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**MAUI PLANNING COMMISSION
PORTION OF REGULAR MINUTES
ITEM B.1
SEPTEMBER 22, 2020**

Ms. McLean: Thank you, Chair. There are three public hearings on the agenda today. The first one is from myself transmitting County Council Resolution 20-90, referring to the Commission, a proposed bill to amend the comprehensive zoning ordinance relating to canopy tours and zipline operations. So, this is a council-initiated bill that all three commissions will be asked to review and provide comments that will then be transmitted back to the County Council. Would you like to do that PowerPoint presentation first before testimony, Chair?

Mr. Carnicelli: Yeah, I think that that's appropriate so people know what it is and what it isn't before they testify.

Ms. McLean: Okay.

Mr. Carnicelli: And they can give better testimony, I guess.

B. PUBLIC HEARINGS (Action to be taken after each public hearing.)

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

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.

Ms. McLean: Okay, great. Jacky Takakura, our Administrative Planning Officer will do the PowerPoint and she'll probably be sharing her screen.

Mr. Carnicelli: Great. Thank you, Director. Jacky.

Ms. Takakura: Thank you, Chair. Good morning, everyone, Commission Members. I'm going to share screen just to go over this presentation briefly give everybody understanding of what we're proposing here or what's being proposed here, I'm going to share screen. Can you give me a thumbs up if you can see the screen? Okay, thank you. So, it's regarding, as the Director mentioned, zipline and canopy tour operations. And this came to us from the County Council via Resolution 20-90, and it's relating to canopy tours and zipline operations.

So, some of you might wonder why, why are we talking about this now? Well, because ziplines can have potential impacts to neighbors, potential impacts to or compatibility with agriculture,

1 which is the zoning district in which these are located, it's an opportunity to review for safety and
2 other concerns, and it also proposes a permit cap to prevent saturation.

3
4 So, before we talk about the bill, let's look at how things are now. So, the County has allowed
5 canopy tours and zipline operations as accessory uses. Usually when the proposed...it's
6 proposed as a guided tour of an ongoing principal agricultural use. So far, we've issued seven
7 zipline approval letters and the Lanai Planning Commission has approved one, and in the memo
8 to Commissioners, all of those are in that packet that you received.

9
10 So, this is a list of the ziplines that are in Maui County, and they're all over, Kula, Kaanapali,
11 Honolua, which is West Maui, Lahaina, two in Waikapu, and then we have some Upcountry,
12 Makawao, Haiku, and then the one on Lanai. ...on the bottom, some have received approvals,
13 but not all, and like I mentioned, those letters, those approval letters are in that packet that you
14 ...(inaudible)...

15
16 So now, I just want to go over a little bit more detail about each of these operations, and I can
17 come back to this screen if needed if anybody has any specific questions. So these are the
18 different ones, Skyline Kapalua, Paradise Eco Adventures, Maui Zipline, Flyin Hawaiian, Piiholo
19 Ranch, Jungle Zipline and NorthShore Zipline and then on Lanai, the Lanai, the Lanai Adventures.
20 And so, you can see most of the zoning is Agriculture. I have the acreage listed, but I just want
21 to point out that this acreage is based on the tax map key parcel numbers that are on those letters.
22 It doesn't have...you know, say it's part of a...or bigger area like that has contiguous parcels. It
23 just has the acreage of the TMKs listed on the letters. You can see that there's some on the
24 bottom where the approval, there's some comments like none found or there's violations, those
25 like say, for the Flyin Hawaiian, it's probably because they have the other letter from Maui Zipline
26 Company and it's on the same lot. Piiholo Ranch we don't have a letter for them. Then the two,
27 Jungle Zipline and NorthShore Zipline, those are going before the BVA, the Board of Variance
28 and Appeals, and so the Planning Department is working with Corporation Counsel on that. Like
29 I said, we can come back to this slide if you have specific question.

30
31 So, in the Resolution, the County Council is proposing to create a new chapter, Chapter 19.97,
32 and that's specifically for ziplines, and they're proposing a maximum of 15 conditional permits and
33 some specific criteria and restrictions and standards. They also want to revise the Ag District,
34 Chapter 19.30A to make it clear that these operations, ziplines and canopy tours are neither
35 accessories nor special use. The proposal also includes that existing operations with approval
36 as accessory use can continue. Those are that are on greater than 50 acres may continue as
37 nonconforming, and those that are less have to apply for a conditional permit. And like I
38 mentioned in the proposal, the acreage includes parcels or multiple contiguous parcels, which I
39 like said I don't have that in that big chart.

40
41 Okay, so what we're proposing, and you saw in our memo, I do have some revisions to the memo
42 that went to you folks, we had it initially included amusement park and carnival, but that was based
43 on some previous versions of the bill and they're not needed anymore. So that's not applicable.
44 There are definitions for zipline and canopy tour. We're proposing to move those to where we
45 have all of our Title 19 definitions and that's in Chapter 19.04.040.

1
2 For the Agricultural District, we're proposing to revise the special uses to add these things to our
3 list of prohibited uses, and those would be rappelling, bungee jumping, ziplines, and canopy tours.
4 And then the revisions we're proposing to...the chapter on conditional permits, which is Chapter
5 19.40, it's just moving the things that they had for 19.97, put them in this chapter, Chapter 19.40,
6 Conditional Permits. So, we would be moving the restrictions and standards to here, to the
7 Conditional Permit Chapter. In the memo, we had also included some language about if the
8 property is located within 1,000 feet of residential, apartment or rural or farm dwellings, again, this
9 was from previous versions and it's no longer needed so you can disregard that.

10
11 So, in a summary, in a nutshell, we propose, the Department's proposing to keep the purpose
12 and intent of the resolution and the proposed bill from the County Council, but just move things
13 around, move the definitions into Chapter 19.04, which is general provisions and definitions, add
14 some changes to 19.30A, which is Ag District, and then move the criteria and restrictions to 19.40
15 Conditional Permits. And so, we're recommending approval of the proposed bill with some of
16 these amendments, and then the Commission it's up to you what you folks would like to do. You
17 can prove approve, approve with amendments, recommend denial or vote to defer. So that's it.
18 I'm going to stop sharing and then we can take it from there, and like I mentioned, I can always
19 bring up these screens if needed. Thank you.

20
21 Mr. Carnicelli: Thank you, Jacky. Director and/or Mr. Hopper, do you have anything to add before
22 we open it up for public testimony?

23
24 Ms. McLean: Thank you, Chair, I don't have anything to add at this time.

25
26 Mr. Carnicelli: Okay.

27
28 Mr. Hopper: ...(inaudible)...Chair.

29
30 Mr. Carnicelli: Thank you, Mr. Hopper. So, again, if you would like to testify on this particular
31 item, you can use the chat function to let the Director know that you would like to testify on this
32 item. With that being said, Director, has anyone indicated that they would like to testify?

33
34 Ms. McLean: Yes, Chair, so far we have three people signed up to testify. The first is
35 Gina Flammer, and she'll be followed by Adam Burnett.

36
37 Mr. Carnicelli: Great. Please on mute your audio, and if you also wish to, unmute your video,
38 state your name for the record,

39
40 Ms. Gina Flammer: Hello, I'm Gina Flammer. Good morning.

41
42 Mr. Carnicelli: Good morning.

43
44 Ms. Flammer: I'm testifying on behalf of Councilmember Shane Sinenci, who represents
45 East Maui, I'm his Executive Assistant. I did submit some testimony in writing.

1 Councilmember Sinenci does support the bill, the intent of the bill and I think if any government
2 body knows about the problems with ziplines it be the Commission. It's pretty obvious that
3 regulations are needed. The bill's a common-sense approach. It has some basic guidelines and
4 a requirement that operators obtain a conditional permit. Our office also supports the Planning
5 Department's recommendations. This is why we have Council referral to the Planning Department
6 and to the Planning Commission. You folks are the experts on Title 19, and we're very grateful
7 to have your expertise. We agree that whenever possible you don't need to create a new chapter
8 in the code. It's also always better to have all your regulations under one place. So, for conditional
9 permits, by moving it 19.40 you'd have everything in one place. It makes it easier for the planner,
10 for the operator and the public to find everything.

11
12 We also support the Department's recommendation to add in repelling, and I just see bungee
13 jumping activities. These activities also have no current County oversight, and as we mentioned
14 in our written testimony, East Maui has had problems with rappelling on waterfalls so folding it
15 into this bill makes sense rather than doing something separately. We like the Department's most
16 recent recommendation to go ahead and put it as a special use but also prohibit these two items,
17 which really technically just means you need the conditional permit, and that again, it makes
18 sense to have everything all in one spot so all the activities require all the same regulations. So,
19 in closing, thank you for your review of this bill and for all your service to Maui, and we look forward
20 to seeing your comments and the report when it comes back to Council. Thank you.

21
22 Mr. Carnicelli: Thank you, Gina. Good to see you back to the Planning Commission under a
23 different, under a different, I guess, title. Any need to clarify the testifier's testimony? Seeing
24 none, again, thank you, Gina. And also, I forgot to mention to everybody that testimony is limited
25 to three minutes. Just so everybody also knows that. So, thank you, Gina. Director.

26
27 Ms. McLean: Thank you, Chair. I misspoke when I said that Adam Burnett was next, he wishes
28 to testify on a different item. So, the next testifier on this would be Danny Boren. Danny if you're
29 ready, can you—

30
31 Mr. Danny Boren: Yes.

32
33 Ms. McLean: Okay, there you go.

34
35 Mr. Boren: Hi Commission. Yeah, my name is Danny Boren. Thank you for, for being here and
36 listening to the testimony and everything. So, I'm the founder of Skyline Eco Adventures. When
37 you saw that list, you notice we have two different locations, one on Haleakala Ranch, it's on a
38 9,000 acre parcel, and one over in Kaanapali that is on a 450-acre parcel. We're actually the first
39 commercial zipline operation in the United States. We started in 2002. So, I met with John Min,
40 who was Planning Director at that point, got a approval from him at that time. Prior to opening
41 Kaanapali, we met with Mike Foley, got approval from him, and has since gotten approvals for
42 expansion at our Haleakala location.

43
44 I'm in, I'm supportive of the bill, as was approved by the County Council. I think it does a great
45 job of requiring insurance, which I believe operators have but is obviously an important thing to

1 have limiting the hours of operation. And also, you know, restricts operations to appropriately
2 sized parcels. When we first started this operation on Haleakala Ranch, our goal was to use
3 valleys there which we do that are unusable for cattle ranching. They still run cattle in the area
4 that we operate so it's an active agriculture operation, but we supplement income because as
5 everyone knows, agriculture is difficult to make money here on Maui.

6
7 Since 2002, in the last 18 years, things have changed a lot in the industry and we've had a few
8 operations come in that's caused a lot of problems. If you guys live in Haiku, I'm sure you've
9 become aware of some of the operations. The way that the Council approved it with the 50-acre
10 minimum for operations does it really clean job of isolating operations like Skyline, like Flyin
11 Hawaiian, like Maui Tropical Plantation, Kapalua that have been in good standing with the
12 community for over a decade in most cases, and really limiting the issues to the folks that have
13 created issues that we've all heard about. There's only a few bad apples, but like anything, you
14 get one or two operations cause problems and everybody else, you know, can get thrown in with
15 it, but this as written from the Council does a great job of separating that.

16
17 The recommendations from the Planning Department, I'm concerned, as they were written to you,
18 I'm not sure how they were just presented, but the thousand feet from residents would shut down
19 about half of the good operations. So that now apparently is not part of what they're
20 recommending, which is good. Also it says that not having alcohol within a thousand feet of a
21 zipline is one of the recommendations as written to you guys, but I don't believe it's presented.
22 The Council modified that to say alcohol cannot be on zipline premises during business hours.
23 Now perfect example, Maui Tropical Plantation has a zipline right next to the Mill House which
24 has a liquor license. If it was approved as it was written to guys by the Planning Department, and
25 I don't believe that's what's intended at this point, but it would shut down the Mill House's ability
26 to serve alcohol. That's not the intent. The goal, of course, is to not have people drinking and
27 then going ziplining which I think as the Council—

28
29 Ms. Takayama-Corden: Three minutes.

30
31 Mr. Boren: ...does a good job of that. So, I'd recommend approval—

32
33 Mr. Carnicelli: Thank you, Mr. Boren.

34
35 Mr. Boren: Thank you.

36
37 Mr. Carnicelli: Any need for clarification from the testifier? Mr. Boren, I'm just...I'd like to just
38 clarification on the thousand foot of residential.

39
40 Mr. Boren: Yes.

41
42 Mr. Carnicelli: You're in opposition to that?

43
44 Mr. Boren: I'm an opposition. That's not...that was actually a first version that was heard by the
45 Council, and there is a lot of other operators that have come out and voiced their opinions against

1 it. I just found out about this meeting today, so I think I'm the only operation on the phone. The
2 50 acres does the same thing. Our operation at Haleakala Ranch is part of the Haleakala Ranch
3 Visitor Center. The visitor center itself was...has gone through special use permits and what have
4 you, and it's, you know, it kind been in a holding pattern for years, but that's within about a
5 thousand feet of residences in Upper Kula. I've got a great relationship with all our neighbors.
6 Two of our neighbors' kids have worked for us and again, this is 18 years of operation. It's not a,
7 it's not an issue for our operation, but we locate ourselves there because that's when, where
8 multiple other operations of ATVs, horseback riding and things were located. So that was the
9 center for activity, but it would conflict with this issue, the thousand feet which is part of why it was
10 taken out and was modified to be it must be a large agricultural parcel. Now any conditional use
11 that is looked out for approval in the future, so if another questionable location comes up, it's
12 gonna go before the Planning Department, everybody, and then conditions to be placed on them
13 to say, hey, the ziplines need to be located X distance from the property line. But if it was adopted
14 at the thousand-foot regulation as is, all you'd be doing is penalizing a number of operations that
15 have never had any complaints.

16
17 Mr. Carnicelli: Okay, thank you for, thank you for clarifying cause yeah, I mean, I don't, I don't
18 see it in the current version that was given to us by the Planning Department—

19
20 Mr. Boren: It's not.

21
22 Mr. Carnicelli: So, okay.

23
24 Mr. Boren: It was only in the original memo, so I just was making sure it wasn't included as one
25 of the recommendations.

26
27 Mr. Carnicelli: Okay. Commissioner Freitas has a clarifying question for you.

28
29 Mr. Freitas: Chair, I have a question regarding operation. Should that wait for another time
30 because it doesn't pertain to anything he said?

31
32 Mr. Carnicelli: Is it, is it, is it an operation for...is I mean, is it a question for an operator, I guess
33 is the question.

34
35 Mr. Freitas: Yes.

36
37 Mr. Carnicelli: Why don't you go ahead and ask him then. Why don't you go ahead and ask him.

38
39 Mr. Freitas: Okay, thank you, Chair. Mr. Boren, I was looking at one of the definitions and it says
40 that ziplines may be installed in combination with trees, poles, portable structures, buildings. My
41 question is, when would you ever use a tree as part of a structure?

42
43 Mr. Boren: Oh, our first zipline course, our Haleakala Ranch one is actually based off of trees.
44 So originally it says, based off of large eucalyptus trees up there, so they're like six-foot diameter
45 trees and the ziplines only a few hundred pounds of pressure on those, on those trees a few like

1 ten to fifteen feet up, so it doesn't create any kind of negative impact. We have regular arborists
2 check them out, and we have them monitored for health continually. So, there's very few places
3 you can do that, and I obviously would not advocate for doing on native trees and certainly not in
4 the native forest, but an invasive forest like a eucalyptus forest it works, mostly people use poles
5 because it's a lot more, it's a lot easier to engineer, but 150-foot tall, six-foot diameter eucalyptus
6 trees is pretty sturdy, too.

7

8 Mr. Freitas: Thank you for your answer.

9

10 Mr. Carnicelli: Any other needed clarified testimony? Seeing none, thank you, Mr. Boren,
11 appreciate you coming forward.

12

13 Mr. Boren: Thanks.

14

15 Mr. Carnicelli: Director.

16

17 Ms. McLean: Chair, the last person who's indicated they wish to testify on this item is
18 Mr. Tom Croly.

19

20 Mr. Tom Croly: Aloha, Commissioners.

21

22 Mr. Carnicelli: Good morning Mr. Croly.

23

24 Mr. Croly: I had to chime in here because this was so deja vu, seeing Gina there and seeing the
25 promulgation of new rules for an industry within you know, Maui County. Sorry, this is this was
26 very similar to the promulgation of the bed and breakfast rules initially, and later the short-term
27 rental rules where prior to them being there, everything had to be a conditional permit, and a
28 conditional permit allows you to look at each operation separately and make conditions specific
29 to that, whereas we're looking kind of broader and saying what are the, what are the conditions
30 and the rules that we want to apply to everyone? And if these rules are properly enforced, then
31 you have an industry that can operate efficiently without creating impacts that, that, that one would
32 fear. And, you know, again, when we started the bed and breakfast thing, we had about twelve
33 more meetings until we actually came up with the law. And the short-term rental one was about
34 15 more meetings before we finally came up with the law. And that's essentially where you are
35 right now with the start of this.

36

37 I heard some discussion about the thousand-foot thing, and I did want to chime in if that was still
38 a possibility. If there is a thousand foot, if there is a distance that these are to be kept away from,
39 from other homes, and that might be a reasonable condition, it should be from where the zipline
40 is located and not where the border of the property is. You know, many of the bed and breakfast
41 and short-term rentals, we send notice to people within 500 feet, but it's from the edge of the
42 property which sometimes is on the other side of a gulch, and the person gets the notice that says
43 this house is nowhere near me. So, I would just caution you, if you are making any kind of distance
44 type regulations, it should be from where the zipline operations are, are being conducted and not
45 the, not the lots themselves. Thank you, Chair.

1
2 Mr. Carnicelli: Thank you, Mr. Croly. And you need to testify...or any need to clarify Mr. Croly's
3 testimony? Seeing none, thank you, Mr. Croly. Director, anybody else?
4

5 Ms. McLean: Chair, at this time no one else has indicated they wish to testify.
6

7 Mr. Carnicelli: Okay, so at this point in time, this is going to be your last chance if you would like
8 to testify on this particular item please unmute yourself, and if you also wish to unmute your video.
9 Unmute yourself, if you wish to testify on this. Going once, going twice, okay so if there are no
10 objections, we're gonna go ahead and close public testimony on this item. Seeing no objections,
11 public testimony is now closed.
12

13 I guess what we can do now is let's just go ahead and start with Q&A from the Commissioners
14 either, I guess, for the Director and/or Jacky. So, Commissioner Pali we'll go ahead and start with
15 you, and what I'll do, is I'll just go around, right, everybody gets a couple of questions, we'll go
16 around, and if you got additional questions, we'll do additional rounds. So, since we got eight of
17 us now, we'll go ahead and do it that way. So, Commissioner Pali go ahead and start us off.
18

19 Ms. Pali: Yeah, I just got really one clarifying question. It might be for staff planner or might be
20 for the Director. It says that the new regulation says a max total of 15 conditional approvals. It
21 looks like based off of the presentation and the information we have we've got ten already. So,
22 actually I suppose it's two questions, so the first question is, assuming the ten fall into the 15, am
23 I standing it that it would allow for five more that's question one, and question two, which can be
24 answered in the same, at the same time, now that we're taking these other things like bungee
25 jumping and these other activities and we're throwing it there so now we're saying out of all those
26 other types of activities, is that also now limited to the extra, the total of 15? So that's my question.
27

28 Ms. McLean: Thank you, Commissioner Pali. Of the permitted operations there are a few that
29 would not require the conditional permit because of the acreage, as the bill's written now, there's
30 that difference in acreage so it's only the ones on the smaller parcels, even though they're still
31 quite large parcels, only the ones on the smaller parcels, would be the conditional permit. So,
32 yes, the existing operations, including bungee and any of those other activities, would all fall under
33 that cap requirement. But as far as we know, that would still allow space for a few more permits
34 to be issued if all of those actually received their permits.
35

36 Mr. Carnicelli: Thank you. Commissioner Edlao, do you have any questions or need any
37 clarification from the Director or Jacky?
38

39 Mr. Edlao: Yeah. Yeah, I do. You know, I yesterday I contacted Jacky. One of my concerns is
40 the safety issue. You know, because back in 2012, when I was on the Land Board, there was an
41 accident on the Big Island that a person died, and you know, it's, it's something, you know, I was
42 real, real concerned about. But that said, anyway, Jacky did some research with the State and
43 did a wonderful job, thank you, Jacky, but what it really boils down to, I mean, the State cannot
44 regulate because of the costs to implement a program. It would be just phenomenal, and also to
45 maintain, what it boils down to basically is the insurance that really you know, comes into play,

1 and my question would be, I mean, for instance, for the guys here on Maui or in Hawaii are they
2 working with local insurance companies or insurance companies from up in the mainland, how
3 did they do their inspection? If it's somebody, if it's an insurance company up in the mainland, do
4 they have somebody here that will do the inspections or is it just a paper? If it's just a paper
5 inspection, I'm not too cool about that, you know. I would prefer somebody physically that's
6 qualified, whether engineer or, or whoever, a contractor that is qualified to do these inspections,
7 number one. Number two, do they report to the Department of Labor Industrial Resources or
8 they'd reply to the County. I would assume, I would hope that some sort of report would come to
9 the County when these inspections are done. Those are my concerns.

10
11 But like I said, I guess you know this whole thing, I mean, all we're doing is making rules. We're
12 not regulating these guys cause we can't, you know, it's up to the State if they want to do it, but
13 because there are cost that's not going to happen not in my lifetime anyway. So my concern is
14 to make sure that they're working with reputable insurance companies, with reputable inspectors
15 and constant reporting, not only to the State, but also to the County. That's my, that's my play.

16
17 Mr. Carnicelli: Great. Thank you, Commissioner. Great points. Actually, great points, actually
18 great points. Commissioner Tackett, do you have anything that you would like to add or questions
19 that you need? Oh, oh, Christian hit the wrong button. Commissioner Thompson, do you have
20 anything that you'd like to add or questions? Okay. Commissioner Castro?

21
22 Mr. Castro: Yes, I do have...I also do have concern about safety, you know, as well as Ed, and I
23 remember that accident back then, and I remember one of the companies coming before us, and
24 I wasn't really quite happy with the responses, and what I mean by that is when it came down to
25 the inspections and who did the inspections, and they said, oh, we do the inspections. So I was
26 like...my other question to them was, okay, if you do your own inspections, are you certified to do
27 those inspections, and where did they go to for training, to get certified to do those inspections?

28
29 You know, and never really got a really good answer, they a little evasive. And one of the
30 concerns...the other concerns I have, especially when they are erecting towers that you really
31 need to get some kind of a expert, a engineer in there because a lot of it has to do with the soil
32 condition, so if you're gonna, you're gonna go vertical the bottom got to be stabilized to erect
33 anything that's going up, and that as well was not really ever answered. And again, the other
34 concern is how often do they inspect the cables, the ladders, the ropes, you know, on all of that,
35 all the mechanical parts? So that's, that's the only concerns that I really have and it still bothers
36 me because it looks like it's accidents waiting to happen. That's all I have, thank you.

37
38 Mr. Carnicelli: Great. Thank you, Commissioner. Commissioner Freitas comments, questions?

39
40 Mr. Freitas: Yes, thank you, Chair. I was going to ask because I heard they operate...one of the
41 operators say that they tend to put ziplines over gulches. Is it ever a possibility that these gulches
42 have water that would be used for consumption, and is there a possibility of contamination? Is
43 there any rules over not going over water, fresh water?

1 Ms. McLean: Commissioner Freitas in the, in that bill as it's drafted there are no such
2 regulate...there, there is no language relating to that the way that the bill was drafted right now.

3
4 Mr. Freitas: These zipline and tours, they, they sometimes go over conservation lands or
5 not...they cannot go over conservation land?

6
7 Ms. McLean: The...if they do go over conservation lands, then that would fall under the State
8 Department of Land and Natural Resources. The County doesn't have zoning authority on
9 conservation lands. So that would be a Conservation District Use Permit. I mean, as the
10 presentation showed, there are some operators here who didn't ever get County approval so I'm
11 not aware of any that are in the Conservation District now, but certainly there could be some
12 illegally operating without CDUP, but not that we're aware of.

13
14 Mr. Freitas: Could we put a condition that says if the plans for their construction goes over, a
15 water source that feeds in to public water system, that it not be allowed.

16
17 Ms. McLean: You can make whatever recommendation you want. We'd need to be careful about
18 the language, 'cause when you talk about water source, I mean, there's you know a
19 groundwater...

20
21
22 Mr. Freitas: Open water, open surface.

23
24 Ms. McLean: Yeah, if it's, you know, we can say a stream or waterway would probably be clearer,
25 but the Commission can make whatever recommendation it wants. We rely on Mike Hopper to
26 advise if that's under the County's authority, but that's up to you to make your recommendations.

27
28 Mr. Freitas: Okay. All right.

29
30 Mr. Carnicelli: Yeah, and just so people that are on the call understand what it is that we're doing
31 here, this is a bill that or a resolution that was started at County Council amending Chapter 19.
32 Anytime something's amended in Chapter 19, it has to go to the planning commissions, plural, for
33 our input and recommendations, and then it goes back to them. They're ultimately, you know,
34 who's going to make the decision on what's in there and what's not. I see that Gina Flammer
35 representing Councilmember Sinenci is still on the line, and I also see that Councilmember
36 Sugimura, Yuki Lei Sugimura is on the call as well. So when this gets remanded back to them,
37 they just, you know, they listen to what it is or read what it is that we recommend, and then they
38 make the call from there. So that's just how the ball bounces, and that's also true with the next
39 item on the agenda as well. So with that being said, Commissioner Hipolito, do you have any
40 questions or comments that you'd like to provide?

41
42 Mr. Hipolito: Thank you, Chair. My clarifying question was addressed by the Director McLean
43 and also Commissioner Pali, but I do want to state that I want to make this statement as far as
44 safety is concerned also, inspections, certified inspectors, you know, doing their due diligence,
45 you know, and as Commissioner Edlao said, you know, we can make the rules, how are we going

1 to enforce it? You know, and Commissioner Castro, in what he mentioned about soil conditions,
2 and any time when you go vertical, you know, proper testing needs to be done prior to construction
3 to ensure that the area that they planned to place this new zipline or bungee jumping that, that all
4 of the due diligence on the safety side needs to be considered, and so I support Commissioner
5 Edlao and Commissioner Castro very wholeheartedly about the safety, about construction, about
6 ongoing maintenance, you know, it states yearly inspections I feel in this area I think you've gotta
7 really consider semi-annual inspections on some of the key components and even monthly
8 inspections on some of the more critical components, you know, so it needs to be stepped out for
9 the owners and operators of the ziplines or even the consideration of the new developments that
10 we're gonna be, that are gonna be coming before the Maui County that, that needs to be take
11 place. Thank you, Chair.

12
13 Mr. Carnicelli: Thank you. Yeah, great questions. So, Commissioner Tackett, do you have any
14 questions and/or comments?

15
16 Mr. Tackett: Seems like you covered pretty well. I have, I have no questions or comments. I
17 think what everybody else brought up were were key points to the safety of the people that use
18 the ziplines, and I think that that's the most important thing, is that everybody that that tries to use
19 that type of recreation that, that they're a safe place to enjoy it. So I have no other questions
20 besides the ones that were already brought up. Thank you.

21
22 Mr. Carnicelli: Thank you, Commissioner Tackett. So, Director, I have a couple of clarifying
23 questions. So one, it was sort of addressed, but Conservation, right? Like 'cause we're talking
24 about Ag. but you know, one of the things for me, like when you start talking about specifically
25 rappelling, right, and this almost goes to what you know, Commissioner Freitas was talking about
26 rappelling and ...(inaudible)...waterfall most likely, and a lot of that is going to be in Conservation
27 areas. So if we're suddenly doing that, you know, like what exactly is, how does this affect these
28 operations that would potentially be in the Conservation area?

29
30 Ms. McLean: I'd ask for clarification from Mike Hopper, but I don't think they will have any effect
31 on operations in Conservation, in State Conservation.

32
33 Mr. Carnicelli: So if, let's just say, if you want to do a zipline in State Conservation, then this bill
34 doesn't cover you. I guess maybe I'll ask that question to you, Mr. Hopper.

35
36 Mr. Hopper: Well, you would need whatever permits you would need from the State in addition
37 to, I think, what you would need from the County. I mean, unless you were exclusively on
38 Conservation District lands. So I think that if you're going to use those lands for that purpose, just
39 like if you were going to do anything else on lands that are Conservation, you would need to
40 get that approval from the State in addition to County approval 'cause presumably you're also
41 using land that's outside of the Conservation District probably it's designated Ag by the State,
42 State District. Also, if you're, you're going to have a County, you're probably going to have land
43 in those County, County areas anyway, so you'd probably need a Conditional Permit and, you
44 know, I don't want to speak for the State maybe you don't need a Conservation District Permit of

1 any kind to do a zipline, but I think that's the State's jurisdiction so they would need to determine
2 what approvals you would need or that area.

3
4 Mr. Carnicelli: Okay, stay on Mr. Hopper 'cause we're also talking about bungee, right? I've
5 bungeed a bunch of times and 'cause your answer is kind of making the assumption that there's
6 probably Ag, too. What if we're in an area that's across a ravine, they build a bridge and they
7 want to do bungee and it's solely in Conservation, right. Like, I mean, and I get that that's not us
8 but that's State, but is there a way with which this is written or like the definition of say bungee
9 repelling, zipline, canopy tours is that, that operation is just prohibited in the County?

10
11 Mr. Hopper: I don't want to play the, the, what if game without seeing a specific set of facts. It's
12 hard to give a give a general...a specific answer to that if I don't know exactly what's happening—

13
14 Mr. Carnicelli: Fair enough.

15
16 Mr. Hopper: --but in general, within the State Conservation District, the County doesn't have the
17 ability to...the zoning ordinances wouldn't apply from the County, so that's the general answer.
18 And you know, you may need to go to the State, and I mean, sometimes that's an interesting
19 situation because you could argue the State's more permissive than the County even though the
20 intent of the Conservation District is to take away the County's authority to zone because the State
21 wants to have exclusive jurisdiction and potentially be more restrictive. But sometimes, you know,
22 the State may be less restrictive than the counties if they if they want to.

23
24 Mr. Carnicelli: Okay.

25
26 Mr. Hopper: But generally speaking, inside the Conservation District, it's the State's jurisdiction if
27 there's, there's no zoned property whatsoever there.

28
29 Mr. Carnicelli: Great. Commissioner Tackett has a question for you, I believe. Go ahead,
30 Christian.

31
32 Mr. Tackett: My question isn't...I mean, my question isn't necessarily for Michael, but I do have
33 a question. When, when, when you guys are finished.

34
35 Mr. Carnicelli: Okay. So, Director, I then have another just clarification. When I'm looking at the
36 conditions and modifications on the, what I guess would be the third page of the report that was
37 given to us. It says, that it is unlawful for any person to consume intoxicating liquor on or within
38 a thousand feet of any bungee jumping, zipline, canopy tour or similar thrill activity. So I'm going
39 okay, what if I'm the neighbor having a beer in my backyard?

40
41 Ms. McLean: We're gonna come get you. As I believe Jacky mentioned, those were comments
42 on a previous version of the bill, an earlier version of the Council bill had that language in it and
43 we were proposing modifications to that. Now that that language has been taken out of the
44 Council bill, we are not proposing to add it back in.

45

1 Mr. Carnicelli: Okay, so...

2

3 Ms. McLean: So it got a little bit confusing because there were different versions of the bill that
4 we had commented on in the past. So I apologize for that.

5

6 Mr. Carnicelli: Right, and that's what's hard for us as well because there's not like a, okay, here's
7 the version with which we're given right now to be able to make, you know, it's kind of like the
8 presentation was like, oh, we're kind of doing this and then that and now we're not. And so it's
9 kind of hard to say, okay, this is where we stand on it. Commissioner Edlao, I see your hand up
10 there.

11

12 Mr. Edlao: Yeah. You know, because the insurance will play a big part in this. I was wondering
13 if Mr. Boren is still available and maybe you can ask him, you know, who's his insurance inspectors
14 are.

15

16 Mr. Carnicelli: Right. Are there any objections—

17

18 Mr. Edlao: Or how does it to work?

19

20 Mr. Carnicelli: Are there any objections to bringing Mr. Boren up as an expert on bungee jumping
21 or even on ziplines I guess you'd say, sorry, not bungee jumping, but on ziplines. Seeing no
22 objections. Mr. Boren, thank you for unmuting your audio or your video, unmute your audio. In
23 regards to insurance, my first question, kind of just to piggyback on Mr.....Commissioner Edlao
24 is, are you allowed to self-insure?

25

26 Mr. Boren: No, no. I can...I can definitely fill in on all of the questions that have been made. I
27 can also tell you about the two major accidents that have happened in Hawaii in the last 18 years
28 to color the situation. So first off, we were briefly insured by a local company just because we
29 want to keep everything local and ...(inaudible)..., but basically there's two large insurance
30 companies on the mainland that do all the insurance for ziplines across the country. They're
31 experts at it. They know exactly what they're looking for.

32

33 And as far as the inspections go, what's required is in order to have insurance with either of those
34 two major vendors, which I believe everyone on Maui has, you have to have an independent third
35 party inspection annually, and they do a full report and submit it to the insurance company and
36 everything like that. They cover all the structures, they cover training, they cover the whole nine
37 yards about the operation. Independent of that, you also as pretty much a standard throughout
38 the industry is you do a daily inspection of everything, equipment, the course typically takes about
39 hour, hour and a half before the start of the day. You go through every single element. You also,
40 we also do quarterly tactile inspections, which means that we physically get on every line and roll
41 hand over hand for you know, thousand feet and check for wires with our eyes which takes a
42 couple of days to do. So that happens every quarter. So daily we're checking every anchor,
43 we're checking pole, we're checking all the lines, quarterly we're hand over hand rolling every
44 line, of course, ...(inaudible)..., and then once a year, an independent expert that's been certified
45 to do it, comes in and checks it out, and that's what you need in order to have insurance. So it's

1 pretty well regulated. I will say, I think the safety and everybody has absolutely...what...the
2 questions you guys have is exactly what I think that most people would have.

3
4 Ziplines kind of thrive on the perceived danger when there is an accident it's a sensational thing.
5 It's like a shark attack. I mean, we all know, out there ...(inaudible)... whatever happened in
6 South Maui recently, you know, shark attacks are really rare, it's pretty safe to get into the water,
7 but as soon as somebody gets bit in Florida, it's all over the national news. If somebody falls off
8 a zipline, it's all over the national news, but the reality is in 18 years with 22 operations across the
9 State, there's only been two deaths and there's been easily two or three million people that have
10 gone ziplines and both of those deaths were staff members. And one case is the Big Island that
11 was mentioned earlier, and that actually was a soil issue. So prior to the course opening at
12 Kapohokine over there they installed a tower, had not done soil studies which of course, they
13 should have done, and...and the line tipped over while a guide was on it. So that tragically, the
14 staff member died. It wasn't open to the public at the time, and they obviously didn't do proper
15 engineering on the course. Every other course I'm aware of has done proper engineering and
16 particularly since then anchor testing has become a major part of every insurance policy. So even
17 if you didn't do it initially, you've had to go back through and load test all your anchors. The
18 second death occurred here on Maui at the Piiholo and that was a staff member, and basically
19 there were new, as I understand it, if somebody from Piiholo happens to be on the call, they could
20 clarify more, but they were new on the job, had gone through training, but they apparently
21 for...didn't hook themselves into the platform. So a guest came in, they tried to catch the guest,
22 and the guest started to roll back out and because the staff member had not clipped themselves
23 in, they rolled out with the person, and I can't even imagine how horrific that was for everybody
24 involved. But those were the only two deaths that occurred in Hawaii in 18 years with easily two
25 million people that have zipped.

26
27 So the perception because of how horrific those situations are when they do happen is that it's
28 unsafe, but the reality is it's everything's engineered, there's constant inspections, and there's
29 never been a major guest injury that I'm aware of. I mean, you get broken ankle here or there,
30 but honestly, I'm sure that snorkeling is far, far more dangerous.

31
32 Mr. Carnicelli: Commissioner Edlao.

33
34 Mr. Edlao: Mr. Boren, I like the idea of a third party inspector. Now because most of the zipline
35 tour guys are using these one of two of these insurance companies up in the mainland. So when
36 they do the inspection is this somebody that they fly in or they have somebody here that they work
37 with to do these inspections?

38
39 Mr. Boren: So, good question. So if they're, there I think might be one or two inspectors in Hawaii,
40 but most of us fly people in from the mainland to do them. It's not the actual insurance company
41 that has the inspector. There's an association called ACCT or the Association for Challenge
42 Course Technology.

43
44 Mr. Edlao: Yes.

45

- 1 Mr. Boren: They certify inspectors, and so there's a handful of these guys that are certified. So
2 you basically pick any certified person that has gone through that training and what have you, and
3 they can come out and do the inspection of the course. So it's probably like an elevator safety
4 inspection, like that was...people are looking at elevator inspectors originally when that state law
5 was trying to go through, I think someone had mentioned a while ago, but there's a huge backlog
6 of elevator inspections, apparently so they didn't do that. But I think like to be an elevator
7 inspector, you don't have to be the insurance person, you have to be certified to inspect elevators,
8 and that's the same thing as ziplines, there's people certified to inspect these and that's who
9 comes out to do it.
- 10
- 11 Mr. Edlao: So they do have people here or not?
- 12
- 13 Mr. Boren: There's, there are, I think, are two local companies that are certified to do third party
14 inspections.
- 15
- 16 Mr. Edlao: Okay.
- 17
- 18 Mr. Boren: I don't know of anybody that uses either of them locally. So, you know, one of them
19 is a builder that I think does most of his work on the mainland but happens to live here and the
20 other one has operations in Tennessee, and here they go back and forth ...(inaudible)...I'm
21 actually not sure if they're...if they're certified as a third party inspector or not. But generally, we
22 all fly people in that that's what they do for a living.
- 23
- 24 Mr. Edlao: So when these inspections are done—
- 25
- 26 Mr. Boren: Yeah.
- 27
- 28 Mr. Edlao: You get a copy of the inspection as well as the insurance company?
- 29
- 30 Mr. Boren: Yes, we have to—
- 31
- 32 Mr. Edlao: Would you be opposed to—
- 33
- 34 Mr. Boren: --provide that.
- 35
- 36 Mr. Edlao: Would you be opposed to submitting that copy to the County as well.
- 37
- 38 Mr. Boren: Not necessarily, no. I mean, the insurance company requires it, so if we have
39 insurance, then we have that on file every year. So I mean I'm happy to submit our copies, and
40 they typically will include recommendations. So you'll get like a fail, pass or a pass with
41 recommendations like, you know, something or other with inventory or something. So it's...they're
42 lengthy documents.
- 43
- 44 Mr. Edlao: Okay. Thank you very much. That's very informative.
- 45

1 Mr. Boren: Yep, you're welcome.

2
3 Mr. Carnicelli: Any other questions for Mr. Boren while he's here? Thank you, Danny, appreciate
4 you giving us the clarification that, that actually was very, very helpful because it kind of felt like,
5 okay, we're trying to put rules on an unregulated industry when you know, it seems like that there
6 is inherent regulations through the private sector and insurance rather than through government,
7 you know, putting in rules and everything like that that's at least the perception that I get.

8
9 Mr. Boren: Yes, I totally...(inaudible)...I totally get it, yeah. You're welcome.

10
11 Mr. Carnicelli: Great. Thank you. Any other questions or comments for the Department?
12 Commissioner Tackett.

13
14 Mr. Tackett: Yes. Thank you. Thank you, Chair. My question was, as far as anchorage points,
15 not so much for the zipline for, but for the repelling and things of that nature, is there anything in
16 place to, to dictate where and who puts in anchorage...(inaudible)...and the reason for the
17 question is for the repelling, and you are saying that people were repelling down waterfalls is there
18 anything in place to, to stop somebody from coming up with a...with a three-quarter inch battery
19 driven hammer drill and drilling a big hole, three-quarter inch hole into the ground and putting their
20 own anchors in to these kinds of natural features and then just tying up to them and repelling
21 down these types of places. So I was wondering if there is anything in regards to that, because
22 it seems like some of that stuff would be kinda inappropriate.

23
24 Mr. Carnicelli: Director and/or Jacky.

25
26 Ms. McLean: Chair, right now, there's no language in the bill that addresses that, and that might
27 be something we can bring Danny back to ask him 'cause we...the bill doesn't go into the detailed
28 regulations about the structures or the inspections. The County, just for your information, doesn't
29 require building permits for the towers whether they're freestanding towers or towers using trees.
30 The County doesn't do inspections. So getting into the details of that kind of regulation, I'm not
31 sure how we would regulate it since we don't have those standards anyway. That's not to say
32 you can't make the recommendation, we'll forward whatever recommendation you'd like to make
33 to the Council. But right now, the bill doesn't have that, and I'm not quite sure how the County
34 would, would enforce that.

35
36 Mr. Carnicelli: Well is, we could make it a condition of the permit. I mean, if they come to us for
37 a Conditional Permit, we can make it a condition of the permit that that doesn't happen, I mean,
38 'cause, and ziplines is going to be different than, than repelling, right? I mean, repelling. I ziplines
39 not going to be drilling into the side of a waterfall, but repelling might as Christian said. So,
40 Commissioner Tackett you said you had another question.

41
42 Mr. Tackett: I just wanted to make sure that that was clear. I just, I just thought that that should
43 be addressed because a whole bunch of people going into our natural features and, and drilling
44 holes in the rocks with hammer drills, I think would be, would be inappropriate.

45

1 Mr. Carnicelli: Right. Commissioner Freitas.

2
3 Mr. Freitas: Thank you, Chair. If we pass this bill, would any of the current operators be in
4 violation, and would they be not allowed to operate, and what would their timeframe be to meet
5 any of the changes that we are passing?

6
7 Mr. Carnicelli: Well, it would be the Council would be passing, but Director?

8
9 Ms. McLean: Well, we would, at the time that they apply for permits, we would need to verify their
10 insurance and their inspection and maintenance to see that they are in compliance or would be
11 in compliance by the time the permit is issued. As you mentioned before, there are a few
12 operations that would not require a Conditional Permit, but yeah, that actually...what, what's that's
13 bringing to mind is is an interesting way to structure the bill that whether or not you need a
14 Conditional Permit, you have to comply with those requirements. But you need the Conditional
15 Permits just based on the acreage. So that's, that might be a better way to structure the bill, you
16 know, whether it's the form we recommend or the Council's form of creating the new chapter to
17 make sure that all ziplines comply with those requirements, but only the ones on the smaller
18 parcels need the Conditional Permit.

19
20 So right now, back to your main question, Commissioner Freitas, sorry for my train of thought, we
21 don't know if all of them would be in compliance. I would imagine they would be that would be a
22 really risky thing for an operator to not have insurance and inspections. But I can't say for sure
23 there are a few questionable operators. So, but we would, this would be a mechanism to find out.

24
25 Mr. Freitas: Thank you.

26
27 Mr. Carnicelli: Thank you. Commissioner Edlao.

28
29 Mr. Edlao: Michele, question...couple...two questions. Number one, maybe perhaps we could
30 structure something in the condition that during some sort of certification of the construction that
31 was done by...reviewed by an engineer or somehow prior to approval number one. Number two,
32 because it seems like the insurance is a big part and you know, been watching these guys
33 because we're talking about bungee jumping and all these other things would that insurance
34 requirement also apply to them as well as to...because, right here, we were just talking about
35 ziplines, but, you know, we bundling everything in there so would this also apply to them, bungee
36 jumping and all of that?

37
38 Ms. McLean: Yeah, as the amendments that we're proposing would also include bungee jumping
39 and repelling into that category.

40
41 Mr. Edlao: Oh, okay, okay.

42
43 Ms. McLean: So the conditions would apply to all of those.

44

1 Mr. Edlao: Okay, just wanted to make sure, but again maybe you could structure something to
2 say that when you build these structures, get some kind of certification from engineers, that it's
3 been soil tested or safe for during the construction or whatever it may be would be great.

4
5 Mr. Carnicelli: Thank you, Commissioner. So, Director, is it possible to put in the bill that...well,
6 at least we can recommend that they put it in the bill that these permits are only one year? I mean
7 'cause what that would do is saying, like okay, you have to come back every year and we want to
8 make sure your insurance is up and that you've done your inspections, as you know, as Mr. Boren
9 talked about and everything like that. So, these are one-year permits, not okay, a five-year
10 conditional permit, and what if you just kind of let it lapse and you are one of these dodgy guys?
11 And again, this is you know, we're talking... I like the shark attack analogy, you know, millions of
12 people swim, one person gets it and we all freak out, you know it is horrific. But is it possible to
13 make these only one-year by ordinance?

14
15 Ms. McLean: Yes, that is possible.

16
17 Mr. Carnicelli: Okay, would anybody else like that as a recommendation? Commissioner Pali
18 and then I'll go to Commissioner Freitas. Okay wait, we'll let Mr. Hopper chime in because he's
19 probably going to just squelch this whole thing for us.

20
21 Mr. Hopper: Well, I raised this issue with the Council, too. It's extremely odd and unprecedented
22 to have lists of requirements for conditional permits because the County Council grants those and
23 the County Council passes this ordinance. So, it's very odd in a case for the County Council to
24 say we can only grant permits for a certain period of time by their own regulations, and yet the
25 conditional permit they pass is actually an ordinance. So, to me, it is questionable whether or not
26 the County Council would have to abide by these requirements if, if they put them on. Now, I
27 suppose that it's similar to the processing requirements of conditional permits that are supposed
28 to be followed, but it's just highly irregular to have a conditional permit list of requirements. In one
29 case, there's a requirement for a two-thirds vote for passing the ordinance, and it's not even in
30 the conditional permit section, so we may need to, upon legal review, make edits to this to deal
31 with those issues. So, that's the only odd thing with this ordinance as proposed, is you know,
32 originally it was going to be special permits, which the Council putting special permit requirements
33 on it would make a little more sense. Of course, you as the commission would have to review
34 them, but that would be the Council placing limits on the Commission's review and approval of
35 the permits. Now you're talking about the Council placing limits on future ordinances that it may
36 pass, and I suppose it does that with changes in zoning and things like that, but it's just very odd
37 to do that with conditional permits because normally it's up to the Council to put whatever
38 conditions on it that they would like.

39
40 Mr. Carnicelli: Okay, so I'll withdraw my, I withdraw my recommendation then. I get it. That's
41 fine.

42
43 Mr. Hopper: You can put it on there, but it's questionable to me whether or not the Council would
44 have to be held to that is all I'm saying.

1 Mr. Carnicelli: Great. Thank you, Mr. Hopper. Commissioner Pali then Commissioner Freitas.

2
3 Ms. Pali: Yeah. Thank you. I'm glad he went first. I was just saying that I think we're getting
4 confused as to what we're discussing here. And so, we have to kind of compartmentalize all of
5 it, and I was just going to say that this is the ordinance which is the bigger picture, and then as
6 the applicants come through to apply for those 15, then we'll be able to make it specific and then
7 have the generic conditions like follow all, you know, regulatory state, federal requirements,
8 including insurances, and things like that. So, I don't know, I was just going to try to separate the
9 two, but anyway, non-issue now.

10
11 Mr. Carnicelli: Commissioner Freitas.

12
13 Mr. Freitas: Thank you, Chair. One of the limits put on this bill was 15 operations or 15 tours.
14 What if the operators are not in an area of ziplining that would allow rappelling and bungee then
15 another company would, would have to come in. So, we got to look at leaving this only with
16 ziplining and canopy tours, and make bungee and rappelling a separate bill because the areas
17 that you do these two things, I think is very different. And if that's the case, if you are going to
18 bundle them, I don't think 15 is fair because if Mr. Boren doesn't want to do that it takes away one
19 spot of an opportunity like the bill was intended to accommodate. Thank you.

20
21 Mr. Carnicelli: So is your suggestion that that the number be moved from 15 or that your
22 recommendation is that bungee and repelling be separated from canopy and zipline?

23
24 Mr. Freitas: One or the other. I would lean more to separating those because those rules about
25 the water, fresh water, surface water would apply more to the other two than the bungee...than
26 the zip, the ziplining.

27
28 Mr. Carnicelli: Okay. So, Michele and/or Jacky, how do you want to package...I mean, we've
29 had a lot of discussion about different things, regulations, oversight, numbers of tours, things like
30 that, how do you want to package what it is that we're gonna to forward to the Council? Do you
31 want to just say, oh okay, these are the things that were discussed and do that in a transmission
32 or do you want us to actually make a motion on something that we then formally adopt and give?

33
34 Ms. McLean: Formal motions would be preferred because then it's very clear and straightforward.
35 Usually we send a summary of the discussion if, if there's not a clear recommendation or you can
36 for example, you can recommend approval of the proposed bill, either the Council version or the
37 Department's amended, amended version or amended approach, and then add a few comments
38 or you can make specific recommendations. I mean, if you want to say you recommend that
39 conditional permits be granted for no more than a year, you can make that specific
40 recommendation. You can make a recommendation that a restriction be added, that ziplines not
41 cross dreams or waterways that provide drinking water. You can add a condition about the
42 frequency of inspections. You know, there's those are things that you talked about, but it would
43 be better if you have a specific motion because otherwise it's what Jacky and I understand your
44 discussion was intended to convey, but you know, if you can make a motion that would be better.

45

1 Mr. Carnicelli: Okay, so for clarification purposes, Jacky, can you pull your PowerPoint back up
2 so we know exactly what the Department's recommendation is, please, so we'll use that as our
3 base.

4
5 Ms. Takakura: Can you see my screen? I just have to get to the page.

6
7 Mr. Carnicelli: Yeah. Yeah, we can.

8
9 Ms. Takakura: It takes a minute to change... So, the first thing we were proposing is to move the
10 definitions, keep them, but move them for zipline and canopy tour, not amusement park we're
11 forgetting that part, and then don't worry about the thousand feet, and then moving the criteria
12 and restrictions and standards to conditional permits. And then for the Agricultural District, it was
13 adding rappelling, bungee jumping, ziplines and canopy tours to the list of prohibited uses or
14 structures.

15
16 Mr. Carnicelli: Okay, so my, my first recommendation is going to be that if we have rappelling
17 and bungee jumping now in 19.30A.060.7 that we also then have a definition for them at the
18 beginning, right. We have, we've defined ziplines, we've defined canopy tours, but we didn't
19 define repelling, we didn't define bungee jumping. Does anybody have an objection to that
20 recommendation? Okay, hearing none, we'll go ahead and adopt that one. Does anybody else
21 have a recommendation that they would like to add over and above what the Department's
22 proposed revisions are? Go ahead and unmute yourself 'cause Jacky's doing screen share so I
23 can't see yourself. Just go ahead and unmute yourself and chime in.

24
25 Mr. Edlao: For me, it's the insurance thing to make sure that, you know, that there's inspections
26 done by a third party and reports done you know periodically and submitted to County which I
27 think it's already pretty much in here, yeah. The records shall be made available to the Director
28 upon request. And, you know, just some sort of assurance that or knowing that this will not...the
29 insurance requirements, not only apply to the zipline, but to the bungee jumping and the rappelling
30 as well to be fair.

31
32 Mr. Carnicelli: Right so, if we go...

33
34 Ms. McLean: Chair?

35
36 Mr. Carnicelli: Oh, go ahead. Go ahead, Director.

37
38 Ms. McLean: This is Michele, if I can jump in?

39
40 Mr. Carnicelli: Yeah.

41
42 Ms. McLean: Right now the language is, proof of insurance and inspection reports, maybe you
43 might want to clarify that there should be third party inspections?

44
45 Mr. Edlao: Oh yeah, yeah.

1
2 Ms. McLean: At least annually because that's not specified or if you want a greater frequency,
3 you can recommend greater frequency.

4
5 Mr. Edlao: Yeah, yeah, I want something to say that a third party inspector and I like the idea of
6 Commissioner Hipolito about maybe very six months as opposed to once a year.

7
8 Mr. Carnicelli: Are there any objections to that language? Commissioner Pali.

9
10 Ms. Pali: The inspection is every six months or the requirement to provide insurance what was
11 the clarification on that?

12
13 Mr. Edlao: Both of them. They need to require. Yeah, so proof of insurance and have a third
14 party inspector doing the inspections and not, you know, have them do their own.

15
16 Ms. Pali: So just for clarification, insurance usually is issued on a year to year basis so I feel like
17 that might be excessive once they've done it once for the 12-month period. And in regards to the
18 inspection, is it because you believe soil and the environment would change rapidly enough to
19 additionally burden the small business owner with having another inspector every six months
20 versus once a year?

21
22 Mr. Edlao: No, I think the fact that things change periodically, you know, this is Hawaii, the
23 weather is weird sometimes so soil conditions can change. So you know, if you wait one year,
24 you know, something could change in three, four months. So, having it you know, a six-month
25 period of twice a year would be great, I mean, you know, as opposed to, you know, waiting.

26
27 Ms. Pali: So that, I respect your position, but just to, just to give some founding to your position,
28 is it because you have personal knowledge that this is the case or this is just an idea that it could
29 be changing because we know things are changing?

30
31 Mr. Edlao: No, because where back in, you know, 2012, when they had their accident, I was
32 involved with that on the State Land Board, and it really, really hit me. You know, and I know
33 ziplines, you know, accidents are far and few like Mr. Boren had said, but when it happens, it
34 happens, and this is something that I don't want to see happen. And by having these inspections,
35 you know, will help, you know, hopefully to prevent these accidents. I mean, might be a poor
36 analogy, though. Why put wires up on a Pali Highway, you know, because all it takes is one rock,
37 so you don't want something to happen, you know, and you don't know when it's going to happen
38 so that's why I think I would like to see that.

39
40 Mr. Carnicelli: Commissioner Pali.

41
42 Ms. Pali: Yeah, so just, you know, I'm just trying to find a balance. I think in what we do, we have
43 an obligation to find a healthy balance. So, I don't disagree with you that we want it safe. We're
44 in the same canoe boat per se on that, but excessively overburdening is also the line we have to
45 balance, and so there was an incident in 2012. I can't imagine how tragic that was, but you're

1 saying since then there's been no inspections and no regulations. It's been eight years and we
2 haven't had anything since, but you feel like we want to mandate now every six months. I just
3 feel like that doesn't seem like it's a healthy balance. Anyway, no sense beat the dead horse.
4 Just my opinion.

5
6 Mr. Carnicelli: Okay, so...and that's, and that's fair. So, I appreciate you both having, you know
7 sharing your opinions. So essentially, we don't have consensus on every six months, so what we
8 can do is just say like, okay, those of you in favor of doing inspections and proof of insurance
9 every six months as a recommendation to the Council, right, that's all this is a recommendation
10 that they possibly adopt that all of those you in favor of that amendment to our recommendation,
11 please raise your hand. One, two, three. Opposed? One, two, three, four. So, motion fails.

12
13 So, do we want to amend it to say, once a year? Once every twelve months? Okay, is there any
14 opposition to saying that third party inspections and proof of insurance have to be provided at
15 least annually? Any objections to that? No objections to that. So, then we'll go ahead and take
16 that as consensus, and Jacky and Michele, if you could go ahead and add that to our
17 recommendations.

18
19 Any other recommendation, anything else that you guys would like to add to our recommendation
20 to the Council? I'm just going to ask the question, and I don't...I'm not necessarily on board with
21 it, but do we want to add some kind of building inspection or something like that to new structures?
22 You know, you've got to get a building permit, you know, I mean, I put it this way, Jacky, why don't
23 you just add that as something we discussed because it kinda, we discussed it sort of in a
24 roundabout way, it's not necessarily a formal part of what our recommendation is but, but it is
25 something that we discussed that maybe the Council should consider.

26
27 Ms. McLean: Chair, if I could jump in. I believe Public Works is on the call and they might want
28 to chime in on that because they're the agency that oversees building permits—

29
30 Mr. Carnicelli: Right.

31
32 Ms. McLean: --and they might be able to give more background on why they currently don't
33 require building permits and—

34
35 Mr. Carnicelli: Okay, Mr. Molina is he...is that who it is? Who's on the call?

36
37 Mr. Jordan Molina: Yes, Jordan is here.

38
39 Mr. Carnicelli: Great, if you want to go ahead and chime in on that then please?

40
41 Mr. Molina: I apologize, I was multi-tasking a bit, could you repeat the question?

42
43 Mr. Carnicelli: Why is it that we currently don't require building permits for ziplines, canopy tours,
44 bungee jumping?

45

1 Mr. Molina: Yeah, unfortunately I have to get back to you on the specifics of why but just thinking
2 of out loud, you know, the building permit functions a lot to allow people to buy insurance on
3 property and to, for insurance companies to have a reliable means of insuring that you know
4 structures are built to certain standards. Given that the zipline operation is somewhat different,
5 and it's not really a habitable structure which falls under the purviews of building code I would
6 suspect that was one of the reasons why it's not, but—

7

8 Mr. Carnicelli: Fair enough.

9

10 Mr. Molina: But we can look into it further.

11

12 Mr. Carnicelli: It's okay.

13

14 Mr. Molina: To find out if there was any other specifics why we never wrote in ziplines under the
15 Building Code.

16

17 Mr. Carnicelli: Okay, I mean, just be prepared for then Council to possibly ask you about that
18 when you get to Council then. So...which is fine. Mr. Hopper.

19

20 Mr. Hopper: Yeah, I think in addition to that, I think you would need to amend the Building Code
21 or make that clear in the Building Code itself rather than have that as part of Title 19 since that
22 that dictates when you need a permit. I mean, if this says you need to get a building permit.

23

24 Mr. Carnicelli: Right.

25

26 Mr. Hopper: But they don't otherwise have a basis in the Building Code to review and approve a
27 permit that could be problematic. So, I'm not saying the County couldn't eventually decide we
28 want all of these to get building permits after that discussion, but I don't think that's something
29 that could be done as part of this ordinance without amending the Building Code, saying this is
30 the type of structure that needs a building permit. So, just thinking about that issue in general,
31 that's something I would want to—

32

33 Mr. Carnicelli: Right

34

35 Mr. Hopper: To let you know.

36

37 Mr. Carnicelli: Great. Yeah, and I personally, you know, I'm really okay with and like the fact that
38 this is actually being regulated by the private sector, by insurance companies coming in and
39 saying, hey, listen, they're being more stringent than the government is right now. I have no
40 problem with that and I actually think that that's great. I just know that there was concern amongst
41 the conversation here with my fellow Commissioners about that so I just thought that I would just
42 broach the subject as we're trying to come up with a recommendation to the Council.

43

44 So, is there anything else that we want to go ahead and add formally to our recommendation
45 other than the discussion? Commissioner Edlao.

1
2 Mr. Edlao: Yeah, Michele, I guess what I'd like to probably include when you submit this to the
3 Council, Mr. Boren's comments and in terms of insurance and how they do it and the inspections
4 and et cetera, et cetera, just as a side note so they have something to look at when you're talking
5 about insurance. Would that be...it would be included with that?

6
7 Ms. McLean: Yes, we do send them the minutes of the meeting, so they will have the written
8 transcription of today's meeting with all this morning's comments.

9
10 Mr. Edlao: Yeah, okay. Thank you.

11
12 Mr. Carnicelli: And maybe along those same lines, is what he's saying is the part of our
13 discussion, it's not just the minutes 'cause they're not going to read the minutes most likely is to
14 maybe recommend that Mr. Boren be used as a resource, you know as an expert resource.

15
16 Mr. Edlao: That's even better, yeah.

17
18 Mr. Carnicelli: Okay. I guess, any objections to that? We want to make that a formal part of
19 our...okay, let's go ahead and make that as part of our formal recommendation as well then.
20 Anything else, Commissioners?

21
22 Ms. McLean: If I could ask Commissioner Freitas, did you want to bring up crossing the streams
23 or waterways issue at all?

24
25 Mr. Freitas: Yes, sounds like we're going to just leave the rappelling and the bungee, so I guess
26 surface water streams should be avoided. Is that simple enough?

27
28 Mr. Carnicelli: You mean avoided, I mean, what if it's, I mean, I'm just trying to...what if it's a
29 thousand feet over, you know, a zipline? You know, I mean, you're saying you just don't want it
30 to cross any, I guess, stream, potable water or I guess that wouldn't be potable, it be nonpotable
31 if it's in a stream. So how do we want to work—

32
33 Mr. Freitas: Yes.

34
35 Mr. Carnicelli: You know, how do we...

36
37 Mr. Freitas: Can it be worded so that if it's a stream that feeds into potable water?

38
39 Mr. Carnicelli: Well, I mean it would it...it would have to go to a treatment plant then, right.
40 Director.

41
42 Ms. McLean: Yeah. I think, again, we're talking about the County would review that, we could ask
43 the Department of Water Supply for their review, we'd have a site plan, and so they would be able
44 to say whether it involves a water source for the County water system or another public water

1 system, even though they don't regulate it, they would be able to know which ones may feed into
2 a private system.

3
4 Mr. Freitas: Yeah, so what would stop a tour to put together a zipline right in Lao Valley? So, yes,
5 that that's what I'm afraid of, something like that. A real high, high producing water source, and
6 over on the west side which is very limited, let's try to protect the water as much as can. Thank
7 you.

8
9 Mr. Carnicelli: Okay, thank you, Commissioner. Anybody else have something that they would
10 like to add? Okay, Jacky and Michele, do you guys have enough to forward a communication
11 onto the Council?
12

13 Ms. McLean: I'll just go over them really quickly and Jacky can jump in if I missed anything.
14

15 Mr. Carnicelli: Great.
16

17 Ms. McLean: I'm not clear if you want to recommend the Council's version of the bill or our
18 proposed change. So that's one thing.
19

20 Mr. Carnicelli: I think, I think we started from, the Department's version. Department's version.
21

22 Ms. McLean: Okay, great. So, you wanted to define rappelling and bungee jumping, you want to
23 require third party inspections and proof of insurance annually, you want to prohibit crossing or
24 operating in a stream or waterway that provides drinking water, and you suggested they further
25 discuss building permits, and if the County would play a role in inspections and also suggest that
26 they use Mr. Boren as a resource. Does that cover everything?
27

28 Mr. Carnicelli: Jacky, do you have anything? Jacky's giving the thumbs up, let the record show
29 that. Are there any objections to go ahead, and then forwarding that recommendation onto the
30 Council? Hearing no objections, we'll go ahead and take that as consensus, and we are done
31 with item number one.
32
33

34 **The recommendation to recommend approval of the proposed bill with the recommended**
35 **amendments by the Department and the Commission's recommendations of defining**
36 **rappelling and bungee jumping, require third party inspections and proof of insurance**
37 **annually, prohibit crossing or operating in a stream or waterway that provides drinking**
38 **water, and suggest that the Council further discuss building permits and if the County**
39 **would play a role in inspections, and also suggest that the Council use Mr. Daniel Boren**
40 **as a resource was approved by consensus of the Commission.**

41
42 Respectfully Submitted by,

43
44
45 CAROLYN TAKAYAMA-CORDEN

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2
3

Secretary to Boards and Commissions II