

MOLOKAI PLANNING COMMISSION
REGULAR MINUTES
SEPTEMBER 23, 2020

A. CALL TO ORDER

The regular meeting of the Molokai Planning Commission was called to order by Chairperson Lori Buchanan at approximately 11:06 a.m., Wednesday, September 23, 2020, via BlueJeans Meeting No. 594210156.

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

Chair Buchanan: Everyone, welcome to the September 23, 2020 meeting of the Molokai Planning Commission via online, and you can go online to review all the housekeeping types of what numbers you can call, and if you want to sign up for testimony, it's all on the agenda, so we don't have to go through all of that right now except I will say that public testimony will be taken when each agenda item is discussed, and testimony will be limited to a maximum of three minutes with 30 seconds to conclude unless the Chair makes other provisions for return type of testimony, and if there's no amendments or anything that the Commissioners need to disclose at this time, then we will commence with the agenda as printed.

B. Open Testimony Limited to Only Non-Application Agenda Items That Could Be Placed on Future Agendas

Chair Buchanan: On item B, after calling to order, is the open testimony, public testimony, that is limited to only non-application agenda items if you're here to testify or an item that is already on the agenda, we'll ask you to wait till that agenda item comes up, but there's -- if there's any other planning issues that the public wants to bring forth to the Commission at this time, you can do so now, and it's also going include anything placed on future agendas. With that, is there anyone in the public wishing to testify at this time? Suzie, I don't --

Ms. Esmeralda: This is Suzie.

Chair Buchanan: Yeah, go ahead.

Ms. Esmeralda: No, I -- I did not receive any request.

Chair Buchanan: Okay, awesome. So, seeing none, we will close that portion of item B, Public Testimony, and we will move right into item C. Public Hearing, item no. 1:

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

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

1. **MS. MICHELE CHOUTEAU MCLEAN, AICP, Planning Director, transmitting County Council Resolution 20-90 referring to the Molokai Planning Commission a Proposed Bill to Amend the Comprehensive Zoning Ordinance Relating to Canopy Tours and Zipline Operations**

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

Per Council Resolution No. 20-90, adopted on June 19, 2020, transmitting the proposed bill, the Council proposes to amend Chapter 19.30A and establish Chapter 19.97, Maui County Code, to require a Conditional Permit for canopy tour and zipline operations to enable the Council to evaluate the appropriateness of the uses in various zoning districts.

Chair Buchanan: Thank you, staff or whoever presenting.

Ms. McLean: Thank you, Chair. This is Michele McClean, and, Chair, as you read on the agenda, this was a Council-initiated bill; because it amends Title 19, the zoning ordinance, it has to be reviewed by all three planning commissions, and then we will take your recommendations and comments and transmit them back to the Council. We have already taken it to the Lanai and Maui Planning Commissions just the way the schedule worked out, and if you're interested, we can let you know the comments they have on the bill, but they did ultimately recommend to move it forward.

We think this is very needed. I don't think this kind of use has been an issue for Molokai, but it has been for Maui, hasn't been an issue yet on Lanai either, so that's great news for those islands, but it is very much needed for Maui Island at this time. And our Administrative Planning Officer, Jacky Takakura, has prepared a PowerPoint, so if there aren't any question that this time, then Jacky can take it over and give the PowerPoint. Thank you, Chair.

Chair Buchanan: Thank you, Director. Any Commissioners have questions at this time before we see the presentation? Seeing none, thank you. We'll have the presentation.

Ms. Takakura: Good morning, Commissioners and Chair Buchanan, so I'm just --

Chair Buchanan: Good morning, Jacky.

Ms. Takakura: Going to give you a short PowerPoint presentation just to go over where we're at now, what the resolution is about, and what the Department's proposal is, so I'm going to share screen. Can everyone see the screen that says ziplining and canopy tour

operations? Thumbs up if you can hear and see everything okay. Okay, and this isn't too long. It's just an overview.

Okay, so, as was mentioned, this is from the County Council. It's a bill for ordinance that came to us via a resolution, and so we're taking it to the commissions, and it's amending the Maui County Code relating to canopy tour and zipline operations. So, these operations have been going on for a little while and, you know, we don't really have regulations and so that's why this is before us now because ziplines can have potential impacts to neighbors, potential impacts to or compatibility with agriculture, which is usually where they're located, and it's an opportunity for review, for safety and other concerns, and it also proposes a permit cap to prevent saturation.

So before we go into the provisions of the resolution and the proposed ordinance, this is how we -- how they're regulated now. The County has allowed canopy tour and zipline operations as accessory uses, usually when proposed as guided tours of an ongoing principal agricultural use. Over the years, the Planning Department has issued seven letters and the Lanai Planning Commission has approved one. And I have a chart, or this is the list of all of the operations that we know of as of this past May, and I think in your packet you got a letter, a copy of the letter that we sent to the Council that had more details and copies of all the letters that went out to these operations, and you can see there aren't any on Molokai, but, you know, this certainly, you know, this will affect Molokai if one were to try to apply. But anyways, on Maui, they're all over. We have them in Kula, Skyline Eco Adventures, and then a couple in West Maui, Skyline Eco Adventures Kapalua, Paradise Eco Adventures, two in Central Maui, in Waipahu, Maui Zipline and Flying Hawaiian, and then one in Makawao, Piihola Ranch, two in Haiku, and then one, as I mentioned before, on Lanai, and you can see on the bottom, some have received approvals, but not all. So this is a little bit more details here on this chart, and I can come back to this chart if you have questions, but it just shows the different properties and when they got their approvals, and there are a couple that you can see towards the bottom under the approval column where they don't have letters, but they're operating anyway. There are two that are before the Board of Variances and Appeals that we're working with Corporation Counsel on, the Jungle Zipline and the Northshore Zipline, both in Haiku 'cause of violations and appeals. Then on the bottom, the Lanai Adventure Park. And I have in this chart the acres because that will come into play, you'll see in the proposal, because one of the conditions that's being proposed is requiring a conditional permit based on the acreage. I just want to point out though that this acres here is based on the tax map key numbers that are either on their letters or, you know, based on their addresses on their website, so it doesn't necessarily include site contiguous parcels if they weren't listed on the letters. And like I said, I can always come back to this slide if you have questions about a particular one.

Okay, so this is what the County Council is proposing. First of all, to create a new chapter specifically for ziplines and canopy tours, a maximum of 15 conditional permits, and they

have in there criteria, restrictions, and standards, you know, like starting at eight and ending at five and having insurance. All of that is in the resolution, in the memo report. It also proposes revising our chapter on agriculture, the agricultural district, which is Chapter 19.30A, they make it clear that ziplines and canopy tours are neither accessory uses nor special uses, and then also to add this provision that existing operations with approvals as accessory use may continue. The ones that are on the bigger lots, greater than 50 acres, may continue as nonconforming. The ones that are on smaller lots, less than 50 acres, would have to apply for a conditional permit. And then, like I mentioned, the acreage includes parcels or multiple contiguous parcels.

So we have just a few minor changes. In the report that we sent you, we had some other definitions, amusement park and carnival, but those were based on some previous versions of the bill and they're not in the current bill, so those aren't needed, so we don't have to talk about those. Also, in the resolution, there are definitions for ziplines and canopy tours, and they have them in that proposed new chapter, Chapter 19.97; we would like to see those moved to Chapter 19.04 'cause that's where we keep all of the definitions for Title 19 so it would just make sense to have them with all the other definitions that we go to when we look up things in the zoning code. And then the other change that we're proposing for the ag district is to revise the part about special uses to add repelling, bungee jumping, ziplines, and canopy tours to the list of prohibited uses or structures. And then the criteria, and restrictions, and standards that are proposed in the resolution for that new Chapter 19.97, we would like to see those under the chapter for conditional permits, Chapter 19.40, it's just cleaner and less confusing to put the language, you know, where we would look for those types of permits, and those restrictions and standards are the ones that are listed in the resolution, you know, like the hours of operation and no liquor and, you know, having insurance. We had previously mentioned about location within a thousand feet of residential and so forth, but that, like the definitions, was from a previous version of the bill and it's not applicable because we're looking at the size of the lots, so that one you can also disregard.

So that's it. We proposed to keep the purpose and intent of the resolution but we just want to move things around a little bit, move the definitions to Chapter 19.04, which is the general provisions and definitions, add some changes to 19.30A, which is agricultural district, include repelling and bungee jumping to the list of prohibited uses, and then move the criteria and restrictions to 19.40, conditional permits.

So the Commission can recommend approval with amendments, or approve as is, or recommend denial, or vote to defer action. That's the presentation. If you have any questions, I can answer your questions for you. So I'm going to stop screen sharing but like I said, if you have any questions about any of the particulars, we can always screen share again.

Chair Buchanan: Thank you, Jacky. Oh boy, interesting. Commissioners, any questions for Jacky? Commissioner John Sprinzel.

Mr. Sprinzel: Happy to approve for Maui; never on Molokai.

Chair Buchanan: Okay, did you say happy to improve on Maui, but not on Molokai?

Mr. Sprinzel: Never on Molokai.

Chair Buchanan: Never. Oh --

Mr. Sprinzel: It just doesn't -- it just doesn't fit here.

Chair Buchanan: Okay. I hear never. Okay. Thank you, John. Commissioner Bridget.

Ms. Mowat: I kind of feel like because we don't have any here, why am I -- why am I going to approve or, you know, do anything for Maui because we don't have it here and I don't want to make any decisions, but if it's just moving things around, like it's in place but we're moving it around, then it's not really making any decisions for Maui right?

Mr. Sprinzel: Bridget, it's one of the things that we're asked to do and the four items include approving it, all the -- all the planning commissions are asked this. It's been done for years and years that we approve stuff for Maui. All I'm saying is not on Molokai. Thank you.

Ms. Mowat: Yeah. Thank you, John. I get that. What were you going to say, Jacky?

Ms. Takakura: If I may, Chair?

Chair Buchanan: Okay.

Ms. Takakura: I think this could affect Molokai. If, say, you had an applicant that, you know, someone who wanted to start this on Molokai, then it could affect.

Chair Buchanan: Thank you, Jacky. Oh, I sorry. Commissioner Bridget, Title 19 applies to the entire County. Whatever is in Title 19 includes Molokai, so any rules and regulations within Title 19 applies to us, and so, you know, you approve stuff for Maui, but it, inadvertently, is also approving it for Molokai so -- unless Stephanie or Michele wants to chime in on that, if you have any more questions.

Ms. Mowat: No, that's good. I got it. I just didn't want nobody -- Maui get mad at us, but I'm just trying to play good friends but -- but you're saying that, basically, it's all in here

already, but we're just moving things around, putting the definitions where the definitions go and -- okay. Thank you.

Chair Buchanan: Commissioners, any more questions for Jacky? Okay, on my screen, I don't see any questions right now but -- but, Jacky, I had a few questions 'cause I think it's a little bit more than just moving the definitions into the definition category within 19. I think my questions and I think of got lost where the -- on the lot size, you said greater than 50 acres is what kind of approval?

Ms. Takakura: Thank you, Chair. Right now, it's in the resolution under the proposed 19.97.030, ordinances for conditional permits for ziplines or canopy tours may be enacted only for parcels of at least 50 acres or multiple contiguous parcels that together are at least 50 acres; that -- that the Council may enact ordinances for conditional permits for ziplines or canopy tours on parcels or multiple contiguous parcels smaller than 50 acres only by a two-thirds vote of its entire membership on two readings. And then the draft, the proposed ordinance, at the end, in section -- Section 6, which is Exhibit 1, page 7, a zipline or canopy tour in the County agricultural district that received approval from the County as an accessory use as of the effective date of this ordinance and that is operated on a parcel or multiple contiguous parcels of at least 50 acres must meet the criteria -- must meet the requirements within 30 days of the effective date, but may otherwise continue as nonconforming without obtaining a conditional permit, and then the next paragraph says if they received approval, partial or multiple contiguous parcels smaller than 50 acres must meet the requirements within 30 days, but that no later than one year from the effective date of this ordinance, the owner operator of the zipline or canopy tour must either obtain a conditional permit or cease operation, so that's where the acreage size kicks in. It seems like the bigger ones, if you're on bigger than 50 acres, then they can continue as nonconforming. Does that answer the question?

Chair Buchanan: Yeah, except when you say "contiguous," would contiguous mean that it would have to be the same landowner or it would be with permission of multiple landowners?

Ms. McLean: Chair, the way that the bill is written, it doesn't say it has to be the same landowner but --

Chair Buchanan: Yeah. Okay.

Ms. McLean: Or the application, we do require authorization from landowners, so the permission of multiple landowners would be needed for them to be able to apply.

Chair Buchanan: Okay, so this Commission today cannot say that, for zipline and canopy tours, except on Molokai in order for us to opt out of the -- the rules and regulations for zipline and canopy tours?

Ms. McLean: Well, Stephanie can chime in on this. We had a similar discussion with the Maui Planning Commission that, in any zoning district, you could say a use is prohibited, but someone can always apply for a conditional permit for that use.

Chair Buchanan: Okay.

Ms. McLean: It's the same like on Molokai, with STRHs, as of the end of the year, Molokai has zero STRHs, that doesn't stop someone from applying for a conditional permit for that use. The Commission and the Council still have the opportunity to deny it, but there isn't a way to stop someone from applying if the process allows them to apply.

Chair Buchanan: Okay. So at this point, for what I heard was repelling and other recreational type of uses, now a zipline, all of those will not go into accessory uses or special uses, it would all fall under conditional permit, and the conditional permits all have to go through the planning commissions and then the County Council? Yes? Okay.

Ms. McLean: Yes, Chair, that's correct.

Chair Buchanan: Okay. But the verbiage at the end about can continue if you don't respond within a certain time, it'll continue as a accessory use. Why -- why did this come about? What was the issue?

Ms. McLean: The language at the end about existing operations --

Chair Buchanan: Yeah.

Ms. McLean: Makes the distinction between 50 acres and -- or less than 50 acres or more than 50 acres. Ones that have received some kind of County approval before, if they're on greater than 50 acres, they can continue operating and not have to do anything but they would have to comply with the requirements of insurance and inspections and so forth.

Chair Buchanan: Okay.

Ms. McLean: Existing operations that got approvals that are on less than 50 acres but continue operating but they have to come in and apply for a conditional permit, so there will be an opportunity for those to be reviewed and possibly be denied, so the Council, you know, saw a distinction between existing operations and those on larger parcels and those on smaller parcels, and the ones on the smaller parcels they want to see. The other ones they're saying they got approval, we're going to let them continue, but the other ones, they -- they want to be able to review.

Chair Buchanan: Okay. But you cannot write law just for those that you like and not for those that you no like, but I guess I have a question then with -- if, Jacky, you can go back to the slide that was the spreadsheet on all of the zipline tours that are permitted and are operating that are not permitted. That's the slide.

Ms. Takakura: Can you see that? Yes.

Chair Buchanan: Yeah. So my question is this if the approval was not found for the Waikapu, Makawao, Haiku, and I don't know what happened to the other Haiku, Northshore Zipline, Camp Maui, so if they are up and running, why are they up and running?

Ms. McLean: Chair, this is Michele.

Chair Buchanan: Michele.

Ms. McLean: Probably because we haven't gotten complaints about them --

Chair Buchanan: Oh.

Ms. McLean: And had a reason to enforce. The one at Maui Tropical Plantation did get approval, as you can see, in 2010. The other one, we're guessing, sort of snuck under that umbrella, but they never formally got an approval. And the other ones, you know, one is a violation has been issued, The Jungle, and then Piiholo we've never gotten a complaint so we haven't had a reason to take enforcement action.

Chair Buchanan: Okay. Planning -- my fellow Commissioners, this is a point I wanted to point out. We all know that enforcement is complaint driven so -- and that's a whole process within itself because we get calls, as Commissioners, about possible people doing nonconforming uses in zoned lands, and I wanted to point this out that people continue to operate without a permit, without enforcement, and this is why it's hard is that, you know, people talk about the foot in the door, but it's true, and so I'm disappointed because, let me ask this question, in one of -- in this list, without singling out any one business, one of these business had a death related while somebody was on the zipline, is that correct?

Ms. McLean: Jacky, do you know? I don't know the answer to that.

Ms. Takakura: There was a death of an employee in 2011 that was on the Big Island, and there was a death of another employee and I think that was on Maui, probably somewhere Upcountry, I vaguely remember, but yes, those -- those -- there are two, yes, in the history of the zipline operations in Hawaii.

Chair Buchanan: Okay, so I'm aware, I seldom ask questions that I don't actually know the answer for first, so that's not nice, but I know that there was a death and -- and if that -- and if the death occurred in a non-permitted current operating business where the County did not step in and issue violations or enforcement because we never have whatever, I don't know what the enforcement was for an accessory use. Ziplines in ag zoned lands are simply a nonconforming use, we know that, and we know we get into trouble when we start allowing uses that are nonconforming. So that's all I wanted to point out in this discussion on the record was the lack of enforcement, the lack of oversight for safety, I'm glad we moving forward, and I'm glad the County Council has taken this up, but for Molokai, I don't want to be stuck when somebody comes in and wants to put in a zipline, or they wanna repel, they wanna do some extreme sport type because we've had requests from people from the movies to do extreme stuff and I want to make sure we protected from this, that this Planning Commission is included in looking at those permits outright making them, like Commissioner Sprinzel says, never. My grandma always said never say never. But I think in this kind of extreme stuff where people actually end up dying and then families are left to pick up the pieces, I really wanna see something really more restrictive, taking the precautionary principle, because we don't know all of what is encompassed within this, and that's why I said if the Molokai Planning Commission can outright prohibit these uses, and yeah, go ahead and spin your wheels and you can apply for one conditional use permit, at least it provides oversight. It's almost like you need one environmental assessment to do all of these kind of extreme things that are tourism related, and we all suffering right now, our tourism is suffering, so we know that we gotta move forward more wisely, so, with that, Commissioners, you guys get any feedback? Yeah, I'm not thrilled with -- I think the improvements need to be little bit more restrictive, Jacky.

Ms. McLean: Chair, may I make a suggestion?

Chair Buchanan: Okay.

Ms. McLean: Back to the earlier discussion about prohibiting them on Molokai, as Jacky read that section of the bill that said a two-thirds vote of the Council is needed for a zipline on less than 50 acres, you could make a recommendation that a two-thirds vote is needed for any zipline on Molokai, regardless of the acreage that's -- that makes it more restrictive; that would be one way to get closer to -- to that objective.

Chair Buchanan: And why we cannot just --

Mr. Sprinzel: I'd --

Chair Buchanan: Go ahead.

Mr. Sprinzel: I'd certainly go along with that as long as we can ban it Molokai. There's just no place for it. We have no supervisors, we have just no oversight of any of this stuff, so we'd be risking whatever.

Chair Buchanan: Thank you. I see you, John Pele, Commissioner Pele.

Mr. Pele: Yeah, so my question is, I was just wondering, so a two-thirds vote of the Council, even if you put that way, that still means that the Council has the final say and could override any kind of decision that this Planning Commission would make. I mean I look at these kinda things and I kinda -- I kinda -- kinda put it in the backburner because I know, and unless I'm wrong, I know that no matter what the language says in that bill, they need to come before us, so I kinda don't stress too much about it because I believe that they are going to have to come and sit and talk to us first and that's where -- that's where we stop anything, that's where we direct what we want to see on Molokai. As far as workplace incidents, I mean you could scan the board as far as workplace accidents and what divisions they happen in, it happens in construction, it happens, you know, across the board so that's -- that's a subject that I wouldn't want to hold, but I'm just wondering, this -- is this language is something that the County could ultimately, the Council could ultimately, no matter what we decide, can ultimately overrule us even if it's for Molokai?

Ms. McLean: Yes, Commissioner Pele, the Council could -- could not go with a recommendation. I did think of something else. It seems counterintuitive in a way, but if you want the Molokai Planning Commission to have the final say, you could say that a County special permit is required for ziplines on Molokai, which, in general, is more permissive than requiring a conditional permit but that leaves the final decision-making authority with the Molokai Commission, so that would be a way for you to control it, it -- it is more permissive, but that would be a way for the Molokai Commission to have the final say and not leave it with the Council, it's backwards, but that might work.

Mr. Pele: Okay, in using that -- and using that logic in that that kind of approach, will it spin us into a point where our conditions or a finding of fact and conclusions might lead us down the road of a lawsuit or a contested case, which we -- we went through on another issue recently with the Molokai Planning Commission, which, you know, there's always everybody always -- it's like putting the language like, oh, you know, they'll never sue us; well, we all know that anybody can sue anybody for anything at any time, so that kinda language is hard to put in, and I feel like it's hard to put in the language like never on Molokai 'cause some -- somehow people find a way in this world today to -- find ways too, I even have cautions about enforcement because, as we know, no matter what language we put in, people who are gonna break the law, we have a lot of drunk driving laws, people still drive drunk, so I don't know if that's the best way to -- to minimize or mitigate the solution. I'm just kind of worried that if we use that approach that you're talking about,

Michele, it's -- is it -- is there room for legal action, legal recourse, and -- and could that leave us in a more precarious situation by -- by going that route?

Ms. McLean: Yeah, you're absolutely right, Commissioner Pele, that would make it a contested case, which a conditional permit is not. And yes, if you were to deny an operation, you'd have to have your findings of fact. Your reason for denial would have to follow the criteria. And as we've seen, and not just on Molokai, on Maui as well, we've seen, when the commission has final decision-making authority, that it's not uncommon for denials to be challenged in court. So, yes, you're absolutely right. It's very rare that you see a Council denial challenged. I think that's a very valid point.

Mr. Pele: Yeah, and, as a Commissioner, I just -- the Commissioner, that's catch-22, that I'm -- and I feel is that we want total say but when we have the County looming over us and they're not in line with Molokai's -- maybe they're not all in line with Molokai's view of what we want, and this is, I think, what Commissioner Mowat was talking about when we talk about, and Chairman Buchanan, when we talk about Molokai and Maui, they're so different, they're so different, and their goals and what they need, I'm glad that Maui has ziplines and they can have all the ziplines they want, and it's probably the best thing for them, for their tourist industry, for their workers, whatever, but, you know, I worked at the ranch when they had a zipline. I didn't understand it. But we put one in, and I wasn't all for it, and it ultimately didn't go well. So I just -- I'm in favor of not having them, you know. I just don't know.

Chair Buchanan: Okay.

Mr. Sprinzel: Lori?

Chair Buchanan: Thank you, Commissioner Pele. I going have Commissioner Poepoe followed by Commissioner Sprinzel.

Mr. Poepoe: Yeah, I remember that, the ziplines down at Polo Camp, I think so, in the '90s that I was just going to mention that we did have a zipline and I think it was before any type of restrictions, or I not sure, but I wanted to ask if there's a basis for dimensions or specs or size, size-wise, height, length, or, yeah, if that's one of the requirements for - for a -- a permit?

Ms. McLean: Thank you for that question, Commissioner Poepoe. Right now, the bill doesn't have those requirements in it, and right now ziplines are, and this is true around the country, they're largely self-regulated. There are a couple of main insurance companies that insure all of them so -- because not many insurance companies do. What the Maui Planning Commission recommended yesterday was to require third-party annual inspections and also for the Council to further discuss whether the County should be more involved in building permits and inspections. Right now, the County does not require

building permits, even if it's a freestanding tower or if it's a tower built around a tree, the County does not require building permits for those and it seems like the reason is because the County follows the International Building Code, which doesn't have provisions for ziplines, so there's not a code to follow, but the Maui Planning Commission, yesterday, recommended that the County -- that the Council pursue that a little bit more to see if the County could require building permits and conduct inspections in addition to the required third-party annual inspections.

Mr. Poepoe: I would assume that in order to issue a permit, the entirety of the situation would -- would have to be known 'cause my niece had like a 20-foot zipline with a little rope, and I broke it, but what is the limit to where we stop and where -- at what point do we begin to consider it? Is it commercial against recreational personal-type use or just getting to the bottom of that before you even get to issuing any permits, like, prior to that, maybe hold off on -- figure it out before you even get to that point?

Ms. McLean: If an applicant were to apply for a conditional permit, they would have to have a site plan and -- and specs and -- and details. Under the proposed bill for the Commission and the Council to review it, they would want to know those things, so those would have to be provided by the applicant but there, currently, isn't a County standard against which those would be analyzed, you know. We don't have a zipline expert in the County to say, oh, that's -- that's a -- that's good construction, or that's bad construction, or that's good equipment, or that's faulty equipment.

Mr. Poepoe: I figure with the --

Ms. McLean: That's where the insurance requirement comes in.

Ms. Poepoe: It might be best to create a standard and have a moratorium on ziplines before we issue approvals for them.

Chair Buchanan: Okay. Thank you, Commissioner Poepoe. Commissioner Sprinzel?

Mr. Sprinzel: Instead of never, I'm quite happy if we make clear that the Molokai Planning Commission has sole authority to pass or reject applications for these things. Thank you.

Chair Buchanan: Thank you, John. And with that, Michele, maybe you can briefly explain what -- what authority and what powers the Molokai Planning Commission has in final says, like the SMA permits, and what and what we don't have final say on, such as conditional use permits, that kinda stuff. Thank you.

Ms. McLean: Yeah, and I'd ask Stephanie to jump in too, and this ties back to the points that Commissioner Pele was making. Applications that where the Commission is the final authority, so SMA majors, county special use, state special use on smaller properties,

those are contested cases. The Commission's decision is the final decision, so it doesn't need to go to the Council, but because it's a contested case, those deliberations need to be conducted in a certain way. Denials have to be spelled out in a decision and order, and those can be appealed to court, and we've seen that happening more and more frequently countywide. Conditional permits, changes of zoning, community plan amendments, those are all final authority of the council with a recommendation from the Commission and those are not contested cases, your proceedings are very different and those decisions are rarely challenged. I don't know. I mean, here's another approach to what it seems you folks want. I don't know if it can be written that if the Molokai Planning Commission recommends denial of a conditional permit on Molokai, that the application dies there and doesn't get forwarded to the Council. I don't know if that -- if that jives with how Title 19 functions or, as I said, if the commission recommends denial, you could say that the Council needs a two-thirds majority to approve. Those might be options. I mean, I -- maybe you don't need to be specific. You could just say you want to prohibit them on Molokai, and if that can't be done, you want the process to be as restrictive as possible and to give the Commission as much authority as possible, something like that, and then we can try to figure out the best way to make that happen.

Ms. Lopez: Chair, this is Sybil. I just wanted to add to the Director that you guys also have the bed and breakfast as well, permit, that comes to you.

Chair Buchanan: Thank you, Sybil, and we going ask all the same questions. Stephanie.

Ms. Chen: Thanks, Chair. And I'll just note that -- that I think you guys have 120 days from today, from the date of the public hearing, to review and the transmittal and get back to Council too, so just keep that in mind.

Chair Buchanan: Thank you, Stephanie. No, I think we can -- we can do this today because we going have to deal with the bed and breakfast, which going have all the same similar questions we asking right now but, hopefully, that'll move quicker. Commissioners, you guys get any more questions? I have two more. Okay, seeing none, my question is we still on track to overhaul Title 19, Director? Okay.

Ms. McLean: Yes, Chair.

Chair Buchanan: So I'm not a big fan of making changes to Title 19 when we supposed to be overhauling Title 19 but -- especially with the next one coming up, so that's my first question is why we continuing to do this? And I have not heard anything on the movement to overhaul Title 19 with those people that you brought over some meetings ago. And then my second question is where in the world is Chapter 343 in all of this? And you want to provide feedback on that, Director?

Ms. McLean: Sure. Yes, the Title 19 rewrite project is proceeding. From the beginning, we knew it would be a multi-year process, so estimating about four years, and we're not even -- I don't think we're even one year into that yet, and it could take longer, you know. It's going to depend on the feedback they get and how many changes need to be made along the way. And whether this should wait until then, I'll just be honest, I think that Council is very enthusiastic about passing this bill and so I -- I think it would be worth giving your comments even if you disagree with it and all that. If you do want to see changes, I suggest that you -- you can let them know you don't think this should proceed but if it were to proceed, what your comments are because I do think that you're anxious to move forward. Regarding 343, there are specific triggers in State law for what requires the preparation of environmental assessment and ziplines, all by themselves, aren't one of the triggers. If there are related actions to the zipline that could hit a trigger like using state or county lands and other triggers, then EIS or EA might have to be prepared -- prepared but all by itself, a zipline wouldn't currently trigger an EA.

Chair Buchanan: Thank you Director. I guess because I look at the cumulative impacts of a zipline. They're, obviously, designed and targeted for tourists. Tourists would come to a area that is either appropriately zoned or not appropriately zoned for commercial tourism, which would mean people, cars, buses and the like, and so the use in itself may not trigger Chapter 343 but the associated uses and cumulative impacts of the use, so I, for myself, I'm kind of mad that they would put the onus on the County to permit something without looking at the cumulative impacts of the use, such as a zipline or any tourism related sport, hang-gliding or whatever, whatever extreme sport, parasailing, without looking at the cumulative impacts because we only need look to Kihei or Makena to look at what the natural area reserves and what other conservation zone lands, and these ziplines, if you, Jacky, in your -- in your slide, are those -- is that spreadsheet, does it say what kind of zone lands they're in? Most of them are in ag or conservation. I think that, in itself, is a trigger, conservation, ag, conservation, ag, ag, ag, ag, ag, ag. So all nonconforming uses, if it's in conservation, it should have triggered a conservation district use permit. How does that work, Director? So for Skyline Eco Adventures at Haleakala, they would have had to gotten two permits or both permits? I mean --

Ms. McLean: Yeah.

Chair Buchanan: Yeah.

Ms. McLean: The -- so if you look at the acreage on that first one, you know, 9900 acres, the zipline itself doesn't span across 9900 acres, that's the size of the parcel on which it operates, and the parcel itself is split designated with conservation and ag; my guess is that the actual zipline is not in the conservation district, but if it were, and you're correct, they would need be a conservation district use permit, and that can be an EA trigger unless they fall under an exemption, which I think would be unlikely. So, yeah, but my -- my guess is that, I'm familiar with the Haleakala zipline, and that's right off -- it starts right

off the road, so my -- my guess is that a portion of that parcel is in State conservation but that the zipline itself is in the ag portion.

Chair Buchanan: Okay, thank you, Director. Thank you, Jacky. My last comment for the record is, 'cause I'm a member of also other cultural organizations, and we do have a culture of person on this Commission, because I'm aware that, culturally, native Hawaiians use the eight realms of decision-making in their decision-making thoughts on impacts to aina, this would fall into the realm, one of the realms of decision-making, and I don't see how that the native Hawaiian culture aspect of effects to their decision-making realms where they would have the due process to come in and chime in on this type of permit, you know, unless it's to the County Council as a conditional permit, so I think -- I think the Council needs to invoke the precautionary principle similar to what the water commission would have to do when the impacts are unknown because it doesn't seem that any of these ziplines or repelling commercial businesses had to do an EA or an EIS in order to have the due process for native Hawaiians to consult, and so just that alone should be enough for this Commission to convey to my County Council that it should be a prohibited use until exactly what Commissioner Sprinzel, Commissioner Poepoe, and Commissioner Pele have also commented on, and Commissioner Mowat and myself that we don't know all the impacts from the zipline. It definitely is affecting one of the realms of decision-making for Native Hawaiians who are not consulted because there is no process to consult, and for those reasons, we would like to deny that on the island of Molokai, and would also encourage the Council to deny it unless the State of Hawaii, because they set the zoning for all of us to follow, would like to open up a Section 106 or -- or go to the Environmental Council and say, hey, you guys want to do this, then you're going to have to do an environmental impact study because it triggers due process for Native Hawaiians, and that would be my feedback. Thank you very much. So I'll be in favor if any Commissioners want to make a motion, but we're going to open for public testimony. Stephanie, you have something?

Ms. Chen: Thank you. I was just going to remind you to take public testimony. You're already ahead of me.

Chair Buchanan: Thank you. Okay, Commissioners, you can come back with questions after, but if there's anyone in the public wishing to testify on this matter of ziplines, please state your name for the record and go ahead.

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

Chair Buchanan: Okay. Okay. Okay, very good. So if there's no one in the public wishing to testify at this time, then we'll go back to the Commission. Commissioners, any last questions for staff? I like what Director said, but I'd also like to even go further to suggest to the Council that, by moving this along as is, it be posing a due diligence issue with Native Hawaiians and due process. I think there's a due process issue myself and

that there's no process for anybody else other than the restrictive here, Planning Commission and County Council to chime in on potential impacts to Native Hawaiians. Thank you. Okay, seeing none, questions for staff -- oh, go ahead. Director.

Ms. McLean: I, once the Commissioner's comments and questions are finished, I just wanted to summarize my notes to make sure that I have --

Chair Buchanan: Okay.

Ms. McLean: Your response; that I have it accurately.

Chair Buchanan: Awesome. Thank you. Go -- go right ahead, Director, thank you very much.

Ms. McLean: Okay, so your comments are you recommend waiting until the Title 19 rewrite is completed before ziplines are addressed. If -- if they're going to proceed with a bill, you want there to be no ziplines allowed on Molokai. If that's not possible, to make it as restrictive as possible, for example, if the Commission denies a permit, then it doesn't proceed to the Council, or if the Commission denies a permit, then it requires a two-thirds majority of the Council. You recommend that the County create standards for ziplines so that County building permits and inspections are required. And that you have concerns that the impacts are unknown, including cumulative impacts. That there isn't Native Hawaiian consultation on the decision-making. And that there's no EA or Section 106 consultation requirement.

Chair Buchanan: No EA or EIS for the zipline use.

Ms. McLean: Right.

Chair Buchanan: Can we also -- this doesn't include the rappelling and all of that too, yeah?

Ms. McLean: The Planning Department is recommending that rappelling and bungee jumping be included under the same time.

Chair Buchanan: Okay. Okay. We also want to include bungee jumping.

Ms. McLean: Okay.

Chair Buchanan: You know, this might be way out there, but because I'm in the business, from extreme sports, the danger that comes with extreme sports for a small island like Molokai is also similar to COVID, if we are in dire need of emergency services for people that are hiking, which we've had in the past, we did have hikers from a foreign country

that could not speak English, that fell off a trail that was not a sanctioned trail in Molokai had to be airlifted out and eventually it was fatal and they passed away. It was very difficult for Molokai to respond because we didn't -- we don't have the resources, and so if you don't have the resources to support obviously extreme type of behavior, then you shouldn't be having the behavior because we just cannot respond. In that case, it was difficult for me, I had to find an interpreter to talk with the families because we -- nobody spoke Italian, and at the time, we had to have emergency services come from Maui, similar to a fire, so I want the Council to know this because it's not that we just hate everything. There's a reason. We don't have the resources. Our roads are falling into the ocean. We don't have great response. In the case of a fire a long time ago, which was a gasoline fire, many, many moons ago, we had to wait two days for specialized people to come in and put the fire out. So, that's our reason why we sometimes are anti so I don't want anybody to take it as we activists, we hate business, and we not support of commercial people making money. That's not it. We're a rural -- we're a rural island, with rural resources, and we cannot respond to certain stuff so, with that, I just wanted to get that on the record for my County Council. I not necessarily saying wait for Title 19, which you said on number one. I just thinking that piecemealing Title 19 as we move along, unless it's extremely important, we should, you know, press for the overhaul first because I don't think it's fair for the County to have to develop and create guidelines or to have a zipline expert now unless the Hawaii Tourism Authority is paying for the expert, so you asking my tax dollars to now pay for extreme sport oversight. I no think that's fair because it's part of tourism, I no think that's fair, so that's -- that's what I like get to the County Council, why we say no. Sorry. I should have wait for the motion and discuss, but thank you, Michele. I appreciate it. I know you guys understand. I see something in the chat. Okay. No. Oh, I have a direct message. Okay, that's it. That's all you gotta do, Michele? You need to go on more? Sorry.

Ms. McLean: No, no. I just wanted to go over those notes and I'll make those clarifications. Thank you for those. So, yeah, I just wanted to make sure I had them accurately, and if the Commission is comfortable with that, then you could make a motion to forward those comments to the Council, if that's what -- if that reflects what you wish.

Chair Buchanan: Okay, thank you for that. So at this time, I will open up the floor for a motion as you heard the Director. Stephanie?

Ms. Chen: Chair, did you, I might have missed it, did you close public testimony?

Chair Buchanan: Yeah, I thought I did, didn't I? Suzy, I did.

Ms. Esmeralda: This is Susie. I just recall you saying there was none. I don't recall you actually closing.

Chair Buchanan: Oh. I'm sorry. For the record, public testimony is closed. Okay, thank you. Thank you. Stephanie. Commissioners, any motion to forward those comments to the County Council on this? Commissioner Sprinzel.

Mr. Sprinzel: Same motion as before, number two on the list, with the suggestions that Director Michele has outlined, and no on Molokai.

Chair Buchanan: Okay, thank you very much. Is there any second that motion? Commissioner Mowat, was you seconding that motion? No. You have a question?

Mr. Poepoe: I'll second.

Ms. Mowat: Is that saying it -- what did he say? He -- he's -- he's making a motion to approve with that recommendations? Is that what he's saying?

Mr. Sprinzel: With.

Ms. Mowat: What?

Chair Buchanan: Hang on, Bridget. John, you're muted.

Mr. Sprinzel: To approve -- sorry. To approve as outlined with the modifications and alterations that we discussed, but not on Molokai.

Chair Buchanan: Thank you. I know that John was off for a little bit. I wrote it down. He said to -- is to not have ziplines on Molokai and the other conditions as read by Director McLean. And so, Commissioner Poepoe, did you second that motion?

Mr. Poepoe: Yeah.

Chair Buchanan: Okay, it's been moved and seconded to move the motion to deny ziplines and rappelling and bungee jumping, whatever it says on the -- and then with conditions as read by Commissioner -- Michele. Any discussion? Commissioner Mowat, we're in discussion.

Ms. Mowat: I confused. I'm confused. Sorry. I thought I heard John say he -- to approve, and then you're saying to deny that. So what is the motion again, please? The motion -
-

Chair Buchanan: Okay, let me -- let me -- I'll restate the motion, and, John, if I don't have it, please jump in. John's motion that was seconded was to convey to the County Council that we wanted to deny ziplines, bungee jumping, and rappelling on the island of Molokai and, if not, if they proceeding forward, they cannot make that condition for Molokai, then we proceeding forward with what Director McLean has in her comments to the County

Council about Title 19, waiting for Title 19 to be done. And if we cannot decide -- deny, then the procedure is to -- to move forward - I got it written down - with making it as restrictive as possible. And then she's to convey everything else about our concerns and for impacts and that an environmental assessment should be done. And it's not fair to native Hawaiians. And everything that she read. Would you like the Director to restate all of that, Bridget? No? That's what we asking for approval. Okay.

Ms. Mowat: Okay. Okay.

Chair Buchanan: Yeah.

Ms. Mowat: Got it. Thank you very much.

Chair Buchanan: Okay we -- you're welcome. So we still in discussion. Commissioners, any more discussion on the motion? Okay, seeing none, I'll call for the motion by rollcall. Commissioner Moore?

Mr. Moore: I vote yes.

Chair Buchanan: Commissioner Pele?

Mr. Pele: Aye.

Chair Buchanan: Commissioner Pele -- Sprinzel?

Mr. Sprinzel: Aye.

Chair Buchanan: Commissioner Poepoe?

Mr. Poepoe: Aye.

Chair Buchanan: And Commissioner Mowat?

Ms. Mowat: Aye.

Chair Buchanan: And Chair votes aye. Motion carried. Unanimous. Thank you very much.

It was moved by Commissioner John Sprinzel, seconded by Commissioner Laakea Poepoe, then

VOTED: to convey to the County Council that the Commission wants to deny ziplines, bungee jumping, and rappelling on the island of Molokai. If

the County Council is unable to make that condition for Molokai, then the Commission would like to forward the comments of the Commission as summarized by Director McLean.

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

Chair Buchanan: Oh, you thought that was going to be simple. Nah. Okay, I'm going to move on --

Ms. McLean: Truly, I had -- I had no idea how you folks were going to react to this. Sometimes I make assumptions that I shouldn't, but I had no idea what your feelings were going to be on this one.

Chair Buchanan: I know we're different. We love being different. We're so proud of being different. But I hope I explained why. Okay, if anybody needs to take a break, you know, five-minute Zoom break, whatever, let me know. Raise your hand, and if not, we're going to power on to the next agenda item. Hang on. Okay, which is item C, no. 2:

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

- 2. MS. MICHELE CHOUTEAU MCLEAN, AICP, Planning Director, referring to the Molokai Planning Commission a Proposed Bill to Amend Chapters 19.35, 19.64 and 19.65, Maui County Code, Relating to Accessory Dwellings, Bed and Breakfast Home Permits and Short-Term Rental Home Permits. (J. Takakura)**

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

Chapters 19.35, 19.64, and 19.65 are proposed to be amended to allow bed and breakfast and short-term rental home operations in accessory dwellings, subject to restrictions that encourage long-term occupancy; limit short-term rental homes to one per property and per applicant; clarify trusts and ownership requirements; expand notification requirements to neighbors of the property; and other minor revisions.

Chair Buchanan: I guess staff would be Jacky. Director, you want to say something?

Ms. McLean: Thank you, Chair. Yes. I'll just make some introductory comments that these proposals had been in the works for a while, and we have heard from some in the vacation rental community that now's not the time to move forward with these changes. But as it turns out, when we met with them, they actually agreed with most of the changes, there were just a few where there was some disagreement and so you'll see in the PowerPoint that we are proposing some modifications to address those concerns. Of course, the changes to 19.65 and the related ones to 19.35 would not affect Molokai because your cap on STRHs at the end of the year will be zero so, you know, the permitting requirements in processing and so forth, in that sense, isn't applicable to Molokai, but we're required to bring that forward to you anyway in case you do want to comment on those provisions as they would apply to the other islands. So, if there aren't any questions at this point, then, Jackie, can take it away.

Chair Buchanan: Thank you, Jacky. Commissioners, any questions? No. Okay, thank you, Jacky.

Ms. Takakura: Thank you. Commissioner Buchanan and Commission Members. So, I'm going to share screen again. Bear with me for a second. Can I get a thumbs up you can see this light blue screen with the writing? This one is a little bit longer just because we're covering three chapters and, as mentioned, 19.65, I'm just covering it because, you know, it's part of the Maui County Code even though, for Molokai, the cap is zero for short-term rental homes. As mentioned, it's three different chapters that we're looking to amend: 19.35 is the one accessory dwellings; 19.64 is bed and breakfast; and then 65 is the short-term rental homes. And like Michele mentioned, the goal is, you know, to allow for some flexibility in transient vacation rental use in accessory dwelling units while encouraging long-term occupancy, and then we had a few housekeeping items, like clarifying some definitions in ownership and trying to make some things consistent between 64 and 65.

Okay, so as mentioned, we're trying to allow for some flexibility in allowing accessory dwellings to be used for either bed and breakfast or short-term rental -- or I'm just gonna say bed and breakfast here, and we can just disregard the short term rental home, but also we want to make sure that there is some long-term occupancy on the property. Limiting short-term rental homes to one per property per applicant. Like I mentioned, we would need some clarifications and definitions, revisions for consistency, improvements for notification of neighbors, and then little things like you're going to see throughout here changing the word "shall" to "must;" that's kind of consistent with the County Council's overall goal of making the Maui County Code more user-friendly and readable.

Throughout the presentation, you're gonna see some things in green and some things in red. Those are the things that we think are more lenient, those are going to be green, and the things that are going to get a little bit more restrictive are in red. And like the Director mentioned, we did meet with Realtors Association of Maui and the Maui Vacation Rental Association, so you're going to see more things in italics that we're proposing to

revise based on their feedback, and, you know, we will continue to work with them, you know, if there are any further changes, but, hopefully, we can get this figured out and get it right. So next slide. And this is the Chapter 19.35, there's just --

Chair Buchanan: Jacky? Sorry.

Ms. Takakura: Yes?

Chair Buchanan: Jacky?

Ms. Takakura: Yes?

Chair Buchanan: Who's "them?" The County Council?

Ms. Takakura: Oh, I'm sorry. The Realtors Association of Maui and the --

Chair Buchanan: Oh. That's what I was wondering.

Ms. Takakura: Yeah, MVRA. Just getting some feedback from them as we go through this process.

Chair Buchanan: Okay. That's what I was wondering. Thank you.

Ms. Takakura: Okay. Sorry. Okay, so just this one slide is about accessory dwellings, and the proposed change is to say that an accessory dwelling may only be used as a short-term rental home if the main dwelling and other accessory dwelling, if applicable, are occupied on a long-term residential basis. In the event of bed and breakfast, it would be only one accessory dwelling per lot may be used as a bed and breakfast home. So that would mean, for bed and breakfast, that they could operate in the main dwellings and/or an accessory dwelling not to exceed two dwelling units. Other dwelling units must be occupied on a long-term residential basis, and when we say "long-term residential basis," that can mean owner-occupied or a long-term rental or an owner's second home that if they stay at that occasionally, so this allow for some flexibility without changing the numbers, so, like for bed and breakfast, it's still limited to two dwelling units on the lot.

Chair Buchanan: Jacky, I no understand. I sorry.

Ms. Takaura: No problem.

Chair Buchanan: What is the dwelling unit?

Ms. Takakura: Oh, the houses, so it could be like the main house or the accessory dwelling units.

Chair Buchanan: Okay.

Ms. Takakura: 'Cause, you know, on some bigger lots, you're allowed to have more than one main dwelling or some bigger lots can have more than one accessory dwelling?

Chair Buchanan: Okay.

Ms. Takakura: So what we're proposing is for the bed and breakfast, you can have the bed and breakfast in one accessory dwelling, but only one. The other, because with bed and breakfast you can have two yeah? So the other one still has to be in a main dwelling and they're still maximum two.

Chair Buchanan: Okay.

Ms. Takakura: Okay. Bridget, go ahead. I see your hand. Sorry.

Chair Buchanan: Commissioner Mowat, you have a question?

Ms. Mowat: Yeah. Can you define again, I'm sorry, the -- what is the accessory dwelling? What qualifies it to be an accessory dwelling? Is it just a second building?

Ms. Takakura: So we have accessory dwellings in 19.35 and those are permitted based on the size of the lot, and then I, you know, there are some special restrictions for accessory dwellings on Molokai. I will have to pull up my Maui County Code 19.35 that's -- so this is 19, I'm looking at 35. I'm sorry. I'm just looking at another screen. Okay, so for Molokai, one accessory dwelling shall be permitted on a lot that is 7,500 square feet or greater; that's in addition to the main dwelling, and it's allowed for lots that are 7,500 square feet or greater on Molokai. Does that answer your question?

Ms. Mowat: I guess. I remember we were talking about accessory dwellings and -- or --

Ms. Takakura: Yeah, there's limitations on like the size and, you know, the connections and so forth. They're pretty regulated, specifically, in this chapter ...(inaudible)...

Ms. Mowat: And their use and their -- what they're -- and their uses. Yeah.

Ms. Takakura: It's for residential dwelling. Yes, to live in.

Ms. Mowat: Okay.

Chair Buchanan: So, Bridget --

Ms. Takakura: Does that ...(inaudible)...

Chair Buchanan: Hang on.

Ms. Takakura: Yeah.

Chair Buchanan: I think, Bridget, don't get confused because accessory dwellings in different zoning --

Ms. Mowat: Zoning. I'm thinking about the ag.

Chair Buchanan: Yeah ...(inaudible)...

Ms. Mowat: Yeah, farming. Farming. That's what I thinking of.

Chair Buchanan: Okay. Thank you.

Ms. Mowat: Okay. Mahalo. Thank you, Jacky, for the clarification.

Ms. Takakura: You are correct because some ag is different. Yes. Yes. Okay, so -- and then we can also talk some more after, yeah, as you go. Okay, so this is now looking at the next Chapter 19.64, bed and breakfast homes, and this part in the green at the top is the parallel language about allowing -- proposing to allow the -- a bed and breakfast use in two single-family dwelling units, and so that means it can be in a main dwelling or the one accessory dwelling unit. So that's just kind of the same thing that we have in 19.35 but putting it here also so it's the same thing.

Ms. McLean: Jacky --

Ms. Esmeralda: Jacky, I think you're muted.

Chair Buchanan: Jacky, you're on mute.

Ms. McLean: Jacky, you're muted again.

Chair Buchanan: Did she fall off?

Ms. McLean: Jacky?

Chair Buchanan: I think she's not on.

Ms. Mowat: She looks frozen. She looks like she's frozen.

Chair Buchanan: Poor thing.

Ms. McLean: Let me give her a call.

Chair Buchanan: Okay.

Ms. McLean: Sorry, Chair. She -- she put her phone on transfer to voicemail since she's in the meeting but we're going to run down and ask her to -- to regroup. So, it should just be a minute.

Chair Buchanan: You know what then? Can we take a recess?

Ms. McLean: Perfect time to take recess. Perfect. Okay, Stephanie, Commissioners, if there's no objections, we're going to take a recess, and we're going to recess, let's give it five minutes. Thank you, Suzie. We in recess. Recess.

(A recess was called at approximately 12:27 p.m. The meeting reconvened at approximately 12:41 p.m.)

Chair Buchanan: We left off with Jacky. We leading off where Jacky left off. Thank you, Jacky.

Ms. Takakura: Thank you, Chair Buchanan. Sorry about that. For some reason my computer was resolving network issues, so I went out and came back in. But I'm going to share screen again and I think this is where we left off, or were we on the previous slide? This is the one about the five-year construction. Did we see this one? Sorry, I don't know where we -- where I -- I lost. I'm going to go one slide up. I know we talked a little bit about the accessory dwellings, and I think we got that understood, so then I moved to bed and breakfast homes, and this first part is kind of the parallel language that you saw in the 19.35 saying that bed and breakfast use may be permitted in no more than two single-family dwelling units, that could be the main dwelling or the accessory dwelling, but still it's limited to two dwelling units, period, and then any other dwelling units have to be occupied long-term. This could warrant some adjustments to real property tax classes to recognize the long-term occupancy.

Next slide on this subject, still on bed and breakfast homes, Chapter 19.64, and you can see this is in red, so it's a little bit more restrictive. What we had proposed initially was limit -- putting in that same limit that they had for short-term rental homes, limiting bed and breakfast homes to units that were constructed at least five years prior to the date of application and owned at least five years prior. In talking with Realtors Association and the Vacation Rental Association, we agreed to revise it to just five-year construction requirement only and the goal of that is to reduce the opportunity for speculation. You know, we know that some families might want to start operating a bed and breakfast to

generate more income in light of the COVID-19 pandemic so, you know, we can remove this one, if that's your preference.

The middle item is that Lanai Planning Commission came up with their own proposal for their cap of 21 permits for bed and breakfast so that we have it in here; that bill is already en route to County Council. And then the last part that I have in italics is something we wanted to add, it's something we have proposed in 19.65 and we just want to say the same thing here, that no bed and breakfast permit may be issued to anyone who holds a valid short-term rental home permit or who has been banned from applying for a short-term rental home permit, and that's just to allow others to participate in this market and it eliminates a loophole for rule-breakers 'cause, you know, some people might try to -- if they can't do one, they might try the other.

Okay, still in bed and breakfast homes. This is about the signs and we just want to make the sign requirement the same as the short-term rental home ones, and actually, for Molokai, it's already a four square-foot sign so this would make Maui and Lanai similar because, right now, the current rules for a Maui and Lanai are a 16 square-foot sign, and so we're proposing that it be a four square-foot sign, so it would be same for the three islands and also between the two chapters of the code, and it also changes the dates that they have to post it and take it down, and that's, like I said, for consistency purposes.

Okay, so the next part is about the public hearing criteria and the notification requirements, and again, it's to make it consistent with the short-term rental home requirements 'cause, right now, if planning commission review is required, it's actually more complicated to get this processing than it is to do the short-term rental home one, so we'd like to make it consistent so it's easier for everyone. And then the criteria about the public hearings, the current criteria for bed and breakfast public hearings is if there's one existing B&B on a lot within 500 square-foot distance, for short-term rental homes, it's two, the proposed revision makes it two here and that's consistent with the two types.

The last item here we had proposed to add that a tax class, a real property tax class, could be used as prima facie evidence, but in talking with -- in further discussion, we decided it's not a priority for the Department as tax classes are established by the County. So that one -- that one is okay to take off.

Okay, so that's it for bed and breakfast. I'm just gonna go through this part, the short-term rental homes quickly, even though, you know, the cap on Molokai is zero. This is the part about accessory dwellings that the short-term rental home use could be permitted in the accessory dwelling or the main dwelling; any other dwelling units would have to be occupied long-term, so that's the proposal for that and, like I mentioned, it's parallel to what we have in 19.35.

And then we have some changes here regarding definitions and trusts and this provision would require that trustees belong to the family of the family trust, and we worked with Corporation Counsel on this trust language after we had some struggles with two applications from trusts, and so what we've proposed is that the trust must be in the name of the applicant, and then the definition for family trust is self-settled revokable trust, where the trustees is also the trustors or grantors, or is related by blood, adoption, marriage, civil unions. And this language clarifies how trusts work as ownership entities for short-term rental homes. Existing ones would be allowed to continue, like grandfathered, if they don't fit this definition, but new ones would have to comply.

This next item, the one that's in red, is just simply one permit per applicant, period, because, right now, there's some language in there about like if the property is over 3.2 million dollars, then it's okay to have more than one. We'd like to make it clear and simple that one permit for applicant.

Then the last item here that you see on the bottom is to eliminate loopholes that could be used for investment purposes, and what we have here is that the permit wouldn't be transferable in any way, and we want to add that in the instance of a trust that it could transfer to the beneficiary of the trust.

We want to add some additional criteria that assists the applicant in conforming to the character of the existing neighborhood and being part of the community. This will assist the applicant in getting approved when they go to the planning commission. And this kind of information, like benefits that the STRH brings to the community and then the justification and reason for applying, those usually are asked anyway during the hearing so it should be included upfront, you know, it just makes it clearer to have that information right from the start.

The last one that you see in red is the short-term rental home limiting -- proposal to limit the short-term rental home to dwelling units that were constructed at least 15 years prior to the date of the permit and that it was owned by the applicant for at least 15 years prior to the date of the application, than 5, and this requirement was requested by the Mayor and we do understand that this may not be a popular proposal, but there it is.

Okay, just a few more details, and this is little things. For Lanai, their cap is at 21 and, like I mentioned, that is en route to County Council. We also have some experimental and demonstration housing revisions, those are kind of like affordable and workforce housing, and vacation rentals are inconsistent with the purpose of that kind of housing so we want to make it clear that they would not be permitted. The one in the middle, no short-term rental home permit may be issued to any person who holds a valid bed and breakfast permit or has been banned from applying, that's just like what we have in the bed and breakfast permit proposal, we want to have the similar wording and that just, you know, allows others to participate in this vacation rental, and it also eliminates a loophole

for rule-breaking. The second from the bottom, we propose that ads must include physical street address, but we'd like to change that to just use the tax map key number instead. For us, that's enough information for verification and enforcement, and it doesn't compromise the safety of a guest or the owner. And then last one, owner cannot have a financial interest in another B&B, that's just adding the B&B in there, and that, again, is to allow others to participate in short-term and bed and breakfasts.

So, the next part is about notification, because one of the things that we hear often is that, you know, like say a neighbor rents nearby and they don't get notification so we would like to include that physical addresses of a proposed short-term rental home get notification also; that way, at least, you know, the neighbors who may -- maybe they're not on the side that they would see the sign, at least they get notice. The next part is about the advertising as evidence, I mean, excuse me, including real property tax classification as evidence, we're okay with not having that in there, that was just proposed as another tool for our enforcement, but we're okay with not having that in. And then the last part on the bottom of this slide, I did have a typo on the bottom of page 22 of the draft bill, I think I copied and pasted, but the only change for that part, 19.65.080.D.1 is just changing the "shall" to the "must," so I apologize for that.

Okay, so in a nutshell, those are the proposals allowing accessory dwellings to be used for bed and breakfasts or short-term rental homes if the other dwellings are occupied long term, so that gives them flexibility. Definition of family trust. Some revisions to ownership requirements, and ...(inaudible)... for permits consistency because when things are consistent, it's easier to comply and we'd like compliance. Increase notification for neighbors. So, you know, those are basically the goals of what we have here.

We propose that existing permit holders would continue under existing rules, and the only change that would lead to is that when they come in at time of renewal, they would just have to notify the requirements to the neighbors and make sure this is clarified. Upon renewal, they will be allowed to continue as they were approved, unless, of course, they want to make changes but, otherwise, they would just be, you know, continuing under the existing bill.

So, just like the other one, we're requesting that you approve the bill with some revisions, as -- that we went over, you can make other revisions if you want, we can defer, or you can recommend denial. It's up to you. That's it in a nutshell and we can take any questions, and I'm going to stop screen sharing, but can always go back to anything that you need to.

Chair Buchanan: Okay. Thank you, Jacky. Okay, Commissioners, you guys like take public testimony first or you guys have questions right now? Okay. I cannot --

Mr. Sprinzel: Public testimony fine.

Chair Buchanan: Okay. Thank you. John. I just was saying I never see you. Alright, so we're going to take public testimony first on this agenda item. If there's anyone in the public wishing to testify, please chime in, state your name for the record.

Ms. Poepoe: Hi. This is Mahina Poepoe.

Chair Buchanan: Hi, Mahina.

Ms. Poepoe: I only have couple notes that I took during the presentation. First, I really like the idea of putting the TMK on the advertisements. I think that'll really help finding the illegal one. And then the -- the other point was that, on Molokai right now, all B&Bs have to come through the Commission regardless of triggers and I think that this should remain the same for Molokai and not be made consistent with the STR review process just to ensure that all of them come through Commission and aren't just approved by the Department because there were no triggers, if that makes sense.

Chair Buchanan: Okay, great. It does make sense. Thank you for the reminder. Okay. Does that conclude your testimony?

Ms. Poepoe: Yes. Thank you.

Chair Buchanan: Okay. Commissioners, any questions for the testifier? Okay. Thank you, Mahina. Seeing none, is there anyone else in the public wishing to testify on this agenda item? Okay, seeing none, we will close public testimony on this agenda item. Commissioners, you guys have any questions on the report from Jacky for short-term rentals and B&B?

Mr. Poepoe: I had a question?

Chair Buchanan: Commissioner Poepoe.

Mr. Poepoe: How much did the Realtors Association weigh in on - on the changes?

Ms. McLean: Chair, this is Michelle. Jacky noted in the presentation the proposed changes based on our discussions with them. If that wasn't highlighted in the PowerPoint, then they didn't have any input on -- on everything else; just the ones that were noted in the presentation are where we're agreeable to making some revisions.

Mr. Poepoe: Were there any other -- other stakeholders identified?

Ms. McLean: It was the Realtors Association of Maui and the Maui Vacation Rental Association together made those requests.

Chair Buchanan: Okay. Any more questions, Commissioner, Poepoe? No? Commissioners, any questions? Did I lose -- oh no. There's Commissioner Mowat. Okay. Okay. Yeah, go ahead, Commissioner Moore.

Mr. Moore: I was wondering if project managers are permitted to manage these properties because a project needs a license to manage one property.

Ms. McLean: Commissioner Moore, the -- a bed and breakfast has to be operated by the owner proprietor, I mean they could hire someone to help with the business, but a B&B itself needs to be run by the owner, proprietor. A short-term rental home, which you won't have on Molokai after the end of the year, can have a manager and there are requirements for the manager.

Mr. Moore: Thank you.

Chair Buchanan: Okay, Commissioner's, any more questions? Okay, Jacky, I had a question on the presentation. You stated that on one of the slides, and I was too slow to catch it, but my question was for husband and wives because we had a husband and wife who owned -- who were married but had multiple parcels, placed multiple parcels under business names and then also on themselves, so how is the County defining "per person?" I see on one of the slides you cannot be related. Or what did it say? I'm wondering if the husband and wife can individually own multiple units and apply separately. And you on mute, by the way.

Ms. Takakura: Thank you, Chair. So, right now, the proposal, and this is for short-term rental homes, is simply one permit per applicant. I don't think we had any proposed revisions --

Chair Buchanan: We have a definition for "applicant?"

Ms. Takakura: I'm not sure if we had any proposed -- anything making it more specific for bed and breakfast though. I'm going to look.

Mr. Poepoe: I see 19.65.050.A.8, owner cannot have financial interest in another B&B or STRH.

Ms. Takakura: Yes, that is correct. I'm just checking the bed and breakfast language in that --

Ms. McLean: Chair, I don't think that the bill, as proposed, would prohibit a husband owning one property entirely in his name and a wife owning another property entirely in her name. If the property is in both of their names, then he couldn't get a B&B one and

she have one in the other because they have an ownership interest in both. But if they own them exclusively in their own names, then each one could get a permit or -- for those properties.

Chair Buchanan: Okay. And on that same trend of thought, an applicant can be a corporation?

Ms. McLean: Yes, as the bill is written now.

Chair Buchanan: Okay. So that's one of my problems. Okay, so for me, the whole short-term rental and B&B, the real issue, the underlying basic issue is the zoning. I always thought that the County of Maui was erroneous in allowing commercial uses in the residential areas and that a commercial business, such as a short-term home rental and a bed and breakfasts could be in appropriately zoned areas, and when people think that we don't have any B&B and short-term -- actually, we have a lot. Any condominium that is in appropriately zoned area or any resort in a resort owned area is a short-term rental, so when people say we don't have any short-term rentals, that is really, really wrong. Every -- every Hotel Molokai, every Wavecrest, every Ke Nani Kai is a short-term rental. So the -- the real -- and this is why we have continuing issues with B&B and short-term home rentals is because they're in neighborhoods where our kids are riding bikes on the road. So, we have people in a short-term rental that -- that you don't know in your backyard. I have a problem with that. I will always have a problem with that forever and ever until I get my council person to try and to introduce bills to rescind the type of decision-making that was meant -- made to allow a nonconforming use in a area that was zoned for families. And to have a corporation own -- make a financial interest in the State of Hawaii to purchase homes purely to make money in my backyard is wrong. It's just wrong. And so I know people don't like it when I say that, this is my personal experience having had to deal with a few illegal short-term rentals in my neighborhood, and it just adversely impacted everyone in my community, so from parking, inadequate parking to people just not knowing that we had a hearing-impaired child in our neighborhood that couldn't hear cars speeding up and down the road, but people who lived there knew that we had a hearing-impaired child in our cul de sac. So, again, it's almost like the zipline yeah. People not are not aware in a rural area of what goes on day to day. Short-term home rentals that are primarily used not by locals, but by tourists, should not be an allowable use in a residential zoned area because they're already permitted in areas zoned appropriately for that use, and I want that conveyed to the County Council. It took us, what, ten years to pass our zero cap, and that was so hard. It was just painful. It's painful. And so, I no like pain. And I -- and I tired of advocating on behalf of my community to people who no understand. So, I guess for this, all the stuff that was in green, which was to make it more lenient to be -- I can see being in compliance with short-term home rental, but I have a question on the B&B. I see Lanai put a cap on B&B. Currently, correct me, Molokai has no cap on B&B? You muted, Jacky.

Ms. Takakura: Thank you, Chair. That is correct. Lanai Planning Commission proposed a cap of 21 permits for bed and breakfast. And you are correct that the -- there's no cap right now for the Molokai Community Plan area.

Chair Buchanan: Okay. Did the Lanai -- oh, you know what? I'll hold my questions. Commissioner Pele.

Mr. Pele: Oh, I just wanted to verify and -- and correct me, we have five B&Bs active on this island right now, on Molokai?

Ms. Lopez: Currently, you have -- sorry. Thank you. Can I answer that question?

Mr. Pele: Yes.

Ms. Lopez: You, currently, have two bed and breakfasts here on the island.

Mr. Pele: Oh, two? Okay. Thank you. Thanks.

Ms. Lopez: And they're all located in the Kawela District of Molokai.

Mr. Pele: Okay. Thank you.

Ms. Takakura: Excuse me, Chair. Buchanan may make a correction? So I'm just looking at the Maui County Code for 19.64, bed and breakfasts, and the permits has to be in the name of the owner proprietor who shall be a natural person and the owner of the property. No bed and breakfast home permit shall be held by a corporation, partnership, limited liability company, or similar entity. So, yeah, for bed and breakfast, yeah, that's a, yeah, it cannot be held by a corporation, so I just checked, looked -- I looked at 19.64.

Chair Buchanan: Okay, thank you. Commissioner Pele, you had any more question?

Mr. Pele: Oh no, thank you. I just was trying to refresh my memory. I did catch the cap and I don't think we ever addressed that as far as the B&B was concerned.

Chair Buchanan: Okay, thank you. And I think that this Commission was amenable at the time for the B&B because the natural person was a live-in person that provided oversight, and the problem with the short-term home rental was that all they had to do was have a name and a number for a manager, like Commissioner Moore stated earlier, and that was for kind of like a 911 when people was partying like animals and you needed to call someone, so is that the same for B&B signage, that there's a number to call? You muted?

Ms. Lopez: I can answer that question. Only for Molokai, on the signs, you need to include the owner's telephone number, and that's under -- in the B&B ordinance.

Chair Buchanan: Wow, how awesome. How awesome is Molokai? At least if people partying like animals, we -- we get somebody to call. We no gotta -- I know I'm so frustrated at times when we have something going on and we have nobody to call except our Maui Police Department to burden them even more. Commissioner Mowat.

Ms. Mowat: And that's -- that's something that kinda like I want to add on to yours is that in the community, when people pau work, they go home, they wanna to cook dinner, they wanna to kick back, in a -- in a short-term rental, these guys are on vacation, they partying, you know, disrupting the whole environment of the community, so that's why I agree with -- with, you know, Lori's comments that it doesn't really belong there and we got -- we have zoning, we have Molokai Shores, we have, you know, that, yeah, I no have any problem with because they're going to have all the maintenance or they're going to have the security there to keep everybody quiet. So, there's designated areas for tourism or the tourists, let's keep 'em in the designated areas and not in the family -- in our -- in our communities. So, I just wanted to add on to Lori's comments. Mahalo.

Chair Buchanan: Thank you, Commissioner Mowat. And with that, Jacky, what Commissioner Mowat was just talking about, can you go back to the slide where the Council wanted to add in the green verbiage about conforming to community on the application instead of waiting for it to come up because we -- you on mute, Jacky. Okay.

Ms. Takakura: I just -- I have to find it.

Chair Buchanan: Yeah.

Ms. Takakura: Okay, so I'm going to share screen again, but this is regarding the short-term rental home permit applications, so that's not actually relevant to Molokai, but, yeah, we would like to add this information so that the applicant can include it, you know, when they submit everything, the benefits that the short-term rental home will bring to the community, and then justification and reasons for applying for the short-term rental home, and how the property would be used if the permit's not granted 'cause those are standard questions that come up at the hearings now, we see this all the time, so at least the applicant can start preparing the information from the time of the application.

Chair Buchanan: Okay. I was kind of surprised to see this because staff often cautions the Commission not to -- not to use, not to overreach our authority. I found that this -- this question or this guideline or consideration, it says that the planning commission must consider. I'm just surprised to see it. I mean I'm happy to see it and I don't have real -- an issue with it, but I -- if this is something that can go -- is this new language, Jacky? So

if -- if you guys can insert new language like this and also the new language following in red, why we no can put in new language? You muted, Director.

Ms. McLean: Chair, this is Michele. If I could take a stab at that.

Chair Buchanan: Okay.

Ms. McLean: It may be, in the past, that the two bullets there in green about the benefits to the community or the justification or reasons, if you have been guided in the past to not consider those things, that could be because it wasn't in the law as one of the things for you to consider, and so we try to file -- try to follow the criteria and those haven't been in there before. We're proposing to add it though because most commissions have tried to glean this information from applicants and so for it to be something that applicants know are to be considered, then -- then they'll put it in their application and they'll be prepared to address it; that's why we put it in green because we think it will be helpful to applicants even though if they don't answer those sufficiently, then it might work against them, but I think it could help them overall, but that's my guess as to why you had been steered away from considering those things because they weren't included as criteria before. And to answer your question about criteria that could be considered, I think you can suggest things, they need to be lawful and have a connection to -- to the use or else Corp Council's going to tell us you can't say that, but certainly you can -- you can suggest other criteria. I mean it isn't applicable to Molokai anymore anyway but, in general, you know, that's how it would work on criteria for permits.

Ms. McLean: Thank you, Director. And while it may not be applicable today, we could all be gone tomorrow and it could be applicable to the new commission that wants to restore short-term home rentals. So, I guess if I was an applicant, I would say where does it validate that my project has to be a benefit to the community? Is that -- is that validated somewhere else as a use or as like this project should have benefit to the community and explain that benefit almost like if you was going through the SMA or 343 or something?

Ms. McLean: Sometimes applicants offer these things up themselves, for example, we've had applicants, on Maui anyway, who have part-time homes here so they do spend time on Maui, and when they're here, they're active in community organizations, they give in financial support to various nonprofits, they volunteer, so trying to establish their connection with the community and that they care about this place and will be respectful operators, so a lot of times applicants will offer this up themselves. This won't work very well for applicants who really have no connection, who have a place as an investment and, you know, rent it out, don't really spend time here themselves, it would be hard for them to -- to meet these criteria. So, that's how it kind of fits in.

Chair Buchanan: Has the Attorney General weighed in on the verbiage? I mean have you guys vetted this through your guys' law people?

Ms. McLean: They haven't reviewed the bill yet. The way that the process works is they don't review the bill until it's ready to be transmitted to Council.

Chair Buchanan: Okay.

Ms. McLean: So, they could -- they could have issues with this or they may recommend refinements to the language, but we're --

Chair Buchanan: Okay.

Ms. McLean: We're hoping that they'll be able to support it to some degree.

Chair Buchanan: Okay. The only reason why I say that -- that this is so mushy because the Commission, Molokai Planning Commission, has tried to do this in conditions and we've constantly be told that we treading on -- into territory that is legally wishy-washy, so that's why I kind of surprise. But anyway, moving on to the -- what's in red -- oh, sorry. Jackie, you can put that back up? The red. I like -- I like talk about the red before we go, and please, Commissioners, I sorry, for the patience, because we make a law and make a rule, it ends up being really bad, and then we spend years trying to fix it to be some -- when we shouldn't have even had it, and this is -- I -- I see this in red as a product of that, so we limiting the single-family dwelling units to have been constructed at least 15 years prior to the date of permit application and to be owned by the applicant for at least 15 years, and I can read between the lines to see that this is for people, local people who have owned their home for quite some time and -- and that's why it's more restrictive instead of people who just come in and buying up homes in order to make money. Am I close, Director?

Ms. McLean: Yeah.

Chair Buchanan: Okay.

Ms. McLean: This was a request, as Jacky mentioned, from the Mayor. Right now, it's a five-year requirement but he -- he felt that a longer term would -- would confine it more to -- to residents or people with a longer-term connection to Maui County.

Chair Buchanan: And so, for something like this or any of the other proposed changes, after the last period, we can always say, except for on Molokai, yeah? Like, right now, I could say, except for Molokai, where single-family dwelling unit must be constructed at least 20 years, I could say something like that, right, as a proposal? I'm not going to but I'm just saying so because if the Mayor can, I can, right? So. Okay.

Ms. McLean: You've done it before. I don't see why you can't continue to do it.

Chair Buchanan: Okay. Okay. I sorry. I just getting punchy at this point on wordsmithing because that's where we lose a lot of stuff. So -- so, Commissioners, we should put one cap on the B&B right now because we can and instead of taking ten years to do a cap, and I'm thinking that the Lanai Planning Commission did not have a protocol, like a scientific protocol, for coming -- deriving at 21, using whatever data that they had in order to find out what was amenable to them, like we could do some piecemeal, arbitrary stuff right now. Jacky.

Ms. Takakura: Excuse me, Chair, if I may. Thank you. The Lanai Planning Commission had at least five meetings on this subject so they -- they did have quite a few workshops and meetings and worked with the Director and the Deputy Director to come up with their proposal. I believe you could put I would -- I would imagine it would be a separate item from this, but probably Corporation Counsel can advise on that.

Chair Buchanan: Commissioners, if you guys not going whoa, there's Stephanie. I going whoa. Yeah, that going be step -- that -- that going be one definitely step for us. So, right now, B&B is pretty much in line STHRs. I kinda funky on the use, you know why? Seventy-five hundred square feet is not that big you know, 'cause my lot is seven thousand square feet right now, and if I was to squeeze another house to rent out for tourists, boy my neighbors going be kinda wild because I going be right up -- right up to their front door, and then too I'm on a cul de sac, and in every cul de sac, you cannot park your cars because emergency vehicles cannot come in and turn around. Is that correct, Fireman Poepoe? Commissioner Poepoe? We all had to move our cars to comply. Commissioner Poepoe, is that true?

Mr. Poepoe: It's really hard to turn in a loop when there's a car in it.

Chair Buchanan: Okay. So, you know, if you're in a cul de sac, your parking restriction, so are there any associated parking restrictions that go on with accessory use for B&B and short-term home rental under this ordinance?

Ms. Takakura: Thank you, Chair. The B&B Chapter 19.64, I believe it already has parking restrictions that parking can't be on the street, but that wouldn't change.

Chair Buchanan: So, there would be no street parking. So -- so, if my neighbor had one short-term home rental or B&B, and one of their clients came up and parked on the street, I could call MPD and have them remove their car or ticket their car?

Ms. McLean: I don't know if it would be MPD. If -- if it's a traffic violation, then yes, you could call in MPD. If parking is otherwise allowed on the cul de sac, then it would be a zoning violation and you would call us and we would site the operator.

Chair Buchanan: Oh my God, that is not going to work for me, Director, because we don't have a zoning inspector on Molokai. Oh my gosh, that is so not going to work for us. I mean that's -- that's the whole reason why we put the 911 on the -- on the sign. So, okay, so now if people partying, right, we call 'em, we call the operator, nobody answer, the house, so we call MPD but they going to one noise complaint, yeah, not to one zoning infraction. Okay, we cannot do this then if our only recourse to have that car ticketed or removed is to call Maui County through our request of service process, is that how that would be handled, Director?

Ms. McLean: Yes.

Chair Buchanan: Okay. So, because I'm the Chair of the Planning Commission, I cannot do requests for service because I don't even know if it'll ever come back, so I would have to ask somebody else or my neighbors to file a request for service to remove tourist cars that are parked illegally 'cause they supposed to be on property, but they not. Okay. I just setting the scenario. Thank you.

Ms. McLean: Yeah, I mean I -- I certainly understand what you're saying, but if parking on the street is legal otherwise, then it doesn't have the urgency of MPD having to remove the vehicle. It's a zoning violation. It's a permit violation. But if parking is prohibited on the street for anybody, then yes, MPD could remove that car like they would remove any other car. So, the car itself, it shouldn't make a difference in this scenario whose car it is. If it's not supposed to be there, then it should get removed.

Chair Buchanan: Okay, so before COVID, I went to visit family in Kahului and in Wailuku, and I had to park my car five -- five blocks away because the parking issue in Wailuku and Kahului is so stressed because of mcmansions, and so that's why you shouldn't have commercial type of uses in residential areas because we already get multi-general families in houses 'cause nobody can afford, so that's how come I want the County Council to know how adamantly we are -- I am opposed to this in the red because it's a nonconforming use, period. Nothing to do with a B&B for make money or accessory dwelling. And if people can afford it, hurry up and build one five hundred square rental, and then add to the congestion in my neighborhood, and then not have a means to enforce that if I have problems with that accessory use and I cannot have the help of the manager or the homeowner, so it's just a messy slippery slope. So, I would say no. I mean to make it more restrictive and I no go along with the making it more permissible. Commissioners, any more questions? I lost Commissioner Pele. Okay. Oh, you there. You lying down. Okay, I see your hand. I see your hand. I sorry you guys for belaboring

this. You said that short-term home rental and the B&Bs was not allowed in experimental housing. Is that the only restriction? Where else it's not allowed?

Ms. Takakura: If I may, Chair? Thank you. It's already not allowed in affordable housing and workforce housing. This part about the experimental housing, it's we'd like to add that in because it's something in reference to HRS, not in the Maui County Code, and so just adding that to the list of where it can't occur, you know, affordable housing, workforce housing, and then this kind of experimental and demonstration housing.

Chair Buchanan: Director McLean, is there any way in this that we can add except on Molokai where it will not be permitted in interim or residential zoned areas? STHRs and B&B? Can we insert that somewhere in here?

Ms. McLean: I think it's -- I don't think there's anything wrong with you making the recommendation, but we would have to check with Corp Council to see how this was noticed and to see if that's under the umbrella of what was publicly noticed because, you know, the public who saw the public hearing notice might think, oh, okay, those don't apply to me, I don't have an interest in testifying on that one way or the other, so it might go outside of what's been posted today, but we could initiate a bill to do those things separately and bring that back to you another time if -- if that's what you want to see.

Chair Buchanan: I don't know. I just no like 'em take ten years. Thank you. Stephanie.

Ms. Chen: Thanks. I -- I agree with the Director. I think the Commission could add this as a comment, but to change the, for example, the B&B caps, that should be something that's done in a different ordinance, so the comment could be something like a -- a blank cap that, you know, to be discussed further. But I agree with the notice requirement there. Thank you.

Chair Buchanan: I was thinking more of making it a non-permissible use.

Ms. McLean: That can be achieved by caps, though. I mean, if you limit the caps to the number of existing operations and even those in the pipeline, and Sybil can jump in and let us know if there are any in the pipeline, then, same as you did for Molokai, once those permits expire or by a certain timeframe, they go down to zero, and so that's effectively no B&Bs in any district so that you can achieve the same thing by -- by putting a very restrictive cap and phasing them out.

Chair Buchanan: Thank you, Director and Stephanie, but I respectfully disagree, and the reason is I would rather it not be permitted because at any time, if there, in the future, is a change of -- of leadership through the County that may just -- just releasing the cap is - is much easier to do than going through a public comment for a non-permissible use. But in that sense, I respectfully disagree and I would rather it -- you go from more

restrictive to lenient than trying to just start off at a higher level of leniency and be able to add or detract; if you understand where I coming from.

Ms. McLean: Yeah, I don't disagree with you, Chair, that it is more solid to do those prohibitions. I don't disagree with that.

Chair Buchanan: Yeah, can you also tell the County Council that they should look at rescinding this whole short-term rental and B&B law for Maui County. No, I'm serious. It's laughable, but I think we've had nothing but trouble with it, and what we saw that it put a real burden on the taxpayers of Maui County in order to enforce and create a whole structure just to, like we want for the zipline, now I gotta get one zipline expert, now I need one whole department to manage short-term rentals and B&Bs and make sure they paying their TAT tax and -- and I no even get the TAT tax, all of it back, so -- so any way you can make this restrictive for Molokai. I am amenable to B&Bs and putting a cap on it if -- if I stuck with 'em right now. But, again, if you want to do that type of commercial business, then you should buy land that is appropriately zoned for that business because it is a commercial business, buy one condo, by five condos, something. Okay. Thank you.

Ms. McLean: Chair, if there are no more comments, then I can try to summarize what we've heard, and Jacky can jump in if I missed anything.

Chair Buchanan: Yeah, Director, after this comes out from us --

Mr. Poepoe: I'll wait.

Chair Buchanan: Oh, I sorry. Commissioner Poepoe.

Mr. Poepoe: No. Never mind. I get one question but after the Director.

Chair Buchanan: And I just like know where does this report go to after it leaves us, does it go to committee?

Ms. McLean: The way that the process works is we would put together a transmittal letter, a revised proposed bill that incorporates the three commissions' comments, the minutes from all of the commission meetings, and we send that package to the Full Council, and then at a Full Council meeting, they will refer it to committee, and I'm assuming it would go to Council Member Paltan's Planning and Sustainable Land Use Committee, and then they would have to meet on it, make a recommendation back to the Full Council, who would pass the bill on two readings.

Chair Buchanan: Okay, 'cause I'll look at it better. I just wanted to know who we gotta talk to after this. Okay. Thank you. Go ahead. Wait, did we open for -- oh, we did in

the beginning public testimony right up in the front row. Okay, thank you. Go ahead, Director. Mahalo.

Ms. McLean: Okay, the comments are relatively broad. It sounds like you recommend rescinding the B&B and STRH ordinances altogether. In the meantime, you support the proposed revisions that are more restrictive and oppose those that are more lenient. And you would like to see a future bill that establishes caps for B&Bs on Lanai -- or, excuse me, on Molokai, and, also, prohibit STRHs and I believe B&Bs too in those districts where they are allowed, except I'm assuming business districts, but in residential, and ag, and interim where most of the residential communities are.

Chair Buchanan: Yeah, Commissioners, is there anyone that doesn't agree with anything that Director just read to us?

Mr. Poepoe: I'd like to add.

Chair Buchanan: Okay, Commissioner Poepoe.

Mr. Poepoe: That 19.64 not be consistent with 19.65 for the -- in terms of processing, that it continues to come to the Commission.

Ms. McLean: Chair, to clarify, it looks like, right now, the B&Bs that the Commission reviews are those that hit one of the Commission review triggers, and for any permit that has to be approved by the Commission, the renewals have to be approved by the Commission too, but it doesn't say that all permits have to go to the Commission, it's only those that hit one of the triggers. Now, that could be something that you recommend changing as well today if you want that.

Chair Buchanan: I -- taking into consideration --

Ms. Lopez: ...(inaudible)... Chair?

Chair Buchanan: Okay, go ahead, Sybil.

Ms. Lopez: So, under -- under 19.64.050 of permit processing, A.3., section B, subsection, under e, it says: For bed and breakfast home located on Molokai and Lanai, that the application is for an initial bed and breakfast home permit that shall go in front of the appropriate planning commission. So, for Molokai, all initial bed and breakfast goes in front of the Molokai Planning Commission and that Planning Commission shall review and either approve or deny the application for pursuant to that requirements of the chapter.

Ms. McLean: Okay.

Ms. Lopez: So that is not changing, yeah?

Ms. McLean: Thank you, Sybil.

Chair Buchanan: So, Commissioner Poepoe is asking that it be consistent, that 19.64 be consistent with 19.64.050?

Ms. McLean: I think he's just asking that that stayed the same.

Chair Buchanan: Oh, okay, okay. Is that correct, Commissioner?

Ms. McLean: And just to clarify.

Chair Buchanan: Commissioner Poepoe?

Mr. Poepoe: Yes, that all -- all authority is retained by the Commission for permitting and approving B&Bs on Molokai.

Chair Buchanan: And it's the same for STRs. Is that correct? 'Cause that's what Commissioner Pele had stated earlier. Sybil, you know?

Ms. Lopez: Is the question -- thank you, Chair. Is the question for STRs what Commissioner Pele stated as what the -- this?

Chair Buchanan: Yeah, for Molokai, even though we have a zero cap because the cap is one issue and the due process of it is another issue.

Ms. Lopez: No, that verbiage does not include --

Chair Buchanan: Exist.

Ms. Lopez: Is not included short-term rental or ...(inaudible)...

Chair Buchanan: Can we can we include that? Can we include for short-term rentals even though our cap is zero, Director? Oh, Jacky?

Ms. Takakura: Sorry. Sorry to interrupt, Chair. Regarding the short-term rental home renewals, I'm just looking at 19.65.070.B, and this is about renewals, so it can be granted for renewals up to one year on Molokai except the renewals for permits initially approved by the Molokai Planning Commission may only be granted by the Molokai Planning Commission for terms up to one year in terms -- in reviewing a renewal, the Director Molokai Planning Commission, as appropriate, can require evidence of compliance and

so forth, so that's for short-term rental homes and going to 19.64, which is the bed and breakfast chapter, it's similar about the renewals, permit renewals up to one year on Molokai accept that renewals for permits initially approved by the Molokai Planning Commission may only grant -- be granted by the Molokai Planning Commission for terms up to one year. And so I think what you folks is want to keep it that way, right? We don't have any proposal to change that.

Ms. McLean: I -- I think what they're saying is that B&Bs, all permits have to go to the Commission and have to be renewed by the Commission. For short-term rental homes, right now, only permits that hit the triggers have to go to the Commission and those same permits have to be renewed by the Commission, and I think what is being said today is that you want all short-term rental homes to go to the Commission, even though the cap is zero, if the cap changes someday, you want all permits, like the B&Bs, you want all permits to go to the Commission. So, yes, we can add that comment.

Chair Buchanan: Okay, that's correct. Commissioner Pele.

Mr. Pele: We're talking about the cap is zero and I see there's something that -- that might not be relevant, but there is pending litigation against the grandfathering and there is a few STRHs that have joined from Molokai, so I have no information on where that's going, it's been stated has frivolous, who knows if it's frivolous, but the possibility remains that those grandfathered STRHs could -- could end up winning, and we want to make sure that they still have to come back to us 'cause, you know, nobody's talked about that litigation and it's always in the back of my mind of where that will -- where that'll end up.

Chair Buchanan: Agreed, Commissioner Pele. And, Director, you're correct. We like 'em to the Planning Commission because, just what Jackie had mentioned, is for me, again, is so flaky and why we have so much distrust is because you go from one to the other, and one says something, the other one overrides the other, and just what alone what she said in 19.64.050 is there was verbiage added with -- about the Planning Director and we fought hard to keep and retain on decision-making at the Planning Commission level and not be -- give authority to one person to make decisions for our community, and so with respect, when you said only triggers, then we gotta go back now, okay now triggers is another name loopholes to me, so we like close the loopholes and be really specific that that type of decision-making is - is left to the Molokai Planning Commission, okay, as in renewals or not, they still should all come to us. Is there any Commissioners that don't agree with that statement? Ah, seeing none. I guess we all in agreement it. Okay. Thank you very much. Okay, where we go from here?

Ms. McLean: Do you want to make a motion to forward those comments to the Council?

Chair Buchanan: Yeah, just one real fast recap 'cause was really -- really easy. The rescind the B&B, support restrictive, oppose the more lenient, establish cap on B&B,

prohibit STHR and B&B where not compatible, and then about the consistency with the Molokai Planning Commission having the -- the authority. I think, yeah, that's all good.

Ms. McLean: Okay.

Chair Buchanan: Commissioners, any questions for staff -- staff report? Seeing none, we can open up the floor for a motion to -- you guys can approve with recommendations, not approve, defer. Any motion on the floor?

Ms. Mowat: I'll take a shot at it.

Chair Buchanan: Okay.

Ms. Mowat: I -- I recommend approval of the proposed bill with amendments to the Maui County Council.

Chair Buchanan: And, Commissioner Mowat, is that amendments and the proposed conditions or the --

Ms. Mowat: Yes.

Chair Buchanan: The verbiage? Okay.

Ms. Mowat: Yes. All that was -- that was --

Chair Buchanan: That was mentioned on the record.

Ms. Mowat: Mentioned earlier. Yeah. Yes.

Chair Buchanan: Okay, Commissioners, is there any second for discussion? I have a peace sign from Commissioner Pele.

Ms. Mowat: Two.

Chair Buchanan: I'm assuming that is a second. So for the record --

Mr. Pele: Yeah, that's the number -- that's the number two. Second.

Chair Buchanan: For the record, for those who not on Zoom, Commissioner Pele has second the motion to approve with our amendments, conditions, and verbiage to Council. Any discussion, Commissioners, on the motion? Okay, seeing none, I going call roll call. Commissioner Poepoe?

Mr. Poepoe: Aye.

Chair Buchanan: Commissioner Mowat?

Ms. Mowat: Aye.

Chair Buchanan: Commissioner Moore?

Mr. Moore: Aye.

Chair Buchanan: Commissioner Pele?

Mr. Pele: Aye.

Chair Buchanan: Commissioner Sprinzel? You on mute, John. You voted aye? Okay. You can do a thumbs up too. Commissioner Sprinzel votes in the affirmative. And Chair votes in the affirmative. Unanimous. Motion carried.

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

VOTED: to recommend approval to the Maui County Council of the proposed bill with amendments, proposed conditions, and verbiage as discussed.

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

Ms. McLean: Great. Thank you so much, Chair and Commissioners. We really appreciate the time you spent on both of these. It was really helpful. Thank you.

Chair Buchanan: Our favorite subject.

Ms. McLean: Yeah right.

Chair Buchanan: Okay, you know what? Let's take a brief five-minute break. What time is it? Can we do a five-minute break? We -- I know we just did one but let's do another five-minute break. Very short five-minute.

Ms. McLean: Okay. Jordan Hart is gonna switch places with me --

Chair Buchanan: Okay.

Ms. McLean: So I can join a Council meeting, so he'll be taking over the rest of the meeting.

Chair Buchanan: Tell the Council we said hi.

Ms. McLean: Okay. Nice seeing all you folks. Thanks so much. Stay safe.

Chair Buchanan: Thank you, Michele. Appreciate your attending. Mahalo.

Ms. McLean: Take care. Aloha.

Chair Buchanan: Okay ...(inaudible)...

(A recess was taken at approximately 1:49 p.m. The meeting reconvened at approximately 1:58 p.m.)

D. DIRECTOR'S REPORT

- 1. MS. MICHELE MCLEAN, PLANNING DIRECTOR, NOTIFYING THE MOLOKAI PLANNING COMMISSION PURSUANT TO THE PROVISIONS OF THE MOLOKAI PLANNING COMMISSION'S SMA RULES OF THE ISSUANCE OF THE FOLLOWING SPECIAL MANAGEMENT AREA EMERGENCY PERMITS:**

Chair Buchanan: Okay. Thank you. Welcome back to the Molokai Planning Commission, September 23, 2020. We are on item -- agenda item D, under Director's report item no. 1, Planning Director, in this case, for the Director, Jordan Hart, notifying the Commission that pursuant to the provisions of our SMA rules, the issuance of the following special management area emergency permits, so you guys haven't seen too many emergency permits, so item a:

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

- a. Approval of a Special Management Area (SMA) Emergency Permit application from Mr. Mike Moss for the replacement of metal roof to match existing and weatherproofing existing buildings to prevent water intrusion and safety concerns, located at 80 Makaena Place, Kaunakakai, Island of Molokai, Hawaii; TMK: (2) 5-3-002:049 (SM3 2020/0008) (S. Lopez)**

This is for notification and review purposes.

Chair Buchanan: It says this is for notification and review purposes. So there's no decision-making. Is that correct?

Mr. Hart: Chair, not at this time. This is informational.

Chair Buchanan: Ah. Okay. Very good. Thank you very much. Staff?

Mr. Hart: Sybil, maybe just go to the submittal information.

Ms. Lopez: Okay. Thank you, Jordan. Chair, may I proceed?

Chair Buchanan: Sure.

Ms. Lopez: Okay, so we are on item D.1.a. Correct? So it's the approval of the SMA emergency permit for the application Mr. Mike Moss. I just want to inform the Commission today, if you have any questions, we actually do have the owner here present, I see that Kaleialoha Moss is attending the meeting as well as -- just wanted to acknowledge that they're here in the meeting, but they -- they requested an emergency permit to replace their metal roof and match the existing, what the existing roof was, and provide weatherproofing to the buildings to prevent water intrusion and safety concerns. So, the parcel is located right in town. This is the parcel that is right next to the Molokai Fish and Dive and across the State building. I don't know if you have any -- any more questions regarding that -- that -- that emergency permit, but the Director did approve the permit and the SMA is forthcoming. Thank you.

Chair Buchanan: Hi. There's a question for staff. Commissioner Mowat.

Ms. Mowat: This one is for Sybil. Sybil, what is -- what is weatherproofing existing building? What does that require?

Chair Buchanan: Good question.

Ms. Lopez: I believe I have, I don't have Luigi here, but I do have the consultant here and if he wants to chime in on that, but, basically, it's the same type of material that they use.

Ms. Mowat: Well, it says to replace -- replacement of metal roof to match existing and weatherproofing existing buildings to prevent water intrusion. So, I'm thinking the roof is one point and then -- then another thing is, according to this, another thing is -- is weatherproofing the whole building, so what is the weatherproofing the whole buildings, so get more than one buildings to prevent water intrusion? So, what is weatherproofing the buildings? What -- what is -- what kind of work is required on that? Is that just putting on a plastic thing or what?

Mr. Stephenson: Aloha, Chair. This is -- this Rob Stephenson here with -- representing Luigi Manera, if I might be able to clarify.

Chair Buchanan: Thank you, Rob. Would -- that would be awesome? So, the -- the weather proofing is, if you look at your package, if you look at the information --

Ms. Lopez: Hold on. Sorry. We have Corp Counsel ...(inaudible)... Corp Counsel.

Mr. Stephenson: Yes.

Ms. Chen: Hi. Chair, can I -- can I swear Robert in or would you like to do it?

Chair Buchanan: Oh, yeah. Thank you. You can swear him in.

Ms. Chen: Okay.

Chair Buchanan: I forgot.

Ms. Chen: Okay. Hi, Robert. This is Stephanie, from Corp Counsel.

Mr. Stephenson: Hi, Stephanie.

Ms. Chen: Hi. Could you please state your name and the item you're testifying on for the record?

Mr. Stephenson: Sure. My name is Rob Stephenson. I'm testifying on item -

Ms. Lopez: D.1.a.

Mr. Stephenson: 1.a. on behalf of Mr. Luigi Manera, from Architectural Drafting Services, the consultant for the project.

Ms. Chen: Okay. Thanks, Robert. And do you swear or affirm that the testimony you are about to provide is the truth, the whole truth, and nothing but the truth?

Mr. Stephenson: Yes. Thank you.

Ms. Chen: Thank you.

Mr. Stephenson: So, I believe the question was about what does it mean weatherproofing? If you look at the materials, there's a clouded area that says the emergency SMA will be confined to that portion of the building, so weatherproofing simply

means to prevent the weather and elements from entering the building. The roofing is part of that, and then there, I believe, was some small areas that needed some patching, some weatherproof patching, and there might have been just some -- some other areas to make the building weatherproof so water can't get in, so wind can't get in, that's the definition weatherproofing.

Ms. Mowat: And then my question was, what does that entail? I mean, what do you -- how do you -- it says, "buildings," so when you saying you're going to weatherproof, it's just the -- the portion that the roof is being prepared, that -- repaired? Is that that portion? It says, "buildings." So are we talking about the laundromat, the -- the --

Mr. Stephenson: The --

Mr. Hart: Chair, if I could --

Mr. Stephenson: Again, I will, pardon me, and, again, I will just reiterate that the -- the scope of the SMA emergency repairs is confined to the clouded area on the documents provided.

Ms. Mowat: Okay. Just wanted to make sure it's just the -- okay.

Mr. Stephenson: And I'm happy to answer any other questions.

Chair Buchanan: Thank you, Mr. Stephenson. I think maybe because -- maybe because the diagrams that we have with -- attached for our review today is maybe --

Ms. Mowat: Different.

Chair Buchanan: A little difficult to read because this doesn't have additional maybe landmarks that people -- like where is Malama Road? Ala Malama. And then you have to look through notes, so it's actually the -- the back portion of the Chen Building. Is that correct? No?

Mr. Stephenson: No. That is not correct.

Chair Buchanan: Uncle Billy is shaking his head. Okay. So -- so get us on the right page. Where --

Mr. Pele: It's by the -- it's by the laundromat. Right across.

Chair Buchanan: Oh, by the laundromat.

Mr. Pele: Yes. The building is in pretty bad shape. I'm sure it needs repair. He's a local businessman, works hard for his money. I support everything he's trying to do, not that it has any relevance, but good luck to him.

Mr. Stephenson: The portion of the -- again, Rob Stephenson here, for the consultant for the project. The portion of the roof that was under the emergency SMA repair and weatherproofing is back towards the back of the property, so if you know where the laundromat is, if you just look straight back, it's the very back portion of the -- of the building that is all the way almost next to the back fence, and it's just that small area that is indicated in the -- in the drawing, in the drawings that were submitted.

Chair Buchanan: Okay. I see Commissioner Mowat has her hand up. Bridget.

Ms. Mowat: Okay. Thank you. I support the hardworking man, too, so don't get me wrong, I'm just asking what does that encompass, and -- and on the first page of Moss property is the diaphragm and it -- diagram, and it shows SMA emergency repairs limited to within this clouded area. There's a -- okay, I can see that, but then when you look at the next page, it's clouded area, the arrow goes to the bathroom and that back room, but it also encompasses the office so -- and then when you look at the description, it says, "the buildings," so that's my only -- I was just wondering how do you weatherproof it? Do you spray a plastic? What -- what -- how -- that's all I'm asking.

Mr. Stephenson: I -- I see then so I believe that weatherproofing is replacing the roof to prevent the weather from getting inside and there may be some it's like some caulking to seam the -- to caulk the seams in the metal roofing. There may be some exposed cracks, some -- some gaps in some areas that might need some weatherproofing material, but the term "weatherproofing" is simply just to prevent the weather and the elements from entering the building.

Ms. Mowat: Okay. I can see that. And then -- and it also encompasses the -- the -- the office space too, that whole area wherever it leaks.

Mr. Stephenson: Yes, that is correct.

Ms. Mowat: What was I going to say. Okay. Okay. Thank you.

Mr. Stephenson: You're welcome. And I'm happy to answer -- answer any other questions.

Chair Buchanan: Commissioners, any questions for the testifier? I have a question for staff but -- okay, I don't think the testifiers have a -- I mean, the Commissioners have a question, but we are going to open for public testimony because it's an agenda item, but I think my -- and then I have a question for staff after. If there's no more questions of the

Commissioners, then we would open up for testimony from the public. If there's anyone in the public wishing to testify supply on this item 'cause it's on the agenda. Okay, seeing none, then we'll close public testimony on that agenda item, but I have a question for staff. Weatherproofing, what's the difference? Is that because I think this is why Commissioner Mowat was confused, weatherproofing versus reroofing, does that make a difference in a emergency permit application? Or is -- what? -- why is the terminology used --

Mr. Hart: Chair, I can respond to that.

Chair Buchanan: 'Cause it seems to be confusing. Okay go ahead.

Mr. Hart: So -- so reroofing could be part of the weather -- weatherproofing, as the applicant's representative mentioned, you know, there could be caulking, there could be flashing, there could be other types of waterproofing material that may be painted on on portions of the roof. It basically -- the purpose of the emergency permit was to allow them to protect their building from the water that's been coming through. The roof is severely damaged but, you know, there may be water that hit the side of the building that needs to be addressed. It's just to -- it's only for the purpose of waterproofing the building or weatherproofing the building in the area that's -- that's outlined and so the -- the Department's approval doesn't extend any further than that, so anything else that might have been done or might be done beyond what's being shown and described here is not covered by the approval.

Chair Buchanan: Okay. Commissioner Mowat.

Ms. Mowat: I sorry. I just feel like I need to clarify why I asked that and at -- and our Department of Planning, County, you know, it talks -- the subject, it says approval of a special management area SMA emergency permit application for the replacement of that whole roof to match existing and weatherproofing existing buildings, with a "s," to prevent water intrusion. That's why I asked the question because it looks like it was just more than one building because there's buildings to prevent water intrusion and safety concerns. Okay, so that's -- I was referring to that and, apparently, it's not buildings, it's just one building, and -- and I feel okay. I -- I understand as long as this can be changed maybe to building.

Mr. Hart: Thank you, Chair. Yeah, that was a typo. I'm not certain whether or not we're going to amend the permit and reissue it. If you do look at the diagrams and you look at the scope description, it's clarified what it's limited to, but I recognize how the misunderstanding could happen with the typo in the subject line. I apologize for that.

Ms. Mowat: Well, too, if you look in the back, you know, front elevation, it has an arrow on the existing roof and the existing metal siding, those arrows look like two different

buildings, but -- but it's just -- it's just giving more clarification on how it looks. So, okay, I thank you for the clarification.

Chair Buchanan: Thank you, Commissioner Mowat. And I agree with Commissioner Pele about helping people secure their stuff, and at the same time, you know, I think we need to be careful about emergency permits, I guess 'cause we don't see a lot of emergency permits because they never come before us, they're just done. Besides the application saying that they have a emergency, does the Department have any other validation that a emergency exist, Jordan?

Mr. Hart: You know, this happened during the COVID situation so I wasn't able to go over there, but I reviewed photographs of it, and it was really obvious that, basically, the weather is -- is causing damage their building, and so the approval didn't extend to anything further than allowing them to protect the building from the weather so it is within our rules that exist and the -- the process of reporting to the Commission what had been done and then the applicant following up with and after-the-fact approval that will be reviewed by the Commission is -- is the processes that's established by the rules, so you'll see this submitted again. And since the applicant is here, I hope that they will submit into their application some clear photographs of before and after, maybe consistent with the elevations that are shown in the plan so that the Commissioners can review and see that the areas of effect are -- are the same.

Chair Buchanan: Yeah, Commissioner Pele. Go ahead.

Mr. Pele: Is this similar -- isn't this exactly similar to the County building with the emergency permit and after-the-fact with their roof?

Mr. Hart: Sybil, are you familiar with that situation? I'm not.

Ms. Lopez: Yes. Yes, Commissioner, to answer your question.

Mr. Pele: And -- and --

Ms. Lopez: It's somewhat similar.

Mr. Pele: Question for staff. Is this -- this is nothing that we take action on? And when we and it's -- when the emergency after-the-fact permit comes before us, since the work has already been completed, what kind of actions can we take at that time?

Chair Buchanan: Commissioner Pele, you asking one question?

Mr. Pele: So I was asking to staff, since the permit has already been issued, and it will come before us this as an after-the-fact permit, and it's within the rules of emergency,

there's little we are concerned about or is there something -- what do we do, make them take it back down if we're not happy? Just trying to --

Mr. Hart: Well --

Mr. Pele: Understand.

Mr. Hart: You know, Chair, I couldn't possibly -- I would -- if you look at once proposed, you know, you have an existing building, and they're proposing just to protect it from, basically, rain, and provided that that's what they submit an application after-the-fact showing that that's exactly what they did, I would hope that your concerns would be limited, and I would hope that you would either conclude that they did what was supposed to be done and that everything's okay, but if it was concluded that other work was done or something was done inappropriately, that might be something for consideration. But, again, if everything is done as represented and as expected, I would expect that there wouldn't be concern, but that's, you know, that's for the Commission to review and provide input on.

Chair Buchanan: Thank you. I -- I guess irregardless of the current project, the emergency permit before us, I think, in general, there's a hard thing for us to digest after-the-fact permits; in this case where the County allowed the permit and it was an emergency permit, it shouldn't come to us as an after-the-fact permit. There probably shouldn't be such thing as an after-the-fact permit for emergency permits, I don't know what -- I can see if was the result of one hurricane, you know, versus corrugated tin of one slap-together shanti that wasn't -- had a building permit to begin with. Is there a building permit for the existing structure to be reroofed? Just a question. Like is it -- is it a legal -- is it an existing permitted structure?

Mr. Stephenson: Pardon me, Chair. This is Rob Stephenson for the consultant again.

Chair Buchanan: Hi -- Hi, Rob.

Mr. Stephenson: May I -- may I provide some insight on your -- the first part of your most recent question, please?

Chair Buchanan: Okay, for the record, Stephanie, if you have no issue because Rob has already been sworn in, he can answer the question. Okay. Thumbs up. Thank you, Rob.

Mr. Stephenson: There's no after-the-fact work associated with this permit, so I'm not sure where the after-the-fact is coming from, but there's no after-the-fact work associated with this permit. Thank you.

Ms. Lopez: And, Chair, can I clarify as well --

Chair Buchanan: Sure ...(inaudible)...

Ms. Lopez: In regards to that sense that part of the -- part of the Molokai Planning Commission SMA rules that states regarding emergency permits that when the Director issues these emergency permits, it's for temporary measures, yeah, and so, like, technically, it would not be like what you see in after-the-fact permit that -- that I wouldn't want to say secondary permit that's coming through, but part of the rules state that with the emergency permit, because the Director is issuing something as of a temporary measure, that the applicant shall be coming in with a regular SMA assessment application so that they can review under the -- under the SMA rules, like, for example, if it's by the shoreline, you know, they have to do certify shoreline survey, it's a flood development permit, and so on and so forth, and so that's the reason why the assessment application comes after the emergency permit so that they can go into a full review of the SMA. I hope that clarifies the idea of having it as an after-the-fact. And if there's any long term instead of, you know, instead of the temporary measures being temporarily fixed, if there's something more that they have to do beyond what the emergency permit allowed them to do to remedy, mitigate what the emergency has done, that's the reason for the SMA assessment, and I think you probably might see that in the next project that is on the calendar. Thank you.

Chair Buchanan: Thank you. Stephanie.

Ms. Chen: Thanks, Chair. This is just to go to the origin of where the emergency permitting comes in, it's from the Coastal Zone Management Act, 205A-22 and 205A-30 that requires that the various authorities develop rules for SMA emergency permits, so this is under -- this process is outlined in the Molokai Planning Commission rules under the SMA rules, 12-302-16, for reference.

Chair Buchanan: Thank you, Stephanie. And that's just what Sybil read, right, the SMA 12-302-16? So -- so, hearing that, Rob, you aware that you guys are going to have to come in for one after-the-fact permit?

Mr. Stephenson: Chair, to answer your question. No, we are -- there -- there is no requirement to come in for the after-the-fact permit, but, yes, we are aware that we are required to come in for an SMA assessment permit. Thank you.

Mr. Hart: Chair, I need to apologize. I was the one who said after-the-fact and I -- I probably, you know, was just not really -- I was saying it in the context of after the work is being done and I shouldn't -- I should have clarified because there is a after-the-fact, specific after-the-fact permitting process where you've done work that's not authorized and you're filing afterwards, but I was the one who entered that into the conversation.

Chair Buchanan: Okay. Thank you. That clears that up. Then I guess, for discussion purposes, I would -- since we have Deputy on and planner and Stephanie, I guess my caution to or my comment would be to clearly define threat and emergency as opposed to setting any type of precedence with -- because the condition my roof was in recently could have been one emergency, I mean, like a couple years ago following one storm, but we went and reroofed our -- our place the regular way. So I have one question for Rob.

Mr. Stephenson: Yes?

Chair Buchanan: Rob, is the structure to be reroofed currently a permitted structure?

Mr. Stephenson: I don't have the answer to that question right now. I think I can provide that answer to you at a later time.

Chair Buchanan: Okay. Pending that information, I would like to defer the discussion. I don't know what application it has 'cause we -- we don't have anything to do with this permit and if -- if administration -- go ahead, Stephanie.

Ms. Chen: Thanks, Chair. Under -- Sybil, perhaps, as part of your review, you looked at this because no emergency permits can be issued if the structure wasn't legally constructed to begin with?

Chair Buchanan: That's why I'm asking. I don't think --

Ms. Chen: Yeah.

Chair Buchanan: My Commissioners know that.

Ms. Chen: Okay.

Chair Buchanan: Okay. Because you know why, then the liability fall on the County so that's why I'm asking, but that's a good thing for the Commissioners to know, so maybe if we can answer that question. I think, Sybil, we waiting for the question from Stephanie about if it's a legal structure or if it's a permitted structure.

Mr. Hart: Chair, this is the Deputy Director. I don't think that we're going to be able to answer that for you on the fly in the middle of the meeting.

Chair Buchanan: Okay.

Mr. Hart: We'll have to get that to you at the next meeting, otherwise, the applicant will submit that information when they submit the application that's going to come before the Commission for review.

Chair Buchanan: And if we can have something to validate that, that would be great. The reason for that is to ensure that whatever emergency additions or permits or reroofing that was done is -- would -- would be done in a safe manner and that the structure can support the emergency repairs because you guys are permitting it, so you guys should -- should have -- should have asked the question and found out, so let's defer pending information or whatever, I don't know, Sybil and Jordan and Stephanie, you guys want to do because this was only informational for us, except, later on, we going have to deal with something else. Is that correct? One SMA assessment? We going have to concur, right, with one SMA assessment?

Mr. Hart: Right. That's correct. That's what I had just said, basically, we can't -- we're not going to be able to verify it right now so we'll verify it in between meetings --

Chair Buchanan: Okay.

Mr. Hart: And either it'll be submitted to the Commission as part of the applicant's submittal to address the issue, or we'll have to address the issue if it turns out that there is any sort of permitting problems.

Chair Buchanan: Okay ...(inaudible)...

Mr. Stephenson: Chair, this is Rob -- pardon me, Chair, this is Rob Stephenson again, for the consultant, Luigi Manera. To our understanding and according to the Maui County Real Property Tax website, and in consultation with Mr. Manera and all of the due diligence that our office has done, it is our understanding that the structures on the property are legally permitted and they are listed on the Maui County Real Property Tax website for the -- for the parcel. Thank you.

Chair Buchanan: Okay. So if staff can get validation of that, that would be great. Awesome. So, did I take -- yeah, I did take -- did I take public testimony? I did. Shaking her head. Okay, can we just defer that for now and move on to the other item? Is that okay? Or do I need a motion? Stephanie, what would you suggest?

Ms. Chen: Well, this is just for informational purposes only so I think if you -- I think Deputy Director Hart has the notes written down and, Jordan, if -- if you could bring -- bring that back when it comes back in front of the Commission, that would be great.

Mr. Hart: We will.

Chair Buchanan: Okay.

Mr. Hart: We'll make a -- we'll address it with the applicant and verify it. Thank you.

Chair Buchanan: Okay. Thank you very much. Commissioners, moving on to item b:

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

- b. Approval of a Special Management Area (SMA) Emergency Permit Application from Carolyn Imamura for the construction of a 1,350 cubic foot natural berm located at the southeastern property line using natural materials from a 36 feet by 75 feet excavation area in the northerly portion of the property, not to exceed six inches in depth, at 290 Seaside Place, Kaunakakai, Island of Molokai, Hawaii; TMK (2) 5-3-007: 005 (SM3 2020/0007) (S. Lopez)**

This is for notification and review purposes.

Chair Buchanan: And also, this is a notification and review purpose. Wow. Okay. Staff, who's presenting on this?

Ms. Lopez: Thank you, Chair. This is Sybil Lopez --

Chair Buchanan: Thank you, Sybil.

Ms. Lopez: The project planner on the emergency permit that is before you as informational purposes, and if you click on the memo link, it'll show you a diagram of which -- along with the emergency approval, page four is the diagram that the applicant did provide and that the -- that the work will be done in accordance to the letter as well as what the diagram as shown. So if -- this is like -- like it's stated, it's located on a Seaside Place, southside of Molokai, in town, probably not even -- not even a mile our Kaunakakai Town. So, if you have any questions, Commission, Chair, the -- actually, the applicant is not here, she did email and say that she won't be able to make it, but she can address any -- any questions or concerns that you guys may have. Thank you.

Chair Buchanan: Commissioners, can I -- Commissioners, can we take public testimony first to get this portion out of the way since it's an -- it is an agenda item? Okay, seeing none, I'd like to open up this agenda item for testimony from the public if there's anyone in the public wishing to testify. Please chime in. State your name for the record.

Ms. Poepoe: Hi. This is Mahina Poepoe testifying. I need to get sworn in?

Chair Buchanan: Thank you.

Ms. Chen: Thanks, Chair. I -- I'm not sure, since the applicant isn't available to respond or ask any questions, do you mind just giving me one minute to check with my office?

Mr. Hart: May I ask a question? Is this an issue, item that has a final decision by the Planning Commission today?

Ms. Chen: Well, it ultimately will so it's part of a contested case.

Mr. Hart: Okay. Thank you.

Ms. Chen: Yeah. That's where we're coming from. Do you mind just giving me one minute, Chair?

Chair Buchanan: No.

Ms. Chen: Okay.

Chair Buchanan: Go ahead.

Ms. Chen: Sorry, Mahina. Thank you.

Chair Buchanan: Thank you, testifier. Please stand by. And thank you for the question, Jordan.

Mr. Pele: Well, it's coming up one minute. Oh, shoot, I'm on. Oh, I thought I was muted. Shucks.

Chair Buchanan: You're not muted, honey. Thank you. And we -- and we still recording so nobody should be discussing anything. It's always good practice to mute when you not talking.

Ms. Chen: Okay. I'm ready whenever you are, Chair.

Chair Buchanan: Okay, what you found out?

Ms. Chen: So, yeah, I'll go ahead and swear you in, Mahina. Could you just state your full name, please, for the record, and the item you're testifying on?

Ms. Poepoe: Mahina Poepoe. D.1.b.

Ms. Chen: Thank you. Do you swear or affirm that the testimony you're about to provide is the truth, the whole truth, and nothing but the truth?

Ms. Poepoe: Yes.

Ms. Chen: Thank you.

Ms. Poepoe: Okay. Hi. I know this is an information only, but I do have comments to share with you and additional information. First, on the subject line. It says natural berm will be constructed, but just by definition, something that is constructed cannot be natural because it didn't occur naturally, even if natural materials are used, so if the Department uses alternative definitions, it would be helpful to have those included in applications. There are numerous properties that are facing similar issues to this one. This project, although it's not easily apparent in the materials, has everything to do with sea level rise and -- and I do see this as a form of armoring the shoreline. The seas are rising faster than projected, high tides are getting higher and more frequent, and property will be lost across the planet, hundreds of millions and trillions of dollars-worth of property, and that's just a fact. The project is located about 20 feet from Flood Zone VE, which is coastal flood with velocity hazard, and it absolutely will impact the shoreline and ocean. The application materials don't do a good enough job illustrating the proximity or shoreline conditions; the proximity to the shoreline; the beach and ocean are literally right there. Governor Ige just signed a legislation banning seawalls and shoreline hardening and I'm concerned that this is the start of a piecemeal chain of reaction that's going to happen where we have somebody digging a ditch here, filling a ditch there, making up their own solutions when it's really not solving anything, and, a lot of times, it's making the problem worse. These are really temporary fixes that cause more damage. The ditch is also owned by the County, and I guess a part of the ditch is in the property boundary of the applicant, but it's also a part of a larger ditch system that connects across the street, goes through numerous other housing properties, and out to the highway, so I wonder if, when it rains, will this cause water to back up and flood neighboring properties from the ditch, essentially being backfilled, the ditch, so from either end, you won't be able to stop the water and there's a high chance that the fill material will end up and wash into the ocean. With a two feet sea level rise map, the ditch is permanently filled with water, and at 3.2 feet, the whole property is underwater, so all these types of reactive individual projects related to sea level rise and climate will have a cumulative impact collectively and they should be reviewed more with -- on that scope. So, I just think it's a disservice to be issuing emergency permits for this type of shoreline really projects, and I'll come back and repeat this when it comes for a permit. Thank you.

Chair Buchanan: Thank you for your testimony. Commissioners, you guys have any questions for the testifier? I just have a comment for the testifier. Thank you for testifying today. A lot of issues you raise I was also going to convey during this time but -- but thank you for doing your homework. Appreciate it all the time. Thank you very much. Is there

anyone else, seeing no more questions for the testifier, is there anyone else in the public wishing to testify on this agenda item? Okay. Seeing none, I will close public testimony at this time and then we'll go back to the emergency permit. So, Sybil presented what this was. Commissioners, you guys have any questions or comments?

Ms. Lopez: Chair?

Chair Buchanan: Yes?

Ms. Lopez: Before we take Commissioners questions, can I add to the -- to the Department's -- the project so to understand why the applicant came in to request the emergency permit?

Chair Buchanan: Thank you. That was going to be one question but let's have Sybil expound, and then followed by Commissioner Mowat.

Ms. Lopez: So, the applicant came in for an emergency permit due to that the -- her property itself has sustained substantial damage from the -- the drainage ditch on the abutting property resulting from erosion of the subject's property on the side of the makai, so it's on the easterly side, on the makai portion of the adjacent drainage ditch, along with the -- along with causing imminent threat to the single-family dwelling, and so the -- the erosion is causing the dwelling and -- and imminent threat to the -- the structure itself. The Department is aware -- is aware of everything that the testifier did state, that is why, if you read the emergency permit approval, we, the Department has diligently worked with the applicant and -- and the applicant is aware of the sea level rise, and the County, the Department, and the applicant is working towards a more long-term solution so, with that being said, that this may be one of many sea level rise projects or -- or, you know, resulting of -- or concerning of sea level rise projects that may go in front of you, yeah, and -- and you're looking at more long term -- long term solutions to, you know, to what is evidently going on so -- so the Department will be working hand-in-hand with the applicant to have this solution as -- as, in the meantime, the applicant will be coming in to address all of the conditions in the emergency permit so at least we can effectively try and mitigate where -- where -- where the applicant move forward with this, so just wanted to -- for your guys' acknowledgment. Thank you.

Chair Buchanan: Commissioner Mowatt and followed by Commissioner Pele.

Ms. Mowat: That's okay. I pass.

Chair Buchanan: Okay. Commissioner Pele.

Mr. Pele: Sorry, I just trying to understand. Sybil, so you said they're working with the County, so if I'm looking at the Pictometry of this, on the makai side, there's a ditch that

runs all the way from the highway, across from the baseball field, is that County controls that ditch, it runs from across Maliu Field ... (inaudible)... Maliu Field all the way to this property?

Ms. Lopez: Thank you, Commissioner, for the question.

Mr. Pele: ... (inaudible)... shows a ditch on the Pictometry here.

Ms. Lopez: Yes. Thank you, Commissioner, for the question. Yes. The -- it's the County of public -- the Department of Public Works and so the -- the Department of Public Works is well aware of what -- what is going on with within this subject matter and as well as with the Planning Department and Public Works and the applicant themselves and we can probably work towards --

Mr. Pele: So, is there -- is there a reason why we require that the homeowner to come in for the permit? Or is the ditch not the problem that -- or am I misunderstanding as to why the Public Works is not --

Ms. Lopez: Well, the applicant -- the applicant -- well, the applicant is taking it upon herself to mitigate her property and -- and more effectively and see how she could stabilize what she can in the meantime. But I -- I cannot speak on behalf of the applicant, so, you know.

Mr. Pele: Okay. Got it. Thanks.

Mr. Hart: Chair, I can address that a little further. So the -- the issue is that the improvements to the drainage way are a much more complicated process and take a lot -- a lot more approvals and a lot longer process to complete, and so this applicant is requesting emergency approval of what they're proposing here that you see. And I wanna -- I do want to address the comment that this is a seawall. You know, one critical thing that I think it makes it not a seawall is that it's perpendicular to the shoreline. The purpose is to protect the property from the drainage way, unfortunately, and it is, you know, it's -- it's not shoreline hardening, it's -- it's soil material, and so it's not really going to last a very long time, I don't know how long that would be, but it's not -- it's not a solution, and so I think that something more specific has to be done to address the issue. And, you know, the -- the -- there is a new law passed that's going to prohibit -- that does -- has already prohibited shoreline hardening, so that's not going to be an option, but it wouldn't even necessarily be feasible in this location due to elevations, so this is something that potentially can buy a little bit of time but I don't see this realistically as a solution to any sort of problem.

Chair Buchanan: Commissioner Mowat.

Ms. Mowat: Okay, I just wanted to get a better picture. So that area, excavation area that's in the front of the house, and that is -- across the street get other the houses, and on the side get other houses. I kinda -- I looked at the property assessment. So, they're taking the dirt from this excavation area to fill in the berm, the natural berm right? So, when they do excavate, I don't know what they're going do as far as the dust control and -- and all of that, and -- and if they're gonna take dirt from here, what's going to replace that dirt? 'Cause you know why, everything is kind of like sea level already, so if they going dig -- huh?

Chair Buchanan: It's below sea level.

Ms. Mowat: Yeah, below sea level. So if you going be digging over there to put someplace else, what happens to that area? And then again, for the neighbor's sake, the dust control, I don't know if they going get water truck or what, so just -- just my -- my concern and -- and like it was stated earlier, that is very temporary. Luckily, Kaunakakai don't rain very much, but when it does rain, we usually get big rain. So, that was just my comment.

Chair Buchanan: Thank you. Commissioners, any more comments?

Mr. Poepoe: Question.

Chair Buchanan: Question, Commissioner Poepoe.

Mr. Poepoe: I thinking that due to its proximity to some type of waterway, it would have BMPs connected to it, to the emergency permit. Is that true?

Ms. Lopez: Sorry, Commissioner, I didn't hear the question.

Mr. Poepoe: If BMPs will be implemented into the permit, the emergency permit, considering its -- its proximity to a drain, a waterway as well as the ocean, the shoreline.

Mr. Hart: Chair, I can answer that. So, the -- there's a condition that the applicant will apply for a grading and grubbing permit and obtain it before any work is done, and Public Works includes best management practices requirements for grading and grubbing permits before they issue.

Mr. Poepoe: But the work hasn't conducted yet?

Mr. Hart: Sybil, I'll need you to respond to that just because I'm not on Molokai.

Ms. Lopez: Okay, Commissioner, I can -- I can answer that question. So they submitted their grading and grubbing permit last week Friday, and they're still waiting to obtain that.

Once, as part of the conditions of the emergency permit, once they can obtain the grading and grubbing permit, they can proceed with the work. And I just wanted to provide more information that the shoreline team, our shoreline team looked, and we reviewed this, and we -- the shoreline team actually came up with this idea 'cause the original application, they wanted to put concrete blocks, but, as -- as consulting with the applicant and one of the best -- as the geologists and the shoreline team pointed out as what, you know, what was said that, you know, technically, you can't do a sea wall, so what it was is that they had to take existing material seeing as what is on the property, which is Jaucus sand, to create the berm, and so the only place that we -- that the team could identify that could be utilized, the materials that could be utilized for the berm, was to take it straight off the property itself, and so part of the -- the requirement was that you cannot exceed six inches and so they had to come in and redo -- redo the diagram until they -- they had fit in the six inches, and the only way they could fill back in what was being excavated is with the same material or -- or -- or leave it as it is, and so they chose to leave it as it is and to stabilize more of the berm is to include natural vegetation, such as naupaka, pohuehue, and pohinahina to help the stabilization of that berm. So, I hope that helped.

Chair Buchanan: Commissioner Poepoe, you need to ask Sybil question on that statement? And then Commissioner Pele. Commissioner Poepoe? Okay, Commissioner Pele.

Mr. Pele: Again, forgive me guys, it's been a long meeting, but question for staff. Can you tell me if this is a legitimate statement on my part that this owner is trying to mitigate problems that we could conceive are the responsibility of Public Works or the County because they do own that -- that waterway? Are we -- am I understanding correct that there is some shared responsibility here from Public Works, or is it just the owner's problem 'cause they own the lot? Because I have -- I mean --

Mr. Hart: You know what, Chair? You know, whether or not Planning Commission -- or, sorry, Public Works was here and wanted to make statements about, you know, how that process works, you know, they're not here now, so I'm not necessarily going to make that interpretation for them. The requests that we received was that the owner was -- was receiving -- getting water on their property and they proposed to do this, and so I'll just say, you know, my personal opinion, and we've had internal conversations about this, the testifier was right, there does -- water comes up under the house from the ocean as well. It's not a good location for a house. It has to be addressed. They came in for a request for some sort of temporary measure to protect them from some of the things that are going on and we're -- we granted that. But, you know, there's a lot going on here and this is not a solution, it's just, basically, a period of time to figure out what the real plan is going to be, and so this is what it is.

Mr. Pele: Okay. Cool. Thank you.

Chair Buchanan: Commissioners, you guys get any more question? Commissioner Poepoe, you was satisfied with that explanation? I mean, you absorbed that, yeah?

Mr. Poepoe: Yeah, it's an explanation.

Chair Buchanan: Okay.

Mr. Poepoe: Like the problem is figuring out how to do the least amount of damage from a human touching things perspective 'cause I know that ideal would be allow shoreline process to happen but with a house and a drain ditch and weed whacking and backfilling and all that, it's kinda tough to make that determination.

Mr. Hart: Yeah, so, Chair, just -- just so you guys understand, you know, this house in this location at this elevation is a problem and that -- that's understood, but when somebody comes in for an emergency request to protect their property, you know, there's -- there's provisions in the rules to allow that to be done, and there's kind of, you know, there's -- there's the desire to try and help somebody figure something out, so, you know -- you know, we obviously need to work with this applicant further but this -- something else has to be done, otherwise, you know, the coastal process is going to do what it does, and if this house is there at the time, you know, it's going to be a problem, and we understand that, but, you know, this was something that could be proposed, that can be done now, that can provide some breathing room.

Chair Buchanan: Commissioner Mowat.

Ms. Mowat: You know, I can -- I can relate 'cause I live right on the water myself, and it is the -- the tide, the erosion, it -- it -- it is faster than -- or sooner and we worry about that too, but putting that berm, and then you said, Jordan, that the water is coming in to the -- from the ocean also into their house, so how does that berm mitigate, you know, their -- their problem? They're going to put that berm there and the water's still going to come in, but now the water is going to take part of that berm away also --

Mr. Hart: Well --

Ms. Mowat: 'Cause the ocean is -- so I can really understand, you know, how much money -- she's going to spend a lot of money to do something that is so -- so temporal and you know what? I can totally understand that she's going to try to do everything and if -- if there was a way she could armor the shoreline, she would do it also too just to protect and be able to stay at her home. But, boy, this one is I really sympathize with her, but I don't know if this is gonna really help her at all. Yeah? Thank you.

Mr. Hart: That's understood and so, you know, from -- from the Department's perspective, and as Sybil mentioned, you know, there is -- there is erosion happening now, and it's

happening from the soil on this property, and so if this -- if this -- this berm is put up from the same soil from the property, it's not -- it's not so much different than what is happening, although it's, you know, you're putting material towards the area that can be eroded, it's the same earthen material that's -- that's on the property there now. And on the on the -- the comment about whether or not this expense and effort is going to address the problem, like, no, I don't necessarily think so and that's why I made the comment that it's not a seawall, it's not going to block the ocean and we don't -- we don't advise people on, you know, whether or not what they're doing is -- is the best economic approach to -- to trying to achieve what they're doing, but I think that the house being there is an issue and that's -- that's -- I'll just leave it at that.

Mr. Poepoe: Chair?

Chair Buchanan: Yes, Commissioner Poepoe.

Mr. Poepoe: Will there -- will there be a consideration for including a long-term solution written into the -- the permit? I see Sybil nodding in agreement.

Ms. Mowat: There is none.

Mr. Hart: Yeah, Chair, so that would be the forthcoming application, similar to what we just discussed with the Moss property, you know, there's an emergency permit and then you come in with another application for approval from the Commission, and yeah, I -- I do think that that would be appropriate that there be conditions to establish whether there's going to be a plan or what's going to happen to -- to address this thing more permanently, because, you know, a earthen material berm from the same property, which -- which is sand, is not going to resolve a long-term issue,

Chair Buchanan: Okay. Thank you. Commissioners, any more questions? Okay, I sorry to belabor this but, you know, oh, Commissioner Sprinzel, hi. Okay. Go ahead, John. Oh, I cannot hear you, John. I cannot hear you. It says you unmuted, but try talk. Okay, we cannot hear you. Try fool around with just stuff.

Mr. Sprinzel: Can you hear me now?

Chair Buchanan: Yes, sir.

Mr. Sprinzel: Okay. Isn't science wonderful?

Chair Buchanan: What was that? I missed it. You was so fast. What happened to John? Okay. Jordan, you're laughing. What did I miss?

Ms. Lopez: It looks like he got cutoff.

Mr. Hart: Comedic timing by Commissioner Sprinzel.

Chair Buchanan: Okay, so he dropped -- his call dropped? Okay, while he trying to dial back on, I have some comments. I think there's a lot of, for me, frustration in that emergency permit process because, you know, we not going be here deciding whether one gentleman estate is real ag or not ag or whether a real permit is a permit, but in -- in issuing a emergency permit -- is John back on? I no see his picture but --

Mr. Sprinzel: Oh, I'm here. I'm here.

Chair Buchanan: There you. Okay.

Mr. Sprinzel: Sorry about that.

Chair Buchanan: That's okay.

Mr. Sprinzel: We can sit here for 24 hours discussing this, there's no way we're gonna solve it. This is a problem we discussed in the ten-year plan meetings. There's gonna be sea level rise. There's lots of houses are going to be destroyed. And this, whether it's just a short-term thing, other than that, it's going to do nothing whatsoever. As Jordan said, this is not a problem we can actually solve, and but what can we do? We can all move up to Hoolehua. That's about it.

Chair Buchanan: So, John, I guess my question to you is, what is the recourse the Planning Commission should take? We should just sit here and approve emergency permit after emergency permit?

Mr. Sprinzel: No.

Chair Buchanan: Because he's taking leadership to move to a bigger programmatic solving issue?

Mr. Sprinzel: No, this is something that has to be done by the Department of Works. It's -- it's not something we can do. It's not something Maui Planning Department can do. This is something that has to be policy statewide and it just has to be done, and we have to move people from where they are in dangerous parts, even Bridget's going to have to move. When I bought my bit of land, I don't know, 30, 40 years ago, I bought it 300 feet above the sea level. There were lovely sea -- seaside plots available, but there was no point in building there if we're going to have to relocate the entire road that's in the south of Molokai. It's not something we can do. It's something that has to be done at a State level by may I use the word "experts?" Anyway, that's my opinion.

Chair Buchanan: Okay. Thank you. Okay, John -- John, you just went burst my bubble. All my complaint I was going give about -- okay, I think because John and I've been -- been there, done that for years, this goes back to the Kapaakea flooding mitigation, back to when we built the fire station, all the trouble that -- all the low-lying areas in Kaunakakai. This is not the first time we've had the same issue in the same area. So I'll go back to basics. The basic of this Commission's duties is to ensure that the Coastal Zone Management mission, rules are adhered to for the protection of the coastline through the Federal Government, through the State, to the County, and that's where we are on the ground. So, when emergency permits are one thing, and then protecting the environment is another thing, and so if we going silo off everything, I even question how they going get one grading and grubbing permit without coming to the Commission. So that is another emergency permit is grading and grubbing. Is that correct, Jordan?

Mr. Hart: No, Chair. The emergency permit would have been the SMA authorization for them to apply for the grading permit. But again, they will be submitting an application for the Planning Commission's review that would cover all of this work that they're doing, and if that is a minor permit, then there is the opportunity for the Commission to provide conditions including, you know, whether or not you would want them to -- to look into or take some other mitigative actions as a condition of approval of this action that's already happened.

Chair Buchanan: Okay, so, this permit is going to come to us before work is done or after work is done?

Mr. Hart: It would be -- it would be, technically, after the work is approved. Well, that all depends on timing, I would guess. I'm assuming they're going to get their grading permit before it gets on your agenda, and so the work may have been completed, although it's not, technically, an after-the-fact permit, similar to the conversation we just had for the last project.

Chair Buchanan: I didn't see anywhere that within the issuing of the emergency permit that there was an assurance to adhere to the Clean Water Act. Is that true?

Mr. Hart: No. I didn't see a condition like that either. I believe that those types of issues would be addressed through the issuance of the grading permit.

Chair Buchanan: Is -- does the applicant -- is the applicant filing a lawsuit against the County for upkeep and maintenance of the drainage ditch that is causing the issue?

Mr. Hart: I'm not -- Chair -- Chair, I'm not aware of that.

Chair Buchanan: Okay. That was a John Pele question because --

Mr. Hart: Oh.

Chair Buchanan: The issue -- yeah, the issue is coming from the ditch and you would think that the County being exempted from normal maintenance of the ditch would be exempted and then we wouldn't have all of this issue because you can work on a drainage ditch to keep it clear. If it does come to us, I'm going to encourage my Commission to request a site visit because this area is always a problem. It may have to go to the point where we really are going to have to get the coastal planners involved. We -- they supposed to be working on Kapaakea, this is a stone throw away from Kapaakea, so it should encompass the entire coastline from the wharf all the way east, and for those purposes, I -- I cannot -- somebody needs to do one EIS or something in order to engulf all of the issues because the piecemeal emergency stuff not work, especially if somebody starts to file a Clean Water Act violation, which this is really poised to do. The minute all of that dirt runs into the Class A waters of the United States, it's a done deal, and that's what we here to protect, and so I'm -- I'm not happy about temporary fixes that are going to be in violation of other environmental protections. That's my feedback. Thank you. And because I couldn't really make out so I prefer a site visit. Commissioners, did we beat this to death already? I mean, I feel I, I feel for the Imamuras. I probably would do the same thing.

Mr. Poepoe: Chair?

Chair Buchanan: Yes?

Mr. Poepoe: I have a question for -- for Sybil if she knows whether or not the applicant lives on the property full time.

Ms. Lopez: That's a very good question, Commissioner Poepoe. No. The owner does not, they actually have tenants, so they do have long-time tenants living in there; that's to my knowledge.

Mr. Poepoe: That is to have some kinda eyes on the problem full-time and --

Chair Buchanan: Jordan, this is Chair. What I -- what I'm afraid of, in the future, and maybe I shouldn't even be discussing it at this time, is when after-the-fact permits come before this Commission, and this Commission decides to deny an after-the-fact permit, what recourse is the Department willing -- what are they going to take at that point because it's not a normal practice to have after-the-fact permits denied by the Commission. It's going to be problematic. So, I just wanted to -- to bring that issue forward because it may or may not happen and we should start thinking about when permits are denied.

Mr. Hart: Understood. So -- so the way I understand what would happen is that the -- the work would be you need to be removed because our approvals are a temporary 180-day approval.

Chair Buchanan: Would the -- is the Department open when it comes -- go ahead, Commissioner Sprinzel.

Mr. Sprinzel: We -- we did have a refusal of an after-the-fact, I think you were even on the committee at the time, it was about ten years, and they made the guy tear it all down. He built himself a little house and -- and we definitely refused it, and they had to tear it down. So we do have -- I mean, there is the possibility.

Chair Buchanan: Thank you, Commissioner Sprinzel. And -- and I'm not participating in this Commission's current issues with the west Molokai development of removal, but I think that is also an after-the-fact permit that is pending, so we have more than that -- that one example, and then that's it.

Ms. Lopez: Chair, this is Sybil. Hi, Chair, can I -- can I address your concerns --

Chair Buchanan: Okay.

Ms. Lopez: To let you know that the Department is working on some -- the Department is aware of this Commission, that the Molokai Planning Commission is sensitive to a lot of after-the-fact projects so we are working to find some type of a matrix or some -- some type of a solution to -- to solve these after-the-fact concerns that you have, you are raising. So, we do have a bunch of the projects so, hopefully, we can figure out somehow how we going to address that, so we are working towards something.

Chair Buchanan: Thank you. Appreciate that. Okay, Commissioners

Mr. Sprinzel: We -- we have been steadfast over at least the 15 years I've been involved in that we hate after-the-fact. If on a small island, like Molokai, where everybody knows what everybody's doing anyway, you come apply for permission to do something and there should be no way we forgive it afterwards. Thank you.

Mr. Hart: Chair, I do just want to reiterate my error on the last project in calling the work after-the-fact and point out that when they file their application, it's not after-the-fact in the same context as a person who should have gotten a permit and then goes and does work and then gets caught and files an after-the-fact permit with a thousand dollar fine. This would just be in the context of timing I was, basically, saying that the work would have been done. I called it an "after-the-fact" and I shouldn't have done it. That's a different thing. They did receive proper approval from the Planning Department in this instance, however, they do need to receive their final approval from the Planning Commission and

the Planning Commission could decide to deny it, in which case it would need to be removed. But that's not the same as a violation, which is an after-the-fact, so I just want to clarify that these people on these last two items that were communication items from the Director, they did do what they were supposed to do procedurally as far as contacting Department and -- and request emergency approval of work.

Mr. Sprinzel: Well, Jordan, wasn't in the least accusing you of anything or it was not even intended for these two cases. I was just pointing out that over many years, if somebody comes to us afterwards, we really don't like it. Thank you.

Mr. Hart: Thank you.

Chair Buchanan: Thank you, Commissioner. Thank you. Jordan. Ah, Commissioner Pele.

Mr. Pele: I'm sorry I keep dragging it on, but, Jordan, did I just hear you say that they could follow procedures, exactly what they need to do, and, as a Commission, it lands on our lap, and we could be the ones to make them take it away?

Mr. Hart: Yeah --

Mr. Pele: We're the ones who --

Mr. Hart: Chair, I can respond to that.

Mr. Pele: ...(inaudible)...

Mr. Hart: Oh, go ahead. Are you --

Mr. Pele: Well, I'm just wondering if we can -- I mean, I have a problem with that as a -- I just have a problem with that. I mean, if they're doing what they're supposed to be doing, and, of course, the problem is probably going to be procedurally, but, man, that sucks to put us in that -- put me in that position to -- to be punitive to somebody who did everything within their power other than, you know, we know that's a bad place to build but que sera, sera, they -- we let -- they were allowed to build there so-- go ahead. You can --

Mr. Hart: Yeah, so this is an -- these -- these are emergency rules, you know, the -- the -- so the Department considers the issue in emergency situation and we're doing basically a quick action to help somebody protect property that they're authorized to request approval of, and so even though shoreline hardening is not permitted anymore, it's a good example to try and illustrate what the issue is, like let's say you got a high wave event and somebody is got water coming up, and it almost never happens, maybe it hasn't happened for ten years, but all of a sudden it's happening right now. They can request

emergency approval from the Department and we'll grant that, and they can protect their property, and then the storm event goes down and then it's not a hazard anymore, and then they take out this -- this emergency temporary stuff. So, that's kind of what the rules, they're supposed to allow the Department to act quickly so that somebody can protect something because, practically, it's not realistic that they file an application, it goes through our normal process, it's put on the Planning Commission agenda, and they get approval in the middle of a real emergency, and so that's what these things are for. And so, if the Commission decides that there's longer term impacts that -- that outweigh the temporary need to emergency protect something, then they could deny it and that's -- that is the process, though; that's what I meant to say by they're going through the correct process. They have the ability to ask the Department, if the Director determines that it's an emergency, she has the ability to issue the approval, and then it still comes to the Planning Commission for the final, you know, to basically determine whether or not it's going to stay or needs to be amended or reconstructed differently or other conditions are going to be put on.

Mr. Pele: And there's no -- and there's --

Mr. Hart: That's just -- that's just how the process is.

Mr. Pele: Alright. And -- and we're protected from any legal recourse, for instance, if we said, okay, no, you gotta take it away, not specific to this in specificity, but just in general, if we were to deny something and we're protected from legal process on that, or is it we're never protected from legal process?

Mr. Hart: I think that question is for your counsel.

Ms. Chen: Yeah, I mean, that's very situation dependent, John, so --

Mr. Pele: 'Cause God -- God forbid they get excited and they do more than what they're supposed to do, I don't want a situation like that to happen.

Ms. Chen: Yeah.

Chair Buchanan: Like removing a dune?

Mr. Pele: I didn't say that.

Ms. Chen: I will say that, in this instance, you know, this is a -- a transmittal to you folks for review and information purposes and I -- I don't think you've done it, but I would definitely steer clear of making any sort of decisions ahead of when the application comes to you folks.

Mr. Pele: Well, I'm not making -- well --

Ms. Chen: Right. I know.

Mr. Pele: And that's the hard part, Stephanie.

Ms. Chen: I know you're not. I mean that's good.

Mr. Pele: We're trying to -- we're trying to gather information. You expect us to make decisions on information gathering, but you tell us don't use the information to make a decision and it's very --

Ms. Chen: No. I think your -- your review is --

Mr. Pele: It's very difficult for me to not make a decision on what has transpired when -- when it comes before us without using the information that I'm given. I have to use information and I have to process something in my mind, so that's all, that's all I'm asking. Thank you.

Mr. Hart: Chair, maybe I could -- I could help a little bit on this. I think that, you know, today is not a decision-making day for the Commission. There's going to be another submittal that's gonna be transmitted to the Department, and then we're gonna review it, and it's gonna be transmitted to the Commission --

Mr. Pele: Alright.

Mr. Hart: And you can give us the information that you learned today and you can use the information that's provided in that submittal to make your decision on that day.

Mr. Pele: But don't form any opinions on the information I'm given until we hear the day of -- of the decision. Correct? Is that what I'm being told?

Mr. Hart: Definitely don't state them.

Mr. Pele: Oh, alright. Okay. I'm just -- alright. Thanks.

Chair Buchanan: Okay, I'm going to -- I'm going to have to support my Commissioner Pele and the frustrations he's conveying 'cause we all have that -- that frustration. So, I guess this is what I would say to staff 'cause there definitely seems to be something wrong with the process, okay, so, the process has issues, and that's because the process is left open to interpretation by who's reviewing the application. So, whoever is reviewing based on whatever you guys got written over there for protocol or reviewing the emergency application or whatever application, grading and grubbing or whatever you gotta review,

when it comes to Molokai, you guys should add one extra pair of lense on top because this Commission is different from every other Commission. What we might think is -- is minor or what -- or what you might think it's minuscule or minor might be major to us. So, that whole gray area of interpretation that you guys are using to evaluate whether something is an emergency or not, you already stated on the record that this is a larger issue and -- and really this is a Band-Aid, so, you know, you going -- we going give out Band-Aids but, at the same time, the -- the level of interpretation that is needed also might set precedence and be open to be abused, and I think that's what our concern is, the abusing of the emergency permit 'cause I know a home in East Molokai that has multiple emergency permits through historical years of emergency permits due to flooding, and so at what point do you stop giving emergency permits and fix the problem? So, that's not for this today, and that's -- that's nothing to take personal, it's a -- it's a institutional thing, it's a process thing, like Title 19 and trying to patchwork everything together. I probably would have counseled the applicant to say, hey, you know, you may want to just do one regular assessment at this time because, according to this paperwork, they still have to get one shoreline certification. Is that correct, Sybil?

Ms. Lopez: You're correct, Chair.

Chair Buchanan: See, they gotta get one -- one shoreline certification. They have to get grading and grubbing. They gotta get shoreline certification. I mean that's, this to me, that's not even one emergency already, emergency oversights all that because shoreline certification is not a speedy thing to do. We need DLNR to come out here and certified a shoreline, and then the work has to be done within a year of the shoreline certification, and then the grading and grubbing too, that's oversight. You might as well just apply for one -- one SMA assessment or exemption would have been easier for the County to come in and say, oh my gosh, I'm sorry. We -- our berm is not helping you out. So, I sorry. I know I -- I see complexity in your face but --

Mr. Hart: Let me just clarify though, Chair. It says that they'll initiate the shoreline certification, the shoreline -- the certified shoreline survey in 90 days from the date of the approval letter, so it doesn't say that they'll get approval of -- they will get their shoreline survey certified before they initiate the emergency work.

Chair Buchanan: Okay, so what if we find out after they get this certification that work occurred out -- within the shoreline? What happens?

Mr. Hart: Within shoreline setback area?

Chair Buchanan: What happens, yes, if they're -- if they have work that occurred inside the setback?

Mr. Hart: Then they would also need --

Chair Buchanan: Or outside?

Mr. Hart: Excuse me. They would also -- if it was outside, then nothing would change. If it was inside, then they would also file a shoreline setback assessment with their SMA assessment.

Chair Buchanan: So, what if work occurred in the conservation portion of -- or of the State portion?

Mr. Hart: If it did, then that would trigger a conservation district use permit.

Chair Buchanan: Okay. Okay, so, see, we would never issue a permit unless you first had the certification done to make sure that you never trigger -- did work in the State portion of your property and that's why one doesn't supersede the other. I mean, it just makes sense that you wouldn't violate everything. So, getting back to Commissioner Pele's concern, this person says I did everything you told me, County. Now, the Planning Commission says no, you gotta take it down. We no approve. I can -- I would be really, really like, just like what John said, it puts us -- the onus on the Planning Commission when we would have done the due diligence in the first place, and it makes us the bad guy now, you know, just like the cashiers at the store and the bank tellers, when you mad is like it's the first line of people. So, I guess we just voicing our concern that we going be the bad guy in all of this when I think we could have said, in the beginning, County, maybe you like fix your ditch or something. I don't know. I sorry ...(inaudible)...

Mr. Hart: So, yeah, Chair, I recognize those issues and we considered -- we considered those things as well, and the -- the issue is that somebody basically says, hey, I have a - - a potential emergency bearing down on my property and I'm asking you to authorize that I protect in this way, and so, you know, let's say we had said, oh, no, you go get your shoreline certified before you can come and visit the Planning Commission and then the house is destroyed, you know, then -- then, you know, there was no action to allow them to try and protect it before something happened. So, you know, it's not perfect, but this is what it is and -- and the Director is authorized to do this by the Molokai Planning Commissions -- well, the 20 -- HRS 205A because there are situations where, you know, something needs to be done sooner, and, hopefully, they put this berm up and nothing happens, and then you guys see the application before and you can give direction and conditions and a better approach can be taken, but maybe something will happen when the berm's up and it protects the house. You know, it's just a situation where people have to make decisions and this is where we're at, and I recognize it's not perfect and we don't have the time to do everything that we would like to have done.

Chair Buchanan: Yeah, I sorry.

Mr. Hart: But, you know, the Director made a decision. It's a reasonable decision. I do think that something more coherent has to be decided on and -- and, basically, needs to be, basically, applied to the property. I don't -- I've said previously, I don't think that this is a solution, but it's a measure or a step in the process.

Chair Buchanan: I know. I know. I know you know. Okay. Thank you. Any last comments? Commissioner Mowat.

Ms. Mowat: I just -- I just -- the berm, I'm going back to the berm. Is it -- is the -- the erosion coming from the water from mauka going down or it's from the ocean going in 'cause it looks like it gets really thick in the front of -- the front -- the ocean side 'cause ... (inaudible) ... see how it gets.

Mr. Hart: I'll let Sybil to reply. Unfortunately, I haven't been able to come over there, so I'll -- I'm not knowledgeable.

Ms. Mowat: So, Sybil, is the erosion -- I noticed that by the -- by the street side, they're not doing a berm so, apparently, there's no erosion there, but from the ocean side in, that's where there's a thicker berm, and then that -- because the house -- so the -- the erosion and the -- the damage is -- is it occurring because of the water, the ocean going in or is it the -- the mauka rains coming down into that? It looks like they're paying more attention to the ocean side. So it's indicating that the ocean-side waters is the one that's causing the erosion. Is that correct?

Ms. Lopez: Looking at the -- thank you, Commissioner, for that question. Just looking at the diagram and what you're trying to explain, it's evident that the -- that the erosion is more on the makai side than the mauka side of the property on that east -- east -- on the east side of the property, so it's evident, on the east side of the property next to the drainage ditch, the -- the most erosion that you can see that is occurring is on the makai side. Correct.

Ms. Mowat: So, it's the ocean waters going in. So, they want to put the berm, they want to plant all the plants, and I going tell you, with all the plants -- we planted three years ago and still never reach yet. I mean, our naupaka is not filled and it's been three years ago so --

Ms. Lopez: Well, also, I, well, according to the applicant that if the drainage ditch was maintained, that erosion would not occur. I mean, you know.

Ms. Mowat: But -- but -- but it looks like it's because it's coming from the ocean, and then I'm afraid when the water comes up, all that dirt from the berm and sand is going to go into the ocean.

Ms. Lopez: Well, in the drainage ditch, there's a lot of vegetation, yeah, so the vegetation starts from the highest watermark of the -- the wash of waves and then --

Ms. Mowat: No, no. I'm talking -- I'm talking about the berm.

Ms. Lopez: Right.

Ms. Mowat: The dirt.

Ms. Lopez: But the berm --

Ms. Mowat: All that dirt.

Ms. Lopez: So, the berm's that going to --

Ms. Mowat: That's going to all go in the ocean when the waves -- when the tide comes up and -- right? And then we talking about the water -- the water, the Federal, you know, protecting our shoreline, protecting our ocean, protecting our -- from -- from pollution from dirt. So that's -- I don't know. That doesn't sit well with me.

Chair Buchanan: Okay. Thank you. I don't think it sit well with anybody, but, just a reminder, that we did have a project in East Molokai that had an artificial berm that had to take years of mitigation by the EPA because of owners taking it into their own hands to divert streams and create berms and artificial planting, and we all know you're not supposed to artificially enhance the shoreline with vegetation, and we know that regular maintenance gotta apply to -- to ditches, and we just heard that get vegetation. In all berms on every property, Sybil, are we sure that this is not diverting water, natural water into somebody else's lot because we know they gotta retain the floodwaters on their own lot? Is the berm in any way in any way gonna channel water into adjacent lots? That's my question.

Ms. Lopez: Well, according to the shoreline team, it -- it shouldn't because the elevation that was requested would be the same elevation as adjacent properties --

Chair Buchanan: Okay.

Ms. Lopez: So that there -- there would -- there'll be no causing of slopes to -- to adhere to what your request -- what you're anticipating that it would happen.

Chair Buchanan: Okay.

Mr. Hart: Chair, I think it should be added that, at some point also, the -- the other side added a concrete wall on the west -- east side of the -- of the channel and so whether or not that's causing the water to pursue the path of least resistance --

Chair Buchanan: Is that the neighbor? The neighbor created that wall?

Mr. Hart: I don't know. I don't know the origin of the wall right now in order to state on the record, but I know that there is a wall that exists, it was discussed in our conversations, and it's shown on -- on the diagrams, and so if you're the one on the side with no wall, you know, the water is going to go that way, basically.

Chair Buchanan: Okay. That would be nice if -- if -- is there a request for service on that? We don't know, yeah, Sybil? Request for service on the wall if it was a permitted wall?

Ms. Lopez: There was no request for services regarding the wall, but there is an existing wall, a concreted wall.

Chair Buchanan: Okay. Okay, because it's in the SMA, so every construction in the SMA should have been permitted with an SMA permit, that's easy enough to find out. Okay, thank you. Okay, Commissioners, any more question for staff? Sorry this took so long. It was only informational but great input.

Ms. Lopez: And -- and, Chair, I just wanted to address the concern that you have as well as Commissioner Pele in regards to the Commission having the onus or the authority to deny or approve any projects, especially after-the-fact projects, and -- and I will note the request that -- that, you know, you want other different interpretations, so I -- I have that down so -- so we can consider -- consider that as, as you mentioned, and just to let you know, during that review process, any mitigation that needs to happen prior to coming to the Department -- I mean coming to the Commission that's the part of how we do the review process and that's what the Department does so that the Department can get to a standard of being comfortable and confident to present it to the Commission, yeah, in any projects, and so I -- I will consider your concern. Thank you.

Chair Buchanan: Thank you, Sybil. That's all we can ask for. We -- I mean, Maui County has probably the best Coastal Zone Management staff in the State, and I know that, and I know you guys get your hands full from West Maui to Central Maui, I know that, so I appreciate, you know, because Molokai is right there so we all know we gotta make improvements. Thank you very much for all of that consideration, what she said, Sybil. Thank you. Commissioners, any more recommendations or I mean feedback 'cause we don't have -- we don't need any motion or nothing, it's just talk story? Okay, seeing none. Sybil?

Ms. Lopez: Yes?

Chair Buchanan: I looking under item 6, which we are talking about right now, and, okay, wait a minute. Sorry, that was on the application, not on the agenda.

Ms. Lopez: You on Director's Report, D.2.

Chair Buchanan: Yeah. Let me get back to the agenda. Sorry. We just, C.2., if there's nothing on there, we going move past C.2. if there's is no objections.

Ms. Lopez: D -- D.2?

Chair Buchanan: No. We're done. We just completed C, no. 2, yeah?

Mr. Lopez: Okay. Okay. Okay. Director's Report. Thank you.

Ms. Buchanan: Oh, I'm sorry. I sorry. You're right. We dizzy. We just completed, yeah, b, under Director's Report. Okay. That's it. Commissioners, if no objections, we moving on to no. 2, agenda items for future meetings.

**2. Agenda items for future meetings.
*Public testimony may be received on this item.***

Ms. Lopez: Thank you, Chair. So, we do have a public hearing item that will be before you in our next -- our next agenda, our next Planning Commission meeting, which is scheduled for October 14. October 14, the Molokai Land Trust will be -- is the public hearing item that will be coming in front of you as a contested case hearing, and we also have a few exemption item, SMA exemption items, one in the country town business district off Kaunakakai, and a possible, yeah, probably those two items since the public hearing items might take majority of the Commission meeting

Chair Buchanan: Okay. Thank you very much. Any other announcements? Items 3, 4, 5, and then E ...(inaudible)...

3. State Office of Planning and American Planning Association (Hawaii Chapter) hosting the 2020 Hawaii Congress of Planning Officials Conference, a virtual lunchtime series, October 19-23, 2020, from 11:30 a.m. – 1:30 p.m. each day.

Ms. Lopez: For item 3, so for items 3, if any -- any Commissioners are interested in attending, it's going to be virtual, there's going to be a virtual State office planning and American Planning Associations, that's our annual HCPO conferences that we usually have, we usually take about, what, two or three of the commissioners to these annual conferences so, because it's virtual, everybody can attend, I mean, you know, all the

Commissioners I mean can attend, so if you guys are interested, I think you can email Suzie --

Chair Buchanan: Okay.

Ms. Lopez: And then Suzie can --

Chair Buchanan: Give us any --

Ms. Lopez: Yeah.

Chair Buchanan: Suzie, add me. Actually, add all the Commissioners unless anybody is declining at this point.

Ms. Mowat: I requested to Suzie already. I hope she got my request.

Chair Buchanan: Okay. Suzie, please include all the Commissioners 'cause I don't see anybody declining right now, the links to the HCPO lunchtime series.

Ms. Esmeralda: I, this is Suzie, I did send an email that had --

Chair Buchanan: Okay.

Ms. Esmeralda: The links. And, Bridget, I did get your request.

Ms. Mowat: Thank you, Suzie.

Chair Buchanan: Thank you, Suzie.

Ms. Esmeralda: If anyone else could -- if anyone else could let me know so we can go ahead and register you. Thank you.

Chair Buchanan: Ai, you gotta register. Thank you, Suzie. Okay, we'll do.

Ms. Mowat: Wait. I think Suzie going register us. Yeah, Suzie?

Ms. Esmeralda: Yes. The Department is going to register you because there is still a fee so, a registration fee, so we'll register you and pay your registration.

Ms. Mowat: And then you let us know or we just go into the -- the link and it's going show all the classes and who -- which ones you want to attend and all of that?

Ms. Esmeralda: I did send a link that had all the information, so I'm not sure if you looked at it but --

Ms. Mowat: Yeah, yeah, I did. I did. Thank you.

Ms. Esmeralda: Yeah. So, I'll go ahead and we'll register you and then they'll usually send a confirmation.

Ms. Mowat: Okay.

Ms. Esmeralda: I'm not sure how they're doing this -- with choosing classes and stuff so --

Ms. Mowat: Oh. Okay. 'Cause I -- I didn't get the confirmation yet. That's kinda what I was wondering about.

Ms. Esmeralda: Oh, yeah, I didn't register yet that's why.

Ms. Mowat: Oh, okay. Alrighty. Thank you.

Chair Buchanan: Okay, thank you. Sybil or Jordan, you covering the open and close applications, item 4 and 5?

- 4. Open Molokai Applications Report generated by the Planning Department with the September 23, 2020 Agenda Packet (Appendix-A)
*NO public testimony will be received on this item.***
- 5. Completed Molokai Applications Report generated by the Planning Department with the September 23, 2020 Agenda Packet (Appendix-B)
*NO public testimony will be received on this item.***

Mr. Hart: Yes, Chair. Those -- those items are provided to each of the Commissioners as part of the packet or they can be linked to as part of the agenda. If you have any comments on those, we're here.

Chair Buchanan: No. I had before but I don't remember what they was now. Commissioners, any questions on the open and close applications? Okay, seeing none. Thank you, Jordan.

E. NEXT SCHEDULED REGULAR MEETING DATE: OCTOBER 14, 2020

F. ADJOURNMENT

Chair Buchanan: So, then I heard Sybil announce next meeting date October 14, and she gave us the proposals, agenda items. Are there any questions? Last questions before we adjourn, Commissioners? I wanted to thank Jordan, and Sybil, and Suzie, and Stephanie, thank you very much and, Jackie, appreciate all your guys help today. Thank you for sticking it out with us.

Mr. Hart: Thank you, Chair. We always learn stuff from you folks. I appreciate it. And I love all my Commissioners. Thank you very much. If not, then, guys, we are adjourned. See you on the 14th.

The meeting was adjourned at approximately 3:42 p.m.

Submitted by,

SUZETTE ESMERALDA
Secretary to Boards & Commissions II

RECORD OF ATTENDANCE

Present:

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

Absent:

John Perez, III

Excused:

Julie-Ann Bicoy
Leonora Espaniola

Others:

Michele McLean, Planning Director, Department of Planning
Jordan Hart, Deputy Planning Director, Department of Planning
Jacky Takakura, Administrative Planning Officer, Department of Planning
Sybil Lopez, Staff Planner, Current Division, Department of Planning
Stephanie Chen, Deputy Corporation Counsel, Department of the Corporation Counsel
Suzette Esmeralda, Secretary to Boards & Commissions, Current Division, Department of Planning