

**LANA‘I PLANNING COMMISSION
REGULAR MEETING
JANUARY 19, 2022**

A. CALL TO ORDER

The regular meeting of the Lanai Planning Commission (Commission) was called to order by Ms. Shelly Preza, Chair, at approximately 5:00 p.m., Wednesday, January 19, 2022, online via BlueJeans Meeting No. 662 557 154.

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

Ms. Shelly Preza: Thanks Leilani. First I'll make sure that we have quorum. I believe everyone is supposed to be here so when I say your name if you could just unmute and let me know you're here, that would be great. Sally Kaye?

Ms. Sally Kaye: Here.

Ms. Preza: Thank you. John de la Cruz?

Mr. John de la Cruz: Here.

Ms. Preza: Thank you. Zane de la Cruz?

Mr. Zane de la Cruz: Present.

Ms. Preza: Thank you. Lisa Grove?

Ms. Elisabeth Grove: . . . (inaudible) . . .

Ms. Preza: Thank you. Sherry Menze? Not here? Oh, wait Sherry, are you here? I see your name. Maybe on BlueJeans but not at your computer right now.

Ms. Sherry Menze: Sherry's here.

Ms. Preza: Thank you. And Natalie Ropa?

Ms. Natalie Ropa: Here.

Ms. Preza: Thank you. Shirley Samonte?

Ms. Shirley Samonte: Here.

Ms. Preza: Thank you. And Chelsea Trevino. Your mic is on, so great. Thank you. So we'll call the meeting to order. Just a reminder that if you're joining us and you would like to provide testimony, if you could directly message Leilani in the chat. The commissioners won't be checking the chat function, so please don't use it to contact us. But feel free to let Leilani know if you would like to testify and on which agenda item you would like to. Public testimony will

be taken when each agenda item is discussed and testimony will be limited to a maximum of three minutes tonight. I'll call on testifiers who are calling in via BlueJeans and then if there's anyone joining via the phone, I'll open it up if you want to testify as well. And if you're not a Commissioner or part of the Planning Department, we just ask that you keep your video and my mics muted unless you're testifying. I think that's it.

B. NEW BUSINESS

- 1. Final Environmental Assessment prepared for Lanai Resorts, LLC doing business as Pūlama Lānaʻi for the proposed Community Plan Amendment, Change of Zoning, Project District Phase I Development Approval Amendment, and District Boundary Amendment for the Kōʻele Project District located at Kōʻele, Lānaʻi City, Lānaʻi, Hawaiʻi. TMKs (2) 4-9-001:021, (2) 4-9-001:024, (2) 4-9-001:025, (2) 4-9-001:027, (2) 4-9-001:030, (2) 4-9-002:001(POR.), (2) 4-9-002:061(POR.), (2) 4-9-018:001, (2) 4-9-018:002, (2) 4-9-018:003, (2) 4-9-018:004, (2) 4-9-018:005, (2) 4-9-020:020, (2) 4-9-021:009 (CPA 2021/0001, CIZ 2021/0001, PH1 2021/0001, and EA 2021/0002) (K. Wollenhaupt)**

So we'll just get right into it, Item B.1., which is the Final Environmental Assessment (EA) prepared for Lanai Resorts LLC, doing businesses as Pulama Lanai, for the proposed Community Plan Amendment, Change in Zoning, Project District Phase One Development approval amendment, and District Boundary Amendment for the Koele Project District located at Koele, Lanai City. So I'm not sure if anyone, Jordan or anyone from the Planning Department is going to speak on this or if we have any presentation.

Mr. Kurt Wollenhaupt: Good evening. Good evening. This is Kurt from the Planning Department. Good evening, members of the Lanai Planning Commission and Chair Preza. Tonight's objective is to take a critical look at the Final Environmental Assessment (FEA) for the proposed changes to the Koele Project District. The Community Plan action as an amendment to the County's General Plan has triggered the environmental review requirements under Chapter 343. And accordingly, an Environmental Assessment (EA) has been prepared to evaluate the technical characteristics and the potential environmental impacts of the proposed undertaking, as well as to advance the findings and the proposed mitigative measures. This Environmental Assessment will serve importantly as a technical document for the District Boundary Amendment (DBA) petition to the State Land Use Commission (LUC) and the Project District Phase One Amendment, the Change in Zoning, and the Community Plan entitlement applications of which the Lanai Planning Commission will play a critical role. You serve as the approving agency for the review of this evening's Environmental Assessment. And indeed you have seen it in detail commenting on it on September 15th, 2021. The Environmental Assessment for the proposed amendment was prepared by Munekiyo and Hiraga, consulting firm, on behalf of Lanai Resorts doing business as Pulama Lanai.

I'm not going to go into all of the distinct characteristics of this application, as you've already seen it before. And tonight really is to make a determination if your questions that you had and your review of the document does represent a complete document that you're going to be able to use throughout this whole upcoming process that could last over a year as you are beginning to look at the different applications requested. Dr. Keiki-Pua Dancil of Pulama Lanai, I understand is going to be giving the presentation this evening on the proposed Final Environmental Assessment. And I just want you to consider the action alternatives for this evening's review. You can accept tonight's Final Environmental Assessment and issue a Finding of No Significant Impact, which is called a FONSI. Then the Department will transmit that determination to the Environmental Review Program (ERP) for publication that initiates a 30 day legal challenge period. If that determination is undisputed, then the Department will continue processing all the other land use determinations; the CPA or the Community Planning Amendment, the Change in Zoning, the Project District Phase One, and then also the State Land Use Commission District Boundary Amendment.

If after tonight's review and your discussion that you feel that additional information is really required in order to make this determination on accepting the Final EA, you can ask for very specific information to help the consultant and the applicant answer your questions. If you, however, determine that the proposed action will pose significant impacts, really not likely to mitigate to a level of non-significance, then you can determine that a more detailed environmental document known as an Environmental Impact Statement (EIS) should be prepared. That being the case, now would be a good time, I believe, that Dr. Dancil can give the presentation and then you can take any information from the public and then proceed with your debate as to how you believe, and if you believe, that tonight's Final EA is sufficient for acceptance and the issuance of a FONSI. Thank you.

Ms. Preza: Thank you, Kurt. I think people are here if you're if you're available and ready.

Dr. Keiki-Pua Dancil: Aloha Chair Preza, and Vice-Chair Kaye, and members of the Commission. May I share my screen? I'm going to turn off my video while I share a screen to save on bandwidth. Is that okay, Chair?

Ms. Preza: Sure. Thank you so much.

Dr. Dancil: Thank you. Thumbs up if you can see my screen. Awesome. Thank you. So aloha Commissioners. I want to point you to an item. Thank you, Planner Wollenhaupt for introducing a project. The Department did prepare a memo that was in your packet of documents. I want to point to you page-three and call out that the Department has reviewed the Final EA and does make the conclusion that the environmental document that we have prepared meets the various criteria for an EA. And their recommendation is an issuance of a FONSI. So tonight, we are here to your answer your questions, as was discussed earlier, and provide a very short presentation, because we understand that there's lots on the agenda tonight. So my presentation will be very succinct and we'll point you to different sections in

the EA. But I just wanted to call out that the Department did make a recommendation to issue a FONSI, and we are here to respectfully ask concurrence of that recommendation.

So, as I mentioned, we're here tonight primarily as Director McLean mentioned way back in July, the application before you now is more of a housekeeping exercise. There's no specific construction activities associated with the changes that are proposed. And these updates are reflecting a changed environment. We're aligning the project district map with the community plan map. The overall acreage is actually a reduction in acreage. It's significantly less residential that had already been entitled. There is a resort commercial area, and I think through our responses, especially to the Lanai Planning Commission's questions, we elaborated more about that area. And hopefully had some time to review our response to those questions primarily it's to designate the uses of stables and tennis courts. The pasture is still going to be the pasture area. We are not erecting a 30,000 square foot commercial structure. We also are rezoning the, proposing a rezoning of the golf course to more Park and Open Space. And that was something we signaled back when we shut down the Experience of Koele, and we reposition and rebranded the, the Sensei Resort.

So again, the existing project district and the affected parcels are outlined here. You also see it in the top here. I always reference a page number by volume and reference number in your document to assist with your review. Here you see a side by side comparison on the same chart. In your document on pages REF-17 and REF-18, you don't have them side by side. But we thought this was a good comparison. As I mentioned, it's a significant reduction. You see on the left what is existing and on the right what is proposed. The dominant color on the left side is yellow, which is zoned Residential, or single family, meaning single family, residential homes. So what we are doing is down zoning or taking a significant amount of that acreage out, which is already entitled. And we're turning it into Park or we're actually taking it out the Project District. The other change you see is significantly less purple, which is Golf, and we are rezoning that to Park. So lots more Park and Open Space.

The other thing I want to mention down here is that you have the stables. That is not a contiguous part of the Project District. And you also have some areas that, right now, you know, is the entrance of the hotel, which in theory is not part of the Project District. So as again, a lot of this is clean up and adding those areas to the Project District.

What I've done here is I've taken -- I put together a couple of summary sheets. But these are all found in your version Volume One, REF-23 through REF-47. The different areas and whether, you know, we evaluated the physical setting and all the different parts of the physical setting and whether there was a significant impact and the discussion about it. So in the next couple of slides and again on references 23 to 47 you'll see all the different sections on whether there is a significant or if there is a significant impact, you know, the mitigation measures. So again, the socioeconomic takes place on 47 through 50. Not much significance. In actuality actually taking away residential to have fewer homes. And this is primarily second homes versus primary residences. Public services on pages 50 to 52. Infrastructure on pages 53 to 64. Again, reduction, so less impact.

We've also received a fair amount of comment letters and we've addressed those comment letters. Those all can be found on Volume One, reference 131 through reference 441. There is a fair amount of back and forth responding to agency comments. What I've done here is I summarized the different agencies that have responded with a comment or no comment, and it's indicated here.

I want to point to you in to your book on Volume One, reference 113 to 118. And the reason I want to point you to that section is because that's, you know, this is where in Hawaii Administrative Rules (HAR) in which you as the accepting authority to issue the FONSI review whether there is significant impacts under HAR 11-200.1 to 13. That's the significance criteria. So in considering the significance of potential environmental effects agencies, which is you as the Lanai Planning Commission, shall consider and evaluate the significant effects of the proposed action on the quality of the environment. And there's 13 specific things and they're listed here. And you can find them in detail in your book and I've kind of summarize it here, but it's a really simple look up in your book on pages -- it starts on page REF-113. And we went through and summarized whether, you know, here's the description of that first section irrevocable -- irrevocably commit a natural, cultural or historic resource and how that was addressed in the application. So that, those 13 criteria is what you need to -- so when the Planning Department reviewed, they reviewed for completeness of these different things. Again, this is continuing -- there's 13 different sections.

So after reviewing 13 sections, we found that the proposed project has been determined to qualify for a Finding of No Significant Impact, or a FONSI. And as I mentioned on page-three of the memo from the Planning Department to you, Commissioners, they actually make that recommendation as well.

So as Planner Wollenhaupt said this is a very long process, a process that could take over a year. So there's many more opportunities for community input. The last time we were before you was in this section here in which we sought comments on the Draft EA. Tonight we're here in which we are, you know, seeking concurrence of a FONSI determination. There's multiple other steps in this process. And as you can see, it does spell out for over a year.

So tonight, we respectfully request concurrence with the recommendation of the Planning Department to issue a FONSI determination. The Department has reviewed the Final EA and concludes that the environmental document meets the various criteria for acceptance of an EPA document. The Department recommends that the Lanai Planning Commission accept the Final EA and issue of FONSI determination. And we're here for questions as well. Mahalo.

Ms. Preza: Thank you for the presentation. Commissioners, before we get to our discussions or if you folks have any questions, I'll open public testimony. Leilani, has anyone signed to testify on this agenda item?

Ms. Leilani Ramoran-Quemado: Thank you, Chair. No one signed up to testify.

Ms. Preza: Great. Well, I'll open it up if anyone is calling in via BlueJeans who would like to testify. You can unmute your mic now. If not, then is there anyone calling in via phone? Okay, if not, then we'll close public testimony on this item. And Commissioners is open for discussion, if you have any questions for the applicant. And then we can make our decision. Yes, Lisa.

Ms. Grove: I have been instructed by the Board of Ethics or the Ethics Commission from Maui County to once again disclose that my financial interest in Koele District is in the form of our single-family residence on Queen Street. I am -- I have been advised that I must recuse myself from participating in discussions related to Koele District for the entire conversation and recuse myself from voting on the Koele District matter. So I am not going to be able to participate through this next year in these conversations. I'm going to turn my camera off and I'll be back when there's an agenda item that I can actually address.

Ms. Preza: Thank you Lisa. Luckily, we definitely have a quorum. So other Commissioners, do you have questions or comments based on --? You know, we, we submitted, or the County on behalf of the Commission submitted a letter with our previous comments a few months ago. And I'm hoping you folks had a chance to kind of look through the, the Final EA and make sure that what we brought up was addressed and if he had any concerns or questions. Any? So did you all find that they sufficiently addressed any questions or comments that you may have posed at the previous meeting? Sally, I don't know if you're trying to talk. I saw your mouth open.

Ms. Kaye: Yeah, no, I just I have a comment I'd like to make. Back in the day I have to say that the public trust doctrine was something that Castle & Cooke never grasped. They believe that since they owned the land, they own the water, and they resented anyone who ever interfered with the notion they could do anything they wanted with it. They hated having to participate in the water use development plan, which is State mandated. And their answer to the County Department of Water Supply telling them there wasn't enough water to cover their full buildout, especially the way the wells are distributed in one aquifer, was to say that the Commission on Water Resource Management's six million gallons sustainable yield was simply wrong. That said, one of the things that I find missing in what I think is a really very thorough update to the Final EA regarding water use is recharge. One thing we can all agree on finally, is that there is six million gallons sustainable yield in our single aquifer. But you can't get there if you don't have nine million gallons in recharge. So I would just hope -- I didn't even think to bring it up -- but that in future assessments that this recharge is important as it is would be addressed. But I really think the added discussion provided in the EA is really welcome. It means the responses provided make a much more complete record for the next audiences, which is the Land Use Commission and County Council.

Ms. Preza: Thank you, Sally. Keiki-Pua, sorry, I saw you unmute. Did you have a comment?

Dr. Dancil: I wanted to thank Commissioner Kaye for her comments about thoroughness of the record and the additional information. I appreciate the recognition.

Ms. Preza: Thank you. Other commissioners have questions or comments? I just had a quick question. I think one of the questions we had submitted in the previous, in our letter, was regarding in the appendices. I'm trying to find the reference and thank you to the applicant to adding the reference numbers because definitely most helpful this time, I think, in making sure that we're all looking at the same page. We had asked about in reference and of Volume Two where there is like the suggested amendments to the Project District, permitted uses. I was wondering, I think we or I brought up that in the hotel district, historical buildings and structures aren't in that, even though they're in some of the other zones. And I brought it up because of the church and the ranch homes that currently sit in, in that district. So I just was wondering if that is has been thought about being added. I didn't see that it was addressed in the Final EA.

Dr. Dancil: Sorry, Shelly, what comment --? I'm sorry. Excuse me, Chair Preza, what comment in the LPC? I do want to recognize that the church that is currently there, we have absolutely no plans on adjusting the location or moving it. We do have a discussion and we, we responded to an LPC comments that the Koele homes are in the hotel expansion in that area there. And at the time, you know, we, we will do and we actually have done a historic assessment of it. And when we are ready to relocate the homes, we will relocate it. We would reach out and, to a community, and discuss the appropriate relocation. And I'm trying to do a Control-F really quickly, but I know I wrote that several times in the response comment.

Ms. Preza: No worries. I see --

Mr. Wollenhaupt: . . . (inaudible) . . . comment 14, page, REF page one double eight.

Dr. Dancil: Thank you.

Mr. Wollenhaupt: So comment 14, REF-188.

Ms. Preza: I'm sorry. I was on mute. Sorry, Kurt, is it in the volumes that we're referencing or is this in a response email?

Mr. Wollenhaupt: Oh this, well, on page, on reference page-188 in the Volume One, that's the comment, should historic structures be included as principal uses in the hotel subdistrict. And then if you look at reference page-ten of the proposed code, you see you don't see permitted uses as the hotel and automotive parking lots and buildings. So I guess the question is, your question, should historic structures be included as principal uses.

Ms. Preza: Okay. Thank you, Keiki-Pua. I guess I'm just wondering because, because of the church, too, if there's no plans to be moved just, just to ensure that historic structures are included in the, in the zoning because they're included in some of the other sections.

Dr. Dancil: I, I believe they will, they will be included, I think, from even a grandfathering in perspective. And maybe Corp Counsel Thompson can chime in, but they should be an allowed use in the Hotel Subdistrict because they've been in place there.

Ms. Preza: Oh, thanks for clarifying. Commissioners, any other questions or comments?

Mr. Wollenhaupt: Oh, this is the Planning Department again.

Ms. Preza: Hi Kurt.

Mr. Wollenhaupt: Maybe Deputy Director Jordan Hart. Sometimes there's an issue, perhaps a clarification issue, in the proposed, uh, code that will undergo intense scrutiny as we move through this. So this isn't, this is certainly not the last time we're going to be looking at this Code that will undergo very close review by you and Corporation Counsel. But sometimes there's a phrase called special accessory uses, and that's fine. But then sometimes we use the word special uses. And if we're using special uses that's a very specific County Special Use Permit. So we just want to make sure that when we talk about special uses, those are special as opposed to special accessory uses. Special uses are subject to a review through a Special Use Permit, which goes through a long review. And we don't want to make something a special use, it could be a special accessory. Neither do we want to go back the other way. So that's something to be considered probably in the future. But just, just a comment to keep in our minds as we move forward.

Ms. Preza: Thanks, Kurt.

Mr. Wollenhaupt: Unless Jordan wanted to make any comment on that.

Mr. Jordan Hart: No. So we had had a prior conversation about that subject. Thank you for bringing it up, Kurt. I do agree that we'll take a second look at the language as the process progresses. I don't necessarily think it's an issue of concern for this Final Environmental Assessment, but for subsequent steps I do want to clarify the difference between Special Use Permit and other uses of the terms -- other, other instances of the term special in the zoning ordinance.

Ms. Preza: Thanks Jordan. Great. And thank you, Kurt, sorry for your earlier reference number for -- that answers my question. I see it now. Thank you so much. Great. So if Commissioners you don't have any other questions, we could proceed to someone making a motion about if we should grant the FONSI, or defer or if anyone would like to make a motion? Unless there's further discussion.

Ms. Kaye: I move that we accept the Final EA and issue a FONSI.

Ms. Preza: Thank you. Is there a second?

Ms. Menze: I second.

Ms. Preza: So Sally moves, Sherry seconds. Is there any further discussion on this? If not, then since you all your cameras are on, all those in favor, please raise your hand. And any abstentions or any opposed? If not, then it passes unanimously. Thank you all very much. Great.

It was moved by Ms. Sally Kaye, seconded by Ms. Sherry Menze, then unanimously

VOTED: To accept the Final Environmental Assessment and issue a FONSI.
(Assenting: J. de la Cruz, Z. de la Cruz, S. Kaye, S. Menze, N. Ropa, S. Samonte, C. Trevino)
(Recuse: E. Grove)

Dr. Dancil: Chair, I'd like to say mahalo to the Commissioners and we appreciate you and we look forward to working with you as we move through the various multiple applications. Mahalo.

C. UNFINISHED BUSINESS (Action to be taken)

- 1. AT&T Mobility requesting a County Special Use Permit time-extension and upgrade to existing facility, located at 80 Hulopoe Drive, Tax Map Key: (2) 4-9-002:001 (por.), Manele Bay, Island of Lanai (CUP 2016/0001) (K. Willenbrink) (Item was discussed and deferred at the Lanai Planning Commission's October 20, 2021 meeting.)**

Ms. Preza: Thank you. And thank you for the presentation and the very thorough EA. So, great. So moving on we'll get to and -- sorry, I'll call back Lisa if you're around, we're moving on. Just want to let you know. Oh, hi. Thank you.

So moving on to Item C.1. which is unfinished business, AT&T Mobility, requesting County Special Use Permit time extension and upgrade to existing facility located at 80 Hulopoe Drive, tax map key, two -- oh, four, dash nine, dash zero, zero, two, zero, zero, one. So I believe -- so we have this on our agenda a few months ago and then it's been deferred to this meeting pending additional information which we received in our packets. So I believe we might have some representatives to speak on this. Hi Ann.

Ms. Ann Cua: Good evening, Chair and Commissioners. I will be presenting the application today to the Commission as Kim Willenbrink is no longer with the Department, and so I'm going to take over for her. And I prepared a power point that I would like to share with you which will supplement the staff report dated January 19th, 2022. So if I could share screen. We'll see how this goes. Can you see that?

Ms. Preza: Yes we can.

Ms. Cua: So back in October 2021, the Commission reviewed a ten year time extension request and amendment to the County Special Use Permit 2016/0001 to permit -- excuse me -- to upgrade antennas and ground equipment, and to install a backup generator previously approved by this permit. This permit was originally approved as a new permit by the Commission on August 17th, 2016. The permit's expiration date was August 31st, 2021. However, the applicant filed a timely request to extend the permit on May 20th, 2021 at 11:39 a.m., 103-days prior to the expiration of the permit. And if you look at the attachments in your staff report, you can take a look at Exhibit H, which references this. At your meeting on October 20th, you deferred action on the application basically for two reasons. One, to allow the applicant time to submit a compliance report, report as was required by condition number five. And to allow the applicant time to respond to condition number seven relating to construction activities associated with the permit.

So on January 5th of this year, the applicant submitted a compliance report pursuant to condition number five, addressing the ten County Special Use Permit conditions. Also included in the compliance report was background information on the previous County Special Use Permit for the site.

I do want to make note that although the report was submitted on January 5th, there was discussions ongoing from October when you deferred the matter. We, the applicant started discussing with us what exactly was needed. And between October up to January, we went back and forth and finally in January, we received their compliance report.

With regard to condition number seven, the applicant addressed construction of the project regarding installation of a backup generator, and two things that is, is worthy to note. Back in October of 2016, and there is documentation in the staff report, we received a letter from the applicant submitting a revised plan indicating that they did not wish to pursue installation of the backup generator. The Department responded to that on December 13th, 2016, approving the final site plan modification, which removed the proposed backup generator. And our letter to them stated that the applicant will continue to operate the existing telecommunications facility as permitted by the County Special Use Permit approval.

So our additional analysis based on our report is that we reviewed the compliance report. We find it to be acceptable. We concur with the applicant that the project was constructed as represented, and that is acknowledged in the points I just mentioned earlier where they did let us know back in October 2016 they were not going to do the backup generator. We acknowledged that with the letter and further acknowledged that they would continue, as I mentioned, in this slide here, they would continue to operate the existing telecommunications facility as permitted by the approval.

I do also want to point out that we did, the Department did receive testimony dated November 3rd, 2021, from Deborah Green, Dr. Deborah Green, and Leilani forwarded that letter to you and emailed to you. And then finally, the Department continues to recommend approval of

the ten year time extension and amendment request pursuant to amended permit conditions outlined in the October 20th, 2021 staff report.

So that concludes my presentation. I'll stop sharing screen for now. And I believe the applicant also has a short presentation to make to you, Chair.

Ms. Preza: Thank you. And that was a great presentation. And the applicant I see, Elizabeth, I think, are you presenting?

Ms. Elizabeth Songvilay: Yes, I am. And if Bryce could, would you mind sharing the power point presentation? Great. Thank you. Good evening, Commissioners. Thank you for having us back today before you. Again, my name is Elizabeth Songvilay, and I am with AT&T External Affairs. With me again is Bryce Novak, who is with J5 Infrastructure and they handle our site acquisition across the State. And we are here today to continue discussion for AT&T's request to extend its permit for its Manele Bay site. And thank you Ann for the overview. I am hoping to elaborate on the items touched upon. And I also just wanted to convey our apologies for any confusion last time. As noted, we did submit a supplemental submission and part of our presentation will be going over additional information in response to questions and concerns raised in the last meeting, including specific conditions.

So the first two slides here, this is just our site. Again, this is from our last presentation. Just to remind everyone where the site is. So this is an aerial view of the site overlooking the entire area of the island. Next slide.

And then here is basically the water treatment facility, I believe. And then there is an area with a number of wireless facilities. And then in the red box is the AT&T compound, and that is the site we are discussing today. Next slide.

So we just thought we would start with the history of the site. So as Ann mentioned in June 2016, AT&T filed for a new CUP for an existing AT&T site, our Manele Bay site, to take over the permit. And then in August 2016 following Lanai Planning Commission meeting, AT&T was issued CUP 2016/0001 for the Manele Bay site to continue operations and to add a power generator. Next slide, please.

And since I mentioned the power generator, I thought it made sense to just go ahead and discuss conditions six and seven. We listed them here for you. But as, as Ann mentioned, there were letters exchanged between AT&T and the Department to modify the 2016 permit to no longer include the power generator, which just leaves continuing to operate the facility. And I know questions were raised last time about whether there were any upgrades or modifications made to the site since. And we confirmed, looking back, that no, no modifications have been done since or during the 2016 CUP term. And I also just wanted to note I am not sure why plans on the generator, power generator changed in 2016, but I can assure that it is unlikely to change. This time the team handling the installation hopefully of the power generator is watching the permit extension closely. They're really eager to submit

for a building permit. And as I mentioned last time, AT&T has the First Net contract, basically a federal contract to build and maintain the first nationwide public safety broadband network. And with that contract, there is a huge priority to harden the network in the case of disasters or power outages. So adding a power generator would allow this site to continue operating and providing wireless services, at least for a number of hours, while hopefully the power, any power outage issues are addressed. Okay, next slide.

And Ann touched upon this too that we did file our application and FedEx the paperwork in May 2021. And we just wanted to note here that we have actually been in conversations with a County to make upgrades to this site as early as February 2021. And next slide.

And condition number five was also an issue that was raised. And again, I know Ann touched upon this. Just quickly noting that we did as Ann said worked with the Department right away to compile our compliance report and supplemental information into one supplemental document which was filed on January 5th.

And I hope that has been helpful. We have also kept a number of slides from the last presentation just going over our plan. So I'll turn it over to Bryce to go over that.

Mr. Bryce Novak: Aloha Commissioners. This first site elevation, the top part, shows what the site currently looks like. It shows three, three poles with approximately six antennas mounted to them. And this is the proposed upgrade. Part of the upgrade is to add two new poles. Part of the reason for that is there's multiple antennas back together on these poles, which is causing interference and keeping the site from operating optimally. So we spaced that out, and this should allow the site to perform at its peak performance for 4G.

Here's kind of a site of the whole wireless, all the wireless carriers, I think, one's on here. The arrows point to the existing antennas. This is a photo of the two additional poles. The heights aren't increasing. The top of the antennas will remain at 21 feet. So a little bit, a little bit closer view of the existing site. Facing the site. And then we have some coverage map. This is the existing coverage map showing what LT coverage looks like with this site on air. As you can see it shoots down in the Manele Bay. Everything with green is good coverage and everything with the red is more marginal coverage. This is what the site coverage would look like for AT&T without this site on air.

And lastly, this kind of shows the data output for the site. As you can see, it's continually been going up since 2020 which is why we so desperately need to upgrade this site. There's a lot of demand in the site speed overload, and in desperate need of additional frequencies to help offload this demand.

And that's the end of our presentation. We'll be happy to take any questions you have.

Ms. Songvilay: Before that, I also just wanted too, if I can, just reiterate the purpose of the permit extension. Bryce did mention upgrades. It's also so that AT&T can, of course, continue

operating in the area to add significant capacity, including the First Net spectrum band, as well as, again, as I mentioned, add a power generator to keep the site running in the event of a power outage. And again, thank you for your time, and we are very happy to take any questions.

Ms. Preza: Thank you. And thanks for being available for questions. Commissioners, as you're thinking of those, if you have any, I'll open public testimony. If there's anyone, Leilani, who signed up to testify?

Ms. Ramoran-Quemado: Thank you Chair. No one signed up to testify.

Ms. Preza: Great. So I'll just open it up. If anyone is calling in via BlueJeans or via phone who would like to testify, you're welcome to do so now. If not, then I'll close public testimony and Commissioners, if you have questions for the applicant or any comments on this since we last seen it, we've, you know, asked for additional information. Yes, Lisa.

Ms. Grove: Do you know how the site fared during that record rainfall we had a few weeks ago where there was somewhere between nine and ten inches down there?

Ms. Songvilay: That's a good question. I do know about sites that went down. Manele Bay wasn't one of the ones that I was aware of, though, but I don't know for sure.

Ms. Grove: And if there is any erosion or other damage or anything like that down there, just out of curiosity.

Ms. Songvilay: Not that I know of. Bryce, are you aware of any erosion there?

Mr. Novak: No. But after this hearing, once the, we can -- we're going to send a -- a construction team will be heading to that island for a pre-con meeting as part of the building permit. So they'll be looking into any potential erosion issues and we'll fix it during the upgrade to a site that I discussed if there's any erosion that took place during the recent rains. But I am not aware of any erosion. We have not received any complaints from anyone about any damage done to the site since the rains came.

Ms. Preza: Thank you. Other questions? Sally?

Ms. Kaye: Yeah, I have, I have a couple of questions. One, my first is for Ann. Is she still here?

Ms. Cua: Yes, I am.

Ms. Kaye: Okay. I noticed that in the second supplementary packet dated January 19th, there was not an inclusion of the conditions from the Department, the recommendation and conditions. So I went back to the October 20th. I'm assuming that controls?

Ms. Cua: Yes. So what the Department normally does when we prepare a report for a Commission that has recommendations, if the matter gets deferred, we normally prepare an addendum report. The reason for that is we want to get you information that you, you asked for that you do not have. So that's what this, this updated, this supplemental report does, is it provides you that additional information. But -- and if there were proposed changes to the conditions, we would have noted that. So you're correct that the conditions are not in that report. And that's because they would, they, the conditions that we are recommending are in the original October 20th, 2021 report.

Ms. Kaye: Okay, great. All I wanted to point out was that you're missing a letter. Under project specific conditions, you have number seven, number eight, A, B, C, and then you go to E. So you're, you're -- that's all I wanted to point out was you need to just change. Because it looks like something's missing, and I went back and compared it to previous conditions and it just looks like it mis-lettered.

Ms. Cua: Okay. Thank you. I'm, again, I'm . . . (inaudible) . . . so that's not something I caught, and I appreciate your good eye on that.

Ms. Kaye: Yeah. I just didn't want it to be incomplete. And then I have a question for the applicant and that I'm not hearing much talk about whether the upgrades that you're considering still includes 5G.

Ms. Songvilay: Yes, it does.

Ms. Kaye: Okay.

Ms. Songvilay: On the 850 band.

Ms. Kaye: The 850 band, okay. And I know everyone probably is very aware of the controversy now between the aeronautics and the interference that is being suggested . . . (inaudible) . . . about that?

Ms. Songvilay: Sure. So in Hawaii, so a lot of the concerns are regarding 5G deployment on the C-Band spectrum. And in Hawaii, AT&T actually does not have C-Band and we don't have any plans to deploy 5G on C-Band. The reason for that is during the FCC auction of the C-Band nationwide, Hawaii, Alaska and US territory C-Band in those areas were not included in that auction. And so we don't have C-Band in Hawaii. And the FAA also published a list of airports that are supposed to have 5G buffer zones. And since we don't have C-Band anyway, no airports in Hawaii are included on that list.

Ms. Kaye: Okay. That's good to know because I know the airport here is, I think, about three nautical miles from your site. But the helipad that's down at Manele is well within a mile of it. And I was just wondering if you are going, or the landowner, is aware of your application. It's

not our package, but they clearly signed off on this. So there is nothing to be concerned about in terms of once that is deployed that it would interfere with any kind of helicopter landing.

Ms. Songvilay: It shouldn't. Yeah, 5G on 850 band has been deployed across our State already; quite a bit on Oahu as well. And so no issues that we've had.

Ms. Kaye: Okay. And then I wanted to because there was some confusion between the three applications and a transfer of ownership between the site, am I to understand that you folks no longer control or do you still control the facility that's at Koele.

Ms. Songvilay: So we have facilities -- we provide AT&T service there, but we no longer control it. That is controlled, that is owned and managed by Crown Castle.

Ms. Kaye: Okay, thank you.

Ms. Songvilay: Thank you.

Ms. Preza: Great. Other commissioners, any questions or comments? If there's no further discussion, we do have some options before us to defer once again, to approve with no conditions, to approve with, or to deny. So if anyone would like to make a motion or we can discuss. Oh, Ann, sorry, were you going to read the options? So sorry.

Ms. Cua: Yes. All right. So now we go back to the October 20th, 2021 report where the Department provided conclusions of law. Basically the -- we're indicating that the application does comply now with the additional information with the applicable standards for issuance of a County Special Use Permit. And our recommendations --. I'm not sure how it normally goes with you. Does the planner go over every single condition or do we just kind, I think, summarize? How --

Ms. Preza: I think summarize is okay. Yeah, sorry, I kind of jumped the gun and we can just move, but yeah.

Ms. Cua: No, I'm sorry. I'm not, I'm not as familiar with your protocol. I know I've been before you a couple of times, but I don't do it all the time, so I don't know if anything has changed. So I'll just do my best. Well, first of all, we are recommending approval and our standard conditions, number one through six are listed on pages 12 and 13. Condition number one is the main one that I would like to read. That the County Special Use Permit shall be valid until August 31st, 2031 subject to extension by the Planning Director upon a timely request for extension filed within 90 days prior to its expiration. The Director may request a public hearing be held by the Lanai Planning Commission on the time extension. Our other conditions are all standard language.

Condition number seven under project conditions; that construction of the project shall be completed by August 31st, 2031. Failure to complete construction of this project by the

construction deadline will automatically terminate this permit. If necessary, an amendment to this construction deadline can be requested within 90 days prior to the construction deadline. The Planning Director shall review and approve this request, but may forward the request to the Commission.

Condition number eight talks basically -- and I won't go through every, every, every item -- but it talks about comments that we received from the Police Department and their request for us to include these conditions. And I believe I saw their representative on the meeting, Walt Pacheco. But anyway, we, we normally, for any cell tower, incorporate the language that the Police Department has requested for us. So that would be in condition eight, A, B, C, D and E.

And then finally, condition nine, that in event historic remains are inadvertently encountered during construction, all work shall cease in the immediate vicinity of the find and the find protected from further damage. The contractor shall immediately notify DLNR, Historic Preservation Division who will assess the significance of the find and recommend mitigation measures if necessary.

In consideration of the foregoing, the Department recommends that the Lanai Planning Commission adopt the Planning Department's staff report and recommendation report prepared for the October 20th, 2021 meeting as well as the Department's addendum report prepared for the January 19th, 2022 meeting. And sorry, and authorized the Director of Planning to transmit these findings, conclusions of law, and decision and order on behalf of the Commission.

Ms. Preza: Thank you, Ann. Sorry, I just have a quick, like, it's not even a grammatical thing, but it's not a major comment. But on the second condition, maybe removing the apostrophe from Lanai, just to standardize against the rest of how Lanai is written. Sorry, as you were reading, I just I saw it. But anyway, that's non substantive, so great. So Commissioners we can discuss further or I'll entertain a motion if anyone would like to make one.

Ms. Grove: Chair, did we -- just out of curiosity, I thought I was under the impression I'm not suggesting this is where I stand on the issue, but that we also had an option to say to approve for a shorter time frame like five years as opposed to ten, or is that not accurate?

Ms. Kaye: So that was going to be my recommendation, given the fact that this will probably be the first 5G installation, and that there's been complainers, there's been a lot of chatter about it. I'd rather see us keep a shorter. I was going to recommend five, which would mean a change to 2026 for project specific conditions four, and also that date for the standard condition number one.

I also don't understand why it can't come back to us. I would rather see it stay with the Planning Commission and have it come back for review in five years with us.

Ms. Cua: Chair, would you like me to comment?

Ms. Preza: Yes, please.

Ms. Cua: Okay. So it is totally up to the Commission. It is -- this is just the Department's recommendation. So you can accept the recommendation, not accept the recommendation, or modify the recommendation. So if you want to change the time, that's totally your prerogative. I can also explain a little bit more about condition number one, and it's actually the Department, not the applicant, requesting the change in the language. And we've done this with other Commissions for all use permits, changing it from the Commission to, to the Director. Largely, largely because most of the Commissions have a lot of items to deal with, a lot. And we're just trying to streamline the process and relieve boards and commissions of things that we feel the Department can do. But if you notice in the condition we can at any time send it to the Commission. So this is pretty typical of what the Department has done with Maui Planning Commission quite a bit. And I've been with the Department almost, almost 40 years, and we -- all our, all our conditions before were written for them to go back to the Planning Commission. And the commissions weren't as busy 40 years ago, 30 years ago, and 20 years ago. But, man, they sure are busy now. And so again, this is part of the reason we did that, but it's totally up to you. If, you know, if some of you feel it's okay, some feel not, we just take the vote and see how it goes. This is just the Department's recommendation to be consistent with what we do with other boards and commissions.

Ms. Preza: Thank you for clarifying. Maybe I could ask Ann or applicant, I think this was a question before about, you know, the ten year permit. I mean, is this, are you, are you folks expecting it to be done sooner, like if I've heard from my fellow commissioners, Lisa and Sally, that they would prefer to be five years, would that be an issue?

Ms. Songvilay: I, I would say I'm -- I think we agree with Ann that it is completely up to you. I will note that it is a bit unusual for permits just generally in Hawaii, maybe not on Maui, but or, in Maui County, but in Hawaii, we, we don't usually have terms. But, you know, up to the Commission. Totally understand if you do want us to come back.

Ms. Preza: Thank you. So Commissioners, how do you feel? What do you think? Should --

Ms. Kaye: I know I appreciate Ann's concern for us, but we're not Maui, and we're not the Maui Planning Commission. And given that this is a new usage, I feel very strongly that we should limit it to five years and ask it to come back to us.

Ms. Grove: And if it doesn't come back to us, I think at the very least we should -- it said that I think the public hearings are at the discretion of the Planning Commission. For a lot of people, 5G is an emotional issue and one in which people on this island have expressed a lot of opinions in the past. At the very least, I think we should say that we that we would require a public hearing. But I agree with Sally.

Ms. Preza: Thank you. Other Commissioners?

Ms. Cua: Can I comment Chair?

Ms. Preza: Yes.

Ms. Cua: So --. So maybe this is just a distinction. So the wording public hearing has a different meaning than just a public meeting. Normally for permits that go before boards and commissions for the first time that require a public hearing. When they come in for just a time extension, we put it on the agenda as a communication item. So it's not a public hearing per say, where they have to do notice of people within 500 feet. So again, that's normally how items for just a time extension come on your agenda. So I just want to make the note of that.

Ms. Grove: Thank you.

Ms. Preza: Thank you, Ann. Other commissioners, any thoughts? Do other Commissioners feel strongly about if it should come back to the Commission and in what time frame.

Ms. Trevino: I'm on the same page as the come back to the Commission in five years. And there was a comment made by someone in the chat, I think it was Joy in regards to the erosion or the, the heavy rains, and she --. I don't know if that's something you guys want to look at. Because someone I think had asked about what happened with all the rain. And so --

Ms. Preza: I see. She said that there was erosion in the area, but I don't know about the site.

Ms. Trevino: Yeah, I'm in agreement. I have the same feeling as Sally Kaye.

Ms. Preza: Thank you. Other commissioners or --? If there's no further discussion we should -- someone should make a motion so we can move forward.

Ms. Kaye: I can make a motion that we accept the Maui Planning Department's recommendation for approval of the County Special Use Permit with the change that the permit should be valid until August 31st, 2026 under standard condition. And that project specific condition number seven should be changed to construction would be completed by August 31st, 2026. And I'm sorry, back to standard condition, that the subject of extension by the Planning Commission.

Ms. Preza: Thank you. Is there a second?

Mr. J. de la Cruz: I second. This is John.

Ms. Preza: Okay. I'll take John's second. Is there any further discussion on this agenda item? If not, then we'll take a vote. I believe I can see all Commissioners. So if you say yes, please raise your hand.

Ms. Cua: Can I, can I just add something real quick?

Ms. Preza: Go ahead.

Ms. Cua: I'm sorry. So, just on condition number seven, I want to clarify. We're going to change the August 31st, 2026. But then the last sentence where it says the Planning Director shall review and approve this request but may forward said requested to the Lanai Planning Commission for action. I think we can, we can delete that sentence because we have on condition number one, the commission -- where we took out Director and we're saying Commission, the Commission may request --excuse me -- subject to extension by the Lanai Planning Commission. So I, I think we can delete that last sentence. I don't know if the Deputy Director, the Deputy Director wants to chime in on that.

Mr. Jordan Hart: No, I have nothing to add.

Ms. Preza: Thank you. Okay, so I'm not sure if we need to go back to the exact --. So can we just --. And Richelle, you should advise me on this, but include, just include that in what we're proposing to approve. Is that okay, Richelle, or do we need to do a sub-vote for that?

Ms. Thomson: I think as long as there's concurrence about that removal of that sentence from that condition, I think that it would be fine.

Ms. Preza: Okay. Thank you, Richelle. So just with that extra deletion of the sentence included, all those in favor, please raise your hand. One, two, three, four, five . . . (inaudible) . . . Okay. And any abstentions? Any opposed? So that passes unanimously. Thank you very much. And thank you to the applicant and Ann for your time and your work to present this to us and help us have the good information so we could make a decision. Thank you.

It was moved by Ms. S. Kaye, seconded by Mr. J. de la Cruz, then unanimously

VOTED: to approve the County Special Use Permit time-extension with the amendments as discussed.

(Assenting: J. de la Cruz, Z. de la Cruz, E. Grove, S. Kaye, S. Menze, N. Ropa, S. Samonte, C. Trevino)

D. DIRECTOR'S REPORT

- 1. American Planning Association Hawaii Chapter's December 14, 2021 letter -- complimentary Chapter-only membership to members of the planning related boards and commissions at the Department of Planning, County of Maui.**

Ms. Preza: Great. So with that, we'll move on to D, Directors Reports. So the first one is the American Planning Association of Hawaii Chapters, December 14th letter, which I believe

was emailed to us. I don't know if there's any comments on that or that's just, you know, saying that that was communicated.

Mr. Hart: Yes, Chair, basically, there's a, there's an opportunity for a membership participation by the members of the commission if you're interested in pursuing that. There's a letter here you can reach out to the Department to take advantage of that.

2. Discussion of updated requirements related to the Sunshine Law and Public Meetings for Boards and Commissions.

Ms. Preza: Thank you. Are there any questions on that, Commissioners? If not, then we'll move on to D2, which is discussion of updated requirements relating to the Sunshine Law and public meetings for boards and commissions. And I believe Richelle is going to speak on that and with an additional comment about the Charter Commission that might affect us.

Ms. Thomson: Thank you, Chair. And good evening, everybody. It's nice to see everyone. And so we went over, I don't know if it was the last meeting or the one before, on the changes that were anticipated to the Sunshine Law. Those have since been put on hold by Governor Ige. And so all of the Counties, you know, given the current situation with Covid, really wanted the opportunity to continue meeting virtually without that requirement of having the one public meeting location was going to be, you know, staffed and in person. So, you know, the Governor agreed and went ahead and extended the emergency proclamation related to the Sunshine Law and that one provision through the end of February. So at this time, you know, we know it will go through February, and he may extend it longer just depending on how things are going. Please excuse the ducks. It's feeding time and they haven't gotten fed, so there are very loud. That is, that's the main, the main update with the Sunshine Law.

The other thing that is, is a little bit cumbersome to keep track of. But when you're taking your votes, if it's not unanimous, then you need to do a roll call vote. It's just a nuance in the, in the new law. That's it on the Sunshine Law.

And I asked for your Chair's permission to just give a brief update on the Charter Commission, which I also staff. They are, I would say, at the end of their first phase, which is, you know, coming up with going through the whole process of going through the Charter and coming up with amendments. They received about 150 amendments. They called them down to 85, which is still a lot. Their final -- not their final report -- their draft report was published just today and it will be posted. It's available publicly. It will be posted online tomorrow, though, and we're just needing to work with IT on that.

The reason I wanted to bring up in this context of the Lanai Planning Commission, though, is one of the proposals is to establish a new Department of Hearings Officers. And the requirement would be that all contested cases that go to a planning commission and also some other boards and commissions, but specifically the planning commissions, would be heard by these hearings officers. There's going to be at least two full-time hearings officers,

but there may be more. What that would mean in terms of, of this Commission is that instead of being the body that hears the contested cases -- tonight's application regarding the cell tower, that was a contested case. It's a single party contested case, but it's, you know, you are the final decision maker on permits that require a public hearing, and you issue a decision in order.

So what would happen under the hearings officer context is that the Lanai Planning Commission would still receive the application. But in terms of hearing from the applicant, if it, you know, if there was an intervention, that whole process would be overseen and managed by the hearings officer. The hearings officer would put together a report and recommendation, and the hearings officer would come to you and present the report. And then the Lanai Planning Commission or another planning commission could adopt that report. They could modify it. They could reopen, you know, the hearing. You still would be the final decision making authority. But it would basically expand that portion in the middle. You know, there are, I think, logistic reasons, logistical issues that, you know, Jordan can probably speak to. But in terms of the legal issues, it would complicate the record potentially. It would also increase the timeline, certainly, for how long it takes permit applications and things to move through the process, you know. And I know that has been a criticism, you know, that it takes too long, you know, to get permit or to be heard before the Commission.

So I wanted to just really draw your attention to that hearings officer proposal and also let you know that, that like I said, the, the entire report, which contains all of the, the 85 proposals which have been kind of condensed into 40 topic areas. So 40 current ballot questions. The commission is likely to cull those down a little bit over the course of the next month. And their final report to the County Council is in the middle of February. So by the middle of February they have to have all of their ballot amendments in final form presented to Council. Council has the opportunity to offer their own modification or alternative language. But that then gets sent back to the Charter Commission for some review.

So if you are interested in, you know, kind of following that process along, there are public hearings scheduled for the next week, the 26th and 27th at five o'clock. Those are the, the public hearing on all of the amendments so that's the public's opportunity to come out and, you know, give their opinions and, and comment on all the proposals. But I would, you know, since you're not only Commissioners, but you're also, you know, residents and voters, it's a very good opportunity to, to understand, you know, what's been proposed and how it might affect this Commission, certainly, but, you know, other areas of the county government. And, and also, you know, as I always say this, if you do have any questions and you need any information on, on this or other topics, feel free to reach out to me. Tomorrow when it's published, I'll send it to Leilani so that she can distribute the report to you.

Ms. Preza: Thanks so much, Richelle, we appreciate it.

Ms. Thomson: Great. Thanks.

Ms. Preza: Great. Any questions on that? Yes, Lisa.

Ms. Grove: This is very theoretical because I realize you guys are in the process of creating these, or crafting them, or just finished with that. But going back the hearings officer piece, is that just in the planning space or is it across the County? What sort of qualifications or experience or subject area expertise would this person be required to have? And I apologize if the answer is I have no idea because we're still working on it.

Ms. Thomson: Those are, those are excellent questions, and I think very important questions to, to bring up. Currently the hearings officers are required to be licensed attorneys. So, you know, we're kind of calling it the attorneys right to work act because there's going to be quite a bit of work at any rate. So they are -- that is the only current qualification is that they are licensed and they have to be licensed for a period of time and all. You know, I'm certain that, you know, they would be chosen based on, and hopefully their familiarity with contested case procedures and administrative law. But, you know, that would be, that's something that's still kind of is going to be interesting to see how this works, if it's passed out by the voters. I think I missed the earlier part of your question.

Ms. Grove: Nope. You got it. Thank you so much.

Ms. Thomson: Sure.

Ms. Grove: Thank you.

Ms. Kaye: Richelle, I have a question. Who would do the hiring?

Ms. Thomson: The hiring of the -- I think that is one of the things that we need to, to iron out. The hearings officers -- I don't have the proposal up in front of me right now -- but I believe that there is another department that is, or another board, that is proposed to be created called the Independent Selection Committee Commission. There's also an Independent Nomination Board. And I can't remember which one of those two entities would be the entity that would select or nominate the hearings officer, hearings officers, and then it would go to the Mayor from that list. And there's a bunch of default provisions. You know, if the Mayor doesn't act in time or the Council doesn't act in time, that kind of thing. But I can, I, I'll get that to you, Commissioner Kaye. It is in the proposal so I can, I can call . . . (inaudible) . . .

Ms. Kaye: That's okay.

Ms. Thomson: . . . (inaudible) . . . and just send it to you directly.

Ms. Kaye: I'm sorry, I didn't mean to make work for you. I just, it just when I, if we have questions I thought, oh my God, that's right, who gets to decide who these people are.

Ms. Thomson: Yeah, that's a good question. Very important.

Ms. Preza: Thank you. Any other questions? If not, thanks so much, Richelle, for keeping us up to date with that.

Mr. Hart: I did want to --

Ms. Preza: Oh, yes.

Mr. Hart: -- to say one thing. I think that there was a question on whether or not this was land use only or across the County. I'm not sure if that was answered, but . . . (inaudible) . . .

Ms. Thomson: Thank you. That was a great question that I missed. Yeah. So it is across the County. Currently, I believe there are just the Board of Property Tax, the Property Tax Review Board, and the Board of Ethics are excluded currently. And I know that there are other boards and commissions that are requesting to be excluded, such as the Board of Water Supply.

**3. Planning Department's STRH/TVR enforcement process on Lanai
(Requested by Commissioner Sally Kaye at the December 15, 2021
meeting.)**

Ms. Preza: Thank you. Thanks Jordan for catching that. Okay. Great. We'll move on to D.3. which is Planning Department's STRH/TVR enforcement process on the night, which was just something requested by Sally at the last meeting, and just so we are aware of what process should be, you know, or that exist for the enforcement of these transient accommodations.

Mr. Hart: So Chair, I prepared a power point presentation, as per usual.

Ms. Preza: Thank you.

Mr. Hart: Anyway, I'll be able to share screen if you want to start with that. And I'll try to go fast and just please break in and slow me down if it's not. But I don't want to drone on a power point with you at this point. So I'll just get started with that.

Ms. Preza: Thank you.

Mr. Hart: Is that visible?

Ms. Preza: Yes. It's in the, it's in the presenter view now. I don't know if you care. I think it's fine. We can go see the next, we can see the next slide, but --

Mr. Hart: Interesting.

Ms. Preza: It's not really a problem for me, but --

Mr. Hart: No, I'll stop doing that. This is -- I don't know why this started. And I actually never use this, this setting, although I use power point a lot. So I don't know how to . . . (inaudible)
. . .

Ms. Preza: I think a lot of people have issues with that. I've been in other meetings where it does this.

Mr. Hart: For some reason it appears to be only in a, in a . . . (inaudible) . . .

Ms. Preza: Yeah, this is okay. I mean, we can see the next slide, but it's fine.

Mr. Hart: All right. So anyway, I'm going, I'm just -- sorry. So anyway, these, these is this authority slide. Are you seeing that now, the authority slide?

Ms. Preza: Yes.

Mr. Hart: Okay. So these are the various code and rule sections that that we have the authority to enforce under. And I'm just putting that up for documentation purposes. But the purpose of this presentation relates to transient vacation rentals. And so that revolves around the duration of stay. And so that is essentially long term is greater than six months and that's just standard residential use. And then everything else, there is a, there's a bunch of different definitions in our definition section of Title 19. But there's bed and breakfast home, hotel, motel, short term rental home, transient, transients, transient vacation rental or use. And those are all less than 180 days. And even though there's all these various names for them, it's really comes down to the use of 180 days or less, which is either you have some method of authorization for that or you do not. And if you do not, then you're talking about enforcement.

So anyway, in 2018, the County Charter was changed to significantly increase the penalties for transient violations. And it's basically starts with \$20,000 and \$10,000 a day for continuing, so it's pretty serious. That was supported by a County Code ordinance in 2019, and then Administrative Rules, by the, for the Planning Department to implement the Charter and the County Code in 2019. So our approach to, to regulating land uses that these are civil issues. They're not inherently criminal issues. And what we're seeking is compliance. We're not seeking punishment. So in order to initiate an investigation, basically enforcement is complaint driven. We do have a contractor that that searches for online ads for TVR. But essentially, overall, the enforcement process in the County of Maui is complaint driven. Complaints become Requests for Services (RFS) or Request for Service. And I'll go through the process of establishing that.

In order to facilitate the pursuit of a complaint, we need the correct location, clear information, specifically what is the violation. The name of the complainant. Generally we do not follow up on anonymous complaints, so we need the name of a complainant. And the complaint can be disclosed to the, the alleged violator on their request. No other information except for the

name of the complainant is disclosed. If you did file an RFS, the most direct and convenient way for you to follow up on it with the County is to have your RFS number saved.

So on anonymous complaints. In 2011, there was a policy established that that this anonymous process would no longer be done. There are exceptions, however, for the Planning Department, and that is health and safety concerns, and TVR violations. So these are the two scenarios where the Department will receive and act on anonymous complaints.

In order to file an RFS, that is to initiate a land use complaint, it could be mailed, emailed or faxed to the Planning Department. You could call it in. And our, our address and phone number are available on the website. Or you could enter it electronically through our website. Again, the considerations is to know the location, be specific and concise, and then the, the final thing is you may provide evidence to the Department if you have knowledge of or even like, you know, nowadays with smartphones, have a photograph of the issue of concern, you can just email that to the inspector. If you're trying to initiate a complaint yourself using the county system, you can go to Maui County dot gov. There's a community tab here circled in red. When you get on to the community tab, there's an option for request for service. You select that and you are taken to Kiva Net where you can enter a request entry. At that point, you basically enter the information, your own information, including your email address, where you can get an email confirmation that you're your submittal has been registered with your RFS number, and then the location.

So for our process, when we receive a complaint and are acting on it, we begin with fact gathering and we process any evidence we may have received. The County -- this is in regard to TVR -- the County has a vendor, a host compliance that constantly screens online advertisements for violations and they check that. They check our list of permitted properties against ads that are out there to try and determine which ones are not permitted. So we check any results we may have there. We check Airbnb, VRBO, and other websites. But those are -- our vendor plus those two names are the primary sources of material because they cover so many ads. And then we check on other information.

If there is a suspected violation, a notice of warning is prepared. The notice of a warning identifies the violation, provides time to correct it, and notes potential fines. If the notice of violation is not responded to or the violation is not addressed, then it proceeds to the notice of -- I'm sorry -- if the notice of warning is not acted on, it proceeds to a notice of violation. And that's the implementation of fines. You know, we really do, we need to make one hundred percent sure of the alleged violation before we proceed to notice a violation.

Here are examples of a notice of warning on the left side, which is a letter kind of outlining the issues of concern, a timeline, potential violations, or potential fines, and then a violation which is just a service of, of a specific version the department has concluded there's a violation. Here's a specific fines. Here is a schedule. Here are your options for appeal. Appeal must be filed within 30 days. There's an option to resolve the violation with the Department. That

includes the potential negotiation of fines. And if properly filed, there's an option for an appeal with the BVA.

That's essentially how it goes. Obviously, every situation is unique, but that's the overall process that we go through. I'm going to stop sharing with that. And I'm sure if there's any questions or requests for clarification.

Ms. Preza: Thanks so much for preparing that presentation. It was very helpful, I think. I, I just, as a refresher and just, just so we're all on the same page. Could you just clarify the difference between an STRH and TVR?

Mr. Hart: So a short-term rental home, okay so that's a --. A T --. A short-term rental home is a single family residence that's authorized to do short-term rentals with the issuance of a short-term rental home permit, which are typically, well, now all reviewed by the Lanai Planning Commission. Transient Vacation Rental is, is defined as a rental mechanism that allows short-term rental that excludes B&Bs and STRHs. And the unfortunate issue is that because of the contentiousness, contentiousness and evolution of this issue, we have a lot of redundant, overlapping and confusing definitions. That's why I listed all of those definitions below. And those are all the various ways that TVR is described. But in my personal opinion and --. Let me say this. We're going through at Title 19 rewrite that will ideally clean up all of these kinds of issues because it's not the only instance of this kind of situation. But anyway, the underlying concept is either you're greater than 180 days or you're less than a 180 days. Less than 180 days is transient, and above 180 days is normal residential use. And so even though there's various ways of describing that and various permit mechanisms, whether it be a conditional permit or even some special use permits or short term rental home permits, B&B permits, there's hotel zoning. And then there's even existing nonconforming uses that that, you know, they may have been operating on a transient basis before the regulation that defined the difference between long and short term rental entered into the County. All of these various ways of establishing permitted use, it's just, is it 180 days or less, or is 180 days or greater, and is that permitted or not permitted? But there's various ways to describe it as far as the language.

Ms. Preza: Thanks Jordan. Yeah, I hope, I hope it does get cleaned up. And I was asking especially because you said that anonymous tips are allowed if there's a TVR violation. So I guess I'm just wondering --

Mr. Hart: That -- so what I meant to say by that is if, if it involves transient --. If it involves a violation of, of a permitted use, renting less than 180 days, we act on those.

Ms. Preza: I see. So any violation, like whether it's STRH or not, just any transient. So less 180 days --

Mr. Hart: Right. Because there's also the definition of transient. Like, that's --. So the definition of transient establishes 180 days. But transient vacation rental is the one that excludes STRH

and B&B. It's, it's really convoluted when you --. It's suffice to say the transient is relating to less than 180 days, and that's really the short term use. And we will do a follow up, follow up on anonymous complaints on any of those that we receive.

Ms. Preza: I see. Thank you. And thanks for putting together the presentation. Sally, since you requested it, do you feel like that was --?

Ms. Kaye: That was great. Yeah, that was great. I just unmuted myself because I wanted to ask Jordan. Thank you very, very much, Jordan. That was way more than I expected. Can we have access to those slides?

Mr. Hart: Sure. Yeah, I'll send him to Leilani right now.

Ms. Kaye: Oh, that would be fabulous. Yeah, because I think the issue, again, we're so different, we're so small, we know each other. And you know, three houses down from me there's probably a violation. Do I want to call and name myself? Probably not. I mean this is just hypothetical. I'm not saying that's the case. But that's what happens here. I had heard from people and this is, this is actually some down at Manele that there are some off the books rentals going on from way under the 180 days, and it's, you're not going to find them online. It's all word of mouth. And so people don't really know how --. Your guys aren't going to find those things on this island, and not that many people probably advertise. But the ones that I've heard from don't know what to do about it. So this will be really helpful to pass on. I don't know if anybody was on the call tonight, but just having those the slides would be really helpful. So thank you very much.

Ms. Preza: Yeah, thank you, Jordan. And I think especially the slides like showing where people can go to file a request, I think that's very helpful as well. Great. Any other questions or --?

Mr. Hart: Yeah. On a final comment on that, I do want to say that enforcement of TVR is we are really -- how do we put this? Due to the severity of fines, you could imagine that people who are knowingly conducting illegal transient vacation rentals or illegal short term rentals go to pretty good lengths. Either they're totally oblivious and they're about to get a rude awakening or they really go to significant lengths to try to hide what they're doing. And that includes, you know, things like not showing the exterior of their building in their advertisements or showing different buildings and various other things, coaching their potential tenants on, you know, not to talk to people about what they're doing or how they're staying there. So it gets pretty complicated. So, you know, basically, you know, if a resident is aware of these things, we do accept anonymous complaints. And, you know, evidence is helpful, too, because, you know, we haven't been getting to the island of Lanai as much as we would like with our inspection. We hope to, you know, increase that after Covid wraps up. But even if you were to try and like, for instance, a zoning inspector try to stake out a TVR operation, they could be out there all day to hope that they catch somebody coming back in. And then that person would talk to them, explain to them what they're doing there. It's, it's, it's, it's a lot more

productive to rely on the internet and advertising sources and then follow up with on the ground inspection. But community engagement is really appreciated and necessary to be successful at it.

4. Update from Pulama Lanai whether the increase of single-family water potable usage at Manele from Q1 and Q2 have been switched to non-potable water. (Requested by Commissioner Lisa Grove at the November 17, 2021 meeting).

Ms. Preza: Thank you. And thanks again so much for the presentation. Any other questions or comments? If not, we'll forward to getting those slides. I think that was super helpful. I will move on to D.4., which is an update from Pulama Lanai whether the increase of single family water potable usage at the Manele from Q1 to Q2, or and Q2 have been switched to non-potable water, which was requested by Commissioner Grove at the November meeting. I believe that the applicant -- not the applicant, but a representative from Pulama Lanai is here.

Dr. Dancil: Mahalo. So I believe you have in front of you the letter that we sent to Deputy Director Hart regarding the increased water use. So we put together our response in Exhibit A. What we wanted to point out was that potable water for dust control is permitted. We do recognize that it's not the best use and have taken the following action. So we also want to know that the Manele water reports everything is aggregated. We can't specifically call out. You know, when we get the reports, each individual single family home, there's Privacy Acts, very similar to somebody who can't say, well, that, you know, meter uses X amount of electricity. So everything is aggregated and that's protected by the Public Utilities Commission. There's laws protecting privacy. So when everything is presented to you, it's grouped and aggregated together. We wanted to make note that we, Pulama, because we do have a private residence construction project in the area, we can control activities on that site. However, there are other single family home construction in the Manele Project District that is included in this report. So I just want to make note of that. So there's two things going to potable water use is permitted for dust control, and secondly, we're not the only construction activities.

What we have done since being aware, being made aware of the increased water use, is we decreased the watering by 50 percent, and we haven't received any complaints since then. However, the reason why we had implemented such a rigorous regime of dust control in the area is because there was anxiety amongst the neighbors and the community in the area about dust when construction first started.

We also looked at R-1 water in the area as a potential watering down source. And some of the things that we did learn is that we would have to obtain a permit from the Department of Health for that specific use and that we would then have to train all personnel. We also want to note that R-1 water may not be available. There's a limited supply of R-1 water, as you know, and it's already being used on island.

We've also investigated whether a water truck. So we would have to take the water from Manele all the up to Lanai City, and, you know, there are some issues there. Multiple trips throughout the day, going up and down.

The other thing that we looked at was the brackish water as a potential source, and we feel that for certain areas, that's not the best use because of the potential corrosive nature of brackish water. For example, certain structural matters, certain structural materials could be, you know, some of their integrity could be at risk, for example, rebar. So that's kind of a back burner and not -- you know, it could be used, but not on all construction areas. So those are the things that we, Pulama, took action on. And I'm here for questions and so is Joy.

Ms. Preza: Thank you. Thanks for the follow up on this. Commissioners, do you have any questions?

Ms. Grove: I just have a comment, which is I want to say thank you very much for all the thoughtful and work you put this. Thank you for the water reduction that you're pursuing and achieving. Thank you for letting us understand that you may have to increase the water and why. Thank you for letting us understand that obviously rebar and salt water are not good friends, and just the unwieldy nature of trying to use the trucks. So I apologize for making you do so much work, but I really appreciate how thorough it was presented and how thoughtful it was. So mahalo.

Ms. Preza: Thank you. Other comments, questions? Great. Thank you so much for the follow up and we'll --

Dr. Dancil: Not a problem. Thank you. Aloha.

5. Open Lanai Applications Report as distributed by the Planning Department with the January 19, 2022 agenda.

Ms. Preza: Thank you. We'll take -- we'll move on to D.5., which is Open Lanai Applications Report. Commissioners, are there are any questions on that, we get that every time we meet. If not, then D.6. is agenda items for our February meeting. Leilani, is there anything on that agenda right now?

6. Agenda Items for the February 16, 2022.

Ms. Ramoran-Quemado: Thank you, Chair. Yes, there will be one communication item. It's a five-year time-extension for a short term rental home.

Ms. Preza: So that's a communication, not a -- something we'll discuss?

Ms. Ramoran-Quemado: Yeah, a communication item.

E. NEXT REGULAR MEETING DATE: February 16, 2022

F. ADJOURNMENT

Ms. Preza: Okay. Thank you. Commissioners, anything that's pressing that you would like to be added to that agenda? Great. If not, then our next regular meeting date is February 16th, 2022, and hope you all have --. Oh, so we'll official adjourned at 6:37 p.m., and hope you all have a great evening.

There being no further discussion brought forward to the Commission, the meeting was adjourned at 6:37 p.m.

Respectfully submitted by,

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

RECORD OF ATTENDANCE

PRESENT:

John de la Cruz
Zane de la Cruz
Elisabeth Grove
Sally Kaye, Vice-Chair
Sherry Menze
Shelly Preza, Chair
Natalie Ropa
Shirley Samonte
Chelsea Trevino

OTHERS:

Jordan Hart, Deputy Director, Planning Department
Ann Cua, Staff Planner
Kurt Wollenhaupt, Staff Planner
Richelle Thomson, First Deputy, Department of Corporation Counsel