LANA'I PLANNING COMMISSION
REGULAR MEETING
JULY 18, 2018

A. CALL TO ORDER

The regular meeting of the Lanai Planning Commission (Commission) was called to order by Ms. Shelly Preza, Vice-Chair, at approximately 5:04 p.m., Wednesday, July 18, 2018, in the Lanai Senior Center, Lanai City, Hawaii.

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

Ms. Shelly Preza: Hi everyone. I'm going to call the meeting to order at 5:04 p.m. Before I call for public testimony I'd like to suggest that if you would like to testify maybe wait till after we hear the presentation before you make your testimony. But, if there's anyone who can't stay for the presentation, there's only one item on the agenda that we're going to be discussing with proposed amendments. Does anyone, would anyone in audience like to testify at this time or would you be okay with waiting till after the presentation?

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.

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

1. MICHELE CHOUTEAU MCLEAN, Planning Director, transmitting proposed amendments to Title 19 of the Maui County Code to allow in the Agricultural District for structures to be located on the same lot as farm dwellings if the structure's use is customary, incidental, and usual to the farm dwellings. (D. Raatz)

Ms. Preza: Okay, so no testifiers at this time. So could we move on Item C, which is *. . . (Vice-Chair Shelly Preza read the above project description into the record.) . . .*

Mr. David Raatz: Thank you Chair. I'm David Raatz, Administrative Planning Officer, with the Department of Planning. I'm here representing the Planning Director tonight, and I will provide an overview of the matter before you, then you can again accept testimony as part of this public hearing, and then we can get into question and answer and deliberations.

I would call the member's attention please to a memorandum dated July 10th, 2018 addressed to all of the Planning Commissions from then-Planning Director Will Spence. The subject is Accessory Uses for Farm Dwellings. And it's just over two-pages, and I'll just walk the

members through this memo, which the bill is attached to. So in the agricultural zoning district farm dwellings are accessory uses to the primary agricultural use. And specifically as an aside it's two farm dwellings that are designated in the code currently as accessory uses, one of which can be no more than 1,000 square feet. So the County Code is not entirely clear however if uses normally considered accessory to a home in other districts are allowed for the homes in the ag district. Such uses would include, for example, swimming pools, detached garages, and storage sheds. So as I mentioned the Planning Department is proposing a bill for an ordinance and the purpose is to clarify this part of the code and affirmatively state that farm dwellings may have their own accessory uses. So the bill is attached to this memo. It's titled, "A Bill for an Ordinance Relating to Accessory Uses in the Agricultural Zoning District."

The memo goes on, they have a section titled Background. So to give some context to the bill, the term "accessory uses" should be explained as it's used in the comprehensive zoning ordinance. Land uses within our various zoning districts are roughly divided into three categories: principal permitted use, accessory permitted use, and special uses, and we've got a bullet point for each one of those three categories.

A principal permitted use is one that's allowed et of right in a particular zoning district. You don't need to come back to the County or to the Commission and get any type of special approval. If you're, for instance, in one of the residential districts, and you have single-family residence, typically, that's going to be allowed based on your zoning, and that's all you need to worry about.

An accessory use is defined as quote, a use of land or of a building, or a portion thereof, which is customarily incidental and subordinate to the principal use of the land or building, and is located on the same zoning lot as the principal use, end quote. And that comes from Chapter 19.04 of the County Code. So accessory uses are allowed as long as the principal use is present. Examples of accessory uses for residentially zoned properties commonly include things like a garage, again a swimming pool, an art studio or a workout room. Multiple accessory uses are normally allowed on a single property.

And finally the third category is a special use which is a use that meets the intent and purpose of the zoning district, but which requires the review and approval of the appropriate planning commission. This bill does not change that standard. It's just listed here for the sake of the background on this legislation.

So Maui County's agricultural zoning district lays out this basic framework, and the principal uses that are identified, principal permitted uses include growing crops, raising livestock, historic preservation, and then as I mentioned earlier two farm dwellings may be permitted as well. Farm dwellings are limited in size to a combined area of 10% of the developable area of the lot. So now we get into the specific discussion of the bill in front of you.

So as was noted earlier the County Code is not currently clear when it comes to accessory uses for farm dwellings. And again a farm dwelling is itself an accessory use to the principal permitted agricultural use, so within the Department we call this the accessory to the accessory bill. You've got these farm dwellings, these residential structures that are already accessory uses, what types of accessories are allowed for those uses is what we're here to try to clarify. So as the Director states whether those uses are -- that are customarily incidental and subordinate to a home are permitted is not expressly stated. And again that's the standard definition of accessory use, "customarily incidental and subordinate to a principal use."

So the lack of clarity creates a number of difficulties that Mr. Spence had identified and there's four bullet points here. First, it's not clear of the Planning Department actually has the authority to sign off on building permits for accessory uses in the agricultural district -- accessory uses to farm dwellings -- even though the Department candidly has done so on a regular basis over the years. The second bullet point states that the Department would like to allow these different uses, but without a code amendment as proposed before you there are sometimes awkward interpretations of the law. Sometimes a building must be structurally connected to the house so it can be said to be, quote, part of the farm dwelling. Other times structures are justified by landowners as related to the quote farm even though they are clearly related to the residential aspect of the property. Again, swimming pool as a side as an example. Third bullet point, it should be clear to owners of agricultural properties what they can and cannot do with their property. So again, this is seeking clarification. If the existing law without further amendment is strictly construed, Maui County has approved potentially hundreds if not several thousand structures that could be considered non-conforming.

Mr. Spence in his memo stated that it's likely this lack of clarity was an oversight when the Code was adopted. Quote, it is not logical that a farmer or other owner of agricultural land cannot have a pool. It is likewise illogical that there can be no cabana for that pool, and that other uses like a detached garage are not allowed, closed quote. So again, this final paragraph on page 2 of the memo, Mr. Spence is saying that the Department believes the Code should be clear that such uses are allowed.

So finally on page 3 of the memo, we're asking you to sit in your capacity as an advisor to the Maui County Council on land use ordinances pursuant to the County Charter. So as is typical in these situations there are four basic actions you could consider taking tonight. No. 1, you could recommend that the Council approve the bill as it's drafted, as it's presented to you. No. 2, you could recommend approval of the bill with amendments. No. 3, if you'd like to gather specific additional information, you could defer your action on the bill. And fourth and finally, you could consider recommending disapproval of the bill to the County Council.

And then we will go into the bill itself which is a very short bill. The primary new language is on page 2 of the bill, if the members would like to take a look at that. It's underscored. It's two new sentences. It's under the section titled Accessory Uses. Currently under subsection

1, under Accessory Uses, the County Code states two farm dwellings per lot, one of which shall not exceed 1,000 square feet of developable area. The proposed bill would add two following sentences in that subsection relating to farm dwellings. Included may be structures located on the same lot, the use of which is customary, incidental, and usual to that of the dwelling use, period. Above-ground structures are limited to one-thousand square feet and counted toward the developable area of the lot, period. So in substance that's the only new content that's proposed in this bill.

If you go down to page 4 of the bill, there is a proposed deletion of text. And I apologize, there's a typographical error that I'll explain. In subsection 15, and this in the list of Accessory Uses in the Agricultural District, we have a statement that is currently in the Code that says other uses that primarily support a permitted principal use, and that's kind of a catch all. And that's not uncommon to have that in, in a zoning code where you're talking about accessory uses where you list a bunch of specific things that qualifies as accessory uses. And then you have kind of an open ended catch all statement that would allow for uses that the drafters of the Code hadn't thought of at the time but that are clearly customary and incidental. And the language in the Code currently in this subsection says such uses shall be approved by the appropriate planning commission. We're proposing that that part be taken out. So there should be a closed bracket -- you see the open bracket after the word "use" in the first line of subsection 15. There should be a closed bracket at the end of subsection 15 after the word "chapter," so that the entire subsection would read, "Other uses that primarily support a permitted principal use." There's two reasons for this proposed deletion. No. 1 when we're talking about approval by the planning commission for a use, it's typically a special use, not an accessory use, as we explained in the background section of the memo. So it doesn't really fit in the accessory category. And secondly this provision is rarely, if ever, been actually invoked so it's kind of a purpose list provision of the County Code right now.

So thank you for your patience. That's an overview of the legislation and after you receive any testimony I'll be happy to answer questions or help you with your deliberations. Thank you.

Ms. Preza: Thank you for that presentation. I'd like to now open public testimony. Is there anyone in the audience who would like to share their thoughts? If not, then I'd like to close public testimony and move on to discussion amongst the Commissioners. John?

Mr. John Delacruz: I'll start with some questions. When this, I call them small farm thing came about, I think it was like maybe five or 10 years ago when they decided they going have five acres farms. Were you with the Planning Department then?

Mr. Raatz: I was with the County Council in that time period, and the agricultural zoning district came into being in 1998, so 20 years ago. That established a minimum lot size of two acres for any parcel in the ag district. And a sliding scale was set up to provide guidance on the size of parcels and, and how you could use your land in the ag district. You referenced five acres. I'm not recalling specifically what that's in reference to.

Mr. Delacruz: Well there is a reference in here about five acres, and I thought that was…what came about in that…five acres thing way back when. And on page 2 of the, the proposal where is says, No. 2, one farm labor dwelling per five -- okay -- per five acres of lot area. So, the farm, so-called farm, has to be at least two acres, but then each dwelling is dependent on five acres increments. Anyway when I first read about subdividing farm land about people living on quote farms…I felt that, you know, a lot, a lot of people would see this as an opportunity to get a big lot and probably get lower prices versus residential. Probably pay less in assessed fees versus residential. And then stop farming or just put up a…a shadow of -- the effort on being a farmer…and then no one's going to bother them. And it seems that one of the provisions of being a farmer is you only have to have $35,000 in sales of produce for only two years, and they won't ask you again if whether you're a farm.

Mr. Raatz: Thank you. Chair, if I may? Thank you for raising this issue. I understand where you're going now. First I would say on real property taxation of ag lots, that's been a contentious issue for some time. The Council's had a lot of deliberations on that. This bill doesn't directly address that or affect that and it's technically not before us today, but I do appreciate and understand the concern.

Just looking at the bill, I would want to clarify one thing before we go too much further, please. And thank you for calling attention to what you were looking at. So on page 2, subsection (B) is the Accessory Uses. Subsection 1 below (B) is two farm dwellings per lot. And then you go on to subsection (2) under (B), one farm labor dwelling per five acres of lot area. So these are two different things, farm dwellings and farm labor dwellings. A farm dwelling is basically just a residence that is allowed as an accessory use presuming you have legitimate agriculture going on or you satisfy the terms of the principal permitted uses. So you meet that first prong, you're satisfying the general requirements of the ag zoning district for your principal permitted use. Then, an accessory use of two farm dwellings is allowed without any further review by the County. But then a farm labor dwelling which is beyond the two farm dwellings has special requirements. And this does get a little tricky and I appreciate the body's indulgence here, but again it's spelled out on page 2. So a farm labor dwelling which is designed for active working farms where you do have people that are employed either on a permanent or seasonal basis, and need to be on the farm on a regular basis. The County has decided we want to allow those workers to live on the farm, in a farm labor dwelling, provided that -- and this also applies only to the island of Maui so it doesn't apply to your island of Molokai -- but to provide an assurance that this is a legitimate farm and that you're not just trying to build more homes, the County has said you have to meet two of these three listed requirements. And one of them is gross sales that you mentioned, $35,000 per year for the preceding two consecutive years. Or, you've got certification for the Department of Water Supply that you've qualified for ag water rates. Or, you've provided a farm plan to the Department of Planning that demonstrates the feasibility of commercial agriculture production. So you don't have to meet all of those, but you do have to meet two out of those three. And that's a fairly common and difficult issue for, for our Department to work through on a pretty regular basis. That, that's not before the body today, though. We're not proposing

to change anything relating to farm labor dwellings. We're just talking about that first category of the two farm dwellings that are allowed so long as you have legitimate ag use. And then again that doesn't require coming back to the County for a checklist or anything like the farm labor dwelling. So we're just trying to say for those two farm dwellings that are allowed already as accessory uses, can you have the, quote, normal type of accessory uses that other homes would have, such as garages, such as swimming pools, those of types of things. The Code is silent right now. I think the Director mentioned that was an oversight. It does seem like there's a gap there where we don't know what to do about accessory to accessory uses the way the Code is currently laid out because it's just silent. And for better or worse, candidly, the Department has been signing off on building permits for these things just believing that they meet the general definition of accessory use even though it's not spelled out and the type of detail that the Department would like to see necessarily. Thank you.

Mr. Delacruz: And because the Code has been silent, I think a lot of people have taken advantage of this. I'm going to ask my fellow commissioners to bear with me. I'm going to read some stuff off which I prepared because I'm not a good contemporary, what is it called, public speaker so I'll start reading.

Regarding the accessory uses. After my first reading of the Planning Department's proposal for an ordinance to clarify the zoning code, to affirmatively state that farm dwellings may have their own accessory uses, my impression was that if people want the parcel of land they live on to be like regular residences, then why don't they just buy land zoned as residential. It was hard for me to put into words my concern that this whole process was a means for individuals to acquire a large parcel of land in the guise of being a farmer. And then get the zoning rules clarified to allow them to keep large residences while the majority of locals had to abide by the regular residence rules and assessment fees.

On July 16th, I received an e-mail from the Planning Department that included written testimony from the Office of Hawaiian Affairs, OHA. The OHA testimony provides information and summaries of their concerns of this proposed ordinance. I am not a member of OHA, nor do I represent OHA, but their testimony provides words for my feelings, so thank you OHA.

The Planning Department recommends that accessory uses of lands zoned for residential use should be virtually the same as accessory uses on lands zoned for agriculture use. Following this rationale, I could build a barn in my backyard to keep horse to plow my garden. Without repeating the whole text from the OHA testimony, barns should be allowed on farm properties for storage of crops and tractors not luxury cars. There is also a . . . (inaudible) . . . about water. I'm not familiar with the operation of the Launiupoko Irrigation Company, or LIC, but OHA's testimony states that attorney's for some homeowner's associations estimated that LIC provides their clients with 1.8 million gallons of non-potable stream water a day which is a half million gallons more than what LIC had suggested would be needed by 6,000 acres of fully developed agricultural lots. However, a USGS report -- and I'm thinking that's US Geological Survey -- found that only 88 acres of LIC's 6,000 acre service area were in any identifiable state of agricultural production. 88 acres of 6,000 is 1.5%. The majority of

homeowners in this agricultural parcels also listed out of state mailing addresses. OHA refers to them as gentleman, gentleman farmers. I don't know if that was meant to be a nice term. It seems that the Department's logic for this proposed ordinance is to not only grandfather previously approved permits for which they were unsure that they had the authority to approve, but also recommends approval for these permits in the future. Thank you for your patience.

Ms. Preza: Thank you John. Does anyone else have --? Jerry?

Mr. Gerald Rabaino: Thank you Chair. Okay, I know I passed out a summary because I've been watching the July 10th Maui County regarding this agricultural issue. Let's turn to page 2, on Accessory Use.

Ms. Preza: Which document are you looking at?

Mr. Rabaino: Of the one that we just got. Page 2 of the Agriculture -- Accessory Uses for farm dwelling.

Ms. Preza: Of the bill itself.

Mr. Rabaino: Okay.

Ms. Preza: Okay.

Mr. Rabaino: (B), item (B) says Accessory Use, okay. No. 1 I agree with, with the exception to delete -- this is my, my feeling regarding this, my manao. Take away the 1,000 square foot, okay. But before you take away 1,000 square foot, tell me is that 1,000 square foot is a lot that that's going to have the two dwelling, living quarters and…like garage and storage shed? Is that in the same line versus one farm labor? Because the farm labor is just one, right? No. 2? So the 1,000 is only referring only to livable spaces right, dwellings?

Mr. Raatz: Thank you Chair. If you're talking about the existing reference to 1,000 square feet, that's a limitation only on one of the two farm dwellings. So there's no size limitation on one of them, and the other one has to be no more than 1,000 square feet.

Mr. Rabaino: Okay, so in other words, No. 2 is a farm labor dwelling that would be just like a third building on that same lot.

Mr. Raatz: Yes.

Mr. Rabaino: So you going have three dwellings on, on that 1,000, regarding 1,000 square foot?

Mr. Raatz: No.

Mr. Delacruz: Jerry, I think the way you asked the question is if a lot is 1,000 square feet you can put a building on it. I think what David was explaining was that the lot irregardless of size, one of the buildings, one of the buildings on that lot regardless of size cannot be more than 1,000 square feet. But, the other building can be as big as you want. Is that correct David?

Mr. Raatz: Thank you commissioner. Yes, that's accurate.

Mr. Rabaino: Okay, I agree with what John is explaining. We're kind of on the same boat, but I'm using a different approach, yeah. So, okay I can live with that on the 1,000, but there's the other sentence over here, what is "above ground structure?" What is that referring to? Because it also repeats the 1,000 square foot.

Mr. Raatz: Thank you. That's a good question. That's…anything except for a swimming pool is probably a short way of understanding what an above-ground structure is.

Mr. Rabaino: Okay so…just out of the blues, so that 1,000 feet you can put a regular cabana, open cabana, let's say, without the swimming pool.

Mr. Raatz: Yes. And one thing I would clarify briefly as we're getting into this category and it was pointed out at the Maui Planning Commission meeting on July 10th, this limit on above-ground structures to 1,000 square feet, that's only intended to apply to the accessory to the accessory, not to that first farm dwelling that can be of any size. So --

Mr. Rabaino: Let me see. Can we just take away that underline over there? The one you guys got it underlined…for the accessory use. Delete it completely. Well, we want that for Lanai because we got to watch our water uses and make sure that our agriculture land is protected for the intent of this…resolution, amendment or whatever. What you call this bill? You follow me so far, Commissioners?

Ms. Preza: So you're suggesting that we just eliminate the -- what they're suggesting we add? What are you suggesting? You're suggesting to take away the underline part?

Mr. Rabaino: The above-ground. Just take that 1,000 square foot and count it towards develop area on the lot. Take the whole sentence out. And take that out and this is only to be used for Lanai. And keep the proper -- above sentence referring only to the island of Lanai. Because Molokai has their own, Lanai got to establish our own. Because Maui have their own according to what he just said earlier, it only applies to Maui when I was watching the July 10th item, Akaku video.

Mr. Delacruz: Excuse me Jerry, the second sentence that you're referring to, quote, above-ground structures are limited to one thousand square feet and counted toward developable area of the lot. That second sentence only defines how big that accessory dwelling could be. More important is the whole two, the whole entire two sentences, okay. Because these two

sentences are the guts of the revision to the zoning code that the County is proposing. And if these two sentence are approved -- a matter of fact, if the first sentence is approved, what's been going on will continue to go on, okay. The swimming pools they've allowed…are grandfathered. Anyone else who wants to build a swimming pool, by the fact of this zoning change will be allowed to build a swimming pool. Once this…zoning code is amended, if it is accepted in this form, okay, anybody who wants to build a swimming pool, yes they'll need a permit, but the Department has the authority to approve that permit without coming back to the three different planning commissions, the Maui, Lanai, Molokai. There are certain provisions for Molokai which you see in here referring to, I think, short-term rentals and stuff like that. But the guts of the whole amendment is the accessory uses, all these buildings they want. OHA thinks they're for BMW's. And the whole thing about swimming pools too is that if you're a struggling farmer, you're struggling with water rates, and you're going to build a swimming pool. Is that a slap in the face?

Mr. Rabaino: Well, that's my point John, you know. I mean, as we go further down the items over here, I am one against swimming pool on agricultural land because Lanai is limited with water.

Ms. Preza: So I think that instead --. Yeah, since we're referencing the two sentences that they're planning to add, it seems like the first sentence that John was talking about is the one that we're -- it seems like there are issues with, with what an accessory dwelling what kinds are approved versus the 1,000 square feet thing which, like John said, is just simply defining the limitation of that. Chelsea or Sherry, do you have thoughts about --?

Ms. Sherry Menze: I was a little confused on the second sentence, because above-ground structures are limited to 1,000 square feet. But I didn't realize that was the primary, the primary house is not the accessory dwelling so the primary house can be as large as you want. But the accessory dwellings can only be 1,000 square feet. It's the way I see it, right? Am I seeing it right?

Mr. Raatz: That's a little bit off.

Ms. Menze: Am I off?

Mr. Raatz: A little bit, but you're, you're very close.

Ms. Menze: I'm trying to understand it a little better.

Mr. Raatz: Yeah, the only, the only dwellings that are allowed in the agricultural district are these accessory farm dwellings as we see in B1 here. And you're allowed two. One of which can only be 1,000 square feet. The other one can be any size with one caveat. And I did want to clarify this, correct something I said earlier. There is a provision in the ag zoning district, I think it's alluded to in the Planning Director's memo under District Standards, it's section 19.38.030. It has the minimum lot area of two acres. A minimum lot width of 200 feet.

It's got all of these different standards. And it goes down to say maximum developable area, 10% of the total lot area. So that's the limitation. You couldn't have a house that takes up more than 10% of your, of your property. So that, you know, it's not specifically listed here as a defined limit because we don't know how big each parcel is, but it would be 10% would be the ultimate cap on that.

So, but again, back to your point. So these two farm dwellings are allowed, accessory uses. One can be no more than 1,000 square feet. One does not have a specific limit, but we know can't develop more 10% of the total acreage. And then in this proposed new language, we're going on to say in this second new sentence that any structures that you build pursuant to this authority, the accessory to the accessory, whether it be a garage or anything else, those can only be 1,000 square feet. And again, they're counted towards the maximum developable area.

I would point out and this came up before the other planning commissions, there is no limit on the number of these structures other than that cap on 10% of developable area. So you could have various types of structures if this is approved. I hope that clarifies things a little bit.

Ms. Menze: That is if it is approved or isn't approved?

Mr. Raatz: If this bill is approved, if it's enacted as an ordinance, then you could have a number of different accessory structures that are accessory to a dwelling use. And the only limitations would be the size of each of those structures, which would be no more than 1,000 square feet for above-ground structures. So it's non pools. And the overall limit of any development in the ag zone of 10% of the, of the total acreage.

Ms. Menze: Oh, that's interesting. So you could have like one big house and five little houses around it, or accessory dwellings?

Mr. Raatz: Well, thanks for that question. That's another issue that's been addressed before the other commissions. These accessory to the accessory structures are not intended to be dwelling units. So you couldn't have a bunch of dwelling units. You could have a bunch of sheds and garages and stuffs like that. Concerns have been raised, well, it could be a slippery slope of converting a garage, or a shed, or a barn, or whatever we may call it, whatever is accessory to the accessory, into a dwelling unit. And the cap on the dwelling unit is not being proposed for a change. It's just the accessory structures to the already legitimate dwellings that is what we're talking about here.

Ms. Preza: Thank you for the clarification. Chelsea do you have any thoughts?

Ms. Chelsea Trevino: Thank you. I'm just curious if this proposal is here because you had mentioned earlier that because it's so open at this point things are just being approved. So I'm curious if this is being initiated to kind of put a cap on things, or is it --? I don't know how

to word it -- is it so that people can do things that they haven't been able to do? I'm just not quite sure like what we're trying to guard or what we're trying facilitate with this. Just so I understand its purpose in that sense because it sounds like people are putting things. And I can see where there's concerns on several sides as far as people building things and increasing the rates of the land and so forth, you know, versus a need, like a farmer who does need different little places for different things. So can you, can you share that?

Ms. Preza: My understanding -- sorry, you can definitely answer, but my understanding --. I think that's a really good point to bring up, but I think, my understanding was that this was just to provide clarity because there is not a ton of clarity in the bill as it exists with regard to, like, accessory dwellings. So it's just to try to make it more clear, but I think from our discussion so far it seems like us, along with other planning commissions, we're kind of thinking that some more clarity might be required for certain -- like what kind of structures are allowed, but sorry.

Mr. Raatz: No thank you. That, that's correct. And I would say in the Department's defense this is an act of transparency, I would say, to expose a problem we've identified. And ultimately to try to get a policy decision from the Council based on the advice of the planning commissions. Do we want accessories to accessories in the agricultural district, and furthering the continuing practice we've had and get that codified, put that in the County Code, that's Mr. Spence's basic request. He would like to policy decision to be resolved in that direction. But I think I can say on the Department's behalf regardless of who's Director, it would be helpful to have a policy direction either way. If the decision is going to be we don't want to have, as the County of Maui accessories to accessories in the ag district, then we would like to know that policy decision. And whatever the policy is we will do our best to fulfill it.

Ms. Richelle Thomson: I'm just listening to the discussion, I'm thinking that it might be good for the Commissioners to hear some of the technical type of these structures. So it's probably standalone garages, not connected to the dwelling. It's not going to be sheds because those will be accessory to the ag use. But maybe a couple of other examples so that they could understand that a little bit more clearly.

Mr. Raatz: Thank you. That's a good point. Yeah, things like barns and sheds typically could be deemed accessory to the agricultural use. We don't have to worry about them being accessory to the dwelling use so…I know garages and swimming pools are probably two of the biggest ones that have continually come up and raised concerns but basically anything that somebody in a residential zone would be allowed to construct on their property because it supports the residence's lifestyle. The feeling in this proposal is that just because somebody lives in the agricultural districts they shouldn't be denied the same ability to put up structures that are simply incidental to, to the dwelling use.

Ms. Preza: Can I make a couple of comments before or would you like to respond to something they just said? Okay.

Mr. Rabaino: Okay, David, what if we just --. You saying the accessory to the accessory. Take away the second accessory, leave the original accessory that way we don't have to go through all these things. Because we understand residential zone of subdivision is a smaller lot and if we wanted to add on something because to accommodate our living area within the residential zone is allowable, correct? But in ag, you guys want to limit the accessory, so we don't need a second accessory.

Ms. Preza: Well, it already -- sorry, just to clarify -- it already exists, an accessory to an accessory that already exists as a section and we're not deciding whether or not to eliminate that. We're only deciding if the clarification, the two lines, additional or --. Is that -- am I correct?

Mr. Raatz: Actually, not quite, and thanks for the opportunity to clarify. What we have now is a list of accessory uses to the primary agricultural uses, and that includes farm dwellings. But that farm dwelling use itself doesn't have its own accessory uses that are authorized in the Code. So, again, let's say in a residential district, the dwelling use would be the primary use. So then you have a whole bunch of accessories to that primary dwelling use. In the ag district we have a primary ag use, the dwelling itself is not a principal use, it's an accessory to the ag use. So this proposal would take you down to another level. That's why we're calling it accessory to the accessory because a dwelling is already an accessory to the ag. Yes.

Ms. Preza: Yeah.

Mr. Raatz: Thank you.

Ms. Preza: Thank you for the clarification. I think -- I think it's just the word that's kind of confusing.

Mr. Raatz: And one last thing if I may just to provide another example in response to Corporation Counsel's question, and I've heard this in our staff discussions. Storage sheds or other storage facilities, if it's a shed that supports the agricultural use that is not a problem. But if it's a shed that is storing personal belongings, effects of the residential use, then we get into the category where we don't have clarity.

Ms. Preza: Thank you. I think I have similar concerns that John brought up and that was brought up in the OHA testimony with if a zone is supposed to be primarily agricultural. And I understand, you know, like, if people live there then, you know, it's not wrong for them to want, you know, things added on to their residences. But, in my mind if it's supposed to be primarily an agricultural zone, having a swimming pool or like a cabana doesn't really match with the primary purpose of that area. And I don't know -- I mean, I'm not speaking for anyone -- but I don't know too many local Hawaii farmers who are very set on, you know, I need a cabana in my area. And I'm not saying that's what specifically is going to happen if we pass this, but I do have concerns about that when --. But I thank you for the clarification on there

are other accessories that are primarily for agricultural use are fine because I think that what I was thinking was I think those kind of structures, like, that promote agricultural kinds of activities are really good. I feel less strongly about, you know, having a garage. Like if you have a house there, then a garage I'm not so concerned about. But maybe I think we should maybe discuss defining more about what we are okay with and not. It seems like the swimming pool thing is coming up a lot just because it seem a little --. Yeah, it doesn't seem to match, you know, if you think agricultural zone and what does that allow. Or yeah, how does that --. What am I trying to say? In practice, like what kinds of…dwellings does that allow on an agricultural area, you know. Or, what kind of bearing does that have on what's supposed to be a primary agricultural area.

Mr. Rabaino: I think I know what you're saying. You're saying you have the gentleman farmer versus the true farmer. Okay, the true farmer going need that extra accessory, storage for their production of agriculture to be sold. The other one, which is the gentleman's one, they just go and violate everything they like. And by the time you have enforcement step in it's already a done deal because the structure is up. So I kind of agree with her. But accessory to accessory I think you get rid of that second accessory, or clarify the second accessory saying farm dwellings, right, and these are allowable whether it's detached or --. And the word dwelling --. See your definition of dwelling is living space, correct? Or dwelling where you can store. So if you got to define because you looking for clarity. Anything dealing with farm I would agree if they're storing their productive crop in order to sell and market it should be allowed.

Ms. Preza: It is though. It is, right? Sorry John.

Mr. Rabaino: But, yeah. Okay, which is No. 4. Okay, but other than that I don't know the second line. I just don't like the second accessory to the accessory.

Ms. Preza: Thank you Jerry.

Mr. Rabaino: It's like you gambling.

Ms. Preza: Okay, John?

Mr. Delacruz: A short word on dwelling. Last month's meeting I think they defined dwelling is a livable space. You got to have a toilet, you've got to have running water. Okay. So that term is being misused if you're referring to a dwelling as a storage shed. Because a storage shed you don't need a toilet, okay. But that being considered, let's just set that aside. I think the whole gist of this ordinance is that they want to codify, they want to make plain that in the future they want to be sure of the permits that they allow. So in the past they were saying, well, I don't know. You want a swimming pool? I don't know, but go ahead. Okay. That's why you see all the swimming pools. How do you spell it? Launia –

Mr. Rabaino: Launiupoko.

Mr. Delacruz: Launiupoko. Okay. Where most of their residence live on the mainland. 88 acres of 6,000 are in, quote, farming, and 26 of those 88 acres are for coconuts. Okay. So the concern here -- my concern is when this whole thing started and it may have been in good faith because 1998 the County foresaw sugar might be going out, sugar is gone. The County might have foresaw pineapples going to be gone. Lanai pineapple's gone. I don't know if they still have pineapple on Maui. Not in large scale, okay. So they figure hey, let's let the small guys have a two acre farm, okay, which is not happening. Really when you look at this, people saw this as an opportunity, hey, I can have a two acre farm on Maui, okay. Your so-called gentlemen farming. And if we approve this change then anybody who wants to have their farm and build a swimming, build their garages is going to get signed off. You know, whatever they want it's going to get signed off.

Mr. Rabaino: So John, what you saying is we deny No. 1 and 2, or just No. 1?

Mr. Delacruz: I haven't made a recommendation yet.

Ms. Preza: We're only talking about No. 1, right? We're only talking about No. 1.

Mr. Delacruz: Well basically we are talking about No.1, which is the whole guts of the program change.

Mr. Rabaino: So should we re-write this No. 1? Because the two farm dwelling per lot I accept based on the 1,000 square foot of a developed area. That sounds good to me. But the one underlined, even though as much definition he gave, we got to spell it out. Because we want something to protect our agriculture land on the island of Lanai. Because right now there's nothing happening. So we got to look beyond the present, into the future, how we can find language that will protect Lanai agriculture land from being misused for accessory dwelling.

Mr. Delacruz: What I would recommend in this situation is we go into what I would call a home rule situation. Okay, we don't approve it. We don't recommend approval, County wide. We would take the Molokai route, okay. If you want to build a swimming pool, just send it to the Lanai Planning Commission. We'll go look at your farm. Is it a farm?

Ms. Preza: Can I ask? Is that a possibility? Like, is it even an option for us to say that we would like to review? I know that you said that these kinds of accessory to accessory dwellings don't typically come to Planning Commissions, but because Lanai is such a small place and there aren't, I mean, like they said there isn't ton of agriculture. You know it's not like Maui or something where there's like all these things that it would just go directly to the Planning Department. Is that an option for us to request that we make Lanai specific? I mean, or is that not what we're --? I know we're only discussing changes the, the --. Maybe you could advise.

Ms. Thomson: One of those suggestions that you could make if you're headed this route is

that, you know, rather, rather than the language that's proposed that accessory to accessory's need to be special uses that come to the commission.

Ms. Preza: I think --. So you can say it again.

Ms. Thomson: Okay, so if, you know, if the commission is not comfortable with the proposed language, what you could say is, you know, if someone wants a standalone garage, or a swimming pool, or some of these other uses that are accessory to the dwelling, that they would need to have a special permit. And that is a route you could go if you wanted to make that one.

Ms. Preza: Okay, so could we do that like Lanai specific or for --?

Ms. Thomson: It doesn't matter. So if you wanted to make that as just an overall comment or Lanai specific.

Ms. Preza: Cause I feel like, I understand how it doesn't quite make sense for Maui, and I, you know, that's their aina and so I don't know how they want -- how the Maui Planning Commission wants to deal with that. But, yeah, since we're the Lanai Planning Commission and thinking about our land and how we want to see our community like move forward I think that might make sense. Do you have thoughts Commissioners?

Mr. Rabaino: Yeah, let's go with the one John said, just follow what Molokai does but instead of Molokai's one, we just make our one for our agricultural lots.

Ms. Preza: Just a special --. You're saying make it special use thing that would have to come to the Commission?

Mr. Rabaino: Correct.

Mr. Delacruz: Wait, wait, wait. Now you're confusing the issue. Special use is a different category. You've got the specific accessory and special use. Okay, keep it simple. Just make anything for applications of accessory use structures go to their specific planning commissions. Lanai, go to the Lanai Planning Commission. Molokai, go to the Molokai Planning Commission. I'm not sure about Maui. Does Maui actually only have one, or do they have Hana, Pukalani, Puunene?

Mr. Raatz: Thank you. There's just actually one Maui Planning Commission. There is a Hana Advisory Committee to the Maui Planning Commission that gets involved in some issues relating to East Maui.

Ms. Preza: I feel like maybe this, yeah, having it come to the planning commission makes sense on Molokai and Lanai specifically, maybe. What do you think John?

Mr. Rabaino: Chair, John why don't you make a proposal?

Mr. Delacruz: Can we do that with five people?

Ms. Thomson: You have quorum, you know, so it would take an affirmative vote of all five. But let me kind of --. I didn't want to send you down that road as far as making such a radical change to the Code. So right now accessory -- permits for accessory uses don't come to the Planning Commission, so those are administratively approved if they fall into a certain category and all. And there's just the one caveat at the very end, No. 15, on page 4. So other uses that primarily support a permitted principal use such as ag approved by the appropriate planning commission as conforming to the intent of this chapter. And that language is also recommended to be eliminated because in practice it hasn't been -- it just doesn't come up very often or at all is I think the reasoning behind that.

What I was suggesting is not that all accessory uses, the entire list of accessory uses has to come to the planning commission because that would be an overwhelming amount of work. But if you're uncomfortable with standalone garages or swimming pools or things that are kind of customarily associated with dwellings that you could -- your comment could be that those should be considered special uses.

Ms. Preza: So we would have -- thank you -- so we would have to define these structures are we are not comfortable with? Is that what you're saying?

Mr. Raatz: Well, thank you. Maybe to give the body a little bit of background. There is a provision in the agricultural zoning district -- we don't have it before you because we weren't proposing any changes, but it's called Special Use, 19.38.060. And these are uses that aren't principal permitted uses. They are not accessory uses, but they're listed here and they're allowable if the applicable planning commission grants the special use permit. And I can just briefly run down the list. Additional farm dwellings. So if you wanted more than those two that are listed. Farm labor dwellings that don't meet the criteria that's laid out that we went over earlier. Commercial ag structures, public/quasi-public institutions, major utility facilities, telecommunications and broadcasting antennas, open land recreation uses, cemeteries, churches, mining and resource extractions, landfills, solar energy facilities. So, certainly in concept you could add on to that list and put something under what we're now calling the accessory to the accessory category, and instead make it a special use.

Mr. Delacruz: Wait. I think for Lanai, the number of applications for uses on farm dwellings is not going to be large. It won't be a big burden. And it will provide us with what I call home rule. So what if we take item 15 on page 4, yeah, you scratch out "other", yeah. And you say that uses including accessory and accessory to accessory that primarily support a permitted principal use, blah, blah, blah. Take away the brackets. So it will read: Uses including accessory and accessory to accessory's that primarily support a permitted principal use --

cross out however such uses, and then say shall be approved by the appropriate planning commission as conforming to the intent of this chapter.

Ms. Preza: But that means that that we're recommending --. Or I don't even know if we're allowed to be suggesting something that we're not talking about editing, but I understand --. What? Oh, I mean like the first part of that, though, you know, like the other uses part? Or are we allowed to discuss that because it's the whole? Okay. But would that mean that every accessory -- everything would have to go to the Maui Planning Commission?

Mr. Rabaino: . . . (inaudible) . . .

Ms. Preza: Right, then if we just --. But as he said it, he said by the appropriate planning commission. So should we say something specific about like -- or like for Lanai specifically, you know, only, not for -- is that a possibility?

Mr. Rabaino: Well he's referring, referring to the appropriate planning commission, so commissioners, so that would be us.

Ms. Preza: Right, right, but this --

Mr. Rabaino: Refer to the Lanai Planning. Because Molokai have their own. Maui have their own. Maui is separate from us.

Ms. Preza: Right, but this bill is, like, talking about it all, right, so it would -- we're saying that it would also have to like --. Now I know like what happen to Lanai would have to go to Lanai. But if we say, shall be approved by the appropriate planning commission, that means if someone from Maui is applying for like an accessory dwelling on Maui, it would have, we're saying as we said it, it would have to go to their planning commission, which I don't think it makes sense on their island. But for us, it does.

Mr. Rabaino: . . . (inaudible) . . .

Ms. Preza: We're not though. This is for the whole Maui County right?

Ms. Thomson: How about -- how about this? So if you look back on page 2, No. 1, so those two sentences that are recommended to be added to that, the section that starts two farm dwelling per lot? So you could add -- you know we can clean up the language a little, but such structures located on the island of Lanai shall be approved by the appropriate -- by the Lanai Planning Commission. So that way we're not trying to --. That would apply to every --. You're casting too big of a net, I think, putting that under 15. But if you put that specifically under No. 1 that the Lanai Planning Commission wants to review these accessory to accessory.

Mr. Rabaino: I like that.

Ms. Preza: I like that. I think that's kind of the essence of what we were trying to get is we would like to be more involved with what happens in our community on our island just because it's such a small place and it wouldn't be too much of a burden if that were the case. So I think especially because it would really be hard for us to clarify right now, like, we're not okay with swimming pools, but we are okay with this, you know. Like, for us, a case by case basis could work because I don't think there's too many of these coming up on our island, you know, or that frequently. Would anyone like --? I don't know everybody --. I see people nodding, but would anyone would like to make a motion or would you like to continue discussing?

Mr. Delacruz: I don't think we have to discuss it any further, but we need the wording.

Mr. Rabaino: Yeah, can you help us with the wording? Because I'll second it.

Ms. Preza: You just said --. She just said --.

Mr. Rabaino: Help us with the wording, and I'll second the bugger.

Mr. Myles Saruwatari: Myles Saruwatari. It seems like everybody is kind of hung up on definitions. You know, there's a lot of confusion as to what is this, what is that, what is, you know. Would it be possible to create a sub-zoning of farm land so that the residential would be sub-zoned? You know, they'd have to layout okay certain amount of square feet or whatever that's going to be used for residential, not primary agriculture. So that when they apply for a license, they can apply for a license or something as a residential area more than as agricultural. It will just to simplify what exactly is the agricultural part, and what is the residential part. So if they could create like some kind of a subzone for a farm land. I don't know, that seems to answer a lot of cross over questions.

Ms. Preza: Thank you for the, the input Myles. I don't know. You want to answer, but my understanding is that to rezone would be -- or like to redefine, like, the zoning would be like a whole other process that I don't know --. You want to add?

Ms. Thomson: Sure, maybe one, one way of getting at that, at that same result would be to say that, you know, these accessory to accessory structures would need to be located within x-number of feet of a farm dwelling. That also could be a way of restricting your developed area to a certain section of your ag lot. So it's not rezoning, but it would be --. You know if you have these accessory structures, you know, say like you have a garage, it's a detached garage, it has to be within 200 feet of the farm dwelling. So that's one way of clustering, you know, the structures.

Ms. Preza: Thank you. I think that -- thank you -- I think it's a really good thought, but I think what could be --. I mean, because I don't want to speak for Maui or Molokai necessarily, so -- but I think if everything came to Lanai Planning Commission like you initially said, like, adding that part about for Lanai specifically, then we could kind of --. We don't like --.

Because right now I don't feel super comfortable talking about like square footage necessarily because I don't feel quite qualified at this time. But if they're coming to us on a case by case basis, I think it solves a lot of the, you know, concerns that we're having right now. So, you want to make a motion?

Mr. Rabaino: Well, John and…Michele.

Ms. Thomson: Richelle.

Mr. Rabaino: Richelle. Okay, come up with the word because I'm not good at that. But, you know, it sounds good what we were discussing so if you can put in the language just for the island of Lanai, and then get it inserted into that or amended into that, correct? Okay, let's do it Michele. Come on John.

Ms. Preza: John is ready?

Mr. Delacruz: Well, we can work on it. On page 2, Item B, Item B1, after the second sentence we're talking about add new accessory dwellings for the island of Lanai must be reviewed by the Lanai Planning Commission before permitted.

Ms. Preza: Richelle, you have a comment?

Ms. Thomson: How about --. So I'm looking at the end of that first sentence -- so included may be structures located on the same lot of the use of which is customary, incidental and usual to that of a dwelling use, comma, provided that for such structures located on the island of Lanai they shall be approved by Lanai Planning Commission.

Ms. Preza: John, do you think that's okay?

Mr. Delacruz: So what you're saying is after sentence two, after the word lot, put a comma instead of a period?

Ms. Preza: After the first sentence, after dwelling use, just adding provided that on the island of Lanai such structures would be approved by the Planning Commission prior to permitting.

Mr. Delacruz: Can I say we move to do that?

Ms. Preza: Great, do we have a second?

Mr. Rabaino: I second it. Try read the language again just for clarity, for the record and for my ears.

Ms. Thomson: You're testing my memory. Okay, so let's do after the first sentence which

ends in use, we would say provided that such structures shall be approved by the Lanai Planning Commission, period.

Ms. Preza: Okay, so John moved, Jerry seconded. Okay, all in favor?

Mr. Rabaino: You okay with that John? Sherry? Chelsea?

Ms. Preza: Okay, all in favor say aye.

Mr. Rabaino: I second.

Ms. Preza: All opposed?

Mr. Rabaino: None.

Ms. Preza: Okay, approved to recommend approval with amendments. Thank you. Thank you so much. Now we can move on to Item D, which is orientation workshop. Shall we take a -- let's take a five minute break. Five minutes. It's 6:11 p.m., so we'll reconvene at 6:16 p.m. Thank you.

It was moved by Mr. John Delacruz, seconded by Mr. Gerald Rabaino, then unanimously

VOTED: to recommend approval with the amendment as discussed.
(Assenting: J. Delacruz, S. Menze, S. Preza, G. Rabaino, C. Trevino)
(Excused: R. Catiel, C. Green, M. Martin, S. Samonte)

(The Lanai Planning Commission recessed at 6:11 p.m. and reconvened at 6:18 p.m.)

D. ORIENTATION WORKSHOP NO. 1

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. **Special Management Area Rules and Shoreline Setback Rules**
8. **Managing Maui's Shorelines**

Ms. Preza: Break's over, so we're going to start up again if you're ready Richelle. Yes, we're on Item D, Orientation Workshop, No. 1. It's 6:18 p.m. We have the slides, right? Okay.

Ms. Thomson: Okay folks. Please feel free to interrupt me at any time you want to. So basically the first, the first several sets of slides just go through where the Lanai Planning Commission's authority derives from. And I'd like to, you know, show, show these slides so that you can understand where your power and authority fits in. So, of course, we, we're starting with the Hawaii Constitution and let me go down obviously to -- so US Constitution, Hawaii Constitution, Hawaii State Law, the Maui County Charter, the Maui County Code, which you were looking at tonight, and then the Lanai Planning Commission Rules. So that's your basically all of the, all of the rules kind of fit into their nook and crannies as you go on up.

The Planning Department includes the Planning Commissions and the Board of Variances and Appeals, and the Planning Director is the head of the Planning Department. So as a Commission you're a part of the Planning Department.

Powers of all of the planning commissions; you advise the Mayor, the Council and the Planning Director. You review the General Plan, the Community Plans, Land Use ordinances such as you did tonight, and conducting public hearings so that members of the public can airy that the commission acts in, have the opportunity to come and present their thoughts also. You can adopt rules related to your powers, and other powers and duties as provided by law, so those are things that are contained in the Maui County Code.

You conduct contested cases, and those are -- these little squares are just examples of contested cases -- so Special Management Area Permit, Special Use Permits. You also analyze Project District Phase II approvals. Those are just some examples of types of contested cases. You know, legally, the reason we call them contested cases is that you have a specific procedure that you have to follow when you're analyzing, for example, an SMA Permit. So it's under the law that you have the opportunity for the parties to present evidence. There can be interveners, it then can be a more formal contested case procedure. Sometimes you might farm it out to a hearings officer if the matter is pretty complex or will take a significant amount of time or the body acts as the hearings officer. So this is just what I was suggesting. And so that's part of the contested case requirements, the formality of it.

So every decision and order adverse to a party must be in writing, and it must be accompanied by Findings of Fact and Conclusions of Law. So the reason I include this slide is when you're analyzing a contested case, it's very important to put all of the reasons for your decision on the record so that when we're preparing a decision and order that it's clear how you came to make your decision and what facts you're relying on, and how those relate to the law that you're applying. And that's -- my job is to help you get there, and also to help you make decisions that if they're appealed to circuit court, that your decision is clear so that the judge reviewing the case can understand how you got where you did.

Agency records, this is part of your record. So again this is in the contested case format. It includes all of these things. All of these items, pleadings, motions, oral testimonies, exhibits, all of those including staff memoranda are part of your official record. You don't want to go

outside of the record, or do your own investigations, or interview people outside of a formal proceedings because that would be grounds for appeal and challenge of your decision.

Those are a couple of case citations. So a board was analyzing a permit and they decided to contact an expert from the University of Hawaii. Had that been done within the context of the contest case, it would have been fine, but a few members of the board went to UH and basically interviewed a professor and that was outside of the process, so that was grounds for appeal.

And contested cases, if a party is unhappy with a decision, they can appeal the decision to Circuit Court. And the Circuit Court when they look at your decision can either affirm it, they could remand. And we just had a case remanded from Circuit Court back to the Board of Variances and Appeals. And what that means is that the Court sends it back and says do this over, you made these errors and we need you to, you know, rehear it. So, that's the reason that we try to keep it, you know, tight and clean from the get go so that if it's appealed that it's either not remanded or that the judge just affirms your decision.

These are other grounds for overturning a decision.

So case law review; I will go through this fairly quickly. Basically every, every action that you take is grounded in law, and it's -- you'll have different types of law that you're applying, so you might have Project District. You're applying a Project District Ordinance, your applying Special Management Area law, so every permit that you have, sometimes there's multiple areas of law being triggered. And the reason I bring it up is that…sometimes the Commissions will say, you know, you're thinking do I like this project or not? Do I think it's a good project or not? But that's not the decision that you're, you know, tasked with making. What you're tasked with making is how does this project either comply with or not comply with the law. What conditions can we impose on it to make it comply, and things like that, so it's a nuance, but it's a different way of looking at, looking at applications.

The reason that we talk about takings it's usually in the context of conditions that exceeds. So if you have a certain kind of harm that you're trying to prevent, you can impose conditions on, on the use that's being requested. If the conditions greatly exceed the impact that you're trying to mitigate, then that can be considered a taking. It's taking of private property for public use without compensation, and you know, someone unhappy with that condition or decision could appeal that and receive compensation. Or, the clerk could say, you know, make that decision again because it was done incorrectly. You exceeded your authority.

Essential Nexus means your conditions need to -- they need to relate to the harm you're trying to prevent. So SMA is usually, it's just an easy area of law to talk about. So if you are looking at a project and you're trying to -- the buildings are so high, the proposed buildings are so tall that they prevent the view from the, from the roadway down to the shoreline, you can, you can look at making a condition that says that they need be lowered, you know, and it's

rationally related to the law that you're applying. You're not exceeding your authority because you're then connecting the dots basically.

Rough Proportionality, these are all related legal concepts. That just means you can't, you know, make someone build, you know, build a mile of roadway because they're trying to, you know, put in a bike path some place, you know. It needs to be proportional to the harm that you're trying to prevent.

And this is what I was talking about earlier on Unconstitutional Conditions. So the government can't require a private person to give up a constitutional right, such as the right to receive compensation when property is taken for public use when that benefit has little or no relationship to the property.

And I'll let Jim get into SMA more. And again, you know, you'll hear this, we say it all the time, just make your findings on the record, make them as clear as you can, and go back to the law that you're applying. Kind of always check in with what law you're applying and how are your conditions or decision made based on that law?

So these are appropriate conditions I'd say. So provision and maintenance of beach access, and this is in the Special Management Area of law context. Preservation of archaeological sites. Protection of life and property from coastal hazards, so, you know, looking at setbacks and protection of structures and things. Drainage improvements that control runoff. And artificial lighting so impacts to seabirds and things like that. Those are all good conditions that could be imposed on a project if they relate to it.

Open meetings. So sunshine law meetings -- tonight's meeting, that portion of it where we were talking about a recommendation to Council, that was a sunshine meeting. So you're not making the final decision. So a contested is you're the final decider, you know. Other times you're not the one making the final decision. Tonight, County Council will make the final decision on that ordinance, on that proposed amendments, so it was a sunshine law, open meeting, where you take testimony and --. The main thing is you take testimony and you do all of your deliberations in public.

So meetings -- I'm going too fast. So a meeting is any gathering of this board to discuss matters over which you have advisory authority or a jurisdiction. All of your actions need to be taken by a majority of the members, and this group has nine so you need five to take any action. What I always try to stress for the bodies are try not to talk each other about board business except during a meeting even amongst two of you. Because it's just too easy for two members to talk about board business which is allowed under the sunshine law, but then one of them may talk to someone else and you've violated the sunshine law. So basically just try as hard as you can not to discuss board business outside of a meeting.

The sunshine law has a few different types of exceptions. So you can have what's called a permitted investigative group or a temporary investigative group that gets set up by the

Commission to go and investigate a certain discreet topic and then come back and report the Commission on it. I haven't seen planning commissions have that much use for doing these temporary investigative groups, but an example might be you're looking at some rule changes and it may be problematic or difficult to get all nine of you together to do it in a regular meeting so you could have a special subcommittee basically, this investigative group, to look at a certain area of the proposed rule-making and then come back and report back to you.

Mr. Jim Buika: Excuse me, I'm Jim Buika, Shoreline Planner, and I'll present next. Just an example for this permitted investigative group, I had a development near the shoreline on Maui, 14 acres, and one of the testifiers, a local person who lived in the neighborhood asked that the Commission do a site visit to the property to check out the flood plains and some other parameters, so a group of two became ---– were elected by the Chair to become a permitted investigative group. They went down there with me. The applicant, the neighbor, and did the site visit and then reported back at the Commission. So, that's a good example that you can add to your slides and in the comments side.

Ms. Thomson: Thank you very much. So the, the formalities for these groups is that it takes basically three meetings to conduct their business. So one meeting you set up the group. The second meeting, the subsequent meeting, they come back and report to you, but the board can't take action on whatever the underlying matter is until a third meeting. And although the sunshine law doesn't spell it out my take on that is so that the public can follow the steps of the process. So, you know, the public won't know what the groups reporting is going to be until they actually make it so you want to give the public a chance to, you know, have that in front of them at the third meeting.

This is another type of permitted sunshine law interaction that's outside of a normal meeting. The Commission can assign less than quorum so two to four members to present or discuss or negotiate any position that the Commission has formally taken. So say tonight's ordinance being a proposed amendment, you felt quite strongly about it and so strongly that you wanted to send basically a delegation to County Council when they were taking this up. You could discuss your position, and then nominate, you know, two, two to four members to go and present your case to Council.

This happens occasionally, so when we don't have quorum, we technically don't have a meeting, but often there are members of the public who have, you know, taken their time to show up or presenters that are, you know, flying in or coming over on the ferry, so we're allowed to have -- take testimony and presentation and the board members can ask questions, but you can't make any decisions at that meeting, that non-meeting.

Less than quorum can attend other meetings, and the caveat is that those members that attend other meetings that kind of relate to board business need to come back and report what was said and done at that other meeting.

Occasionally we'll have Executive Meetings. We call them Executive Session, and we basically go, you know, into private. So it's just the Commission, and the attorney, and occasionally there will be necessary staff. And most of the time that's to discuss the board's limitations or powers as they relate to, you know, when we go back to the permit condition example. If you want to talk about permit conditions, you're not comfortable you know whether or not you have the legal authority to impose certain conditions, and you don't want to make that discussion on the record because if that were appealed you would be getting too much of the nitty gritty of, you know, how you're, how you're making that decision and that you think you might be pushing your boundaries legally. So we would go into executive session and talk about that matter and then come back into open session.

For sunshine law violations, a court could void the decision. You could get an injunction which means that you have to stop, stop the activity. You could be found guilty of a misdemeanor. Or you could be removed from a Commission. So there are, there are penalties for violating the sunshine law. But the main reason that you want to adhere to it is to obviously to make your decisions open and in public.

And just wrapping up. So Robert's Rules of Order, these are just rules of procedures and they're in your rules of practice and procedures. Those are primarily taken from Robert's Rules. It's this archaic but very informative little booklet that talks about how meetings are conducted, parliamentary procedure. So the Chair controls the flow and the order of the meeting. Members look to the Chair, and obtain the Chair's permission to speak. And the reason that that's done so that, you know, one or more members doesn't dominate the conversation and that the Chair is running the meeting. One of the things too, to remember, for this body and for most other County bodies is that if there's a motion on the floor and you abstain without, you know, formally declaring you have a conflict of interest and talking about what that conflict is, if you just abstain, it's counted as a vote in favor of the motion whatever the motion is. And I would remind you of that is, you know, if we got there at any point.

You'll hear this term a lot in Council especially. They call them friendly amendments. There's really no such thing. It's just a plain amendment. So once a motion is made and seconded it doesn't belong to the maker of the motion anymore. It belongs to the body. So you can make amendments or proposed amendments by motion. Those amendments are acted on first, and then you go back to the main motion either as amended or not.

And this just kind of a Maggie slide. So read your materials before you get to the meeting. Don't ever to be afraid to ask, you know, myself or staff outside the meeting or before a meeting. If you don't understand something, you just want to understand like an application or, you know, what is this we're trying to decide, you know, next week Wednesday, you know, feel free to call us. And there's not violation of the sunshine law talking to staff, you just don't want to talk to each other about it outside of a meeting.

And things to remember. This may seem kind of a no-brainer, but it comes up all of the time where we have preconceived ideas. We either like a project, don't like a project, we like and

applicant, we don't like an applicant, but what you want to try to remember is that as Commissioners you're trying to apply the law in a fair and impartial way so it wouldn't matter who the applicant is. It matters what the application is, and how that application relates to the law.

And Ethics. Obviously don't accept gifts or money, you know, from applicants. If you have a business -- and this can come up here on the island of Lanai especially with Pulama being a major employer -- there may be certain applications that, that we'll want to talk about, you know, ahead of time. If, let's say, if an applicant comes in and you work for that applicant or your spouse works for that applicant, then that maybe a conflict of interest, so that you should recuse yourself from considering it. So at any rate, that's one of the things, just keep it in mind, and just kind of flag it and, you know, call me or call staff and we can talk about ahead of time or at a meeting.

This is the Lanai Planning Commission Rule regarding conflicts of interest. So if you believe you have a conflict of interest, you want to disclose that on the record. If you have a financial interest as I was just talking about, you know, working for an applicant, then you need to be, you need to refrain from discussing or voting on that application.

So and when in doubt, you can decide, you know, this is --. You're the one who decides, you know, if you have a conflict of interest. You can abstain from voting, you know, disclose it on the record, say I have a conflict of interest because my spouse works for the applicant. You can also, if things are a little bit less clear, there's grades of conflicts of interest, you can obtain an advisory opinion from the Board of Ethics. It's not a difficult process. Usually you just write them a letter, explain the situation, and they get back to you with their decision. And if you abide by their decision then it's not -- you haven't violated the Code of Ethics.

Okay, I'm passing it over to Jim, unless if you have any questions obviously I'm happy to take them.

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

Ms. Preza: Does he need to use the microphone for this?

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

Ms. Preza: John, can you use your microphone please? Thank you.

Mr. Delacruz: Slide 33 of the sunshine law, more than two members of a board cannot gather to discuss board business. I thought we couldn't get together at all.

Ms. Thomson: I usually recommend that you don't. You know, even, even though the sunshine law has an exception for two members to get together to discuss board business, I generally say that it's a good idea just not to do it because it's just, you know, especially on a

small island it's too easy for either one of those two to talk to someone else on the board, and then you would be having basically a serial communication with three or more, and then it's a sunshine law violation.

Mr. Delacruz: So you can't even talk to them.

Ms. Thomson: I recommend against it, but, but it is, you know, two members can get together and talk about board business outside of a meeting without violating the sunshine law. It's just not a good idea.

Mr. Delacruz: Okay, thank you.

Ms. Preza: Thank you. Hi, thank you for being here. Do you want to introduce yourself?

Mr. Buika: Aloha Chair and Commissioners. My name is Jim Buika. I'm a shoreline planner with Maui County Planning Department, and I am going to continue with some training on a subset of the many laws that Richelle was talking about called the Coastal Zone Management (CZM) Act. So it's a Federal law that is -- it's also a State law and, and you are the authority for the Coastal Zone Management Act here in Lanai through the Special Management Area (SMA) Rules and your Shoreline Setback Rules and Regulations. So that's what I'll talk about today.

I've been with the -- by way of background -- I've been with the Planning Department for 11 years now. A resident on Maui for 16 years and I've been doing mitigation type of planning, natural hazard planning for 30 years. Prior to Maui County, I was with the Pacific Disaster Center as one of the executive directors. And prior to that, in San Francisco, I assisted Hawaii as a member of Federal Emergency Management Agency (FEMA) for 14 years. So a lot of disaster related work and mitigation planning through the years. And I'm tied to the islands since 1990. I ended up at least Polynesia. I went to American Samoa for Hurricane Ofa, and married a western Samoan girl and as I tell my three daughters they wouldn't be here if the wind didn't blow in Samoa. So since then I've been -- so we had an opportunity to come to Hawaii. So that's kind a little bit about my background. I have a Master degree in Geology from the University of Southern California.

So I'll sit here, just easier, I think you can all see me and I'll run through the slide here. So we're going to move from the ag district down to the shoreline here and, and just an outline of the presentation, I'll give you just one or two slides on the Coastal Zone Management Act itself. It's HRS 205A, but I'll talk about it throughout the SMA Rules. And then I'll just quickly highlight what you have been doing for the last several years. Some of you, through the Special Management Area map boundary amendment that you completed; congratulations on that. And then talk specifically about Chapter 402, the Special Management Area Rules for the Lanai Planning Commission, and the Shoreline Setback Rules and Regulations for the Lanai Planning Commission, Chapter 403. And then some concluding remarks and Q&A.

So just an overview presentation. Yeah, each of you has a handout. I think -- do you have a handout? I can share one with you. Everyone else have a handout? I have a couple more I'll leave with --.

So the Coastal Zone Management Act, it's now 40 years old. It was enacted by the Federal Government in 1978, assuming and knowing that a lot of development would begin occurring along our coast lines throughout the United States. And low and behold, in the last 40 years, we have had quite a bit of development. And the whole premise was is to preserve the, the environment, the coastal ecosystems in balance with the development that goes on so that's how these rules came about. And then Hawaii, it was approved. It was federal, federalized in 1977; Hawaii approved it in 1978. So it's our State's resource management policy umbrella. It is our environmental law, and you are the final authority, which I'll show you for environmental decisions here on Lanai within the Special Management Area which is very thin little ribbon around the islands near the shoreline. And Coastal Zone Management law manages all the Hawaiian Islands. And it is -- it's managed via your Special Management Area Rules and your Shoreline Setback Variance and your Rules that you have, so it's basically home rule as John was talking about earlier on. So you have your own set of rules here.

So again your authority, it comes from, as you can see here, from the Maui County Charter Section 8-8.4. It designates each of the planning commissions -- Lanai, Maui, Molokai -- as the authority in all matters relating to the coastal zone management law for their islands. So you can see that how it cascades down from the Act, to the Charter, to your Commission, Lanai Planning Commission. It's different again than Molokai and Maui.

And then -- so if we drill down or begin to discuss the Special Management Area, it is a subset of the coastal zone delineated by the County authority, and you being the County authority on the Special Management Area. You have, just over the past few years just amended your Special Management Area boundary with Kathleen Aoki and her staff who have been coming out here for a series of meetings. And I'll just address that and actually I will go to a map book real quick. Let me see if this will come on top of it. No. Let me minimize this other guy. I don't know what's going on here. I just erased my slides so that's why I have retrieve it again somewhere, wherever it is here, but I wanted to show you this. I'll open it up a little bit more. I guess that is open all the way. Anyway, what I'll do is I'll just go around this island here. So this up. Can you see the inset map here, No. 1? I cannot get rid of this thing. Okay, we'll just deal with this here anyway. Just go through this quickly.

So this is the, this the Special Management Area boundary. You're the island that has a digital version of this. Now all the others are all still paper and so you're way more advanced than the others. Thank God. So, we'll just go around. You can see the, the mauka most line is your SMA boundary. So we're up in the northwest corner of the island. We'll go all the way around, two through 20. And it's a combination of this hatchered line is the extreme tsunami zone that has been mapped state wide so we added in all those areas so that any proposed developments in the extreme tsunami zone considers this extreme tsunami zone. We know

a lot more about the extreme tsunamis in the world that can occur than we did 30, 40 years ago when the SMA boundary was determined. And then we'll keep going around. You can see we're going to (3) and then we're going to the northern part of the island. Same thing, very low line, coastline so that line, the inner most line, the mauka most line is your SMA boundary. We're going to go around the… Kaiolohia Bay. Moving to the eastern side. So you can see it's just a very thin strip of land where there pretty much is no development over here. And then it does not include all of Manele Bay area, but it does include some of the cultural area, I guess Kathleen was telling me over in this area here. So again, it's thin, and then it goes all the way around the island, out back to where we were. The harbor here again. So you can see we're dealing with this little manini strip so that is the revised…SMA boundary.

Okay, let me get back to the next slide. Okay, so you amended the boundary and Kathleen provided, there was an article in Lanai Today. It began in January 16th, earlier in the year, 2016. You had five formal meetings. It took a two year process with recommendation for approval October 4th, 2017, and it was, I do believe, amended officially in April of 2018. While it took a while to get the new boundary adopted, they stayed on course and always remained committed. And she had other comments here that the members should be commended for their hard work, their dedication to the project for asking difficult questions, and for inviting and encouraging the public to be involved and asking the questions of the meetings. Many kudos Stanley Ruidas was the champion from the very beginning and is recognized here. And the last note, all of your members should be applauded for understanding their role as commissioners, understanding the parameters of the SMA Law and working within those parameters. And it couldn't be achieved without a good win-win relationship with the Planning Department and Office of Planning, so congratulations on that.

So moving on to the -- to your -- where this Coastal Zone Management Act in the SMA fit within the State Constitution. Here you can see -- the State Constitution we have the Planning Act, we have the Land Use Commission, Zoning and the Coastal Zone Management Act all on the second tier level, and then the circled areas are, are your authority through the Special Management Area and the Shoreline Rules. So again you are the final authority on anything in the SMA.

So just some pictures here just to talk about the goals of the SMA. They're very insightful, foresightful. Basically it's to, for your SMA Rules, it's to further the policy of the State which is to preserve, protect, and where possible restore the natural resources of the coastal zone. So it's a very strong environmental coastal zone preservation act, and it's reflected in your rules. This type of growth along the shoreline, this is Kamaole Beach I in Maui, and it is an example. We were able to take out 30 years of massive growth, and we were able to triple the width of a massive growth that had been done by seven, eight homeowners over 30 years, about 100, 150 feet of buffer zone of naupaka and other growth that had grown. You couldn't even get down the beach during high tide. So we basically we tripled the width of Kamaole I, a world class beach through the Coastal Zone Management Act. So that's just one example. And through our, the SMA Rules, the whole idea is to, is to look at these objectives and policies and SMA guidelines that Richelle referred to, that are in the State law. So the State

law brings down objectives, policies and guidelines into your SMA Rules. What we don't want to do is before the rules, in Kaanapali, we built too close to the ocean. This, again, it was, the rules were enacted in 1978, we had a tremendous amount of building between 1970 and 1978, a lot of the hotels went in way too close to the shoreline, and we're paying for it now. We have tremendous problems on the west side of Maui with many large structures threatened by coastal erosion. And you don't have that much development, so if you do develop along the shoreline, you have 40 years of knowledge and, and good planning that you can apply, and I'm sure you will.

So just to get into some of these. So we have the guidelines. So this is again at the State level referring back to the Coastal Zone Management Act. I think these are no-brainers. The Lanai Planning Commission shall seek to minimize where reasonable dredging, filling and altering of any coastal areas; reducing the size of any beach; impeding public beach access and coastal recreation; minimize where reasonable loss of coastal views; adverse effects to water quality, fisheries, wildlife and habitat; and loss of existing or potential agricultural uses along the shoreline. So these are pretty basic, no-brainers that the SMA guidelines from the State Act are manifest in your rules. So the bottom line is the Coastal Zone Management Act through the SMA guidelines at the State level with your SMA Rules seeks to minimize where reasonable adverse impacts to the environment. So that's what you do, you evaluate the impacts and try to minimize them through conditions that Richelle was talking about.

So the SMA guidelines at the State level they want to ensure adequate access to publically owned beaches, recreational areas, wildlife and natural reserves. It's kind of repeating what I said. Adequate and properly located public recreation areas; adequately controlled, managed and minimize impacts from pollution and runoff -- all the drainage issues are extremely important for Lanai -- minimize adverse effects to water resources, scenic resources, recreational amenities; and minimize risk to the proposed structures from coastal hazards. So you'll see there I underlined adequate and minimize, right? I always say every time you put a shovel in the ground there's going to be some kind of impact. So how can we adequately minimize the impact from development while taking our coastal ecosystem into account at the same time, protecting what we value. So it's a balancing act that you have.

So these are the areas in the State law. I won't go over the white area, but the impacted resources that we evaluate as a planner -- so a planner would evaluate all of these with the applicant prior to coming to this Commission, and try to mitigate the areas: recreational areas, recreational historic and cultural, scenic and open space, coastal ecosystems, economic uses, coastal hazards, managing development through the permit system, public participation, beach protection and access, and marine resources. So it's, again, it's very environmentally oriented. So we evaluate how the project will impact each of these general areas in the Coastal Zone Management Act through your SMA Rules.

So looking more specifically at your Rules, Special Management Area Rules for the Lanai Planning Commission, then I'll look at the Shoreline Rules. So Chapter 12-402. So the SMA Rules provide authorities to the Commission and the Planning Director, and this is how it's

divided up here. It's a little different in the other Commissions. So any proposed action within the SMA requires an assessment by the authority. So they need an SMA permit for any action pretty much that occurs there. So the Commission, you guys, are responsible for a major, SMA Major Use Permit and also SMA Exemptions, and I'll explain what those are. The Director is the authority, meaning administratively the Planning Department staff and the director authorize SMA Minor Permits and also Emergency Permits. And Emergency Permit is something where it has to happen quickly. It's probably protecting some building from something happening to it, or some structure along the coastal area collapsing or, or being in trouble. So, trying to shore it up. And we do it, we authorize it prior to a formal commission meeting and then we tell you about it after, so the Director has that authority.

So there are these SMA Assessment criteria. So every project that comes before the Planning Director or the staff and you go through these specific questions, and I'll just quickly --. Again, it really reflects on the environment, irrevocable loss of natural or cultural resources; significantly curtails a range of beneficial uses of the environment; conflicts with our environmental policies and laws at the County and State level; substantially affects the economic or social welfare of the community; involves secondary, substantial secondary impacts, kind of like, such as traffic right, would be -- or increase effects on the infrastructure. Traffic is a good example. It's part of cumulative effect or involves commitment of a larger action. So these are the, these are the specific criteria that we go through on every, on every project. Substantially affects a rare, threatened and endangered species of animal, or plant, or its habitat. So down into the very environmental issues. It's contrary to State and County plans, zoning and subdivision ordinances. It's detrimentally affects air or water quality, or ambient noise levels. Affects environmentally sensitive areas, such as the flood plain, shoreline tsunami zone, erosion prone area, coastal waters, fresh waters. And substantially alters natural land forms and existing public views to and along the shoreline.

So this is our checklist for what we do. If any of these things get impacted, we try to mitigate it the best we can and present it. So a lot of times, we'll, the County will recommend approval of this project but with various conditions. And those conditions are all meant to minimize the impact to the environment, and still to allow this project to go forward. So that's usually how we bring it. We list out all the, all the rules, all the law, all these criteria that we looked at, and try to make it the best project that it can be. And I'll give you an example in a second.

And then the last criteria is that your rules go back to reference the Coastal Management Act, the objectives and policies that I showed you earlier. You have a slide in there. It's contrary to any of those objectives and policies. So these are specific to your rules, and then it refers back to the State Law. So we double check the project against the State law also.

So there are five different types of permits. A major permit, when that would come before you in the special management area, you are the authority on one, anyone that comes with, that's half a million dollars or more. It requires a public hearing, and setting just like this. And it requires a notification of neighbors within 500 feet. And it usually does include conditions to

avoid, minimize and mitigate impacts. So that's your authority. It's a discretionary permit. You can say, yay or nay, add conditions, etcetera, improve the project.

Minor permits goes to the Planning Director. Those are the same thing, but valued at less than half a million dollars. There is no public hearing required, and -- but we still can place, the planner through the Director, through his signature can place on project, projects, various conditions to minimize impacts.

Emergency permits, again, that I explained, eminent and substantial harm to the public welfare, or to prevent substantial physical harm to persons or property. We can actually, the Director through myself or staff, can give oral verbal authority to proceed, and then there's a process for writing it up and getting it to you. And we do notify the Lanai Planning Commission of any of these actions that have happened.

So there's an Exemption, a class of exemptions, which you are actually the authority on. Along with Molokai also, they review Exemptions. These are usually the smaller common projects in the Special Management Area such as the single-family home. On Maui we'd never be able to build a single-family home if every one of the single-family homes had to go to the Planning Commission for approval. We'd just gum up the system, it would be impossible. So we have authority to approve single-family homes, but with mitigation. Sometimes the single-family home, even though it's exempted, it can go through a year's worth or two years' worth of scrutiny by the staff to make it a better project. Drainage is a, is a very good example. Making sure the drainage, there's no drainage into the ocean. View plains. Also we can't, you know, archaeology. We, we, usually if they are digging or there is grading, we get reviewed by the State Historic Preservation Division and ensure that there's proper controls in those areas. We look at demolition of historic or if older buildings may be historic, and look at cumulative impacts and any coastal impacts. So that process can, even though somebody comes in for a single-family home on a lot, it could take a year or two, sometimes with a, with -- in sensitive areas, sensitive ecological areas. And then it can be denied. Some of these, if it's inconsistent with zoning or community plan or adverse impacts to the coastal resources, a project can be denied, either by you or the Planning Director.

So again those three numbers at the bottom, the Lanai Planning Commission provides review and determines final approval on Exemptions. All Minor and Emergency Permits are reported to the Commission at its next regular meeting. And any of these decisions by you or the Director can be contested by the, by the applicant or other parties by filing an appeal to the Commission within 10 business days after the Director's decision. And then when that begins that's when you consult with Richelle on all that stuff, on the appeals and contested cases. So we try to avoid that.

So some common, just the Exemption categories on Maui for Maui Island, the Director and the Planning staff approve these. But on Lanai, you guys look at each of these: single-family residence; structural and non-structural improvements to single-family residence; repair and maintenance of roads and highways; routine dredging of streams as maintenance; repair and

maintenance of underground utilities; repair and maintenance of existing structures; and demolition of some structures. So these categories do come to you in the SMA. Of course, they aren't within the boundary. Of course, there aren't many within the SMA boundary here in Lanai so, so when they do you see them.

So that's it on the SMA, the Special Management Area Rules. Just concluding with the Shoreline Setback Rules and Regulations for the Lanai Planning Commission, Chapter 12-403. Okay, the shoreline objectives is part of the Coastal Zone Management Act, again, are in the white, on the left hand columns, the coastal ecosystems, coastal hazards, beach protection and access on marine resources. So it gets into a subset of the objectives of the Coastal Zone Management Act, usually on parcels that are adjoining the shoreline or any beach parcel usually that's where the shoreline rules come into play.

So how do we manage a specific project right on the shorelines? So looking at the goals of the shorelines rules, again, very broadly, it's to regulate development so that shorelines are protected, beach resources are conserved, visual and physical access preserved, and landowners do not incur unnecessary risks or shoreline hardening expenses. So again looking at the organization from the state constitution down, the Lanai Planning Commission is the final authority for all projects on the shoreline here as I've highlighted.

So there are four, again, generalized shoreline setback objectives. So when I speak about a setback there is a –. We want to make sure that whatever we build is setback right back from the actual shoreline, a certain distance anyway at this point. So, you know, the idea is to move out of harm's way. Pretty basic. We want to plan for obsolescence of structures in the shoreline setback, so we don't want to keep adding more and more money and developing all those structures right on the shoreline that will become more at risk. And then to protect them we have to impact the shoreline quite a bit. We want to ensure shoreline access is very, very important. And we want to limit the types of structures and activities in the shoreline area or this setback area. I'll talk a little bit about the setback area. But generally the setback area is anywhere from a minimum of 25 feet from the shoreline, to a maximum of 150 feet by law so we want to setback a structure as much as possible depending on how large the lot is.

So your shoreline rules were -- became effective in 1996 and again it is to regulate the use and activities within the shoreline setback areas to protect the structure, the public health and safety, as well as our ecosystem, our shoreline. Provide minimum protection from coastal natural hazards. Of course as time goes on we know more and more now we have sea level rise happening, right? Now, I don't know, you probably heard 3.2 feet of sea level rise probably by the year potentially -- well most likely by the year 2100, but we're planning, we have planning horizon for 2060 at the State level and we're looking at it. The Mayor has a proclamation to at least adopt a 3.2 feet of sea level rise into our shoreline planning from some maps. We do have maps out there. I haven't included them in here, but at some point you could, you could invite Tara Owens who is a University Hawaii Sea Grant extension agent who has presented prior to the, at least to the, to the CPAC when we were doing the Community Plan about coastal hazards. We could talk more about -- have her come out and

present on coastal hazards for you. And then to ensure that the public has use and enjoyment of shoreline resources that they're preserved and, and for generations to come, protect them for generations to come. It's a battle. It's a battle on, on, you know, Molokai. It's a battle especially on Maui. It's a battle on all of our shorelines around the country, you know, is preserving our shoreline here. I'm right in the middle of that battle on a daily basis.

So we do have a method and the determination for a shoreline setback. It's an average lot depth. We don't have erosion rates out here in Lanai. And it requires the State Certified Shoreline. So any project right on the shoreline requires a surveyor to come out and survey the shoreline. And then whatever the setback is, it's anywhere from 25 feet to 150 feet back. So any swimming pool or house or structure or road at least has to be built behind that setback line. So it's a quick -- I'll just put this up here. So for an odd size lot we what do is we take the edges. This is -- this picture here in the blue, the wavy line is the shoreline. One side of the lot is 250 feet width. The other side is 225 feet width. We take measurements in the middle, 230. We add them up, divide by three, and that's our average lot depth. So pretty much, except for a very narrow lot that's less 100 feet deep, it's about, it's basically we take a quarter of that depth width, that average lot depth. So it's one-quarter. So in this case with an average lot depth of 235 feet of the average lot depth is 58.75 foot setback. So that we create that line and any development structure has to be behind that. We have manini things we can put in the setback area, but we try to avoid anything that might have a risk from coastal hazards that would be of substantial value to be outside of that area. And that allows for lateral shoreline access to, and allows the beach to -- the whole idea is to not impede the natural motion of the shoreline so that it can come and go without walls or structures in the way. Let it take its natural course.

So there are actions by the Lanai Planning Commission within the shoreline rules, and I'll just go through them quickly. We, within the Planning Department, we can offer any applicant a Shoreline Setback Determination (SSD). It normally requires a State Certified Shoreline Survey. That's always done prior to coming to you for a decision, and that's done administratively. We can do a, through the Planning Director and the staff, do a Shoreline Setback Approval (SSA) for various types of activities or structures within the shoreline setback area right near the ocean. Okay, so there are some things, and I'll list a few of those. There's a Shoreline Setback Variance that requires conditions so if somebody does want to come in with a seawall or a harden structure within the setback area, anything harden basically major structures within the setback area are illegal, but there is a variance process. And a lot of seawalls that you see around Lahaina town, etcetera, those were all grandfathered in before 1978 and they are -- back in the early '80's during some big storms, some Kona storms on the west side, south Maui, anyway I go back and review a lot of these permits, they were allowed by Public Works to protect the properties from these big coastal storms. So some of them are, but nowadays we're not allowing seawalls or large hardened structures in the shoreline. But there is a variance process to go through and I'll talk a little bit about that. So it does require conditions. And anything for a variance would come to, to your planning commission for approval or denial.

So things that permissible structures that are allowed under your rules, minor structures or activities that cost less than $20,000, and it cannot impede the natural movement of the shoreline, does not alter the existing grade of the setback. And also new structures need to be elevated one-foot above base flood elevations on pilings or columns, so that is out of any flood zones. And the County is held harmless and with no liability. And it does not harden the shoreline. So probably what we're going to be doing is, is also adding in areas where we would have flooding or coastal zone intrusion due to 3.2 feet of sea level rise. So we are reviewing some of our shoreline rules now for the Maui Planning Commission, so we're trying to look forward so that we don't start developing again right in the shoreline so that we have problems down the line trying to protect it. And there's also an effort at the State level to begin looking at what we're calling managed retreat, strategic retreat. How do we begin to move major structures that are becoming threatened by coastal erosion, big waves in, in the setback area, right on the shoreline? Besides protecting them with variances for walls and things, how can we begin to look at all the legal ramifications of actually moving large structures out of the shoreline? So that's our future. We're just beginning on that path. It's fascinating and condo law is very complex and -- as I'm learning -- anyhow, I won't talk too much about that. So new structures do have criteria.

And wrapping up here. So your role in approving shoreline variances, they may be granted for these types of things. Any structure that's in for or ancillary to crops or aquaculture such as shrimp farms I know, and fish ponds; limited landscaping not affecting the shoreline process; drainage improvements; boating/water sports facilities; public facilities, repairs and improvements or utilities. So again, public are obviously emphasized over private as I'll get to. Some private facilities can be authorized by you, but with -- are improvements that are clearly in the public interest such as pathways or boardwalks or lateral access type of things. Private facilities that may artificially fix the shoreline provided that erosion will cause hardship and it --. Private facilities or improvements which, again, they cannot affect beach process or artificially fix the shoreline, or would result in hardship if not approved.

So there are some mandatory conditions with every variance that we maintain safe lateral access, minimize adverse impacts to beach processes, minimize the risk of that structure from failing, comply with flood rules, and minimize adverse impacts on public view to and along the shoreline. So those are mandatory conditions.

So I'll conclude there with just some final remarks. You know your shoreline provides for tourism, economy, recreation, fishing food, cultural practices and our quality of life. Our shoreline is threatened with coastal erosion that is accelerating and so rather than dealing with these projects parcel by parcel it really, what we're learning is it really makes sense to look at dealing with the shoreline from a scientific beach cell process rather than parcel by parcel. So we need scientifically based decisions at the shoreline. And that, just coming back to what I, I stated prior, the Coastal Zone Management Act through the SMA guidelines, which I went through, and your SMA Rules for the Lanai Planning Commission seek to minimize where reasonable adverse impacts to the environment. So that's our goal is to minimize those impacts, keep our environment intact.

And I'll conclude here with -- this is a shoreline setback on Kamaole Beach III down in South Maui. This is a structure that's authorized in the shoreline setback. It's an ADA, American Disabilities Act, compliant dune walkover to get people onto the beach, to preserve the dune as well as to provide a path for everyone to get down to the ocean. So this is an example of a project that we…would authorize and have authorized.

So there are four of us, myself, Keith Scott, Tara Owens and Jeffrey Dack. And the last slide I think you have has our contact information. If you have any questions and/or comments now or later, here is our contact information. Thanks for carrying it on until 7:30 p.m. I'll turn it back over to the Chair.

Ms. Preza: Thank you Jim for the presentation, and thank you Richelle for yours as well. Yeah, thank you for coming all the way to Lanai to do it for us.

Mr. Buika: My pleasure.

E. DIRECTOR'S REPORT

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

Ms. Preza: Do you guys have any questions? Great, the only thing left on the agenda is E, Director's Report, which is open Lanai applications. The new thing on the agenda, or on the open application is the Adventure Center. Does anyone have questions about that right now or --? Okay, great. Does anyone know agenda items for the next meeting?

2. Agenda Items for the August 15, 2018 meeting.

Mr. Raatz: Thank you Chair. We do have a public hearing that will be a scheduled for your next meeting. It's, again in your role, providing guidance to the Council on a proposed piece of legislation. It's a correction to a map and -- on the community plan map. My colleague Kim Willenbrink will be here to guide you through that.

F. NEXT REGULAR MEETING DATE: AUGUST 15, 2018

G. ADJOURNMENT

Ms. Preza: Thank you so much. If there's nothing else, then I call the meeting concluded at 7:30 p.m. exactly. Thank you.

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:
John Delacruz
Sherry Menze
Shelly Preza, Vice-Chair
Gerald Rabaino
Chelsea Trevino

EXCUSED:
Roxanne Catiel
Caron Green, Chair
Mililani Martin
Shirley Samonte

OTHERS:
David Raatz, Administrative Planning Officer, ZAED
Jim Buika, Coastal Resources Planner, Current Planning Division
Richelle Thomson, Deputy Corporation Counsel