

**MAUI PLANNING COMMISSION
REGULAR MINUTES
JUNE 14, 2022**

A. CALL TO ORDER

The regular meeting of the Maui Planning Commission was called to order by Chairperson P Denise La Costa at approximately 9:00 a.m., Tuesday, June 14, 2022, in the Planning Conference Room, 250 South High Street, Wailuku, Maui, Hawaii 96768 and online via BlueJeans; **Meeting ID: 327 484 654**

Ms. La Costa: Aloha kakahiaka kakou, good morning, everyone and welcome to the Maui Planning Commission of June 14th, 2022. We'll begin by doing roll call. Our Vice-Chair Kellie Pali is not present today, so we will start with Commissioner Freitas. Can't hear you.

Mr. Freitas: Sorry. Good morning, everyone. I am here, I'm in my office in Lahaina. I'm alone. Great to see everybody.

Ms. La Costa: Aloha. Commissioner Thompson.

Mr. Thompson: Good morning, all. Welcome again.

Ms. La Costa: Commissioner Hipolito.

Mr. Hipolito: Good morning, Chair. Good morning, fellow commissioners. Good morning, Director and everyone out there. I'm in my office in Kahului alone. Thank you.

Ms. La Costa: Mahalo. Commissioner Lindsey.

Ms. Lindsey: Aloha kakahiaka kakou. Nice to see your faces. First off, congratulations Commissioner Thayer on 40 under 40 PBN, Pacific Business News, congratulations. Nice to see you all today. I am in my office in Wailuku at home.

Ms. La Costa: Mahalo. Commissioner Thayer.

Ms. Thayer: Pretty...(inaudible)..., but aloha kakahiaka everybody. It's nice to be here. Hi.

Ms. La Costa: And Commissioner Greig.

Mr. Greig: Aloha everyone. I am in my office in Wailuku and alone.

Ms. La Costa: Mahalo. I'd also like to welcome our esteemed Director of Planning, Ms. Michele McLean.

Ms. McLean: Good morning, Chair. Good morning, commissioners.

Ms. La Costa: And Mr. Hopper, Corp. Counsel.

Mr. Hopper: Good morning, Chair. I just want to check and see if the audio is working okay for you guys.

Ms. La Costa: It is. Thank you so much.

Mr. Hopper: Great. Thank you.

Ms. La Costa: So, at the planning commission, when you testify, we first will start with those folks who have called in video and then we will do in-person testimony. You will have three minutes to do so, not three minutes and five seconds, three minutes. And when your time is up, please discontinue your conversation. Often time the commissioners will want you to finish. They will ask you, would you please finish what you were saying? So, we ask in deference to everyone to have a fair shot, please keep it to three minutes. Thank you so much. We have a chat function for those of you tuning in online. The chat function is not to be used to contact commissioners directly, nor is it to be used to provide testimony. If you want testimony, please register on the chat function and you will be recognized when it is your turn. So, having said that, Director, we'll start off with our first agenda item. Mahalo.

Ms. McLean: Thank you, Chair. We have three public hearing items today. The first is a bill referred to you from me. And this is a proposal to amend Maui County Code, Chapter 19.04 to authorize commercial filming and photography activity in all zoning districts with a film permit, and create a new chapter in Title 5 of the County Code to create a new permit process for commercial filming and photography. Jacky Takakura, our Administrative Planning Officer, will give a brief presentation.

B. PUBLIC HEARINGS

- 1. MICHELE CHOUTEAU MCLEAN, AICP, Planning Director, referring to the Maui Planning Commission a proposed bill to amend Maui County Code Chapter 19.04 to authorize commercial filming and photography activity in all zoning districts with a film permit, and create a new chapter in Title 5 to create a new permit process for commercial filming and photography. (J. Takakura)**

The entire text of the proposed bill for ordinance is available at <https://www.mauicounty.gov/DocumentCenter/View/133292/Draft-bill-for-ordinance-for-commercial-filming-and-photography-activities>

We do have Donne Dawson from the State Film Permit Office or the State Film Office, excuse me, on the call. I know her time is limited, so if the commission would indulge us, I'd like to ask Donne if you're on the call. Do you need to offer your testimony right now or can you wait until after the presentation?

Ms. Donne Dawson: I can wait until after the presentation.

Ms. McLean: Okay, great. It'll be pretty, pretty brief.

Ms. Dawson: Yeah

Ms. McLean: And then we'll get right into testimony after that. Thank you so much. So, we'll turn it over to you, Jacky.

Ms. Jacky Takakura: Good morning, everyone. Can you hear me, Chair and members of the Commission? So, this is my first time to do a presentation in person and remotely so, if you can bear with me for just a moment. Just the way the screens work, I have to minimize this one, then open up my PowerPoint. So, then I'm going to be looking back and forth at this screen and that screen, so just a moment, please.

Okay, so can everyone see this blue and white, okay.

Ms. McLean: Yes, we can. Thanks Jacky.

Ms. Takakura: Okay, and can hear me. Okay, so as the Director had mentioned, this is a bill for ordinance to authorize commercial filming and photography in all zoning districts with a film permit. And the goal of this proposed bill is to create a permitting process for commercial filming and photography on private property.

So, right now, commercial filming and photography is only allowed where commercial and business uses are allowed and not in other zoning districts like residential or agriculture. By having a permitting process, the impacts on the neighbors and on the environment can be mitigated. I jumped a screen.

So, right now as I mentioned, it's only allowed in zoning districts that include business or commercial use or on state property with a State Film Permit or county property with a County Film Permit, so that leaves out private properties. So, the goal of this bill would be to allow a permitting process so that filming could occur on those types of parcels but with certain procedures to minimize impacts and I'll go through those briefly.

Okay, so here's the definition and this is based on feedback from the Maui Film Office and the State Film Office. It's filming and photography for commercial purposes and involves an active crew of three or more people and the use of filming equipment and it's got a list of different types of equipment. And Mahalo to the Maui and State Film Offices for their contributions on this.

This is just a summary of the limitations and the criteria of the film permit. As I mentioned, state properties would still be getting their permits from the State Film Office. County properties would be getting their permits from the County Film Office, but private properties would require a film permit from the county also, and that's the new thing here.

There would be written notice to properties within 500 feet, and that would be required 14 days prior to the start of the filming. And there can't be annoyances or inconveniences to neighbors like traffic or lighting or noise, and parking would have to be on site.

The hours of operations would be proposed for private outdoor. It would be 8:00 a.m. to 9:00 p.m. and private indoor 7:00 a.m. to midnight. And then for county properties it would be determined by the Film Office. Then filming at night would have to comply with state rules for lighting, and that would be to protect endangered or threatened species.

And then the bill also proposes procedures for complaints and enforcement of violations. And as mentioned, some of it is proposed for Title 19, which is the Zoning Code. but the bulk of it is in Title 5, which is the part of the Maui County Code that is for business licenses and regulations. And that makes sense because this is regulations for commercial film and photography. The permit would be issued by the Maui County Film Office, and enforcement would be by the Department of Planning's Zoning Division. So, we would be working together with the Film Office.

So that's it in a nutshell. The commission can recommend approval, they can recommend approval with amendments, recommend denial or defer action if the commission would like to gather more information. So, this is the first of the three public commission public hearings. Tomorrow is Lanai and next week as Molokai, and then we will take this to the County Council. So, I'm going to stop sharing and, but I can come back to any screen as needed. Let's figure out how to stop sharing.

Ms. La Costa: I'm sorry, Jacky. When you first started, they didn't ask you to introduce yourself or promise to tell the truth. Thank you.

Ms. Takakura: Thank you, Chair. My name is Jacky Takakura. I'm with the Zoning Division. I'm the Administrative Planning Officer, and I tell the truth. I told the truth, and I always do.

Ms. La Costa: Mahalo. Appreciate.

Mr. Hopper: Chair? Chair?

Ms. La Costa: Commissioners, have we any clarifying questions for Ms. Takakura. Oh, Mr. Hopper.

Mr. Hopper: Oh, just for these first two items, they're ordinances so you don't have to worry about swearing people in or cross examination questions for the first two items. You still need to take testimony though.

Ms. La Costa: Thank you for your counsel, appreciate. But she tells the truth anyway so that's good. Commissioners, have you any clarifying questions for Ms. Takakura. Commissioner Thompson.

Mr. Thompson: Hi, Jacky. So, right now are there any permits for people? 'Cause I know like in Kaanapali they filed Love Island or something, they have...do they have to get permits?

Ms. Takakura: So, the recent TV shows or shows that we've been seeing, like White Lotus and some of those, they're on properties that are allow filming commercial like hotel, you know, those kind of things can happen in those zoning districts.

Ms. La Costa: Commissioner Freitas.

Mr. Freitas: Thank you Chair. Ms. Takakura, I want to go back to the definition for—

Ms. La Costa: Excuse me, Commissioner Freitas, could you please turn up your volume. Mahalo.

Mr. Freitas: Oh, boy, here we go again. Testing, testing, is that better.

Ms. La Costa: Perfect. Yeah.

Mr. Freitas: Okay, sorry. Ms. Takakura, I want to go to the definition and get some clarification. It's a long sentence that states, for commercial purposes with an active crew of three or more, and then it says, if there is filming equipment such as cameras. Now, I'm trying to understand this so that we can...and to find out if the intent was for smaller, simple filming in someone's backyard doesn't need to go through the permitting. Let's say someone wants to do a filming for, let's say, for a campaign ad. Is that considered commercial? So, I'm going down this definition. What is commercial in this sense? Would a campaign ad be a commercial purpose?

Ms. Takakura: Thank you, Commissioner Freitas. We don't consider campaigns for commercial purposes. That's similar to the sign code, which it's only for commercial signs. This would be similar where it's only for commercial filming.

Mr. Freitas: Okay, can you define commercial filming? Is that for profit? What if I did a documentary in someone's yard that had two cameras and two people speaking and they're doing a documentary? Is that commercial?

Ms. McLean: Commissioner Freitas, this is Director McLean. I'll jump in here. Commercial involves the exchange of money or compensation consideration. So, if it was a non-profit doing its own filming and there was no exchange of money for the people involved, then we wouldn't consider it to be commercial. Any activities—

Mr. Freitas: Well, a lot of times –

Ms. McLean: --so, the examples that you're giving we would go back to the definition every single time. Is it commercial? Are there three or more people on the crew, and are they using this kind of equipment. So, if it's money exchanging hands but there are only two people, then it wouldn't meet the definition. If there's no money exchanging hands and it's three people, then it wouldn't meet the definition. So, we would go back to the definition every time, and the purpose was for these small kinds of things that aren't going to impact neighbors, you know, we don't need to be regulating those, but the larger productions, we do.

Mr. Freitas: Okay. It would be nice if that is said in here in the definition because that...what you just said is a lot clearer than this, because this, this makes any small project...I've done little documentaries and I had to pay the film guy, but we're not making money off the film, it's just

you know, a edited film that we're sharing with no money from the film coming to it, but I had to pay the film guy. So, can you explain the money exchange part.

Ms. McLean: The money would be paying the film crew not whether or not you're making money off of the finished product.

Mr. Freitas: Well, I think this has to be redefined then because there's smaller ones that don't affect the community that would have...would fall into a problem with this definition. And then where it keeps saying, and, and, and, so anything on there, you're screwed. If you have more than three cameras and even if it's a small thing 'cause some you have side, forward, whatever and maybe a drone or whatever, that's three cameras, now you gotta get a permit even though it's kind of a backyard—

Ms. McLean: There's not a, there's not a restriction on the number of cameras, just on the number of crew.

Mr. Freitas: Oh, I'm sorry, three or more people, okay, okay. All right.

Ms. McLean: But we can get into that, if you don't mind, get into that further when the commission gets into discussion.

Mr. Freitas: Okay, all right. Thank you.

Ms. McLean: After testimony.

Ms. La Costa: Does that answer your question, Commissioner Freitas.

Ms. McLean: For now.

Mr. Freitas: For now.

Ms. La Costa: Commissioner Lindsey, did you have a question. Thank you, I'm sorry. Commissioner Lindsey, did you have a question?

Ms. Lindsey: I'm gonna wait until after Commissioner Freitas speaks again the next time.

Ms. La Costa: Thank you. Okay, Carolyn do we have anyone signed up for public testimony?

Ms. McLean: Not for this item.

Ms. La Costa: Not for this one, okay.

Ms. McLean: So, Chair, we do have Donne Dawson from the State Film Office who was going to offer some comments on the bill.

Ms. La Costa: Go ahead, Ms. Dawson.

Ms. Dawson: Aloha mai kakou, mahalo to the Chair and to the Commissioners for giving me this opportunity. To the Planning Director, it's great to see you. I wanted to just encourage all of you to, to look upon this as an opportunity for Maui County to really provide or kind of up the opportunity for the film industry to have a greater economic impact for your county in providing opportunities for productions to film in these places, but in the...while ensuring that the productions are going to be held to a certain standard and are going to not abuse the privilege for being allowed to film in our neighborhoods, in our community.

So, this is not unlike the Memorandums of Agreement that the State Film Office has had in place for 30 some years that regulate filming activity and provide the guidelines, guide posts for that activity for all productions that are coming into our communities and it's critically important for all the reasons that are articulated in this measure that, that there is a regulation and that they do have to go through a film permitting process either at the state level or at the county level and that they are following all the rules.

I would be happy to answer any specific questions that you have about what this might entail, but I just wanted to keep it short and brief to say that I think that this measure provides the proper level of regulation and oversight to ensure that these productions are doing right by, by the neighbors and they're doing the proper outreach and they are following the terms and conditions of their film permits and they're leaving these places better than they find them. And I really don't think it matters in terms of size, you know, as the Planning Director, you know, we're not wanting to regulate the little guys, we're wanting to regulate those that have the greatest level of impact. So, I'm available to answer any questions before I have to jump off, but I just wanted to offer my full support for this measure because I think it's going to be good for your community and of course, for your property owners. Mahalo.

Ms. La Costa: Thank you, Ms. Dawson. Commissioners, have you any clarifying questions for Mr. Dawson? Commissioner Lindsey.

Ms. Lindsey: My concern lies with the exposure of our special private places, then monetizing those for commercial uses, whether it be large productions or smaller influencers. Maui's special places are being lost because of both of those. So, do you have any insight there?

Ms. Dawson: Yes, and that is an excellent concern that I think we all have to keep top of mind. For any production that is coming in here, regardless of who they are. And you know, we're living in an age now social media influencers are a big problem. And you know, we have examples of other islands where, you know, social media influencers were coming in here and, and like on Maui, they, you know, we're trying to soak up all these special places and expose them to the world and that is a really critical concern. Any time a film production comes in here before they are given a permit, before they are even given access to scout a place, we are looking at whether or not that place is a sensitive site, sensitive culturally, sensitive, environmentally, sensitive because a certain community is oversaturated with film production and the neighbors are just like, no, we need a break or it's too much.

So, the only way that we can prohibit this kind of activity and regulate it, as we're talking about, is to impose this kind of a measure and to force the hand of the productions to go through the Film Offices. Because we are the...we're the first line of defense. We are the gatekeepers and

we have a line to all of those community organizations, cultural organizations, environmental organizations to say, and even our state and county agencies to say, no, filming cannot happen here. So, just because you are pushing a measure like this through, this is not an open invitation. It is not saying that, you know, all bets are off and you can do whatever you want, wherever you want. That is absolutely not the case, and this is just another tool in the toolbox to regulate this activity. And it's really critical and critically important because exactly as you've said, our sacred spaces, our special places are, are being gobbled up by, by the outside world and we have to kind of up our game in terms of protection. But the only way we protect is really through regulation, and we've been asked for filming in places as far flung as Kahoolawe, as an example, and places where there are known burial sites, where there are known archaeological features or there are threatened or endangered species, and we've had to say no. And so, I wanted to reassure you that those, those elements are in place with our, especially at the state level, with our decades old film permitting process and I have a close relationship, my office has a close relationship with all of the county film commissioners and Film Offices to help them with the, the background and the experience we have over the years to develop those same kinds of restrictions, regulations, considerations in their own jurisdictions.

Ms. Lindsey: Thank you.

Ms. La Costa: Commissioner Thayer.

Ms. Thayer: Thank you. I have a follow up question. I'm curious what other counties have done in terms of ordinances like this?

Ms. Dawson: Kauai has very strict ordinances, as does Oahu, City County of Honolulu, I, I think that Hawaii Island, under its new administration, is developing stricter guidelines. We did have an example on Hawaii Island of they have a new film commissioner in place who's, who's starting the 16th of this month. We did have an issue with Love Island, was filming there and they were filming on private property and there really was not any restriction on their filming. And it created a considerable issue with the neighbors and there were issues with threatened and endangered species of seabirds in the neighborhood because they were essentially given permission to film, as I understood it, from 6:00 in the morning to two o'clock in the morning. And it was absolute...this is along the Hamakua Coast. It was absolutely detrimental to the environment and to the community members who are...were concerned about what, what that night filming was, was doing to those species. So, I think Hawaii County is going to be adopting similar regulation and restrictive measures. So, this is, this in that regard, you folks are right in line with, with what's happening across the islands.

Ms. Thayer: Thank you, can you...sorry—

Ms. La Costa: Go ahead.

Ms. Thayer: --Can you tell us a little bit of what Kauai has done?

Ms. Dawson: I can't specifically...so, so, let me just say that the artificial coastal light law, as an example, is a state law, but it is up to the counties to enforce. And so, it's kind of like a collaborative thing that we have to work together with the counties. And depending on the

county that you're dealing with and the particular restrictions of that county, some will be stronger enforcement than others. Kauai is known to have some of the strongest environmental protection elements involved in their, in their county, more so than, than other islands. And they've kind of...and during the pandemic, they were the last to really kind of step in and reopen for filming within their county. So, they're very, I don't want to say gun-shy, but they're just very wary and wanting to be protective of, of their community and protective of their, of their environment. And so, I can't be specific, but I can just tell you that their, their err on the side of enforcement, more so than maybe the other counties do.

Ms. Thayer: Thank you.

Ms. La Costa: Commissioners, other questions? Commissioner Lindsey.

Ms. Lindsey: I, I think that influencers kind of are flying under the radar here because they are oftentimes solo, but their exposure, their film is maybe a million people watch it or something. What kind of precautions has anybody done across anywhere to limit that?

Ms. Dawson: That's a really good question. I will say this, yes, it is much easier to regulate them when they're coming in a larger group of them as a, as opposed to flying solo. On Kauai as an example, they have a very active, strong Visitors Bureau. Sue Kanoho heads the Visitors Bureau on Kauai, and she got wind of social media influencers that I think were approaching the Visitors Bureau to, you know, kind of get them to, you know, roll out the red carpet and say, hey, we want to, we want to, you know, come here and, and cover, you know, Kauai, the Island of Kauai, and we want to do all this good for Kauai and, and open it up to tourism as you guys are coming out of the pandemic. And she worked with the mayor, with the with the Film Office to essentially shut them down. And it, and it didn't, it wasn't super popular in terms of the decision because they had already booked hotel rooms, and this is, you know, coming out of the pandemic, and you know, Kauai needed the business, but they had to do the kind of cost-benefit analysis to say this is not a good thing and this is not going to end well for the County of Kauai, so we need to shut it down.

So, I would say first, having strong relationship and I believe Maui County does, strong relationship between your Film Office and your, your Visitors Bureau and the, the...even the tourism organizations to essentially be talking to one another so that when you get wind of, of, and a lot of times it's going to be a social media influencer that has flown in under the radar and they're out kind of, you know, doing their thing and, and being able to kind of put a stop to that. If you have a measure like this that is adopted and is in place and is, is, is law, essentially, you have a tool just like you have a tool within your Film Office to shut down illegal filming. And that, that really is kind of like, the like. I said, we're the gatekeepers, but having that kind of relationship with agencies and organizations in your community so that, you know, the Film Office can be getting phone calls saying, we've got, you know, we've got some, you know, rogue social media influencers that are down in, Ahihi Kinau, just you know, shooting, whatever, and we're concerned about it. So...or even complaints from the public. Anyway, that's, that's what I would offer is, as you know, it's all about talking to one another and being able to shut them down.

Ms. Lindsey: So, there's no specific verbiage that was added. It was just kind of a relationship between the Visitors Bureau and the powers that be.

Ms. Dawson: Yes, you may...and I will say it's, it's, it's kind of, it's a little bit difficult if you were, if you were thinking of maybe adding another definition or something into this measure to thwart that. It's, it's a bit, it's a bit difficult because you could be impacting a lot of the wedding photographers or portrait photographers or, you know, kind of the one, one person film, you know, still, photographers that are out that make their livelihood, you know, and they're residents of Maui County and they're...they make their livelihood from taking, you know, beautiful photos on certain beaches or, or whatnot. But they still have to play by the same rules if they're filming on public property, even if it's a one-person operation, they have to have a film permit. If a social media influencer is...unless they're flying rogue, if they're coming in here and they're filming on state, county or federal property, they have to have permission. They have to have, they have to have a film permit. And if they're filming on private property without permission, they're trespassing.

So, I think that the way it is defined in the measure is, is, is good as a starting point. I think everybody else needs to know and it needs to be communicated, whether on a website, whether on a, you know, press release, that you're going to be putting out that if you're filming on public property, public property, no matter the size or impact of your shoot, you have to have a legal film permit to do so.

Ms. Lindsey: Thank you.

Ms. Dawson: Mm-Hmm.

Ms. Lindsey: That helps

Ms. La Costa: Commissioners, other questions for Ms. Dawson? Commissioner Freitas.

Mr. Freitas: Thank you, Chair. Ms. Dawson, are you speaking on behalf of the State Film Office and the Maui County Film Office?

Ms. Dawson: I am speaking on behalf of the state. I work very closely, I wouldn't presume to speak on behalf of the Maui County Film Office, but I work very closely with Tracy Bennett and, and he, he gleans a lot of...he gets a lot of assistance from me in terms of just how to handle a situation.

Mr. Freitas: Okay, let me ask you a few questions then, let me ask you a few questions, thanks. I know that you mentioned that if someone comes in and there's possibly cultural significance that may be compromised or exposed that we don't want, you folks say, no stop.

Ms. Dawson: Yeah.

Mr. Freitas: Now you have that on state level. So, you have a cultural advisor or two that you go to is that correct or do you decide yourself.

Ms. Dawson: No, we have cultural advisors, depending on what it is. Some things are very clearcut ones like burial sites, for instance.

Mr. Freitas: Okay.

Ms. Dawson: But I just want to say that film permitting is predicated on jurisdiction, so by and large, any kind of cultural or environmental issues are going to be at the state or federal level. They're not going to be necessarily at the county level unless it's, you know, like an archeological feature that's part of a county park or a county whatever. So, it's, it's, it's predicated on jurisdiction.

Mr. Freitas: Okay. One more question. I don't see anything in here that addresses drone usage. So, is that in another document, maybe the state level or higher? What's the deal with drone?

Ms. Dawson: Yes. And thank you for asking that question because at the beginning of this, I thought, I need to bring up drones. Drone usage is...falls under the jurisdiction of the federal aviation. The airspace is FAA, but we do have regulations on drone use within the county, excuse me, within the state agencies, for instance, and it differs between divisions. For instance, DLNR, State Parks, allows it. Division of Boating allows it. But Land Management does not allow it. So, in that case, the, the drone user would have to, obviously, they have to follow all the FAA guidelines and regulations, but they would have to take off and land from private property and have the permission of the private property owner. It's a good point to mention if a drone was to be requested to be used over a neighborhood somewhere where filming is going to be allowed, they have to secure permission from the FAA and permission from, from the state, and the private property owner to take off and fly that drone. And there are restrictions in terms of flying over populated areas, et cetera, et cetera. So, there are restrictions in place for drone use. If you want to restrict drone use completely over any of these, say, residential neighborhood areas that may be approved for filming regardless of the zoning, you may want to articulate that in the measure.

Mr. Freitas: Okay, and my last question for now, who actually goes and asks for the permit? Is it the land...when it's a, when it's a private property? Is it the landowner or the people doing the film or it doesn't matter.

Ms. Dawson: It's the production. And the reason I say that...the reason that is that way is that it is the production that has to provide the requisite insurance. Every film permit requires, I believe it's \$2 million in general liability insurance and a million dollars in automobile insurance, and they have to name, whether it's a state or a depending on whether it's a state or a county permit, they have to name the state all, of its agencies, employees, contractors, et cetera, as additional insured on that film permit. And it is the permit applicant that is the policy holder for the insurance, and that's where the distinction is. So, it is not the property owner. The property owner may have their own level of insurance for approving filming on their private property.

Mr. Freitas: Excellent. Thank you for your answers. That's all for me, Chair. Mahalo.

Ms. La Costa: Thank you, Commissioner Freitas. Commissioners any other questions? Okay, I have one for you, please, Mr. Dawson. You have done an excellent job for the state and thank you so much for all the work you've done all these years and bringing the revenue that you have for from the film industry. What kinds of issues have you encountered either on Oahu or any of the other islands that have not been addressed in this bill? I know that you helped craft it. So, what kinds of things are we perhaps not addressing? Drones was one of my concerns, but also the social influencers, you know, how do you stop people from taking out their phone and doing a Tik Tok?

Ms. Dawson: Yeah, there's not...that's a tough one. It's very difficult to do. You know, people have, people have their, you know, their personal, you know, freedom of expression. And it's a tough one to regulate the individuals, and that's why I say, you know, and there, and I want to just kind of allay everyone's fears, too, to know that by and large, film productions, large and small behave themselves. You don't see people coming in here wanting to just wreak havoc. That is not, I mean, it's probably less than three percent of those that would do that kind of, take that kind of approach because ultimately, they want to be invited back, they want to be welcomed back. And so by and large, they're going to follow the rules, they're going to, they're going to come and seek the proper permits, et cetera. The individuals, it's a tough one. I would say that the biggest concern and I would just use the Maui as an example, and we had some issues with Temptation Island early on in I think it was the third season that Tracy and I had to deal with them. And a lot of it has to do with education and communication, and by education, I mean, educating these producers that they are in a very, very different place than what they may normally be used to in filming and they need to conduct themselves accordingly.

We are in the process of creating what we're calling a Hawaiian Handbook which is a, it's a producers guide to environmental and cultural sensitivities that exist across the pai aina of Hawaii. And I, it's similar to what they have in New Zealand because a lot of times people come into Hawaii and they don't know what they don't know and they don't know the right questions to ask. That is why it's so important for them to consult with the Film Offices so that they can navigate some of these sensitivities. And I think you're going to find that most people want to play by the rules and do the right thing. So, I, I don't have a really good answer for you for the, the little guys that may be, you know, just wanting to do their own thing and not really caring.

But I will say this the film industry is, is a highly regulated industry, and it is a whole lot easier to control film productions that are going through our process than it is to control random tourists who are coming in here and doing whatever, wherever and pulling out their phones in places where they shouldn't be filming or just being abusive to, to, to the land and to the community. So, that's why the more tools we can give the film industry to regulate this activity, the better off we're going to be. And then we just have to deal with kind of the, the, the bad actors, no pun intended on an individual basis.

Ms. La Costa: Do any of the other counties have any restrictions on either drones or social media?

Ms. Dawson: I do not...City and County of Honolulu does not allow drones in any...over any city properties or taking off from any city properties. There have been situations that have been very carefully planned, like, say, that, you know, drone footage of the Honolulu Marathon or

something like that where they just make sure that the drone is taking off and landing from either state property or private property, and that they...or are making sure they're following all of the, the FAA's drone guidelines for not filming over concentrated groups of people, et cetera. So, they probably have the strictest drone regulation of any county. And like I said, the, the state DLNR has, depending on the division, has differing opinions. But drone activity is very, very regulated. For instance, if someone is applying for drone use and a State Film Permit, they have to fill out a drone permit, which is separate, and it takes at least 14 days to process that permit and get the proper permissions for it. And whereas a state permit takes on average, anywhere from two to five days, business days, but we require that they give us at least five business days' notice for a State Film Permit, and I believe it's the same for Maui County.

Ms. La Costa: I thank you so much for your informative discussion. We have one member of the public who would like to testify. Mr. Tom Croly.

Ms. Dawson: Can I jump off?

Ms. La Costa: Yes.

Ms. Dawson: I'm gonna jump off. Thank you so much everyone, aloha.

Ms. McLean: Thank you so much, Donne.

Ms. La Costa: Okay, thank you, appreciate very much. Mr. Croly, if you are with us, will you please unmute yourself, video and/or audio.

Mr. Tom Croly: Aloha Commission. Tom Croly with questions on my own behalf as opposed to testimony because there was two, two instances where maybe this could have affected me. One was, one of the large productions that happened here actually scouted my property to be used for a scene in their, in their movie and they chose...they did not choose my property so it never happened. But I didn't know as a property owner are they allowed to do this or not? So that's, that's kind of a question for the Planning Department as to an individual property if, if a big production comes to them and says, we'd like to use your property for this. What are the obligations of that individual property owner. It sounded like in the discussion that you just had that the, the production staff would apply for this permit. But, but from a land use purpose, am I allowed to use my property in this, in this use provided they do the necessary work up front?

The other was someone who came to me and said, Tom, am I allowed to rent my property to this film folks who are going to do, I think it was that Paradise Island one or whatever. And I had advised the guy this would be a very bad idea because the guy eventually wanted to get a short-term rental permit, which he did not have at the time. And I told him that I did not think that this would be a good idea. But it brings up the question, can any landowner rent their land to someone for this purpose for less than 180 days or is that a violation of, of our zoning laws, I don't know.

So, I'm just trying to understand this, this, this bill a little bit better. It appears that the, that the Film Office will handle the administration of this, but from the reason it's before the planning commission right now is how it affects our land use laws. And those are two big questions, an

individual like a shoot that might just be one day on their property are they allowed to do that by, by zoning?

And then there is one thing in here that says two complaints submitted to the Maui Film Office from owners or residents of different properties within 500 feet shall result in suspension. So, again, if there's noise happening on a given night, is there a possibility that, that it's going to be shut down on that given night? How quickly would the Film Office respond to complaints by neighbors? I know that from the Planning Department standpoint, they wouldn't really be able to respond very quickly to something like this. So, there's a number of questions that, that, that I bring up here, and I ask the, the commission to just think about that and maybe have some discussion about that in their comments. Thank you, Chair.

Ms. La Costa: Thank you, Mr. Croly. Commissioners, have you any questions for Mr. Croly? I have a question for you, please, Tom. When you talk about rent land, are you...you said someone asked you about a rental of personal property or you're talking about someone using the land, not using a home and occupying it, just showing up on the land and paying for the use of the land?

Mr. Croly: Well, that might be one question, but the one that was, the one that they asked me about was a large Launiupoko property and one of those, those filming things like Paradise Island, where the people would be staying there, wanted to use that property for, for this use. And I don't even know if...whether they got a film permit or not, that's one thing, but whether the zoning, the Agricultural zoning would allow that property to be used in the way that they were proposing, and how the Planning Department might review such an application or whether the Planning Department would even review such an application. That's one of the questions that came up.

My advice to that particular fellow was, I know that you're going to create an impact to your neighbors that they're not going to be happy about. And, and I told him, do not, do not rent to these folks, and they didn't. But, but that was my, my point was somebody wants to rent your home, maybe it's a quarter-acre home, maybe it's a five-acre home and do some type of film production, how, how...what's the impact on zoning laws in that regard?

Ms. La Costa: Thankfully, we have the master of zoning laws sitting with us, so I will have Director McLean answer your questions.

Mr. Croly: Thank you. Chair.

Ms. La Costa: She didn't know I was going to ask that.

Ms. McLean: I think that we were remiss in introducing this item with not giving some of the background. The idea for this started several years ago, when there was an MTV, MTV production in Haiku, and you probably read about it in the paper. They had helicopters, they had all kinds of things, they were building big structures, and the neighbors were very upset. We got complaints about it. We cited the production. So, then we got into a little bit of head-to-head with the Film Office because the Film Office was involved, even though right now there's not a permit process for filming on private property. Production companies always contact the

Film Office anyway, and the Film Office assists them. And it's just been this, I don't even want to say gray area, just an area that we've never paid attention to before, where these activities have gone on without regard for the zoning. So, when they're in hotels, where commercial activity is allowed, it's not an issue, but more and more we're seeing these on private property and we don't have a permit process for it. Well, the permit process would be a conditional permit that takes months, if not longer, to do it. And the Film Office tells us, hey, these production companies call us and say, we want to start filming there next week or next month, like their turnaround is super-fast.

And so, we were back and forth with the Film Office on, well, how do we allow this, but regulate it at the same time? So, we introduced a bill several years ago that would just outright allow it in any zoning district subject to a handful of conditions that went through the commissions and to the Council and the Council said, we want to see a permit and we're like, well, we're not going to start regulating filming. You know, the Planning Department is not going to regulate filming, we regulate land. So, we went back to the drawing board with the film permit to craft this bill.

So, the Launiupoko activities, Mr. Croly is correct it wouldn't have been allowed. The people who approached him to do it on his property wouldn't have been allowed. The property owners don't necessarily need to know that. If they do, that's fine, if they don't, it's not a problem because the production company knows to contact the local Film Office, and so, through that, they would say, oh, you can do it, but you need to do this permit first is what we're proposing.

So, the whole idea, and this ties back to Commissioner Freitas' original questions is to regulate those larger productions that can have impacts. We're not saying the bill's perfect. You know, that's why we go through this process to tweak it and refine it, but not let smaller productions, documentaries, et cetera and certainly, you know, home movies and things like that to leave them out of this regulation.

We didn't address drones, and I agree that needs to be addressed. We didn't address social media influencers. I don't know how to address that one, but we can talk about it.

So, in terms of Mr. Croly's about shutting down a production, the...so again, what we've defined here is that there's a contact person who is accountable 24-7 to the neighbors. They would complain to that person and to the Film Office, and it would be the Film Office's responsibility to suspend production until those complaints can be resolved. It wouldn't be us. The only time we would get involved is if conditions are being violated or a permit wasn't obtained at all, and the Film Office would let us know that, and then we could enforce because they don't have an enforcement mechanism. So, the way the bill is, is designed is to sort of tie the two together, define...to define the land use and connect it to the permit. So, they take care of the permitting, and as long as everything goes smoothly, we don't need to be involved. But if there are problems, then they let us know and we can...(inaudible)...

Ms. La Costa: Mr. Croly, does that answer your question or do those remarks answer your questions?

Mr. Croly: Sure. Again, I'm not here to ask questions, but, but just to raise the concerns for the for the commission to make their own comments on it. But the...I, I guess I'm glad to know that

I did the right thing advising the guy in Launiupoko that he shouldn't do this. I still kind of left me questioning whether the legitimate filming of whatever the White Lotus one that came and scouted my place, whether it would have been okay for them to use my permitted bed and breakfast for this use. I'm not, I'm not 100 percent sure from a zoning standpoint whether that was okay or not, but...and how someone would know that like, like whether if they approached me because they found my property as a, as a vacation rental and said, okay, we want to rent your place for a day or two days or however long to shoot this scene, if, if it was a nonvacation rental property, would they be, be allowed to do that from a zoning perspective?

Mr. Hopper: Chair?

Ms. La Costa: Yes, sir, Mr. Hopper. Just a clarification on process. Generally, testifiers get three minutes. Obviously, you can have follow-up questions. If testifiers have questions, they can certainly state them during the questioning. But at that point, it's up to the commissioners if they want to ask those questions, generally during deliberation rather than as part of the public testimony. You can imagine if, if that happened repeatedly, the testimony portion could, could, could really have issues. So, just in, in the future, you know, certainly if you've got commissioner, if there's questions testifiers raised, you want to ask, I think you could ask them during departmental comments generally and, and, you know, go through the three minutes of testimony. If you have follow-up questions for the testifier, that's fine. But as far as asking those questions to the Department, generally that's done during the after-testimony portion of the meeting just as a clarification.

Ms. La Costa: Thank you, Mr. Hooper. Appreciate that. ...(inaudible)...

Ms. McLean: ...(inaudible)...If you want me to answer, you ask the question.

Ms. La Costa: I would actually like to have the Director answer Mr. Croly's question. Thank you.

Ms. McLean: In the situation you described, the...that filming activity at your bed and breakfast would need a film permit. It doesn't matter that it's a permitted bed and breakfast or short-term rental home. The bed and breakfast and short-term rental home permits allow the short-term occupancy of the structure. They don't allow commercial filming.

Ms. La Costa: Thank you, Director. And I appreciate Mr. Hopper, your comments. It certainly has helped clarification for me. Do we have anyone else who is interested in testifying on this item? I don't see anyone signed up in the chat room. Going once, going twice, public testimony is now closed. Director.

Ms. McLean: Chair at this time, it would be...now would be the time for more commission discussion, although we, we did have some really good discussion with State Film Commissioner Donne Dawson. I've made a couple of notes to clarify that production companies would be the applicant, to add another condition about requiring insurance, and then with Commissioner Freitas' question about the definition, I think the definition could be more clear by breaking it up into pieces. So, it could read, commercial filming and photography means all of the following: a. filming in photography for commercial properties where the crew

is paid; b. involves an active crew of three or more people; and c. the use of filming equipment such as cameras, et cetera. Any filming or photography that do not meet all of these criteria are not considered commercial filming or photography. So, I think that might clarify it. But if you want to change any of those terms, certainly you can. But to separate it out that it needs to be commercial, you need to have three or more people, and you need to be using that equipment, and if you don't meet all three of those, then it's not considered commercial filming and doesn't require the permit.

Ms. La Costa: Is there anything in there about compensation?

Ms. McLean: Yeah, that commercial purpose, commercial purposes where the crew was paid?

Ms. La Costa: Okay.

Ms. McLean: So, we can refine that a little bit more as we get into discussion, but I think that might. I'm trying to address Commissioner Freitas' concerns with how the definition is applied.

Ms. La Costa: Thank you, Director. Commissioners? Mr. Freitas.

Mr. Freitas: Thank you, Chair. That sounds great, Director. Exactly what I was trying to get at. Is there any...I know you said, you know, you don't want the Planning Department to get involved with approving a lot of these, but I think the aerial part is an important part that if they feel they got it without saying something about the drone or a helicopter should be added somewhere where it may say either no aerial video or filming and/or if they do, they got to, they got to get a permit. I don't know how to add it in there. Otherwise, people are going to look at it, oh, I meet everything. They don't say anything about the aerial, so I'm going to do it. So, just to be safe, is it okay to add a line in there, any aerial video will need approval, something simple like that?

Ms. McLean: Well, again, these are your recommendations to the County Council and you could recommend that drones be prohibited. And if you wanted to do that, then that's the recommendation we would put forward. Or we could say that the three cameras or, excuse me, not three cameras, when we refer to cameras that that would include drones, and that any drone use must comply with all applicable requirements and restrictions.

Mr. Freitas: Director, I would rather it be allowed, but be specific. You know, if you have a small half-acre lot and you're trying to do a drone over that, your neighbors are gonna...property is gonna be filmed. But if you have a five-acre lot, you might be able to do a drone and only catch your property. So, it's kind of something where you got to know what the property landscape and, and if it is private enough that they can, they can operate this drone in that private property's domain, I guess.

Ms. McLean: Okay. So, what we can do is in the definition where refers to cameras we can say, including drones, we can see that drone usage must comply with all applicable requirements, and then one of the permit conditions can be that they have to provide proof of their drone permits. And I'm not familiar with what those are, but we'll make, but we can make that a permit requirement.

Mr. Freitas: Sounds good. Thank you.

Ms. La Costa: If I might Director, in the portion where it talks about applicable laws perhaps put state, federal and county because FAA is federal.

Ms. McLean: Okay.

Ms. La Costa: Okay, thank you. Commissioner Hipolito.

Mr. Hipolito: Thank you, Chair. I support Commissioner Freitas, and I like how he defined the word, aerals. And about, mentioned about helicopters and drones. I feel in supporting Commissioner Freitas that maybe the words, aerals and not just specific to drones, but to include any aerals.

Ms. McLean: Okay.

Ms. La Costa: Thank you, Commissioner Hipolito.

Mr. Hopper: Chair?

Ms. La Costa: Yes sir.

Mr. Hopper: We may be getting into FAA jurisdiction in that case, in which case the county's preempted from any regulation. If you're dealing with just a drone on the private property, maybe that's something we can deal with. But if you're talking about, you know, photography from a, from a helicopter or airplane, we may be getting into issues that, that could be preempted. So, I'd maybe have a little concern about saying, all aerals without, you know, further looking into what FAA regulations may, may apply. If that's a problem you're having with helicopter and airplane photography, then we could regulate that, I suppose. But if drones is the principal one, I'd recommend maybe looking at that. We may even have some FAA issues with that as well as far as preemption, because there might be already FAA rules there. But I think having that in there, as far as considering that a form of photography, because I could see that being launched from that, you know, someone's property and things like that, that's I think, probably closer to the realm of our regulation. But to say all aerals, I'm not comfortable right now that that wouldn't be potentially preempted by federal law.

Ms. La Costa: So, even if the verbiage in there is about taking into consideration all federal, state and county laws, when you're discussing the aerals, do you think that that will---

Mr. Hopper: You'd still have to consider that, but I'm saying that if the county is going to say, you need a permit to do this activity, we may not be able to say that if it's within the federal government's jurisdiction. There's something called preemption that would generally say, no, federal law applies in that, in that case for, for things like that. That's a little different than saying you have to also follow those laws. It might be an area the county might not be able to regulate. Again, I didn't plan on this film bill becoming something about, you know, airplane or helicopter photography issues, so, that's not something that I think we have looked at before this. But I

know that's a potential issue because we've dealt with it, for example, for lighting ordinances and, and other zoning ordinances and things like that.

Ms. La Costa: Commissioner Freitas.

Mr. Freitas: Thank you, Chair. So, Mr. Hopper, I think if we go back to the beginning of this agenda item it was mentioned the reason we're doing it was because of filming that had a helicopter. So, I think this is a very important part of us addressing this. Now also, I'd like to say that 10, 15 years ago, nobody knew what a drone was, and I think that when we create something like this, we need to use verbiage that anything falls within that 10, 15, 20 years from now will be covered. So, by saying, aerial, I agree with Mr. Hipolito, let's use terms that as technology changes that it still will apply to another gadget that may come up in the next ten years. Now we can say, hey, maybe anything over a thousand feet is FAA then we say what the ceiling height for a drone should be. That's my thoughts. Thank you.

Ms. La Costa: Thank you, Commissioner Freitas. Commissioner Lindsey.

Ms. Lindsey: I think in addition to that aerials and like helicopter photography, a lot of our special places are accessible by or visible through aerial photography, so I think addressing it here would be beneficial for us also.

Ms. La Costa: Thank you. So, are we going to forward this with our recommendations and it will come back to us after it's been honed by other islands or how, how is this process because we haven't addressed this before? Thank you.

Ms. McLean: Yeah, the process works is we go to all three planning commissions and get your recommendations and put them all together as best we can and create a revised bill that incorporates all your comments. And Mr. Hopper will have to sign that bill. Then if there is anything, let's say we put something, you know, out of bounds in the bill, then Corp. Counsel would pull that out, and in our transmittal to the Council, we would say, you know, the Maui Planning Commission wanted to address helicopter filming, but it was not included in the bill because that's out of our jurisdiction or something like that so that they would have the full picture. Plus, they also get the minutes to the meeting.

Ms. La Costa: Okay.

Ms. McLean: So, they can review all the, all the details of the discussion.

Mr. Thompson: Chair, can we put it in that just has that with the exception of where it's in conflict with the federal law? So, we make our own rules and says, except for when this is a contrary to FAA rules. One line.

Ms. La Costa: Thank you. Excellent point.

Ms. McLean: We can give that a try. We can work with Mr. Hopper on language when we're finalizing the, the bill to send to the Council.

Ms. La Costa: Thank you, Director. So, at this juncture, I believe that by consensus, we will pass this along to the other planning commission versus an actual motion?

Ms. McLean: Oh, Commissioner Lindsey has her hand. I'm not sure if, if the commission is finished with questions.

Ms. La Costa: I'm sorry I didn't see you, Commissioner Lindsey. Thank you, Director. Go ahead, please.

Ms. Lindsey: I think influencers also need to be addressed somehow. I'm not sure how that will, how we can do that. I'm wondering if we can somehow limit it so that Maui County residents can do it. I don't know. It does need to be addressed.

Ms. La Costa: Commissioner Thayer.

Ms. Thayer: Thank you. I would agree with that. 'Cause, so, just looking at the definition of it being three or more people on a film crew like a lot of, I think, influencers work on their own or as teams of two. And so, they would just automatically not be subject to this rule. And I know we're trying to strike a balance between just small, tiny productions and like giant productions, but they're all filming and, yeah, and I guess that's a question to all of us to how to figure this out, but to address that because it is, I think, a growing issue that is really hard to get a hold on. And this seems like we have a way to do it here, but it's just figuring out where that balancing point is. And I guess another thing like and, is that, influencer, a commercial enterprise, which they are in...by virtue of what they are, they are commercial like...

Ms. McLean: I know they, they don't get...nobody pays them to do their video of them at Twin Falls. Nobody pays to buy the video. They just post it. But then they get, you know, advertisement. They get whatever. So, in an indirect way, it is. I don't...I'm...it's a challenge to figure out how to cover that with this bill. If...so, back to what Donne Dawson was saying, are the, the areas that you're concerned about, is it mostly county or state or federal land or is it private property? Because if it's county, state or federal land, it kind of falls...not, I shouldn't say outside this, but that's something we could pursue separately with the County Film Office and the State Film Office. If it's private property, we should get into it in this bill. So, I'm not sure what areas you're most concerned about if it's private land or if it's public land, 'cause that might be a way to distinguish.

Ms. La Costa: Commissioner Lindsey.

Ms. Lindsey: I would say both examples of private property who where have been special places in the past is Twin Falls, Venus Pond is another one that was...lots of people have gone there because of tips from people, and there are many other places. I'm wondering if you could do it by either number of followers or views or people who are not residents of Maui County. Anyone who is not a resident of Maui County needs to get a permit for like if they're an in...if they're making any money on social media like something like that. Because I feel that the people of Maui County have a like an inner relationship with our place that they want to keep it how it is and not, you know, share it too much with the world. I don't know if I'm getting too, too in my head about this, but...

Ms. McLean: If I could ask Mr. Hopper for some feedback on those suggestions. I don't know if at some point we're crossing a First Amendment line. I don't know about narrowing it to, to residents. I totally understand the sentiment. I just know there are limitations to what we're able to do.

Mr. Hopper: I think I'd advise on focusing on the land use aspect of it. I mean, this isn't...it's going to you as planning commission to deal with the land use issue. So, I think that, that issues like how many people are physically on site, the impacts as far as traffic and noise while filming are the key issues there. Again, if it's federal or state property, generally it's up to the governing, you know, whoever has the authority governing that area to determine what activities can, can happen there. If it's federal or state, that may be a little bit limited within our jurisdiction. If it's county, well, it's less of a land use issue and more of what does the County Film Office want to allow on county property, if anything. If it's private property, then I think this is where this type of land use would, would, I think, be appropriate. But I don't think that land use would, would focus on how many followers someone has or things like that on social media. I think they would deal with the impacts to the land as far as how many people are there, the things that it sounds like spurred this, which would be the extra traffic, having a large crew, things like that, that would similarly be a problem for, you know, other types of land uses that you may have there for, for large, you know, sort of commercial gatherings and things like that. Because again, this is a, the County of Maui has limited authority to enact laws. One of the areas where it has pretty broad authority to enact laws is in zoning and land use. And so, to the extent this has land use impacts, I would focus on private property and focus on the impacts to the property. I don't, I don't think a resident only distinction there would, would be justifiable. It would be an impact, I think, based, based issue would be where I would advise focusing on.

Ms. La Costa: Thank you, Mr. Hopper. I...another a comment that I was looking at was the enforcement. You slap someone's hand and say, sorry, you can't have a permit. But I think that if a monetary fine were attached to it, I think people would pay more attention to if you hit people's pocketbooks, they often go, oh, they don't want to spend that money on a fine. So, that is a comment that I have for the Director, and as far as enforcement. Commissioner Greig.

Mr. Greig: Kind of following the same question. What are the repercussions if someone violates this or anything that is put in place?

Ms. McLean: Well, there's the initial suspension of the permit if there are complaints. Then in the enforcement section, it says that any violation of a permit condition or operating without a permit could be enforced by the Planning Department. And so, our typical enforcement is to issue a Notice of Warning, which identifies the alleged violation and gives them a specific amount of time to stop. If it's a use, then we typically ask them to stop immediately, and then if we find they don't stop, then we follow up with a Notice of Violation that imposes an initial fine and daily fines until the violation is cured. And that's what we did with the MTV production in Haiku. They continued on, and that was for them the cost of doing business. But we cited them every day as they continued to film.

Mr. Greig: That citation, was it a flat rate or is it based on a percentage for each day? I mean, I know you saying every day there's a, you know, the fine continues, but if it exceeds a certain period of time, does that increase, you know, could it increase by a percentage?

Ms. McLean: The County Charter imposes limits on what the fines can be. That was amended a few years ago to increase the fines for illegal vacation rentals. I believe the Charter Commission is putting forward an amendment to remove the limit and to allow fines to be limited by ordinance instead of by the Charter. But for now, we're limited the maximum of \$1,000 initial fine and \$1,000 a day for zoning violations. Is that correct, Jacky? Can you confirm those amounts?

Ms. Takakura: Yes, that is correct.

Ms. McLean: Okay.

Mr. Greig: All right. And I guess the reason why I asked if it's basically later on down the line if it to be based on a percentage on top of the daily fine because a thousand dollars a day, is sometimes a drop in a bucket depending on, you know, what they're filming and stuff, and the repercussions and the annoyance of the noise, you know, noise decibel of a helicopter flying around—

Ms. McLean: Right.

Mr. Greig: --and just the neighborhoods itself, and the repercussions, you know. Is there anything—

Ms. McLean: So, if the Charter amendment passes and that, that ceiling gets removed, then fines can be established by ordinance and different fines could be established for different kinds of violations or the Department could just have greater discretion on how much to cite. But for now, we're limited to a thousand initial, and a thousand daily for zoning violation.

Mr. Greig: And just one more crazy question, is there any funding for...any type of financial compensation for the neighbors within that 500-foot radius for the inconvenience of that? Just the question.

Ms. McLean: That would be up to the film production company. I know that with the Haiku situation, they gave, what I understand were extremely generous gift baskets to all of the property owners. I know the owner of the property was well compensated, but I don't know if there was cash compensation to the neighbors. I just don't know.

Mr. Greig: Okay, thank you.

Ms. La Costa: Thank you. Commissioner Thayer.

Ms. Thayer: Thank you. I have a question on the enforcement section since you brought it up. It says, the County Film Office shall retain records of any permit violations and no property owner who has been found to be in violation of permit requirements may obtain a film permit.

But I thought we established that it's the production crew and not the property owner that's supposed to get the permit. So, that should be the film or photographer crew and not the property owner.

Ms. McLean: The...so, this ties the two together. The...we should reword that to make it specific to the property rather than the property owner, because when we conduct enforcement, it's against the property owner. So, if a property owner says, okay, MTV, you can come and film here, they got a film permit, but then they violate or let's say they don't get a film permit. We cite the owner. So, then it's up to the owner and their relationship with the production company. But that needs to be reworded so that the, the property would not be able to be permitted for film use in the future, rather than the, than the owner obtaining a permit.

Ms. Thayer: Okay, but it's still the production company that's the permit holder.

Ms. McLean: Correct.

Ms. Thayer: Okay. I guess I have another question.

Ms. La Costa: Go ahead.

Ms. Thayer: On the new section, 19.04.026, Item D, that the activity must not involve any change in use unless such change is lawful or permitted. So, that change in use can be anything from like, like what Mr. Croly brought up about renting out a house to a crew or renting out a property to a crew could be a change in use or building whatever structures could be a change in use. So, like the whole gamut would be subject to this item.

Ms. McLean: Correct.

Ms. Thayer: Okay. So, if they were like filming on a shoreline property and they needed to erect whatever structures for it, they would have to go through SMA?

Ms. McLean: Correct.

Ms. Thayer: Okay.

Ms. McLean: Yeah, that was...those are some of the complaints that we've heard in past cases that they're building all sorts of stuff without building permits, yeah.

Ms. Thayer: Okay. And then, sorry, can you clarify the situation if, you know, someone's got a property that they don't utilize, that they would rent out to a film crew, would they need to go for any permits or like land use permits for that? I guess it depends on the zoning district?

Ms. McLean: For the film crew to stay there?

Ms. Thayer: Yeah, yeah.

Ms. McLean: Actually, that's addressed in the next bill that you have before you.

Ms. Thayer: Yeah, yeah, I know, I was thinking about this looking back and forth like, there's a lot that could be tied together here.

Ms. McLean: Yeah.

Ms. Thayer: Yes. So, I guess that's up to us if we put that language to address that in one or the other of these ordinances.

Ms. McLean: Right, right.

Ms. Thayer: Okay, like, for example, we could put language in our second one, just like there is exception for a medical health care personnel. There could be provision for film crew.

Ms. La Costa: Film crew.

Ms. McLean: There could be. I mean, there is...don't want to get ahead of ourselves, but there is also, and this has always been in the Code, employees who receive their room and board as part of their compensation while they're working.

Ms. Thayer: Okay.

Ms. McLean: So, if the production company pays for their lodging as part of their compensation for their work, then they would be covered.

Ms. Thayer: Okay, okay.

Ms. McLean: Which is just a distinction from your typical visitor.

Ms. Thayer: Yeah, okay. Thank you.

Ms. La Costa: Thank you, Commissioner Thayer.

Mr. Thompson: Would that be a non-short-term property?

Ms. McLean: Yes.

Ms. La Costa: I am so lucky to be surrounded by such intelligent commissioners. Thank you for your great questions.

Ms. Thayer: I do have another question.

Ms. La Costa: Go ahead Commissioner Thayer.

Ms. Thayer: About...so, the permit itself, like the Film Office would set like what questions the permit application asks, who it is reviewed by, what is the review criteria?

Ms. McLean: Well, the bill already lists—

Ms. Thayer: The conditions?

Ms. McLean: --a handful of conditions. We discussed adding a condition that they have insurance. In your packet is the Film Permit Handbook from the county that also lists 11 conditions. So, those would also apply and their code of conduct. But if there's anything that you don't feel is covered in these, then then it can be added to the bill as another condition.

Ms. Thayer: Okay. I have a question, sorry. On the written notice, providing the written notice shall be provided in writing no less than 14 days prior to the initiation of the activity. So, does that mean it like has to be mailed at 14 days or like the neighbors should receive that notice within 14 days? Because like, I'm just thinking if it's mailed at the 14-day point, then they might not get it until like a week before, which leaves very little time to do anything.

Ms. McLean: You can make a clarification.

Ms. Thayer: Okay, okay.

Ms. La Costa: Go ahead if you'd like to.

Ms. Thayer: Yeah, like I would say, to me, 30 days is probably better 'cause like I say, like two weeks if it's, you know, a working person that receives this thing, that two weeks might not be sufficient time to wrap your head around the situation and figure out what you want to do about it. That I feel like a month would be more reasonable to give neighbors notice.

Ms. McLean: I know that the Film Permit Office is concerned or the Film Office is concerned with like their tight timelines.

Ms. Thayer: Yeah.

Ms. McLean: But these are your recommendations to the Council, so if that's what you want to recommend, then we will forward your recommendation.

Ms. Thayer: Okay. Put that out for discussion.

Ms. La Costa: Sure. And that's what we're here for is to help craft this bill to make it how we want it currently. And again, my comment on the enforcement I would like to add a minimum of \$1,000 for a fine for properties that are in violation.

Ms. McLean: Okay.

Ms. La Costa: Thank you.

Mr. Hopper: Chair?

Ms. La Costa: Yes sir, Mr. Hopper.

Mr. Hopper: I don't...we've had issues. Maybe it's not as big of a deal with the thousand dollars, but a mandatory minimum fine if the, if the ordinance specifies or the Code specifies a range establishing a mandatory minimum in all cases could potentially be problematic if the fine range is up to a thousand dollars. That's sort of taking any sort of discretion away from the enforcement authority to establish a range based on the severity of the violation. So, I don't know if I'd necessarily recommend that. I guess you could recommend that 'cause you can recommend anything you like, but normally that's going to be up to the, up to the Director in a given case to look at the nature of the violation and see if it would justify the maximum fine possible. I suppose you could make it as your recommendation but that does potentially create issues as far as making the maximum be that in every single case. I just needed to advise on that.

Ms. La Costa: I actually wanted to have that specific amount so that people knew that that is actually what they'd be looking at instead of using discretion and I certainly trust Director McLean, but if people know that it's gonna hit them in the wallet, and a thousand dollars a day is nothing for film crews, so I wanted to put that in black and white so they would know what they're looking at if anyone violates it. So, that's my recommendation, and again, it's a recommendation and the Council can do with it, whatever they want, so...Commissioners, anything else? Because we have had this bill marked up, edited, changed, at this point, let's do by consensus to move forward the recommendations that we have all made. We're going to have the Director go through each of them. Thank you.

Ms. McLean: Thank you, Chair. On the first page, the definition of commercial filming and photography would be edited to read, commercial filming and photography means all of the following: a. filming in photography for commercial purposes where the crew is paid; b. activity that involves an active crew of three or more people; and c. involves the use of filming equipment such as cameras, including drones or aials, sound and...sound and lighting equipment, electrical power generators, et cetera. Any filming and photography that do not meet all three of these criteria are not considered commercial filming or photography. Any aerial or drone usage must comply with all applicable federal, state and county requirements and restrictions as allowed by law.

Then, on Page 2, under purpose and intent, the purpose and intent of this chapter is to allow permits to be issued to production companies for commercial filming and photography.

Then on Page 3, under the conditions: a. change 14 days to 30 days; add another condition of proof of applicable approvals for any drone usage. We'll need to come up with better wording for that. And then adding another condition requiring insurance. I believe the state film commissioner recommended \$2 million. And lastly, under enforcement, on Page 4, that no property rather than property owner who has been found to be in violation ...(inaudible)...obtain a film permit and establishing a minimum fine of \$1,000 daily and initial for violations.

Ms. La Costa: Thank you, Director. So, one last pass, anyone have any other changes to this before we move on it? Mr. Hopper, do we need a motion here or is consensus adequate?

Mr. Hopper: If there's actually unanimous consent, you could say, if there's no objection, we'll have those forwarded, as are our comments and recommendations on the on the proposed legislation. You could do that. Normally we have a motion and vote, but if everyone's in agreement, I suppose you could do it by unanimous consent.

Ms. La Costa: Well, then we'll do a motion and vote to keep it clean. May I have a motion please from commissioners? Commissioner Thompson.

Mr. Thompson: I'd like to propose a motion to forward our comments to the County Council as, as written.

Ms. La Costa: And may I have second please? Thank you, Commissioner Hipolito. It's been moved and seconded to forward the comments as stated to the County Council. Any further discussion, Mr. Thompson? No? Mr. Hipolito? Any further discussion?

Mr. Hipolito: No discussion.

Ms. La Costa: Thank you, then we'll do a roll call vote.

Ms. McLean: Commissioner Freitas.

Mr. Freitas: Aye

Ms. McLean: Commissioner Thompson.

Mr. Thompson: Aye.

Ms. McLean: Commissioner Hipolito.

Mr. Hipolito: Aye.

Ms. McLean: Commissioner Lindsey.

Ms. Lindsey: Aye.

Ms. McLean: Commissioner Thayer.

Ms. Thayer: Aye.

Ms. McLean: Commissioner Greig.

Mr. Greig: Aye.

Ms. McLean: And Chair La Costa.

Ms. La Costa: Aye.

Ms. McLean: Did I miss anybody?

Ms. La Costa: No.

Ms. McLean: Chair, that's eight ayes, no noes. Commissioner, Vice-Chair Pali excused. Seven ayes, excuse me.

Ms. La Costa: Thank you, Director.

It was moved by Mr. Thompson, seconded by Mr. Hipolito, then

VOTED: To Forward to the County Council the Commission's Comments and Recommendations on the Proposed Bill, as Discussed by the Commission.
(Assenting – K. Freitas, D. Thompson, M. Hipolito, A. Lindsey, K. Thayer, W. Greig, P D. La Costa)
(Excused – K. Pali)

Ms. La Costa: At this juncture, lets take a short break and I know we have people in the gallery, thank you again for your patience. So, we'll take, oh about seven-minute break so we can stretch our legs and use the facilities, et cetera. Thank you all.

A recess was called at approximately 10:37 a.m., and the meeting was reconvened at approximately 10:47 a.m.

Ms. La Costa: I'd like to reconvene the Maui County Planning Commission meeting of June 14, 2022. Because we have folks in the gallery and online waiting to testify, we have moved Item 2 to 3 and we will move up Item 3. Carolee Higashino and White Orchid Wedding. So, Director, please.

Ms. McLean: Thank you, Chair. This is a request for a Conditional Permit and a State Land Use Commission Special Permit in order to operate commercial weddings and special events in the County R-3, Residential District and State Rural District located at 7000 Makena Road in Kihei on a portion of 0.8-acre parcel which is identified as TMK: 2-1-006: 011. Jared Burkett is the project planner, but I think it's safe to assume that we're going to go right into the applicant's presentation since they're up on the screen. But I don't know if Jared wanted to have any...wanted to provide any introductory remarks before we move to the applicant's presentation. Jared.

- 3. CAROLEE HIGASHINO, requesting a Conditional Permit and a State Land Use Commission Special Permit in order to operate commercial weddings and special events in the County R-3 Residential District and State Rural District, located at 7000 Makena Road, Kihei, Island of Maui, on a portion of a 0.8-acre parcel, TMK: (2) 2-1-006:011. (CP 2021/0001) (SUP2 2021/0007) (J. Burkett)**

Mr. Jared Burkett: Good morning, Commissioners. My name is Jared Burkett, I am the staff planner for the Department of Planning. So, the applicant has been using this leased portion of the parcel located at 7000 Makena Road for the past 25 years. The applicant started...stopped operating for these events in 2019 and seeking permits for those uses. Now, the report and recommendation stated that new violations have been cited but have not been yet issued. We just want to report that those new violations, the fines have been paid and so those can be closed out. Also, the applicant's request for a Conditional Permit is before you to make your recommendation to Maui County Council. The State Land Use Commission Special Permit request is before you for your final decision whether to approve or deny.

Now also, keep in mind that the proposed uses will require a separate Special Management Area and Shoreline Setback Assessment applications to be submitted and issued approvals prior to operating, even if these permits are issued. It was just briefly mentioned in the staff report, and you can ask more questions about that if you'd like.

The Department's report and recommendation had been prepared and transmitted to you. But then the Department received a number of letters of testimony, and those have been transmitted to the Commission. Those letters, just for anyone else in the public, those letters are also viewable by clicking on the hyperlink on the agenda that's labeled documents received after posting. Another one of those that's included in that documents received after posting is this additional comment letter that was received by the applicant prepared by their consultant commenting on the Department's report and recommendations. So, that's also been transmitted to you, the commissioners by the Department and if you would like to discuss this letter, then the Department would want to comment because there are some statements in there that the Department doesn't necessarily completely agree with.

Now the applicant's consultant, Rob Cole, has prepared a presentation and he is available for also testimony...for deliberation and questions after he's done with the presentation.

Ms. La Costa: Mr. Burkett, would you please introduce yourself and is what you said truthful?

Mr. Burkett: Yes, my name is Jared Burkett and what I stated was truthful.

Ms. La Costa: Thank you very much. Mr. Cole, with that, please introduce yourself and do you promise to be truthful.

Mr. Rob Cole: Good morning, my name is Robert Cole and I do propose to be truthful. I want to thank the members of the commission, Chair for volunteering your time today, and I want to acknowledge the Planning Director and Jared for putting together a very decent report and recommendation and I want to thank and apologize to Carolyn for having to deal with a lot of last-minute testimony by email which I know took a lot of her time to put together.

Ms. La Costa: Excuse me, before you proceed, Commissioners, can you hear Mr. Cole? Okay, all right, thank you such.

Mr. Cole: Before I start the presentation, I'd like to introduce the applicant and let her say a few words.

Ms. La Costa: Go ahead please.

Ms. Carolee Higashino: Public speaking is not my favorite thing.

Ms. La Costa: Stand please.

Ms. Higashino: Here.

Ms. La Costa: No, stand at the podium please and then...because the camera is there and then you'll the microphone there.

Mr. Cole: Use this one or it's...

Ms. Takakura: Yeah, you don't need the other mic.

Ms. La Costa: Go ahead please. Introduce yourself and do you promise to be truthful.

Ms. Higashino: Yes, my name's Carolee Higashino and I promise to be truthful.

Ms. La Costa: Thank you, go ahead please.

Ms. Higashino: Okay, so thank you first of all, all of you, is that Carolyn in the corner pocket there, especially you, I talked with you over the phone, but thank you all for being here. I totally know this is a volunteer position for many of you and appreciate that very much.

My name's Carolee. A lot of people in community do know me, I've been here a long time. I've lived here on the island 40 years and I've owned and operated The White Orchid Wedding for 35...31 years exactly this year. Anyway, I do employ eight people on my...full-time, on my crew, but over 350 subcontractors and various vendors in the community and throughout the state also work under our umbrella as independent contractors and so forth to help us run our what we call our mothership.

The people in the back here are my posse, my favorite people in the world. I have an Ethel Leval in the back. She does all of our accounting. I have Jacqueline Ishikawa here. She's one of our senior event planners. I have Tiera Jenson, who's also one of our wedding planners. Laurie A`i, who's one of our wedding planners. I have a Euta Lightsy, he's one of our officiates, our wedding officiant, Linda Herberger, who has been one of my best friends for my whole life and is also, has owned and operated hair and makeup studios and, and places like that that we work with all the time. My lovely husband, Peter and my son, Kainoa, right here, he's also my support system, and Naomi Takakura, who's his girlfriend and also works with White Orchid as well. She does a lot of our social media and marketing. And then I have Dana Pistula who is the owner, you might know here, a lot of people know her she owns Café Ole restaurants, and then I have Stacey Smith, who owns Maui Bars Are Us. Stacey, and Dana, and I quite the triangle and we've been in business working together as a team for over 25 years. Okay, so that's them.

I do want to mention that I have worked on this island for many years. Like I have said, I've done over probably 8,000 weddings in my lifetime and one of the most precious place is this venue. This venue means more to me than it, sorry I'm ...(inaudible)...more to me than just a venue. It's a beautiful property, but it's also been a property that I've used and utilized for my family, raised my kids at and hoping to keep this one slice of paradise for not just that but for weddings and making people happy 'cause that's what we do. That's the business we're in.

Besides that, lets see, I do work on the island, all of the islands now. We opened and expanded our business a few years back but primarily I'd say 85 percent of our weddings and events are held here in Maui County. We do support a ton of local people in this community and we do hire local first that is our priority. And I'm sure a lot of people can attest to that. I did get a lot of submitted testimony from a lot of people within our industry as well as other people who are somehow connected or tied to what we do. I had four days pretty much to get those testimonies in and I think we got about 60. I think we could get a lot more, but I don't want to overwhelm Carolyn any more, and I think you get the message.

Besides that, the beach house is not only a place for weddings. We have a done a lot of community events there. We donated to places like the Make a Wish Foundation and a Keiki's Dream Foundation, the Pacific Whale Foundation and the Whale Trust, we offer, you know, a complementary use of the place to do things that are good for the community and we do believe in the community. I've been on several boards for many of these things and that will be in the information that Rob has. I do believe in giving back. It's very, very important to me and that is one of the priorities and something that I hope to be able to do with this property.

My feeling overall about this property is it's one little last slice of paradise is what I think I would call it in the Makena area. When I first got the property, which now 25 years ago, I've been leasing it that long there literally, there wasn't even a road there, and I'm sure a lot of you even know that. The resorts and hotels all kind of, you know, popped up all around and everything around there has been developed. Now we have Jeff Bezos is our neighbor at the very end of the road and the whole area is going to be developed and taken over, pretty much. And in saying that, I...I'm sorry, try to keep it short ...(inaudible)...okay, and saying that we had to send out letters to all of our neighbors, there's two full-time resident neighbors there that I am actually even aware of the rest of the community all the way from La Perouse Bay to, I'd say, Wailea are pretty much not local resident owned anymore, and it's kind of a sad thing.

So, with this property, we want to give back, we want to let locals get married there as well. We do a lot of local weddings, not just tourist and visitor weddings. Our application is for small functions only. We are not trying to overuse the property in any way. We are not disturbing anybody. We have no complaints on the property in 25 years. We run a real tight ship and, guess with that, I should just kind of ...(inaudible)...no, you can ask me any questions, of course along the way.

Ms. La Costa: Okay, before you step away, Commissioners do you have any questions or the applicant? I don't see any, thank you so much. Mr. Cole, go ahead please.

Mr. Cole: Thank you, Chair. If you don't mind, I'm going to start a presentation here. Okay, thank you. Carolee stole all the good parts of my presentation just now. I wanted to mention,

you know, if you were able to read through, I know there's a lot of information that came in rather lately, even Carolee's competitors mark her as an expert and a leader in the industry. I also wanted to mention that she was one of the wedding coordinators selected to advise Mayor when the pandemic hit and to advise him on the rules for resuming weddings and close intimate events such.

Carolee's property is located between Big Beach and Ahihi Kinau, a natural area reserve. It's just a few hundred feet south of what people know as Secret Beach. It's a small, I would say pedestrian property compared to what other—

Ms. La Costa: Excuse me, we're just checking the feedback.

Mr. Cole: Yeah, there is a small house that Carolee leases. It's a war time radio shack building that was relocated to this property in the '60s. It has a estimate valued of \$108,000 per the Real Property Tax website. And compared to everything else in the neighborhood, it's pedestrian. It's very beautiful inside and clean and classy, and it's used as part of the event process.

The property is along Makena Road, it's known as 7000 and 7010 Makena Road. It has a drop off and parking area that is shielded from the main house and has a lawn area that's used for the ceremonies. On the property, but not leased, is a cottage and occupied by a caretaker. Carolee's business, she mentioned to me the other day, services everything from a couple wanting a very private dinner all the way up to weddings with receptions. The front yard is a beautiful place to take advantage of the sunset views along the west coast over the Pacific Ocean. They also set up for receptions as shown here in the photos with tables, chairs, tents, bars, lighting and occasionally music.

This is a view of the inside of the house where the brides and grooms can get prepared for the wedding day. To the south of the property is a state-owned parcel, with a trail providing access between the road and the coastline. Fishermen do use that for perpendicular access, and in this picture, you can see them using the shoreline area for lateral access along the shoreline. And this is a view from Makena Road towards the property showing the parking and loading area. I point out to that, the fencing along the property screens the wedding use from view.

To talk a little bit about her business, Carolee's small wedding venue fits between what I would call the DIY weddings, where people get a state permit for \$50, \$25 to \$50 and they can go on a state beach such as Secret Beach just up the road. They're not allowed to have amplified music or a reception. They're basically limited to a minister, a photography and their wedding party. They're able to bring chairs to the beach for elderly people, but otherwise they're not allowed to bring any removable equipment. The problem with these type of weddings is although they are affordable and you know you can get a permit on line, is they do occupy the public parking in the...you know, available to the public in the state and county roadways and they basically take up the beach use. There's also right now, what we call a hot mess and that no one's regulating how many people are using the beach at any one time, so there could be four brides getting married at the same time on the beach.

On the larger side, Carolee works with, but also competes with the large resorts who are able to have weddings of up to 500 plus people. They are all, like her, they're full service, offering both

receptions and wedding activities. The disadvantage of these bigger sites is that they don't allow many of the small businesses to participate. There's often a list of approved vendors, and some of those are forced to give a discount to the hotel, basically to sell their services at wholesale, and the hotel then sells them to the guests at retail.

Carolee kind of fits in the middle where she's got a small managed site. Smaller groups of people. Her site has gone up to 75 people where, as we mentioned, these resorts can go up to into the hundreds.

One advantage she has in the local economy is that she's able to work with a lot of competent small vendors that otherwise would not be able to participate. She also has an advantage over the DIY permits and that she's removing people from the public beaches and she's not utilizing public resources such as parking .

Success to Carolee, you know, at the site has meant a number of things. You know, one, it's been able to maintain this property for her family. This area has seen so much development that her tax rate is now, her County property taxes are \$74,000 a year. Five years ago, it was \$43,000, so, a 72 percent increase over five years.

To preserve local use and rural character of this area. It takes some innovation, and this wedding business has been one way she has succeeded. Another measure success is her ability to participate with a number of charities. As she mentioned, she's brought a number of them to the site for not only events for children, but also for fundraisers for Montessori, Pacific Whale Foundation and some other nonprofits.

The other thing that she hasn't mentioned was that she's also been able to make the site available for what we call a more discreet and private area for people to have funeral services for people in the community that have been lost. One of the main focus is, though, on, you know, being successful...(inaudible)...spot is the ability to maintain a business, a successful business that employs eight people, but also reaches out into the community. Carolee estimates that in a non-COVID affected year, her business puts about \$2 million into the local economy. Most of that in just small local businesses, and she mentions, she has about 350 different businesses on Maui that she works with, most of them small local businesses.

No, economic success is important, and I think the Department mentioned it in the plans, it's also part of our state plan and our County General Plan and Countywide Policy Plan. You know, all of them encourage entrepreneurship, the development of small local businesses, the encouragement of proper tourism. It's not to be done, however, at the expense of anything else.

And you know, one of the things in the application that is unique was the...one, due to the existing violations that have come up just before the hearing. The County deferred a recommendation, and they offered this statement, they said, due to the number of complaints and violations related to this unpermitted use, the Department is deferring to the Commission to determine if the use has been and will continue to be in harmony with the area and whether the proposed continued use is detrimental to the public interest, convenience or its welfare. I think in other words, the County is asking you, will granting permits exacerbate an existing

neighborhood issue or impact or will granting the permits actually resolve an administrative problem?

And I think the answer is pretty clear, and I'd love to go through with you talking about some of the Requests for Services and Notices of Violations that have occurred. To talk about this, I'd like to discuss the neighborhood and if it is a good fit for this type of service, and then I'd like to talk about what nuisances we would be looking for, and then I'll go through the actual, Notices of Violation.

So, in this case, the neighborhood that Carolee has a residence in here is a sparsely populated area with only nine property owners that we are aware of and that we had to notify within 500 feet. I compare this to the Kukahiko wedding site that was visited about three to four years ago, which had 80 owners within that range. Going to point out on the screen here, the property is located in the blue identified area. To the north of the property are three private residences, those are all North American residents who have second homes here. To the south is a residence that was noteworthy in 2011 for selling for \$27 million also a nonresident. And there are three properties on the mauka side of the road that have local addresses on their tax identification, one of them being owner-occupied. Amongst this group, the, the neighbors were solicited for comments about six months ago I believe and one neighbor did send in a letter stating that the property...wedding use is appropriate for the project and he had felt that when weddings were on site, they were done without any impacts. We have not received any other letters from the neighbors and we notified again, 46 days ago and we have not received any further responses.

And, I note, just for the Commission's identification, just north or kinda left and up of the property, the second beach is what we were referring to as Secret Beach, and that's the beach where, you know, people come in and get a permit over the internet and can have a wedding on site. I was there last Thursday morning at 10:00a.m., and there was someone getting married. Carolee mentioned that on Valentine's Day, there were 15 different weddings at the beach, so, there were occurring simultaneously.

In terms of whether or not this neighborhood is a good location. What makes it, I think, attractive for wedding use is one there's a lack of neighbors. Most of the neighbors who are nearby are never there because they live, you know, on the mainland. There's a lot of other vacant and open space land around the property, and it has this beautiful view over the Pacific Ocean on the west.

So, you know, if I were in your shoes, the type of impacts I would be looking for, for a wedding operation would be nuisances of you know, volume and duration of music, people using public parking, obstructing public access, traffic, violence or late-night lingering, smells and visuals. Now, we want to note that not a single nuisance complaint has been filed in the 25 years of operation at the site. So, I don't know what Carolee is doing, but she's doing it right. I cannot imagine someone throwing professional parties near me for 25 years and never having a complaint.

I put a chart in the letter I sent to the Planning Department, kind of outlining the various requests for services and notices of violation. I'm ...(inaudible)...to summarize this chart, there's two

pages here, there are basically 10 occurrences and out of those occurrences, there were six violations. Three were for commercial events and three were for non-commercial events or otherwise parties held at the property for Carolee that Carolee held for her friends, one for her husband and such. So, just kind of going through them, all but one of them happened since 2019, and the first one was, I believe, a person who cared for someone on property who she misthought was being evicted and complained to the county about the wedding business as recourse. And then, I think the only reason the applicant knows about this is that the woman then apologized when she learned that the person had not been evicted. He had just been taken care of by family. Likewise, in 2019, an anonymous complaint was filed that there were weddings on the property. The applicant was not made aware of this until much later. In November of 2020, this is about a year after she voluntarily stopped operations, she had a COVID friendly dinner for six couples on site as a birthday party. And although, I would say to be fair, the Planning Department had been tracking events at her property for a while, this event was actually not commercial. She was notified as she was given warnings for commercial use and various CZM infractions. There were no fines at the time. In March of 2021, she...a DLNR agent observed filming of a movie on site and reported it to the Planning Department. It was found out that she had coordinated with the mayor prior to approve filming at that location. There was a little bit of mismatch in terms of the mayor's approval may have not been in the exactly right format and did not cover CZM permits, but I think due to the confusion, the Planning Department decided to rescind the fines for that violation. There were three events happening in, sorry, in later 2021. In July, the applicant hosted it, hosted a birthday, sorry, hosted a birthday party for her husband. In July she also had another party for a friend, and in July there was also a commercial wedding that happened on the site, and we'll talk about the reason for that later. And in October, there was a commercial wedding that happened on the site. So, two commercial weddings and one private party, and she received all three violations at the same time in November 2021, and she did not hesitate to, you know, admit fault and pay for the violations for the weddings. She wasn't exactly sure about what to do about the private party for her husband. She paid it anyway since she had an application, and I felt that was the best thing to do. So, those have been resolved.

Since then, the applicant has had a couple more private parties, and she did not know this until a week ago. but they were reported and the applicant received CZM fines, Coastal Zone Management or SMA or SSA fines for equipment at the site. And I'll explain a little bit about the confusion regarding that too.

I think, you know, the commissioners would probably want to know, you know, is the applicant complying properly and are any, you know, violations excusable? Or is the applicant acting in a cavalier way, you know, feigning responsibility and just to kind of set a context for this, the applicant withheld or decided to, excuse me, the microphone is giving me a little trouble here, the applicant decided to close down her site in December 2019, and she did so, you know, after hearing about some other sites that were shut down and realizing that she needed to get permits. The next month, COVID hit and we went into the shutdown, and it changed the industry quite a bit. For people in the wedding industry it was a nightmare in particular. She had because she worked with many sites, 150 events that she needed to shut down or move or cancel, including 35 at the project site. So, at this time, the public was furious. Grooms and brides were rescheduling events over and over. They were dealing with changing policy regarding shutdowns, changing policy regarding flights, hotels and dealing with a number of

vendors that had different cancellation and rescheduling policies. So, this was a considerable amount of work, but Carolee did move or cancel all but two of 150 events. She granted a full 100 percent refund policies to the events booked at this site and for these last two events, they could not be moved. They could not find an alternate venue when the County opened back up to weddings, and they could not get the clients to cancel. Two of these clients were attorneys. The clients were threatening legal action and not a cavalier action, but an action made under duress. The applicant decided that the best bet to protect her business, which you know was on stilts already due to the pandemic, was to hold the events at the site and, you know, hopefully have them go without issue. She was cited for both, and she did resolve both.

The other issue is the question on CZM permits. So, the applicant has been fined actually, and all these, are all CZM permits. None of them are use permits related to zoning. The applicant was confused to exactly what was required. When she was given a warning in...by the Planning Department. the first warning she got was for commercial use and the CZM warnings that came with that also referenced not failing to obtain CZM permits in association with commercial events. So, the focus to her was on the commercial aspect of this process. When she was fined for the three events, including the two weddings and the birthday party. she paid those fines thinking it was a mistake, and she also met with, you know, members of DLNR, one of which who recommended to her that to avoid being seen as a commercial event, which she thought was the problem, she was, she should contact the County ZAED's enforcement section and let them know ahead of time that she was having private events at her house. In good faith, she did so, and these last two events, which were, you know, one was a private dinner and vow renewal for her niece, and the second was a brunch for 20 of her friends, she called ahead of time, three to four weeks per her memory and let the Department know the date of the events that she was putting up equipment such as tents and tables and chairs. She did that again for the event in May and talked with a commission...sorry a enforcement officer there. Let her know, thought she was disclosing everything, and thought she had complied with everything. But to her surprise, we were notified last week that these were actually turned into violations. We are not contesting the CZM violations. I think the applicant understands at this point that the Department wants applicants to come in regardless if an event is commercial or non-commercial and including anything that could be a tent, chairs, tables and get those cleared through the assessment process. So, I think most of these permits are basically misunderstandings other than the two commercial...(inaudible)... I'm going to note that none of these violations here have anything to do with nuisance. All of these violations are basically just saying you did not have the right permits. And this is actually a photo of the day when Carolee threw a birthday party for her husband. And the tent identified, I believe, was misidentified as being part of a wedding. Now we know, though, that, you know, tents like that, even if for a non-commercial event need to be cleared by the Planning Department prior to use.

So, to address the question, you know, was this, you know, were these...sorry, were these events, you know, in violation? Are they showing that this the use of the facility is in conflict with the community? I would say, no. Out of all the Requests for Services and Notice the Violations, none of them were in reference to any type of nuisance on the site such as sound, smell, parking, anything of the sort.

The question that becomes is will the permits granted by this body further, a problem, and I would say no, that there has been no problem or will permits actually solve the issue, which is the applicant has not received her permits on time.

I have some changes suggested to the Department's conditions, and I'm not sure if this is the time we should review them. I can do that later, after the Department reads out the conditions or I can do that now. We don't have many. The primary target is just to change a little bit of the composition of the amount of events that would happen on site.

Ms. La Costa: Please, this is your time, so go ahead and..(inaudible)...

Mr. Cole: Okay. First off, Condition Number 1, the permit term and renewal. We have no objection to the standard condition. We just note, for the record, that a business like this has a time frame leading out from, I would say, eight to 18 months. So, we would probably be coming earlier in for a renewal. Right now, I think it's, you know, if we had a five-year permit, you would come in at the very latest at four months and four years and nine months. We would probably come in a little bit earlier because they have a lot of...a larger lead time and this is just notice.

We have suggested a replacement to Conditions 7 through 9. And the reason I did so is because Conditions 7 through 9 are, were originally suggested by the applicant, but they were also a little bit confusing. The conditions that were included by the Department included an accounting that was both in terms of weeks and in terms of months, and we figured it was much simpler to just put it all in the terms of months. So, for example, there will be no more than 17 commercial events at the property per month. And we've included the additional language that was in there for Conditions 7, 8 and 9 with the addition of the D. We inadvertently did not have a medium sized event of 50-guests. We had two events at 75, which would be the larger size and the rest at 25. After talking with Jared last night, we realized that, you know, this is a little bit of an increase. So, we came up with an alternative that is a net zero change. So, basically, we would reduce the amount of commercial events from 17 to 15. We would reduce or eliminate the 75 guest wedding events, which in effect would remove two events at 75, two events at 25 or 200 people per month. And instead, we would suggest a medium size event of 50 guests that could happen four times per month. So, that's a net change of zero and about 99 percent of the recommendation. And I say 99 percent because when we originally scheduled it in weeks, there was about 17.3 events per month and we just rounded it down to 17. And this condition would look like this completed.

And our only other suggestions or very minor suggestions to Conditions 12 and 13. We just suggest the change of event coordinator, replace wedding coordinator in Condition 12, and condition 13, after talking with Jared, he said it's not necessary to change, but we just wanted to make sure that the preservation of the use of the, the house by Carolee and her family was preserved by adding a little bit of specific ...(inaudible)...to the end of the condition, which read, the main dwelling cannot be used for overnight accommodations, and we just suggested adding, by any client or guests of any event hosted by the White Orchid Wedding Company.

And thank you, that concludes my presentation, and I'm available for questions.

Ms. McLean: Rob, could I excuse me? Excuse, Chair, could you go back a couple of slides to the first modified condition? Yes.

Mr. Cole: I'm sorry, this is the first one here which I included in the letter to the Department.

Ms. McLean: Right.

Mr. Cole: And then what we are suggesting is, you know, after talking to Jared and saying, you would not support it because it was an increase and we agree, we came up with this version, which modifies it slightly so that there's no net increase in guests per month at the site.

Ms. McLean: Because I'd like to keep the special events separate from the weddings. So, I just wanted to know what your numbers were for that.

Mr. Cole: Oh.

Ms. McLean: Okay, thanks Rob.

Mr. Cole: Yeah, I apologize, I believe it's supposed to say, two special events per month. Oh, no, it does say there, limited to twice a month.

Ms. McLean: It does. It does.

Mr. Cole: Yeah, okay, sorry.

Ms. McLean: Okay, thank you.

Ms. La Costa: Commissioners, have we questions for Mr. Cole or the applicant? Could you please take your screen down Mr. Cole? Thank you. Mahalo. Commissioner Freitas, go ahead please.

Mr. Freitas: Thank you. Not sure who can answer this, there is the I guess kinda like a unlimited up to 25 and then from 25 to 50 you're asking for four. Now my question is where did that 25 come from? Was that decided during the COVID?

Mr. Cole: I believe it was provided by the previous consultant after he discussed the average size of a wedding with Carolee. She actually mentioned that she never does 25 'cause it's always issued in couples, so 25 is an odd number. But it was the approximate size of a small wedding at the site and they weren't unlimited, they're actually limited to as we put it, 17 or 15 per month.

Mr. Freitas: Okay, so the 25 amount of guests that was pre COVID, that was sort of her numbers or that was during COVID, I think will be about 25 because people aren't as traveling as much because of the COVID. But the reason I ask is that I did weddings where I work and because it's a destination wedding, it was normally like 30 was sort of my average. I'm wondering if we don't want to get into what was the COVID number, I would like to see if

Ms. Higashino would kinda want it to be maybe 30 be the number or even higher. Does she foresee that number slightly increasing?

Mr. Cole: Yes, she would like to see around 30 and that was approximately the size of her pre COVID weddings.

Mr. Freitas: Yeah, and, you know, I'm not sure if those were set up again, and I do want to thank her and Chef Anderson for getting weddings going after COVID because it was that road role model that we used at the Old Lahaina Luau's to get luaus the exemption to open. So, we use the model that they use. But we know that at that time, those numbers that just a general rule but we later found out that each property can accommodate different don't stick with what, you know, everybody else has to follow. You fit what can fit on your property comfortably. So, I would suggest that you folks up that number, not to hold her back from, you know, only 17 at 25 and she has to turn away a party that has 30, if that's more of the average number that she has, which I think it is. So, do I share that with the Director to see if that could be up to 30 instead of the 25?

Ms. McLean: Commissioner Freitas, that would be the commission's purview to modify the conditions and modify those numbers.

Mr. Freitas: Okay, okay. If I may Chair, I have one more question.

Ms. La Costa: Go ahead.

Mr. Freitas: I'm not sure if this is for the consultant or Ms. Higashino. How many venues of this type are there on Maui? Are they increasing, decreasing? Are you able to find a location if this isn't approved or are we short of venues?

Ms. La Costa: Ms. Higashino, go ahead come up and answer, please. Thank you.

Ms. Higashino: Thank you, Kawika. I would love to respond to that and to the two things. The first thing is the reason that we put 25 people or less was that was what was recommended by my previous counsel. It wasn't what I ever wanted. And in fact, there's another property, which I believe we've mentioned the Kukahiko property, my understanding is theirs is just a straight 49 guests or less, and I would rather just that if that is going to be a change that's modified, I'd rather just say any event that amount. However, we came in at a smaller number just thinking it would be more appealing, you know, to get it approved and we're fine either way to answer that question.

The other this is, yes, Kawika there are exactly four properties on this island all of which are completely saturated that are similar to what we are trying to propose. We have Sugar Beach Events which is new, very busy, very popular. We have the Kukahiko property which is there and they do...they're pretty full. We use the Olowalu Plantation House and the management...the manager there, Donna Poseley wrote a very long lengthy letter which is in the testimonials about how overloaded she is. She is sold out for the next two years already. She would love to roll over business to us and she stated that as well. And what's the other one, Pineapple Chapel? Oh, Hui No'eau, which is the visual arts center and we work up there

as well. They're the most like kind, I suppose. Although the Hui is not a resident residence, but we do use that as well. But that's it. Everything else is you're, you're becoming...it's a resort. You know, we're pretty much to there unless it's a church or chapel or something like that. You know, we have other little other little places like the Lavender Farm, but I don't even know if they're doing weddings there anymore. You know, the inventory does change somewhat, but, but primarily it's decreased. So, we have very, very limited offerings. And in fact, if they are not finding this type of a niche, they're going to other counties and other places. So, hope that answers your question.

Ms. La Costa: You might want to stay there and keep—

Ms. Higashino: I'll stay here. I know I'll get a lot of questions.

Ms. La Costa: Thank you.

Mr. Freitas: That does, Ms. Higashino. Thank you so much. I have no more questions, Chair. Thank you.

Ms. La Costa: Thank you, Commissioner Freitas. Commissioner Thompson.

Mr. Thompson: Thank you. I have a question, first, now it's a residential there, do you pay residential property tax or commercial property tax?

Ms. Higashino: Residential.

Mr. Thompson: Residential, okay. And also, you know, it doesn't look good, there's a big stack of RFSs, in 25 years did you know you needed a permit to do weddings there?

Ms. Higashino: I did. I was not aware that there was—

Mr. Thompson: You didn't know that.

Ms. Higashino: No, at the beginning when we first started this, let me clarify, there was three wedding planners on this entire island, not there's 300 and 500 planners. When we started using the property, I want to be really clear that we didn't run a cookie...(inaudible)... We weren't making it, it wasn't a factory, we were doing a couple here and there and that sort of thing. We were not aware of any sort of a type of permit in any sense from the beginning that there was such a thing. When we looked into it, we were told, we were advised also that you know you could do a bed and breakfast or something like that, but that is not what we do, we don't do overnight accommodations. So, my understanding, I did not understand what we needed to get until recently when we, you know, before the RFSs that we would and we were advised that you know, you should get a permit that, you know, you should get a permit, this sort of thing. But this is why we reached out to get it. I don't know how to describe myself.

Mr. Thompson: And what are you doing 200 a year before, before COVID?

Ms. Higashino: Two hundred weddings at the beach house?

Mr. Thompson: Yeah.

Ms. Higashino: Oh, no. We do 200 on average a year for the entire company through the State of Hawaii.

Mr. Thompson: Okay, thank you.

Ms. Higashino: Okay. Yeah, I mean, we do some months that we're zero is to be really clear. November, December, January, it's not wedding time. We do some months there was nothing going and then other months we do one or two and other months...a big month would have been maybe five to really transparent.

Ms. La Costa: ...answer, okay. Commissioners, other questions? Commissioner Hipolito.

Mr. Hipolito: Thank you, Chair. This question I think is for Mr. Cole. Um, there's a portion in this application saying that your septic system will be modernized. Is that something you're voluntarily doing, it's something that Public Works is saying you have to do?

Mr. Cole: I believe that's a voluntary upgrade to the property to take it off a cesspool and not only put it on a septic system but a modern aerobic system which is appropriate for the shoreline area.

Mr. Hipolito: And it's being stated that this will be done prior to hosting any events, is that correct?

Mr. Cole: Correct. I believe that's one of the conditions that the original application suggested and it's been picked up by the Director in her report.

Mr. Hipolito: Okay. And so, the system is being sized for bedrooms or is it being sized to the number of attendees?

Mr. Cole: Both. Yeah, I believe the...actually hold on, let me pass this onto Carolee.

Ms. Higashino: So, I've done a lot of...I've done a lot of the homework on this. I've been working on this now going on three years, this permit. I have had to do a lot of steps but we did have Linda Taylor Engineering contracted to come out and she's already drawn and drafted anaerobic or aerobic systems for us. It is based on a five...there is a five-bedroom stipulation which you're speaking of, and there is a house and a cottage on the property. So, the main house is three-bedroom and the cottage, two-bedrooms, so we fit within the five-bedroom for one system. Then you go to flow. Because the house is not permanently occupied, our home, the that's there, it goes by flow ratio, so because it's not permanently occupied that alleviated us from having to put in two of these systems. Does that make sense? Is that what you're asking or...anyway, but it is by flow. I think it's 8,000 gallons if I'm not mistaken off the top of my head a day that can be utilized, but an event is only running, you only have people there from say, 4:00 to 10:00. You're only utilizing so many hours within a day, and so the consumption did pencil out to put in one system.

Mr. Hipolito: Okay, so you're placing septic tank and seepage pit or...'cause I see the wording here, but I don't see any design. My concern is this being so close to the ocean.

Ms. Higashino: Okay, yeah. We have already...we have gone through all of that with, with all the proper authorities and it will fit and it will have a seepage system is that what you called that or...see, I'm not expert I'm sorry on this, but it can fit within the confines of the property with every requirement from State and County or whatever, it will fit and it will work. If that makes sense. It goes on the backside of the house. The property is a little deceiving because the parking lot is part of the property, but there's that whole back area that is leach field or anything like that...it's not a leach field though it will be aerobic, right? Can you speak?

Mr. Higashino: I think the County is aware of the—

Ms. La Costa: Excuse me, excuse me, if you're going to speak, you'll need to step up, give us your name and promise to tell the truth.

Mr. Peter Higashino: Hello, my name is Peter Higashino, Carolee is my wife. I'm in the construction industry, so I think I have a little bit of grasp to answer your question.

Ms. La Costa: Mr. Higashino, will you please step to the microphone so Carolyn can hear you. Thank you.

Mr. Higashino: Sorry about that. My name is Peter Higashino, I promise to tell the truth. I'm in the construction industry, I'm a contractor....maybe I can explain a little bit better. So, this system that they are proposing, if I'm not mistaken, has went through all the departments. They're aware of the shoreline proximity to the shoreline. So, the system that's being designed is not your standard septic system that we have operating in Upper Waiehu. You know, they realize that we're on the shoreline. So, the process has to be broken down a little more versus the average, your average septic system, yeah. So, we would not...so, I guess less seepage or you know, meet the criteria that whatever overflows or whatever is going to go into that leach field is not going to impact the shoreline basically if that answers your question.

Mr. Hipolito: Sort of. Anything else you want to add? I have questions for Public Works if you're done.

Mr. Higashino: No, I mean, that's I know...anyway, I know they've been trying to comply with whatever the State and County might need to make it happen. All right, thank you.

Mr. Hipolito: Thank you.

Ms. McLean: Chair, if I could add to that.

Ms. La Costa: Please.

Ms. McLean: The property is currently served by a cesspool. Those are not regulated by the County. They're regulated by the State Department of Health, and there is a requirement for cesspools to be replaced by a certain point in time. I'm not sure what that...the Chair says

2050, and certainly in addition to that, this being a shoreline property it's important for the system to be converted from cesspool to septic. They will need an SMA permit to do that and so at that time we would look more carefully at the proposed system to make sure that it wouldn't have impacts on the coastal zone, but the County Public Works or Planning doesn't approve the system itself, but we will be looking at the system as part of SMA review when they come in for that.

Mr. Hipolito: Thank you, Director for the clarification. No more questions, Chair.

Ms. La Costa: Thank you, Commissioner. Commissioner Thompson.

Mr. Burkett: Chair?

Ms. La Costa: Who's speaking please?

Ms. McLean: Jared.

Ms. La Costa: Oh, I'm sorry.

Mr. Burkett: Chair, this is Staff Planner, Jared Burkett. I just wanted to identify that the aerobic system is included in the application starting on Page 138, so you could see the...so, not the staff report, but the application which is hyperlinked on the agenda, so if you would like to look at that, that's where it starts on Page 138.

Ms. La Costa: I'm gonna ask that that is pulled up and if it shows the specifications or the placement of that new aerobic system, I think that will help all of us.

Ms. McLean: Jared, could you share screen with that?

Ms. La Costa: Thank you.

Mr. Cole: While Jared brings it up, Chair, I just wanted to add that—

Ms. La Costa: Excuse me, identify yourself for the minutes, please. Thank you.

Mr. Cole: Once again, Rob Cole for the applicant. I just wanted to add a little bit to what Jared is about to put on screen. The plans and Department of Health approval were included in the application, including a location map. We are in the process of amending that location to push it further away from the ocean and out of the flood zone. So, when we come in for the SMA permit, there will be a new site plan that shows it even further away from the ocean.

Mr. Burkett: Okay, does everyone see the page that says, individual wastewater system design?

Ms. La Costa: No, we're on the front page.

Mr. Burkett: Okay, so you can just point out if there's a page you'd like me to stop at.

Ms. McLean: Jared, is there a site plan?

Mr. Burkett: Right here? Are you receiving the image?

Ms. La Costa: We do see that, yes.

Ms. McLean: Yes. Can you reduce it a little bit so it fits just on a single screen?

Mr. Burkett: I'm trying.

Ms. McLean: They just move it down a little bit. Great.

Mr. Burkett: Oh, down?

Ms. McLean: No other way, I guess I should have said, move it up. That's good. Thank you. So, the existing two-bedroom cottage is up at the top. The existing three-bedroom dwelling in the middle in front or I should say, mauka of the existing three-bedroom dwelling. It has the infiltrator system, the aerobic treatment unit and the cesspool that will remain for the cottage. Then below the three-bedroom dwelling is the soil absorption bed.

Mr. Cole: And Director, if I may, this is Rob Cole again. The soil absorption bed is the feature I was talking about where we intend to turn that perpendicular to the shoreline and move it landward. And after that detail is worked out, I believe we'll be submitting that to your department for SMA assessment.

Ms. La Costa: Thank you, Mr. Cole. The Deputy Director of Public Works is on the line if people have questions, I think one of the Commissioners had a question for Public Works. Commissioner Thompson, go ahead please.

Mr. Thompson: Awesome, thank you, Director. Is it possible to have a commercial on septic? I thought I read that you cannot. That's a State issue isn't it?

Ms. McLean: I think there's a differentiation between the two because certainly there are commercial areas in the state that aren't served by municipal sewer systems. The Kula Lodge for example, there's no wastewater system Upcountry, so there are...it's the difference between like a residentially sized one and a large capacity, I believe, but I don't know the details. It's, it's up to the Department of Health.

Mr. Thompson: Would Public Works know, they're on.

Ms. McLean: I don't know, but it would be...it wouldn't be Public Works anyway. It would be—

Mr. Thompson: The State.

Ms. McLean: --Environmental Management, Waste Water Division would know those details, but they don't typically attend these meetings unless they're requested.

Ms. La Costa: Does anyone have any...oh, go ahead, Commissioner Thayer.

Ms. Thayer: Thank you. A question related to that. So, the application states that are Porta-Potties were used in the past for any event over 15 people. Would you continue to bring in Porta-Potties?

Ms. Higashino: We want to, yes, if we need to in the interim, especially if doing this, but the property, you know, like she said in 2050, has to be switched to the system anyway. So, we're willing and able to do it. We can use portables until that's done absolutely, but right now we're not doing anything, so we're not in need of that, but yes.

Ms. Thayer: I have another question.

Ms. Higashino: Yeah, please.

Ms. Thayer: So, can you...I think this was touched upon earlier, but if you can just lay it all out. So, often were you having events at the property for all this time.

Ms. Higashino: Good question. I don't know exactly to be truthful, but it would be on and off mostly...you have to understand I don't own the property. I want to make sure everybody knows that. I don't own the property, I lease it, and the owner is allowing me to apply for this permit. Has given me, Power of Attorney to do that. So, it's under White Orchid Wedding, it's not under her. Now, during the course of this, my responsibility as a tenant was to pay her real property taxes, so as they've escalated we've tried to offset that with the weddings. It wasn't...in answer to your question, let me get to your question, on some months, none, other months, two. Some months say five or six at the most I would say we've ever done. I should defer Ethel, she does our accounting, maybe no more than six, Ethel? On the overall average, I would say probably three to four.

Ms. Thayer: Per month?

Ms. Higashino: Yeah. I want to, if you don't my clarifying one other thing too just to let you know, you know, we are asking for 15 weddings per month. The likelihood of us reaching and attaining that amount is slim and I'll tell you why because it takes me at least, it would take me at least three years of this permit process to even build up that inventory again 'cause we're starting from ground zero. You know, that's what we were saying earlier, is my lead time is 18...12 to 18 months for a booking. 'Cause you're getting married, you're gonna plan a year ahead, right. So, it takes that long for me not only to make it happen, but also to not make it happen. So, I just experienced not making it happen for all those people and redirecting them, so yeah.

Ms. Thayer: Would you anticipate at some point actually making it up to 15 events a month?

Ms. Higashino: I would like to, but I don't, you know, I'm very conscious also of the community and a few...and that's why, after all these years, we've never had a complaint because I'm not trying to make this...I have other places I can sell as a business. It's for me to keep it for my

family. That's really what I want to do. And to offset that by paying \$75,000 a year in real property taxes, then yeah, I'm going to have to have a little help to do that. The other thing is, I'm not. I don't, it doesn't matter to me if it's...I would rather have 25 people than have 50 people. The impact is less and the cost the same. Now, bringing, bringing things full circle, we just don't have inventory and places for people to get their weddings done in a private setting oceanfront. That is what they want. That's what everybody wants. We don't...like you said we have four and the Hui is not oceanfront. Oceanfront, truthfully, we have three. I guess three, and cost is ...(inaudible)... so, I don't know how much you want me to say about all...I'm just trying to answer your questions, but you know, if they don't...like we have been running it on a very small...have a very small price tag attached to it. We do donate a lot to community and all that for free and all that stuff we've already said.

The hotels and resorts now, I don't know if any of you are familiar with the price tags that are attached to them, but certainly we all now a room night is a thousand dollars and it used to be \$300, you know, our increase over the last year or two have gone tremendously, same with the site venue fees. So, I'm not opposed to resorts and hotels in fact, we work with them all the time. We have a wedding at Montage tomorrow. You know we work at all the hotels and resorts, but the average oceanfront lawn price ranges from \$4,000 to \$25,000 and that's just the site fee. The food and beverage cost too when you have a hotel wedding, you're looking at \$300 per person, plus, plus. The average cost per person on a resort wedding site is about a thousand dollars a person. So, if you're gonna have a wedding of 60 people, \$60,000 is your minimum and that's not for bells and whistles, that's for a standard wedding.

So, if people can't afford it, locals can't afford it. The locals are all calling me all day long, everyday want to come down and do their event and this and that, but you know, now we can't do anything, but in addition, I keep that...you know, and that's kind of the startling facts that are going on here, and this is at least 100 percent increase in the last couple years. I mean, even the rooms alone after Covid, post Covid. All right, that was just a weird fun fact I threw out, and I'm sure Rob's saying stop talking. I have a bad habit, sorry I wander, but I'm back.

Ms. Thayer: Thank you.

Ms. Higashino: You're welcome. Sorry about that.

Ms. La Costa: The more information you can give us then the better our decision going...

Ms. Higashino: Is it better 'cause I feel like a lot of things are not out there on the...

Ms. La Costa: It's fine.

Ms. Higashino: Thank you. Good.

Ms. La Costa: If you ramble too much I will bring you back in.

Ms. Higashino: Just get the hook.

Ms. La Costa: Commissioner Lindsey.

Ms. Lindsey: That being said, how many events, like percentage wise, at this facility are...do you host locals? Is it mostly visitors?

Ms. Higashino: You know, mostly it is. But I'd say about at least 20 percent...you guys, 20, 25? Maybe 20 to 25 percent would be local.

Ms. Lindsey: And that would include your community service, Pacific Whale and all of those events?

Ms. Higashino: Yeah, usually those we do five to six a year.

Ms. Lindsey: ...20 percent.

Ms. Higashino: Oh, no, not within the 20 percent. That would be separate. The reason mostly that locals don't want to use it, is it's too small. If they have 300 people it's not gonna work, and now we're...like we've said we're going for 50 or less. It's, it's...that's 25 couples and if you guys...we're all from here, doesn't usually work out that way.

Ms. Lindsey: Okay, thank you. I just wanted to kind of get a feel for how much of that is local because even locals want to get married on the beach, you know, without the other 14 weddings that are getting married on the beach.

Ms. Higashino: I hear yea.

Ms. La Costa: Thank you, Commissioner. Commissioner Freitas.

Mr. Freitas: Thank you, Chair. Ms. Higashino, I'm concerned that you know, this...it sounded like some months is like the season and then some is really, really slow. I'm concerned that you may get real close to that 15 and then some months there's none, is there a way that we average this out for the whole years instead of just saying, oh, sorry June summer month's busy but that your 15, you're done. Do you feel that you will, I know you said, you rarely reach 15, but let's, let's put the limits, if we're gonna put limits think long term, think what five years may come, think how your business and if there's less venues out there, you know, and I know the reason why, so that we're not putting our neighbors out or you know, interfering with neighbors and the community and you're being very thoughtful by lowering it to 15. I just don't want you to have to come back here in four or five and then ask for that number to be increased or play around with those numbers. What...are you really comfortable with 15?

Ms. Higashino: Truthfully, I would just like to see what's fair and I will say the other property that we've mentioned before, the Kukahiko property if I'm not mistaken has an annual amount. So, over the course of the year, I'm not positive what that amount is, all I recall when I read their permit was they could have any event for 49 people or less, if I'm...I don't know why it was 49, but I think that's what I read, and that they could have like somewhere around 200 weddings a years, so I'd just like it to be equal because it's the most similar like kind property down there and if that's working for the County and whatever, I'd be happy with that.

Mr. Freitas: Thank you, Ms. Higashino. I have a question, Chair either for Corporation Counsel or the Director. Is there a way to verify what Kukahiko does have 'cause then we can compare apples to apples here, now and what is their capacity that way we can kind of do something a little bit more streamline and fair? Is there way to get that information?

Ms. McLean: We can look that up. I don't have access to those files on my laptop here, but perhaps Jared might be able to look that up. Jared do you think you could find that? They would have needed a conditional permit so there would be an ordinance for it.

Mr. Freitas: Okay. If they also have a cumulative annual number of events, I think we should try to ...(inaudible)...doing the same with this one, and then I think we can go back to what is maybe not 49, you know, maybe half of what her capacity is, I don't know, but 25 is way too little bit knowing that I did destination weddings at our luau that the numbers are in the 30s, usually the average. I'd like to see that number go up. However, we do our recommendations for changes to this, I would like to throw that in. Do I do that now or later?

Mr. Hopper: Chair?

Ms. La Costa: Yes, sir, Mr. Hopper.

Mr. Hopper: Again, right now, all we're doing is questions to the applicant. You still have to take public testimony which you will need to consider and then have deliberations. So, right now, all it is is for questions and you still got to go through testimony before anybody makes up their mind on anything, including finishing up with the presentation. So, just, just to be clear, that's, that's important.

Ms. La Costa: Thank you, Mr. Hopper.

Mr. Freitas: Okay, thank you. I'm done, Chair.

Ms. La Costa: Thank you. Commissioners, other questions? I have a few questions for you please, Ms. Higashino. So, do you have a GET license.

Ms. Higashino: Yes. She has all the numbers. I don't do money.

Ms. La Costa: Thankfully she brought the financial girl with her. So, I have a question. I know that Commissioner Thompson asked you, but it's mystifying to me that you didn't know to get a permit when you were doing commercial weddings, you know, other than your family and why did you not think about doing that?

Ms. Higashino: You know, I didn't, from the beginning and the onset, like I said, I didn't realize there was such a thing and when I, when I was made aware of it, that's when we chose to shut down, cease and desist immediately. I don't know...I didn't know how to get...I don't know, I don't know, how would you explain it. I mean, we've talked about this over and over, and I know that's the biggest question everybody has, I was not trying to pull the wool over anybody's eyes, certainly the neighbors knew, everybody knew that I was doing weddings in the industry and I just...with no complaints or anything I didn't feel the need to do it, I suppose, and then when it

became, you know, a thing, like I said, there's no like kind properties really doing this, but then when I started hearing more about the B&B shutdowns and this and that, Launiupoko, places like that, because we had weddings at other venues that also were not permitted. All the venues that we work with, that are anywhere like this did not have a permit, none of them. The only one that got a permit was Olowalu to my knowledge, so the most recent like kind property that I am aware of that got a permit was Kukahiko and that's why I'm using that as my role model.

Ms. La Costa: Okay. In the documentation that we have here and the RFSs, there were five fines that I saw.

Ms. Higashino: Yes.

Ms. La Costa: And if you kept being fined then wasn't that an ah ha moment saying, oh gosh, if this continues then I need to correct my actions?

Ms. Higashino: We shut down before those fines were brought to me. Is that correct? We were already shut down.

Ms. La Costa: Okay.

Ms. Higashino: One was, again, one was for the film called Aloha with Love and the mayor had signed off on that with Branscombe Richmond and with everybody that I had also talked to, the film commissioner for that, the Maui film commissioner. It was all approved according to me. But then I found out from the Planning Department, from the gal there, who is the one who contacted to me and came...I told her come down, come down and look at the filming and that was Melissa who works with your department. I asked her to please come down, we're being very transparent, I want you to see what's going on here, and she did. And I said, so, here's the paperwork I have and I gave it to you, and it's on the record from the mayor, and she said, well, that doesn't necessary...(inaudible)...Well, I, like just what you're hearing was earlier this morning was very intriguing to me as well, from the other hearing we just had, I didn't know either that...that these film people are going to all these properties like us and just saying they have the permits and handing you something from the mayor you assume that it's fine, you know, but that, that was one, that was two, two of those, right? Is that correct? Then I got the birthday party, and then the two others which I admit to, I did weddings, I did two commercial events. I did do them. I'm not hiding that. I did them, I literally would have been sued by this couple. It was their triple rebook because of Covid. You know, a lot of these weddings that we had bottlenecked had to be rebooked, and rebooked, and rebooked and they were one of them. They both were that. So, and one was a brunch for 25 people. I took the hit, I paid the fines, paid \$2,000 for that for four-hour, 25-person brunch, and the other one was 25 people as well for a dinner wedding, I did it, so, sorry, does that answer your question. I'm owning it.

Ms. La Costa: No, no that's fine. Like I said, the more you explain, the more it helps. Commissioner Thompson.

Mr. Thompson: Chair, yeah, I have a question.

Ms. Higashino: Sure.

Mr. Thompson: So, I have one of these RFSs from 2003, and it says operating without a proper permit. So, did we know in 2003?

Ms. Higashino: Okay, that wasn't, I don't believe that was...was that an RFS? Is that what it was filed? That was the neighbor issue.

Mr. Cole: The RFS from 2003 was the one about the woman who complained, you know, complained to county because she thought her friend was being evicted, so the—

Mr. Thompson: But it says here without proper permits, conditional use, SMA, so you were aware of it then in 2003?

Mr. Cole: Actually, the applicant, Carolee was not given that RFS. In fact, the County did not send anything to Carolee until 2020. So, even though there was an RFS filed, the County, the first contact the County ever made with Carolee was a year after she shut down in 2020. The only reason they know anything about it as I mentioned earlier was that we believe the woman apologized after she found out the truth of what was going on and you know, basically a third party, you know, information, sorry I turned you in type of thing, but it wasn't from the county itself. So, an RFS is basically an, you know, a request to the county for action. They don't actually...they don't necessarily follow through with a letter of warning or a letter of violation for every RFS.

Ms. McLean: I would ask Jared to comment on that because he's the one who did the research as part of the staff report.

Mr. Thompson: Sure. Jared, are you on line? Can you check on it, sir?

Ms. McLean: And Commissioner Lindsey has had her hand raised. I don't know if that...if she just wants to go next or if she has comments on what's being discussed right now.

Ms. La Costa: I'll get to you Commissioner Lindsey. Mr. Burkett, can you answer that question because I had the same question. It says responsible as White Orchid Wedding conducting commercial wedding operations in a rural district without proper permits.

Mr. Burkett: So, yeah, I can comment on that. So, the RFS that was, that you're discussing in 2003, does not have any notes listed that it was inspected or that the owner was contacted. It just...it was closed, so it makes sense if the requestor pulled their request then they would just close it. So, that it does seem to be correct. I mean, I contacted Zoning and discussed with them and they did some research. They also did not find anything that was issued back in 2003.

Ms. McLean: And so just to summarize, Jared, a complaint was filed, we looked into it and closed it. We did not notify the property owner or the alleged violator, so they would not have known at that time if there was any investigation on the county's part.

Mr. Burkett: Correct.

Ms. La Costa: And just for continued clarification on the RFS that you received May 20th, 2019, it says the same thing about weddings were conducted without a permit?

Ms. Higashino: Mm-Hmm.

Ms. La Costa: So again, that goes back three years.

Mr. Cole: Yeah, Rob Cole, once again. So, in 2019, there was another RFS, but similar to the one in 2003, no action was taken by the county. It wasn't until I believe it was December 2020 that the first warning letters were sent to the applicant.

Ms. La Costa: So, the applicant was not aware that there was an RFS filed against the property because of illegal wedding activity.

Mr. Cole: Correct.

Ms. La Costa: Interesting.

Mr. Cole: Yeah. So, the applicants are not usually notified when an RFS is filed. It's only if the Department decides to pursue an action after investigation and issue a warning or violation.

Ms. La Costa: Thank you, Mr. Cole. Director.

Ms. McLean: If I may, Chair, just looking into the details of the 2019 RFS, the inspectors had drafted a Notice of Warning and then the deputy director requested to create a new RFS and closed that one. I don't know why. Sometimes we find laws in how it's being processed, and so we want to start clean. So, it does appear that action was not taken on that 2019 RFS either, and new RFS was started, and that's when the enforcement began, when the applicant was first informed.

Ms. La Costa: Now of the same thing happened in 2020 was that also the case?

Ms. McLean: I would need to see...That was for a specific event. The inspector took photos over a few days and said, we'll reopen the RFS if more events are reported or observed. So, it appears she didn't, the inspector didn't observe the event that, that was the subject of the RFS

Ms. La Costa: I just keep seeing these over and over, and it's just mystifying how you were not aware that people kept tattling on you, if you will, you know, but nothing was done in and except the non-commercial events and you were fined for those. So, my last comments are in the staff report. There are conflicts with the times here and the filming times, which we'll talk about in the next bill. But I would like those to be lined up so that if somebody does film on the property, then you are not violating your permit.

Ms. Higashino: Mm-Hmm.

Ms. La Costa: And then having theirs go under, under their permit. So, I think that that's something that needs to be cleaned up internally that we can probably do, right, Director.

Ms. McLean: I think so.

Ms. La Costa: And we just, we don't want your hands slapped anymore.

Ms. Higashino: I know, it hurts.

Ms. La Costa: Commissioner Thayer, did you have questions?

Ms. Thayer: Yeah, I think it's for the Director or the planner is I'm just curious when Olowalu applied for their permit and when the Kukahikos applied for their permit.

Ms. McLean: I don't know when they applied. The Kukahikos received their ordinance, so after County Council approved was in March of 2019. So, they must have applied a couple of years before that because the process takes a while. That was also the result of enforcement action. Olowalu goes back a bit farther, so I'm not sure. I'm not sure when that was. And I only know Kukahiko because Jackie found the ordinance and, and I knew the date of the ordinance.

Ms. Thayer: Okay, sorry. I'm just curious about that timeline because I feel like the wedding community is pretty small and in touch, and if Donna Poseley submitted a support letter for you, I think you guys interface enough. But just to put together the timeline of when you would have known that you would have needed to go through permits like I would think if there was another venue that was going for a permitting for their same weddings at their beach house that you would have been aware of that happening in some way, shape or form.

Ms. Higashino: I didn't know a process that was in line for it at all, not at all. Olowalu I probably would have thought differently because it's a huge corporation. It's Olowalu Elua Partners who owns that entire space of land and they're doing development as well. It's a whole different beast. It's not just a wedding venue. I mean, that property is all different things. And I guess maybe that's why I didn't. I mean, I wish they did. I wish I started this a long, long time ago.

Ms. Thayer: Okay, but you know, they've been permitted? You just mentioned that earlier.

Ms. Higashino: ...(inaudible)...let me clarify, with properties nobody talked about permits because there wasn't such a beast to most of us and the knowledge was if we have a beautiful home here and there, if you're not bothering a neighbor then you know, we don't want to work at place where a neighbor's going to complain of something and that's what happened up in Launiupoko. A lot of that was happening up there and every place got shut down up there. So, we were, we got stuck on those events where we had something booked at somebody's property and they got shut down and so we can't work there because of this, you know, and it wasn't a permit issue, it was just say we got shut down because the neighbors complained and that was the buzz in the community, that's how it was, but now we know.

Ms. Thayer: Okay.

Ms. Higashino: Yeah. I hope that answers your question.

Ms. La Costa: Commissioner Lindsey, I'm sorry, I overlooked earlier, so please go ahead.

Ms. Lindsey: Kawika asked for the Kukahiko project, can we add on Olowalu too just to get a good base for numbers because obviously this is a need in the community. So, I want...I'm interested in how many weddings are allowed at that property also given them being the three oceanfront venues.

Ms. Higashino: Olowalu I know is more, I know that, but I don't know how many. I want to say around 300, but we have to look up, so...

Ms. Lindsey: Yeah, if we can get that information that would be great. Thank you.

Ms. La Costa: Thank you. And again, I apologize for overlooking you. Let's see my last question that I had on this Condition No. 12 it talks about amplified music must be approved. That seems to create the most issues in neighborhoods.

Ms. Higashino: Right.

Ms. La Costa: And I don't see any decibel level that is there. I do see music shall conclude by 9:30 p.m., but I don't see any decibel. Is that up to the wedding planners, the folks who are there because most entertainers like to crank those amps?

Ms. Higashino: Yeah, and we are very strict about that. In fact, we only allow like duos, trios at the most. But we do, we do regulate that. I'm terrible to ask about the decibel level, but there is a decibel meter that we can bring on site. We don't do it. We just know when it's too loud, we turn it down and we only work with very...we work with very few entertainers. We do allow deejays to come on property, which you would think would be the worst thing in the world, but they're the easiest to turn down and the quickest. Live, large live bands for peace, and we don't allow at all. And in fact, we just won't, you know, too loud. But yeah, it is something we do monitor, and like I said, we've never had a complaint, so I think we're doing a pretty good job at it. But we'll bring a monitor, if you want.

Ms. La Costa: Appreciate that, it's.....(inaudible)...have any RFSs, and that I think that's something else that I would like to talk about in the standard conditions because there have been as many RFSs as there are here, I'm wondering about verbiage in there about if there are RFSs when it comes time for renewal.

Ms. Higashino: Mm-Hmm.

Ms. La Costa: You know...so, whatever, whatever verbiage we can put in there about reviewing, if you're going to have a five-year permit, then definitely if there are RFS issues, then we could review those and take a real hard look, that they've been repeated. So, thank you.

Ms. Higashino: Oh yeah.

Ms. La Costa: Those are my comments. Commissioners, do I have anything else, Mr. Cole?

Mr. Cole: I think I was just going to add, I can see Director McLean there constant, her furiously looking at something, so maybe I'll hold off.

Ms. McLean: You can go ahead.

Mr. Cole: Oh, sure. I just want to say, I think part of the process of renewal requires notification of neighbors which gives them an opportunity to, you know, voice any concerns that they've had. So, you know, if they...the next few years are problematic, when it comes for renewal they will have that opportunity, and I believe Director McLean would have discretion in elevating the renewal from her discretion to sending it back to the commission or Council if she felt necessary.

Ms. McLean: That is true. If the commission wanted to add to this, so right now the code section that's referenced in Exhibit 1 allows permits to be extended by the Director if certain criteria are met. You could add to that that if there are any outstanding RFSs on the property that the renewal must be approved by the commission if that's what you'd like to do.

Ms. La Costa: Thank you, yes. Commissioners, feeling on that?

Mr. Hopper: Chair? Chair?

Ms. La Costa: Yes, Mr. Hopper.

Mr. Hopper: Again, I think we probably gotta change this for future meetings, but we cannot have discussion of proposed conditions before get into testimony. This is supposed to be a brief period to clarify anything from the applicant's presentation and then testimony and then your deliberation and questions which could include things from testimony so we really cannot get into deliberating on, on potential conditions at this stage before testimony. I just really want to stress that, you know, we may be need to discuss in the future how to, how to conduct this portion because I know it's good to have testimony before...or the presentation before testimony, but we cannot have deliberation on conditions and things before testimony is completed.

Ms. La Costa: Thank you, Mr. Hopper. Okay, I just have one last question and then we'll go to public testimony. You have stated that you will not do events until the aerobic septic system is installed, correct?

Ms. Higashino: That's what we're proposing, yeah.

Ms. La Costa: Okay. Well, there was mention of porta potties earlier, you just provide those as a convenience so people don't go in and use the restrooms in the home?

Ms. Higashino: Oh, I think you were asking me if we could...I mean, if there was a duration where we were operating the system, then we would use them, but now it appears that we have to get that before we can open, so it's kind of a moot point I suppose.

Ms. La Costa: Thank you, I just needed clarification on that. Thank you.

Ms. Higashino: Oh, no problem.

Ms. La Costa: Okay, Commissioners if we have no other clarifying questions then we will open public testimony. We will start with...yes, we'll start with online people first. Mr. Peter Landon if you're on the call, please unmute your mic and/or your video, introduce yourself and swear to tell the truth please.

Mr. Peter Landon: Good afternoon, I'm Peter Landon. I work with DLNR. I'm a neighbor to this property, and I promise to tell the truth. So, testimony, I think should really focus on the land use here. I don't have any doubt in my mind that the Higashinos are reputable people and they run a tight ship. I have no problem with the wedding industry or the...or White Orchid Weddings itself, but the property that they identify to the south of the property, the state land is actually in the process of being transferred to the Natural Area Reserve System. And as you all may know, the Natural Area Reserve System is the highest level of land protection in the state next to Wildlife Sanctuary. So, you know, the way that I got involved in this RFSs and kind of helping the county inspectors is that in our management plan, we're designated to sort of watch over development and attempt to influence it in a manner in line with the management of the Natural Area Reserve within a one-mile buffer. So that's quite a wide range.

And we had been working on some similar violations with a property that's kind of an inn holding in the Natural Area Reserve that was running yoga retreats. And in that process, I made a relationship with the county inspector for the area and had, you know, actually made a commitment to keep an eye out for this property because it was under investigation. And so that's why a lot of the RFSs have my name on it, and to the Higashino's credit, I mean, I'm not looking at it as whether it's a wedding or it's your family or whatever, it's purely the land use.

So, it doesn't matter if it's commercial. If you're putting up tents and you're using vendors and all these sorts of things, these are SMA-type issues, right. And as the county should know, SMA zoned, the Coastal Zone Management, this is one of the highest levels of protection that the county can provide in a coastal area. So, the reason why this, this this wedding property is getting so much scrutiny is because of this. It's not because of nuisance or the neighbors aren't in support or anything like that. And I want to make sure that that's what we're focusing on here.

So, I have a few points to make. Hopefully, the Director can clarify the State Land Use Designation. Looking at maps, it appears to be in the Conservation District and not in the Rural District. So, that would, that would have a lot of bearing on how we move forward with permitting and things like that.

The other points we want to make is that, you know this, this is not for a meeting of weddings at the property. This is essentially encouraging commercialization of the beach, right? They've said it many times, the applicant, people want to come to the beach and get married, right? And so, if you take a look at the size of the parcel, I think it's .8 acres, but when you look at that on a map, most of that has become state shoreline, right? In which case they don't own the property, right? This is a public resource, and they haven't satisfied...

Ms. Takayama-Corden: Three minutes.

Mr. Landon: ...a shoreline setback or a certified shoreline to any degree, right? And if you do that—

Ms. La Costa: Excuse Mr. Landon, your three minutes is up for your testimony, but you may have questions from the commissioners, so please hang with us.

Mr. Landon: Okay.

Ms. La Costa: Eeny, meeny, miny, moe, Commissioner Thayer, go ahead.

Mr. Hopper: Chair? Chair?

Ms. La Costa: Yes, sir. Mr. Hopper.

Mr. Hopper: Again, this is a contested case, so all testifiers need to be sworn in and testifiers also need to be asked if there are questions from the applicant as well.

Ms. La Costa: Thank you, sir. So, Commissioners, before you start, applicant do you have any questions for Mr. Landon?

Mr. Cole: No, you know, I respect his opinion and providing his experience of the site.

Ms. La Costa: Just questions, right.

Mr. Cole: Yeah.

Ms. La Costa: Okay, and please introduce yourself.

Mr. Cole: Robert Cole.

Ms. La Costa: Thank you. I'm sorry Mr. Cole, you just had a statement?

Mr. Cole: I didn't have any questions, but to address his point, questioning conservation, I believe there was a boundary determination made.

Mr. Hopper: Chair.

Ms. La Costa: Yeah, you cannot...that's consider testifying so I cannot have you do that. Mr. Hopper.

Mr. Hopper: Oh no, Chair, it's just...he can certainly...the applicant after testimony certainly will have an opportunity to submit any rebuttal evidence that they believe is important. So, I think now is for questions, essentially cross-examination questions of any testifier and then after that

the applicant would have the opportunity to provide any rebuttal evidence to the commission if they so choose.

Ms. La Costa: Thank you, Mr. Hopper. Commissioner Thayer go ahead.

Ms. Thayer: Thank you, Chair. Mr. Landon, I'm curious about the other points that it sounded like you had to share. Can you share the rest of what you were going to tell us?

Mr. Landon: Yes, I appreciate that commissioner. Yeah, so I mean, we are a little bit late to the game, the State, it looks like this went to the OCCL and DBEDT. You know, DLNR is heavily taxed, this didn't really rise to the cream of the crop with the types of issues they've got going on, you know, for example, on the north shore of Oahu, so you know, it didn't receive a lot of testimony but as being a neighbor to this parcel and a DLNR Agent, I did want to share that yes, the shoreline certification is integral to this. I've heard comparisons made to the Kukahiko property which is similar size on paper, but like I said if you go and just take a look at the aerial photo of the parcel and how it sits on the land, I mean, it's easy to see that the shoreline has pretty much taken away half of the parcel's size. And so, you know, when you look at the buildings and the parking area and all this, the actual size of, of an operation here is really quite small. And I would suggest that the, you know, the, the commission doesn't take any action on this at this time that they should wait for the shoreline certification at minimum before we really look at event size and the amount of people. I don't think it's impossible to have events here. And I think that the vendor and the, the applicant is a responsible party, but I don't think that anybody's really looked at this through the lens of the of the SMA, through CDUP process being adjacent to a natural area reserve and then just looking at the actual shoreline.

You know, they show a picture of fishermen and stuff like on the other side of some palm trees. We have reason to believe that that shoreline is actually inside of the palm trees, you know, and things like that really matter to the public. You know, this, this is, this is potentially encouraging illegal activity on state lands because, you know, once you step off of the property into the shoreline at a commercial event, you're now in violation of the commercial activity on state lands. You know, there's also things like the photography that you guys were talking about in the last issue, you know, if you go on White Orchid Wedding website, they have several photographs of models, you know, in this shoreline of this property on state property, there's no permits. Again, this is commercial use of state lands, and these are the types of issues that the public entrust us to look at, right? Like, I don't, I don't say that, you know, the nuisance to the neighbors and all that is something that's not or that's, you know, negligible. But at the same time, like the lens that we want to look at this through is the land use, and those are the, the major issues that I would bring up. The fact that the shoreline certification and improvements that are necessary to be made as conditions of this permit are multi-year processes. I just don't think that there should be an issuance of a permit with...that talks about sizes of gatherings and things like that until those issues are fully taken care of. And then, like I said, the zoning, I mean, maybe that's right, maybe that's wrong, it doesn't matter. Even if it's zoned Rural, it's still not in the category of a low-key operation. If you're talking 15 events a month or a 180 to 200 a year, you're talking about a million-dollar operation in a, in a Rural area, in a neighborhood on a quiet stretch of fishing beach, and I don't think that those things are being looked at fairly.

So, you know, I do support an application of some sort, but not until the shoreline setbacks have been determined, and not until the full reality of what the size of an operation and what space they have to operate in is realized. And then, and then we go from there, you know, to meet the \$74,000 tax requirements, so that they can keep use of the property and the family is totally doable. We're talking about, you know, \$10,000 a pop on one of these things, right? You know, and the price is going up. So, I don't think that we're, you know, going to take, take space or take opportunity away from a local family. And I think that this can be done responsibly, but I don't think that any action should be taken until the, the land use issues are fleshed out. And I'm happy to take comments or questions or be a resource going forward. Like I said, it's weird that, you know, that the state agencies that are necessarily that could be useful to you all are not tagged, right. Like it probably should have been Land Division, Dan Ornelas, and then like I said, myself, I'm the neighboring property, and he and I have visited the property, so that we have some experience, we've talked with the Higashinos and so that's why I'm coming at you with a lot of information too late and way over my three minutes. Thank you.

Ms. La Costa: Thank you, Mr. Landon. Commissioner Lindsey.

Ms. Lindsey: What is the time line look like to get that certification process done? Is it...because you have a lot, you guys got a lot to do, so I'm just looking—

Mr. Landon: So, you only get a limited amount of months to actually complete the whole process. In a situation like this, where we went out with the applicant and we kind of just took a look at it to give an assessment. There's kind of two routes, like they can get a shoreline certification, no doubt, but they're either going to have to do a lot of earth work to basically remove areas that have been, you know, inadvertently hardened or landscaped to return the shoreline back to a 2:1 slope from wherever the surveyor would stake it. Or they have to pay for an easement, which is actually quite expensive, and even some of the property, you know, one of the dwellings is in the shoreline. So, to work that process out in the application period is actually quite hard. What, what happens is, is it usually takes like two application periods, and then they would have to do the work and then come back and get it all done. So, in my mind, it's at least a one-year timeline. It could be multi-years. It just depends on, you know, the avenue that they take, how much money is behind it and things like that, you know, and then all of that is needed for them to even get a permit for the septic system, which, you know, I don't know the county's timeline on that. So, that's why I mean, I don't think that any of it is impossible, but I just don't think that we're in the right space or timeframe to start talking about numbers and capacity for this venue and all these things when none of this other stuff has actually been taken care of. And you know, it could eat most of the timeline.

Ms. La Costa: Go ahead, Commissioner Thayer, I mean, Commissioner Lindsey.

Ms. Lindsey: Okay, thank you for that answer. Another question about the neighboring property and its importance to...its significance to wildlife, I guess, where you're representing, can you elaborate a little bit on that?

Mr. Landon: Yeah, so if you were to look at a map directly south of the property is a piece of land that goes from that, that spot all the way...the picture that they showed with the little shoreline access that's part of the property. It goes all the way back to the boundary of the

current natural reserve. It encompasses some archaeological sites, significant cultural sites, that bay just to the south of the property is called Puako. It was actually the site of an historic fishpond. I believe the heiau that's like on the point kinda between there and where the guys are kind of homeless and fishing is an actual koa, a fishing shrine. So, it does have a lot of significance and it gets a lot of community use. Our, our goals with it is to return the vegetation back to some sort of native coastal strand and then work on the, the, the parking and the use of the area to reduce sedimentation into the ocean and things like that because all of the water fronting the property and all the way back to the reserve is part of the, the double A class state waters, which is the highest class in the state as far as quality and pristineness. The reefs in the area are said to be some of the few that are actually regenerating corals after the bleaching events and things like that. So, it is a really important area for biology, for natural resources and things like that, and that's why it's being added to the natural area reserve. You know, as you can imagine, these processes are slow, but you know, right now it's in this sort of hybrid jurisdiction where it is unencumbered state land managed by Lands Division. But then this, then where I work, the natural area reserve, is you know, paying for the port a potties, the trash removal, doing the vegetation management and working on the archaeology kind of behind the scenes while the land's being transferred.

Ms. Lindsey: Thank you for that answer. That's all my questions, Chair.

Ms. La Costa: Thank you.

Ms. Thayer: Thank you, Chair.

Ms. La Costa: Go ahead, Ms. Thayer.

Ms. Thayer: You mentioned with the establishment of the natural area reserve, there's a one-mile buffer around all the NARs?

Mr. Landon: No, not around all the NARs, but our management plan that was draft...or completed in 2012 actually was the product of a community working group of various stakeholders. One of, you know, one of which I think is next on the testifier list, but that management plan indicated that they wanted the working group and the reserve to basically over, you know, keep watch on a one-mile buffer around the radius or around the perimeter of the reserve when it comes to development. So, you know, I mean, behind the scenes with another, I think planner for the planning commission working on, you know, getting our parcels to her so that we get flagged in these discussions like, like ahead of time. But yeah, it's just, it's, it's part of a mandate of an engagement with the community that we're, we're supposed to be looking at developments in that that buffer.

Ms. Thayer: Okay, and looking at developments with the lens of potential impacts on the NAR.

Mr. Landon: Yes.

Ms. Thayer: Okay, thank you.

Ms. La Costa: Thank you, Commissioner. Other questions for the testifier? No. Mr. Cole, if you have rebuttal to his comments, please go ahead.

Mr. Cole: Sure, I guess a couple of things I wanted to point out. One is, you know, the state also approves a number of weddings on the beach just 300 feet north of this parcel. And then I'd also like the Chair's recognition—

Mr. Hopper: Again, Chair.

Ms. La Costa: Yes, sir, Mr. Hopper.

Mr. Hopper: Chair, we're again in testimony. If there's, you know, further questions from the testifier, that's fine. But again, the time for rebuttal evidence is after the testimony is completed. So, I mean, you can finish your questions. But yeah, at this point, that's going to be after testimony.

Ms. La Costa: Are you talking about all testimony or individual ones that Mr. Cole had some questions or had some rebuttal for Mr. Landon? So, at what point does it come after everyone or after each testifier?

Mr. Hopper: Yeah, rebuttal evidence...If the applicant would like to present rebuttal evidence, they can do it at the conclusion of all testimony. If he's got...they've got questions for each specific testifier, then it's proper to ask while they're testifying. But the rebuttal evidence portion would be, after all the testimony is completed if they wanted to submit evidence. So, I think you could note, he could note the items that he wants to be heard on and present that after the testimony is completed.

Ms. La Costa: Thank you, Mr. Hopper. I was confused. I thought it was after each testifier, so thank you so much for keeping me on track. So, Mr. Cole, after everyone has testified, then you'll be able to do your rebuttal. So, and thank you all for your patience because I am not an attorney. So, Mr. Freitas.

Mr. Freitas: I don't want to get scolded but can I ask a question of Mr. Landon?

Ms. La Costa: Yes, you may.

Mr. Freitas: Mr. Landon, Mr. Landon, I understand that you wrote he RFS...you called in this information about the filming. When you called in for this based on your job, do you, do you look and find out if they had a permit or just report whatever you see because I believe that was found out to be approved. So, you go around and you question everybody or everything without finding out.

Mr. Landon: So, to back up just a little bit, like I said, I was working on a case with another property with the inspectors and they identified to me this property as one that they were investigating, and from there, we kind of, you know, had the conversation like we just had about, you know, the lands being transferred to the natural area reserve. And so, no, like I'm not trying to verify what's going on, it was an RFS filed with the online system to say that there was an

event happening there suspected to be illegal, right. Then the county inspectors job I believe was to verify that information and they did so unbeknownst to all of us that the Mayor had kind of sanctioned this thing, but you know, it's my opinion and an opinion that was expressed to me that you know, the Mayor does not trump the SMA system or the Coastal Management Zone or anything like that so, you know, maybe that got worked out with his office and things like that. But you know, he's not really built into the process. So, again, they didn't have an SMA permit for that filming. The whole like reduction of the fines and things like that, you know, I don't have anything to do with that like I said, as, as a steward of the area—

Ms. La Costa: Excuse me, Mr. Landon.

Mr. Landon: --monitoring the situation—

Ms. La Costa: Excuse me, Mr. Landon, would you just please answer Commissioner Freitas question. He asked whether or not you investigate or do you just do RFSs, so please answer that question.

Mr. Landon: Yeah, just do the RFS.

Ms. La Costa: Thank you.

Mr. Freitas: Okay, Chair, sorry.

Ms. La Costa: Yes, sir.

Mr. Freitas: So, when you do a RFS, we're all entitled to write if we see something wrong, but we would check first if there was a permit if you're stating something illegal is happening. I do appreciate the work you do, I want you to protect our conservation areas, I just want to make sure that when we're doing stuff we check before something like this gets in and then it gets thrown out and then it's like a ding to an applicant down the road. Just wanted to clarify that you were the one that wrote that and how you proceeded. There's no more question for him. Thank you, Chair.

Ms. La Costa: Thank you Commissioner Freitas. Are there any other questions for Mr. Landon? If not, thank you so much for taking the time to testify and answer the questions. Our next testifier is Mr. Patrick Borge. Mr. Borge if you're on the phone.

Mr. Patrick Borge: Yeah, good afternoon planners.

Ms. La Costa: Please introduce yourself.

Mr. Borge: Can you hear me?

Ms. La Costa: Excuse me, sir. Please introduce yourself and promise to tell the truth.

Mr. Borge: My name is Pat Borge and I will...My name is Pat Borge and I'm here to speak the truth here, okay.

Ms. La Costa: Go ahead, sir. You have three minutes.

Mr. Borge: Yeah, I've been in the Makena area for over 40 years. And first of all, I want to thank Peter Landon for protecting this area. Ahihi Bay all the way down to Makena Beach. They do a hell of a job in protecting this natural area reserve, okay. And I sat on the advisory groups with the NAR since...1999 when we started the group to protect this area. But back to this property at the 700, my concern is traffic. It's real narrow road. Sometimes they park their vehicles, the backend of the vehicles are out on the road. I had to stop one time with my horse trailer, walked into the wedding, and to tell them to move their car, late in the evening, I got four horses in my trailer, and I gotta stop and go walk in there and tell them, eh please move you guys car. There's no parking. They talking 50 people. Where the hell they're gonna park. You got people hiking. You got mopeds. That's a narrow road. It's a narrow, narrow road. You got no sight distance that you go over which I have accident with tourist already, cars just flipped over at this...it's a public safety issue. You got weddings right down that little...at that small beach right there. I'm not against weddings. My concern is the traffic and years ago, she approached me, I don't know if that's the same lady, she said, you know, Pat, I'm gonna do it very small. We not gonna do big. And from my concern, I thought she had a permit for the last 20 years, you know what I mean? So, I don't understand, you know, after 20 years and all this permit process with B&Bs and short-term rentals, you didn't know you had to get a permit? I mean, give me a break. But I've been driving up and down this road for 40 years. I used to drive down this road when there was cattle guards, there were cattle on the road. So, I've been here a long time and I live up Makawao, but I drive this road all the time, and that hill where that wedding wants to do is a dangerous, dangerous place unless they move the fence more in where they can park more cars or the tourists gotta be towed in, I mean, bused in, okay, but it's a very, very narrow road and you got cyclists on Wailea, you got moped operators, you got joggers and there's a no sight distance hill right there, right where they park their cars and let me tell you, it's a, it's a public safety issue for me, you know, and I hope...I don't know what their plan is, I don't care about weddings or whatever. I'm in the tourist business myself, but as far as the public goes, you gotta take care of the public. When you do this kind of business, public comes first. Public safety, it's about a public safety issue, and I've been here a long, long time, let me tell you, I've been here a long time. My first operation was right next to the Maui Prince Hotel when they first started. They weren't even built the Maui Prince Hotel, but that's how long I've been down here. So, anyway, I hope you guys do the right thing. You guys should defer this thing and the owner of the property should be at this hearing to say what he's going to do about the septic tank. That's, that's who supposed to be—

Ms. Takayama-Corden: Three minutes.

Mr. Borge: --talked to. Thank you very much.

Ms. La Costa: Thank you, Mr. Borge. Appreciate very much. Applicant, do you have any questions for the testifier?

Mr. Cole: No, thank you.

Ms. La Costa: Thank you. Commissioners, have you any questions for Mr. Borge? Mr. Borge, thank you so much for your time and your input. We appreciate it very much.

Mr. Borge: You're welcome.

Ms. La Costa: Our next testifier is Mr. Jeff Bagshaw. Mr. Bagshaw, please unmute yourself and introduce yourself and promise to tell the truth. Thank you.

Mr. Jeff Bagshaw: Good morning or good afternoon, Commissioners and thank you for the chance to do this. My name is Jeff Bagshaw. I'm with Division of Forestry and Wildlife, and I promise to tell the truth. I work with Peter and I'm often at Ahihi Kinau natural area reserve. I just had a couple of things I did want to highlight, and while I agree with Peter that the size of the event may be a further discussion, I'm often there and we put a traffic counter on the road to try to understand how many people were using the area between 2017 and 2019, we were averaging about 2,400 people each day. Just to put this in perspective for you and echo what Mr. Borge was sharing. So, we're seeing about 1,200 cars each day from that corridor. In...I noticed in the applicant's letter and their plan that they've tried very hard to accommodate and plan ahead for parking. But as Mr. Borge noted, there just isn't any parking. And as Mr. Cole said earlier, I'll borrow a phrase, it's a hot mess in that area. People are always trying to park everywhere they can, and there is no parking. When they, the applicant states that they are going to shuttle people and the shuttle turns, drives south to turn around in a safe place, guess what, that's in the reserve parking lot. That parking lot was built so that we could accommodate visitors to the natural area reserve and get cars off the road. But those, those shuttles that they're describing are coming in, in that area to turn around. It's not a huge impact to turn around, but that's, just FYI, that's where they're going.

Just to address a couple of other issues that I noticed in the application, they do use chemicals in the lawn. And any, any chemicals, they said moderate use, but any chemicals used in the lawn in that area is going to go into the ocean. And as Peter noted, the, the reef in the natural area reserve is the only one in the state. The only one in the lower portion of the state that is not declining. So, every, every activity in that area does have an impact. And I appreciate that they're trying to minimize impacts. But commercialization of this area creates new impacts.

The last thing I would just amplify is that in the application, it says that the area does not have native species and could not be landscaped for that. That's inaccurate. We've been reclaiming shoreline in the reserve with native strand coastal planting. So, what they're describing it, it's a private piece of property. Understood. But if you're a private piece of property, you're probably not going to try to be as intense on your chemical use to make a perfect lawn for the perfect wedding as you would be at, at a commercial exercise.

And one last point, native species can—

Ms. Takayama-Corden: Three minutes.

Mr. Bagshaw: --use an area including seals, so that's on the shoreline.

Ms. La Costa: Thank you, Mr. Bagshaw. Mr. Cole, have you have any questions for the testifier?

Mr. Cole: No, thank you.

Ms. La Costa: Thank you, sir. Commissioners, have you any questions? Commissioner Freitas, go ahead.

Mr. Freitas: Thank you, Chair. Mr. Bagshaw, can you finish? You were almost finished, I think. We don't want to cut you off. What were you trying to say? Something about a seal.

Mr. Bagshaw: I just wanted to point out that monk seals have frequent that area and if it's on state land, we have to close down access within 50 yards. That's federal and state law for endangered species. It's certainly possible that seals could come into that area and if it's a crowded area, you know, 25 people would be a lot better than 75, but if it's a crowded area the seals may not come in, and I just have a...I wonder if they would be willing to stop a wedding if a seal came ashore would that happen?

Mr. Freitas: Okay, that's end of your testimony, Mr. Bagshaw?

Mr. Bagshaw: Yes, sir. Yes, sir, that's it.

Mr. Freitas: Okay, I have a question Chair, for him.

Ms. La Costa: Go ahead, please.

Mr. Freitas: Mr. Bagshaw, thank you so much for giving—

Mr. Hopper: Chair.

Ms. La Costa: Yes, sir, Mr. Hopper.

Mr. Hopper: You just gotta remember to see if there's questions from the applicant again.

Ms. La Costa: I did, sir. I already did that. He said there weren't.

Mr. Hopper: ...(inaudible)...the last testifier, but okay, thanks.

Ms. La Costa: Thank you though. I appreciate you keeping me on track. Go ahead, Commissioner Freitas.

Mr. Freitas: Mr. Bagshaw, thank you so much for doing a car monitoring and traffic report. My question to you is I am familiar with that area and I'm thinking more of a day traffic is when this is happening whereas these events as far as I know where I did wedding at the luau here in Lahaina, we, we did it in sunset. Do you have a car count say in the afternoon, 5, 6 o'clock, until 9 o'clock during the event time?

Mr. Bagshaw: The data that we have was the average per day for a 24-hour period not for the hours. But I can tell you the peak hours for the area are between 9:00 and about 1:00 p.m. The additional problem with that congestion is if there's an emergency vehicle, it's clogged by just everyone trying to park on the sides of the road and large vehicles like ...(inaudible)...or any equipment delivery trying to navigate that same narrow road that Mr. Borge was describing. I, myself have been trying to respond things, it's a work road for me, and I get stalled behind things, and it's...there's traffic from all corners, not just this one property of course, but large vehicles or shuttles and that's gonna create more of a bottleneck.

Mr. Freitas: Thank you, Chair.

Ms. La Costa: Thank you, Commissioner Freitas. You can write down your questions, Mr. Cole, you're referring to rebuttal is that correct? You can...afterwards you can questions. Thank you very much. Commissioners, any other questions for Mr. Bagshaw? Okay, I thank you so much for appearing, and your time, and your comments. We are now going to start in-house testimony. I will call your name when...please come to the podium, introduce yourself, I will ask you if you will tell the truth and you will have three minutes. So, our first testifier is Dana Pastula. Ms. Pastula, please step forward. Oh, sorry, it looked like Don. I beg your pardon. Dana, excuse me. Please introduce yourself, promise to tell the truth and you have three minutes. Who's gone? Excuse me just a second, let's make sure we have all the commissioners? Thanks, Kim.

Ms. Thayer: She's still on the call.

Ms. La Costa: She's still on the call.

Ms. McLean: Commissioner Lindsey, are you still on the call? Commissioner Lindsey? Commissioner Lindsey, are you still on the call?

Ms. La Costa: Ms. Pastula, thank you for waiting. We have to wait till all the commissioners are available. There she is, okay, perfect. Ms. Pastula, please forward, introduce yourself, promise to tell the truth, you have three minutes.

Ms. Dana Pastula: My name is Dana Pastula. I own Café O Lei restaurants and I promise to tell the truth. You know, they say that Hawaii is the hardest place to do, and I have your business thrive. But as for me, I have a lot of help from communities and special people. Carolee Higashino is one of those people that helped me where I am today. I, I was a little mama shop in Wailuku and Makawao, and she gave me a chance to cater some of her many events. She not only inspired me, but encouraged me to, to achieve my goals. Many times, I have sought her counsel and she had to help me and many others, and she's always generous with all her help. I'm talking about generosity because she has always been with her energy, with her creativity, and she always inspired and encouraged many of the people that are in events planning today and have their businesses thrive. It's because of her, you know, like, like she was saying, there were...before there were only three events planning. Now there's like 300, you know. So, she has always...her standards are the ones that we follow through this industry. Her work is not only in the events planner that makes her a good person. She also

again to reiterate, she has helped put her time, her work, even White Orchid Beach House as a venue for a...for the many charitable events that that she helps out.

I work at the White Orchid Beach House is always a welcome joy. You know, we go in with the...with a organized staff. And we've seen some of the most spectacular wedding deco that they put on. So, because of the standards that they put, I think this is all true to many of the vendors that work there. You know, we all try and achieve excellence because of what they put in there. They have a strict rule of standards and they're very into the safety, the cleanliness, the timelines, and we are...we have to follow all these. So, all of us really try our best to make it a great place for all the events that come in.

You know, we have suffered a lot already well with this pandemic with food and beverage—

Ms. Takayama-Corden: Three minutes.

Ms. Pastula: --with the food and beverage industry has, has suffered much. So, I would love for you guys to give her the permit, conditional permit to do it.

Ms. La Costa: Thank you, Ms. Pastula.

Ms. Pastula: Thank you so much.

Ms. La Costa: Thank you, Ms. Pastula. Before you leave, please Ms. Pastula, there may be some questions.

Ms. Pastula: Yes.

Ms. La Costa: Does the applicant have any questions for the testifier?

Mr. Cole: No, thank you.

Ms. La Costa: Thank you, Mr. Cole. Just a moment please, we have commissioners, Ms. Pastula. You may have questions from the commissioners. Commissioners, have you any questions for Ms. Pastula? No. Thank you for the delicious pies, at Leodas. Thank you so much for your testimony. Our next testifier is Stacy Smith Hault, and please correct me if mispronounce your name please, step forward, introduce yourself, promise to tell the truth, you have three minutes.

Ms. Stacy Smith-Hault: It's Stacy Smith-Hault, and I promise to tell the truth. I have a business for 26 years called Bars are Us.

Ms. La Costa: Excuse me, would you speak into the microphone so Carolyn can pick it up. Thank you.

Ms. Smith-Hault: So, that's how I met Carolee and Dana. We all built our businesses together to become some of the top, you know, in our professions and like Dana said, Carolee sets the

standard for these events and they're always run the best of anybody else. We actually have a lot of due care. We always try to, you know, be good with parking out there and we care about the neighbors. We've been there, you know, for years. We all, I live, I live in Kihei for 40 years. So, and we always try to keep the sound down and I do the bar, so, I always cut it off at 9:15, so everyone's packing up their things at 9:30. So, everyone's gone before any sound ordinance. So, just know that there is a lot of due care there, and it's not just run, you know, run of the mill, it's really a top notch, you know, it's run like a top-notch business. So, if you guys could give her permission, we would be thankful. We have thousands of employees that really depend on it, too. So, thank you for your time.

Ms. La Costa: Thank you. Mr. Cole, have you any questions for the testifier?

Mr. Cole: No, thank you.

Ms. La Costa: Commissioners, have you any questions for Ms. Smith-Hault? Thank you so much for your time and testimony. Appreciate it.

Ms. Smith-Hault: Thank you.

Ms. La Costa: Our next testifier is Mr. Higashino. Please introduce yourself, promise to tell the truth, you have three minutes.

Mr. Peter Higashino: Hello, my name is Peter Higashino, I promise to tell the truth. Like my wife mentioned, we've been there I think 25 years. She's never a quitter. She has a stellar reputation. I think she made a lot of the waiting rules as, as when weddings were starting to get popular on Maui in person. I just want to see a little bit about the concern about the monk seals. I have never seen a monk seal in front of that property in the 25 years we have been there. I have seen them at the wedding cove, the permitted state property, where they have 10 to 15 weddings a day. Anyway, thank you for your time. Anyway, thank you, thank you very much.

Ms. La Costa: Just a moment please, sir. Mr. Cole, have you any questions for the testifier?

Mr. Cole: No, thank you.

Ms. La Costa: Commissioners, have you any questions for Mr. Higashino? Thank you so much for your time and testimony. Our next testifier is Kainoa Higashino.

Mr. Kainoa Higashino: Hi, my name is Kainoa Higashino, I'm Carolee's son and I promise to tell the truth.

Ms. La Costa: Thank you, sir.

Mr. Higashino: So, pretty much my whole entire life I've been down there just enjoying the water, not so much the wedding side of it, more so the ocean side of it and everything about it. And it's just a place I've been going for years and years, just a special place to me. Honestly, if we don't get the permit, most likely it'll just be sold to an out of state buyer, who knows, another person buying the land, just live there maybe one month of the year, who knows. But with us

there, I mean, we use it quite often. We bring all our friends down, we go fish, dive, go do whatever down there, just hang out, you know, enjoy the beach, enjoy the resources it offers, and it's just, it's a place to escape. It's nice for our friends and all of us to go hang out. And I like to do a lot of diving, and yeah, like my dad said, I've never seen a monk seal there in my life and I'm there almost every other weekend if not. I like to go to bays right down the road. This is a place that means a lot to us as a family. And I think going back to like the parking side, I mean, honestly, the parking, everyone, if everyone pulls in perfect is like there's so much space that you can take at least eight cars. And plus, there's a parking lot down the road. And honestly, every day I see at least 50 people with me visually seeing going around in our lot, in our property, private property. So, like DLNR was saying, they're kind of mad about them going to our public lot to turn around, imagine in your own private lot, but it's like, that's just all of the people visiting, that's not even people wedding. All of people coming for weddings and stuff, I know every time I've seen them personally, they pull into the side, they get off the road as much as they possibly can. Like he said, when he was saying there was the trailers when he had to come down, yeah, it might have been true that he had to wait until someone, but also, that's not their fault that the road's so small. Although, yeah, sure, it does affect the parking and stuff there. It's not quite the private properties fault, but also, that there's all these other options to turn around down the lot or down the road that is public land. And I don't know why they get mad. I mean, I understand why they're getting mad about us turning on private property or public property, but yeah, I'm getting a little off to the side now. But yeah, my main thing is more so, my family's been going there since I was born. We've been taking care of a place more than I'm sure 90 percent of tourists take care of any of our beaches. And after any wedding I've ever been to, I've never seen a piece of rubbish, and if there is, I go pick it up. If there's anything on the beach, I go pick it up, of course. I'd never leave that for the land to rot with, you know. Sorry, getting a little mixed up now, but yeah, that's I most like to say.

Ms. La Costa: Thank you. Just a moment please, Mr. Cole have you any questions for Mr. Higashino.

Mr. Cole: No, thank you.

Ms. La Costa: Commissioners, have you any questions? Commissioner Freitas.

Mr. Freitas: Aloha, Mr. Higashino, thank you for your testimony. You said that you've never seen a, like your dad did earlier, you've never seen any monk seal. And you also said that you swim out front there...(inaudible)...Can you share why...what is the dynamic right in front that you think the monk seal cannot, either cannot or does not want to come to that beach?

Mr. Higashino: So, that beach is actually...it's not really a beach really, it's beyond...it's a lot of reef in front of it, and there's the waves that breaks on this little reef shelf, almost. So, it would really, really hard for monk seal to really want to make it in there without getting hit on the rocks.

Mr. Freitas: Right...(inaudible)...

Mr. Higashino: ...It just wouldn't...(inaudible)...

Mr. Freitas: Thank you.

Ms. La Costa: Thank you, Commissioner Freitas. Commissioners, any other questions for the testifier? Mr. Higashino, thank you so much for your time.

Mr. Higashino: Thank you.

Ms. La Costa: Appreciate. Our next testifier is Ethel Leval. Please introduce yourself, promise to tell the truth. You have three minutes.

Ms. Ethel Leval: I'm Ethel Leval and I promise to tell the truth. My name is Ethel Leval. I've been with Carolee for 25 years. Born and raised on the island. I had no idea that there was an industry that existed called the wedding industry that employed so much of our local people from ministers to caterers, bartenders, musicians. It's a whole nother industry that brings in so much economy to our islands that a lot of people aren't aware of. Our brides and grooms that come here, you know, they, they need to rent cars, restaurants. They have rehearsal dinners, they have the day after brunches and it's...we just bring in so much economy, to our local economy and we're using...we try...we use local most of the time. A lot of our brides and grooms don't want the hotel experience. They want privacy. They don't want hundreds of people witnessing their weddings on the lawns of the hotels. We've worked at this property for many years and with Carolee's guidance, we have always respected it and respected the land and the neighbors and kept a really tight ship. So, I would wish and hope that you grant White Orchid this permit.

Ms. La Costa: Thank you, Miss Leval. Mr. Cole, have you any questions for the testifier?

Mr. Cole: No, thank you very much.

Ms. La Costa: Thank you. Commissioners, have you any questions for Ms. Leval? No. Seeing none, thank you so much for your time and testimony. Appreciate. Our next testifier is Jacqueline. Sorry, I cannot read your writing. Please step up, introduce yourself and promise to tell the truth.

Ms. Jacqueline Ishikawa: Aloha, Commissioners and Chair. My name is Jacqueline Ishikawa. I've been with White Orchid now for 19 years. Thank you to Carolee for the opportunity that she gave to me. Like Ethel mentioned, I had no clue what this wedding industry was like or just what was out there. She gave me that opportunity to, basically to work with clients to give them a memorable experience of coming to Maui and experiencing what I've been experiencing my whole life here from growing up on Maui. I speak with continuously on a weekly basis and coordinate events from Maui I've seen how it has impacted in a positive way of bringing most of all revenue to our island. By speaking to one couple, it can lead to 30 people plus coming to Maui. We are in need of private estate venues, which is what clients are looking for more for a unique experience as a couple and for also for their guests. The Beach House, I feel, is a very special place that sets a tone for a destination wedding in Hawaii like no other location that I've ever been to, worked at and experienced as myself. Thank you very much for your time today and considering the Beach House to get approved for the permit.

Ms. La Costa: Thank you, Miss Ishikawa. Mr. Cole, have you any questions for the testifier?

Mr. Cole: No, thank you very much.

Ms. La Costa: Commissioners, have you any questions for Miss Ishikawa? Seeing none, mahalo for your time and your testimony. Our next is Miss Laurie Ai. Please state your name, promise to tell the truth. You have three minutes.

Ms. Laurie Ai: Aloha, everyone. My name is Laurie Ai, and I am employed with Carolee Higashino and the White Orchid Wedding team. I promise to tell the truth. I'm testifying in support of the White Orchid Wedding Special and Conditional Permit. After working under Carolee and with the White Orchid Wedding team, I'm humbled to stand here and testify and attest to the Higashino's sincere generosity and care towards me myself, but also the community at hand. Like Carolee stated earlier, there are only a handful of private estates, three beachfront to be exact that allow us to conduct business and utilize local vendors to our utmost ability. As a former employee of some major hotels, such as Four Seasons and the Grand Wailea, I have been able to see firsthand the hotel industry and how it monopolizes on our islands and the beaches and the beautiful spaces we have without giving back nearly as much as what I've seen the Higashinos contribute to the community. The Beach House is a special space that has allowed so many great memories and special moments to be had, and I've had a client this year tell me how sad she is that she can't return to enjoy her vow renewal there. With that being said, I would hope that you'd gotten her the permit to allow weddings as well as vow renewals and special events to be have on this property. They are very considerate and they're very cautious with the way they conduct business and first hand seeing how they run their business and being a part of the team, I know that we can hold up any of those requirements.

Ms. La Costa: Thank you, Miss Ai. Mr. Cole, have you any questions for the testifier?

Mr. Cole: No. Thank you very much.

Ms. La Costa: Commissioners, any questions for Miss Ai? No? Thank you so much for your time and testimony. Our next testifier is Linda Herberger.

Ms. Linda Herberger: Hello, my name is Linda Herberger, and I promise to tell the truth. I want to thank you for giving me the opportunity to speak in my support of Carolee Higashino of White Orchid Wedding receiving a Special and Conditional Permit for events at 7010 Makena Road. I own and operate Lah Salon. I provide, along with several of my stylists, hair and makeup services to be...to the brides and the bridal parties that are getting married. I have personally known and worked with Carolee for close to 30 years. In my experience, she's been exceptional, consistent, providing a service to her clients while maintaining respect for her neighbors, the vendors and for the land. She has created what I feel is a real stewardship to the land at 7010 Makena Road. I've owned and operated a salon at a resort in Wailea for ten years prior. Having the location at Makena Road gives for a more personal and intimate experience. It also keeps the money from the services on our island rather than feeding a larger mainland corporation. We have a lot of people who come and work along with Carolee, and that feeds our families, and it stays here on the island, and allows us to thrive on our beautiful island. It is a privilege to work with a company that holds itself to a higher standard and to work at such a

beautiful location. Carolee and her company have always treated their clients, vendors, neighbors and the land with the utmost respect, utmost respect. I believe it will offer great opportunity to the families of Maui to offer space that is run by a local business and allows for many small businesses to work and thrive here on Maui. Mahalo.

Ms. La Costa: Thank you so much for your testimony. Mr. Cole, have you any questions for the testifier?

Mr. Cole: No, thank you very much.

Ms. La Costa: Commissioners, have you any questions for Miss Herberger. No? Thank you so much for your time and testimony. Our next testifier Tiara Jensen. She left. Okay, then is Alita Lightsey here, did I say your name wrong?

Mr. Euta Lightsey: Hi my name is Euta Lightsey and I promise to speak the truth.

Ms. La Costa: Mahalo. Go ahead please.

Mr. Lightsey: Mahalo. Thank you. So, I am a wedding officiant here on the Island of Maui and I have been an officiant for about four or five years now, and have been working with Carolee and White Orchid Weddings for about the same amount of time and it's been a great experience and I've grown a lot with working with people like themselves. Basically I wanted to testify in support of them receiving the Conditional Permit and the reason why I feel that was is because at one point during Covid there was all kinds of things happening and I'd noticed that the decline had happened for our wedding industry and they've been a big influence for getting us back into it and when it did, they were starting to open up to helping out the community and so, my wife's birthday was around that time and I needed a place to hold the event, and so, just so happen they allowed me to hold the event there and I've realized that there aren't a lot of places for local people hold events that are affordable and are on the beach front. We can do beaches, but any other place that I've noticed tends to be very expensive. There is no way I would have considered holding the event at Olowalu because the price is so high, the lot is so large and I don't, you know, most people won't really need a lot that large to hold a simple event as a birthday party. And Kukahiko I actually hadn't really considered before, but beyond that, it's kind of...that I feel like it's a very perfect spot for affordability and something a little bit more luxurious than just a simple beach event for family and friend gathering type of thing. With that being said, I would actually if even if it's allowed for me to make a suggestion to allow more special events for them to hold throughout the months. I notice it was only special events per month, and I would think if word got out to the community that those kinds of things could be held there, I think there would be a lot more interest in local people holding personal events rather than just weddings. That all aside, considering the opposition, the things that they brought up, I hold more reservation for Secret Beach, Makena Cove than I would for the venue. I do weddings there practically every day honestly and there is so many weddings being held there, there are so many people there in that small vicinity that I would feel there would be more of an impact to the preservation south of that area than it would be from the—

Ms. Takayama-Corden: Three minutes.

Mr. Lightsy: --from the venue. But that's just my personal opinion. That's all I have to say, thank you so much.

Ms. La Costa: Thank you, Mr. Lightsy. Mr. Cole, have you any questions for the testifier?

Mr. Cole: No, thank you very much.

Ms. La Costa: Thank you. Commissioners, have you any questions for the testifier? No. Thank you so much. Appreciate. Okay, that is the last person who has signed up to testify. Do we have anyone on video that has stepped up? Okay, Commissioner Freitas.

Mr. Freitas: Before Mr. Lightsy runs out, I have a question for him.

Ms. La Costa: Hang on just a second, we'll drag him back in from outside. That was close he almost got away from us.

Mr. Lightsy: So sorry.

Ms. La Costa: Go ahead Commissioner Freitas.

Mr. Freitas: Thank you, Chair. Thank you, Mr. Lightsy for your testimony. My question to you, you mentioned you do officiating at that Lover's...what do they call it, Love's—

Mr. Lightsy: Makena Cove, Secret Beach.

Mr. Freitas: Secret Beach. Now, it's a really small beach. How many...I hear sometimes more than one. What have you seen, like how many ceremonies at the same time you've seen the most?

Mr. Lightsy: Five.

Mr. Freitas: And let me ask you this, now wouldn't that create some kind of a traffic, more parking challenges than the one that you...the one that this applicants are putting in.

Mr. Lightsy: Thank you for bringing that up. That's one thing I wanted to mention. Yeah, the issue with that area, yes, the road is small, but during the high time of, you know, 5 o'clock in the evening, cars are all the way lined up down the road, but I have also noticed that they would utilize the parking lot across from Makena Cove for their venues and that's their way of minimizing traffic in the area whereas if you just had five weddings during the day at the same time you have more traffic on the road because nobody's utilizing that parking lot across the street. It's a private home, but it's utilized as a parking lot from time to time.

Mr. Freitas: Okay, okay. So, you said up to five sometimes at once, gosh, okay. Thank you, Mr. Lightsy.

Mr. Lightsy: Thank you.

Ms. La Costa: Thank you, Commissioner. Thank you for coming back in Mr. Lightsy. Appreciate very much. Commissioners, any other questions before he escapes? I think you're free to go. Mahalo nui, appreciate. So, last call for testimony. Going once, going twice, public testimony is now closed. Go ahead, Director.

Ms. McLean: Chair, now it's time for commission questions and discussion.

Mr. Hopper: Chair?

Ms. La Costa: Yes, Corp. Counsel.

Mr. Hopper: Now would also be the time if the applicant wanted to provide rebuttal evidence to the testimony I think, I think that could be done.

Ms. La Costa: Thank you, Mr. Hopper. So, Mr. Cole, I'll let you do your rebuttal and then we'll have commissioner questions.

Mr. Cole: Thank you very much, Chair.

Ms. La Costa: Thank you. Go ahead please.

Mr. Cole: I'm just gonna address a few issues regarding traffic and parking. We did want to clarify that you know, the applicant does not ever try to park 50 cars at the site. In the application, they've detailed a lot of the measures they used. They strongarm their clients to use shuttles not only because they're convenience but because also for safety. Shuttles are also required after a certain size. They stagger the shuttles when they come if there's a large event. They've got a system that's down where they can unload people and they're not using any public parking.

Next, I wanted to talk about chemicals on site. I just confirmed with the applicant that they take care of the yard themselves and they do not...I'm sorry, I just confirmed with the applicant that they take care of the yard themselves and they do not use any chemical fertilizers in the lawn. I also just wanted to further add that you know, not only are they upgrading a cesspool to septic system, they are choosing to upgrade to aerobic septic system which I believe is kind of the top of line for removing nutrients out of your water system before they can enter a coastal area. So, they are taking it to the furthest limit in terms of removing chemicals from their waste stream. Lastly, I just want to address the SMA process. I believe the Director's Report is very clear that it is a separate process that comes after this. It will address not only shoreline issues and shoreline setbacks but any of the questions on minor structures that come in that area. We targeted submitting it after this section, one, because we are getting the final realignment of the aforementioned aerobics system, but also because we're going to get information from the commissioners here today on the conditions that set the, I would say, the maximum use of the site, and that would also be put into the application for consideration by the Planning Department. I assume that we would be doing that in between this and the hearing by the County Council, and if it's approved, and the council has any final changes then the SMA approval which is separate from this, will also be amended and will need to be in effect prior to use of the site for commercial events. That's all I have.

Ms. La Costa: Thank you, Mr. Cole. We'll now have discussion among commissioners, so please let me know what comments, questions?

Ms. McLean: Chair, if I could in response to Commissioner Freitas question. The Kukahiko permit allows for 110 events per year of up to 50...shall not exceed 49 people including staff. So, 110 events, up to 49 people including staff.

Mr. Freitas: Thank you. Thank you, Director. Can I ask a couple of questions, Chair?

Ms. La Costa: Go ahead, please, Mr. Freitas.

Mr. Freitas: If someone can answer me, in our packet, we have Exhibit 2 and Exhibit 3, and it shows the property. I don't know what it shows. There's a blue line outlining something, and I would like to know where is the property line 'cause on Exhibit 3, the line's straight, but Exhibit 2, there's funny blue line going kinda funny kind. What is the correct property boundary?

Ms. La Costa: Mr. Cole, you probably can answer that please.

Mr. Cole: Sorry, excuse me, you were asking for the property boundary?

Mr. Freitas: Yes, please.

Ms. McLean: Chair, I can respond. Exhibit 2 shows the property boundary according to the County's Real Property Tax map, and so that boundary does show an extension beyond the shoreline. Exhibit 3, shows the site plan for the events, and so, it...the majority of the lines match, but when it gets to the shoreline area, the site plan is a little bit looser and follows more of the features you can see by imagery than the actual property, according to Real Property Tax.

Mr. Freitas: I can see that now. My question, there was a comment made by a testifier that said that there was a picture of a fisherman and, and said that the...I'm not sure if he said the property or the waterline is the other side of the coconut tree. And I thought he meant mauka side, and I just wanted to see for sure that this...where the fisherman was is actually in the property of the private owners, but yet they don't really...they're not saying they're complaining about it, but I wanted to clarify to whoever that testifier was they made it sound like the property and the activity is going outside of their boundary and also that they are on the beach or on the rocks taking picture, which isn't allowed. Well, that's...if they do anything. I think they're within their boundary.

Mr. Cole: To answer your question, Commissioner. There's a difference between a deeded boundary and an effective boundary of where state ownership starts, and this has kind of evolved over a number of years with state policy.

Ms. La Costa: Excuse me, Mr. Cole, you have to identify yourself.

Mr. Cole: Apologies, Rob Cole for the applicant. The policy that's evolved, which refers to the process of what's called a certification of the shoreline, is a formal process where a surveyor submits a map. The state agencies come out and review it along with the surveyor. Public comments are allowed. And from that comes the official determination of the boundary between private and public property. So, at this point, you know, that process once done only lasts year, so it has to be redone over and over, and I assume it will be done, you know, as part of this project at some point and is related to the SMA process, which is separate from this process.

Mr. Freitas: So, what I was trying to clarify was someone's...a testifier's comments, and I just want to make sure that the activity, the lawn and even part of the beach and the rocks are still within the boundary for this permit or you...or is there another line going to be drawn where the boundary is for the ocean side?

Mr. Cole: I believe this permit would extend to the whatever is legally represented as a private property through the shoreline certification process.

Mr. Freitas: Okay.

Mr. Cole: For, you know, purposes of this application, the applicant is not proposing to do anything seaward of, I would say, the lawn area.

Mr. Freitas: Correct. But if they want to take a picture of something on the beach, they're still on their own property and wouldn't require a beach, a state beach permit is what I'm trying to get at.

Mr. Cole: If they were to travel to the area where you know, if the state were to determine through this process the shoreline was located, anything seaward of that shoreline would be considered state property. And you know, the applicant would need to get a permit for any use on state land.

Mr. Freitas: Okay, that's good to know. Well, thanks. That's the only question I have.

Ms. La Costa: Thank you, Commissioner Freitas. Commissioners, any other questions?

Mr. Thompson: I have one.

Ms. La Costa: Commissioner Thompson.

Mr. Thompson: Maybe the Director, when's the last time we got a shoreline survey there, the setbacks and...

Ms. McLean: I know that the staff planner, Jared Burkett had a comment on that. I don't know if Rob wants to comment on that or if Jared wants to talk about the latest certified shoreline survey.

Mr. Cole: There is, there was a survey done in, I think, 2021. It was not certified. So, it was basically informational for the applicant for planning purposes. And I believe, you know, as part of the process going forward they will have a new shoreline surveyed and certified.

Ms. McLean: Yeah, and that would...we would need that with the permitting package for the septic tank.

Mr. Thompson: Will we need it for this?

Ms. McLean: No.

Ms. Thayer: May I ask a question?

Ms. La Costa: Go ahead, Ms. Thayer.

Ms. Thayer: The septic tank would need to go for a SMA?

Ms. McLean: Yes.

Ms. Thayer: Okay.

Ms. McLean: And we would want a...just because it's a shoreline property and we're dealing with a relatively shallow piece of land, we'd want to make sure that it's outside the shoreline setback.

Ms. Thayer: Yeah.

Ms. McLean: If for some reason it's not, it would come to you for approval, but to make sure that it's outside the shoreline setback.

Ms. Thayer: And then the wedding activity occurring within the shoreline setback?

Ms. McLean: They would need a permit in order to do that. They would have to apply for that, so we'd see what the results of the survey are, and if they wanted to conduct activities there...we're talking about different jurisdictions now. We'd be getting into the State Conservation District if it's that far makai, otherwise, it could be an activity still within county authority and subject to the shoreline rules.

Ms. Thayer: I'm trying to wrap my mind around there's a lot of different stuff going on, so I just want to make sure we are like deliberating the right things with the right set of criteria, and in the right time line. So, like what we are looking at today with the State Special Use and Conditional Use is regarding the conducting of weddings and events on this property. And then, so that justifies the use and then each individual event would be subject to the SMA Rules. Is that correct?

Ms. McLean: Yes, what we would likely do is get like an umbrella permit or a blanket permit so they don't have to come in every single time. So, yes, that would be for SMA and potentially shoreline, and then the septic would also have to be subject to SMA review.

Ms. Thayer: Okay, so as part of that process, they would automatically need to get an approved shoreline survey, shoreline certification.

Ms. McLean: Right.

Ms. Thayer: And then for the SMA, they would have to have that shoreline certification and say, we are conducting our events in like this portion of the property, which either crosses into the shoreline setback area and they would need permits for that or it's outside of the shoreline setback area and they would still be subject to SMA.

Ms. McLean: You got it.

Ms. Thayer: Okay, okay, I just want to make sure this is all straight. Okay, gonna put my thoughts together based on that.

Ms. McLean: ...(inaudible)...

Ms. Thayer: Yeah, yeah, yeah, thank you.

Ms. La Costa: Commissioners, we have any other questions, clarifying comments, input?

Mr. Burkett: Commissioners, this is Staff Planner, Jared Burkett. I have a little bit more information on that certified shoreline survey. So, I had discussed this with the applicant's previous consultant and they had stated that they...they already had two shoreline planners, one was, is the Sea Grant Specialist. They came down and looked at the parcel along with DLNR and there were some concerns about some boulders that were placed there that didn't seem to endemic to that spot, so they're, they're kind of determining what happened, though the property was developed back in I believe it was 1966, so, they're still determining what to do about that which is also a reason why they have not got the certified shoreline survey completed yet. So, that will be an ongoing, you know, collaboration to get that issued. But it also was for the reasons that were stated because of altering that septic system, and so, then they'll, they'll definitely be turning that in for the SMA Assessment and Shoreline Assessment applications.

Ms. La Costa: Thank you so much Mr. Burkett. Commissioner Hipolito, you had a question please?

Mr. Hipolito: Yes, thank you, Chair. I had a question for Mr. Burkett. When we first started the hearing you made a presentation and we got a response letter reference June 13th, and you mentioned in your words that you had some comments about it, if I can recall correctly or in response to the June 13th letter is that correct?

Mr. Burkett: Yes, that is correct. But I let the applicant know yesterday about the Department's concerns with their letter and so he addressed those in his presentation to you today. So, and I

wasn't aware that he was going to do that. So, everything's taken care of I would said the Department's satisfied with the corrections that he made on the record.

Mr. Hipolito: Okay, thank you.

Ms. La Costa: Thank you, Commissioner. Commissioner Thayer go ahead.

Ms. Thayer: Thank you. I have some questions for the applicants. One is how many on average vendors do you have per event? I mean, vendors in terms of like food, bar, band, et cetera.

Mr. Cole: Rob Cole. Sorry, I thought you said I thought you said benders. Let me bring up the applicant here. I think she could best answer.

Ms. Higashino: Carolee Higashino again. Okay, I'm talking again. It varies. It's almost like asking how much is your wedding going to cost and we know nothing about what you're doing. So, what it is, is we have if it's 25 people, you'll have...the thing is we have ingress and egress too, so the minister will come and go, then the photographers will come and they will go, before the end of the event, so for the whole duration, you'd have probably a minister, a photographer, but see we stagger this. So, the floral designers will come and they'll be gone before anybody gets there, so if you get my drift. So, there's a lot of coming and going, but we orchestrate that on a very tight time line. So, we learned a lot also with Covid that we couldn't cross paths, when we were, you know, first coming back after Covid. So, we've kind of kept that routine. So, at a given time, you'll have your guests but typically after the ceremony might be a better gauge of that because you'll have your minister come and go, you'll have your musician come and go from ceremony, usually it's a soloist, guitarist, vocalist, they'll go. Then what we're left with is really the crew. We have come to formula, it's a little more complicated than that, but we'll have a wedding planner. The photographer may stay, usually they stay through cake cutting or something like that. The catering crew is really who's there at that point, and the service crew. So, our formula is for every 15 guests we have one waiter, that gives you an idea, it's not...the density for 25 people is very little. We probably have three people. We would have the chefs come in and go also, so like I said it's a very staggered thing. So, the chefs don't usually come with the food and everything because they don't cook there on property, they use their commercial kitchen. So, by the time the ceremony is gone, then they come in. So, it's kind of a lot of give and take. So, at any given time, it's hard to say, I guess, you know what I'm saying? You'd have really the catering crew and the wedding planner.

Ms. Thayer: Okay, so like, are those guys shuttled in or are they parking in the park?

Ms. Higashino: No, we have them come and they load and unload and then they leave. And then when they...and some do stay. We have parking for eight cars. But every, every event that we have that exceeds our parking limitation, we require shuttle. But to be honest with you, we shuttle 90 percent of the time. We use 25-passenger small mini buses. We don't use the large 50 passenger buses. I do, so, they come and go. All the guests and people will come and go on that. On occasion, we have had people parked down towards the Big Beach. You know, I can't say we haven't, we have. You know, if we have somebody who's going to come and go and, you know, they don't want to get locked in like the minister who's here for an hour, he'll

probably come and go. And I feel like that's pretty reasonable. But if it's not, then we'll work out a way that we can get them all in the lot. We can get eight cars in that lot easily.

Ms. Thayer: Yeah, so I guess that's what my—

Ms. Higashino: With room for the shuttle by the way.

Ms. Thayer: Yeah, so my question is

that's what I guess what I'm getting at is—

Ms. Higashino: Yea, no, good question.

Ms. Thayer: Is that sufficient for when, for like the maximum number of people who would ever be on site at a time. Is there any time when they're parking on the road? Or is that eight stalls able to fit everybody?

Ms. Higashino: We can fit everybody. We have everybody carpool. For one thing, catering teams and things like that will do drop offs and things, you know, and come back later in the evening. And again, you know, we have had people park, I'm not going to lie. I mean, we'll have people park on the side of the road who want to go and grab something or deliver a wedding cake if, you know, they don't want to get locked in again. That does happen on occasion.

Ms. Thayer: Okay.

Ms. Higashino: Yeah. And again, the time of day that we usually do our events just so you know, we don't really usually start anything until about 4:00 - 4:30 for the...in terms of guest arrivals or anything like that. So, the beach goers are pretty much all gone by that point. But again, we have we have the room on the lot.

Ms. Thayer: Okay. Okay, that's my question. Thank you.

Ms. La Costa: Commissioners, any other questions? Commissioner Freitas.

Mr. Freitas: Yeah, thank you, Chair. I'm kind of leery about changing the, you know, the minimum or you remember, we were trying to change some of the numbers around, but the other property with a max of 45, this one has these events that go up to 75. Would this be a time that we can kind of find a medium number like half of 75 is 35 instead of the 25 in their recommendation and then the four times a month that bigger party whether it was 50 or 75. I think that would make the most sense for this by, by what they're saying, the size that they can accommodate. I think that be a good amount.

Ms. McLean: If there aren't any other questions or discussion from the commission, then you could start getting into the details of the, of the conditions.

Ms. La Costa: Okay, thank you, Director.

Mr. Freitas: Yeah, I'd like to get it to 35 instead of the 25. And again, that's from my experience of doing weddings at our luau for destination weddings. That kind of was more of a medium number than the 25.

Ms. La Costa: So, you headed at 30 before, if I'm correct, Commissioner Freitas, and now you're looking at 35, and does that include staff?

Mr. Freitas: No, what I, what I had originally said, I threw numbers out, but I'm using the 35 because it's half of what the max was, which was 75. So, I'm actually using numbers that make some sense instead of just pulling it up. Half is 37 1/2, but you know, I was make...round it to a nicer number, 35.

Ms. La Costa: So, would 36 make more sense being that they're usually couples.

Mr. Freitas: Okay, that works, thanks.

Ms. La Costa: Just saying. I've run out of fingers so that's the only way I could figure it out.

Mr. Freitas: I'm glad, I'm already married.

Ms. La Costa: Okay, other conditional changes that we want to make?

Ms. Thayer: I have a question about one of them.

Ms. La Costa: Please, Commissioner Thayer go ahead.

Ms. Thayer: Thank you, and I think this might be for the planner, but the Condition No. 13, is there a reason why you put a full stop on overnight accommodations and not allowing for non-paying guests or family or the Higashinos themselves?

Mr. Burkett: Sure, this is staff planner, Jared Burkett. So, the zoning allows for the owner to use the property or the tenant to use the property for their own use. So, non-commercial use for the tenant overnight is outright allowed use, so you don't need to condition it. So, this is for specifically for the commercial events.

Ms. Thayer: Okay, so would it be appropriate to like, qualify this statement then? As I think suggested in the letter that was submitted?

Mr. Burkett: I don't think that would hurt, but I defer to the Director.

Ms. McLean: Yeah, I don't see that there would be any harm in it to add at the end of Condition 13, the main dwelling cannot be used for overnight accommodations by any wedding or special event guest or participant.

Ms. Thayer: Okay.

Ms. La Costa: Commissioner Thayer, I mean, Commissioner Lindsey.

Ms. Lindsey: I'm just wondering why is there a distinction between a special event and a wedding?

Ms. La Costa: I'm going to let Mr. Cole answer that question.

Mr. Cole: Rob Cole once again for the applicant. I apologize, but this application was submitted by a different planner, and I can't attest to why it was broken up like that. I think from a project condition standpoint, it likely doesn't matter too much. We're talking about the maximum use. I think we could fit that in. I don't know if there was any concern about the Department about having special events over weddings. I don't see a reason why. They are a little bit different. They could include things like filming. So, perhaps that's why the limit was initially suggested. But I think the applicant would be in favor of removing that category as a separate category if everyone was comfortable with that, and that, you could say weddings or special events.

Ms. La Costa: Commissioner Lindsey.

Ms. Lindsey: I'm not sure how weddings are defined here, but in my mind, a wedding is a special event. So, I would be in favor of eliminating weddings or wedding or/and special event, but I'm not sure, the definition there.

Mr. Cole: I think the applicant would be fine with that. I think weddings are special as well. I think, I think it was primarily aimed originally at designating something different, like the commercial filming event where, you know, that obviously wasn't a wedding. It was something unique. Um, but yeah, I feel fine doing that. I would kind of defer to the Department here because they have their project specific conditions, and I have suggested an alternative way of phrasing that and I'll work with that or with, with whatever they are comfortable with.

Ms. Lindsey: Michele is there, can you offer some clarification here for that, please?

Ms. McLean: The Kukahiko ordinance...so, the conditional permit is granted as an ordinance and that is a bill for an ordinance to allow special events. It doesn't make a distinction between weddings and other types of events. We don't have any objection to coming up with a maximum number per month or per year. Kukahiko is per year. This one started out per week, it's...I don't feel strongly whether it goes by month or by, by year. We process what gets applied for, but at this point, changing from weeks to months or a year, we don't, we don't feel strongly either way. But I agree that just calling it special events altogether makes sense. Then we don't have to keep track of, oh, wait a second, you've had three weddings, and that was two fundraisers, so that's all the fundraisers you can have for the year, but you can have all these other weddings. You know, that, that doesn't make a whole lot of sense.

Ms. La Costa: Does that answer your question, Commissioner Lindsey?

Ms. Lindsey: Yes, but I do have one more.

Ms. La Costa: Okay, go ahead please.

Ms. Lindsey: I, I have a slight concern with, which I'm kind of working out in my head about giving them a yearly amount because of the conservation area around. Like, is that a season for a specific fish in the area or it's likely that it's winter when more events are because there are more visitors here is like I would prefer a wildlife professional kind of chime in there.

Ms. La Costa: Let me ask Mr. Cole, did you happen to consult with any wildlife professionals, DLNR, any department like that as far as seasonal animals, and fish, and et cetera?

Mr. Cole: I believe the application was sent to DLNR, Office of Conservation and Coastal Lands, but probably not to the Fish and Wildlife Division. DLNR did not reply to their comments or to the submission of the application.

Ms. La Costa: Thank you. Mr. Lindsey, do you have further clarifications that you need?

Ms. Lindsey: Well, that question is left unanswered at this point. So, but it is something that I feel like the commission should consider. I do see the need for the, for the balance when visitors are here or when the weddings usually are. So, it doesn't make sense to have a lot of weddings in, say, August, when there aren't as many visitors here and more maybe in December, when we have more visitors, but we need to consider the testimony of the first two testimonies and what...why, they were here today.

Ms. La Costa: Mr. Cole, I'm sorry, did you have a comment?

Mr. Cole: Sorry, Rob Cole, again, for the applicant. I just wanted to offer that, you know, as part of a more focused, you know, coastal application, the SMA application will likely be routed to different agencies for review. And I would assume that the Director's Department would route it based on this information to DLNR and, DOFA, Department of Fish Wildlife for the SMA review process.

Ms. La Costa: So, if that's the case, then perhaps something can be put in the cover letter to them, asking if there are seasonal animals that should be taken into consideration.

Ms. McLean: Yeah, in SMA review that would be the appropriate time.

Ms. La Costa: Right.

Ms. McLean: I think.

Ms. La Costa: Is that sufficient for you, Commissioner Lindsey?

Ms. Lindsey: Yes, at this point, yes.

Ms. La Costa: Thank you. I appreciate that input. Anyone else? Commissioner Hipolito.

Mr. Hipolito: Thank you, Chair. I have a question for, again for, staff planner, Mr. Burkett. On project specific conditions, No. 14, I need clarification. This permit does not include accessory dwelling and its associated driveway, garage or yard. Could you expand on that, please?

Mr. Burkett: Sure. The cottage that's also on the property, it's further over to the left or north. That is the caretaker of the property, which is not part of Carolee Higashino's lease. So, the owner of the property has a separate lease to the person that occupies that accessory dwelling. So, the condition is just to ensure that, you know, there isn't going to be any parking in that driveway or they're not going to use that little portion of the yard as also for events. So, specifically, just, you know, making sure they're aware of that. So, that's why the condition was put in.

Mr. Hipolito: Thank you for the clarification. So, I wanted to ask that question because of the fact, parking is a big issue, Chair, and I wanted to ensure that these areas will not be used for parking at any time. So, thank you, Mr. Burkett, for that clarification. I have a question for Mr. Cole. Mr. Cole, you mentioned that the applicant takes care of the landscaping, but they have a caretaker. What does the caretaker do there?

Mr. Cole: I'm going to have to defer to the applicant. Please hold on.

Ms. La Costa: Ms. Higashino, would you please step up? Thank you.

Ms. Higashino: Carolee Higashino again. Not much. The caretaker of the property is probably a glorified name for that position. The gentleman who lives there is actually a friend of the owners. He does pay rent and rents from her, but he does...He does all the caretaking on his side of the property, not the entire property. We take care of all of the, the financial obligation and the responsibility for our side. Make sense?

Mr. Hipolito: So, with your lease, which you lease with the owners, does that encapsulate the entire property or you have a boundary that you're responsible for and the caretaker's responsible for?

Ms. Higashino: Yeah, that's correct. We have a boundary. There's a very clear fence line in between the two properties. They can access just a little bit around on the ocean side and on the back side, but we don't allow anybody to utilize any portion of his side of the property and him to ours as well.

Mr. Hipolito: So, his action is dealt directly with the owner, Mr. Sturgis, or Miss Sturgis, is that correct?

Ms. Higashino: His what? What he say? Oh, yeah, I'm sorry. Yeah, he deals directly with the owner.

Mr. Hipolito: Okay, all right, thank you

Ms. Higashino: Oh, no problem.

Ms. La Costa: Thank you, Commissioner Hipolito. Commissioner Freitas, did you have a question?

Mr. Freitas: Sort of, little bit of...yes, Chair. Thank you. Sort of a little bit of response to Commissioner Lindsey about the total number per year and the possibility of days that or months that may affect some of our native species. I would say again I think you answered it that we can address what those months are on the next SMA because I don't think the months that you are mentioning is exactly the wedding season months that are very busy. So, we can look at that later, but would like to kinda set a limit based on annual, that was what I wanted to share in discussion.

Ms. Lindsey: Noted. Thank you for that, I agree.

Ms. La Costa: Thank you, Commissioners. I have an observation. The Kukahiko, and I beg your pardon, I don't mean to be disrespectful, the Kukahiko permit allows for 110 events. If you do 50 in a month times 12 that's a 180 events per month. So, when we talk about using the Kukahiko as a benchmark, it's lower than what you have asked for. So, would you give me some response to that comment, please?

Mr. Cole: We did recognize after that information was put out that it was lower. This site is also maybe a little bit more accessible in terms of its, it's not in a highly dense area in terms of homes, so perhaps, you know, a greater number is appropriate for this location rather than Kukahiko. And I wasn't sure, Department also look at Olowalu in terms of what their application was.

Ms. McLean: Yeah, we haven't been able to track that down yet.

Mr. Cole: Yeah, but we're willing to, you know, work with the commissioners on the floor here to set an appropriate amount.

Ms. La Costa: Commissioner Lindsey.

Ms. Lindsey: As a wedding coordinator company, are the...is there, can you, do you know that information offhand possibly about Olowalu because you guys are kind of the big dog in weddings outside of hotels. So...

Ms. La Costa: Ms. Higashino, if...please introduce yourself.

Ms. Higashino: I'm Carolee Higashino again. I can find out that information. I can try and text Donna, but I do believe it's 200 or more, but I'm not...I don't have the paperwork in front of me what her permit is. I know that at some point they did renegotiate for more and were granted that. I'm not sure when that might have happened. That's what I was told, but they've been doing this a long time, and I don't know when their permit actually started, I'm not sure.

Ms. La Costa: I think the Director is looking that up also. Thank you, Ms. Higashino.

Ms. Higashino: Sure.

Ms. La Costa: Does that answer your question, Commissioner Lindsey? Thank you very much. So, while we're well, we're looking at that and I mentioned earlier about the...oh, I'm sorry, oh excuse me, Commissioner, Hipolito go ahead, please.

Mr. Hipolito: Yeah, Chair, I share the same sentiments as you solely on the fact that parking has been congestion, has been one of our major discussion points. So, lowering the requested amount, I feel would be very appropriate in trying to minimize that traffic and parking issues. Anything can happen. I've traveled that area, same as Commissioner Freitas from when they had no homes there and long before the kapu area was kapu. The traffic has always been especially that blind area as stated by one of the testifiers, and he does that as his business. He has his business further in. I checked up on that. So, traveling his horses back and forth with that trailer, you know, we need to consider that because of the fact that it's also his business that may be affected, yeah, by our actions and what we need to do today. So, Chair, I share your sentiment, and I think we need to look at this very carefully. I also want to state that I share the same confusion as Commissioner Thayer on what we're asked to do because there's so many moving components and so many things that is being shared and shared without information that we have to decipher on. So, I just wanted to make that comment. Thank you.

Ms. La Costa: Thank you. Anyone else? So, my comment about the film industry is and it would be affecting at No. 10, Condition 10, where it talks about events and ceremonies, shall start no earlier than 10 a.m. and must be concluded by 9:30 p.m. I would like to add something like any film event shall follow the timeline set forth in their specific permit because there they can start earlier and, and work a little bit later. I just didn't want to have the event have to stop if their permit was in conflict with what this one said if they use the property for filming aspects, and then I could go all commercial activity must conclude by 10:00. So, that's, those are my comments. And Mr. Cole, I don't know if you heard what I was saying.

Mr. Cole: I'm sorry, I did hear you were changing Condition 10 to incorporate the individual times of different permits.

Ms. La Costa: Any film event would follow the film permit's timeline because they're, they're actually allowed to start earlier and conclude at 10:00 versus this timeline. So, I didn't want it to be in conflict with, with what their permit was. And so, I wanted to be a little more tolerant of the filming to go under their permit guidelines.

Mr. Cole: I thank you very much. That's an excellent catch, and I appreciate you, including that the Condition 10.

Ms. McLean: Chair, staff did find information for Olowalu. They have a Conservation District Use Permit, so the lands where events are being conducted are in the Conservation District. They can do six to eight months of approximately 66 people and that's just in the State Conservation District. So, six to eight, which is a maximum of eight with 66 persons.

Ms. La Costa: So that's 96 events a year, then.

Ms. Thayer: Does that say if that's guests or if it's...like how Kukahiko was total including staff, right?

Ms. McLean: Kukahiko was 49 including event staff. Jared, did the CDUP for Olowalu specify the 66 persons includes or doesn't include staff?

Mr. Burkett: Staff planner, Candace Thackerson, located it. I did not read it yet, so, I'm not sure.

Ms. McLean: Candace, if you're on the call, can you jump in?

Ms. Candace Thackerson: Staff Planner, Candace Thackerson here. Sorry, and I swear to tell the truth. I found the Conservation Use District permit from like 2007. At the time, they did not clarify. It just said that, and they didn't even give them a hard number. It said the average number of guests at these assets are approximately 66 persons.

Ms. McLean: I'm glad DLNR is enforcing that not us.

Ms. La Costa: Mr. Cole.

Mr. Cole: Yeah, I just wanted to report, sorry, Rob Cole, once again for the applicant, that she just got word from Donna, Donna Poseley that they were at 120, with an exception made for post-COVID, for 180 events to apparently catch up. Once again, I'm not reading from any report or DLNR report just word of mouth here.

Ms. La Costa: So, then that would make it on a par with what you're requesting. Okay, thank you. Appreciate the clarification on that. Commissioner Freitas.

Mr. Freitas: Thank you, Chair. I'm just going to say this in what I think has happened is that they're using the included staff mainly during Covid. That was how they would say that events, including staff, has to be below 50 have to be below 100, and they use that. Prior to this, there was no, there was no inclusive of staff, but that was a very good clarification, which we also had to deal with in our luau when we had an issue of capacity. So, now that this 50 limit for weddings or special event locations, they don't have that, you know, the...social distancing has been stepped back. I don't think that should be included. My thoughts.

Ms. La Costa: Thank you, Commissioner. Commissioner Thayer.

Ms. Thayer: Thank you. Just to respond to Commissioner Freitas. For, I believe, the Department said the Kukahiko permit was granted in May or March of 2019 which was prior to Covid, and their limit included staff before social distancing was a thing just for sake of discussion.

Ms. La Costa: Appreciate that.

Mr. Freitas: Can I respond, Chair?

Ms. La Costa: Yes, please.

Mr. Freitas: Commissioner Thayer, it may have been that that was they were given an amount or it was adjusted during Covid, because if I remember, I think they had a lot more people that they accommodated based on social media pictures 'cause a friend of mine used to do weddings there and he doesn't anymore. So, I know it was higher than 50. And is there a way to check if the permit that he got, they got there was altered or adjusted due to Covid?

Ms. McLean: Director.

Mr. Freitas: As far as, as far as the capacity or limit?

Ms. McLean: Not to my knowledge, Commissioner Freitas. Even so, even so, it's you're looking at this particular property and this particular applicant, and it's very useful to have these other permits to understand what has been done in the past, but it's your judgment on what you believe is appropriate for this site for these uses. So, use that as a guideline, but you don't have to follow it exactly. You can choose the number and the number of events, the number of people. I think it is helpful to include a staff count. So, if that means the number might be higher to accommodate for staff, then that's your call. But I don't know that we really need to determine, you know, the finer points of those other permits 'cause you're making a decision today for this application and this applicant.

Ms. Thayer: Yeah, I can for discussion. I just think it's helpful to have a gauge of a similar venue doing similar activities, scope, intensity of use, all the whole thing.

Ms. McLean: Right. And also, sorry, Commissioner Thayer, you have authority over the State Special Permit. The County Council has authority over the Conditional Permit, so it could be that what was, what ended up in the Kukahiko ordinance was modified by the County Council based on their judgment, the testimony they heard, et cetera. So, it's good for the permits to match, but they may not necessarily so.

Ms. Thayer: Mm hmm.

Ms. McLean: What you decide today will be the final word on the State Special Permit, but not the final word on the Conditional Permit.

Ms. Thayer: And then, the SMA might introduce a whole nother set of conditions, right?

Ms. McLean: Well, when we process the SMA permit, we would know the parameters set by the commission and the council, so it would have to work in that. If we find that there are reasons relating to the coastal zone and the shoreline environment to add additional restrictions, then that would be from the SMA component like, you know, weddings during these months shall not happen at these hours. You know, that's just off the top of my head. So, those would be added on top of these conditions. So, the SMA process could add additional restrictions.

Ms. Thayer: Okay. So, we are assessing or like our decision criteria for this is like does not look at the, like coastal zone management criteria, right? Like, I guess, you know, it's overlapping in a way, but not.

Ms. McLean: Well, in your staff report on Page 5 are the applicable regulations for the State Special Permit. It does mention 205A. So, you do have a tie in there, and then the Conditional Permit criteria is much broader that doesn't provide, well it does, it does relate to the surrounding environment. So, if there are known concerns, then I would say go ahead and put them in as restrictions. But you do also know that there is an additional process to follow that will get into more detail. So, I certainly don't want to say, oh, don't worry about that, we'll take care of it. But if there is a known identified concern at this point, then we will be aware to take an extra look during the SMA.

Ms. La Costa: Mr. Cole.

Mr. Cole: I would just add for Commissioner Thayer's benefit, you know, the SMA process could identify some things such as, and I've seen this happen where, a condition of the permit would be, hypothetically, you know, if a monk seal appears on the property then you would apply a 50-foot buffer around that and mark it and not use that area. So, that's an opportunity for a concern like that to, you know, be voiced and dealt with.

Ms. Thayer: Okay, thank you.

Ms. La Costa: Commissioners, do we have any other input, comments, questions? Commissioner Hipolito.

Mr. Hipolito: Thank you, Chair. This one, actually, you brought this up earlier and I've been thinking about this one here, but it's Condition No. 12, amplified, amplified music must be approved by the wedding coordinator. OSHA's standards is anything over 80 decibels, it's harmful to the ear, so I would like to add a maximum limit of, say, 75 decibels, which is when you look at 75, it's like a vacuum cleaner and you're running it, it's that loud. And so just to stay under and give us, give the neighboring community there, at least some, some sort of a comfort that it's not going to be more than that and not arbitrarily left up to the wedding coordinator.

Mr. Cole: Rob Cole for the applicant. Would it be sufficient to reference, you know, so it's not arbitrary, the community noise control rules by the Department of Health, if they comply with that, and we could put a condition in there saying that the applicant will adhere to the State Department of Health's rules for community noise control.

Mr. Hipolito: Um, State Department of Health, I would more clarify it to be more specific, with OSHA, IOSH. They govern the hearing protection law.

Mr. Cole: Is there a specific standard that we would be...that you're suggesting?

Mr. Hipolito: Based on my experience, as I mentioned earlier, anything over 80 decibels, it's harmful to the ears. And if it's a time weighted average that you do versus instantaneous sound level metering, sometimes you fall under hearing protection must be worn. So, based on my

experience with hearing protection law, which falls under OSHA and HIOSH, that we want to stay below 80 decibels, and so, that's what I'm referring to.

Mr. Cole: I think we're definitely amenable to a condition like that. And if you want to suggest that, I wasn't sure if you wanted to say like a time weighted measurement at a certain distance or from the source or something along those lines.

Mr. Hipolito: Not time weighted. I don't think it's necessary for time weighted because this is instantaneous here. Music changes. It varies, you know, depending on a love song versus hip hop versus jawaian, yeah, the beats are different. So, if you go time weighted, it's not going to be necessary, because time weighted is eight hours. I feel instantaneous and stayed below the 80 decibels would be at 75 would be appropriate based on OSHA and HIOSH criteria.

Mr. Cole: We have no objection to that condition.

Mr. Hipolito: Thank you. Thank you, Chair.

Ms. La Costa: Thank you, Commissioner Hipolito and I do believe that the applicant said that she had decibel meter. Okay, okay. Thank you. Additional comments, questions, concerns, layers?

Mr. Thompson: Maybe I have one. Thank you, Chair. Just one. And I had asked earlier about if we're doing commercial on this property, then do they have to pay a commercial real estate tax that's going to be for anything that's doing commercial, even if it's a fruit stand or something. Do the same way?

Ms. McLean: When we, when a new use is approved, whether it's a B and B permit that staff handles administratively or an action that requires Council approval, we send Real Property a copy of the approval letter and so they make their determination based on that. And I would think that based on that, they might change the tax class, I guess.

Mr. Thompson: And that's not an absolute? Like sometimes we might get somebody here...their fruit stand, you know, they're going to do \$50 a day. We don't want to double their property tax, not to, you know, they would lose money.

Ms. McLean: It would be up to their—

Mr. Thompson: So, it's individual cases.

Ms. McLean: It would be up to their assessor and then the property owner would have the opportunity to appeal if they disagreed with the assessment. I am looking at the State Department of Health's community noise administrative rules, so they class it in different zoning districts, so zoning districts are residential, conservation, open space or multi-family, apartment, business commercial or agriculture, and in those three classes, the maximum permissible sound levels without getting a noise permit during the day which is up to 10:00 p.m. is 55, 60 or 70 being the max. So, Commissioner Hipolito suggested 75, the max allowed under this is 70. So, if they went to 75, they'd need to get a noise permit from the state.

Ms. La Costa: So, having, having that information, Mr. Cole, is there an issue with going to 70 decibels versus 75?

Mr. Cole: Rob Cole for the applicant. I believe those are probably measured differently. I think the state rules are measured at the property line. And I think what Commissioner Hipolito is requesting is at the source.

Ms. McLean: It says, shall apply to the following source.

Ms. La Costa: Commissioner Hipolito.

Mr. Hipolito: Clarification, Chair. It wasn't asked the source. At the source, if you had power speaker that would be the source. If I put that there and it's reading 75, it's the amplified, what I consider amplifier area, which would be the boundaries. All depends on your setup. So, I only brought it up because of the fact OSHA. Now, if it states the state governs, Department of Health, then we have to be a...abide by that. So, again, I brought it as a concern it's what...and thank you, Director for bringing that up and clarifying, if that's what it is and that's what it is.

Ms. McLean: The maximum permissible sound levels shall apply to any excessive noise source emanating within the specified zoning district and at any point at or beyond the property line. So, they say 55 decibels in residential, 60 in business, and 70 in agriculture. And this is, well, this would be considered residential. So, this would be considered Class A I think.

Ms. La Costa: And if we go by that, then it would be a 55-decibel maximum from 7:00 a.m. to 10:00 p.m. and 10:00 p.m. to 7:00 a.m. is 45 decibels.

Mr. Cole: Rob Cole for the applicant. You know, I think, you know, we have no choice but to comply with state rules. If you want to add that to a condition, I think it's, you know, negligible impact to the permit. You know, generally speaking, the music at this site is not loud. It's usually kept lower, you know, for conversation to occur, maybe slightly louder when people are dancing, but otherwise, and it's always shut down by 10.

Ms. La Costa: Thank you. So, that means that the applicant is amenable to the 55 decibels. You may.

Ms. Higashino: Sorry, Carolee Higashino, here again. I'd like to see if I could ask Kawika, actually, because he's in the entertainment industry, if he feels...I don't know what that would sound like, would it be loud enough, Kawika, do you think at 55 decibels?

Mr. Freitas: Ms. Higashino, what—

Mr. Hopper: Chair, Chair?

Mr. Freitas: --when we do the weddings and –

Mr. Hopper: Chair?

Ms. La Costa: Excuse me, I'm sorry, Mr. Hopper, yes.

Mr. Hopper: Just continuing this as a contested case, it's not really appropriate to have like witness testimony from a member of the commission at this point. I know that they're just being asked to be helpful, but I don't want to provide factual testimony from a commissioner that's gonna be relied upon by an applicant that, you know, I don't want them to come back and later...later on, and say, oh I didn't think that was accurate or something. If, if the commissioner is going to be voting, I don't think generally they'd be providing witness testimony. And apologize for that, but that's just not something that in a contested case we would generally advise doing. If the applicant wanted to consult with their own consultant or something like that, I think that could be appropriate on that issue, if they want time to do that, so that's what I'd advise now.

Ms. La Costa: Thank you, Mr. Hopper. I appreciate that very much. So, that being said, then Commissioner Freitas, cannot provide an answer for you.

Ms. Higashino: Okay, thank you.

Ms. McLean: I have a suggestion though. We could say shall not exceed 70 decibels or as otherwise allowed by the State Department of Health. And then if, you know, we're misreading this or however it's interpreted, then we're setting the ceiling for what's in the rules. And then if it's allowed differently, then more restrictively, then you can find out from DOH.

Mr. Cole: Yeah.

Ms. Higashino: Okay, thank you.

Mr. Cole: Rob for the applicant, yes, that sounds perfect.

Ms. La Costa: Thank you. Director. Comments, further comments, further questions? Commissioner Freitas.

Mr. Freitas: Commissioner Hipolito's recommendation for the decibels is perfect and I agree that it should fall within the state level. Now, especially since we were talking about having the wording be wedding and/or...eliminate wedding and making it an event, I think that it will be better to go with whatever the state one is higher even though I feel that if it was just a wedding it would be way down. But because if this gets approved, it could be other events that might have something louder, so that would be a safer thing to be more restrictive.

Ms. La Costa: Thank you. Seeing no further comments, then I will turn it over to the Director.

Ms. McLean: Well, the one thing I'm not clear on is how many events the commission wants to allow per year and how many participants that would include, including staff. Other than that, the changes that I have noted on the conditions, Condition 10, would add that commercial filming and photography may operate in accordance with a county film permit, if applicable, because we're not certain that that bill is going to pass. Number 12, any amplified music must

be approved by the event coordinator and shall not exceed 70 decibels or as otherwise allowed by the State Department of Health. The main dwelling cannot be used for overnight accommodations by any wedding or event guest or participant. And then Conditions 15 and 16 both refer to weddings and events, and we would just have it say, events. So, those are the only...those are the changes I have so far.

Ms. La Costa: Thank you, Director. So, ladies and gentlemen of the commission, we need to have a number of events and we need to have a number of participants, please. And please specify whether that includes staff. Thank you.

Ms. McLean: I think Commissioner Thayer had a question.

Ms. Thayer: I was just going to say about, and I'm sorry if I missed it, but for Condition No. 12, about changing wedding coordinator to event coordinator.

Ms. McLean: Yes.

Ms. Thayer: Okay.

Ms. McLean: Brain trust. I'm telling you, we have a brain trust here. Commissioner Freitas.

Mr. Freitas: Thank you, Chair. Since I'm the one that's kicking the can around about this amount of guests and the number of events, I think if we go with the cumulative for the year, I think 10 per month or 120 would be a nice, round number. I cannot really say about the guests count plus staff, because I'm not sure what you're calling as staff is that mean at any given time. Like Ms. Higashino say, people come and go, and they drop things, and they go, we wouldn't count them as cumulative for the entire day, but at any given time it should not exceed what number is that? And if you're going to include them based on kind of like the weddings that I were doing, I would, I would have to move that 36 up to probably something like 48 to include on the staff because the staff sometimes includes the caterers, and you got your servers, and you got to bar people. So, I would say 48 and 120 for the amount for the year.

Ms. La Costa: Thank you, Commissioner Freitas. Commissioner Thayer, I mean, I'm sorry, Commissioner Lindsey.

Ms. Lindsey: So, Mr. Freitas, are you saying 48 is cumulative or not cumulative? Is cumulative, okay.

Mr. Freitas: Yes.

Ms. La Costa: Thank you. Commissioner Hipolito.

Mr. Hipolito: Thank you, Chair. I agree with Commissioner Freitas. If you take just the numbers itself, add it up, divide it by three, it comes out to close of 120. And that numbers that I look at 140, at 48, I support Commissioner Freitas numbers. Thank you.

Ms. La Costa: Thank you. Commissioner Lindsey.

Ms. Lindsey: I am thinking at this point, if you want to do like a great high-end thing with lots of staff, I think that we should remove the staff thing, and just limit them by parking stalls because that will naturally, that'll naturally balance itself out. If they only have eight stalls and we limit their onsite parking to the eight they can only, they're going to designate how many stalls per staff or it's going to self-regulate at eight stalls.

Ms. La Costa: Commissioner Thayer.

Ms. Thayer: Thank you. Just to clarify, Commissioner Lindsey, so, are you seeking to do away with the 48 number altogether and just say number of people enabled by the eight stalls or do you want to have some kind of guest number?

Ms. Lindsey: I'm saying we should go back to the 30s...30 count and let the eight stalls limit their staff or guests who are driving or bus parking to the eight onsite parking stalls. Because it will end up, self...she was saying, sometimes they park outside because they don't want to get stuck in, but if they can't even park outside, they're going to be regulated by the eight.

Ms. La Costa: If I, if I might, they do shuttle people, the eight parking stalls, once they're used, then they will shuttle people, so there is no issue with parking. So, I don't know that that would "self-regulate" any kind of participation. We need to have a number so that the people who actually are there, because if you drop off a cake, you're going to pull up, drop off the cake and hop in your car and hele on. So, I don't know that for me personally, the tying it in with number of parking spaces to me doesn't equate to total number of participants. So, my two cents.

Ms. McLean: So, I'm hearing participants are a maximum of 30, not including staff or 48 including staff. I think those are the two different proposals that have been put forward.

Ms. La Costa: Correct.

Ms. Lindsey: Sorry, can I change that number to 36 because that was the number we were going with before

Ms. La Costa: Thirty-six participants and 48, including staff.

Ms. Lindsey: Thirty-six participants, staff excluded is what I'm saying on my side. If you...with I don't think...I think it will self-regulate because the wedding...the person marrying them are going to come and go. The cake is going to come and go. Maybe they have elaborate floral decorations, so maybe they need 15 floral people, you know, so, I think just it's kind of a headache every day to continue to regulate. Oh, I see 31, 37 people here right now. But if they need to park and put their tour...their drop off bus and everything into the eight stalls, they have to do that. They can't leave...the cake guy can't park outside to drop off the cake. They have to park inside. So, that will be regulated.

Ms. La Costa: In our initial staff report, it does talk about two events at 75, so we haven't really addressed that. Can we please have some discussion on that? Commissioner Thompson.

Mr. Thompson: Well, it's always nice to have a lot of people at a party, but there is going to be parking issues. There already is parking issues that it's already stated. We just can't stop it. There are going to be on the street and they cannot lie, they're there. The more people that we're having, if we're having 75...so, let's say when there's 30, we've got five cars out on the street. A couple of staff came late and they had to park out there down the road. So, they're going to be there no doubt, they're going to...you just can't stop it. If you have 75 people, now you're going to have ten people on the street, maybe more cause you got staff too.

Unidentified Speaker: Shuttle.

Mr. Thompson: Yeah. So, the shuttle brings in in the wedding party, caterer's taking his car, her car, you know, they'll pull up. If there's no parking, they park on the street. And that's a real, real thing. I don't know if we have to address it because it's in our, our standard conditions No. 6, all parking shall be on site. Nothing is allowed by any guest or staff. It's simply not doable. Whether we want to ignore it or change it, it's fine. But reality, I think we won't be able to accomplish that, and I'm for the project.

Ms. La Costa: What, what about...go ahead Kawika. Commissioner Freitas.

Mr. Freitas: Thank you, Chair. How's about we do the larger one at 75 including staff, and you know, I want to say, I...(inaudible)...in favor of these cumulative, including the staff. But actually, if we look at the big picture, what we're trying to do is not overcrowd a small area. And if we say these are the number of guests and then happens to be like, Commissioner Lindsey said, a high end with a lot of staff, well, we're defeating this number of how many people should be going on there and that will affect the toilets. It will affect more of the traffic. So, you know, I actually like this one that includes the number of staff. I like it at 48. And I think the higher end...the other bigger one, the two per month or if you want to cumulatively add that one up to 24 for the, for the year would be 75 include, and I think that we might be able to get, the applicant may be able to get eight people in the parking stall. I think 75 plus staff. I agree with Commissioner Thompson that's too much.

Ms. La Costa: Commissioner Lindsey.

Ms. Lindsey: I might have missed this, but are we going to be seeing the SMA also? Or is that going just as the Director?

Ms. McLean: That will probably not come to the commission unless they need a shoreline setback variance. I would think the SMA permit would fall under the threshold for a major permit, which is \$500,000. So, I don't think the installation of the septic system and then the valuation of the events would exceed \$500,000.

Ms. Lindsey: Thank you. And also, I also agree with Kawika, 75 is too much. I'm, I'm, I think we should limit. I don't even think we should have the 75 guest events, and just keep it at our original number 30, 48 or 36 at a time ever.

Ms. La Costa: In line with that, let me ask the applicant, please, to please step...someone, either one of you. My, my question is how many events do you have that have 75 people at them per year?

Ms. Higashino: Carolee Higashino speaking again. Actually, very rarely. We put those in there just in case, so we could do without the two at 75. What I'd like to see, if possible, is to do four...do the 48 inclusive, just simple. Just do 48 across the board and inclusive of staff. I think it just be simpler, easier than that way we can also market it that way. You know, that's all it is. And truthfully, we don't want big groups there. It's like you said, it's not good for the neighborhood, the area. I mean, all the parking over there, the cove, there's no regulating the parking out there. I mean, there's people parking, you can park there and they might say, you're a guest of mine and you're not, you know, I mean, there's no way for people to regulate that. So, if we just keep the lower count, I think it's better for everybody.

Ms. La Costa: Okay, so 48, including staff?

Ms. Higashino: uh hmm.

Ms. La Costa: Okay.

Ms. McLean: And just as a reminder, Kukahiko was 49 including staff. So, you're—

Ms. Higashino: ...(inaudible)...

Ms. McLean: One. More.

Ms. La Costa: That extra bartender, you have to have them. Okay, so, 49 including staff. There is no longer a 75, two-event condition in there?

Ms. McLean: So, what I'm hearing Chair is—

Ms. La Costa: Go ahead Director.

Ms. McLean: --the number of events that can be hosted on the property is limited to 120 per year, with a maximum of participants at 49 including staff.

Ms. La Costa: Any additional comments about those changes? Okay, I think I can call for a question, please.

Ms. McLean: Chair, if I could?

Ms. La Costa: Yes, I'm sorry.

Ms. McLean: I think really hesitate to bring this up, but it did come up in discussion. Condition 15 relating to the installation of the septic system. I don't know if the commission wants to allow events to continue using porta potties until the system is installed, because right now it says no events until the system is installed. But if you wanted to allow events before that

time, then the condition could say prior to the initiation of events, the applicant will either provide porta potties or install the septic system.

Mr. Thompson: It doesn't have a permit, does it?

Ms. McLean: I'm sorry?

Mr. Thompson: Do they have permits?

Ms. McLean: Not yet.

Mr. Thompson: So, they can't do them anyway. And don't you have to put the septic system in before you get a permit? Is that with the state guy said?

Ms. McLean: I, that I don't know. I don't know.

Mr. Thompson: That might be a problem.

Mr. Cole: Rob Cole for the applicant. That was a self-imposed condition. So, you know, we would be happy if you loosened it a little bit. But yeah, I think you know, realistically speaking we need to get, you know, not only this permit, but the Council permit as well, the ordinance, so there will be time to work on this, but in case one is lagging behind the other, then yeah, that would give, you know, the applicant more flexibility.

Mr. Thompson: I'm just concerned about the applicants run it without a permit for 20 years, and they've known they needed a permit, whatever they say, they already knew that. We all know that.

Ms. La Costa: So, commissioners, as far as No. 15 goes, do you want to if when you vote...yes, Mr. Hipolito.

Mr. Hipolito: I share the same concern with Commissioner Thompson. Port-A-Potties, it's a temporary thing. It's not temporary permanent. If you mount that natural weather can knock it over that would release effluent that is very close to the ocean. Port-A-Potties, a former company I used to work for, we rented Port-A-Potties, and when we install it, especially in high wind zones, we have to assure that we met the permits Department of Health. So, I share the same sentiments as Commissioner Thompson. I'm against this in allowing Port-A-Potties. Thank you

Ms. La Costa: So, having stated that, then what is your sentiment on allowing activities and events to happen before the aerobic system is installed?

Ms. McLean: ...(inaudible)...

Mr. Hipolito: I think when I read the language and I think I brought it up earlier, the language about septic, 'cause septic was my biggest concern about this, and what I was assured by the

applicant that no activities or events would occur until the septic system was installed. And that was my earlier discussion with the applicant.

Ms. La Costa: Thank you, Commissioner Hipolito. Okay, then Director because we have gone back and forth, up and down, over and over, I'm going to ask you to please restate what the...is before us today and then we can call for the question. Go ahead, please.

Ms. McLean: Chair, Conditions 7, 8 and 9 would be combined to state that special events are limited to 120 per year with a maximum count of 49 participants, including staff. Condition 10, would be amended to add at the end, that commercial filming and photography can operate in accordance with county film permits, if applicable. Condition 12, would be amended to read, any amplified music must be approved by the event coordinator and shall not exceed 70 decibels or as otherwise allowed by the State Department of Health. All music must conclude by 9:30 p.m. Condition 13, would be amended to read, the main dwelling cannot be used for overnight accommodations by any event guest or participant. Condition 15, would be amended to delete, weddings and, so it would just be, prior to the initiation of events. And same with Condition 16, all trash and waste generated by events. And the other conditions would remain as drafted.

Ms. La Costa: Thank you, Director. Do I have a motion, please from someone on the commission? Mr. Thompson.

Mr. Thompson: I'll make a motion to approve with those existing conditions or those new conditions.

Ms. La Costa: Thank you, Commissioner Thompson. Do I have a second? Commissioner Freitas. Thank you so much. Okay, we will go into discussion. As the movant, Commissioner Thompson go ahead please.

Mr. Thompson: Yeah, certainly there's a lot to unpack here, ...to do. But, I think we're all for having businesses on Hawaii that hire people that live here to keep the money on the island. It's a needed thing, but there are some concerns and I still have about the, the setbacks. We don't have a certified shoreline that's going to be an important one. But I guess the, the state will handle that, I guess, right?

Ms. McLean: The applicant will get a survey certified by the state, yes.

Mr. Thompson: Okay. Yeah, other than that, hey, great thing. Although and I mentioned it already, I don't think there's any way to keep all the parking off the street. I don't know if we need to make something that says that or not. I mean, we put a rule in that says it can't, but they can't control it. They're in there, you know, serving cake and somebody drives up, oh, I'm late. I park right here, partway in the road with the guy with the trailer and whatever, but that's where they'll be.

Ms. La Costa: Thank you, Commissioner Thompson. Commissioner Freitas, as the second.

Mr. Freitas: . Yeah, thank you, Chair. I would like to say that this kind of venue is a very much needed thing in our, on our island. I think this falls within the D map, Destination Management Action Plan, one of the goals, and that is to create a better experience for our visitors. And this is a destination to get married at. Hopefully takes off some of the people from the beaches and crowding up those weddings at the beach, in a little bit more private area, and I sincerely feel that Ms. Higashino, her husband, and the son that spoke earlier, had said that they really take care, sounds like they malama aina around there, and I feel it. And with that, I would like to support approving this application permit. Thank you.

Ms. La Costa: Thank you, Commissioner Freitas. Any other comments by commissioners?
Ms. Thayer.

Ms. Thayer: This is for the Director I think. In speaking to Commissioner Thompson's concern about the shoreline setback which I think we've touched upon at various times, so, like we are...since we're not gonna, probably won't see the SMA or the shoreline survey, like we are assured by those processes that there won't be any activity operating within the shoreline setback area unless they get a variance.

Ms. McLean: Under your shoreline rules, there are limited activities that are allowed in the shoreline area, and those could be approved by administratively. If it's something significant, though, then absolutely that would need a variance, that would come to you.

Ms. Thayer: Okay, 'cause I'm just thinking like we wouldn't need to or it wouldn't be appropriate to like, put in on, say, Condition 17, that no activity should occur within the shoreline setback because that's already going to be addressed by that next process they'll go through.

Ms. La Costa: We can't add that while there's a motion on the floor, so you need to ask the movant if he would accept a friendly amendment.

Ms. Thayer: Oh, well, I guess I'm wondering if that's...if we even can propose that as an amendment.

Ms. McLean: Again, the shoreline, the shoreline rules allow some minor activities. If you wanted to go farther than that, and say no activities at all in the shoreline setback, then this would be the place to do it.

Ms. Thayer: Okay.

Ms. McLean: If you wanted to let the existing rules apply, then you would leave it alone.

Ms. Thayer: Okay, thank you. That's all I wanted to clarify.

Ms. La Costa: ...(inaudible)...

Ms. Thayer: Yes.

Mr. Thompson: Friendly amendment.

Ms. Thayer: I don't know if it is. I guess this is up for discussion now.

Ms. La Costa: Yeah.

Ms. Thayer: Yeah, so I guess I would, I don't know, maybe propose that as a friendly amendment to Condition 17.

Mr. Thompson: Need a second?

Ms. La Costa: Speak your friendly amendment please, how you would like it worded.

Ms. Thayer: Okay, so friendly amendment would be to amend Condition No. 17 to add a clause that I guess no activity will occur within the shoreline setback area.

Ms. La Costa: Photography.

Mr. Thompson: No commercial.

Ms. Thayer: Unless otherwise provided by another permit. 'Cause I guess the...like the State Film Permit would allow for or could allow for that?

Ms. McLean: We're talking about a couple things now. The shoreline setback is from—

Ms. Thayer: It's on the property so it's not on state land.

Ms. McLean: --the shoreline, so that wouldn't...correct, that wouldn't be under state jurisdiction. Anything makai of the shoreline, the vegetation line would be in the conservation district would require a state permit.

Ms. Thayer: Yes.

Ms. McLean: So, anything makai...or excuse me, mauka of the shoreline, so there is that band that we don't know precisely where it is, that's the shoreline setback. But currently the rules allowed for minor activities. So, taking pictures, things like that, could happen there. And again, if you want to say, no, nothing at all, that is a condition that you can, that you can place. I think the applicant might want to speak to that. I don't know if you have a sense of where the shoreline is, so the commission would be familiar with the area there considering right now.

Mr. Cole: Sure, so...Rob Cole for the applicant, and you know, I want to say there's no shoreline analysis on the agenda today, I was just kinda curious to what specific activities you were trying to block because you know, the photos we showed include what we would call minor structures like a table and chairs, you know in that yard area, not seaward of the shoreline that would require state approval or ...(inaudible)...permit approval to go out there. What, you know, the applicant hasn't used in the past is to put structures that don't...you know, that meet the definition of what we would say minor structures that would need to be approved by the Director which includes things like chairs, tables, that don't necessarily impede the movement of the

shoreline, you know, can be moved quickly if there were ever some sort of issue, are not permanent, and do not disturb the grade of the ground. So, those are the types of things that we would want to preserve to have to be able to be approved administratively as minor structures by the Department.

Ms. Thayer: Okay.

Mr. Thompson: That tents, tents as well? Is that tents as well?

Mr. Cole: Tents are also something that gets approved by the Director, and I believe they would have some discretion on where those are located. We think this will probably have a 40-foot setback based on the dimensions of the lot. So, you know, 40 feet, it's a good amount of the yard there. And that's the prime real estate for where people want to put up an arbor and some chairs and, you know, have their ceremony. So, I would have concern for the applicant if that were to be implemented as you just said, so...

Ms. La Costa: If I might, Mr. Cole on Exhibit 3, there is a site plan and there is a broken line that is just makai of the actual site plan, but not in the ocean. Can you tell me what that broken line is, please?

Mr. Cole: Is it possible to bring it up on the screen?

Ms. La Costa: Yes, please.

Mr. Cole: I have lost power on my tablet due to our hearing length today.

Ms. La Costa: Oh, surely. Yeah, it's Exhibit 3, just a moment please, and we'll pull it up for you.

Ms. McLean: Jared, would you be able to pull up Exhibit 3 from the staff report and share screen.

Mr. Burkett: Yes, one moment.

Ms. La Costa: Thank you, Jared. So, Mr. Cole, see the dotted line just makai of the site plan, the green grass.

Mr. Cole: I believe that's a mapping artifact probably used to delineate curves when they were redrawing the lot lines.

Ms. La Costa: Okay.

Mr. Cole: I believe the green line is the approximate location of the vegetation.

Ms. McLean: Yeah, that's what he's saying.

Mr. Thompson: ...(inaudible)...

Ms. La Costa: No, I'm looking at this.

Mr. Thompson: Oh, okay.

Ms. La Costa: Sorry, I was just trying to ascertain when they...when we talked about the shoreline whether that is included in the property or actually you would have to get a permit to be able to use that if it were not, if it were excluded as one of the conditions. So, that's what I was trying to ascertain.

Mr. Cole: Oh. If I, if I'm going to answer you correctly here, you know, the lot was larger at one point in time and has receded due to erosion. And what we presumed to be, you know, but would confirm with the shoreline certification is the actual boundary line called the shoreline and that delineates a regulatory boundary and due to recent interpretation, also the state private/boundary. So, anything seaward of that line would be within the state's jurisdiction, and anything landward of that line would be in the county's jurisdiction. And I'll just mention, you know, every shoreline parcel on Maui has an ambulatory boundary. It's always shifting and subject to, you know, revision and survey as needed for permits.

Ms. La Costa: Okay.

Mr. Cole: I would recommend that the CZM process proceed along its lines. And, you know, the special and conditional permits have their own, you know, qualifications for approval. And I think that would be the better avenue is that process itself.

Ms. La Costa: Thank you. Appreciate that. Thank you so much, Mr. Burkett. Commissioner Thayer, go ahead.

Ms. Thayer: You know, I guess I would be okay with the process working itself out.

Ms. La Costa: Are you withdrawing your friendly amendment. We didn't second it, but...

Ms. Thayer: Oh, well...well, yeah, I guess.

Ms. La Costa: Okay.

Ms. McLean: So, the motion on the floor is to approve the State Special Permit and recommend approval of the Conditional Permit subject to the conditions in the staff report as revised by combining and revising Conditions 7, 8, and 9, and revising Conditions 10, 12, 13, 15 and 16.

Ms. La Costa: Correct. Commissioner Lindsey.

Ms. Lindsey: I would like to make a friendly amendment to bring that one back until...

Ms. La Costa: Which one?

Ms. Lindsey: The one that Commissioner Thayer brought up about the shoreline setback. But, removing it after...if, if it is defined...like proven wrong in, at their next step. So, bring

back...I'm, I'm proposing that we bring back that amendment from the amendment saying that that no activity within the shoreline setback area until it is redefined by the governing authority when they get there, is that possible?

Ms. La Costa: I'm going to defer to the Director. She's going to mull that over and figure out if that even is something we can put in there.

Ms. McLean: That, that's how it works I think if I understand what you're proposing. No activity shall occur within the shoreline setback area until a state certified shoreline is prepared and shoreline approvals are granted by the appropriate authority. Is that what you want to see?

Mr. Cole: I think everything that she said is already included in the process.

Ms. McLean: It is. It is.

Mr. Cole: We necessarily need to comply with SMA and we necessarily need to comply with any shoreline regulations that are prerequisite to her approval. I also wanted to bring up that, you know, as part of your regular meetings, you are updated to any, any decisions that she makes on these discretionary items.

Ms. La Costa: Thank you, Mr. Cole.

Ms. McLean: So, it's up to the commission. I mean, that is stating what the process is. But if you feel strongly that it needs to be a condition, then it can be added.

Ms. La Costa: Just a second, please. Do you want to maintain the motion? We don't have a second, so, it really isn't a motion currently.

Mr. Freitas: I did second it, Chair.

Ms. La Costa: Oh, I'm sorry. I did not see you. Thank you, Commissioner Freitas. Okay, so, before we have discussion, do you have anything to say to the amendment that you wanted on there?

Mr. Freitas: Wait, I'm sorry, I'm sorry, you're saying...we were, we were in a vote, and then now, now we're gonna change?

Ms. La Costa: This is a friendly, yeah this--

Mr. Freitas: So, I didn't second what she said. I seconded the original motion which I thought we were in a vote.

Ms. La Costa: No, you're correct. So, this is where we stand. We have a motion on the floor, a friendly amendment was suggested by Commissioner Thayer. She withdrew that because the process is what happens and she was concerned that it was not being covered. And then Commissioner Lindsey said she wanted to bring back the friendly amendment. And Mr. Cole pointed out that indeed, that is the process, and it didn't necessarily need to have an

amendment, as the Director echoed, and she said unless you felt it necessary to have it delineated in the conditions of the bill that we're discussing right now. So, my question is, is anyone prepared to second the friendly amendment of Commissioner Lindsey? And if not, it will die for lack of a second, and we will go back to the original motion.

Ms. Thayer: Can I ask a question of the Director before I—

Ms. La Costa: Yes, Director. Commissioner Thayer go ahead.

Ms. Thayer: Okay, thank you. I had the same thought that Mr. Cole brought up right when he brought it up in that when this...when the SMA assessment and shoreline are put before or with the Department, we will see that on our packet, and we will be able to ask questions about it at that point, correct?

Ms. McLean: Ask questions, yes, but at that time, by the time they are in your packet, they've already been issued.

Ms. Thayer: Okay. Yeah, I just wanted to clarify that for the record. Yeah, 'cause at that point, there is nothing we can do about it. So, basically, like our...this body's touch on this matter is now then, right?

Ms. La Costa: That's correct, director?

Ms. McLean: Correct.

Ms. Thayer: Okay, then in the interest of discussion, I would second her motion.

Ms. La Costa: Okay. So, we have a friendly amendment to the original motion by Commissioner Lindsey, seconded by Commissioner Thayer. We'll do a roll call vote for that amendment and then we'll go back to the original motion. Director.

Ms. McLean: If I have it correctly, it would read, no activities shall be conducted or allowed in the shoreline setback until a shoreline survey is certified by the State Department of Land and Natural Resources, and unless shoreline setback and special management area approvals are granted by the appropriate authority.

Ms. La Costa: Is that correct, Commissioner Lindsey?

Ms. Lindsey: Yes, correct.

Ms. La Costa: Thank you. Okay, we will do a roll call vote please, Director.

Ms. McLean: Okay, and this is on the amendment. Commissioner Freitas.

Mr. Freitas: Aole.

Ms. McLean: Commissioner Thompson.

Mr. Thompson: Aye.

Ms. McLean: Commissioner Hipolito.

Mr. Hipolito: Aye.

Ms. McLean: Commissioner Lindsey.

Ms. Lindsey: Aye.

Ms. McLean: Commissioner Thayer.

Ms. Thayer: Aye.

Ms. McLean: Commissioner Greig.

Mr. Greig: Aole.

Ms. McLean: And Chair La Costa.

Ms. La Costa: No.

It was moved by Ms. Lindsey, seconded by Ms. Thayer, and

The Motion to Add a Condition, “That no activities shall be conducted or allowed in the shoreline setback until a shoreline survey is certified by the State Department of Land and Natural Resources, and unless shoreline setback and special management area approvals are granted by the appropriate authority,” FAILED.

(Assenting – D. Thompson, M. Hipolito, A. Lindsey, K. Thayer)

(Dissenting – K. Freitas, W. Greig, P D. La Costa)

(Excused – K. Pali)

Ms. McLean: Okay, Chair, that’s four ayes, and three noes. The motion fails.

Ms. La Costa: So, we will now go to the original motion. As stated previously, without the amendment, and Director, will you please do a roll-call vote. Thank you.

Ms. McLean: Okay, the vote on the main motion. Commissioner Freitas.

Mr. Freitas: Aye.

Ms. McLean: Commissioner Thompson.

Mr. Thompson: Aye.

Ms. McLean: Commissioner Hipolito.

Mr. Hipolito: Aye.

Ms. McLean: Commissioner Lindsey.

Ms. Lindsey: No.

Ms. McLean: Commissioner Thayer.

Ms. Thayer: Aye.

Ms. McLean: Commissioner Greig.

Mr. Greig: Aye.

Ms. McLean: And Chair La Costa.

Ms. La Costa: Aye.

It was moved by Mr. Thompson, seconded by Mr. Freitas, then

**VOTED: To Recommend Approval of the Conditional Permit to the County Council and Approve the State Land Use Commission Special Permit, as Recommended by the Department with Amendments by Commission as Discussed.
(Assenting – K. Freitas, D. Thompson, M. Hipolito, A. Lindsey,
K. Thayer, W. Greig, P D. La Costa)
(Excused – K. Pali)**

Ms. McLean: Chair, that's six ayes, one no, and Vice-Chair Pali excused. The motion passes.

Mr. Cole: Thank you all so much for your time today. I know this was a long item. I appreciate all the discussion and your volunteer.

Ms. La Costa: Thank you, Mr. Cole, and good luck with your continued process.

Mr. Cole: Thank you.

Ms. La Costa: We are going to take a seven-minute break again, and then we will take up our last item on the agenda. So, please be back here by quarter past three everyone. Mahalo.

A recess was called at approximately 3:08 p.m., and the meeting was reconvened at approximately 3:19 p.m.

Ms. La Costa: Aloha all. I am reconvening the June 14, 2022 Planning Commission meeting and we will address Item two, which is now three. Director.

Ms. McLean: Thank you, Chair and Commissioners. The last public hearing on the agenda today is another bill referred to you from myself to amend Maui County Code Section 19.04.040 relating to the definitions of “time share plan” and “transient.” And once again, Jacky Takakura will be presenting on behalf of the Department

2. MICHELE CHOUTEAU MCLEAN, AICP, Planning Director, referring to the Maui Planning Commission a proposed bill to amend Maui County Code Section 19.04.040 relating to the definitions of “time share plan” and “transient.” (J. Takakura)

The entire text of the proposed bill for ordinance is available at <https://www.mauicounty.gov/DocumentCenter/View/133291/Proposed-revisions-to-1904040-Definitions-for-time-share-plan-and-transient>

Ms. La Costa: Go ahead.

Ms. Jacky Takakura: Thank you. I'm going to share screen again. So, if you don't mind bearing with me for just a minute. So, can everyone see that?

Ms. La Costa: Yes, we can, thank you.

Ms. Takakura: Okay, thank you. And this one is very short. We're just amending one part of the County Code and that Section 19.04.040, which is the part of the Code that I refer to every day, and that's for definitions. And we have definitions to be updated, two that are existing and two that we're proposing as new. The two that are existing, you can see here, timeshare plan and transient. And to me, the purpose of this bill is basically to keep up with the times. Things change and the Code needs to be updated too. And I do want to say mahalo to Corporation Counsel and Councilmember Paltin for working with us on the bill.

Okay, so as I mentioned, there's just a few changes. There's actually four. Two are two terms that are already in the Code, and two are new. So, you can see here the ones that are existing are timeshare plan and that our proposal here is to increase the length of stay to 180 days. And then we have our revisions to the definition of transient. And you can see for Number two, it's that's excluding health care providers from the definition of transient. And then clarify exclusions from the definition of transient. And that also relates a little bit to other temporary workers, students and military personnel, and I'll get into a little bit more detail on these.

The purpose of these changes are to, one, alleviate the shortage of health care and other temporary workers; and two, clarify that business entities like LLCs or these temporal use ownership types are within the definitions of timeshare plan and transient. So, they have to follow the same rules like other timeshares and transients.

Let's get into the details of what the proposals are. Okay, so on the left side, you can see the definition for timeshare plan because these are the two, timeshare plan and transient are the existing terms and that we're proposing to revise. So, for timeshare plan, you can see it's just a change of the length of stay. Right now, it's 60. We're proposing to change it to 180 days. On

the other side, the other column you can see for transient. The big paragraph there that's basically to include LLCs and similar organizations that use properties for less than 180 days, and then also to add to the exclusions, health care providers actively engaged in the practice of medicine within the county. So, the two items you see, the timeshare plan and the other one, the bigger change for transient about the partner, owner, trustee or shareholder of the corporate or limited liability entity that owns the property. These are to prohibit what we're seeing all over the country, where companies buy up properties and create LLCs and then, market this property to buyers to use the property for short-term periods. And so, we would like to have those types of entities be included in the definitions of timeshare and transient so that they're subject to the same rules just like any other transient accommodation.

The other smaller bullet item, you see under transient that's basically to keep up with, I'm sure you've all read about this in the newspaper, that you know, we have a hard time keeping health care providers in the county just because they can't find housing. Right now, in the Code, there is an exemption for employees who receive room and board as part of their compensation. But if a property owner advertises directly to a health care provider, then they're subject to the transient rules just like any other short-term or transient vacation rental rules.

We did have some other minor revisions, and we checked with Department of Housing, especially regarding the part about the low-income renters, and they're good with the proposed wording that we have, which is in more detail in your packet.

So, in addition to updating the existing definitions, we have two new proposed definitions and these kind of tie in with that definition of transient because we want to be really careful in what we allow. And so, we have these two new ones, health care facility, which is a private or public institution or agency building, et cetera, licensed to operate in the county, and that's specifically for providing medical diagnosis, treatment, nursing, rehabilitative or preventive care.

And then we also needed a definition for health care provider, 'cause it's you know, of course, not just for anyone, so we have the whole list of different health care providers that meet the criteria of this definition that would be exempt or excluded from the definition of transient.

So, this is probably the shortest presentation I've ever done. Those are the four proposed changes, and the commission can recommend approval of the proposed bill, make amendments and recommend approval or deny or defer action on the proposed bill in order to gather specific information. And just like the other one you heard this morning, the public hearings for this item from Molokai is tomorrow and Lanai is next week. So, we will be taking the feedback from all three commissions to the County Council. So, I'm going to stop sharing. I can go back to anything you need to see, but basically just summarizing what's in your packet, though, so, I thank you.

Ms. La Costa: Thank you, Miss Takakura. Commissioners, do have questions? I know there are probably a lot of them. Mom Lindsey, I mean, Commissioner Lindsey go ahead please.

Ms. Lindsey: My question is given Kaiser's recent strike for mental health services is that included in health care provider?

Ms. Takakura: Thank you, Commissioner Lindsey. So, if the health care provider...yeah, well, there's a psychologist in here, there's nurse, physical ...(inaudible)..., other health care facilities and the employees thereof licensed and legally authorized to practice medicine and operate within the state. So, I do believe that they would fall under this definition of health care provider, yes.

Ms. Lindsey: Okay, I was just reading the second...I think it was your second slide. I wasn't sure if that was on, yeah, I wasn't 100 percent sure, but as long as that's covered, I'm happy. Thank you.

Ms. La Costa: Commissioner Thompson.

Mr. Thompson: I have a question, and I have to show some of my ignorance, I'm not sure about that timeshare thing. Is that transient timeshare already? I thought, I thought before you're either long-term, six months, one day or you were transient before short-term, and I don't know what the distinction is between timeshare and short-term.

Ms. Takakura: So, Commissioner Thompson, the existing, language in timeshare plan is 60 days and that follows the state. So, what we're proposing is to increase it to 180 days, and so, it would be the same terms, you know, that number of days as the definition of transient, so, 'cause right now it's, it's only 60, so, we'd like to increase it to 180.

Mr. Thompson: Don't most timeshare people come for like a week? Am I talking about the wrong timeshare?

Ms. Takakura: So, Commissioner Thompson, timeshares are allowed and they're okay in certain zoning districts like Hotel, some places or if they were before the rules came about. And so, those are probably, I'm thinking those were what you're thinking about where they're, they're okay, and they're allowed.

Mr. Thompson: Exactly. Thank you very much.

Ms. McLean: Yeah, if I could add. So, timeshares, as Jacky mentioned, are regulated by the state, and so the County Code has followed the state definition till now, but it makes sense for them to be in line with other types of transient accommodations because we are getting these new ownership schemes, and it's like, oh, I'm a...is it a timeshare, is it 60 days, and so just to make it clear and consistent for everyone to play by the same rules, we're proposing to change it.

Mr. Thompson: You can't sell a month at your house.

Ms. McLean: Exactly.

Mr. Thompson: And they were doing it.

Ms. McLean: Yeah.

Mr. Thompson: I've seen it before, seen it online, buy 60 days' worth.

Ms. La Costa: Commissioners, any other questions? Commission Freitas.

Mr. Freitas: Thank you, Chair. Well, let's see, Section 3, Number 2, health care providers actively engaged in a practice of medicine within the county. Is there any way to clarify they could be a consultant and they work one day a week or is it a 40-hour, you're a physician or health care provider 40 hours a week or it could be anybody? Just trying to make sure we're not loosely making this, this change and then people circumnavigate the intent.

Ms. McLean: As the bill is written now, Commissioner Freitas, there's not a time limit or a time requirement for those workers. We don't know well enough about...I do have friends who are nurses who work 12-hour shifts and sometimes they'll work three, 12-hour shifts in a week, which is 36 hours. Maybe it's a part-time doctor who doesn't even work that. I wouldn't feel comfortable setting a time limit without getting feedback from the medical community, but certainly the commission can recommend a time limit or a time requirement if you, if you want to.

Mr. Freitas: Yes, please. Just clarify what that would be. That's only thing I have. Thanks.

Ms. La Costa: So, Commissioner Freitas, if I can ask a clarifying question, please. Are you wanting to prevent someone from showing up and saying I'm a counselor and renting for a short amount of time under this bill versus being an actual bona fide, actively working full-time or most of the time as health care?

Mr. Freitas: Well, I think this is actually going to have people like we're extending it to 180 days versus 60 days, so two months to six months. And so, if we're going to provide this for the intent that it was for, health care people that come here to help us because we're short and they have these short contracts, we want to make sure that it's clear what their contract is, and yeah, have like a minimum 20 hours or at least considered part-time. I wouldn't want somebody that's on call or something like that be taking advantage of this bill.

Ms. La Costa: Jacky.

Ms. Takakura: Commissioner Freitas, we can consult with Corporation Counsel on the best wording for that. Good point. Get some feedback on that.

Ms. McLean: Something like health care providers actively engaged in the practice of medicine within the county for at least 20 hours per week. And we can include that as your recommendation or something to that effect, as your recommendation, and between now and when we send it to the Council, we can reach out to the hospital, others to see if, if they want to tweak that number in some way.

Mr. Freitas: Yes, thank you.

Ms. McLean: Okay.

Ms. La Costa: Commissioner Lindsey.

Ms. Lindsey: I'm wondering, is that teeters into benefits if you meant, if there's a minimum of 20 hours per week, then they're like a six-month employee, and so now they get full health care because they are a part-time, you know what I mean? I'm not sure how that translates.

Ms. La Costa: I don't know that those benefits, I'm sorry, maybe I'm talking out of school, but I don't know that those benefits have anything to do with the definition and what they're trying to forestall. I understand what you're saying, but you know, I'm just wondering if we can...that's, that's kind of going into labor and the Department of Labor, and that's not what we're here for.

Ms. Lindsey: Yes, which is why I just want to avoid that. So, I don't know. It's just something I'm thinking, sorry.

Ms. La Costa: Oh, so you were, I misunderstood, so I beg your pardon. So, you wanted to be sure that we didn't put some kind of constraints on an employer to have to provide insurance and benefits if they go up to 20 hours or more a week? Okay, now I get it. Got it. Thank you. Glad we had the discussion. Commissioner Thompson.

Mr. Thompson: Chair, we may have to check with the hospital because they do fly in specialists. Sometimes they come in from Seattle, to do a stent and they're here for five hours, and they leave the next day. So, might, might be worthy to check with them just in case.

Ms. La Costa: Thank you for that.

Ms. Thayer: Guess I have a question.

Ms. La Costa: Commissioner Thayer.

Ms. Thayer: Thank you, Chair, and this is just looking at the other types of people that this may apply to, and one of the things is full-time students and I'm just curious why to distinguish between full-time students and maybe half-time students who would need to be like—

Ms. La Costa: Employed.

Ms. Thayer: Yeah. Like if there's an allowance...I don't know maybe this is opening up a barrel of monkeys and a can of worms.

Ms. Takakura: Thank you, Commissioner Thayer. The barrel of monkeys has already been opened so...there is a particular property that has...offers classes and we struggle with them because classes aren't necessarily mandatory and they offer accommodations. It's been very, very challenging to get them to comply with the rules of being a school when they're, they're really not.

Mr. Thompson: Yoga classes.

Ms. Takakura: Yes, for example for a yoga class, and then what happens if the student doesn't show up for the yoga class, they can still stay in that place. So, we did want to try to limit the definition of student to full-time students, but as I mentioned, you know, this has been a complicated subject because of a particular property and so, you know, if you have any other thoughts about Number 3 about students, be willing to listen to what you have to say.

Ms. McLean: Commissioners, we do have one person who signed up to testify. So, we should probably go into testimony before we...

Ms. La Costa: On a call in.

Ms. McLean: Okay. Up to you, Chair.

Ms. La Costa: Wanted to get the Commissioners questions out first, because Mr. Croly who is our testifier has always such great insight. So, my question is we did talk about film earlier, but the film is not shown on here, you know, if there's a film crew that comes in for three or four days or two week or two months. So, that's probably something that we should look to address as well.

Ms. Takakura: Chair La Costa, so we do already have in the Code employees who receive room and board as part of their salary or compensation. That's already in the Code, so, hopefully those people working on...the film crew would not have to pay for their lodging themselves.

Ms. La Costa: Okay, okay, thank you for that. Thank you, I appreciate that. Any further comments? If not, Mr. Croly if you would like to step forward, I will open public testimony.

Mr. Tom Croly: Aloha, Chair, I don't even have to stand up. I can just sit here and participate in your, in your meeting from home, and I appreciate that. And I certainly appreciate the ability to include Commissioner Lindsey, a new young mother, to participate all day in this long thing and still look after her child, and I think that, that is terrific. That, that's one good thing that's come out of Covid, right, that we've learned how to do these meetings this way. I also want to applaud the commission for their work on the last item. I thought you did a great job in working out the conditions to make that work, and those guys have a long way to go.

On these items, it seems like we're trying to plug one hole or one workaround that people are doing to, to convert housing into transient accommodations with the timeshare thing. And I hope that, that, that, that can work. I hope that, that would prevent people from participating in these schemes where five people go together and buy a house and, and then essentially turn it into a timeshare, but it's not technically a timeshare. And I hope that that that there's an enforcement mechanism that they can make sure that that part works.

The other part of this, we're kind of liberalizing the law a little bit, and I'm a little concerned that we may be opening a, an avenue for someone to get around the law. And that would be the idea that people could advertise and say, oh, I'm just advertising for, for nurses to stay. And how do we determine that their target market is not, you know, the general public and nurses? There are websites that specifically target traveling nurses. One of them, I think, is called

Furnished Finders or something like that. And actually, I just looked at it today and there are a bunch of ads on it right now of non-bed and breakfast permitted or short-term rental permitted places that are advertising for 30 and 60 and 90 days. And then some very specifically, say, 180 days.

So, I would think that that that this measure would be kind of allowing that as long as it's specifically targeted to nurses. But I am concerned that we would have people advertise on VRBO or Airbnb and, and saying, well, I'm just advertising for nurses, I'm not advertising for the general public. And who knows how that would go?

Jacky did make reference to something I hadn't thought of, and that is having the health care facilities be the avenues to, to advertise these rentals. I don't know if that was a discussion that, that has been had with the hospitals and such as to people contacting them directly and saying I have accommodations for these types of workers and you can forward them to those folks. But again, just changing this term and allowing health care workers the ability to not be transients and therefore people could advertise for them, I'm a little concerned that it may create a new enforcement problem for you. So, I don't have the answer, but I got the question. There you go. Thank you, Chair.

Ms. La Costa: Thank you, Mr. Croly. Does anyone have questions for the testifier? No? Again, thank you for your insight. Always appreciated.

Mr. Croly: Aloha.

Ms. La Costa: Do we have anyone else signed up to testify?

Ms. McLean: No, Chair, you can make a last call.

Ms. La Costa: Okay, thank you. Last call for public testimony, going once, going twice, public testimony is now closed. So, ladies and gentlemen, do we have any additional comments on the bill, questions, suggestion? Commissioner Thayer?

Ms. Thayer: Thank you. I guess to stick to Ms. Takakura's question about the schools, is it possible to qualify it that it's attending like a K-12 or college or university?

Ms. Takakura: Thank you, Commissioner Thayer. You know, in our definitions we do have generalized education and specialized education, and the general one does include the kind of schools that you mentioned, you know, elementary, you know, and universities. The specialized education are the ones that are more like the example came up of yoga classes or you know, hula or some of those other specialized things. So, that's an option maybe you want to have it ...(inaudible)...using the term that's already in the definitions of generalized education, it's just the thought that.

Ms. Thayer: Is that a suggestion we would make or—

Ms. La Costa: So, what are you meaning like accredited schools or—

Ms. Thayer: I suppose, but I think allowing leeway for schools that are like not yet accredited but seeking accreditation is that in your experience?

Ms. Takakura: I'd have to look up the Code word for word but, the generalized education, I think, would probably fit what you're thinking. I don't know if it mentions accreditation, but it's more of the traditional type schools from kindergarten through colleges. I think Michele is looking it up right now.

Ms. La Costa: So, has your enforcement come across a lot of bad characters?

Ms. Takakura: In terms of schools, there's just the one that I know of. Most of them are pretty standard. You know, Lahainaluna has dorms. Yeah, it's just this one that is a hotel but offers yoga classes.

Ms. McLean: We have had a couple of enforcement actions against legitimate part-time nurses because it took a lot of work with them to determine whether their room and board was covered by their employer, which typically it's not. And so, that's one of the reasons we wanted to make that distinct change in the bill. Other employers, other part-time seasonal workers, construction workers, film, et cetera, their room and board would have to be covered by their employer. But we're putting the health care workers in a different category to be more lenient.

To the question of education. So, the definition of general education is a facility offering a general education curriculum such as, but not limited to, kindergartens, elementary, intermediate and high schools and colleges and universities. Specialized education is trade, vocational, language, research and learning, music, dance, art, yoga, martial arts. So much broader.

Ms. Thayer: ...(inaudible)...

Ms. McLean: Just the one example.

Ms. La Costa: So, to speak.

Ms. McLean: So, to speak. I think clarifying general education would be a good change and full-time is important, I think, because if they're part-time, then maybe they're working part-time and they'd likely be here for more than 180 days. So, yeah, all we're talking about is who can stay for shorter periods of time.

Ms. Thayer: Yeah. And you know, the, the dorms that were built for UHMC that are now also allowed to be regular apartments, you know, people from the other islands or even from the mainland do have a permanent place of residence elsewhere, but they can come and stay while they're going to school.

Ms. La Costa: Commissioner Lindsey.

Ms. Lindsey: I'm pretty wary of the student thing because if they take one class at the school or they have a child with them and they just travel the world, that's it. You know, then they put

their kid in school here for three months and then they leave, you know, it's...that's a big can of worms that could potentially open.

The other thing was, what about for apprenticeships? Like, I think oftentimes a lot of apprenticeships aren't fulfilled here, like in conservation because we don't have the people or their work, you know, they're a student, they want to go into it. They maybe want to...they have interest in Hawaiian birds and then they move to Maui, but they can't find a place to live. I think that's what I've seen a lot in looking around for, people are like, oh, I got a job in conservation, now I got to find a house, but the term is short. I think the apprenticeships should be possibly addressed also in the education bubble, I guess.

Ms. La Costa: And, and internships as well.

Ms. Thayer: Yeah, interns. Yeah.

Ms. La Costa: Both of those I think need to be added. Thank you, Jacky. Yeah, both apprenticeships and internships because they're a little different.

Mr. Thompson: Woofers, the woofers.

Ms. La Costa: ...(inaudible)...a woofers.

Ms. Thayer: It's a farm worker.

Mr. Thompson: They're farmers. It's a big organization and they get onto a website and they go I want to go to Hawaii and they live in your...on your property in a hut and pick your tomatoes or whatever. It's pretty common.

Ms. Thayer: Would that fall under employer provided—

Mr. Thompson: Housing.

Ms. Thayer: Yeah.

Mr. Thompson: That's a ...(inaudible)...

Ms. Thayer: Yeah.

Mr. Thompson: The hut.

Ms. La Costa: A yurt.

Mr. Thompson: I did it once.

Ms. La Costa: How would you know that?

Ms. McLean: Are you a...(inaudible)...

Mr. Thompson: I had some come and help do some—

Ms. La Costa: La, la, la

Mr. Thompson: Yeah, ...(inaudible)...yeah, rich white girls from the mainland. ...(inaudible)...one plant at a time.

Ms. La Costa: Did they break their nails when they were working?

Mr. Thompson: ...(inaudible)...Ashley.

Ms. Thayer: She had her hand up, I think.

Ms. La Costa: Are you patting your baby or did you have a question?

Ms. Lindsey: No, I wanted to jump into the woofer conversation, but I am going to not do that and we are going to continue on with our meeting.

Ms. La Costa: It's late.

Ms. Thayer: I do have a question for Ms. Takakura, sorry. Switching, changing subjects a little bit, but I'm curious about LLCs purchasing homes. In your like research in putting this together, did you look into like how many homes or at what rate and at what locations are properties being bought by LLCs?

Ms. Takakura: Thank you, Commissioner Thayer. So, this is not just happening on Maui, it's in other, I guess, what you would call nicer areas like Sonoma and I think some of the nicer places in Colorado. But here on Maui, I think there's a unit at Ironwood's in Kapalua that is, and I think there's some testimony on that one. I think there's another property in Paia. I'm not exactly sure where. And then there was another one, too, but I don't, I can't remember the location, though it's starting here also. There is some website, website information about what some of these other places are trying to do to prohibit that use, you know, and you know, some of the community members putting out signs, you know, that's the home with no soul or, you know, because it really does change the character of the neighborhood, at least that they found.

Ms. McLean: They are also advertising at the Honolulu Airport at baggage claim the big signs, you know, they'd have all different kinds of ads, you know, for restaurants and luaus, and these organizations are advertising, they're like, oh, you can buy into this.

Ms. Thayer: Okay, I have a follow-up question. Are any other counties doing anything about this? Like I think of Kauai, they seem pretty proactive when it comes to these kinds of things.

Ms. Takakura: Thank you, Commissioner Thayer. I'm not sure. We wanted to get this out right of way because we need to address this issue before more properties get bought by these entities.

Ms. La Costa: So, are you looking at every LLC, every tax...excuse me, every taxed owner that is an LLC because a lot of people especially Canadians buy in LLCs because of the tax ramifications of being foreigners. How does that take shake out with this one?

Ms. Takakura: Thank you, Chair. That one, I'm not sure. I'm not sure. We worked with Corporation Counsel on this, and I don't know if the Director has any other comments on that.

Ms. McLean: We were initially asked when these organizations first came along, you know, are we allowed to do this? And we said, no, you're not. And we checked with Corp. Counsel and they said, well, we, we have a basis to say no, but it's not as strong as it could be. And so, that's when we went forward and proposed this bill. I don't know how far along these have gotten. We haven't gotten to the point where we're enforcing yet, but I don't think it'll be long before the time comes that we'll have to...

Ms. La Costa: So, if you see an LLC, then you would ascertain whether they were full-time or part-time residents, and whether or not there was more than one person. Because if they buy into an LLC, then how are you going to know that?

Ms. Takakura: Thank you, Chair. So, with these, it's pretty clear because in the advertising it says that you are buying say, 88 days at this place. And so, it's pretty clear that it's for the short-term use or you're buying, say, you know, one-fourth or one-eighth, so you can do the math and figure out how many days it is.

Ms. La Costa: Thank you.

Ms. Takakura: These are...I just gotta add, these are different from your typical LLC where the people know each other. These are people from, you know, who knows where that or they have nothing to do with each other. They're solely buying it for the property usage.

Ms. La Costa: Thank you. Commissioners, other questions, clarification? Any other comments to move forward? If that's...if we have no further comments, then I will have Director go back and say what we changed and then we can vote on that and he'll be on.

Ms. McLean: The changes I have would be to the definition of transient. Item 2, we don't have a specific amount of time, but we'd want to establish some kind of duration and we'll check with the medical community on a recommended number of hours per week, for example. Number 3 would be, full-time students while attending general education classes. And then adding a new condition, or interns and apprentices, and I'm not sure exactly what Commissioner Lindsey, what kind of wording she would want. I can see her hands are full right now. Interns and apprentices for environmental and conservation organizations. I don't know if you want it to be broader than that or if there was any other detail you wanted for interns and apprentices.

Ms. Lindsey: I was actually thinking of the word, intern not apprentice. Thank you for adding that word, Chair, but I'm not sure how to word it. But I know they oftentimes are short a body or so, so, I just want to allow for that. People have said in conservation specifically.

Ms. McLean: So, interns and apprentices for conservation organizations.

Ms. La Costa: But they're also interns with medical, you know, kids who are in school, they have to do an internship somewhere, and sometimes it's only four months.

Ms. McLean: They would be considered health care providers then when they're doing their, their internship or their residency.

Ms. La Costa: Okay.

Ms. McLean: They would be considered health care providers.

Ms. La Costa: And then what about carpenters?

Ms. McLean: Carpenters would be covered if they received their room or board as part of their salary or compensation.

Ms. La Costa: We're trying to turn over every rock. Go ahead.

Ms. Thayer: Just on the note of students, is there a need for even teachers or educators?

Ms. Takakura: Commissioner Thayer, there may be, but we haven't been presented with that or you know, asked to put that in. I'm not sure.

Mr. Thompson: Chair, I'm sorry, how about restaurant interns? I know Bev Gannon hired some for Haliimaile and they come in and they work real cheap. I don't know if they supply the housing and they're temp.

Ms. McLean: If they're provided housing then they'd be covered.

Ms. La Costa: What if they aren't?

Ms. McLean: If they're not provided housing then they would not be covered. And if you want to add, see that...we start getting into trouble though 'cause then we find out, oh, this is a short-term rental and the friend goes, oh, I'm working at this restaurant. You know, and they run out that day and get a job. So, we want it...we're like looking for it to be more, more nailed down, yeah, whether it's the employer paying for it or you're a full-time student. The leniency is with the healthcare workers.

Ms. La Costa: Commissioner Freitas.

Mr. Freitas: Thank you, Chair. I have a question about is this, is this a short-term fix or is this something that we just gotta implement and it's gonna be around forever 'cause I was wondering if there should be a time limit if this is just a short-term.

Ms. McLean: Well, it's...there is a timeliness to it, so I can't say with absolute confidence that this language is going to be around for a very long time. Also, with the visitor industry, they keep figuring out different ways to work around the restrictions and permit processes that we

have. So, it could be in another year, it's leg up. Here's another thing that we didn't think about. The definition of transient has been in the Code for a long time. Most of these examples have been in the Code for a long time. We're starting to realize they need refinement, and so changes are proposed to clarify them and then adding health care workers specifically. But, you know, I can't say for sure if this is going to last exactly for a long time or if the...there's going to be some new situation, you know, we'd...like earlier, we talked about drones that weren't an issue even five years ago. So, we're doing our best with today.

Mr. Freitas: Okay, thank you.

Ms. La Costa: Thank you. So, the ladies and gentlemen anything else? If not, we will go ahead and do a...Well, a little motion, please and a second, and then we'll vote on this to move it forward to the Council. Thank you. Commissioner Thompson.

Mr. Thompson: Why thank you, Chair. Like to make a motion to accept this with, with the amendments that we've made.

Ms. La Costa: Thank you, Commissioner Lindsey, for the second. Any discussion? No? Discussion for a seconder? Okay, Director, roll call vote please.

Ms. McLean: Okay, just confirming that the changes made were to Condition 2, where we're going to check with the medical community to find out a time duration. Condition 3, to change that to general education classes, and adding Condition 8, for interns and apprentices for conservation organizations. And starting with Commissioner Freitas.

Mr. Freitas: Aye.

Ms. McLean: Commissioner Thompson.

Mr. Thompson: Aye.

Ms. McLean: Commissioner Hipolito.

Mr. Hipolito: Aye.

Ms. McLean: Commissioner Lindsey.

Ms. Lindsey: Aye.

Ms. McLean: Commissioner Thayer.

Ms. Thayer: Aye.

Ms. McLean: Commissioner Greig.

Mr. Greig: Aye.

Ms. McLean: And Chair La Costa.

Ms. La Costa: Aye.

Ms. McLean: Chair, that's seven ayes, no noes, one excused, Vice-Chair Pali.

It was moved by Mr. Thompson, seconded by Ms. Lindsey, then

VOTED: To Recommend Approval of the Proposed Bill, as Recommended by the Department with Amendments as Discussed by the Commission. (Assenting – K. Freitas, D. Thompson, M. Hipolito, A. Lindsey, K. Thayer, W. Greig, P D. La Costa) (Excused – K. Pali)

Ms. La Costa: Thank you very much, Director. We'll next go on to Number C, the Director's Report, but before we do that, ladies and gentlemen, next meeting is the continuance of the contested case, and may I please ask that you all try to be here in person so that we can have a more cohesive meeting so we don't have to go back and forth to Zoom? Miss Lindsey, I know that you have an exception with your little one, but if I could ask the other commissioners to please be present if possible so that we can have a more cohesive hearing, if you will? Thank you. Go ahead, Director.

C. DIRECTOR'S REPORT

- 1. MICHELE MCLEAN, Planning Director transmitting the following application to the Maui Planning Commission pursuant to the provisions of Section 19.32.020(C), Planned Development, of the Maui County Code:**

SUNSTONE HAWAII 3-0 LLC, requesting a Step 3 Planned Development Approval for the Wailea Beach Marriott renovations. The proposed project includes replacing a pond with a swimming pool and spa, renovating a towel hut, constructing a solar PV pergola, and constructing outdoor living spaces for 14 existing ground floor guest rooms within the Haleakala Tower. The project is located on 18.388 acres at 3700 Wailea Alanui Drive, Wailea, Island of Maui, TMK: (2) 2-1-008:061-0000. (PD3 2022/0001) (J. Burkett)

The Commission may act to waive or not waive its review.

Ms. McLean: Thank you, Chair. First, under Director's Report, we're transmitting to you for your decision whether to waive or not waive your review of a Step 3, Planned Development Approval requested by Sunstone Hawaii, 3-0 LLC for the Wailea Beach Marriott renovations. That includes replacing a pond with a swimming pool and spa, renovating a towel hut, constructing a solar PV pergola and constructing outdoor living spaces for 14 existing ground floor guest rooms within the Haleakala Tower. The project is located on 18.388 acres at 3700 Wailea Alanui Drive in Wailea, at TMK: 2-1-008:061. Jared Burkett, again, is the project planner. Jared. And thank you, Jacky.

Mr. Jared Burkett: Good afternoon, Chair, Commissioners. My name is Jared Burkett, staff planner for the Department and again, swear to tell the truth. So, the Planning Commission approved the SM1, the Special Management Area Use Permit, the Planned Development Step 2 Approval and the Shoreline Setback Approval on August 10th, 2021. So, you reviewed that project. So, now today you have the option on whether you want the...to review those construction plans or waive the review. So, if you choose to review the PD3, then we would schedule that and provide a simple report for you at that point.

So, this is due to the jurisdiction here for you as the Maui County Code Section 19.32.020, and it states, it's requiring the owner, the applicant to prepare a Step 3, unified site and building program, which shall include, among other things, construction plans in accordance with Title 18, site plan showing grading, landscaping, protected open spaces, location of each building and structure, building plan of each building and structure, and the financing and timing program. The Planning Director shall review the Step 3 unified site and building program and shall notify the Commission of the Planning Director's review. The Commission may review and take final action on Step 3 unified site and building program or waive its review and allow the Director to take the final action.

So, if you have any discussion on this, we also have the consultant for the company here. If you do have any discussion this, we also have the consultant for the company here if you do have a question on the project even though, you know, we would probably reserve most of the questioning if you had any to scheduling this for your review. Okay.

Ms. La Costa: Thank you, Mr. Burkett. Commissioner Freitas.

Mr. Freitas: Thank you, Chair. Correct me if I am wrong. Is this the project that my concern was the water usage, and they came back and said that there will be no, zero increase in water usage because of their adding the swimming pool and the water features outside, but they took away the water feature or something. Is this the same project?

Mr. Burkett: I do recall you having that discussion for this project, the Wailea Beach Marriott, yes.

Mr. Freitas: Okay, so if we waive this, will that part that I was concerned still hold up that their increase of water usage was zero and it will be zero?

Mr. Burkett: So, what happen is they are submitting a preliminary compliance report. That's been submitted, they now have those conditions that they have to say how they're meeting those conditions and it's been assigned to another staff planner. I've been assisting of that review. So, we'll check and make sure that that's still...I can't recall exactly what the conditions were that you stated, but we'll check that, and then there will also be the final compliance report after they have the construction plans submitted to Public Works.

Mr. Freitas: Okay so...

Ms. McLean: If I could jump in. Commissioner Freitas, the short answer to your question is yes. That restriction has to remain in place. They're not proposing right now to amend the SMA Permit.

Mr. Freitas: So, I'm not sure if this is each commissioner, but for me if that is made sure to remain like we agreed, then I'm okay for waiving this.

Ms. La Costa: is that a motion?

Mr. Freitas: Oh no, that was just my, my discussion and my thoughts.

Ms. La Costa: Commissioners, additional comments, observations, opinions? Commissioner Lindsey.

Ms. Lindsey: Just...as I remember, that was a kind of like on the fence kind of presentation. I think a lot of the commissioners were kind of...we were pretty divided on that one. I am leaning towards the presentation at this point, although, I also, I'm a hundred percent on the fence also, but we were controversial and I think we had at least one new member here who didn't see...it didn't, wasn't presented to them too. And I guess I'm at the same place where Kawika is, yes, I would agree to waive its review too. We have to put that in, should I put that in, is it time for the motion now?

Ms. La Costa: If we don't have any additional comments? Anyone have any comments before the motion is made? Go ahead, please, Commissioner Lindsey.

Ms. Lindsey: Okay, I am move to waive the review of the Sunstone Hawaii 3-0 LLC, Step 3 Planned Development for the Wailea Beach Marriott renovations.

Ms. La Costa: Thank you, Commissioner Thompson has second. Would you like to have any further comments as the movant, Ms. Lindsey? No. Mr. Thompson.

Mr. Thompson: None, and thank you Lindsey.

Ms. La Costa: Thank you. Okay, it has been moved and seconded to waive the review of plans of Step 3 with Sunstone LLC. Director.

Ms. McLean: You want a roll call vote?

Ms. La Costa: Yes, please we're gonna do a roll call vote.

Ms. McLean: Okay, Commissioner Freitas.

Mr. Freitas: Aye.

Ms. McLean: Commissioner Thompson.

Mr. Thompson: Aye.

Ms. McLean: Commissioner Hipolito.

Mr. Hipolito: Aye.

Ms. McLean: Commissioner Lindsey.

Ms. Lindsey: Aye.

Ms. McLean: Commissioner Thayer.

Ms. Thayer: Aye.

Ms. McLean: Commissioner Greig.

Mr. Greig: Aye.

Ms. McLean: And Chair La Costa.

Ms. La Costa: Aye.

Ms. McLean: Chair, that's seven ayes, no noes, one excused Vice-Chair Pali. The motion passes.

It was moved by Ms. Lindsey, seconded by Mr. Thompson, then

**VOTED: To Waive Its Review.
(Assenting – K. Freitas, D. Thompson, M. Hipolito, A. Lindsey,
K. Thayer, W. Greig, P D. La Costa)
(Excused – K. Pali)**

Ms. La Costa: Thank you very much and now we will move on.

2. SMA Minor Permit Report

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

3. SMA Exemptions Report

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

Ms. McLean: Moving right along to the SMA Minor and Exemptions Reports. The original report attached to the agenda did have some information missing, so Carolyn did email you the complete report. There had been a lag as we mentioned the last few meetings with getting these to you through the new MAPPS system. So, this is a little longer than you typically see because it covers a couple of time periods. Are there any questions on either report?

Ms. La Costa: Commissioner Thayer.

Ms. Thayer: Thank you, Chair. I had a question on the let's see, SMA Minor for a Kahana Village dune management and maintenance.

Ms. McLean: Yes.

Ms. Thayer: What the scope of work was?

Ms. McLean: I don't know, and I don't have access to this because our...the system doesn't allow me to get onto my desktop here so I can follow up with the commissioners on that to give just details of the scope.

Ms. Thayer: Yeah, sure. Thank you.

Ms. La Costa: Mr. Freitas.

Mr. Freitas: Yes, Director, the one that says the Kamehameha Day Hoolaulea and Parade. Is the permit for the parade or the Hoolaulea at the end or both.

Ms. McLean: I will have to get back to you on that one, too.

Mr. Freitas: Okay. All right, thanks.

Ms. La Costa: So, my comment is that I don't necessarily need to see all of this verbiage. I mean, you folks have enough to do it rather than write a novel for us. It's something that, you know, this includes is not limited to, that's kind of superfluous. If it just says replacing sheathing and no earthmoving. Just to me, the salient points so that we can make a determination if we need more information might be easier on your staff too. Thank you, Director.

Ms. McLean: So, some have too much information and some don't have enough.

Ms. La Costa: Welcome to the world.

Mr. Thompson: Gotta figure it out.

Ms. Thayer: Learning process.

Ms. McLean: It's a work in progress, yes. Any other questions? And I'll follow up with the commission by email on these two.

Ms. Thayer: Thank you.

Ms. McLean: Next discussion of future—

Mr. Freitas: I have a question.

Ms. McLean: Oh, I'm sorry Commissioner Freitas.

Mr. Freitas: You know, regarding the description and the notes, I just want to let you know that I'm like Commissioner Thayer, I look for anything by the shore and if those are the ones that you can add little bit more info than you normally would, that's the one that I kinda look at too. So, if you can, try to give more info on those renovations for projects near the shore. Thanks.

Ms. La Costa: Thank you.

Ms. McLean: Thank you.

4. Discussion of Future Maui Planning Commission Agendas

a. June 28, 2022 agenda items

Ms. McLean: Discussion of future agenda items. You have your memo and as the Chair indicated, next time is Honuaua, Honuaua, and Honuaua.

5. Referral to the South Maui Advisory Committee and the Paia-Haiku Advisory Committee to conduct the public hearing and provide their recommendation on the following:

[Council Resolution No. 22-70](#), referring to the Planning Commissions and Advisory Committees a Proposed Bill entitled, "A BILL FOR AN ORDINANCE AMENDING THE COMPREHENSIVE ZONING ORDINANCE RELATING TO TRANSIENT ACCOMMODATION CAPS".

Ms. McLean: And lastly, you have in your packets a resolution from the County Council with another proposed bill for the three planning commissions to review. It essentially establishes a permanent cap on vacation rentals, essentially freezing them, and this is all kinds of vacation rentals at the current number of units. This was referred to the three planning commissions and also referred to the advisory committees. But this commission would have to decide to send it to the Paia-Haiku and South Maui Advisory Committees for comment. We don't automatically take it to those advisory committees. We do for Hana because you previously voted a blanket motion for items to go to Hana, but you didn't make that same motion for Paia-Haiku and for South Maui. So, we're asking today whether you want this bill to be sent to them first, and then we would get the comments from these advisory committees before its scheduled with you. So, you would have their comments before you make your comments on the bill. So, we're just asking whether we should take it to those advisory committees or not, and that's your decision entirely.

Ms. La Costa: Comments, Commissioners?

Mr. Thompson: Actually, I first have a question.

Ms. La Costa: Sure.

Mr. Thompson: So, is that resolution is that signed by one of our attorneys?

Ms. McLean: The resolution itself is signed. The bill is not signed.

Mr. Thompson: Then I would recommend that we do pass it on to both of those committees and get their input first. I think it might be a good example of how long things if you add to more committees, and how much time it will take to get back, and then I'll look for these comments from those committees especially this one I don't think it holds legal water, so I'd be interested to see what they say about that.

Ms. La Costa: Mr. Freitas.

Mr. Freitas: Thank you, Chair. The rules of the advisory committee is it that they're supposed to...didn't it say, these are the things that they are responsible for and these they are not. Would this be one of them?

Ms. McLean: Let's see, sorry for the delay. I'm looking up the provision in the County Code. Okay, each advisory committee is authorized to provide recommendations to the Maui Planning Commission on matters within its community plan area upon request by the Maui Planning Commission, hold public hearings on behalf of the Commission on matters that pertain to its community plan area, carry out such duties as provided by law or as may be delegated to it by the Maui Planning Commission and adopt administrative rules.

I do believe in earlier drafts they went into a lot of detail about different things that they...that the advisory committees might do, but ultimately, they decided to bring them more in line with the Hana Advisory Committee's existing duties. So, those are the duties provided in the Code for them. So, they're really are subject to, to you folks, and what you want them to review.

Mr. Freitas: Okay. Thank you.

Ms. La Costa: Mr. Hipolito.

Mr. Hipolito: Thank you, Chair. Director, the South Maui and Paia-Haiku Advisory, do they have membership for a quorum?

Ms. McLean: The panels have all been appointed. So, they have seven members plus alternates and all of those members have been appointed. We have been working with them to figure out what the meeting schedule will be, figuring out who's available, which days, is it daytime, is it nighttime, et cetera? Is it in person? Is it hybrid? So, it, so far it appears that we'll have quorum, but we haven't had a meeting with them yet, so we will see.

Mr. Hipolito: Thank you, Director.

Ms. Thayer: ...in their...like with the Paia-Haiku meeting occur in Paia or Haiku?

Ms. McLean: If they have hybrid meetings, then we don't have facilities equipped in those areas for hybrid meetings. If they want to meet entirely in person then yes, we would try for it be located in that area.

Ms. La Costa: I do remember when this came up initially that the planning commission did not want to relinquish their oversight to the advisory committees. We made an exception of Hana because it is in a different country and it's easier for them to do, I mean, they know their area. So, that was one of the cautionary things that we addressed and talked about for a long time about what kinds of powers we give the advisory committees versus the planning commission who looks at the entire island as a whole, so...Mr. Freitas.

Mr. Freitas: Yeah, it you know, it doesn't sound like it's ready to be taking on something like this if they haven't had one meeting yet, and I think this is a very serious matter. But I kind of agree with Commissioner Thompson that it might be a good idea to have them do it. I think this actually falls in line exactly what, what that organization or the, the committee is built for is exactly this, sort of more defined group of people to narrow down what their thoughts are. What, what would that then come back here, and then we, we have public testimony again, and then it just kind of becomes a really long process. How long before they can actually have the meeting?

Ms. McLean: I think they're, they're pretty much ready to have their first meeting. Their first meeting would be going over things like the Sunshine Law, Rules of Practice and Procedure, County Code of Ethics, and then just a general overview of the land use procedures, the kind of, the kind of training that you folks get every year. We would do just an initial cursory training for them. So, that would be their first meeting. And then if this if you choose to refer this bill to them, that would be their second meeting.

Mr. Freitas: Okay. And then, and then what they'll do is for the Paia and Haiku area, they'll figure out just them, South Kihei would figure out theirs, and then they'll come back and say this, this is our recommendation. And then we go through the whole process kind of again. I mean, we read their notes and then we make our decision. Is that the process I'm understanding?

Ms. McLean: That's right. Their recommendations will come to you and then you will make your recommendation to the Council on the bill.

Mr. Freitas: But then we do have public testimony again, right?

Ms. McLean: You will also take public testimony, yes.

Mr. Freitas: Okay, well if that's the case, just for my fellow commissioners, I would say, let's yeah, let's give the advisory a shot at, at this.

Ms. McLean: And do we want to put a timeframe on that, within how many days?

Ms. McLean: I yeah, I don't, I don't know that we need a timeframe. We...we're under a time crunch because it was a Council initiated measure.

Ms. La Costa: Right.

Ms. McLean: But—

Mr. Thompson: But if it doesn't make the deadline...(inaudible)...they called for those committees, and they're not island wide, ...(inaudible)...this is island wide. Give it to them. Let them take as much time as what they need.

Ms. La Costa: Commissioner Hipolito.

Mr. Hipolito: Thank you, Chair. Question for the Director. Director, will you need to be present at all these meetings including staff planners, who's for this item, this bill?

Ms. McLean: If my schedule allows, but I can't say for sure.

Mr. Hipolito: And as far as the staff planner, would they need to be at this advisory board meetings?

Ms. McLean: Absolutely. So, for each of these advisory committees we would have a commission secretary, we would also have the supervising planner and then we would have whatever needed staff is based on the item that's being discussed. In this case, it will probably be Jacky again taking this bill through, so she would be there for sure. And then I would discuss with staff, do you think I need to be there and see if my calendar allows for me to be there. Like if it's a daytime meeting if it conflicts with your guy's schedule or County Council then I would miss it, but if I'm able to be there for this particular bill, I probably would want to be.

Mr. Hipolito: Thank you, Director. My thoughts on this, I also agree with Commissioner Thompson and Commissioner Freitas to move this over to or approve the South Maui and Paia-Haiku Advisory Boards to review this first, I agree.

Ms. La Costa: How much additional funding does that take do you know?

Ms. McLean: We estimated, I believe we estimated in the range of \$250,000 a year, mostly for personnel, and the Council did budget that.

Ms. La Costa: Okay.

Ms. McLean: And some additional funding for additional office space, which they've given us, which we've rented, which we've fixed up and are occupying.

Ms. La Costa: Thank you, Director. Any other questions? No. May I have a motion, please? Do I need a motion?

Ms. McLean: We'd like a motion, but then it can be just unanimous consent vote.

Ms. La Costa: I'd like a motion, please, and a second to have everything in a row. Commissioner Thompson.

Mr. Thompson: I'd like to propose a motion to accept the Council's recommendations that we refer this ordinance to the Haiku-Paia and South Maui—

Ms. McLean: Advisory Committees

Mr. Thompson: Advisory—

Ms. McLean: Committees.

Mr. Thompson: Committees.

Ms. La Costa: Thank you. Do I have a second? Commissioner Thayer seconded. Thank you very much. Commissioner Thompson, additional comments? Commissioner Thayer, as the second?

Ms. Thayer: No, I agree with all the points that Commissioner Thompson brought up earlier.

Ms. La Costa: Okay, thank you, Okay, we a move and second. Any further comments, discussion?

Ms. McLean: All those in favor.

Ms. La Costa: All those in favor, please say, aye.

Commissioner Members: Aye.

Ms. La Costa: Any opposed? Any abstain? Carried unanimously. Thank you, ladies and gentlemen.

It was moved by Mr. Thompson, seconded by Ms. Thayer, then

**VOTED: To Refer the Proposed Bill to the Paia-Haiku and South Maui
Advisory Committees for Comment.
(Assenting – K. Freitas, D. Thompson, M. Hipolito, A. Lindsey,
K. Thayer, W. Greig, P D. La Costa)
(Excused – K. Pali)**

Ms. McLean: Thank you, Chair and Commissioners that concludes the agenda. The next regular meeting date is two weeks from today on June 28th.

Ms. La Costa: And I look forward to seeing all of you in the flesh because some of you I've never met in person, so that would be kind of fun. Thank you, ladies and gentlemen. Meeting adjourned.

D. NEXT REGULAR MEETING DATE: JUNE 28, 2022

E. ADJOURNMENT

The meeting was adjourned at approximately 4:28 p.m.

Respectfully Submitted by,

CAROLYN TAKAYAMA-CORDEN
Secretary to Boards and Commissions II

RECORD OF ATTENDANCE

Present

P Denise La Costa, Chair – in person
Kawika Freitas – via BlueJeans
Dale Thompson - in person
Mel Hipolito, Jr. – via BlueJeans
Ashley Lindsey – via BlueJeans
Kim Thayer – in person
William Greig – via BlueJeans

Excused

Kellie Pali, Vice-Chair

Others

Michele Chouteau McLean, Director, Dept. of Planning - in person
Michael Hopper, Deputy Corporation Counsel, Dept. of the Corporation Counsel – via BlueJeans
Gary Ambrose, Deputy Director, Dept. of Public Works– via BlueJeans