

**LANA'I PLANNING COMMISSION
REGULAR MEETING
JANUARY 17, 2018**

A. CALL TO ORDER

The regular meeting of the Lanai Planning Commission (Commission) was called to order by Ms. Kelli Gima, Chair, at approximately 5:00 p.m., Wednesday, January 17, 2018, in the Lanai Senior Center, Lanai City, Hawaii.

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

Ms. Kelli Gima: Good afternoon everyone. We're going to go ahead and get started. It's now 5:00 p.m. This is the January 17th, 2018 Lanai Planning Commission meeting. At this time before we go into opening public testimony, I do want to introduce our newest commissioner, Shelly Preza. I did introduce her last meeting; she was unable to attend. So at this time, Shelly, can you just give a short summary of who you are. You can get on the mic right there. Yeah.

Ms. Shelly Preza: Hello? Hi everyone. My name is Shelly Preza. I'm really excited to be representing the community on the commission. I'm born and raised here. My family has been here for many generations, and I have ancestral ties to this land as well. And I went to Kamehameha and then went to the east coast for college, but I just graduated so I'm back and I'm excited to be on the board, on the commission. Thank you.

B. PUBLIC TESTIMONY - At the discretion of the Chair, public testimony may also be taken when each agenda item is discussed, except for contested cases under Chapter 91, HRS. Individuals who cannot be present when the agenda item is discussed may testify at the beginning of the meeting instead and will not be allowed to testify again when the agenda item is discussed unless new or additional information will be offered.

Ms. Gima: Thank you Shelly. We're really happy to have you here as well. At this time I'm going to go ahead and open public testimony. Was there sign in sheet, Leilani? Okay, so anyways, whoever would like to come up first, there's mics at both ends of the table or one right there. And please state your name for the record.

Ms. Sally Kaye: Okay, so thank you. Sally Kaye, 511 Ilima. I'm testifying. I want to say a few words on your agenda item E1, unfinished business, the Lanai Water Advisory Committee or as we call it LWAC. I want to start by correcting a statement or two from the minutes. LWAC is not a different kind of group that happens to have the same name, end quote. And we're not a group calling itself LWAC. We are the LWAC that was created by the Board of Water Supply resolution in 1999. Current members have a collective of 100 plus years of institutional memory on all things water. My personal introduction goes back to 1974 with Sweet Deshay and Goro Hokoma.

Second, Corp Counsel's insistence that any applicant is, quote, held to what they submit is a pretty an empty promise. Just think Miki Basin, revocations or reversions for failure to fulfill conditions placed on permits are virtually non-existent so it's very important to have a continuing memory because this board changes every couple years, new people come, old people go off.

Today there's no dispute that LWAC was created to serve two purposes. The first was to help compile the Water Use and Development Plan (WUDP), and the second was to oversee its implementation. The Water Use and Development Plan was adopted in 2011, and LWAC is now focused on the second purpose, overseeing its implementation. This means that any permit, by any applicant that implicates water use is a permit or an application that LWAC should review. In the past has included a dry run where the applicant would present to LWAC, and LWAC would then present its findings and conclusions to the LPC or to County Council. There was not a single case in which I was involved that lead to a recommendation of disapproval. Am I unhappy that we do not get more public participation in LWAC? Yes. Am I disappointed that the next generation has not stepped up to the plate to serve on LWAC? You bet. The enabling resolution sets out LWAC membership representation but it does not include term limitation. This results in a lot of us serving for a very long time. After almost 12 years do I wish I could exit LWAC knowing that my replacement was committed to learning its history, committed to safeguarding our single aquifer precious water resources, and thoroughly understanding that water is a public resource that can't be privately owned? Absolutely. Today, we have a very competent, professional, and enthusiastic utilities director in Joy Gannon. We are very lucky to have her. And today, you have an LPC representative on LWAC in commissioner Delacruz.

To the point that Corp Counsel made in the last minutes that groups like Sierra Club are, quote, up at Council all the time, at Maui Planning Commission all the time, LWAC does not have that luxury. We can't hop a bus, or drive our cars to Kahului. So Commissioner Delacruz could, should act as liaison to request applications be provided to LWAC or you can collectively to do that. You always have the option with any application to defer if you need any additional information from an agency or an applicant. Water use can be a complicated subject, and as was pointed out in your minutes there's nothing wrong in consulting a group like LWAC to help decipher the complexities. Several times in the past, LWAC has asked questions of an applicant that has resulted in cleaner and clearer presentations to you.

Bottom line is that you have a public trust responsibility pursuant to cases such as Kauai Springs versus Kauai Planning Commission. LWAC can help you fulfill that public trust responsibility. With that, I'll answer any questions if you have any.

Ms. Gima: Thank you very much. Commissioners, any questions for the testifier?

Mr. John Delacruz: I have a comment.

Ms. Gima: Sure, go right ahead.

Mr. Delacruz: Sally, thank you for being here, and I for one am really glad that you've been there forever and hope you will remain there forever. When, when the LWAC was created, whoever created it basically tied the hands of LWAC by saying individuals in LWAC can testify as individual to a Council meeting, but they cannot testify as members as LWAC, and LWAC --. It's, it's in here.

Ms. Kaye: No.

Mr. Delacruz: No? Anyway, what I want to, what I want to say is having tied the hands basically, in my opinion, and restricting meetings to be called only by the Director of the Board of Water Supply which no longer exists, them being absorbed into the Department of Water of Supply, and the Department of Water Supply has ignored LWAC as much as the Board of Water Supply. Thereby, I think, advocating their authority. So I believe they either, the Board of Water Supply or the Council, should step in and provide the staffing and mechanisms where meetings will be held sanctioned by the Council, and members of the LWAC can testify to Council meetings as representing the LWAC.

Ms. Kaye: Could I just clarify some history here? As I've said, the, the LWAC was formed by resolution of the Board of Water Supply in 1999. It was an independent agency at that time. Subsequently it became advisory only to the Department of Water Supply so at one point when, when we were considering trying to do some sort of resolution, additional resolution, or ordinance we asked --.

Well, first of all, we got -- those of us who had served on LWAC got a letter from the Department of Water Supply thanking us for our service and saying you can go and do whatever you like now, and we fired back a letter and said, I'm sorry, but that's not what the resolution said. The resolution said you were there to create the Water Use and Development Plan (WUDP) and oversee its implementation, so -- excuse me -- we kept going. So Councilperson Victorino at that time asked for a Corporation Counsel opinion and that formal opinion came out and said, yes, the Board of Water Supply resolution stands. They, they are no longer have jurisdiction to overturn it. They couldn't make a new resolution even if they wanted to. So the only thing that can get rid of the LWAC that the Board of Water Supply formed is a new ordinance from County Council.

So, to your point that the original resolution said that the Department, that the Board of Water Supply should staff it and call it, and whether we were subject to sunshine law or not is absolutely true. And once we got that formal notification from Corporation Counsel saying, no, you can't disband them, then we started sending notifications to the Planning Department and to the Department of Water Supply, and they just never responded. So that's essentially --. I mean, I don't --.

Your question, if I read your minutes correctly, is how do you get LWAC to get, get the information that's going to be in front of you if at all relevant and in time so that we could come and do a presentation. I think your Corporation Counsel was exactly right, there's nothing to prevent that. The only point I was trying to make is we can't get that information as easily as other groups can so your representative can make sure that happens. We've had really good discussions with Pulama's representatives and Joy Gannon. I don't see a problem as it stands right now, but I wanted to clarify the record how that history all happened.

Ms. Gima: Thank you for clarifying that, and then also providing that history. My question is, and correct me if I'm wrong what I was hearing you say, is that at some point you were receiving applications from the Planning Department to review?

Ms. Kaye: No.

Ms. Gima: No?

Ms. Kaye: No. No, no to my knowledge. For the 11 plus years I've been on it, the first goal we had was getting that Water Use and Development Plan. If, if members of LWAC had an application, yes, we would. But I was sitting where you were back then, so I was John Delacruz and I was Chair, so I wasn't --

Ms. Gima: Okay.

Ms. Kaye: Yeah, I wasn't playing the community role then.

Ms. Gima: Okay, thank you. Any other questions?

Ms. Caron Green: So Sally, as I understand it, when you were established you were an advisory to the Department of Water Supply, correct?

Ms. Kaye: No. No, there is a resolution and I think Commissioner Delacruz has it and he can provide it to you. The Board of Water Supply formed LWAC for those two specific purposes. The Board of Water Supply was independent at that time and so they formed us and they had, you know, how we're to be represented and how to be staffed and that sort of thing. And then the Board of Water Supply turned into an advisory body to the Department of Water Supply. So the Board of Water Supply that formed us lost the ability to un-form us is, is the point. There's also a legal opinion. I mean, I, I think, Commission Delacruz has the history there if, if you folks want to get a copy of it.

Ms. Green: What I'm trying to understand is when there's something that comes before us, they send it out to the various departments in the County to get recommendations. But the County body that they send it to on water really doesn't have -- they never say much of anything because they don't have jurisdiction here. But they don't turn around and come to you when they are asked to respond to something.

Ms. Kaye: No.

Ms. Gima: Any other questions or comments commissioners? Go ahead.

Mr. Delacruz: Just to reinstate the comment that because the Board of Water Supply is totally ignoring the LWAC, either they should be instructed to participate in LWAC, with LWAC, or turn responsibility over to somebody else which doesn't make sense because we're talking about water. It should come from the Department of Water Supply.

Ms. Gima: Anything else? Thank you very much. Any other audience members wishing to provide public testimony? Come on up Gabe.

Mr. Gabe Johnson: Aloha Chair, aloha commission members. I'm Gabe Johnson, I'm a Lanai resident, representing myself today. I'd like to talk to you about 17-140, the definition of resource extraction and sand mining. So I have with me a letter from OHA about their, their stance on sand mining. I hope you guys got it. And I just want to reinforce that and say I'm, as a Lanai resident, I'm against sand mining on all islands. We shouldn't, we shouldn't do it. I think it's a terrible practice. It's a, it's a terrible practice for our natural resources. It's terrible practice for our indigenous folks who have burials up there, and I think that's really the heart of the matter is the desecration that's going on on Maui, and the potential that you guys have as a, as a smaller commission to stand up and say something. Because after they come for Maui sand, then they're going to come for Lanai sand, and then they're going to come for Molokai sand. It will just keep going. You can never stop beating this sand monster because it helps us with development.

So I want, I think as a Lanai resident, I just want you guys to kind of put your foot down on this. Stop it from the bottom up, and then the politicians if they have the political will, they can govern it from the top down. I know the Mayor is against this or is against sand mining, but we're still in this unenforceable gray area where people who are large developers will get variance or get some kind of exemption, and they can continue with the sand mining even though Joe Q. Public can't, you know, touch any sand on his or her land. But the larger you are it seems, it seems you can be more immune to the rules. And I think the Public, Public Works Department had the tough, the tough time to handle this because if they don't have the political will to do it, then they're not going to enforce it. And we can talk about the enforcement of it, and that's a very important part because you can have a sand mining moratorium but if the Public Works or whoever department isn't going to enforce your moratorium then it's just not worth -- it's just worthless.

And I think that's where we're at right now where you have...they have some restrictions and then they'll go put it under a grading permit and then it's just, it's unenforceable because they'll get enough -- there's so many ways to get out of any kind of, of restrictions. And I think that's why I just wanted to come here to tell you is that I think you guys have a duty and it's nice that you guys should be able to talk from the bottom up and tell the folks up there on

Maui and all of our politicians that it's enough already and it's time for, you know, us smaller commissions and smaller islands to tell them we can't, we have to stop this. So I just want to come here and tell you that. Thank you for your time.

Ms. Gima: Thank you Gabe. Commissioners, any questions or comments for Gabe?

Ms. Green: If they stopped all sand mining, I guess, where do you suggest they get the material to make concrete?

Mr. Johnson: There is, there is sand that's available you can buy from the mainland. It's going to add price to it. But the sand is only half of the, of the equation. The other half is the iwi, the bones. They're, they're pulling out -- they're digging up sand where people have been buried. And, I mean, we can --. I always try to put this on, like, myself, like if my grandmother's bones were disturbed, I'd be very upset. If I had a long history --. You know, we can go back in time and just say, hey, this is -- even if it's not my people, I have a grandma, and so that matters to me. So I think that, yeah, you're right, the price of construction will go up, but at least we can pay respect to the host culture here and that's where it's really where --. I mean, we can talk about the prices and all the, you know, it will always might be expensive. But what is, what is the price when it comes to our, our, the bones of people that we love, you know?

Ms. Gima: Thank you Gabe. Anyone else wishing to provide public testimony? Alright, at this time --. Sure, absolutely.

Ms. Preza: Hi Gabe. I just wanted to thank you for bringing up the bones situation with the sand mining and just to inform. I'm sure that -- I mean, I'm not sure if the Council's aware, but just kind of a like a little history, cultural tidbit that Hawaiians were never really buried in dirt, and I'm not sure everyone knows that, but they were primarily either their bones were placed in caves or in sand. So it, like, sand dunes were probably a primary place where a lot of iwi kupuna were placed. So that's just for the record. Yeah, so.

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

- 1. MR. WILLIAM SPENCE, Planning Director, transmitting Council Resolution No. 17-140 to the Lanai, Maui, and Molokai Planning Commissions containing a proposed bill to amend the definition of "resource extraction" in the Comprehensive Zoning Ordinance. (D. Raatz)**

Ms. Gima: Thank you Shelly. Alright, so if no one else is wishing to provide public testimony, at this time we're going to go ahead and close public testimony and move on to our next portion which is Item C, public hearing, with the first item on the agenda as . . . *(Chair Kelli Gima read the above project description into the record)* . . .

Mr. David Raatz: Good afternoon Chair and Commission Members. I'm David Raatz, Administrative Planning Officer with the Department of Planning. Thank you for the opportunity to provide an overview of this matter. We're here at the behest of the Maui County Council. They're seeking your review and comment of a proposed bill title, a bill for an ordinance amending Chapter 19, Maui County Code, relating to resource extraction or processing. The bill's stated purpose is, quote, to preserve, protect, and regulate the use of the County's finite natural resources by clarifying the definition of resource extraction, closed quote.

So because this is a proposal for a land use ordinance, each of the planning commissions need to provide commentary back to the County Council before they can consider final action on this proposal. And I would refer you to the Planning Director's memo to all the planning commissions dated January 9th, 2018.

So currently within the comprehensive zoning ordinance for the County of Maui there is a definition of resource extraction, and you can see that in the bill that's attached to resolution 17-140, in Section 2. And the way this bill is set up is under what we call Ramseyer Format where material that's proposed to be deleted is in brackets, and proposed new material is underlined. So if you go to Section 2 and you look at the paragraph that starts resource extraction, and just for the moment ignore the underlining and the bracketing, you can see what the current definition is. Resource Extraction means, "Activities engaged in the exploration, mining and processing of natural deposits of rock, gravel, sand and topsoil." And then you can see there's a proposed new definition which would be resource extraction or processing, and then there's three different enumerated elements that would be different ways of determining that resource extraction or processing is taking place.

This proposed new definition would be used in four different parts of the comprehensive zoning ordinance. Right now, in the Open Space District and in the Agricultural District, there's a current definition of resource extraction which is identified as a Special Use. And for the open space part of that, that's for the island of Lanai, only. So this proposed new definition of resource extraction and processing, or that term would replace the existing term of resource extraction in Open Space zoning and in Agricultural zoning. In addition, in two of the industrial districts, M2 and M3, this bill will take out an existing designated use of rock, gravel and sand extraction, and insert this new term, resource extraction or processing, that would be a listed use within those two industrial districts, again, M2 and M3.

So the three components or the three different types of resource extraction or processing, as you see here, in the underlying content of Section 2, I'll just go ahead read them into the record, Chair, if that's okay:

No. 1, Activities related to the mining or extraction of minerals, ores, soils, or other solid matter, including rock, gravel, sand, and topsoil from their natural subsurface location primarily for purposes other than those directly related to preparation of the land for onsite construction.

No. 2, Processing, preparation, cleaning, or other treatment of materials -- excuse me -- minerals, ores, or other solid matters, including rock, gravel, sand, and topsoil, in excess of 100,000 cubic yards for a duration of more than 18 months so as to make such material suitable for commercial, industrial, or construction use.

No. 3, Uses of land subject to the Federal Mine Safety and Health Act.

So we asked for commentary from various agencies before we took this to the Planning Commissions, and the documents are at the very end of this packet. Most of the packet we gave you is 100-plus meeting minutes from the County Council. But if you get to the end of that you'll see the comments we have received from various agencies. In addition, we have OHA testimony that's been submitted to you separately.

I think, to summarize some of the common themes in the agency commentary that we see, there's been some statements that suggest that resource extraction and resource processing are actually two different things so they should probably be in two different definitions.

Also in the second component of the definition where there's the reference to 100,000 cubic yards, we've received a lot of commentary questioning that measure as something that should be in this definition. And frankly there's some confusion as to what the relevance is of that, whether you hit that mark or don't hit the mark what, what would be the result.

And then finally I'd say a common theme is that there's some question as to whether this proposal would actually meet the bill's stated purpose of protecting natural resources or also have a positive effect on what may be the unstated purpose of protecting cultural resources.

Just a little bit of background on this measure. It was adopted on the floor of the Council meeting back in October without the benefit of community -- excuse me -- committee vetting or committee report. But from the context we see that it did array, I think it's fair to say, from committee consideration of sand mining and related issues in the Infrastructure and Environmental Management Committee throughout much of 2017. So there's actually now a few separate pieces of legislation that are emanating from that general concern, and that stems from sand use issues in Central Maui with the Maui Lani development as you've probably read about.

So there is a proposed sand mining moratorium in Central Maui and that did come out of the Infrastructure and Environmental Management Committee. That is now pending the Mayor's signature. He has until next week to either approve the bill, veto it and send it back to the Council, or let it become law without his signature. We don't yet know what his decision is going to be on that.

There's also a proposal relating to grading and grubbing permits that Council Member Guzman has introduced. He's also the -- introduced the legislation before you. That's pending, pending the Council's Land Use Committee and we understand that's going to be

taken up in committee next week. So get a few different elements that are flowing in legislation from some of the concerns that have been raised relating to sand.

So with that, that's my basic overview of the legislation. We'd be happy to answer any questions. Thank you.

Ms. Gima: Thank you. Commissioners, before we ask questions I'll open up public testimony again to see if anyone's wishing to provide public testimony at this time. Alright, then we'll close public testimony. Commissioners, any questions or comments?

Mr. Delacruz: I'll start with comments. The correspondence that accompanied the paper to us by the department states that the, the bill or the definition is will not clarify the old definition. It replaces the old definition.

But questions on the bill itself, the comment on Exhibit 1, Item 2, where it addresses in excess of 100,000 cubic yards for a duration of more than 18 months. Can you detail that for us please?

Mr. Raatz: I would have a hard time frankly explaining what that means and where that came from. We've had some testimony and some commentary from the other bodies that have reviewed this already, and this has gone before Maui Planning Commission, Molokai Planning Commission, and the Cultural Resources Commission. And we've been told that 100,000 cubic yards represents several hundred, if not, thousands of truckloads of sand. So it's a very large quantity. And we've had questions about how you determine the, the duration of when you start counting. Is it the duration of a project? Is it on a per month basis or a per year basis? So the short answer is because, again, we don't have a committee report and there wasn't a committee vetting process, we do tend to share the concerns that have been raised in testimony and in the commentary you see questioning how would this really work.

Mr. Delacruz: So at this point no one can say whether the -- this verbiage means 100,000 cubic yards, which is a lot, a day for 18 months or only a 100,000 cubic yards only during the 18 months. No one know that.

Mr. Raatz: The Planning Department doesn't know it at least. Yeah, we don't have an answer for that.

Mr. Delacruz: Thank you for that. Can I ask a question on what's on the bill itself on like on...there's these chart that looks like a schedule. Let me get to it. Basically it addresses only the island of Lanai on something called OS2. Let me find it.

Mr. Raatz: I believe that's page 4 of the bill and it's item No. 5 in that chart that you referenced.

Mr. Delacruz: Yes, could you explain that please? Why is it addressing only the island of Lanai, and what OS2 means?

Mr. Raatz: Thank you. Within Open Space zoning there are two different districts, OS1 and OS2. They have different permitted and special use, and this chart exists in the existing version of the comprehensive zoning ordinance. So again all of the text here that you see that is not underlined or is not bracketed, that's existing content that's not being proposed for any change. So we, we currently do have this chart already set up in Title 19 of the County Code to give, hopefully, handy reference of the different uses that are allowed in OS1 and OS2. And if you see an X next a stated use, then that means that's a use that would be a permitted use or a special use depending on which part of the chart that it's located in. And then the final column on the right is where there's special conditions for some of the uses. So this is something that has been existed. The County Council put this into law already that currently in OS1, resource extraction is not allowed anywhere in the County. And in OS2, resource extraction is a special use for the island of Lanai only, and limited to the extraction of natural material only, and no processing permitted onsite. So, again, the only part of that that's being proposed for a change is changing the definition of resource extraction to resource extraction or processing, and then, again, with those three elements that we went over.

Mr. Delacruz: But since this is limited to the island of Lanai only what does it mean? Can they -- somebody drive down to Manele and load up a truckload of sand?

Mr. Raatz: Well under the current code, in OS2 zoning, if a special use were obtained they, they would be able to do resource extraction which again means activities engaged in the exploration mining, and processing of natural deposits, rock, gravel, sand and topsoil.

Mr. Delacruz: So if someone applies for a permit to haul away sand from Manele it would go to the Council and then Council could approve it.

Mr. Raatz: It would go to the Planning Commission actually, it's a special use, not the County Council.

Mr. Delacruz: And right now is there a restriction on that?

Mr. Raatz: Well the only restrictions would be the granting of a permit or not by the Commission, and then the conditions that I, I mentioned a moment ago. They're on the far right column about limited to the extraction of natural material and a prohibition on processing being permitted on the site.

Mr. Delacruz: Thank you.

Ms. Richelle Thomson: I think one of the things that might be helpful for you to know is where the open space zones are located on the island of Lanai, and that I'm not aware of, but just to kind of follow up on your question about Manele. As far as the beach area, that sand is

under State jurisdiction and there's no extraction or mining of beach sand so that's a prohibited, prohibited by State law.

Mr. Delacruz: Thank you.

Ms. Gima: Commissioners --? Go ahead.

Mr. Bradford Oshiro: I'm just kind of curious, who's policing this, you know, you've got all these cubic yards of sand coming out? Who starts counting them? I mean, there's nobody there from the County or you just taking the word from the contractor that, yeah, a ton went out today.

Mr. Raatz: Thank you Commissioner. We share those concerns at the Planning Department. We're not clear how this could be effectively and efficiently enforced.

Mr. Oshiro: I would think you would already have something in plan or else you wouldn't be issued a permit, right?

Mr. Raatz: Well, we don't have this 100,000 cubic yard definition that currently applies so that's something that we don't currently need to worry about the existing law. We do enforcement on the existing definition of resource extraction and that could be a challenge in itself, but the addition of this new quantity is something that has raised concerns.

Mr. Oshiro: I'm just curious again. This all came about what happened last year, right, from the mining that's from -- along Wailuku someplace around that Sandhill area. Okay, does anybody know how much they took out besides that, oh yeah, it's leveled now?

Mr. Raatz: I haven't seen any data that expresses exactly how much has been taken from that site.

Ms. Green: I'd like to go back to John's question and try to understand because you said --. When I was going through this, OS1 and OS2, didn't mean anything to me. But, you know, on the island, I know that they've been crushing rock and doing things like that. It says no processing permitted on site, but what do you really mean there? I know that there's an area. You know, if you remove it, and take it to another area, then you can crush it there, it's okay. But you can't do it exactly where you're extracting it, is that correct?

Mr. Raatz: I think that's a fair representation, yes.

Ms. Green: Are we mining sand on this island at all? Does anybody know because I've been wondering where we get the sand for the concrete we have. I'm not aware of any place where they're mining sand on this island. Does anybody?

Mr. Delacruz: It's called the sand barge. It usually comes in on a Sunday. And to address

your question from before about where sand comes from. When the Koele golf course was renovated under this Australian . . . (inaudible) . . . named . . . (inaudible) . . . What's his name?

Ms. Green: Norman.

Mr. Delacruz: Yeah, Greg Norman. Part of the deal was they bought the sand from him and it was brought in from Australia for the golf course.

Ms. Gima: Commissioners, any other questions or comments? Yeah, go ahead.

Ms. Preza: I think similar to a lot of the testimonies that we were provided about Section 2, the 100,000 cubic yards for a duration of more than 18 months was really confusing, and I think per the OHA letter, they kind of expressed how that could provide loopholes for people to continue to extract sand or other natural resources. And so I think that is definitely confusing. I have a question about the recommendation from the Cultural Resources Commission (CRC). They're --. So they addressed in section 2, or no. 2 that that part is problematic. And then they recommend in no. 3 that they change. I'm wondering, the brackets, does that mean take out the entire part about in excess of 100,000 cubic yards for a duration of more than 18 months? Just remove that completely from the...from, like, the proposed amendment and then include offsite construction use as well?

Mr. Raatz: Thank you for that clarification. Yes, that's correct. The CRC used the Ramseyer format in their letter to us that was signed by the Planning Director. And the bracketing is what they propose to cut out, and the underlining would be a suggested addition.

Ms. Preza: So I'm just wondering just for discussion purposes if taking that out, the kind of the confusing, people don't really know what 100,000 cubic yard for a duration of more than 18 months means. That just makes everything a little bit more simple saying any kind of extraction would be regardless of how much the quantity was, you know? What does everyone think?

Ms. Gima: I had the similar thoughts as well. I mean, that was very confusing and does sound from, like, from other testimonies that, and the Planning Department that there is some confusion there. And correct me if I'm wrong when we give our...I'm trying to look, the options that we have, we can, you know, advise the Council to pass the bill as drafted, we can advise the Council to pass the bill with amendments. So that would be something that we could consider as an amendment, right, having that exact verbiage removed?

Mr. Raatz: That's correct.

Ms. Gima: Okay. And then just to, to state on record because I don't know if people in the audience are aware or not this has nothing to do with for or against sand mining or anything like that. This is specifically regarding this specific change in definition.

Mr. Raatz: That's correct. That's all that the Council has asked you to comment on and that's the limit of your authority right now.

Ms. Gima: Right, right. Yeah, so I just wanted to put that on the record so that there wasn't any confusion that we were making some big, major decision today. But is there any --. You know Shelly brought up a very good point. Is there any other Commissioners wanting to provide some comments on that?

Ms. Green: I too had a lot of questions about the 100,000 cubic yards and the 18 months, and I noticed on the Public Works under their no. 1 comment there, they say that it seems you can extract any amount of sand, rock, gravel, etcetera, even greater than 100,000 cubic yards if it is related to the preparation of land for onsite construction. So it just seems to me this whole thing is with all sort of difficulties and ambiguities so I agree with the other people who have been talking about that one section.

Also when I read what David -- I'm sorry, John Rapacz. How do you pronounce his name? Rapacz?

Mr. Raatz: John Rapacz.

Ms. Green: John Rapacz.

Mr. Raatz: For reference, he leads the Zoning Administration & Enforcement Division of the Planning Department so he's had a lot of firsthand experience in this field.

Ms. Green: Well, he has several pretty strong comments here. One was delete from their natural subsurface location. He says if you can get the resource out of the ground undetected then the sand no longer fits the definition. So there's all sorts of ways around it. So, and then he added a second area where he wanted to delete. It says delete primarily for the purposes -- for purposes other than those directly related to preparation of land for onsite construction. And he said one can claim virtually any grading is for future construction. So I thought he made several really valid points there.

Ms. Gima: And I think that was similar in OHA's testimony as well. I think. I mean, there was some --. I mean, if you look on the testimony that is on -- that was given today, on the last page there's three recommendations and you can see that they were...certain verbiage was taken out. Commissioners, any other questions, thoughts, comments?

Mr. Delacruz: We are actually in what's called an expedited process right now. This matter did not go to Committee before it went to the Council so what's going to happen is whatever we say when it goes back to the Council then it will go to Committee. Whereas the normal process it goes to Committee, it comes to the Commission, then to the Council, and I'm not sure what impact it's going to have on our influence and what goes to the Council. Which

means that normally we see what comes out of Committee, after the Committee takes testimony from the public, entire County of Maui. Then it comes to the Lanai Planning Commission, we can or we may not make recommendations before it goes to Council. But now we won't see it after it goes to Committee on this particular bill.

Ms. Gima: So to clarify, we make our decision or our recommendations, it goes to Council and then to Committee?

Mr. Delacruz: On this matter, yes.

Ms. Gima: No? Can you clarify that?

Mr. Raatz: Thank you Chair. I believe Commissioner Delacruz is accurate. We expect because this didn't go to Committee before it got adopted and sent out to the Planning Commissions, likely when we send the Planning Commissions' comments back to the Council, they're going to need to send it to Committee and have the vetting process happen that hasn't occurred there yet.

Ms. Gima: Okay, so that will happen before Council makes a decision.

Mr. Raatz: More than likely, yes.

Ms. Gima: Okay, okay. Alright. Any other comments, Commissioners? Questions at all? Sorry, I lost my train of thought on something. Okay, so I, what I'm, again, reading that our options are to advise the Council to pass the bill as drafted, advise the Council to pass the bill with amendments, advise the Council to not pass the bill, or to defer decision to gather more information. What I'm hearing is that there may be some thoughts to make some amendments here this evening. So we would have to -- someone would have to make a motion with a proposed amendment, and then we would vote on that? That's correct, right?

Mr. Delacruz: Yeah, we need to work on wording on how to address this 100,000 cubic yards thing. Who's a good writer?

Ms. Gima: Well, what I'm seeing in some of the testimonies was it just stops at the --. So it would state, processing, preparation and cleaning or other treatments of minerals, ores, or other solid matters including rock, gravel, and sand, and topsoil. And then it just stops and we take out the in excess of 100,000 cubic yards for a duration of more than 18 months so as to make such materials suitable for commercial, industrial or construction use. Or is it just taking out the...up to the in excess up to the 18 months? I don't know.

Mr. Delacruz: I would ask David a question. If, if that is done, if we stop at, and topsoil, period, and remove the in excess and so on, who would determine who would take out how much?

Mr. Raatz: Thank you for the question. Well, if there's no quantity specified, then I would think

the Planning Department would regard any amount as fulfilling or being consistent with this term and this definition.

Mr. Delacruz: Then it would have to go to Committee and Planning Commissions, each application?

Ms. Thomson: I think something, something just to keep in, in the back of your minds too. So we're dealing with Title 19, the Zoning Code. In Title 20, we have the Grading Ordinance, and the grading ordinance covers kind of your standard grading and grubbing that people do generally for, for their construction on house lots, so you might be taking material away or bringing material onsite to change the level of the grade. So resource extraction, kind of by its definition, its current definition and also this proposed change is a pretty intensive activity you're talking about. So whether or not normal grading, I don't think that normal grading would be subject to this definition, you know. And that's really -- that's really what the purpose of this change needs to do is there's grading and then at some point there's a gray area between mass grading that was occurring on Maui Lani and resource extraction that occurs kind of how we think of it is it occurs primarily for commercial purposes. So, you can have both though and on Maui Lani that seemed to be the case where they were extracting the sand because it's a valuable resource. They are developing that area, so they were --. You know, their argument is that they were just mass grading, but Planning Department's argument was no, your activity went too far, and to resource extraction. So, this change, this amendment is meant to try to address that gray area so that there's more of a clear delineation between, you know, when you cross over from mass grading to and into resource extraction.

Ms. Gima: Thank you for that. David, can I ask -- now I remember what I was going to say. You said Molokai Planning Commission and Maui Planning Commission had already reviewed this and, and gave comments. Can you share some of what their -- or what their recommendation was to Council?

Mr. Raatz: Sure. The Molokai Planning Commission recommended that the Council not pass the bill. The Maui Planning Commission endorsed and expressed support of all of the agency comments that came in. They did seem to give special weight to the CRC's comments and Mr. Rapacz's comments.

Ms. Gima: Just curious as to -- I mean, just kind of quick overview as to why Molokai Planning Commission was like no. I'm just curious about that.

Mr. Raatz: They had a lot of trouble with the 100,000 cubic yards is one of the issues. I think they also gave credence to OHA's testimony that there might be unintended consequences.

Ms. Preza: I guess just in thinking about how we want to move forward. Even if Molokai Planning Commission had an issue with the, you know, obviously the part that was really confusing and gave credence to what OHA, OHA's testimony provided, I just wanted to note that OHA's suggestion for how to treat that section 2, and this Cultural Resources

Commission, Commission's recommendation to just remove, in excess of 100,000 cubic yards for a duration of more than 18 months, both of their suggestions were pretty much the same except the CRC included, added in an offsite conjunction use as opposed to OHA which just said construction use in general. But I think taking out that kind of --. I mean, there not really a lack of --. I mean, there's a lack of clarity with the 100,000 cubic yards thing so taking that out of that section might be a good way to move -- amend the resolution.

Ms. Gima: Would you like to make a motion for us to vote on to include that specific, specific amendment?

Ms. Preza: I'm sorry, this is my first meeting, so I'm not really familiar with procedure as much so I just say, I'd like to make a motion to --? Do I say, reference exactly which one I think would be --?

Ms. Gima: Richelle, I mean that's how we would do it or would we do it as vote for the amendment first or --?

Ms. Thomson: So the --. You can do it a couple of different ways. If, if there's general consensus, you know, we can just take down notes and draft a letter and forward your comments. Or you can do it more formally, you know, through motion. You know, and you would move to amend to remove, you know, that whole quantity language in No. 2. Someone would second it. Then there's discussion and then you vote on it.

Ms. Gima: So it doesn't have to be formal.

Ms. Thomson: It doesn't have to be formal.

Ms. Gima: Okay, Shelly, how would you propose that that, No. 2, how would you propose that to state?

Ms. Preza: I think OHA's suggestion of processing, preparation, cleaning or other treatment of minerals, ores, or other solid matter including rock, gravel, sand, and topsoil for the purposes of commercial, industrial, or construction use. And I say that not --. I'm sure the Cultural Resources Commission had a good reason why they said offsite. I don't know if you guys could speak to that. But, for me, it's like, I feel like they're trying to describe onsite or offsite construction use, right, for OHA? Like that's why they didn't say offsite specifically because that might leave room for it's okay to use it onsite? Sorry, I know started saying something very clear, and then I asked a question, but --

Ms. Gima: No, no, no. So basically what OHA has proposed in their public testimony is fine?

Ms. Preza: Yeah.

Ms. Gima: Commissioners, I mean, please refer to OHA's public testimony which is page 3,

looking at No. 2. Are there any objections on making this our -- including this in our comments to the Council? That we would recommend that as well.

Ms. Green: No, I totally agree. When earlier I talked about John's comments, and I just went through and looked in his comments, it appears that this is exactly what OHA has done is taking his comments and incorporated them into the motion. So, actually I think I could be pretty much in agreement with their 1, 2, and 3 here.

Ms. Gima: Any, any objections, Commissioners? Okay, so...having --. Caron, you're saying 1, 2, and 3. So what I'm hearing is no objections to making that a comment that we're in agreement to OHA's number -- their amendment to No. 2, or their proposed amendment to No. 2. Is there any comments or objections to OHA's proposed No. 1 or 3? No objections. Okay, so if we can add that as that is something we also agree with. And is there anything else? Any other amendments or comments that you would like to include to be forwarded to Council? No? Okay. So now we would have to formally vote on those five -- four options.

Ms. Thomson: Since you've done it by consensus and no one raised opposition we can just forward those comments.

Ms. Gima: Okay. So, I think everyone's in agreement to it to advise Council to pass the bill with those comments. Alright, thank you very much David. We appreciate your time.

By unanimous consensus, the Commission recommended to County Council to pass the proposed bill with the comment that they expressed their support to OHA's testimony.

Mr. Raatz: Thank you. That was very helpful.

Ms. Gima: Yeah, thank you. Alright, let's go ahead and get started on Item D, which is our orientation workshop No. 2, and I'll turn over to Richelle with Corp Counsel.

D. ORIENTATION WORKSHOP NO. 2

- 1. Lanai Planning Commission's Roles and Responsibilities**
- 2. The Sunshine Law (Chapter 92, Hawaii Revised Statutes)**
- 3. Ethics**
- 4. Contested Cases**
- 5. Property Rights**
- 6. Rational Nexus and Rough Proportionality**
- 7. Bed and Breakfast Homes and Short-Term Rental Homes (Uncompleted portion from the April 19, 2017 meeting.)**

Ms. Thomson: Thank you Chair. And there are copies of this presentation back on the table. My apologies for not having my power point. I didn't actually think we would have a projector so I didn't, didn't bother to bring it with me. Please feel free to stop me at any point if you have questions or if, you know, some of the slides bring up any side issues that you want to talk about.

So going from this presentation and the way that the slides are laid out is horizontally, so regulatory, regulatory authority in general. What these first few slides lay out is where does the Lanai Planning Commission gets its authority. So in general, in, well, in the US, we have the US Constitution. As far as we're concerned our Hawaii State Constitution falls under that umbrella. Hawaii Revised Statutes are our State laws. The Maui County Charter is our original governing document. The Maui County Code which we just talked about tonight, Title 19 is Maui County Code. And the Lanai Planning Commission is established both under the Charter and also under Maui County Code, and the Commission has its own Administrative Rules. So when you're doing your job as Commissioners, you're looking to your rules, Maui County Code, Hawaii Constitution and all those fall under a certain hierarchy.

Slide 4 just goes into, you know, the Department of Planning includes the Lanai, Molokai and Maui Planning Commissions, and also the Board of Variances and Appeals. The Planning Director is the -- he's the chief planner officer of the County and he advises the Mayor, Council, and also the Planning Commissions. The Directors of Public Works, Environmental Management and Water are non-voting members of all Planning Commissions so...they are resources for you.

Powers of the Planning Commission comes from the Maui County Charter, so your job is to advise the Mayor, Council and the Planning Director on planning related matters within your respective islands. You review the General Plan and the Community Plans which this body just did in the last couple of years. And it comes up probably once every, I don't know, 10 years or so unless there are amendments to community plans and then those will come up more frequently. And tonight you've reviewed land use ordinances and you conducted a public hearing on the resource extraction amendments, and then we'll be transmitting your recommendations to Council. One of your main kind of job and where some of a lot of the action is is that you are the authority with the reference to the Coastal Zone Management (CZM) Act. Coastal Zone Management Act is in State law. It's also called the Special Management Area (SMA) and basically it's a ring around all of the islands. It's different -- differs in width and up to certain elevations. Right now, the Planning Commission, we have an open item for reviewing the SMA boundaries and talking about, you know, is it arbitrary, are there changes that need to be made to it? So the Planning Department is working with you to kind of take that on as a topic.

So I'm on slide 6, Lanai Planning Commission's job description. You conduct contested cases, and these are an exercise of your adjudicatory function. So you have advisory; like tonight was an advisory function. You also do adjudicatory which means you're the final decision maker. If somebody's unhappy with your decision, a party is unhappy with it, they could appeal it to the Circuit Court. So contested cases are a much more formal process and the reason that they're formal is to preserve the party's rights to a fair hearing. All of the evidence needs to be in your record so that's why we talk about not going outside, you know, to do your own investigations because that wouldn't be fair to, you know, the applicant to have a chance to either rebut or question evidence or that kind of thing. So that's why it's as formal as a process as it is.

Yeah, so a contested case --. So if you have a Special Management Area Permit application before you, so what you're going to do is review that application, question the parties, question experts, you can get more information, you get information from the departments, so that's all part of your contested case record. And then you make a final decision and usually you'll either deny the permit or approve a permit and typically you'll have conditions. So that's all part of a contested case.

Most likely the two that are going to come up for you are going to be SMA Permits, and then Special Use Permits. So you need, like with the resource extraction, you need a Special Use Permit if you're going to do that activity within certain zones, and they would have to come to the Planning Commission to request your review and approval or disapproval. And like I said if the, if the applicant or a party is unhappy with the decision, then they appeal that to Circuit Court. And the Court -- I'm jumping ahead a little bit -- but Circuit Court would look at your record, so they have the record on review. They look at the record, they listen to the arguments of the parties, you know, and they'll argue why the record should have supported this decision, not the one you made. The Court can either make a new decision based on the record or send it back to you. Most of the time they'll send it back to you and say, you know, do this over, we found fault with it of some sort. My job is to help you not to get to that point.

So I'm on -- let me see, I'm page 3, contested case requirements. So these are all according to State law. So we have to notice. So that's the published notice that's published in the paper. Some contested cases require a public hearing and some don't. Most of the ones that you will handle do require a public hearing, so that's -- it's built into part of the contested case and it offers the public the chance to come and participate and give you their views. It also offers outside agencies or people with specialize knowledge if they want to come and, you know, provide their, their opinions to you or data, you know, so that becomes part of your record. You also consider the weight of the things that you receive, you know, how credible is it, where did it come from, is it reliable? You know, is it proven data, that kind thing.

Your agency record, so your contested case record includes pleadings and motions, intermediate rulings, oral testimony, exhibits, offers of proofs -- those are where parties can agree, you know, on this is an established fact kind of thing and you can find that is a true fact. Sometimes with different matters we can...we can nominate a hearings officer so that can be someone who's outside of the commission. They go and they conduct some of the hearings or the intermediate steps, and come back to you with a report. And I haven't seen that happen here. Typically the Planning Commission acts as its own hearings officer as a body.

I'm slide 12. Going outside of the record may be grounds for appeal. So these are a couple of . . . (inaudible) . . . from some cases that went up to Hawaii Supreme Court. So where the board improperly consulted outside sources, the violation was cured by a rehearing. And then another example was receiving a letter from a party and taking a view of the premises after the public hearing was closed were irregularities leading to reversal. What the Supreme Courts has said, you know, if just boil it down to this, you need to keep everything within your record, and within the formal confines of the contested case proceedings.

The board in that first example went -- I believe this is the case where they went to like a department of University of Hawaii because they wanted to check some facts or find something else that were kind of uncertain about. That would have been okay had they requested that that professor or department come to the contested case proceeding, and then allowed the parties to have the opportunity to question the witness basically. The Court found that by going outside the record on their own, by doing kind of their own fact finding mission without giving the parties the opportunity to question that source, that was the problem. So it wasn't -- the problem wasn't that they consulted somebody, it was how they did it. And that's relevant to, you know, the next topic that we're going to talk about with LWAC and how you can consult with outside groups or agencies, and keep it within the record, you know, so that things are done according to your rules and so your decisions don't get challenged.

Judicial review, I've already kind of gone over that. You know, if, if challenged, the Court could affirm with your decision; they could agree with you. They could remand the case back to you with instructions for basically a do-over or they could reverse or modify your decision.

So every action -- I'm going on to case law review -- every action of the Commission has its own legal standards. My job is to help you know what the standards are and then when you're in the deliberations of making a decision you're applying the law to the facts to come up with a decision that's supported by both.

When we get into Takings, Takings are -- it's -- the Takings clause is to bar the government from forcing some people alone to bare public burdens which in all fairness and justice should be borne by the public as a whole. So in the context of like a Special Management Area

Permit, if the permit conditions are excessive, if they don't --. What you want to permit condition to do is address the harm or the circumstance that's being, you know, impacted by this activity. So if, if views are impacted, you can make conditions that mitigate the impact of a view or public access to the shoreline, things like that. So there's, you know, certain things in, like, SMA Permits that are within that territory and then other things would not like say you have to dedicate 15 acres for a park. Well, that has to be related to the application. It can't be so, you know, outside the scope.

Essential Nexus -- so like I was just saying and the easiest, the easiest context is for the permit condition. So there needs to be a connection between the effects of the land use and what the requirement is. And in your record what you're trying to do is anticipate and identify in the record the anticipated effects and then also show how the permit conditions relates to those affects. So that's one of the things that we'll talk to you about is you need to put it in the record, you know, so put the reasoning behind our conditions into the record so if it's challenged that's clear that the Court can see this is how they made this decision...and it's supported.

Rough proportionality -- like I was saying, it relates to the scope of the harm that you're trying to address. So you're, you know, it's -- you don't want to kill a fly with a sledgehammer, you know, it's a fly swatter, so you know, that's kind of the same thing but in a land use context.

And I know this gets dry so I won't elaborate excessively, but if you have any questions I'm happy to, I'm happy to talk to you about it. I'm skipping down to Special Management Area because this kind of gets more into an example. The Coastal Zone Management Act objectives and policies, these are the things that this law is trying to protect: recreational resources and public access to recreational resources, historical resources, scenic and open space resources, coastal eco-systems, economic uses, coastal hazards, and managing development. So it's not to prevent land uses, but it's to manage them in such a way that these important resources are also protected along the way. And your job is are stewards of those resources, so you look at applications, you look at the potential harm and you look at what's being proposed to mitigate that harm or impacts, and sometimes you might see other ways of addressing it by way of permit conditions.

Occasionally you're going to be faced with permits that you don't see a way of mitigating the harm and you're going to deny those permits. So one of the...on the slide 26, so where there's a lack of mitigation measures or where mitigation measures cannot achieve consistency with the coastal zone management act and objectives and policies -- excuse me -- SMA guidelines that SMA permit may be denied. If you're denying a permit, you know like I said, you want to make those findings very clear in the record so if it's challenged, a Court will look at it and say, you know, I can clearly see why those permits was denied and there was no way that they could have granted it because they couldn't find ways to mitigate the

harm. And it doesn't mean that you have to mitigate it to the, you know, that it's totally zero because it's not, you're not trying to prevent or halt all development, you're trying to do it so it's in compliance with this coastal zone management act. Switching over here.

Sunshine law. I'm just going to talk through sunshine law pretty quickly. So you have two, two types of matters that you are doing. You're either doing your adjudicatory functions and that's under the contested case realm, or you doing sunshine law and those are like today's -- today's public hearing on the resource extraction was a sunshine law matter. Kind of the way that you tell the difference is if your decision is appealed to Circuit Court then it's a contested case. If it's not, and you're doing like an advisory function or some of your other, other duties, review and comment, those are going to be almost sunshine law matters. But similar to contested cases, you don't want to go outside of the confines of a meeting to conduct your own investigations or to meet with each other. One of the things with sunshine law is to open up the government process so that the public can understand what's going on with our boards, commissions, etcetera. And the way that they can do that is publically noticed meetings, the opportunity to come and watch and hear you, you know, do your jobs, and the opportunity to come and offer public testimony. So, that's the purpose behind the sunshine law and the prohibitions, you know, really it's don't talk to each other about board business outside of meetings. Two people, two board members can. I generally advise you not to do it because it's too easy especially in small community for one board member to talk to another board member, and then that board member talk to another one, then you have three and then you've violated the sunshine law. So it's better just to keep your board business within the confines of a meeting.

We -- if there's ever a need for going into a permitted investigative groups we can kind of take that up. So if you have, you know, I'll use -- sorry I'm using SMA as my all around example tonight, but say with this investigation into the SMA boundary line, at some point you might want to identify a permitted and investigative group. So it's two or more members, but less than quorum. So it's two, three or four members of this body. You assign them a specific task. They can go outside and do their own investigations and come back and report to the board. But it's, it's basically another pre-formal process. You have identify the group and their purpose. They go out, they only do that purpose. They come back and report to you. You can't take any action on their findings until their next meeting. So if we ever have a topic, you know, I think that might be a good idea, then I'd definitely recommend it to you guys.

The last few slides on this page 11 are the flow of the meeting, and just really for the new Commissioners. The Chair controls the flow and the order of the meeting. You know, generally the members will look to the Chair before they speak, and that's really just to avoid cross talk so that the minutes can be clear and everybody has the opportunity to speak, and, you know, one member doesn't dominate the conversation. When you're making a motion, so you -- anyone can make a motion. Generally it's done after a little bit of discussion. So a

member will make a motion. It's normally it's seconded. If it's not seconded the motion just fails for the lack of a second. So motion made, seconded, now that motion becomes the property of the commission as a whole. So you discuss its merits and then the Chair will call for a vote at some point once discussion is over. And you have to pass; you need five votes to take any action, to approve or disapprove. So regardless of how many members are here, it's a nine member body, but you will always need five members to act on anything. So if a motion get four votes, it fails for a lack of, you know, lack of sufficient votes.

And the last...the last thing I'll cover is in Ethics, conflict of interest. This is slide 47. So your Lanai Planning Commission Rule No. 25, if you have a conflict of interest or other ethical question which is raised by anyone regarding any member of the Commission the affected member shall promptly make a full disclosure of the circumstances. So you would it on the record.

If the Commission Member has a financial interest in any matter that may be affected by an action of the Commission, that member shall be disqualified from voting in all actions related to such matters. So if you own a, if you own a house and you wanted to operate a short-term rental home in that house, you would have to have the Commission's approval under certain circumstances to be able to get that permit. You wouldn't be able to participate in it. You shouldn't participate in that discussion on your own permit or advocate for it or obviously vote on it because you have financial interest in the outcome.

Ms. Gima: Is financial interest defined? I mean, who -- who basically determines if there's financial interest or not? For example, if there was an application -- well, we've had applications, right, to renovate the hotels, right, so the hotel will flourish, bring in more money. And if you're an employee who works for the hotel, do you have financial -- is that financial interest?

Ms. Thomson: So the Board of Ethics actually took that up in, I think, it was 2004 with -- I can't remember the exact year -- but with Castle & Cooke, and it was with Castle & Cooke employees and serving on the Maui Planning Commission and whether they should disqualify themselves from participating and voting in matters that affected their employer. And the, the Board of Ethics opinion at that point said in general sense, no, that just because you have a kind of a general economic benefit that that didn't automatically disqualify you. But the caveat that the Board of Ethics said was they want to make a case by case decision, so if something comes up and any of the members feel like they need to get a Board of Ethics opinion it's pretty easy and I can definitely help you out with the process.

You basically write a letter to the Board of Ethics, explain, you know, what the scenario is, and they give you an opinion. If you act in accordance with the opinion, then you're fine, basically.

Ms. Gima: So the answer is that the Board of Ethics would make that determination.

Ms. Thomson: Yeah, and it's a case by case.

Ms. Gima: And case by case.

Ms. Thomson: Yeah, so there is no definition of financial interest. If you -- I mean, there are some that are really clear. So if your company or your property is involved, if your spouse's property, company, and that kind of thing.

Ms. Gima: Right, right. But I think there is a lot of those gray areas.

Ms. Thomson: Right.

Ms. Gima: Okay, so the Board of Ethics.

Ms. Preza: So you said --. Sorry, I guess for in the case --. I know it's case by case, but when you said, you know, generally, they -- like if it was a Castle & Cooke employee, they would be able to vote. But you said something about not being able to even participate in the discussion for certain matters.

Ms. Thomson: Right. So if, if like the level of conflict, you know, if it was your own property that was being discussed, you would really want to probably refrain from participating in the discussion and definitely refrain from voting.

Ms. Preza: Okay.

Ms. Thomson: There have been a couple --. So we had a Commissioner who worked as, I think he worked as a carpenter for a company that was going to benefit from --. You know, it was, it was really a pretty close. If this --. I think it was a Special Use Permit maybe. So if this permit was granted his company was going to get the work and he was going to be working. So, you know, when we talked about it, we kind of, you know, talked about that in advance and I recommended that he disclose that on the records, you know, here's the facts, and based on that that he felt that he needed to recuse himself. So it is, you know, it's also kind of an individual call too.

Yeah, but in a general sense, just working for Pulama Lanai or working for one of the subsidiary companies in it of itself doesn't automatically disqualify you according to that Board of Ethics opinion.

Mr. Delacruz: If you recuse yourself what does that do to the vote?

Ms. Thomson: That's a good question. So if you have a circumstance where you just have bare quorum for that meeting, you wouldn't have enough members to take action on that item so you would have to defer it to a subsequent meeting until there are enough members.

Mr. Delacruz: Because one of these blocks maybe two pages ago...if you refuse to vote it's counted as affirm.

Ms. Gima: But refusing and recusing due to conflict interest are two separate things, correct?

Ms. Thomson: Exactly.

Ms. Gima: Yeah.

Ms. Thomson: So sometimes -- sometimes members will be just be uncomfortable with a topic so they won't have a conflict of interest, but they're just very uncomfortable with a topic and they don't really want to make a decision on this. In that circumstance, what your commission rule say is that absent to conflict of interest which, you know, should be disclosed right at the beginning of an item. But absent to conflict of interest, if you don't vote, it's counted a vote in favor of the motion.

Mr. Delacruz: Maybe a year or two back, or several meetings ago, there was at least one case where someone said I don't want to vote on this. And then afterwards they said, well...your vote was --. You're not voting as a yes and that may have --

Ms. Gima: Right, and that's personal choice, right? If you don't feel comfortable raising your hand for a vote then that's your choice.

Ms. Thomson: Yeah, it's --. You know, I, I --. What I would counsel those members, I would say, you know, it really is -- it really is your obligation as a Commission member to vote, you know, and there's --. Yeah, you can't force somebody to do it so people, you know, doesn't come up all that often, but people do abstain from voting. And you know, hopefully the vote doesn't go so fast where we would catch it before, you know, we tally it up and the Commission member would say on the record, I abstain. And we would say, if you abstain, that's a vote in favor of the motion, and, you know, that's basically just it.

Any questions? No one fell asleep. Thank you.

Ms. Gima: Any questions, Commissioners?

Ms. Thomson: The other thing is please feel free to -- I'll give you my card -- but please feel free to call me or e-mail me if you have any questions. If you are taking a look at your meeting materials, you know, before a meeting and you have things that you don't understand or want to talk about, you're not violating the sunshine law talking to me, Planning Department staff. Don't talk to the parties, you know, but as far as talking to your resources and the Planning Department or to me, as your attorney, you can do that, you know, so please do feel free to get a hold of me if you have questions. Thank you.

Ms. Gima: Thank you. So I know we have a second part to the orientation workshop. Clayton, are you going to be doing that one? But I'm going to ask if we could take a quick 10 minute break before we carry on. Would that be okay? Okay, thank you. So, 6:26 p.m. now, so we'll be back in 10 minutes.

(The Lanai Planning Commission recessed at 6:26 p.m., and reconvened at 6:35 p.m.)

Mr. Clayton Yoshida: . . . Commissioners Badillo and Zigmond resigned in June, and then the confirmation of the new members took until November, we couldn't finish the session. So anyways bed and breakfast homes are, you know, transient rentals where they -- single family dwelling or dwellings -- where there's owner proprietor, they rent the rooms and they serve breakfast. Short-term rental homes the owner may not necessarily live on the property. They may have a property manager -- if they don't -- and to handle complaints, if there are any. So I guess we're going to start with page 26 of the handout on taxes. And for bed and breakfast properties they're not entitled to receive a homeowner's exemption.

Ms. Green: Clayton? Clayton, I know you want to go there but there's something that I just noticed and correct me if I'm wrong Kelli, but because I wasn't on the board at the time, but there was a meeting that I did attend where I thought that Lanai decided to have a cap on how many short-term rentals we could have. Remember? And then we had a meeting and they said go back in the minutes and find out what that was, and I don't know that if we've ever had that.

Mr. Oshiro: You're right.

Ms. Green: But it says in your, in your notes here that there's no cap on Lanai.

Mr. Oshiro: She's right. We did, we did pass something putting a cap on short-term rental and bed and breakfast.

Mr. Yoshida: Okay, I guess we can go over that. Again, the bed and breakfast are taxed at commercial residential rates. The short-term rentals used to be taxed at a commercial rate, but our Real Property Tax Division has developed a separate tax category for short-term

rental homes. Before they were taxed as commercial, they were taxed at a hotel rate which the operator said was too high. So these are the rates. The B&B's are taxed at the commercialize, residential, 4.35 per thousand dollar valuation. Short-term rentals are taxed at, well, not at a commercial rate, but now it's a, they have their own tax classification.

So in 2016. Well, in 2014. In 2012, the Council adopted the short-term rental home ordinance which we know as Chapter 19.65, and there was a provision that if we reviewed after two-years. So in 2014, we came to the Planning Commission with proposed amendments to the short-term rental home and B&B ordinances, and that was the various recommendations from the Planning Commissions were transmitted to the Council, and in late 2014. And then in May of 2016, they approved amendments which included CPR units would be treated as separate lots with different permit numbers unless they have the same owner. The owner had to have a minimum ownership, or the permit holder had to have a minimum ownership of 50%, and the Hana and Lanai may use non-relator managers because they found it hard to find realtor managers in these areas. That the initial permit may be approved from one to three years, and they had an amnesty period. They consecrated an amnesty period where ineligible applicant could apply between July and December of 2016. Also, they changed the threshold for Planning Commission review. Before if a permitted short-term rental home was located within 500-feet of the subject property, then it would be subject to Planning Commission review. They increased that to two, at least two permitted short-term rental homes within 500-feet would trigger Planning Commission review. And also that the certification is required as part of the application. That the property had not previously been used or advertised as a short-term rental home or bed and breakfast since January 2013. And this is -- oh, this is for the amnesty period. They had these special requirements that they had to pay an after-fact fee, they had to pay all notice of violation fines. Also, amendment was that the owner has no financial interest in the County with another permitted short-term rental home property. Or if they do, then they must state the permit number and interest. Also if they submitted false information it could lead to revocation of the permit and they cannot reapply for at least two years.

Then in 2016, after the Council approved the amendments in May of 2016, they floated several resolutions regarding short-term rental homes. One was that the applicant must own the property for at least five-years before applying for a short-term rental home. This is to reduce speculation, continue to support long-term rentals, and ensure that there's a slow conversion of long-term rentals to short-term rental homes.

The initial length of the permit for B&B's is up to three-years. For the short-term rental homes it used to be initial one-year with a two-year renewal if there's no complaints. With the 2016 short-term rental home amendments, the permit, the initial permit can be issued up to three-years or less. The Commission may consider one or two years when reviewing applications with a lot of protest.

And then there's a proactive enforcement regarding the five-year ban for illegal operators that was established with the 2012 legislation that advertising can constitute evidence of operation of a short-term rental home and the burden of proof is on the owner operator or lease to establish that the property is being used as a legal short-term rental home or is not in operation. Operating without a permit shall result in a property owner being ineligible to apply for a period of five-years.

So the ban is applied at the time of the notice warning that is issued by our Zoning Division, the Zoning and Enforcement Division, and is used as a deterrent.

Regarding the criteria for approval, whether -- can look at whether the property is subject to CC&R's; the existing land use entitlements and uses; the applicable community plan; community input; potential adverse impacts such as noise, traffic, garbage generated; the number of permitted short-term rental home permits in the area; the number and substance of any protest; existing past complaints about rental operations on the property; existing past non-compliance with government requests and applicant corporation towards a resolution.

Most permits are approved administratively by the Department. However, if there's a permitted B&B operating within a 500-foot distance, the Planning Commission has permit approval authority. Written protest -- also if written protest comprise 30% or more of the owners within a 500-foot radius or if there was a variance that was obtained to meet the requirements for a bed and breakfast home permit, or if it's in Hana when four or more bedrooms are being used for the bed and breakfast, then it would require the Planning Commission review.

I guess to protect a neighborhood character, the short-term rental home, planning commission triggers are two or more short-term rental homes operating within a 500-foot radius, written protect comprising 30% of the owners within a 500-foot distance, if a variance was obtained to meet the requirements bed and breakfast home permit, and in Hana if there's four or more bedrooms used.

Council felt that some neighborhoods are more appropriate to have multiple short-term rental home so they did not support a density cap. So the Planning Commission is tasked with the responsibility of reviewing each neighborhood individually when two approved operations are located within 500-feet. That's the most common reason why it would come to Planning Commission.

People asked how many short-term rental home permits are issued on Lanai. And as of December 31st of 2017 there were 14 short-term rental home permits issued on the island of

Lanai, all of them in Lanai City. And the question may be asked, how many bed and breakfast permits are issued on the Lanai? One. That's the Kepa and Onaona Maly bed and breakfast.

So just a reminder that the Council's intent is for the Planning Commission to protect residential housing and character of the neighborhood, and that's why they review it when certain thresholds are met. If the Commission denies the permit, then the Department's staff would draft the Decision and Order for adoption by the Commission listing reasons why the Commission denied the permit. The planner only has the official record in which to list out reasons, and only legitimate reasons may be listed.

If the Planning Commission's decision is then appealed to the Circuit Court, the Court would review the procedure by reviewing the official record which comprise of the minutes of the meeting, Decision and Order with Findings of Fact and Conclusions of Law, and the Corporation Counsel's Office which will defend you only has a Decision and Order to defend the Commission's decision.

What is a legitimate reason for denial? The staff report lists applicable regulations. Only reasons related to these regulations become a Conclusion of Law in the Decision and Order. For example, short-term rental homes, for short-term rental homes you can cite reasons related to a homeowner's letter, existing land use entitlements and uses, the community plan, community input, testimony from the neighbors, potential adverse impacts, the number and distance from the subject parcels to other permitted short-term rental homes, and the number and substance of protest and protest related to the cumulative short-term homes in the larger neighborhood or area. Also existing or past complaints about rental operations on the property. Existing or past non-compliance with government requirements and the degree of corporation by the applicant to come into compliance. So I guess you need to state your reasons on the record, have your reasons based upon the permit regulations, open the staff report regulation page to help guide you, don't say unofficial things during the meeting as comments will be in the minutes, review all written materials before a meeting.

For in the agricultural district, the short-term rental home is listed as an accessory use -- accessory use so an implemented farm plan is now required and State law still lists them as a Special Use so a Special Permit is required.

So again people ask about the cap for Lanai. Again, in the 2016 iteration of the resolutions, this Planning Commission did discuss having a cap and that's in the minutes that was transmitted to the Council with your recommendation. But to date, that matter has not been dealt with by the Council. So for --

Ms. Gima: Do we know when that matter will be before the Council? Because that was like two years ago now.

Mr. Yoshida: I believe with this current Council, at the beginning --. Well, once they organize which took them a long time. The function of the Land Use --. Before, the original short-term rental home legislation and the amendment in 2012, and the amendments to the short-term rental home legislation in 2014 to 2016 were dealt with by the Council Planning Committee. But they reorganized the function so now it rests with the Land Use Committee. So along with all of the applications for specific projects -- Conditional Permits, Zoning Changes, Community Plan Amendments and the like -- the Land Use Committee also has to deal with various legislations like, you know, allowing accessory dwellings in on lots less than 7,500 square feet which was a resolution that the Commission dealt with also to encourage more affordable housing. So there's just a lot. And then the Land Use Committee also deals with the 201H projects, and there seems to be a lot of those 201H projects that are surfacing. So there's just --. If you look at the master agenda for the Land Use Committee, there's just a lot of items for them.

Ms. Gima: So to make sure I understand you correctly, it would not only have to go to Council to review, but also the Land Use Committee, and there is currently no timeline on that. So basically as of now, as it currently states, there's no caps at all for Lanai, so we could have a total influx of short-term rental homes and B&B's until the Council Land Use Committee decides to possibly look at our comments or recommendations.

Mr. Yoshida: Yes, because you're amending the Maui County Code --

Ms. Gima: Right.

Mr. Yoshida: -- it's a --

Ms. Gima: And I understand that that's a process, definitely. It's just a scary thought to think that we could have a huge influx and then finally put a cap kind of after-the-fact. So when you, in the slides, Clayton, where you have slides where it says the 2016 short-term rental home amendments, these amendments haven't been passed yet because this is still what is pending?

Mr. Yoshida: The Council Resolution --. After the Council passed their amendments to the short-term rental home ordinance based on a two-year review -- that came before you in 2014, but was approved by the Council in 2016 -- they introduced some resolutions, two resolutions. One was that you have the five-year ownership before you can apply. And then the other was to try to bring the enforcement provisions of the B&B ordinance in line with the enforcement provisions of the short-term rental home ordinance where you could have the five-year ban or the two-year, you know, for operating without a permit or the two-year ban for submitting misleading information. Those were --. And then, I guess, the Commissions

kind of went a little bit further than that and, you know, tried to look at, since they hadn't seen it enforced since 2014, you know, other applicable revisions and I guess for this Commission, it was trying to establish a cap because --

Ms. Gima: Yeah, and then we had, I think, a couple of other recommendations as well.

Mr. Yoshida: Yeah because Molokai and Lanai don't have short-term rental home permit caps.

Ms. Green: Clayton, I would just like to make an observation. This two or more within 500-feet, I assume it's to keep the integrity of neighborhoods. While it's not an issue here on Lanai at this time, why wouldn't you put both B&B's and short-term rentals in that same clause? Because, you know, you could have a B&B and then two short-term rentals and you've changed the nature of a neighborhood. So rather than just having to have, you know, look at two or more short-term rentals within 500-feet, I would add also, if there's a B&B in the neighborhood that that also be a trigger.

Ms. Gima: Well what I'm hearing is no matter what if there's two it's going to trigger and to come to us, correct?

Mr. Yoshida: Yeah, I guess, B&B ordinance as we know, it was adopted in 2009 and it hasn't been revised since. But we tried to bring the, when the Department came to you with the amendments, we tried to bring some of the requirements of the, for the B&B, in line with the short-term rental. At least make it similar.

Ms. Gima: So basically what you're saying, Clayton, is when those two resolutions came to us in 2016, or to all of the Commissions, Planning Commissions, it was because we kind of added on our, our extra inputs or our extra recommendations about caps and I forget what our others were. But because that wasn't what was being particularly looked at at that time, it kind of sounds like, and correct me if I'm wrong, that was just kind of pushed on the side because we have to look specifically at this amendment, and maybe or maybe not we'll get back to those. So, I mean, my observation is it's going nowhere and it would be good to know how to, of our community or concerned members, or if our community approach this concern without going the route of LPC making comments on a resolution, to make things hopefully move along quicker or to add some seriousness and concern to this matter. I don't expect an answer, but, you know, that's just kind of my comments or observation.

Mr. Yoshida: Yeah, I guess the full transcript of that September 2016 meeting where they talked about the cap for Lanai was transmitted to the Council, and they do have that before them. That's part of the record. It's just that there's a lot of items in the Land Use Committee.

Ms. Green: I'm going off on a tangent here. Can we make the Planning --? Some of these

things you can okay without us, right? Some of the short-term rentals, if there aren't two more within 500-feet, etcetera, etcetera? Could we at least ask that maybe the Planning Department have our numbers in mind so that if they start, we start bumping up against that number, then it has to come to the Planning Commission? It doesn't? Does it have to? She's asking does it have to be formalize or could we kind of make a request until such time as this becomes law?

Mr. Yoshida: Yeah, well I would --. Well one is you probably will -- you will see the applications listed our open project applications report. Secondly, I think there's more of a chance that an application will come before you because maybe the town is more saturated now with 14 permitted short-term rental home operations than it was a year ago.

Ms. Gima: And then just -- I had another quick question. In one of the slides it said, looking - - looks at the criteria of the community plan. Is there something in our community plan that has --? Is there a cap in the community plan or a recommendation that you're aware of? Because it seems like the community plan would be a guide, right, so?

Mr. Yoshida: Right. Yeah, I haven't seen any policy in the community plan.

Ms. Gima: Okay.

Mr. Oshiro: You know, I always bring up this question to you Clayton. You know, I know it's approved by administratively, but does anybody look at the property, the property line, the boundary, the hedges? I mean, when I cannot see the stop sign that's bad news, yeah?

Mr. Yoshida: Yeah, 500-feet from the property boundary.

Mr. Oshiro: What is the property land from the road to, to, you know, the property of that person? What is it? Is it like five-yards, ten-yards? Because right now I seen this house that sold, they had it surveyed and where their marker is, if you look straight down the road all the commercial buildings, all the hale kupuna and everything else all aligns to it. But these three homes right at the top, from Olapa to Queen Street they encroaching the County property, but they still got their short-term rental permit. I mean, doesn't anybody look at that? I mean, it doesn't make sense to me.

Mr. Yoshida: Well, I think the --. I mean the Commission has made suggestions regarding notification relative to properties on Lanai. Say in the case of the Maly bed and breakfast that, you know, because they have -- I guess they had to notify a lot, a lot of people within the 500-foot radius from the property boundary.

Mr. Oshiro: I put, I put an official complaint in. Yeah, the guy cut his hedge from underneath the stop sign to four-feet. But then inside his property, in his property, he has two lemon trees that growing right along side the stop sign which is higher than the stop sign, which doesn't make sense to me because I gotta come half way out in the road to see up before I can turn down. I already got, almost got into an accident over there, and if I do, I'm going to sue somebody.

Mr. Yoshida: Well, I guess we can note that. So can we proceed or --?

Ms. Gima: Yeah, I mean this, I think, was what we were waiting for when this came up on the agenda to at least bring up these questions, so yes. Thank you Clayton.

Mr. Yoshida: So again for properties, properties located in the State Ag District Special Permit, again, going back to the earlier training, we have various land use regulations and the three layers of land use regulations in the State. We have the County Zoning that Title 19 implements. We have the community plan designation. We have the State Land Use District governed by the Hawaii Revised Statutes. And so for B&B's and short-term rental homes most zoning districts allow them with a permit, or if they can be established as non-conforming, which is very rare. They are allowed in the State Urban District with a permit, the State Rural District with a permit, not allowed in a State Conservation District, and allowed in the State Ag District with a State Special Permit.

So as you can see most of the lands in the State are either in the Ag or Conservation District. I mean, maybe 95% of the lands. So there's room for a lot of State Special Permits in Maui County. So the use is unusual and reasonable. To get a State Special Permit not outright permitted by Chapter 205, Hawaii Revised Statutes. And it's been used in the County to establish a concrete batching plant, special events facilities, bed and breakfast and short-term rental home operations.

So defines that a Special, State Special Permit can be obtained for unusual and reasonable uses other than those for which the district is classified provided certain criteria are met. If it's more than 15 acres like your, our County landfill here, it would go to the State Land Use Commission. If it's less than 15 acres, the Planning Commission is the authority.

Special Permits are usually associated with bed and breakfast and short-term rental home permits. It's reviewed by the Department, so you'll be using the Special Permit criteria and not the B&B or short-term rental home criteria when the bed and breakfast or short-term rental home is administrative.

And then there are the guidelines that we've put into the report that comes out of the rules of the Land Use Commission that the use, for the unusual and reasonable use, that the use

should not be contrary to the objectives sought to be accomplished by Chapter 205 and 205A, Hawaii Revised Statutes and rules of the States Land Use Commission. So the intent is to show compliance with the goals and objectives of Chapter 205. For the Ag District, it's promoting agriculture, so we do require a farm plan that over 50% of the land is in agriculture or ag conservation. The Commission may make a determination if the particular farm plan meets Chapter 205 Hawaii Revised Statutes.

So here is the example of an implemented farm plan that's reviewed by our Zoning Administration & Enforcement Division...and would be included in the staff report if the property is located in the State Agricultural District.

The other criterias are the use would not adversely affect surrounding property. The use would not unreasonably burden public agencies to provide roads and streets, sewers, waters, drainage and school improvements, and police and fire protection, unusual conditions, trends, and needs has arisen since the boundaries and roads were established. The land upon which the use is sought is unsuited for uses permitted within the district.

So the best advice is to, we can offer, is to read the staff report. Recognize that all this information today is maybe overwhelming. That the staff does prepare a detailed report for each permit request listing that applicable regulations. The report analyze the project against those regulations. And ask a lot of questions because we love to provide answers.

So any further questions?

Ms. Gima: Go ahead.

Mr. Delacruz: I don't get out much. What's an Airbnb?

Ms. Gima: You're asking me?

Mr. Delacruz: What's an Airbnb? And does it fall under this ordinance?

Ms. Gima: So you're basically asking what's the difference from an Airbnb versus a B&B?

Mr. Delacruz: Yes, I guess.

Ms. Gima: Okay. I couldn't tell you.

Ms. Thomson: They could be either. So Airbnb's can -- they can either be a standalone whole house or an, like, apartment or it can be where you're actually, like, staying with an owner.

So they could be a B&B or it could be a short-term rental home, listed on Airbnb, and it's like a listing service for rentals of those types.

Mr. Delacruz: It does fall under the County ordinances?

Ms. Thomson: Yes. So if, if a property is listed on, on Airbnb for rental, for short-term rental, either as a bed and breakfast or as a whole home, yes, it would subject to these ordinances.

Mr. Delacruz: Thank you. The second question is one of these rental properties, B&B or short-term rental homes, has a parking restriction. Which one is it?

Ms. Thomson: Which one has parking restrictions, or do both, B&B's or short-term?

Ms. Gima: They're both required to have designated parking, correct?

Ms. Thomson: We'd have to look into that, to read the Code, but going from memory, short-term rental homes do have required designated onsite parking.

Mr. Delacruz: Thank you.

Ms. Gima: Commissioners, any other questions? No? I will open up public testimony. Is there anyone wishing to provide public testimony at this time? Alright, come on up. And just a reminder, this is an orientation workshop so there's no decisions or actions that the Planning Commission is making.

Ms. Winifred Basques: Okay. Winifred Basques, been on this island 54 years. Okay, I've got three questions. The first one is I had supported Onaona and Kepa to have their residential as a bed and breakfast, and it was passed, it was okay. The second one is I have a friend -- okay, you're talking about boundaries, yeah. She has a house --

Ms. Gima: Wait aunty, let me stop you. What was the first question?

Ms. Basques: Onaona and Kepa --

Ms. Gima: Right, their permit was passed.

Ms. Basques: Yes.

Ms. Gima: So what was the question? That was the question if it was passed?

Ms. Basques: Yes. Yes.

Ms. Gima: Yes, it was passed. Okay. Sorry.

Ms. Basques: Yeah, I was here when it passed because I supported that.

Ms. Gima: Okay.

Ms. Basques: The second one is my friend, she was born and raised on this island. Okay, she has the grandma's house, but the grandma had passed, so the house is to her. She wants to do it as a bed and breakfast. Now, the thing is that, it's at the end of the road. How can you define the 500 foot radius for the bed and breakfast? And it's on the side of the road now.

Ms. Gima: So I don't have that answer for you.

Ms. Basques: Okay.

Ms. Gima: I mean, that's a question for the County and maybe that could be something that you could ask after the meeting.

Ms. Basques: One more.

Ms. Gima: Sure.

Ms. Basques: In Honolulu. Now, it's not Lanai, not Maui County, Honolulu, one question. Several weeks ago, there worked on newspaper came out. They have this person have four level home on Houghtailing. I know where Houghtailing is because I was born and raised in that Kalihi area. They have 28 rooms and 18 bathrooms. Who when give 'em the permit to build that? That's the question I want to know.

Ms. Gima: So that probably would be a question directed to the Honolulu County Council or their Planning Commission.

Ms. Basques: Okay.

Ms. Gima: But I think that is a valid concern, aunty, and that's something we definitely don't want to see here on Lanai.

Ms. Basques: No. And there's no parking area on top of that. They parking on the street. Thank you.

Ms. Gima: So aren't we fortunate that we don't have that here. Thank you.

Ms. Basques: Oh, no, we better not.

Ms. Gima: Thank you. Thank you.

Ms. Basques: Thank you very much.

E. UNFINISHED BUSINESS

1. Chair Kelli Gima requesting to continue discussion on utilizing LWAC/Non-government agencies as a resource for the Lanai Planning Commission.

Ms. Gima: Thank you. Anyone else wanting to provide public testimony? Okay, I'll close public testimony. Thank you Clayton for that and we'll move on to Item E, which is Unfinished Business. . . (*Chair Kelli Gima read the above description into the record.*) . . . So I'll just go right into it. I don't want this to be a lengthy conversation. When I was reviewing the minutes from the last time and in our discussion, Richelle, was my specific question that you said you were going to follow up on was that are there any rules that prohibit the Planning Department from sending applications to non-government entities such as LWAC?

Ms. Thomson: I'm not aware of any rules that would prohibit the Planning Department from sending applications or other materials. The way that it's handled, though, across the board for all Planning Commissions is by way of the agenda and all the materials being posted online. So that's the way that anybody from the public including other groups or persons can get a hold of the application and all the supporting materials.

Ms. Gima: How does -- how does the current government agencies that, you know, we see in applications, how do they get the materials? Does the Planning Department send it to them for review?

Ms. Thomson: I can defer to the Planning Department for their operational. But from what I understand those are all agencies that either are required so like State Historic Preservation Division, they're required by law to look at certain permits so those agencies are requested to comment.

Ms. Gima: So basically there is nothing that prohibits the Planning Department from sending an applicable application to a non-government agency. That's what I'm hearing from you, correct?

Ms. Thomson: I'm not aware of any law or rules that prohibits it.

Ms. Gima: Okay.

Mr. Delacruz: Isn't LWAC a government agency? It is. It's a standing, standing committee.

Ms. Thomson: Well, that's a, that's a pretty long discussion so I don't know if we want to get into that tonight again.

Ms. Gima: No, no, no, absolutely not. Again, this was the only thing that I really wanted to follow up on. We had good discussion last time of, you know, what we can do in terms of e-mailing, inviting LWAC to come, LWAC being proactive and reaching out if they wanted something. I think we had a good discussion on that. So this was the only thing I wanted to follow up on and...like I said, so I'm hearing that there is nothing that prohibits. So can we, as a Commission, if we were to vote on this, ask the Planning Department to then send applicable applications to LWAC for review and comment?

Ms. Thomson: I think you could make that request of the Planning Department, but, you know, it would be a Planning Department call, I mean, I believe, at the end of the day as far as sending applications to any other, other groups. The sunshine law requires --. You know, you can sign up for notice of meetings and agendas and all of that, you know, so there's a formal way of doing that of requesting information to be sent to you. And I'm assuming that, you know, the groups have signed for those notices.

One of the things, though, related to this -- I mean, obviously, you can make that request to the Planning Department, but as on aside, just related to water and information and this body's education on that topic, the Commission on Water Resources Management (CWRM), if the Commission wants to, the Planning Department can request that the Director or staff come out and do like a water law training, so that the Commissioners can better understand CWRM, the Water Use and Development Plan, and how the Planning Commission can undertake its duties.

Ms. Gima: And I know we had a conversation about that at the last meeting about trying to have a water workshop. And again, you know, Shelly, you weren't here when we were going through this discussion, but just a brief little bit of background, it was we, as Commissioners, felt that, you know, wanting to have more information on Lanai's water and not rely on possibly getting a comment from the Department of Water Supply who has real -- I mean, Maui Department of Water -- you know, wanting to hear directly from a group that's very knowledgeable and really with the purpose of not spending a tremendous amount of time in our meetings discussing this. And then it was also brought up about possibly doing some,

some workshops that would benefit the Commission. And then also it's open to the community as well.

Ms. Thomson: And just kind of to wrap it back into what we were talking about earlier, usually you're going to be looking at a permit application so it's going to be under the context of conducting a contested case procedure. So that's why you have to have all of the information that you're receiving as Commissioners be a part of your record. So you wouldn't be relying on somebody else basically kind of doing your work for you. You can, you can hear from them, and you can, you know, judge their input to you or their documents, so you can seek people to come in and help you with your jobs, but you can't strictly rely on an outside proceeding, you know, and then coming in. You'd want to judge that by the weight of that evidence. It may not be sufficiently weighty enough to be able to base a decision on it that wouldn't be overturned in court.

Ms. Gima: So the packets that we get to us, our application packets, that is part of the record, correct?

Ms. Thomson: Correct.

Ms. Gima: So, it would, to me, thinking anyways, wouldn't it make sense to then have the application sent to LWAC, they have their comment, which is now official on record. There's no outside communicating that could then be questioned in a contest hearing. This is what's on record, this is what was provided to the applicant, to the Planning Commission, to the Planning Department. It seems in a sense that that would be a cleaner way to do it, to have that formally on the record.

Ms. Thomson: I think probably in the case of LWAC, given that the Planning -- sorry, the Water, Director of Water Supply is not currently calling meetings of Lanai Water Use Advisory group. There are meetings occurring because we're hearing about it. I don't go to those meetings, so I'm not aware. You know, are they conducted according to sunshine law, etcetera, so you know, I don't want to make any comments related to their meetings because I don't have information on it. I think that the best way for this Commission to hear from that group is as part of the public hearing process. So for that group or any other individuals that want to provide you information, or documents, or opinions, they have the opportunity to do that during the public hearing process. And that's really the most appropriate place for it at this point in time.

Ms. Gima: I don't disagree with you at all on there. Commissioners, I would like to formally on the record request that the Planning Department do send applications to LWAC for review or comment. Whether they do that or not, that's something obviously, I guess, we can't enforce. But for the purpose of having these discussions and we brought this up, are there

any objections to formally making that request on the record? No? Okay, so formally, Clayton, I request that, with no objections from the rest of the Commissioners, that the Planning Department does send LWAC any applicable applications for comment and review. They then, in turn, come for public testimony. And I do put it on LWAC as well. If they, they definitely need to be proactive.

Mr. Delacruz: . . . (inaudible) . . .

Ms. Gima: But, absolutely, whether that means them contacting Planning Department for additional information, or coming here to provide public testimony, whatever their make-ups are of the meetings and things that they need to work out with all of that, that's on them. I think at the end of the day what we want is to be able to get valuable input from people who, who know Lanai's water, who knows the Water Use and Development Plan. So that's formally put on record. Uncle John you were grabbing your mic to say something?

Mr. Delacruz: I agree with you, but could or should we make this a motion?

With no objections, the Lanai Planning Commission formally requested the Department of Planning to send LWAC any applicable applications for comment and review.

Ms. Thomson: If you want to, you can make it into a formal motion. Either way, I think, that it's been conveyed and that the Planning Department will – you know, has, has obviously heard the request. But if you want to make it a formal motion it's up to you.

Can I ask one follow up question?

Ms. Gima: Sure.

Ms. Thomson: Is there, is there interest in having, like, a water, water use training because the Planning Department could follow up on that if that's an interest.

Ms. Gima: That was actually on my list of, for agenda items for next month. And I don't know if that could happen so quickly, but I think, absolutely, with the amount of applications that could possibly come our way and then not only --. Again we, yes, wanting to rely on those who have the information, but not solely relying and getting that training, I think, should be not just the onetime thing. So that's another formal request that we have a water workshop in the future, in the near future, preferably soon. Okay, thank you. Commissioners, any other questions or discussions on this at all? I will open up public testimony if there is anybody wishing to give public testimony at this time. Okay, I'll go ahead and close public testimony. Thank you Richelle.

Okay, so we'll go on to our next item, F, Director's Report. Clayton?

F. DIRECTOR'S REPORT

1. Open Lanai Applications Report as distributed by the Planning Department with the agenda.

Mr. Yoshida: Thank you Madame Chair. The first item is the Department has circulated its open Lanai applications report. Is there any questions on that?

Ms. Gima: Any questions Commissioners? Nope? Okay, no.

2. Agenda Items for the February 21, 2018 meeting.

- a. Public Hearing on the Planning Department's proposed amendments to the Lanai Special Management Area (SMA) Boundary Map (K. Aoki)**
- b. Public Hearing on proposed revisions to the Lanai City Design Guidelines (A. Kehler)**

Mr. Yoshida: Okay, the next item is the agenda items for the February 21st, 2018 meeting. We have public hearing scheduled on the proposed amendments to the Lanai Special Management Area boundary map that Kathleen Aoki and company have been working on for several months. Maybe more than several months.

And then we have a public hearing on the proposed revisions to the Lanai City Design Guidelines. Now that the Community Plan Update has been adopted and the design guidelines, the original design guidelines were adopted in 1997, so they're over 20 years old. So, I guess, things have changed in 20 years. If there are any items --

Ms. Gima: I just had a quick question because March is right around the corner and there's going to be some vacancies on our Commission. Has there been any nominations or appointees yet? Or do you have to wait till the vacancy?

Mr. Yoshida: Nominations to boards and commissions? Well I guess some of the members would be -- their terms would be ending on March 31st so the Mayor would probably submit his nominees to the Council 60-days prior to that date, so probably around the end of this month, early next month.

Ms. Gima: Okay, okay. Thank you Clayton. Alright. Any, anything else Commissioners in regards to the agenda items for next month's meeting?

Mr. Delacruz: Except I won't be here on the March 21st meeting.

Ms. Gima: So just make sure --. Make sure to e-mail Leilani and let her know, or respond when e-mails us. Okay, anything else, Clayton?

Mr. Yoshida: I guess, I don't know if the Commission want to have a -- us to coordinate a water workshop, you know we can do that.

Ms. Gima: Yeah, if that could happen at the February 21st, 2018 meeting that would be great. Or if for some reason it can't happen in that time frame, I mean, to at least reaching out to the necessary entities to start planning that. Okay.

Mr. Yoshida: So is there anybody else besides the Commission on Water Resource Management...that you would want to have involved?

Ms. Gima: Well, I think having LWAC. I think having Pulama Lanai's Director of Water. I think having all the key players that are applicable here would be helpful. Okay, anything else Clayton?

Mr. Yoshida: That's all.

G. NEXT REGULAR MEETING DATE: FEBRUARY 21, 2018

H. ADJOURNMENT

Ms. Gima: Thank you. Alright, well, it is now 7:30 p.m., and meeting is adjourned.

There being no further discussion brought forward to the Commission, the meeting was adjourned at 7:30 p.m.

Respectfully submitted by,

LEILANI A. RAMORAN-QUEMADO
Secretary to Boards and Commissions II

RECORD OF ATTENDANCE

PRESENT:

Roxanne Catiel
John Delacruz
Kelli Gima, Chair
Caron Green, Vice-Chair
Bradford Oshiro
Shelly Preza
Shirley Samonte

EXCUSED:

Mililani Martin

ABSENT:

Marlene Baltero

OTHERS:

Clayton Yoshida, Planning Program Administrator, Current Planning Division
David Raatz, Administrative Planning Officer, ZAED
Richelle Thomson, Deputy Corporation Counsel