanan: Okay. Thank you. Okay, that was my input. Okay, Commissioners, anymore discussion, and I cannot see half of you so unmute yourself and say something if you like say something?

Mr. Moore: Chairman, this is Billy Moore. Can you hear me?

Chair Buchanan: Hi, Billy. Yes, I can.

Mr. Moore: I have a question for Michele. Would you tell me the definition of "urban reserve district" again?

Ms. McLean: Yup, I can. The general purpose and intent of the urban reserve district is to accommodate a reserve of lands in the State urban district for future development, which is consistent with the community plan designation for those lands, to prevent premature subdivision and development where infrastructure services are unavailable or inadequate, and to establish standards that aren't subject to other County zoning regulations, and to set minimum and maximum development standards. So it's like a holding --

Mr. Moore: Thank you.

Ms. McLean: A holding pattern.

Mr. Moore: Right.

Ms. McLean: Putting them on hold.

Mr. Moore: Right. I understand that then. My only other question is are there utilities and roads available in these districts now?

Ms. McLean: In some areas, yes, but not in all areas.

Mr. Moore: So wouldn't that be classified as developed land?

Ms. McLean: I would say that land is -- is developable, but most of these properties are either vacant or they have a single dwelling on them, they might be zoned -- or, excuse me, community planned for business or residential, so they're larger acreage and could be subdivided and developed, but they're just put in this holding -- this hold category for now because they might have adequate infrastructure for a home or two, but not for a full-on subdivision or a large commercial development.

Mr. Moore: Okay, thank you. I better understand now.

Chair Buchanan: Alrighty. Sorry, the Chair is playing with different types of viewing over BlueJeans.

Mr. Sprinzel: Lori, if you --

Chair Buchanan: Yes?

Mr. Sprinzel: Want to change -- if you want to change the view, at the bottom left-hand corner of your screen, there are three alternatives. Have you tried those?

Chair Buchanan: Right.

Mr. Sprinzel: The one with the four squares gives you --

Chair Buchanan: Yeah.

Mr. Sprinzel: Pictures of everyone.

Chair Buchanan: Yeah. Thank you, Commissioner Sprinzel. I just zoomed all through that while I was hiding my face. Okay, so, Commissioners, if there's no more questions, I think we already had public testimony and we closed that so, and if I'm wrong, somebody correct me, then we are open for a motion on the floor. Commissioner Sprinzel, you're muted if you're talking.

Mr. Sprinzel: I propose we accept because those items you commented on, if anybody wants to put them on Molokai, it's going to come before the Commission anyway, so there's not really any need to isolate ourselves if you like. Thank you.

Chair Buchanan: Thank you, Commissioner Sprinzel.

Ms. Mowat: Lori?

Chair Buchanan: Is there a second?

Ms. Mowat: Lori?

Chair Buchanan: Yes?

Ms. Mowat: I just have a question. I don't know if I can do that but are you going to like amend that 6, number 6? Are you going to do something with that bed and breakfast?

Chair Buchanan: I think -- I think there's a motion on the floor that needs to be seconded, and then we can have discussion. And if there's no second, then motion fails.

Mr. Pele: Second.

Chair Buchanan: Oh, I see John Pele giving me a peace sign --

Mr. Pele: I second.

Chair Buchanan: So I'm assuming that -- now I gotta be interpretive.

Ms. Mowat: Okay.

Chair Buchanan: If he saying he second or --

Mr. Pele: I second in the matter of sanity.

Chair Buchanan: It's peace on earth.

Mr. Pele: I second.

Chair Buchanan: Okay, thank you very much.

Mr. Pele: We can move on with sanity.

Chair Buchanan: Commissioner Pele for the second, so we are now in discussion on the motion which is to accept the Department's amendments or proposed amendments or recommendations. Commissioner Mowat, now you can discuss.

Ms. Mowat: I -- I, yeah, I just had that question because -- 'cause it seemed unfinished to me 'cause you did make a comment on number 6 and we never talked about that, so just wondering if we're going to move with that number 6, with the recommendation or not. That's my question. Are we going to discuss that? Does anybody feel like we should discuss it? For my --

Chair Buchanan: I guess we're discussing it now.

Ms. Mowat: Well, for myself, I'm kinda like, you know, there are families, and especially I think about the seniors who, you know, can make a little bit of income, they have to be living in the home, and which I think of our local families who rent out a room to our college students for little income and stuff, you know, I'm thinking about them and -- but I don't know if this would be appropriate for our urban reserve district, so somebody help me make up my mind over here, some -- some little more information.

Mr. Sprinzel: But we don't have an urban what's it district.

Ms. Mowat: I -- I know we don't have but we are making it for Maui. You know, we are making a decision or helping Maui so I wanna make sure I -- I'm going to be doing something that Maui people will benefit from and not have them make comments like, gee, Molokai, you know, dah dah dah dah, why they voting for us for, so that was just my question and -- and I think it's worth discussing. Thank you.

Chair Buchanan: Commissioner Pele, you have discussion?

Mr. Pele: Yeah, I just wanna make sure, since I seconded, I want to make sure I'm correct here, we're not making any decisions correct, Director? We're just -- we're just giving recommendations and the County will be making any decisions, I mean we really don't -- this is not a decision-making process for us right? They might tell us go kick rocks. They don't care -- we don't care what you say, this what we're going to do. Is that true or not true?

Ms. McLean: That's correct. What you decide today will be a recommendation to the County Council and then --

Mr. Pele: Yeah, so we're not -- they're making the decision.

Ms. McLean: Correct.

Mr. Pele: Okay. I just wanted to make sure.

Ms. Mowat: But I think our -- our -- our discussion here is to make a recommendation so that's it. Thank you.

Mr. Sprinzel: Bridget, could you just turn your volume down a little bit, please? You're very loud.

Ms. Mowat: Sure. Okay.

Mr. Sprinzel: Thank you.

Ms. Mowat: How is that? Is that better? Can you hear me?

Mr. Sprinzel: About the same.

Ms. Mowat: Huh?

Mr. Sprinzel: About the same.

Ms. Mowat: Maybe you gotta turn down yours 'cause I'm turned -- I'm down. I wouldn't know how to turn -- turning my volume down.

Mr. Sprinzel: At the top of your screen.

Ms. Mowat: Yes, I see that and it's down.

Mr. Sprinzel: There's a settings on the right-hand corner.

Ms. Mowat: Left-hand, I see it, but I'm down.

Mr. Sprinzel: Okay. I'll believe you.

Ms. Mowat: Thank you.

Chair Buchanan: Okay. Commissioners, any -- anymore discussion? I can -- I can have just a second discussion on, Bridget, on item 6, but you heard earlier, I would assume that there's other -- several other districts, because this is a -- more restrictive, urban review is more restrictive of a zoning, it makes sense to keep it restrictive because all the rest of the zonings is all so inclusive of so many other -- I mean the sky's the limit, so when you get to conservation and reserve type of districts, it does help to be -- to be more reserved because everything else is pretty not reserved, so that's my only comment and -- and I can vote in the affirmative to go with the Planning Director's suggestions, but I would hope that the County Council would -- would see that we have a concern on Molokai with the adding bed and breakfast as an allowable use in the urban reserve. I would not want it to be part of that but, okay, that's it. Anybody else? If not, we can take a vote. Any last minute -- okay.

Mr. Poepoe: Is that recommendation --

Chair Buchanan: Commissioner Poepoe.

Mr. Poepoe: Will that recommendation be included without amendment or just the comment?

Chair Buchanan: Okay, can talk up, Laa, little bit? I get hard time hear you. Oh, so your comment is to -- for that to be included? Okay.

Ms. McLean: Chair, we could do --

Chair Buchanan: Okay, thank --

Ms. McLean: If I could. You could either vote on this motion that's recommending approval and we can be sure to note to the Council that you had concerns about including bed and breakfasts, or you could amend the motion to make your recommendation be that the bed and breakfast be removed either throughout the district or just for Molokai. So those are different ways you could handle that one item.

Mr. Sprinzel: I think if you recommend no -- no --

Chair Buchanan: What say you, Commissioners?

Mr. Sprinzel: I think if you recommend no bed and breakfast on Maui, you're going to get murdered.

Chair Buchanan: What about just for Molokai, Commissioner Sprinzel? What are your thoughts?

Mr. Sprinzel: Well, there's a lot of families who probably rely on having a bed and breakfast. I don't think we need to ban it. Anyway, it doesn't apply to this particular island at the moment. We're just talking about an area which we don't have. That's why I wanted to make it simple because if it comes to us having one of these areas, which is very unlikely anyway, it would come to the Planning Commission and we could say, well, no bed and breakfast in those areas. Anyway --

Chair Buchanan: Okay.

Mr. Sprinzel: To vote or not to vote.

Chair Buchanan: Okay. Thank you. Alright, if there's no more feedback, we'll just vote on the motion to approve the recommendations. Okay, I'll call for the vote. Roll call. Commissioner Poepoe?

Mr. Poepoe: Aye with the submitted recommendations.

Chair Buchanan: I beg your pardon. Can you repeat that?

Mr. Poepoe: Aye.

Chair Buchanan: Okay. Thank you. Commissioner Pele?

Mr. Pele: Yes.

Chair Buchanan: Commissioner Mowat?

Ms. Mowat: Yes.

Chair Buchanan: Commissioner Leonora?

Ms. Espaniola: Yes.

Chair Buchanan: Commissioner Bill?

Mr. Moore: Yes.

Chair Buchanan: Commissioner Sprinzel?

Mr. Sprinzel: Yes.

Chair Buchanan: And I also vote aye. Motion carried unanimous. Thank you very much.

It has been moved by Commissioner John Sprinzel, seconded by Commissioner John Pele, then

VOTED: to accept the Department's proposed amendments.

(Assenting - L. Buchanan; L. Espaniola; W. Moore; B. Mowat; J. Pele; L. Poepoe;
J. Sprinzel)
(Absent - J. Perez, III)
(Excused - J. Bicoy)

Chair Buchanan: Anybody need a break before we move on --

Mr. Poepoe: Aye.

Chair Buchanan: To the next agenda item? What's that? See, I get hard time hear Commissioner Poepoe.

Ms. Mowat: I think Laa -- I think Laa said yes and he left.

Chair Buchanan: Okay, so can we take a, oh, Pele is leaving too, so we're on recess.

Ms. Mowat: What time?

Chair Buchanan: We also on like a five-minute recess, okay. Thank you very much.

(A recess was called at approximately 12:12 p.m. This is the end of Part 1 of the Audio Recording. The meeting reconvened at approximately 12:38 p.m. and the start of Part 2 of the Audio Recording.)

Chair Buchanan: We resuming the Molokai Planning Commission meeting of May 27. We are moving on to item number 2, item D, number 2, Planning Director McLean submitting proposed amendments to Title 19, Chapter 19.35, relating to accessory dwellings and fire code requirements. And I will hand it over there to Planning Staff.

- 2. MS. MICHELE CHOUTEAU MCLEAN, AICP, Planning Director, transmitting proposed amendments to Title 19 of the Maui County Code, Chapter 19.35 relating to Accessory Dwellings and Fire Code requirements. (J. Takakura)**

The entire text of the proposed bill for ordinance is available at <https://www.mauicounty.gov/1127/Legislation---Proposed>

Section 19.35.090.C is proposed to be amended regarding fire code requirements for fire apparatus access roads to require that lots meet fire code requirements for fire apparatus access roads instead of requiring a minimum road width of 20 feet.

Ms. McLean: Thank you, Chair. I'll, in turn, hand it off to Jacky again.

Chair Buchanan: Thank you.

Ms. Takakura: Thank you. Chair and Commission Members, this is another part of the Maui County Code, this is Chapter 19.35, and it's a bill for an ordinance to fix a problem in this part of the code. This Chapter 19.35 is regarding accessory dwellings, and there's a section for required public facilities, it's 19.35.090, and we just wanna make a revision to the part about adequacy of street because the current language limits the Department of Fire and Public Safety's ability to approve building permits for accessory dwellings. Department of Fire, they have their own part of the code that they use to review building permits, but then we have this part in here that makes reference to street width and, based on what we have in our part of the code, they can't approve in certain situations, and so we'd like to have this removed so that they can just review building permits based on their own part of the code that they use, not Department of Planning's, not chapter -- Title 19.

The proposed change is very small, like I mentioned, it removes the minimum street requirement -- minimum street width requirement of 20 feet, and it refers to the Fire Code, which has some exceptions to allow the permit to be approved, so it's a little bit more flexible, and that's the part of the code that the Fire Department uses. I mean it makes more sense to -- for them to review building permits based on their rules and regulations, and not on the zoning code, which is our responsibility.

We also received comments from Department of Public Works, and I believe you received that as a separate email, it was a PDF, and they're requesting that the wording regarding the specific street width of 16 feet be removed because it's not necessary, and it's also addressed elsewhere in the code. Other zoning districts don't have this kinda strict requirement either, so it's inconsistent, and we are fine with the Department of Public Works' recommendation, and we do have the Deputy Director of Public Works, Jordan Molina, who is in on this BlueJeans if you have specific questions.

So this proposed bill for ordinance did go before the Maui Planning Commission, and they voted to recommend with the proposed language that meets both the Department of Fire and Public Safety's request and the Department of Public Works' request so that we take out these minimum feet requirements and just have that the lot must have direct access to a street that meets Fire Code requirements for fire apparatus access roads, and so that's what we're proposing in order to revise this part of the code so that we can get these accessory dwellings approved by these other agencies. Did everyone receive a

copy of that Public Works memo from Jordan with their recommendation? You can raise your hand if you remember seeing it. I can also put it up on the screen if you wanted to see it too. And if there's any questions, I can answer questions. Thank you.

Chair Buchanan: Commissioner Sprinzel, you have a question? You on mute.

Mr. Sprinzel: Yeah, I've seeing the memo from the -- as was referred to.

Ms. Takakura: Thank you.

Ms. Mowat: Can you put it -- can you put it up on the screen, please, so -- there's so much papers in front of me, I might have it, I just wanna see if it's familiar.

Ms. Takakura: Okay.

Ms. Mowat: Thank you.

Ms. Takakura: Yeah, I'm going to share a screen and you're just going to see the memo from Department of Public Works. Let me just -- just a minute. Okay, so what you have before you is a, excuse me, a memo from the Department of Public Works, from Jordan, and if you can see in the italics, their recommendation, in the brackets, is that reference to that 16 feet. So what they're proposing, and we agree with, is that this part of the code simply say, "Adequacy of street. The lot must have direct access to a street that meets fire code requirements for fire apparatus access roads." Are there any questions about this one? And then I can stop sharing anytime you folks are ready to go back to seeing everybody's faces.

Chair Buchanan: Jacky, what is the -- sorry, this is Chair Buchanan. What is the Fire Code? Is there a minimum in the Fire Code for width?

Ms. Takakura: Well, they do have the minimum width of 20 feet but they also have some exceptions that they can, you know, in certain situations, it makes more sense to have, you know, something other than 20 feet, and those exceptions in their part of the code allow them to approve building permits, but because we only say -- make reference to the 20 feet and don't make reference to the exceptions that they already have in their part of the code, they kinda -- they kinda get stuck here because of this language that we have in our part of the code. And we did work with the Department of Fire and Public Safety, Fire Prevention Bureau, to word this in a way that they feel comfortable with.

Chair Buchanan: I guess my concern is a liability issue that if the County doesn't set a minimum and punts the ball to Fire and Public Works, or Fire, if they have the expertise to go through all the codes, I see John holding his hand up.

Mr. Sprinzel: We had the occasion to go into this some years back when the -- when the bank, the savings bank wanted to build the back, if you remember, I think you were on the committee then, and the roads to it weren't wide enough but the Fire Department allowed us to do it. So there is a precedence for this.

Ms. Takakura: Yes, and so the Fire Department has their own part of the code that they use to review and, you know, verify for their own -- based on their own criteria.

Mr. Sprinzel: And as I recall, we had a Fire Department person on the Commission back then as well, so they were fully aware of --

Chair Buchanan: I guess because my -- my concern is, and it must just be an issue of enforcement, because you get these really tight districts where we never have building code, you know, these older communities, like Wailuku and, you know, some parts in-between where I cannot imagine, even my father-in-law has a flag lot, and I can't see how a fire engine would ever get in there let alone an ambulance into those back roads, and I know it's because those communities are older communities, so that was my only, you know, like I don't see any minimum set, which leads us to being kinda arbitrary and I was just wondering about the Fire Code and if they had -- it seems like they have a lot flexibility then in their approving their part of the total construction of new places or whatever. They just have that flexibility now.

Ms. Takakura: They had asked if we could -- I'm sorry.

Chair Buchanan: Go ahead, Jacky.

Ms. Takakura: Okay. Sorry about that.

Chair Buchanan: You can give me feedback.

Ms. Takakura: The Fire Prevention Bureau had asked if we could make this revision and it's only relating to accessory dwellings, this part of the code, 19.35, and so any permits still has to meet Fire Code requirements for that -- the apparatus access roads, but it's their -- Fire Department's requirements per their request.

Chair Buchanan: I mean, yeah, I would support the Department. I see, John Pele, you have a comment?

Mr. Pele: No, I have a question. I wanna make sure I'm --

Chair Buchanan: Question.

Mr. Pele: Understanding this. This, for the accessory dwelling, what we're doing is we're empowering the agencies that are the experts to make the calls, is that what I'm understanding, so if there's a fire access, then accessory dwelling, we want the Fire Department to tell us what is safe, what they deem safe, what they deem as a requirement, and same with Public Works or am I misunderstanding? Rather than having somebody in -- who doesn't -- you guys, the Department of Planning, who might not know or have expertise in a fire situation as a Fire Department would, so we'd rather have the Fire Department make the call. Or am I misunderstanding what you're trying to achieve here.

Ms. Takakura: Thank you. That is correct.

Mr. Pele: Okay. Yeah. Alright. It's sort of like -- it's sort of like when we don't want the County people to tell Molokai what to do 'cause we know better than to -- and let the Fire Department determine what's safe in this particular setting 'cause they're the ones who are going to go in and perform the fire duties, right, we're not going to -- so I'm just wondering if that's, I'm trying to understand, I think that's what we're trying to get at, and I'm in favor of letting the expertise and Fire tell us how to fight fires and how to be safe and what they do to be safe, unless I don't understand.

Chair Buchanan: Thank you, Commissioner Pele. I understand what he mean. It's too bad that the -- if I like build one accessory dwelling, I gotta go to the County Planning Department to get my permit and not to the -- the Fire Department, but I understand, in Kiva, everybody's including on a permit, so if I put in an SMA to build an accessory dwelling in the back of my house in Ranch Camp, I go to the Planning Department for that permit, and then that permit goes out for comment to -- through Kiva to all the rest of the departments is that how it works, Jacky or Michele?

Ms. McLean: Not exactly. The SMA permit has particular criteria so that wouldn't go necessarily to that many agencies, but if the SMA permit or SMA exemption is issued, then you would need a building permit and it's the building permit that would get routed to the Fire Department and other departments. So --

Chair Buchanan: Okay, that's the trigger. Okay.

Ms. McLean: Yeah, it's the building permit that's the main trigger, so even a property outside of the SMA would have to get their building permit that would go to Fire, Department of Health, Water, etc.

Chair Buchanan: Sewer, yeah.

Ms. McLean: Yeah.

Chair Buchanan: Okay. Thank you. Okay, so, Jacky, is that it?

Ms. Takakura: That's it.

Chair Buchanan: I don't know how come I thought was more because I was looking I guess at the memorandum of October 22nd and that was what was on the agenda too, and so I can see why I was confused. Alrighty. Okay, that's it. Commissioners, any more questions? No? Any members of the public having -- I can open up for public testimony if there's any on this agenda item. Suzie, Sybil?

Ms. Esmeralda: This is Suzie. I haven't received any.

Chair Buchanan: Hi, Planner Sybil, you still on? I think she on. Okay. I don't think the Department had anymore to share, yeah? Okay, seeing none, we're going close public testimony on this item. So, Commissioners, you guys have any proposed motions for this item.

Mr. Sprinzel: Propose to accept.

Chair Buchanan: Commissioner Sprinzel.

Mr. Sprinzel: Propose to accept.

Chair Buchanan: Okay. Leonora is putting up the peace sign. Whoa, you guys getting --

Ms. Espaniola: Second.

Chair Buchanan: Savy, yeah? Okay, so I have a second by Commissioner Nora. Any discussion? Okay. I mean --

Ms. Espaniola: Commissioner Espaniola. I get a question. Ah, maybe --

Chair Buchanan: Yes.

Ms. Espaniola: I just wondering. Is there room for any biases as far as when an application would go in?

Ms. Takakura: Are you asking regarding a building permit?

Ms. Espaniola: Jacky? Yes.

Ms. Takakura: Usually I refer those calls to the building permits group over in Public Works, but usually when you have your plans ready over to DSA and submit your building permit application, I think Michele might know better.

Ms. McLean: Are you asking about when the bill would take effect?

Ms. Espaniola: Yes. Correct.

Ms. McLean: The bill will take effect when it gets approved, and this was brought to our attention from the Fire Department's reviewing a building permit, and they said we can't sign off on this and that's why they recommended this code change, so as soon as it takes effect, it would apply to permits processed and any that had been rejected could -- could ask to have their permit reinstated and maybe could get approved this time around.

Ms. Espaniola: Okay. Thank you,

Chair Buchanan: Okay, thank you, Commissioners. Anymore discussion on the motion? Okay, seeing none, I would do a roll call. Commissioner Poepoe?

Mr. Poepoe: Aye.

Chair Buchanan: Commissioner Mowat?

Ms. Mowat: Aye.

Chair Buchanan: Commissioner Espaniola?

Ms. Espaniola: Yes.

Chair Buchanan: Okay.

Ms. Espaniola: Sorry.

Chair Buchanan: Commissioner Moore? Thank you. Commissioner Moore?

Mr. Moore: Yes.

Chair Buchanan: Commissioner Pele?

Mr. Pele: Yes.

Chair Buchanan: Commissioner Sprinzel?

Mr. Sprinzel: Yes.

Chair Buchanan: And myself, yes. Unanimous. Motion carried. Yay, Title 19.

It has been moved by Commissioner John Sprinzel, seconded by Commissioner Leonora Espaniola, then

VOTED: to accept the proposed amendments.

(Assenting - L. Buchanan; L. Espaniola; W. Moore; B. Mowat; J. Pele; L. Poepoe;
J. Sprinzel)

(Absent - J. Perez, III)

(Excused - J. Bicoy)

Ms. Takakura: Thank you.

Chair Buchanan: Okay, so I going have a pause, and we are going to go back to item C, Communications, but at that point, I'm going to need to recuse myself from the rest of the meeting, and I'm going to ask the Vice-Chair, Commissioner -- Vice-Chair Poepoe to please step in and conduct item C, and that's it. Then I will -- I will resume on item D, unfinished -- no. Sorry, too much papers. Item E. He can go, you can go right into item E as well, Vice-Chair, if you want to. Okay, so, with that, if Corp Counsel wants to say something, I -- I, right now, I'm asking the Vice-Chair to take over for this meeting. Thank you.

Ms. Chen: Thank you, Lori. Vice-Chair, is it okay if I say a few things?

Mr. Poepoe: Yeah. Go ahead.

Ms. Chen: So to give a little background on this item, well, perhaps we should first read it I suppose. Vice-Chair, do you want to read the item?

Mr. Poepoe: I'll go ahead and read it out.

Ms. Chen: Sorry, what -- what did you say?

Mr. Poepoe: I'll read out the -- the agenda item --

Ms. Chen: Okay. Perfect.

Mr. Poepoe: First, and then hand them off to you.

Ms. Chen: Okay.

Mr. Poepoe: But this is item C -- item C, Communications, 1:

Mr. Poepoe read the following agenda item description into the record:

C. COMMUNICATIONS

- 1. Findings of Fact, Conclusions of Law, and Order Granting Appellant Scott Wehner, member of Wehner Molokai, LLC's Appeal from the Circuit Court of the Second Circuit, State of Hawaii, ordering the remanding of the Special Management Area Minor Permit request to the Molokai Planning Commission of the following:**

MR. SCOTT WEHNER seeking a Special Management Area Minor Permit for the after-the-fact grubbing of 8,000 square feet and grading of 4,000 square feet comprising 45 cubic yards on a 5.65 acre parcel located at 0 Kaula Ili Way, Kaluakoi, Molokai TMK (2) 5-1-007:030 (Valuation: \$190,000) (S. Lopez)

The Commission previously dealt with the matter at its March 27, 2019 meeting.

The Circuit Court of the Second Circuit, State of Hawaii, heard the subject appeal on January 8, 2020 and ordered the matter remanded to the Commission to hold a further contested hearing of the Appellant's Application for a Special Management Area Minor Permit.

AN EXECUTIVE SESSION MAY BE CALLED IN ORDER FOR THE COMMISSION TO CONSULT WITH ITS ATTORNEY ON QUESTIONS AND ISSUES PERTAINING TO THE COMMISSION'S POWERS, DUTIES, PRIVILEGES, IMMUNITIES AND LIABILITIES, PURSUANT TO SECTION 92-5(a)(4), HAWAII REVISED STATUTES.

The Commission may take action on the subject application.

Mr. Poepoe: I guess Corp Counsel.

Ms. Chen: Thanks, Vice-Chair. So, as the Vice-Chair said, this item is on the agenda because the Commission's decision from the March 27, 2019 contested case hearing was appealed to the Circuit Court. Judge Kawano was the judge for that case. He remanded this item to the Molokai Planning Commission based on procedural error that occurred during the March 27, 2019 contested case hearing. So the Wehner SMA permit application is in front of you all, the Commission, again, and the Commission has the opportunity to conduct the contested case hearing again and make a decision.

So I will go over some of the things that the Judge pointed out in his opinion, which I know you all have a copy of, and they are the procedural errors that he pointed out, which we'll need to be careful, do it correct in this hearing. So if -- if you can recall from previous training ...(inaudible)... while others do not. Sorry, can you all hear me? This contested case proceeding does not require public testimony, and per the Judge's Order, the Commission is not to allow public participation in the meeting or to rely on ...(inaudible)... so this hearing item is closed to the public, per that Order.

Mr. Poepoe: Corp Counsel, you cut out for a small section.

Ms. Chen: Oh, thank you. So this hearing item is closed to the public, per Judge Kawano's Order. The second procedural error he pointed out was -- is why the Chair Lori has recused herself from all participation in this meeting is that the Chair was one of the people who reported the activity which precludes from -- she reported the grubbing and grading which precludes her from participating in the meeting except for being present for quorum. So based on this part of the Judge's Order, I'll be conducting the vote for appointment of a substitute chair or hearing officer ...(inaudible)... And I guess there are a couple more points to make. I think I'll -- I'll just conduct that vote now, if that's okay with you folks and then we can --

Ms. McLean: Stephanie, the Commission can serve as the hearing officer, which is what they typically do with contested cases, so I just wanted to clarify that that is an option for the Commission, as a whole, to serve as the hearing officer.

Ms. Chen: Okay, so while part of the Order was that the Commission shall -- the Commission shall appoint and duly designate a hearing officer to preside over the contested hearing so, Michele, what you're saying is the Commission can appoint itself, as -- as a body, to serve as that?

Ms. McLean: Yes.

Ms. Chen: And has in the past. Okay.

Ms. McLean: Yes.

Ms. Chen: So is -- is that what the Commission would like to do?

Mr. Poepoe: I'd like to request a executive session prior -- before we move on.

Ms. Chen: Before we move on? Okay. So for that, we'll need a two-third vote, and if Chair Lori, which she already knows, that if Chair Lori could abstain from this vote as, that'd be great. So ...(inaudible)...

Mr. Poepoe: I'm going to be asking for a motion.

Mr. Pele: Move to entertain executive session.

Ms. Mowat: And I'll second. This is Bridget.

Mr. Poepoe: Can I get a vote? Show of hands? Thank you. Okay, let's learn how to executive session.

Ms. Chen: Oh, sorry, Vice-Chair, can you state the reason for executive session on the record, is it to consult with the board's attorney?

Mr. Poepoe: To -- I'm asking for executive session to clarify our abilities as Commissioners as to what ...(inaudible)...

Ms. Chen: Okay, so to consult with Corporation Counsel?

Mr. Poepoe: Yeah.

Ms. Chen: Okay. Thank you. So, Suzie, could you please send the new -- the executive session meeting link to us?

It has been moved by Commissioner John Pele, seconded by Commissioner Bridget Mowat, then

VOTED: that the Commission go into executive session to consult with its attorney.

(Assenting - L. Espaniola; W. Moore; B. Mowat; J. Pele; J. Sprinzel)
(Recused - L. Buchanan)
(Absent - J. Perez, III)
(Excused - J. Bicoy)

Ms. McLean: So what this will mean for the Commission is that you can, depending on your configuration of your computer, you can get out of this meeting all together, Suzie will send a new email link, and you can click on that, we'll go into executive session, then you go back to the link that you used for thing this morning to get back into this. The other participants on this can stay on it, but only the -- the Commission and Stephanie, Suzie, and myself will be on the executive session email. Does that make sense?

Ms. Mowat: Yup. Yup. Makes sense.

Ms. McLean: So I think the Vice-Chair has to call this meeting into recess so that you can go into executive session, and then he'll call it back into order once executive session is finished.

Mr. Poepoe: Okay, this meeting is in recess.

(A recess was called at 1:07 p.m. This is the end of Part 2 of the audio recording.)

The Commission entered into Executive Session via a separate BlueJeans meeting link.

(The meeting reconvened at approximately 2:31 p.m. This is the beginning of Part 3 of the audio recording.)

Mr. Poepoe: I'll go ahead and call the meeting back to order if everybody's here. And can I have Corp Counsel go through the confirmation with all the members?

Ms. Chen: Sorry, Laa, the confirmation? You mean for quorum?

Mr. Poepoe: For -- for receiving and comprehending the --

Ms. Chen: Oh the -- yes.

Mr. Poepoe: The information. The applicant's information.

Ms. Chen: Yeah, the record. The review of the record. Okay, so part of Judge Kawano's Order also explained that the Commission needed to have the entire complete application in front of it prior to making its decision at the March 27, 2019 meeting, so for the remand of this hearing item, the Commission needs to have the entire complete record, which includes the application, the exhibits attached thereto, any staff reports, any meeting minutes, the Molokai Planning Commission's Decision and Order from the previous hearing on March 27, 2019, and Judge Kawano's Order. So has, this is a question for the Department, has the Department provided the applicant and the Commissioners any new documents or submissions?

Ms. McLean: The Department provided a staff memo with exhibits that was included in the packets as well as Judge Kawano's Order that was in the packet, and then, in addition, the Department emailed the Commissioners the application, and one or two other documents prior to the meeting.

Ms. Chen: Thank you, Michele. So since it's been over a year since the Commission considered this permit, has -- has each Commissioner had the chance to refresh his or her memory? And I'll go around and get a verbal confirmation from each of you that you

had a chance to fully review the record, so I'll start with the top of my list, Bridget, Commissioner Mowat, have you had a chance to ...(inaudible)...

Ms. Mowat: I'm -- I'm sorry. I have not. We just received it yesterday and I'm still looking for the application. There's so many packets.

Ms. Chen: Okay, so based on that, I don't think we even need to continue going through roll call. I recommend waiting until the Commissioners have each had a chance to fully review the record because that's integral to making a final decision ...(inaudible)... so I'll turn it back to you, Vice-Chair.

Mr. Pele: Mr. Chair?

Mr. Poepoe: Per that information, can I -- can I get a motion from the members for deferral to a later date.

Mr. Sprinzel: Motion to defer.

Mr. Poepoe: Okay, defer, motion to defer --

Ms. Espaniola: Second.

Mr. Poepoe: By Commissioner Sprinzel, second by Commissioner Espaniola.

Mr. Pele: Discussion.

Mr. Poepoe: Oh, discussion. We can have discussion.

Mr. Pele: Vice-Chair, can I -- can I -- would it be smart to set a date of our next meeting to handle this matter, and I believe that'd be June 10th or do we not want to include that in the motion?

Mr. Poepoe: You'd like to make an amendment, Commissioner Sprinzel?

Mr. Sprinzel: Fine. Yes. Tenth would be good.

Mr. Poepoe: Can we get that seconded?

Ms. Espaniola: Second.

Ms. Mowat: I'll second. Can I second my motion?

Mr. Pele: Second that emotion. Second that emotion.

Mr. Poepoe: Anymore discussion on the motion? Yes, Director?

Ms. McLean: Thank you. I believe the applicant's counsel is on the call. Could we confirm if that date can work for them?

Mr. Poepoe: Okay. Can the applicant respond to that? Or the consultant.

Mr. Chipchase: Hi. Good afternoon, Commissioners. Sorry. I was looking at my calendar before -- before jumping in and saying one way or another whether that -- that date could work. Since I haven't made an appearance here today, I'll start by introducing myself. I'm Cal Chipchase. I represent the applicant. While -- while we're disappointed to have a deferral, I can confirm that June 10th does work.

Mr. Poepoe: Okay. Thank you.

Mr. Chipchase. You're welcome.

Mr. Poepoe: Members, any other discussion?

Ms. Espaniola: None.

Mr. Poepoe: Seeing none, we can call for a vote. I'll do a roll call. Commissioner Espaniola?

Ms. Espaniola: Yes.

Mr. Poepoe: Commissioner Mowat?

Mr. Mowat: Aye.

Mr. Poepoe: Commissioner Moore?

Mr. Moore: Yes.

Mr. Poepoe: Commissioner Pele?

Mr. Pele: Yes.

Mr. Poepoe: Am I missing somebody? One, two, three, four. And myself, Vice-Chair Poepoe, voting in the affirmative.

Mr. Mowat: Wait. Wait, wait. Where was Sprinzer? What was Sprinzel?

Mr. Poepoe: Oh, okay. Commissioner Sprinzel?

Mr. Pele: He dropped off the call.

Mr. Poepoe: Do we wait or we have a majority. Can we continue?

Mr. Pele: I believe we have a majority, Vice-Chair.

Mr. Poepoe: Corp Counsel, can you help out, please?

Ms. Chen: Oh, sorry. I wasn't counting. Can we go through it one more time, please?

Mr. Poepoe: We missing Commissioner Sprinzel, and we have a majority. What step do we take?

Ms. Chen: How many votes are in the affirmative are there?

Mr. Poepoe: Five.

Ms. Chen: Yep. The motion carries.

Mr. Poepoe: Thank you.

It has been moved by Commissioner John Sprinzel, seconded by Commissioner Leonora Espaniola, then

VOTED: to defer agenda item C.1. to June 10, 2020.

(Assenting - L. Espaniola; W. Moore; B. Mowat; J. Pele; L. Poepoe)

(Recused - L. Buchanan)

(Absent - J. Perez, III, J. Sprinzel)

(Excused - J. Bicoy)

Mr. Chipchase: See you in a couple weeks, Commissioners.

Mr. Poepoe: Yes. Thank you. I'll continue on. The Chair is back on the -- on the Zoom --

Mr. Pele: BlueJeans.

Mr. Poepoe: BlueJeans. Unless -- unless the Chair wants to continue on, I'll just go to item E, Director's Report, number 1, 2, 3:

Mr. Poepoe read the following agenda item description into the record:

D. DIRECTOR'S REPORT

- 1. Open Molokai Applications Report generated by the Planning Department with the May 27, 2020 Agenda Packet (Appendix-A)**
- 2. Completed Molokai Applications Report generated by the Planning Department with the May 27, 2020 Agenda Packet (Appendix-B)**
- 3. Agenda Items for the JUNE 10, 2020 meeting**

Mr. Poepoe: I'll hand it over to you, Director.

Ms. McLean: Thank you. Are there any questions on the open report or the completed report?

Ms. Mowat: I do. I don't know if this -- is it guaranteed that we get on the June 10th agenda?

Ms. McLean: I don't know. Maybe Sybil or Clayton, if they can let us know if there are any other items for June 10th other than the item that just got deferred.

Ms. Lopez: Thank you, Director. This is Sybil Lopez, the Staff Planner. We do have one on the agenda, and it is an SMA minor for RK Development, Kawela Drainage Ditch.

Mr. Pele: Make it two SMA minors.

Ms. Mowat: Okay. So that means we're good to get on that agenda, right?

Mr. McLean: It looks like it.

Ms. Mowat: Okay.

Mr. Pele: Question. Question for Staff. Is there any particular order that you're going to plan the agenda? I mean, Vice-Chair, did we want to handle this deferment first or -- or do we have a say in that?

Ms. McLean: I think you already voted to defer but --

Mr. Pele: I mean but where does it show up on the June 10th agenda, first item? Do we have a say or that agenda is coordinated?

Ms. McLean: The Chair always reviews the agendas.

Mr. Pele: Okay. Cool.

Ms. McLean: Before it get finalized.

Mr. Pele: Alright. Done deal. That's why I'm not the chair.

F. NEXT SCHEDULED REGULAR MEETING DATE: JUNE 10, 2020

G. ADJOURNMENT

Mr. Poepoe: So item F, Next Scheduled Regular Meeting Date, June 10, 2020. Item G, Adjournment. Good meeting everybody.

The meeting was adjourned at approximately 2:43 p.m.

Submitted by,

SUZETTE ESMERALDA
Secretary to Boards & Commissions II

RECORD OF ATTENDANCE:

Present:

Lori Buchanan, Chairperson
Laakea Poepoe, Vice-Chairperson
Leonora Espaniola
William Moore
Bridget Mowat
John Pele
John Sprinzel

Absent:

John Perez, III

Excused:

Julie-Ann Bicoy

Others:

Michele McLean, Planning Director, Department of Planning
Sybil Lopez, Planner, Current Division, Department of Planning

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Stephanie Chen, Deputy Corporation Counsel, Department of the Corporation Counsel
Suzette Esmeralda, Secretary to Boards & Commissions II, Current Division, Department of Planning