

**MOLOKAI PLANNING COMMISSION
REGULAR MINUTES
AUGUST 14, 2024**

A. CALL TO ORDER AND ROLL CALL

The regular meeting of the Molokai Planning Commission was called to order by Chairperson Zhantell Lindo at 11:09 a.m., on Wednesday, August 14, 2024, at the Department of Planning's Molokai Office, 100 Ainoa Street, Kaunakakai, Molokai, Hawaii 96748 and via WebEx Meeting No.: **2661 220 7905**.

Ms. Lindo: Okay, thanks everybody. Looks like we got everybody here. Aloha Mai Kakou, my name is Zhantell Dudoit Lindo, and I'm the Chair of the Moloka'i Planning Commission. E kala mai, for being a little bit tardy, uh technical difficulties. But really appreciate our Commissioners, our community, and our staff for supporting us in these efforts to Malama Moloka'i. At this time, I would like to ask everyone participating to please silence your phones, and other noise making devices. Please keep your camera off except with the exception of the Commissioners. Please keep your cameras off, and yourself muted throughout the course of the meeting, and wait until you're called on. For Commissioners to ensure that we abide by the Sunshine Law, please keep your cameras on at all times. And I'll just do a quick roll call for the record so that we can officially conduct business. Commissioner John Russell Phifer?

Mr. Phifer: Here.

Ms. Lindo: Can you also let us know where you are? And if anybody else stay with you?

Mr. Phifer: I stay at home by myself.

Ms. Lindo: Thank you. Commissioner Shannon, ah Vice Chair Kaahanui?

Mr. Kaahanui: Hello everyone, I'm at mom and dads by myself now in a room.

Ms. Lindo: Commissioner Keomailani Hanapi Hirata?

Ms. Hanapi Hirata: Waved hello (inaudible)

Ms. Lindo: Um, Commissioner Debbie Kelly? Debra Kelly?

Ms. Kelly: I'm here. In my office by myself.

Ms. Lindo: Commissioner Kananikala Bishaw Juario?

Ms. Bishaw Juario: Good morning, I am in my office alone.

Ms. Lindo: Okay, and then I am Commissioner Zhantell Lindo, and I am in my office next to Commissioner Hanapi Hirata. Okay, I also wanna acknowledge our staff, our Deputy Director Ana, and then also Corporation Counsel, and make sure that they're on and ready for business.

Mr. Nelson: Morning everyone.

Ms. Lindo: Alright,

Ms. Thackerson: Ana is out of the office this week, so unfortunately, you are stuck with me today. Environmental Planning Supervisor, Candace Thackerson, thanks.

Ms. Lindo: Awesome, Candace Mahalo. Okay, just a few housekeeping notes. Again, please silence all of your noise, noise making devices, and cell phones. Keep your cameras off until you're asked to put them on. Please keep yourself on mute if you're not talking, so that we can ensure that we can hear everybody well. Uh, if you're participating from the community, you are able to do so in a variety of different ways. You can testify here online. The link is on our agenda and you can find that agenda at MauiCounty.gov under the Commissions page. You can also testify by calling in by telephone, and you can do so also in person at the physical location, which is the Department of Planning office at 100 Ainoa Street over here with, with our Planning Department people, or on Maui at Kalana O Maui. Okay, so let's see. Our first item up is a public, opening public testimony for any, any agenda item that the community would like to testify on. We do this at the beginning for those who cannot stay, and wait till the item is brought up. You have 3 min. to conclude your entire testimony on all of the agenda items, or you have the choice to wait until the item is called up, and then you will be able to have 3 min. on each agenda item. So, is there anybody from the community that would like to testify on any agenda item at this time? And if you want to, you can raise your hand, or type in the chat and our staff will record your name down, and we can call you and swear you in.

Ms. Nomura: Hi Chair, this is Shantel, I see no one wishing to testify online; as well as in person.

Ms. Lindo: Alright. Without any objections, I will now close public testimony for the beginning of the meeting.

PUBLIC TESTIMONY: NONE

B. WELCOME

1. Welcome new Deputy Corporation Counsel Andrew Nelson.

Ms. Lindo: Okay, our first item of business B.1 is to Welcome our new Corporation Counsel. Mr. Andrew Nelson. Nahulu has been assigned as the Department Corporation Counsel, so we'll no longer be our Commission Council, but we are happy to have Andrew Nelson. Andrew, if you wanna turn on your camera, and introduce yourself to everybody or say a few words.

Mr. Nelson: Thank you. Yes, my name is Andrew Nelson. I grew up in Pukalani. I attended U.H. Manoa for Law School. I have been living in Honolulu for about 14 years. After that working as an attorney, and then have moved back home to Maui about eight months ago, have been with Corporation Counsel since then. Thank you.

Ms. Lindo: Thank you. Thank you, Andrew. Commissioners, do you have anything that you'd like to say or welcome statement, anything that you would like to ask, Andrew at this time? Andrew, I would just like to welcome you to the Moloka'i Planning Commission, and, and we will pray for you. We're so happy that you took this on. I mean, I'm sure people were having coffee hour conversation going, what are you thinking, Andrew? But this is really a great Ohana to belong to, and so happy that you're one of the brave soldiers that decided to come join our ranks, and we're just blessed to have you with us so, Mahalo.

Mr. Nelson: Thank you. Yeah, I know that I have a lot to get up to speed on, but I feel fortunate that Nahulu is in the office next to me, so I'll be able to ask him questions, and learn from him. So, thank you.

C. COMMUNICATIONS

1. Presentation from the Department of Planning, Zoning Administration and Enforcement Division. The presentation will include an explanation of fines and related enforcement matters.

Ms. Lindo: All right Mahalo, seeing no further discussion, we will move on to Item C communication. Item C.1 is considered changes that the Moloka'i Planning Commission would like to see regarding all laws and rules that affect the Moloka'i Planning Commission. I'm sorry, are you reading the wrong thing here. Here we are at Shantel; would you jump on? I get two agendas over here, and if I'm not mistaken, we did not decide, I don't know if I have the right one.

Ms. Thackerson: Ah, aloha commission about the agenda you should have before you is August 14, 2024. We got Communication Item, I can read it into the record. It's a C.1 communication item presentation from the Department of Planning, Zoning Administration, and Enforcement Division. The presentation will include an explanation of fines and related enforcement matters.

Ms. Lindo: Okay, lucky we had you today Candace. Okay. Here we go, um so the Department... We asked for this... There was no projects to review today, and so we're happy that Jordan could join us to give us a training. Commissioners should have their written copy sent to them along with the, the agenda so that we can follow along. Jordan, Mahalo for joining us.

Mr. Hart: Aloha, Chair and members. Thanks for inviting me today. My name is Jordan Hart. I'm the Planning Program Administrator for the Zoning Administration and Enforcement Division. We handle the enforcement process for the whole County including Moloka'i, and I have a presentation that was part of the project pack, or the agenda packet. And if I could share screen, I'd go ahead and go through that. Is that alright Chair? Great, thank you. Okay. Oh yeah sorry just give me a second to orient myself, I... Are you seeing the presentation now? Or no presentation?

Ms. Lindo: We can see the presentation.

Mr. Hart: Are the... Sorry I'm trying to get to a situation where I can take notes if anybody says anything, but you can see the present? Okay are you seeing the presentation now?

Ms. Lindo: Yes.

Mr. Hart: Okay. Thank you. Okay, um second, get my notes out. Okay, um so... As stated, I'm the Planning Program Administrator for ZAED. ZAED is the acronym for Zoning Administration and Enforcement Division. We're comprised of three sections. The Zoning Enforcement Section, the Planning Section, and the Plans Review Section. I'll go through, this is, this is the list of all the things that we do, but I'll go through a little bit of a summarized version of that on the next slide. So, our primary functions are to interpret Land Use Regulations. That's generally zoning is the

simplest way to understand that, but we administer State Law, State Land Use Law locally, including the, all of the other land use regulations that we have in the County. We confirm land use designations for people that are curious about what they wanna formally know what their land use designations are if they're purchasing a property, or they're trying to build or subdivide. We review subdivision applications, we review building permit applications. We're what we're reviewing for is compliance with, applicable land use regulations, and there's different triggers at different times for whether or not you need to comply with everything, or whether or not you need, just need to comply with Zoning. We conduct land use investigations and enforcement. We administer the Board of Variances and Appeals, and we administer proposed land use regulations or legislation, sorry. The regulatory framework for Zoning. It starts with Hawaii Revised Statutes Chapter 205, and it's, it's also further implemented by the Administrative Rules for the Land Use Commission, which is; Chapter 15-15 of Hawaii Administrative Rules. Then on the County level, you have Title 19 for Zoning, you have Title 16.13 for Signage, you have, you have the County wide Administrative Rules for Agriculture, which is MC-12.102. You have the County wide Administrative Rules for Fines and Enforcements, which is MC-12.103. Then for the Planning Commission, you have that Moloka'i Planning Commission's SMA Rules and Shoreline Rules. I'm, sorry I'm sorry, there's a there's also Administrative Rules for Special Uses in AG and Rural. That's MC-12.303. There is the Administrative Rules for Country Town Design Guidelines for that's MC-12.305. Sorry, then for the Coastal Zone Management, we start with the Legislation on the State level, which is HRS.205A, and it's three parts for overall Coastal Zone Management, Special Management Area, and Shoreline Setbacks, and then it's implemented at the County level by the Moloka'i Planning Commission's rules for SMA and Shoreline, which is MC-12.302 & MC-12.304. So, for the, for enforcement process County wide, enforcement is complaint driven. Complaints come to the County through COM-connect, that's the way we enter tickets, and track them for processing. We're not able to investigate anonymous complaints unless they pertain to Transient Vacation Rental Violations or there's a Health and Safety concern that's occurring. In those cases, we initiate enforcement without, you don't have to identify who the complaint is in those situations. The names of the complaints have to be disclosed if, if the individual that's being investigated requests it, but we don't provide phone numbers, emails, or other personal information. Providing accurate information in the complaint really helps facilitate. We do get a lot of, false complaints, or unintentionally incorrect complaints that we have to sort through. So, providing clear correct information is very helpful. When you're filing a complaint, that's done through the County of Maui's COM-connect system, it's COM is County of Maui acronym. You can find that through the County's primary website, and you can also Google County of Maui COM-connect, it'll take you right to it, but it's, it's right off the, the County's main web page, and

this is an example of what that page looks like. You can locate the situation using an interactive map and then it'll take you through the rest of the process to enter the information. COM-connects kind of like a Facebook setup. This is an example of a, of a live complaint page, and there will just be the map location of the identification, or the location. It'll give you the type of violation, or the type of complaint it is, the status of the complaint, whether or not it's been acknowledged, who's it, who it's assigned to. It keeps time on what the dates are. There's a, there's a comment area where, where there's an initial complaint area where the complainant can provide their initial information, but there's also a comment area where they can provide further information. The way the enforcement the inspector manages this portion of the process is we use this as a method of documenting, and taking in our complaints. Sometimes there will be, complaints that are made, but they're alleging that something that's actually permitted as a violation. So, the inspector would sort those kinds of things out here, or potentially they'll make a complaint to Planning that a person didn't get a building permit, so that would need to go to Public Works. We would reroute that here. If there's an actual investigation that needs to occur, we would create a PZE file, which is a case in MAPPS, and we'll go on to, to discuss that. But for the, for the member of the public who's looking for information to either monitor what's going on or, or if they want to do some due diligence, and figure out what, if what's going on as a violation, they could do that. You can also just file the complaint, and we'll figure it out. But anyway, everybody has different interests. So, this is, this is a snapshot of the County of Maui's Real Property Tax System. This, this is probably the best tool, for land use information that the County provides right now. I use it every day, even though I'm an employee of the Planning Department just because it's so convenient and efficient. But anyway, you can find out the property you're looking for by entering in these, in the search bars. You could either enter the name of the owner, you could enter the address, you could... Or if you don't have that, you could come up here in this green bar, you can select and, and find a thing using the map. One of the reasons the Real Property Tax GIS system is so useful is, because it has these other pieces of, of information that can be provided. So, if you're in the map viewer it'll show you these, this menu on the left side of your window, and each of these tick boxes is different pieces of information that you could, you could look at. So, for e.g., you can check the Zoning by doing this. This is not a hundred percent accurate but it's very accurate. So, you, you don't want to rely on this for formal, let's say business transactions or something like that. You can get a confirmation for, from the, our office ZAED if you're trying to confirm land use, but you can be pretty certain what what's shown here is very accurate, like it's, it's very for, for general purposes, it's very useful and accurate. But anyway, you can get Zoning, you can check SMA, you can check the State Land Use District, you can check Flood Zones, it's, there's a lot of kind of the key information that you're gonna wanna check, and it's mapped based. So, you can turn on all the

layers, and you can look at all those things at the same time. It's very helpful. What you can also do with this is take a shortcut straight to the permit records for the parcel. So, let's say you, you, you believe somebody's doing something that's not appropriate, you wanna verify that. You click on their parcel, whether you know their, their address, or whether you find it on the map, you select the parcel, you go to the parcel report. If you scroll down, there's this Maui Automated Planning and Permitting System. If you click that, that will take you directly to the MAPPS system. MAPPS system is how the County of Maui tracks all permits. It used to be Kiva that's been replaced by MAPPS. So not only do you track permits, but we also track enforcement matters. Enforcement matters are identified as code cases. If you look at this filter results area here on the left side, like so this specific some properties, they'll have a really high amount of records. You can sort that by like this one, this particular property has 170 different records of various things they've done. You click code cases, that's only the enforcement matters that have happened at this property. But anyway, once you get that, you can kind of flip through and, and see maybe there's already a violation, maybe they've committed a similar violation in the past. You can, you can get a picture of those things, or you can check on the status. Say you had already filed a complaint, you want to know what's going on with the complaint, you can check whether or not there's been a code case entered. If there is a code case entered, you can call our office, and use that number to reference to find out more specific status from the enforcement officer, or sort of the inspector that's been assigned. So, the general description of the enforcement process, complaints entered into the County Maui Com-connect. It's routed by the Mayor's Office to Planning ZAED. We assign it to an inspector; an inspector analyzes the complaint whether or not it's a legitimate complaint. Meaning that is the thing that's being discussed actually a violation, and actually in the area of authority that ZAED has. Is there a, a legitimate complainant, or is it an anonymous complaint? If it's anonymous, is it the type of complaint we can take action on anyway? Or is it the type of complaint that we cannot take action on without a live person? So, oh, sorry. So, once we have, once we've figured out we have a legitimate complaint and a, and a, acting complainant, or we don't need a complainant, the goal of enforcement is to establish compliance. So, the inspector begins by communicating with the individual, that's either the property owner, or the individual that's in violation, and notifies them of the issue, and informs them how they can get into compliance. Most of the time people don't know they're violating, or they did know they're violating, and once they're caught, they say, okay, and they just remove the thing, or stop the thing that they're doing. But there's a certain amount of people who, you know, they just kind of want to play chicken with the County Government, and so anyway, they're given a period of time to resolve. If they don't do that, they're given a formal Notice of Warning with a hard time frame. Now the time frame can be, we will work with an applicant if they're showing applicant, or an

individual who's in violation, if they're showing tangible activity towards progress. But if they're not, it'll result in a Notice of Violation. Something to note for the SMA and Shoreline Rules, there's not a requirement for a Notice of Warning. First for Title 19 and other violations, you have to, you have to issue a Notice of Warning first. So, if in the SMA if there's generally if there's specific environmental harm occurring at this time, we'll issue a Notice of Violation immediately, or if the issue cannot, uh be undone. But if they've done something that they could undo, or there isn't an urgent environmental harm that's being done, generally we'll give them a Notice of Warning. The period of time to establish compliance before the violation is, is propose is documented, and then if there's noncompliance and the timeframe is passed, we proceed to a Notice of Violation. Appeal, appeal the violation or they don't appeal for enforcement, they need to appeal the violation becoming final within 30 days. Otherwise there's no appeal, and, and essentially the County can seek a judgment against the property, because there was no procedural appeal. If there's an appeal, we go through the process, basically appeals of SMA Regulations are done to the Moloka'i Planning Commission. Appeals of Title 19 violations or other land use violations that are not SMA or Shoreline are with the Board of Variances & Appeals, and appeals of those County bodies is to the Circuit Court. There was a request for a description of how fines are established, so the way that fines are established for Title 19 is, is it's straightforward it's a thousand dollars (\$1,000.00) for the initial fine, and a thousand dollars (\$1,000.00) a day. So, it's, it's not really, it's pretty straightforward. For SMA in the Moloka'i Planning Commission rules, Section 12-302-24, outlines the, the guidance for the Department for the issuance of Notice of Violation, and there's, there's several factors that are considered in determining the magnitude of the issue and the volume of the fine. So, the type and degree of violation, and whether or not it's recurrent. Previous violations by the same person. The degree of damage to the environment. Cooperation by the individual during the investigation. Whether, or not a permit, or authorization is required to affect corrective action. The cost associated with corrective action. Applicable statutes and rules, the amount necessary to deter future violations, and any evidence of circumstances beyond the control of the violator. So, we basically look at the, the whole issue, all the evidence that we have, and these factors in order to come up with a, a, an initial fine amount, and a daily fine amount to assign to Notices of Violation. And by the way, so Moloka'i Planning Commission was the first body to create this kind of guidance, and so, actually for several years, we had been applying the Moloka'i Planning Commission's guidance to the entire County. More recently, the Maui Planning Commission has passed an update to their SMA and Shoreline rules and they incorporated a similar version of, of this that was initiated by your Commission. So as discussed briefly, the appeal venues for SMA and Shoreline go to the Moloka'i Planning Commission all other line use enforcement appeals are to the BVA, and then appeals of the Moloka'i Planning Commission and

BVA decisions are to the 2nd Circuit Court. So that's generally the overall presentation of, of information, but I'm here to respond to specific questions or, or try to get into as many details as I can, you know, just off the cuff now. Thank you.

Ms. Lindo: Thank you, thank you Jordan. Commissioners, I think the best way is like, if you want to refer to the slide page, so that Director knows exactly what, what question you are or what, what area you are posing the question from. And then we can start off by asking if any commissioners has any questions based on the presentation. Hang on... How about we open for public testimony? Sorry, let me retract. Too much coffee this morning. I am going to allow discussion little bit, and questions, and then I'll open up for public testimony, so that the public can get a better broader view of what we're talking about. So, any commissioners who have questions now is the time to raise your hand, or and I can acknowledge you. Anybody? Come on I giving you guys a chance, because I get one whole load of questions. I try to be nice so you no need to hear my voice the whole time. Anybody else have questions? Okay, get your popcorn gang. Here we go. Okay, let me start from slide number...One, two, I think it's three, I thinks is the ZAED function abbreviated, um wait. Maybe I can combine a couple of these questions altogether. We, we talk a lot about using, the system for complaints, and the idea that anonymous complaints are not, are not investigated. Who, who gets to complain? And is it true or is it a rumor that County Officials and Commissioners are not able to, to submit complaints for violation?

Mr. Hart: Um, you can have your Corporation Counsel advise the Commissioners on, you know, their duties for participation. Um, I think it would only matter if the issue was coming before the Moloka'i Planning Commission, you know, potentially you you've created a potential conflict for yourself. But your Counsel can respond to that. County employees, County employees can't use County information for their own personal purposes, but they can act as an individual, and file complaints. So, like let's say you, you live in Haiku, and you're driving to Wailuku, and you see something that you don't like, you can file a complaint in your official capacity. But let's say that you are a County employee, and you become aware of something that somebody's doing through their application process, or something like that, you can't turn on your, your, put your citizen hat on and go home and file a complaint against them because they showed you they showed, they submitted something to the County that was, you know, of your personal concern. Like we have to go through, we have to follow the, the, the rules of the process, but any individual can complain. And will be required to enforce on it. I guess that that's the short answer of that.

Ms. Lindo: Thank you for clarifying that because, we had been told that County employees couldn't complain at all. And, and I think that just needed clarification, and maybe we've misunderstood the directive, but if Andrew would like to jump on.

Mr. Nelson: Yeah, yeah, I, I agree with what Jordan shared. Let's see. So, you know, in this scenario that there was work done, let's say without a required SMA permit, or a building permit or something like that, and a commissioner were to complain about that. If the thing matters then came up, let's say in connection with an After-the-fact permit that required SMA review it's possible that the Commissioner, would have to or, or that I would advise the Commissioner to recuse themselves from the consideration of that permit. So that would be, you know, a significant drawback to, having, Commissioners, um you know, submitting complaints, uh frequently. But yeah, that's you know off the top of my head kind of the major complication that I can think of.

Ms. Lindo: Thank you, Candace Thackerson. Go ahead.

Ms. Thackerson: Thank you Commissioners. Jordan, I had a, just a point of clarification on the last topic about staff entering complaints into the system. So, I think what the commission is kind of curious about, and I guess I am too then, is that are you saying that the Moloka'i Planner can go around and turn in, report RFS that she sees out and about on Moloka'i and then come back to the office, and start entering those like almost like a zoning enforcement kind of officer position? Or do would you rather, you know, like if she sees something, she could enter it as a in her personal capacity as a citizen?

Mr. Hart: Right, that's what I said. She could do it in her personal capacity as a citizen.

Ms. Thackerson: Her personal capacity as a citizen. But as a planner, she's not supposed to go around and just turn in people at random.

Mr. Hart: No, and, and actually our, our inspectors aren't even supposed to do that. If they see a safety issue, or inspectors will initiate, enforcement matter on that. But generally, they're initiating a See-Click-Fix ticket, and it's being referred to the agency that it that addresses. Generally, the kinds of things that they'll see will be like unsafe wiring, a septic system, or, or like sewer piping that's going nowhere kind of stuff like but that's like that's the State Department of Health, or that's Department of Environmental Management. Or potentially they'll see like a fire hazard, that's the fire department, so they're not, um Planning doesn't enforce on those matters, but if they see something unsafe, they'll, they'll initiate a complaint, but it'll generally be referred to an agency

that has addresses Health Safety and Welfare issues more directly. But no, we're the, the, entire County is complaint driven, so, so, we're not supposed to be initiating complaints without Health and Safety or Transient Vacation Rental has obtained special status, so, you know, that's the use, the single use that is actually at all times can be enforced and is.

Ms. Thackerson: Thank you Jordan. I just wanted to clarify that, cause I think that was a little bit of confusion.

Mr. Hart: Sure, but any member of the public can do it. So that's, that's the important thing to remember. If, if there are members of the, the community that are concerned about anything that's going on, they can, you know, refer to the instructions that I had, you know, gone through in the presentation about, you know, it's pretty easy steps to document, and initiate our enforcement process.

Ms. Thackerson: Thank you.

Ms. Lindo: I mean if I'm understanding you correctly the bottom line is our, our, our integrity, right? As officials versus our concern as citizens of a community. So, for like Moloka'i, it's hard not to see violations, like it's hard to go to one party at somebody's house, and see that they directed a unpermitted structure that looks unsafe. I mean, it's just hard in one small community like this to do that. And, and I'm having one, and you probably, you don't need to answer this, or, or maybe this is not the time, but just for the record. I'm having one hard time understand how we swear in people at the beginning, we, the commissioners are asked to swear to tell the truth, to operate on this very high-level integrity that we are willing to make the hard decisions, and take the hard steps to ensure the safety and, and following the Malama Aina protocol that the County has set forth. And, and yet on the other hand, those of us who are passionately involved in the care of our aina are now asked to turn our head, because we're privy to information that we work hard to know. And so, I guess I, at some point I think it would be worthwhile to think about small communities like Hana, Moloka'i, and all of that and how do we come up with a better, more efficient system. Where we are not are not blatantly like gagged to not highlight, and talk about different violations that are happening that are ruining our community. And are creating a sense of like a trickle effect of if one person can do that blatantly out in a public cause nobody else can turn them in, or doesn't want to or whatever. And then also like not force us to have to go ask our family, and everybody else to please go put your name on this complaint so that we can, and, and I, and I'm not saying that I do them personally, but if I felt really like I see something going on, sand mining, whatever, and I like complain, I feel gagged not to be able to do that. So, I just, I just wanted to, to get that

on the record. You don't have to answer because I know that's not all you've learned. But anyway, general description of enforcement process. there's a place where you, it said on the slide routed by Mayor's Office to Planning, and then to ZAED. So, my question is what securities are in place to ensure that complaints are addressed equally and efficiently? What kinds of protocols ensure or, checks, and balances ensure that every complaint is addressed, and funneled through that system from Mayor's Office, to Planning, to ZAED? And is there an accounting system to ensure that all complaints were addressed, and equally dealt with in the same way?

Mr. Hart: The system can run reports, so it's all, it's all digital, obviously, so then you can run reports on everything. What's the status of every report? How long, you know, reports take to, to be completed and things like that? As far as the equity, you know, interpretation, that's completely subjective, so, you know, there's no, there's no digital way to report on this perception of whether, or not every case was addressed equitably or not. But we do, we basically just, they get assigned to the inspector that is responsible for that region of the County, and the Supervising Zoning Inspector follows up with them on their open assignment case list, and what the status of things are, and we just go through the process.

Ms. Lindo: Thank you. On that same slide, it says the goal of enforcement is compliance. So, my question is, what happens when compliance is um... What happens when it's an After-the-fact, and done after negative impacts, or desecration of the land cannot be mitigated? Who makes that determination? How is it enforced? And how does the Moloka'i Planning Commission get documented info on the project? And the process of correcting those mitigation efforts? So basically, I guess I asking like, if compliance is the goal, and somebody already went desecrate one area, so SHPD is saying I cannot give you any advice, or, or give you any kind of statement, because the damage has already been done. What then happens to the individual that desecrated that area? And how does the Planning Commission get included in the information on, on what's happening and what the mitigation efforts? What kind of mitigation efforts are being done to, for corrective action? Or is there any?

Mr. Hart: I mean you're, you're... You're really cross like you're going into a lot of different directions with the question, so I'll try and, I'll try and respond as best I can. So, like, the SHPD issue, they have regulations that, that govern how they're supposed to function. So, for them to take the position that they won't comment on an action that's taken, and then they also advise the, the reviewing body to deny the approval. It puts everybody in a nonfunctional set like we're, we're like, so the system that we're operating under is a set of regulations and laws. Like that's the system

that we're under, whether or not, you know, everybody agrees that it's appropriate, you know, that's the set of rules that we're operating under. The, the individual has an opportunity or the right to get approvals for proposed actions. If they're discretionary approvals, there could be they like, you know, let's say it's a, a permit that requires review by the Planning Commission. Planning Commission can deny those approvals for specific reasons, but you can't in this system, if you attempt to put an individual in a frozen position where they can't move forward, like, you know, like you've done this, this inappropriate action, and you didn't get proper permits. So now nothing that you do can be approved, like that won't stand, like if they appeal it, like that won't, that will be overturned. So, it's, it's pretty, it just creates a complication in the process to makes a statement, e.g., that like we won't comment on something, and that nothing should be approved because, this Government System that we have won't put a position up an individual property owner in a position where they could never do anything from that point forward. Like they'll get ultimately, you know, documented the right that they can do something. So that's one thing. The specific issue of saying things should be denied after an action's taken. Determining the mitigation, I mean I think that they should participate in, in identifying mitigation measures that the decision-making body can require as conditions of approval. That would be at least some sort of, way to like one, one, something bad has happened could be the worst thing, you know, conceivable. That's happened now. You want to move forward and make them contribute something very important to the community going forward in order to you know, address that, because if you give nothing, like, you know, they have the right to challenge it, and, and, the, the courts won't put somebody in a position when they can't do anything. So anyway, leave setting that aside, so then so then mitigation measures I think that the, the regulating agencies that our subject matter experts should generally that's what they do. Like let's say, ok, let's say you guys were reviewing SMA Major Permit for a new fire station, in some far region of the island. And all the agencies would come through with their comments, you know, the roadways, the intersections in this location are not sufficient, you need to improve traffic. They, they, they provide you with the statements of what's not sufficient. Water capacity's not sufficient in this location, you'll need to improve the water infrastructure. It'd be the same for a government agency or a private developer. All the agencies that know something about the subject matter tell the reviewing body what will need to happen in order to make this function properly, and it should be the same for every area of consideration. Whether it's environmental cultural, infrastructure, land use, like all the agencies are supposed to respond to the proposed action with a set of comments that they think are appropriate. And then the decision-making body generally will look at those comments, and decide which ones they want to make conditions of approval. And then as far as how you stay up to date on mitigation measures for things that have happened in the past. You could consult with the Department and your Counsel. I think that you

could, I mean you could, so the so the, the Deputy generally is, is attending these, right? Moloka'i Planning Commission? Is that correct? Right, so you can just like, you know, during the direct the Deputy's time period or the Director's time period, you know, ask for update's on things. And if something more detailed was requested or necessary, you could ask for a presentation like this, on something. And then like obviously UIPA requests for, for any records that the, the government has is always possible but, but you should, you know, hear from Counsel on. If you're gonna see something again, you should, you should try to keep your knowledge to what's on the record, so that you can participate. But if you don't worry about that, like, you know, he had asked the question about, you know, how you should be you should, you should be aware of things but not, you know, make complaints. Like you can make complaints, you just can't participate in, I mean it's not that you can't participate if you participate in the process that could be viewed as a, as a attack point for somebody who's challenging the appropriateness of the process that took place. So, it's like, it's just tradeoffs. If you wanted to participate in the Planning Commission, you're supposed to be objective, and you're supposed to analyze what comes into the record, and that's the rules of the system of this body. If, you know, but you can do, you have choices to go in different directions with those things. So, staying up on mitigation measures for ongoing matters I guess you would just weigh that the same way. If you think it's coming back to the Planning Commission, maybe you just only stick to what's on the record with the commission. But if you don't think it's coming back to the Planning Commission, you, you just wanna know about it. Like you could file a UIPA with the County or any other agencies, and we'll have to turn over everything we have. And you, and you can just, you know, look at it all. But you can just, you know, look at the situation and consult with the various resource people that you have to figure out the best way to approach anyone.

Ms. Lindo: Thanks Jordan. That was super helpful. And I do agree with you on, um just the challenges that is created when SHPD does not make the recommendation, or gives those kind... I mean we see that almost every project After-the-fact project, and, and I, so is there something that we can do? Or that you would suggest? To have conversation with the State or areas, maybe it's us creating our own internal, authorities with our own archaeologists, and now our Oiwi Department to be our first line of defense on those kinds of approvals. So that we can get good direction as a commission and, and address some of the violations, and stuff or, or culturally sensitive impacts. Is there suggestions in your role that you think would be helpful for you and for this commission to have set in place, change, adjust whatever that can help mitigate our inability to control SHPD, and the mess the, the information we need from them?

Mr. Hart: Sure, so the, the Department is, is beginning the process of trying to work with SHPD on that specific issue of, of, those kinds of letters that are coming out. You know that I stated before, I don't think that they, they should be doing those kinds of letters in their, um under their existing regulations, but, you know, that they they'll have to address that. Oiwi resources would be another resource for the commission, you know, the commission could ask to hear from Oiwi resources. And so, you know, like I was saying before, you're, you're, you're the decision-making body. You're looking for input from various parties that are participating, some of them are agencies that are expert, the subject matter experts. You also have your own knowledge that you can use to just come up with your ideas of conditions or mitigation measures. Or you can look at what the agencies are saying. So Oiwi resources is a new agency that's coming in that, um it's not exactly the same as SHPD, but it but it's, there's overlap in the, in the area. You know, obviously SHPD is archeology, and well anyway, there's SHPD has specific areas that they, address, but there can be personnel of Oiwi resources that have knowledge in those same areas. But they'll be regulated by the County System and, and, the, the rules that may apply to Oiwi resources. But anyway, so you can get supplemental information could be helpful. It won't, it can't supersede. It would just be another, source of information, but the commission has the discretion to choose which sources of information it's going to rely on or make use of.

Ms. Lindo: So, so right now when ZAED is deciding, or determining an initial amount of the fines. Are you using, or does it include destruction of culturally significant areas? And if so, who is the Department using as its authority to make that determination? And how much the fine should be to mitigate?

Mr. Hart: Um, so for let's say this, we'll go to the Special Management Area, because the Special Management Area requires protection of, of, these types of resources. So, we would look at things like the type and degree of violation, the degree of damage to the environment, so the environment can include cultural resources in the context of the Special Management Area. Ah, costs associated with corrective action required, applicable statutes and rules, the amount necessary to deter future violations, evidence if any of circumstances beyond the control of the violator, whether or not a permit or authorization is required to affect corrective action. So, we just look at the factors generally that are described in that, that set of, in that section of the, um... So, Moloka'i Planning Commissions rules, so we're talking about Moloka'i right now, Moloka'i Planning Commissions rules. Um, we don't currently consult with, anybody about what the specific feature was, but any destruction of cultural resources is pretty serious, it basically like it's it immediately pushes the issue up to the, the you know the maximum range of what we would, be fining. So, the way we do

the process is, is that these are all the, like there's a there's a maximum fine amount, and these are the factors that would, you know, approach the maximum fine amount. But every situation is unique. So, let's, let's say somebody destroyed a cultural resource but they didn't know, nobody knew the cultural resource was there. Like they uncover, like they got a grading permit, they, then they destroyed something well grading that they found something they called SHPD and like, you know, well, that's complicated. Maybe that's not the best example. It, it...

Ms. Lindo: I can give I can give you one example.

Mr. Hart: Sure.

Ms. Lindo: That I'm thinking that I'm thinking of, of, person buys land in Kaluako'i, and near the shoreline, but not enough to have a beach front view, and so decides to illegally like remove the sand dune. And in the course of doing that finds bones, and just puts them all on the side in one pile. And then somebody cites the violation, ZAED goes in, does the research on em, everything. SHPD is saying I cannot really say anything because, you know, you've already done it, because the timeline expanded, so you never get here till 18 months after. Sand looks like it's been put back, cannot find the bones anymore. But people know the violation was there, and all that stuff. So, I guess my question is like, how do you then assess what the fine would be that the corrective act? Nature has, in some form, corrected the action, and re refilled the sand dune? Cannot find the evidence of, uh Iwi Kupuna, even though there are pictures, and violations and all that kind of stuff. How, how, who makes the determination that we can, we, we don't have anywhere of mitigating? Or if you do have, who decides how much that fine will be based on the cultural significance of that? Because now there's not necessarily environmental damage anymore?

Mr. Hart: Okay, so there was a situation that is very similar to this that, that as far as I'm aware, didn't include record of, of Iwi, in the record that went before the commission. So that's why I was kind of chuckling, because I was aware of one that happened that was a big huge issue that didn't have Iwi. So now we're talking about a hypothetical situation that has Iwi, and it's on the record. That would be that, ok, so that's ok. So, let's say you had a fresh situation like that, where there wasn't any issues in the timeline, and you just found this out, you know, the Department would be, most likely based on the criteria that's in the, in the, um in the Commission's Rules assessing a significant initial fine, and a daily fine. One of the comparable issues that may come up, which is, which is similar to an issue that did happen, with somewhat similar circumstances is that... Is there mitigation measures to be done? Like, you know, like it... Can you recreate a do like if you damaged human remains, there's nothing there's really nothing that can be done to make up for

that? There could be some sort of other mitigation measure, and potentially the commission could, ok, so the way the process works is the Department identifies the violation, and issues the, issues the Notice of Violation. They can either not appeal that or appeal that. And in the Notice of Violation, there's, there's general instructions for some specific action that relates to stopping the violation. And, basically like let's say you need permits to After-the-fact permits, or something like that, the Moloka'i Planning Commission would review the After-the-fact permits, there may be conditions of approval. There could be other mitigation measures that are put into there. Cause there's these intangibles of like, how do you make up for destroying cultural remains? So potentially the Planning Commission could suggest some other thing, or other form of mitigation be, be done. That would be in the instance where they took the violation, and they filed for the After-the-fact approvals. Another situation that it could come for the, to the Moloka'i Planning Commission would be if there's a proposed settlement. So, the Department reaches some conclusion with the party, and proposes a settlement to the Commission. The Commission is the deciding factor on whether, or not settlement will be a approved. So, you have the, the ability to, it's a yes or no process, but you have the ability to communicate to the, the Department of what your priorities are in the discussion of the, the settlement proposal.

Ms. Lindo: So, so it's only a yes or no process. It, it doesn't, does the Commission or the Department have ways in which, say, a fine that the violator cannot pay, maybe can do it in trade for like community service or, or land swap, or things like that. Are there different mechanisms of...?

Mr. Hart: Get, getting into the contribution of property, you can talk to your Counsel about that. I, I know of a situation on Maui where there was like remediation work, and planting that was done. So, so some sort of like you know something proportional to something proportional to like, okay, okay. If there's a situation where the environment it on the in the environmental context, the environment will heal itself. So, it's better just to stop damaging it, and let, you know, let's say a dune, e.g., The wind will affect the dune. Stop damaging the situation, let the wind reshape the dune, and let the vegetation recover. There could be a discussion of, of mitigation, or some sort of physical action elsewhere to, to, to take the place of, of some sort of remediation. Like there's cost to remediation. But the remediation would be more damaging, so let's not do that, but the cost of what, what could have been done, you could put that into planting native species in this other area to improve the environment, or something like that. That's been, that's been done. It, it didn't relate to cultural resources, but that's been it was an environmental matter that's been done on Maui. But the, the contribution of, I mean it you have to talk to your Counsel about that. If an individual

wants to propose it through settlement, they could propose whatever they want to do with the County. But whether or not the, the, what you'll be getting into if the body is calling for the individual to contribute property, you know, you have to consult with your Counsel about how to navigate through that.

Ms. Lindo: That, that's, that's really good conversation Jordan. Thank you so much for that. And while we are going to ask you a couple more questions just on this line of questioning, and then I'm gonna ask the commission if they have and give everybody a break from my voice. But, in the area of fines, is there a process by which the community, or the person getting fine can appeal the, amount being allocated and or fine to them? And, who makes that determination of fine reduction? How does the process work? And how can the community know or fight for the appeal? What is the process?

Mr. Hart: Okay so, so all parts of a violation are appealable. Like you can appeal the, you can appeal whether or not you, you can appeal that it's not factual. You can appeal that the County did too much in fines. That the County didn't follow proper procedures. Like any portion of it, essentially you can appeal, as far as settle...

Mr. Nelson: Jordan? Um who does appeals? It's the BVA.

Mr. Hart: Oh, I'm sorry. So, ok. Yeah. And I went through that in my presentation. It depends, it depends what the, the laws, ok, so let's say, e.g., Somebody in front of Kaunakakai Shoreline Area, they build a, you know, multi family structure. You know, they got a, they got a, a house and they start to cut it into like five residential units inside the same house. That becomes multifamily. So that's a zoning violation, and that's an SMA violation. So, the Count... the Department will issue Notice of Warning on Title 19 and on SMA. And, and let's say it's in the Shoreline Setback, so then then we'll do Shoreline too. The Shoreline and SMA, if it's appeal goes to the Moloka'i Planning Commission. The Title 19 if its appeal goes to the Board of Variances and Appeals. Okay, so that's just like what the, what the regulations that, that somebody's being cited under, and where those appeals go. As far as settlement, we'll do both scenarios, the Director can settle, um daily fines, but I believe there's a total dollar amount I have to check on that. I have to, I have to check on this portion of it. I should have checked it before this conversation, but I was expecting to talk more about SMA. The Director has a lot of latitude to settle daily finds for Title 19 only. And doesn't have to have anybody ratify settlements under a certain level. Over a certain level settlement have to go to Council, I believe. But I have to check on that. For SMA, any settlement has to go to the Planning Commission. And so, what typically happens in that situation is the

Department will look at the situation if the applicant, or the appellant's proposing something. If it's, if it's something that the Department is willing to settle on, there would basically be a meeting of the minds between the two parties of what are the terms of settlement, and then that has to be presented to the commission. And the commission decides whether or not they will ratify the settlement basically. And so that's what I was trying to say is that you don't, you don't under the existing regulations, you don't necessarily participate in the settlement. But in an evaluating a settlement proposal, you can express your concerns with the deficiency of the settlement or, or, why you choose not to pass it. And the Department would hear that as well as the other party, and that would be taken into consideration if they're gonna try and propose a different settlement to come back.

Ms. Lindo: Okay. And, okay, okay. Anybody else got any questions? Keo, you have any questions?

Ms. Hanapi Hirata: Um, Aloha Commissioner Hanapi Hirata here. I wanted to know, I think I have like two. Hold on a second. Um, so on one of the slides you talked about the anonymous complaints. Um, and not being investigated except anonymous complaints are not investigated except TVR's and Health and Safety. What is considered Health and Safety to you guys? If you can give me some examples.

Mr. Hart: Common examples, would be, you know, obviously bad wiring, structurally unsound building. Common one is a wastewater, like a toilet. Somebody doesn't have any permits on their property, but they have flushing toilets like the, the that's going somewhere. You know, that's a Health and Safety concern. We are having issues recently with people putting signage in illegal signage, and intersections. In the on, on Maui, that's a Health and Safety issue. There are, environmental, potential environmental issues that, that get to a magnitude where like, you know, they're, they're potentially addressing like healthful environment type of issues. We haven't had any of those since I've been here, but that's something that we're, you know, we consider, but it depends on, it depends on the magnitude of it. Whether or not you could make up whether, whether, or not we could make a sound argument to launch a, um enforcement action that's subject to appeal ultimately to the court system. We're, we're pretty critical about that. Like, is this something that will prevail, or is this something that will be, that will not prevail. But a lot of times issues like that environmental type issues, they'll come in immediately from the public anyway, so that's some general explanation. Let me know if you want more of it on that.

Ms. Hanapi Hirata: Oh. No, so it was just to people, and not necessarily... So, the health and vitality and safe safety. So, for instance, homes that are built in fishponds in Loko i'a, and saying that, like, you can make one complaint because the house essentially is in the fishpond, or half of it is in the fishpond. Um, the Health and Safety of our Loko i'a is affected if somebody decides to build a wall in that fishpond. Dig up, bring in dirt, bring in stones because of, you know, climate changes real. Sea level rise, so they wanna protect their property, and their structures. So, they want to go put up on wall. And that was something that just came up not too long ago a few months back on the island of Moloka'i. So, when I think of Health and Safety, I don't just think about our people. I think about what our livelihood, especially, you know, our subsistence livelihood on this aina. Um, our earth is rich, the rain falls, and our, and our oceans are abundant, and this is how we know to un and understand that we're not poor on our island. Our aina can sustain ourselves, but when irresponsible things come up of people who do things without a permit, and then it becomes a complete. Do you guys have something like that in this section of Health and Safety?

Mr. Hart: So, the example that you, you were giving of somebody building a house in a fishpond, is that a permitted house?

Ms. Hanapi Hirata: Okay, so it's not the house. The house is already there. They want to add like a wall, like a stone wall. That's the issue within their, to protect their structure. So not building, the structure is already there.

Mr. Hart: So, like a sea wall, basically.

Ms. Hanapi Hirata: Yeah, you can call it that. We don't know what they call it, but yeah. So, does so my question is... Does your folks is Health and Safety in one complaint driven area account for our environment, like our resources? Essentially you guys call it natural resources. Um, yes or no? It's just a yes or no question.

Mr. Hart: Yeah, to a degree. I and I had explained this earlier. To a degree yes. Not I don't think to the extent that you're trying to, to suggest, but to a degree it does.

Ms. Hanapi Hirata: Okay. Yeah, I was trying to get you guys to explain a little bit more, but that's ok.

Mr. Hart: Let me know what I'm not explaining.

Ms. Hanapi Hirata: Well you just shared that you explained that earlier, and then it's, maybe it's a different type of one conversation, and maybe I can go talk to Planning and get more clarification, but I'm good.

Mr. Nelson: Jordan, you might have already covered this, but you know when someone submits a complaint, is that person's name provided to the complainant? Or is that just kept in the internal paperwork, managed by the Planning Department?

Mr. Hart: If, if, if the individual that the complaint is against requests to know who filed the complaint against them, the name is given. But not the, not no other personal information just the name of the individual who filed the complaint. I'll bring something too, so what happens a lot of times throughout the County is that an individual will be afraid of retaliation. And so, something that happens frequently is Council members will file complaints through their office as a method of, of, you know, protecting somebody who's concerned with retaliation. Let's say they have some sort of semi violent person whose right next door to them, and they're doing, you know, not to be stereotypical, so they have like a illegal quilt making operation. The, the, the Council members office can file the complaint, and then it's not anonymous, and then we'll follow up on it. So, that's something, you know, if an individual is concerned about retaliation, or some other thing, they can, they can use that. That is a method that is used. So that I guess further on that subject.

Ms. Lindo: Okay, Andrew since you're on here so that we have both you, and Jordan. Um, say the Department has made, or, or worked together, and has decided on a fine. Okay, let me back up. Jordan fines, a fees are what the violators pay, and they're a flat rate. Everybody pays this fee for violation, and that is those monies are allocated to the processing, and the work being done, to either investigate, or mitigate the paperwork, and administrative process of, of the violation. Is that, is that correct?

Mr. Hart: Okay, so After-the-fact fees are, those would be considered a penalty. Those are a penalty, and those are paid for anything, anytime work is at any anytime work has already started before the application's filed you have to file in After-the-fact fee. Fines are not fees. Fines are, are different, and those are basically like, you know, you have a carrot and a stick. Fines are like the stick that enforcement uses to get the individual into compliance. Like we're, we're trying to get them into compliance to either stop the illegal use or reverse the, you know, some sort of illegal action they've taken. And the threat of fines, and then ultimately issuing fines is, is the way we, the tool we have to, to motivate that. But the, After-the-fact fee, that's just a penalty for, starting before you got your permits.

Ms. Lindo: Okay, that, okay. So, if a fine is assessed to a violator, then it's fair to assume that that fine, tries to equal or, has the ability to be used to help mitigate that violation back into compliance. Is that, is that correct on our side? Whether it's like whether it's like the inspectors, or allocating it to administrative processes? Or does the monies go into a fund to contribute back to that area? Or that, that particular place that has caused this negative effect, and can be directly allocated to mitigations to improve the health and vitality and abundance of that area?

Mr. Hart: Uh, SMA fine go into the SMA fund, and then there's specific language about how the SMA funds can be used. Generally, it's for the SMA area County wide, and it's not so local as you're, your kind of bringing up right now. You know, it's not to say that it that can't be changed. But under existing situations SMA finds going to the broader SMA fund, and are supposed to be used for specific purposes to benefit the overall Special Management Area. Title 19 fines, my understanding is they just go to the general fund.

Ms. Lindo: Andrew, if we, if, if this Commission wanted to change how SMA fines were allocated and used for our specific district, would that be something we had to advocate as an overall arching policy or can or is that written in our rules?

Mr. Nelson: I will need to research that question, um to provide you with a more concrete answer, but I believe that the fines are specified in the Commission Rules, and that those you know could be changed in connection with the, ah rule making process. Which requires the Commission to follow certain steps prior to making any changes to its rules. Um, and I'm not sure if Jordan might have any other information on that point.

Mr. Hart: Yeah, so I would say that, what I was doing on the side is trying to start looking up the SMA fund. So, there's an SMA fund, I believe that's, that's County legislation, it's interesting, okay? So, so basically the Planning Commissions are granted the authority to administer the Coastal Zone Regulations through the charter. So, it's I mean it kind of in some ways bypasses the Council. So, you guys can change your rules for whatever you, you, you know, determine to change them through. You have to go through a public hearing process, but you create your own rules. So, there's, there's two, two parties the Council and the, and the Planning Commission that are doing different things and like ultimately, they have to come into some relationship, because there's this SMA fund. Like the County's taking in funds and it, the SMA funds says how it's directed. So, I would read that what the SMA fund language is and see if there's tweaks that, that, you can call for things in your rules, but whether or not there's a section in the County Code that reciprocates on that. You know, it, it doesn't specifically now, and how the County would address

that, you know, that would have to be figured out. But like, let's say you got legislation on the County level past that matches the intent that's stated in your rules, then there's a connection.

Ms. Lindo: That's super helpful. I just have one more question, for, for actually I think it's for Andrew but, but you can chime in Jordan. So, say the Department makes a recommendation on a fine, and then the Commission is being asked to either, you know, support or whatever, I don't know how that process works. But, and say that by the time we get it on our agenda, it's already been mitigated. Nature has already kind of fixed it up, and, and already done its thing, and everything is backed the way it's supposed to be. And because of the timing processing, there's no obvious damage done. Is the, is the Commission, is there written documentation that allows the Commission to disagree with the determination of a fine based on the here and now? As opposed to what has happened before. Or even the opposite way around, right? By the time it gets to us mitigation's been done. Department's saying, ah, no need the fine anymore, because the, the viol... nature already fixed itself. And so, making the recommendation to us that, um where there was a \$80,000, \$180,000 fine now, no need because it's already been mitigated by nature. Does the commission have a leg to stand on to say, no, we know that there's no more adverse effect going on? But ultimately there was a violation at one point that was investigated, and found to be legitimate, and we would like this fine to stand. Um, and that fine, well, and I we already got the answer to the second part, but the hoping that the, that violation of those fines can be used to further improve the area that was once desecrated. I guess they're asking is there written policy that the Commission can stand on to make those determinations? And one of the examples I'm gonna use in the answer, the reason I'm asking is the SHPD example. SMA application after the fact comes to us and we're waiting, because we know get culturally significant sites over there. And we just know that from our history, but SHPD says, I cannot make one determination, because it's already been done. But we recommend that you disapprove this application, because we cannot make it. And then Department says no, but our recommendation is you, they haven't given us valid reason to say that there was any archaeological, or culturally significant place. So, we recommend that you approve the application. One of the problems I'm having is, as a Commissioner, I don't know which side of the issue is more legally strong for me to stand on, cause there's no clear policy that directs us to have the support we need to support the Department over SHPD or SHPD the over to Department. So, then it becomes an individual person's, determination based on what we know and what we don't know.

Mr. Hart: So, ok, so some suggestions that I would have is that, um first of all, you have time frames. Certain permits have time frames, so you wanna watch your time frames, but the, the

Commission can ask for, you know, input, like, you know, did the, did the Department get comment from this body? You brought up Oihi resources. Let's say SHPD's, one of the problems with SHPD just telling you to deny an approval is that various approvals have approval, and denial criteria. So, them just saying you should deny this, it's like, if you're gonna deny it, it has to be based on the criteria that governs the decision. So, it's not really helpful to just say just deny it. If one of the factors was that there's gonna be impacts to, to cultural resources, that potentially is relevant. So anyway, you could ask the Commission or the Department whether or not they've provided like whether, or not they've gotten input from maybe there's other bodies that you think are relevant. Maybe it's OHA, maybe it's Oihi Resources, maybe it's some other nonprofit that's a reputable entity that you believe has input to provide, so that that can be entered into the record as part of your decision making. That, that's for an approval denial situation. For the violation situation where, if the Department can't, the only way the Department for SMA the only way the Department can say that there's, there should be no fine is through a settlement proposal to the Commission. The Commission doesn't have to approve any settlement proposals from the, the Department. The Commission is the, the Commission is the authority for the SMA. And it delegates portions of the operation to the Department to do the day to day business, and one of the things that's delegated under existing regulations is, is the fine process. So, we, we issue the fine. We can't tell you now no fines necessary. We can propose that we think settlement's appropriate. But let's say the commission disagrees. My recommendation is that you base your disagreement on the, on the fine criteria that's in your own rules. So, let's say like for instance, degree necessary to de deter future, future occurrences, you know. Maybe you say there shouldn't be no fine, because you're concerned that other people will do the same thing in the future, and that there needs to be deterrents out there. You know, like whatever, whatever, your whatever any scenario like this is governed by a set of rules. So, you know, whatever your actions are, if you're touching bases on the applicable rules, your, you're, you're making it more defensible. So, if its decision-making criteria, that would be what I would, that's what I would try to do is base it, base any opposition on the specific decision-making criteria of the subject.

Ms. Lindo: Thanks. That's super helpful, and, and I also for the record would just like to reiterate that I'm so glad you guys, the Department is having conversation with SHPD, because part of the on both professional, and moral obligation of individual Commissioners is if we are as a County using SHPD as the overall arching authority on cultural resource management. And then they come back with a no comment deny, and Department is like, whoa, they haven't said why to deny. As a Commissioner, we're stuck in that... Why do you use an authority that is not willing to give one comment, and, and does not have substantial reasoning for denial? Yet we list them as the premier

organization to get our info from, then it kind of just lessens the integrity of our process. And so, to me it makes sense that we would put, either our Oihi Resource Department or, or, or our archaeologists, or whatever. Like put systems in place to mitigate what we're not getting from the arching authority, and give them that system the power to now have really good conversation, and really good protective mechanisms that we all can work with. But, but I super, I'm excited. I guess, my last question would be...If the Dep, if the Commission at any point disagreed with the Department on something that didn't come before it. Like some, some kind of Title 19, that we saw that ultimately doesn't come for us to review, Director makes the calls and all that because it's not under our, preface. But may at some point affect the work that we're doing. Does the Depart, does the Commission have the ability to contest decisions made by the Department for projects concerning Moloka'i, even if it's not under our jurisdiction as a body?

Mr. Hart: That's an Andrew question I think. You're asking like can the Moloka'i Planning Commission as a body, e.g., appeal a Director's decision?

Ms. Lindo: Yes.

Mr. Nelson: Yeah, so over, let's say the granting of a building permit, which would be within, you know, not, not in the scope of the Planning Commission's authority. I, My tentative answer would be no. That, the Commission, to the extent that the Commission tried to, ah challenge that, I don't think that they would have, standing to do so, and I'm not sure what the forum would be that they would seek to challenge that. You know, if it's but for instance, you could, elect to, send a letter expressing concern, to the Department. But could the Commission institute a legal action regarding a matter that's outside of its the scope of its authority? I don't think that that would, that that that challenge would, would go very far. But that's, you know, just kind of my initial take on the question.

Ms. Lindo: Candace?

Ms. Thackerson: Mine was on the SMA revolving fund, so I can let you finish this topic and then.

Ms. Lindo: No, go ahead.

Ms. Thackerson: Oh, okay. So, the SMA revolving fund, because we were talking about that and I know that to Moloka'i Planning Commission is thinking about redoing your rules. So, as Jordan had said previously, just make sure that you work with Council, because the SMA revolving fund

was set up by Council. And its funny sometimes Council will ask us, hey, how are your department? Will they have updates? They'll say like, how, what have you guys used it for? And things like that. And we say Council, it's your fund. You're the only one who can spend it. As written in your in Chapter 3.49, it's up to the Council as to how they want to allocate those funds. So, if you're gonna change your rules, just make sure that you work with your Council member to perhaps amend 3.49 as well. You could maybe add something that's some language that says, maybe funds collected on the island of Moloka'i are used on the island of Moloka'i. You know, something like that, because right now it just is all fees, and fines, and permits, and things go into that fund, and it's used for all three islands at the discretion of Council.

Ms. Lindo: At the discretion of Council? So, so just clarifying, Candace, that says at the discretion of council, but it doesn't automatically make them the premiere, like, only authority to spend that right?

Ms. Thackerson: They are the only authority to spend it. We cannot touch it like the Department can't, we can make suggestions to Council on projects that we think should be used for it. But we, the Planning Department, cannot access that money, and spend it on a Shoreline study, or environmental study. We have ADA beach, wheelchair ramps at some of the beaches we wanted to do, and that would be a project that we would propose to Council in budget season during budget. And then if they approve it, then they would say we allocate those SMA funds to be utilized for Planning Department to implement that project. But we don't have any way, like me personally to access that, that money.

Ms. Lindo: Oh, ok. So, it's not within the Department's overall budget when you come to the Council every year on purposed strategic plans for SMA projects that the commission okay that the Council, ok, ok.

Ms. Thackerson: Yeah, it says in 3.49, you know, the Council may make appropriations to the fund. In adopting each year's fiscal year's budget, and capital program, the Council may make appropriations to the fund. Any remaining balance you know, lapse but remain and accumulate from year to year. So, so how you wanna, how you wanna multiple ways to skin a cat. I'm not sure how the Commission, if you guys in your rules wanna, you know, have Council amend this, let's say may be the funds collected on Moloka'i are used on Moloka'i, something like that. I'm not sure, but when you guys form your TIG, if you're gonna go down that route, and redo your rules, that's something we can discuss at that point, but because that's for suggestions on how to use the revolving fund and we give suggestions for fiscal year budget.

Ms. Lindo: Okay, thanks Candace. Andrew or Jordan, you guys wanna chime in? You guys have I'm, I'm gauging your faces, and I'm wondering if you have anything else to add.

Mr. Hart: Yeah, I was, so I was reading the purpose of the fund, just frankly I don't generally deal with the fund, because of my, my position. But anyway, it doesn't item, item 1 is to augment the enforcement of Chapter HRS 205A, Hawaii Revised Statutes and Special Management Area and Shoreline Rules for Lanai, Maui, and Moloka'i Planning Commission. So, you know, you could, just like Candace was suggesting, you could, you could add on to that to provide criteria where funds are used, where they're collected. Obviously, that creates a 2nd layer of, that creates a 2nd layer of tracking for finance, which is, you know, whatever it is what it is though, it'll just, it'll just basically segment the funds. But the other thing too is that, you know, there was a question earlier about, you know, proactive enforcement, and things like that. It would be possible to put into your rules that enforcement would be proactive. The only thing that I would say about that is that you will think that you're gonna get all the people that you're envisioning are doing bad things, and you want to be brought to justice. But you're gonna get plenty of your, you know, family, friends, aunties, uncles, and neighbors too. Cause like all kinds of people are doing little things like carports, or whatever that they think are, you know, nothing. But it's, it's SMA violations. So anyway. We're currently not complaint driven. We could be switched to proactive, but just, just be conscious that there's a it will, it, it, there's a specific reason I would presume that it was changed to complaint driven, and it's exactly what I'm talking about right now. So, it has been other ways in the past, it could go back that way, but just be conscious of what, what your kind of starting if you do that.

Ms. Lindo: Thank you. Okay, Commissioners, do you have any other questions or Jordan or Andrew, do you have anything that you else you'd like to say? Anybody? Okay, not seeing anybody excited to raise their hand. I would now like to open up this item to public testimony if there's anybody in the community online, or on the phones that would like to testify on this agenda item. You can raise your hand, or let our staff know in the chat, and they will be able to, they will be able to, let you testify at this time.

Ms. Nomura: Hi chair. This is Shantel. I see no one online as well as in the office to testify.

Ms. Lindo: Hang on, I, we have one texting testifier, one, one second. Council Member Keani Rawlings Fernandez would like to testify on this item. Council member, do you swear to tell the truth the whole truth and nothing but the truth?

PUBLIC TESTIMONY: 1 TESTIFIER- MS. KEANI RAWLINGS FERNANDEZ

Ms. Rawlings Fernandez: Yes.

Ms. Lindo: Okay, go ahead.

Ms. Rawlings Fernandez: Mahalo Chair Lindo. Mahalo for this opportunity to testify. I'm Keani Rollins Fernandez Council Member for Maui County Council. And, I just heard some of the discussion that went on regarding the chapter 3.49 Special Management Area Revolving Fund about the Council being the exclusive body that is able to access this fund, and I didn't hear anyone challenge that. So, I'm testifying to have a Corp. Counsel explain if, what Ms. Thackerson just explained to this body was correct. Because I'm looking at it, and I don't see Council as the exclusive body to be able to access this fund, or use this fund that's generally not how revolving funds work. Generally revolving funds, are in the budget, and the Planning Department, any department in the County, can propose use of whichever funds such as the affordable housing fund, and then it, it is transmitted to the Council by the Mayor, in March, and then we go through the proposal, and then Council adopts it. And so, if there is a proposed use of the revolving fund, the SMA management revolving fund, that, is, is something that the Council, and the community is not, does not agree to, then the Council can remove it. But Planning department is able to propose use of that fund. So, I just wanted to provide that perspective, and when you close public testimony, if you would like to ask Corp. Council to opinion on that, that is my understanding. So, Mahalo for this opportunity to testify.

Ms. Thackerson: So, I had said that the Planning Department makes suggestions to Council.

Ms. Lindo: Hang, hang on, Candace.

Ms. Thackerson: Oh, ok.

Ms. Lindo: Thank you. Does the, does any of the Council members have... I'm sorry Commission members have any questions for the testifier? Okay, at this time, does there, is there any other testifiers that wanna testify on this subject matter?

Ms. Nomura: Hi Chair. I see nobody online.

Ms. Lindo: Okay, thank you. Thank you, Shantel. Seeing no other testifiers signed up, oh, yeah. Hang on, I'll gonna let you answer that. I just want to close public testimony at this time with no

objections from the commission. Public testimony is now closed. Okay, so Candace, you can, give your statement and then I'll let Andrew finish.

Ms. Thackerson: So, Candace Thackerson, Environmental Planning Supervisor. Yes. Council member is correct. But, we, the Planning Department make suggestions to Council, like I stated previously, we write down projects, we think are good ideas, studies, and then submit it to Council for their consideration and for the public to weigh in. But the Planning Department itself, I mean, like me, I cannot take the monies and use it. We have to get Council's permission and the public's buy in that these projects are important to everybody, and to use their funds in that manner. That's what I meant about it being Council's discretion, you know, it's, it's not like the CZM staff could just come up with their own idea, and implement it without checking in with Council in the public.

Ms. Lindo: Okay, Andrew.

Mr. Nelson: Yeah, I was just gonna add that the Council, of course, has, the, authority to appropriate the funds for different purposes and, you know, that budget responsibility is obviously a major, responsibility of, of the Council.

Ms. Lindo: Okay, and I can take up too much more time because maybe the maybe the wording in Chapter 3.49 it needs to be improved, but my, my understanding as I read it is that the Council has discretionary power, and I, I, I cannot see how a revolving fund like cannot be accessed without Council approval. I mean I'm thinking that the Mayor would have to approve that first and yeah. So, it's to me it was just a matter of like, who can withdraw the money from a bank account? And can you write your check to get somebody paid? Or can that money be used in a way that that cuts through other bureaucracy, and is there a method for that? And, and so we're gonna need to discuss that right now, because it seems to have one difference of opinion on how we're reading that. So, in going forward, if anybody has anything else Commissioner Kelly, you have something you wanted to say?

Ms. Kelly: Yes, I just wanted to know what can the revolving fund be used for? Sorry, I missed that.

Ms. Lindo: Sorry, he was saying that you can review the SMA Fund, Revolving Fund specifics, but the purpose is the Special Management Area of Revolving Funds shall provide funds to be used for, augment enforcement of Chapter 205A Hawaii Revised Statutes Special Management Area and Shoreline Rules for Maui, Molokai, and Lanai. For land and easement acquisitions for

beach access, master planning studies, permitting and implementation pertaining to coastal realignment, beaches and shoreline management, or beach dune restoration, or manage retreat in adoption, each fiscal year's budget capital program, the County may make appropriations to the fund and any balance remaining to the fund at the end of the fiscal year shall not lapse, but remain in the fund accumulating from year to year. So, the revenues in this fund shall be used for any purpose except those listed in subsection A. So, so basically the, the funds can be used to improve, manage, pre, um care for, and, and all that kind of stuff for Special Management Areas throughout the County. I think what we were having conversation on is looking at ways if we, if this body wanted to, to approve use our rules to appropriate whatever Special Management Fines are, are collected from Moloka'i that it be used for Moloka'i as opposed to Countywide. And, and, that's kind of what the discussion was, but that's something that we can address at one later date when we talk about the TIG. Okay, any other commissioners have any other questions? Okay, if not, we'll close up this item. Mahalo Jordan for your time super appreciated, super appreciate all your knowledge and sharing with us and taking the time.

Mr. Hart: Thank you very much. Thank you for inviting me and, you know, I always try to just provide everybody with accurate information. So, you know, the solid set of rules, all these rules can be changed by participation, so, you know, feel free to call me at the Planning Department and I'll try my best to explain anything that I'm aware of, and I can give suggestions on how those things might be changed. But anyway, thank you again for your patience, and interest in this subject matter.

Ms. Lindo: Thank you, and, and just know that this Commission, as, as long as I'm the Chair, we also would like to become better partners, and more efficient at what we do. So, if you ever have any kinds of ideas, or things that you think might help in our relationship, or are, you know, stewarding this Kuleana while we're open to that too, and training anytime. So, thank you so much.

Mr. Hart: Thank you.

D. DIRECTOR'S REPORT

- 1. Agenda Items for future meetings.**
- 2. Completed Moloka'i applications report generated by the PLANNING DEPARTMENT with the August 14, 2024- NONE**

Ms. Lindo: Okay, Item D director's report, agenda items for future meetings.

Ms. Thackerson: Okay, so Candace Thackerson in place of Ana Lillis. We do not have any agenda items for the next meeting. I don't know if you guys know, but Sybil's been out. She took a much-needed vacation, and now she's on Kauai right now representing the Department at MEMA Conference. So, we do not have any items scheduled for the next meeting. Unless Chair, you would like to potentially place something on the next agenda.

Ms. Lindo: Yes, actually, I would, I, and I can discuss that with you later, but for the record, I'm interested in getting the new Director of the Department of Oihi Resources, to speak with us on his intended role, and by policy and by design on how, we utilize that Department in a way to more efficiently and effectively manage, our Kuleana as Commission members. So that would be one thing that I would like to do for him to introduce himself, and us to get a clear idea of how to best utilize that Department, and how to best support that department in our role. So, so that would be the one thing that I would like to see on the next agenda if possible. And if he's not available I think it would be good for us to have an orientation on the Department by somebody who is available, and, and get one oversight of how that works into being a resource for this Commission.

Ms. Thackerson: You had said OED, Office Economic...

Ms. Lindo: Department of Oihi Resources.

Ms. Thackerson: Oihi, I thought you said OED. I was like, got it. Okay, we will reach out to the Director and see if he's available, if he's meeting, and do a short presentation, and if not, then send somebody in their place to do an overview of what the Department, what they intend, what's their, what's their plan? What's their strategy?

Ms. Lindo: And then I also think we can also put on there the Commissions, to talk about forming a TIG for SMA rule changes.

Ms. Thackerson: So, I will defer to Corp. Counsel. Corp. Counsel? Chair is wanting to form a TIG, to do the rule change. We we've done this process before, and we the TIG ended up closing it. I know that requires three meetings to form a TIG. So, the first one is stating the purpose of it and stating the members. Am I correct?

Mr. Nelson: Yes.

Ms. Lindo: Yep. Well, Andrew, I wanna correct that. First of all, it needs to be part of our agenda for us to even deliberate over whether this Commission would like a TIG.

Ms. Thackerson: So, that's what I was asking, so whether or not you want to form it. Then the second one is forming it, selecting the members, and then the third meeting is reporting back with your findings.

Ms. Lindo: No. So, so the way I understand it is... This first one doesn't count as one of the three. It's simply put on the agenda so that the Commission can entertain the possibility of forming a TIG. Once we vote to do it, then the first meeting would be to come up with the parameter's coming TIG members scope of the work, and then agreeing on that. Then the TIG would go and do its business and when it's ready, come back to report on the findings of the TIG. And then the third meeting would be for the Commission to have the opportunity to deliberate and make, um a vote on recommendations based on the TIG's report, is that right? Andrew?

Mr. Nelson: Yeah.

Ms. Thackerson: We will just pull the description from the last time that we did this.

Mr. Nelson: Yeah, I can't I can work with you to get that item agenized for our next meeting.

Ms. Thackerson: Okay, so now two items on the Director's Report. Hopefully, we have, we definitely have discussing the formation of the TIG on the agenda, and then we'll see what we can get out of the Oihi Resources Department. Thank you.

Ms. Lindo: Okay. Sounds good. All right, and then Candace completed Moloka'i applications, there are none.

E. NEXT SCHEDULED REGULAR MEETING DATE: AUGUST 28, 2024

F. ADJOURNMENT

Ms. Lindo: Our next item E is next scheduled regular meeting date. It's August 28, 2024 at 11:00 A.M. And item F is adjournment. So, Mahalo everybody for all your hard work and your help, really appreciate you guys. And again, I just want to stress to the Commissioners, I know it's a heavy lift, but until we get all of our new Commissioners on board, it I'm really hoping that all of us can commit to the meetings and I'll try my best to ensure that it's efficient and effective, and

doesn't drag on too long so that we can have a very efficient meeting. Okay, thank you so much. Mahalo for your time. Mahalo staff, Mahalo Andrew. A hui hou this meeting is adjourned.

Meeting Adjourned at 12:56 P.M.

Submitted by,

**Shantel Nomura
Secretary to Boards & Commissions I**

RECORD OF ATTENDANCE:

**Zhantell Lindo: Chair
Shannon Kaahanui: Vice Chair
Keomailani Hanapi Hirata
Kananikala Bishaw Juario
John Russel Phifer
Debra Kelly**

Others:

Andrew Nelson- Deputy Corp. Counsel
Jordan Hart- Planning Program Administrator, Department of Planning, Zoning Division
Candace Thackerson- Environmental Specialist, Department of Planning, Current Division
Shantel Nomura- Secretary to Boards & Commissions, Department of Planning, Current Division