

**MAUI PLANNING COMMISSION
REGULAR MINUTES
FEBRUARY 10, 2009**

Approved: 4/14/09

A. CALL TO ORDER

The regular meeting of the Maui Planning Commission was called to order by Chairperson Jonathan Starr at approximately 8:37 a.m., Tuesday, February 10, 2009, Planning Conference Room, First Floor, Kalana Pakui Building, 250 South High Street, Wailuku, Maui.

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

Mr. Starr: Welcome, I'd like to thank everyone for joining us today. This is the Maui Planning Commission meeting of February 10, 2009. We have with us today, Commissioner Kent Hiranaga, we have Commissioner Bruce U'u, we have Vice-Chair Commissioner John Guard, J.B., Commissioner Mardfin's on his way in, Corp. Counsel James Giroux who's our lawyer for the commission and I'm Chair Jonathan Starr. We have Current Division Administrator Clayton Yoshida who will be staffing us since Director is up for the State of the County Address and will be down later. We have Commissioner Donna Domingo, Commissioner Dr. William Iaconetti, Commissioner Wayne Hedani is here. We have our commission secretary, Carolyn Takayama-Corden, who's been doing a great job getting our minutes and action minutes and keeping everything organized. We have Deputy Director for Public Works Mike Miyamoto. We have a number of our planners with us today, Joe Alueta who handles most of the policy stuff and a number of others will be along shortly. I see Paul Fasi in the back and Danny Dias, Jim Buika is also there. Kenny Hultquist taping us for presentation on Akaku.

A couple of quick things. The Mayor's State of the County Address is today at 10:00 a.m. I intend to run up there for the speech and come back and we'll be in the able hands of J.B. Guard unless others want to recess the meeting and come up, but know the room's going to be crowded. That's up to anyone.

There were two items on our agenda that the document was a little bit sparse and we had staff add some documentation to it. One regarding the Kihei Town Center and the supermarket parking expansion there that's on our desk. There are now maps and drawings showing the expansion of the store.

And also the Hana boat ramp, we didn't have too much of the documentation and we do have a couple of copies now of the EA for the project floating around. I know Commissioner Guard is looking at one set. I think Thorne has another set around here and I know Commissioner Mardfin will be in a few minutes has that documentation as well. So if anyone wants to eyeball that before we get to it that's fine. If anyone wants to hold off the item because of that we can also examine that possibility.

We have one item that was deferred at the last meeting which was the Kihei Sunset Estates Subdivision. We'll be hearing that later today.

Anyway, we'll move along to our agenda today. The first thing we will have is the initial portion of public testimony as is our normal process. We allow members of the public who wish to testify on any item on our agenda to have a two opportunities to testify though we ask them to testify only once unless there's been completely new information presented. We ask that testimony be kept

as short as possible and in no case longer than three minutes. We will be opening testimony now for anyone who wishes to testify in any item but doesn't wish to stick around while we go through our agenda. There will be another opportunity to testify before decision making on each item when we get to it. We don't have any list of sign ups. Are there any members of the public wishing to testify on any item before we start going through the agenda. Please come forward, introduce yourself and welcome.

Mr. Henry Spencer: Jonathan, I'm going to testify on the --

Mr. Starr: Come to the microphone.

Mr. Spencer: It's the first issue on the agenda right. So I can just wait to do that?

Mr. Starr: Yeah.

Mr. Spencer: I'll just wait.

Mr. Starr: Yeah, the testimony on the first item will be short, coming up very shortly. Anyone else wishing to testify on any item? Seeing none, testimony for the initial portion of the meeting is now closed, and I will turn the floor over to Mr. Yoshida to introduce our first item and I see a planner is ready as well.

Mr. Yoshida: Good morning Mr. Chairman, Members of the Commission. Our first public hearing item is Jeffrey S. Hunt, Planning Director transmitting Council Resolution No. 08-95 containing A Draft Bill to Establish Solar Energy Facilities as Permitted Uses in the Agricultural Zoning Districts on lands with an overall master productivity rating class of D and E to the Lanai, Maui, and Molokai Planning Commissions. The staff person handling this is our Administrative Planning Officer, Joe Alueta.

B. PUBLIC HEARINGS (Action to be taken after each public hearing item.)

- 1. MR. JEFFREY S. HUNT, Planning Director transmitting Council Resolution No. 08-95 containing A Draft Bill to Establish Solar Energy Facilities as Permitted Uses in the Agricultural Zoning Districts on lands with an overall master productivity rating class of D and E to the Lanai, Maui, and Molokai Planning Commissions. (RFC 2008/0126) (J. Alueta)**

Mr. Joe Alueta: Good morning Commissioners. Again, resolution before you was transmitted from the County Council, it was on November 14th. The commission has until March 14, 2009 to transmit their recommendations to the County Council pursuant to Maui County Code 19.510.

Again, this resolution was in response to last year's adoption, I believe it was last adoption of Act 31 which allowed for solar energy facilities within the State Agricultural District with master land classifications of D and E, ag rating or ag productivity ratings are rated from A to E, D and E being the least productive.

Currently the way any type of small energy of solar facility has been constructed within the agricultural district in the County of Maui has been either through a special use permit prior to or we do have a provision for small scale energy production, but those are limited to sites or being subordinate to an existing agricultural operation within the agricultural district. The one exception has been for where they qualified as a minor utility and that was in the case of Lanai which they constructed a small solar facility panels.

The proposed resolution would be consistent with the County Code or with the State Act 31. I did analyze how this proposal would be consistent with the variety of the community plan and general plan language. It is generally in supportive. There's only one statement that I could find within the community plans and that was with regards to the Kihei-Makena Community Plan in which it would require proper site selection, facility construction and monitoring of power generation facility in order to minimize adverse environmental impacts upon the Kihei-Makena region. And so even though it would be a solar, some type of solar energy facility, it's still a power generation facility. But in general, there is support throughout the General Plan and community plan to encourage alternative energy or clean energy production.

We did send the resolution out to various county and state agencies. It's on page 2 of the memo report that's before. On the Table, it should be, I apologize, apparently the exhibit numbers didn't get in there. It should be, for the first one it should be Exhibit 7 if you want to write it in on that block and then Exhibit 12A and Exhibit 16 on page 2 of the staff report.

One was from Department of Public Works in which from their comments they wanted "the solar facilities should be situated or shielded to prevent sunlight bouncing off solar panels and blinding passing motorists."

Again, from Department of Land and Natural Resources, DLNR from the Maui Department, again, you have various visions within DLNR. These came specifically from the Aquatics Division if you look at, it's attached to Exhibit 12A as Exhibit 13 and that's similar to other commercial uses, "the use of the agricultural lands may or may not be appropriate to be given complete approval. If the actual use of solar energy facilities is not intended to support agricultural, then it should be rezoned to commercial industrial uses." So again, this is echoing a concern that use of agricultural land for a nonagricultural purpose somehow should be either rezoned or should have some type of secondary approval rather than just being outrightly permitted.

From the Department of Agriculture. I didn't quite under their – I guess they wanted to recommend, identify conservation practices and I think that – I can only assume that they were either recommending – they were reading the overall agricultural bill and they thought it was a new bill when we're really just adding this solar energy facility to an existing ordinance, and I think they were asking for clarification on another section of the bill dealing with conservation practices within the County Agricultural District.

Again, in general the department is supportive of the bill. We do note that the County can be more restrictive but not less restrictive within agricultural districts with regards to the solar energy facilities. The State, for State and I guess in this proposed bill, solar energy facilities will be limited

to D and E master productivity.

The one issue that could come up in the clarification but we're going to leave – the department is recommending that we not clarify, we'll just leave it as D and E is that if you look at the overall ag productivity books they talk about, they have a master productivity which is what they're talking about and then you also have where irrigation is added to lands and that changes that master productivity. The way the State is and the way the County resolution is we're going to echo the way the State has it and they just reference the master productivity and that will just be, one book. And that's all I have. Do you have any questions?

Mr. Starr: Okay, members, any questions for Mr. Alueta? I have one which is, there seems to be a feeling with this that it's that you're adding solar or you know, energy generating facilities to ag land takes away the ability to use it for ag purposes. Not too long ago I spent some time in Germany traveling around and Germany has become the most prolific nation in terms of creating a diversified energy facilities both in terms of photovoltaic and wind. And part of the way they've done that is by encouraging the use of it on ag land and allowing farmers to gain the income stream from installing wind and solar. And they do that without stopping the ag use of the land but by integrating it. You know, so you'll be traveling along and there'll be a farm and be ancient farm building that's restored and kept beautifully but it's, you know, 500-year-old buildings and barns and then they'll be windmills or there'll be photovoltaics spaced among the fields. They're doing it on the most productive ag land. You know, has there been any thought to trying to encourage the dual use of it, so that the energy aspect of it could help aid the ag use?

Mr. Alueta: That's already in our County Code under Small Energy Facilities. Which if you have a – the definition for our small scale energy facilities, right, is not limited to just solar, it can be biomass, it can be anything. And so, it's already listed as an allowed use within agricultural district and it expands beyond just solar. And so what this will do is – so if you have A, B or C land, right, you would have to have, again, have a farm. As you indicated it was, and you would have to farm in which to qualify to do a solar small scale energy facility.

What this does is that it allows for the lowest productivity land or at least according to what they're claiming on their mass productivity as the lowest productivity land to just be purely a solar generating facility. So you could have areas that have like I say, D or E land, maybe above Kihei or some place like that where you have very dry, scrub land that is not highly productivity. It's good for grazing. You could theoretically create a 500-acre solar facility out there with no associated or that generated that electricity is not necessarily going back to the farm but is being directly tied into the grid. I think that farmers will get creative or owners of ag land will get creative in the use of this panels. Again, we see them all over the place. You put up a big metal structure, put the panels on top and it's shaded parking. Or you have – you put up a standard T shades and you do solar panels and you put water in troughs underneath and a shaded area for the cattle, for grazing cattle. So there's lots of creative opportunities here to put these panels out here and to have farmer integrated. The only thing that's keeping it is, now that electricity is 33 cents kilowatt, 35 cents a kilowatt, it's now economically viable and people are thinking hard of it.

Mr. Starr: Are we precluding though a large agricultural landowner who's doing ag use and has, you know, a large piece of A or B classified land from integrating a large commercial energy generating

facility into his place? I mean, could he do it under the small scale?

Mr. Alueta: Again, he wouldn't be limited to anything if it's truly a large farmer. The largest farmer on this island is Alexander and Baldwin. They're also one of the largest energy producers for the County of Maui. So obviously is a viable proponent and the existing laws doesn't preclude farmers or real farmers, large scale farmers from using prime ag land you could say to integrate within their energy facilities. And so I'm not sure how, if they're really a true, like I say, A & B I don't think A & B is really looking to give up their prime ag lands to put up a solar farm. I think because of their mass holdings most people are going to look at the worst lands first.

Mr. Starr: Yeah, but if A & B wanted to take, you know, some of its prime land and install some windmills on it in such a way that it's not going to stop them from growing, doing their ag.

Mr. Alueta: Correct.

Mr. Starr: They can do that. They can do that now?

Mr. Alueta: As long as it's tied into their facility. I believe they –

Mr. Starr: No, I mean, if they're going to sell it – let me turn it over, Commissioner Hedani.

Mr. Hedani: Finish up.

Mr. Starr: I mean, I'm talking about a commercial facility where you know, they'll be selling it to Maui Electric.

Mr. Alueta: They currently do now. So I think that we would have to look at it on a case by case basis. I think one, the State land use would preclude it. So they would need a State Special Use Permit. And this bill doesn't go beyond solar. Okay, so it's limited to solar. So if they did put up a windmill, they would probably need some type of county permit also in addition to the state land use permit. So, and again, the State in their Act 31 limits it to solar energy. So that can be either water heaters or photovoltaic or however else you can come up with the use of having solar facilities. And again, the State law limited it to D and E and the County zoning limited it to that way.

Mr. Starr: Commissioner Hedani.

Mr. Hedani: Joe, the Council Resolution was provided to the planning commission for comments or what are they looking for, are we supposed to approve it or disapprove it?

Mr. Alueta: Comments and recommendation.

Mr. Hedani: Comments and recommendation.

Mr. Alueta: I mean, you're going to vote on whether to recommend approval to the County Council. This is like any other standard resolution that's come down.

Mr. Hedani: Okay, my comment was that if they're restricting it to Class D and E lands then what you're probably looking at is land that's too steep to farm in many cases. So when you look at the assets of the island, what you're actually looking at is a lot of area that is probably the most scenic areas on the island that are in either agricultural or conservation and what I'm thinking about is nobody's against solar energy, nobody is against energy conservation, nobody is against reduction of pollution, but we shouldn't implement it in a way that destroys the things that are valuable to the island like vistas of the mountains, scenic vistas to the sea. And when you think about the easiest most economical and efficient way of laying out a solar field, it would be on flat land and the flat lands would probably constitute A, B and C lands. So that's the problem that they have to wrestle with. How can they implement it in a way that does not destroy the things that are valuable to us.

Mr. Starr: Commissioners, any comments back on that Joe?

Mr. Alueta: If you look at Lanai, the plateau on Lanai is actually D land, master productivity of D. So that area is a plateau, it's flat, but it's rated as D. I'm not going to get into the fact that you add water to it what the rating gets you, but it's a little different. And the same thing, I think that you have gently sloping areas in other areas of this island. But I think your concerns are valid and so if that's the commission's will to put that in, again, it was sort of echoed by Public Works in the sense of they were looking at safety for motor vehicles and the reflectiveness of that as well as Kihei-Makena as also looking at it, in their community plan comments. So if that's your comments. I think there is a push at least from our department is that we're trying to limit, lower the barrier, the entry for photovoltaic panels. And I guess whenever you, in a rush to lower the barriers, you may have unintended consequences and one of them again would be scenic resources and again, that's the comments that you need to voice in a motion or in a vote so the Council can then balance that with the desire to move to a more greener energy source and then how much are we willing to sacrifice potential scenic vistas.

Mr. Starr: Okay, Commissioner Guard.

Mr. Guard: Thank you. Two comments or questions. If we're going to be able to easily identify D and E are we finished with the A, B and C? Have we finished identifying all of our ag lands for the State? Because that's been a problem with a few of the other subdivisions that come in front of us. Have we established all of our prime ag lands, the State or the County?

Mr. Alueta: There is a soil classification booklet for the entire County of Maui.

Mr. Guard: Okay, so now we know what our prime lands?

Mr. Alueta: Yeah, it's from 1950 something, done by the University of Hawaii. But there's also different ag methodology. There is ag lands, ALISH lands, ag lands of importance of the State of Hawaii and then you have, I think there's one more also which I don't know off the top of my head but there is – the one that they're referencing, ag productivity is basically –

Mr. Guard: From the '50's?

Mr. Alueta: Yeah, from the University of Hawaii and it has every square inch of this island and

Molokai and Lanai and it rates the soil classification. Again, it's skewed toward the most predominant ag operations at the time which are cane, pineapple and grazing cattle. They do make mention to potatoes and tomatoes and other crops.

Mr. Guard: Sandalwood.

Mr. Alueta: Yeah, but it's pretty good. I mean, it's very good and that's the one that we use and that's obviously what the State of Hawaii using. Because they're not, obviously they're not making reference to these ALISH lands maps which has never been as far as I can tell been adopted.

Mr. Guard: And the second comment would just be, for anyone that wants to do this on any type of ag land as a small farmer if there's a way to expedite that ground mount permit process because a few people have gotten stuck on ag lands waiting for a few months to get a permit that seems to be a fairly straightforward structure. If there's a way – I mean, just to comment on that. I mean, it takes six months for someone to do 20, 30 panels seems –

Mr. Alueta: I just got my building permit for my trellis and that took several months and that's –

Mr. Guard: If there's just some way to fast track it through the County.

Mr. Alueta: And that's where my photovoltaic panels are going to go. And that's one thing that people need to recognize is that if you do a photovoltaic panels and you're going to install it, it has to be on a structure that has a building permit. So even if you build a structure that doesn't necessarily need a building permit from the County, MECO will require you to have one. So say you have a little shed that meets the minimum qualifications and no building permit required, and you try to go get PV panels on, they're going to say no, we can't allow that. So there's a lot of different things and I think the whole industry is working through it to make it easier for everyone but we still have again, balancing the health safety issues as well as, you know, issues with scenic vistas.

Mr. Guard: Mainly just for other departments that if they don't need to look at it they should be able to pass it through, Department of Health needing to look at it for sanitary reasons.

Mr. Starr: Commissioner Hiranaga.

Mr. Hiranaga: So just trying to understand this resolution. Basically if the ag land is rated D, E, it will be a permitted use to put in a solar farm?

Mr. Alueta: That is correct.

Mr. Hiranaga: I guess I have some concern that sort of echoes Commissioner Hedani's comments about you know, impact to the island's visual appeal I guess. I mean, theoretically someone say the Launiupoko project, 400 acres, if that wasn't built someone could put a 400-acre solar farm up there and have no oversight, no comment, just have a big, black spot there on the side of West Maui Mountains.

Mr. Alueta: Yes, that would be correct.

Mr. Hiranaga: Well, I guess I have some concern that there should be some type of permitting process at least for public comment as to location and size. I agree, you know, we want solar panels but you know, I think we should sort of have a process to try and place them, to minimize the impact to the aesthetic appeal of the island. I mean, theoretically Amfac could run a roll of solar panels just below the conservation line all the way from you know, Lahaina Town to the Pali, so you have this black strip going you know, for five miles or six miles and if it's Class D or E nobody, all of a sudden, everybody going to say, hey what's happening up there on that side of the mountain. So I think there should be a process where there's public hearings on it.

Mr. Starr: Commissioner Mardfin.

Mr. Mardfin: My understanding is from page 4 of this memo to us says, "the commission should note the Council proposal does not put any limit on the type of agricultural land that can be used to establish solar energy facility. In areas where land is designated state agriculture solar energy facilities will be limited to D and E. The County could be more restrictive than State law but can't be less." Well, if that's the case, I don't understand why we have in the bill, proposed bill itself, Section 2(a)(8) that reads, on page 2, "Solar Energy Facilities is defined in Section blah, blah, provided that this use shall apply only to land which are classified by the Land Study Bureau as detail land classification as overall master productivity rating Class D or E." Why don't we take out that Section 8? I would recommend taking out the Section 8 and then if the State changes their regulations to be more liberal we don't have to go back and change the County law.

Mr. Alueta: I guess when – the section I was referring to was that, the County resolution does make reference to master productivity of D and E and what I was trying to get at is that when you look at the master productivity, again there's two different – there's an overall master productivity and then there's irrigated, when you add water and so I was trying to find out whether or not – I was trying to argue that we should possibly make it clear on which section of lands clarified. But in talking with my boss and talking with staff over we feel that it is clear enough the way it's worded now with the master productivity of D and E and we were just going to go with that and then we don't feel that any more clarification is needed.

Mr. Mardfin: So you want to keep Section 8 in there?

Mr. Alueta: Section 8 is the one that's being proposed by the County Council. That's the new section being added besides the definition.

Mr. Mardfin: What would the impact be if Section 8 were not included?

Mr. Alueta: It would not be listed as a permitted use within the County Agricultural District and they would then have to go through either a conditional permit.

Mr. Mardfin: What if it said solar energy facilities as defined in section Maui code, period.

Mr. Alueta: I think what's – the resolution that you have before you is adding the definition of 19.04

and that's on Exhibit A.

Mr. Mardfin: Right.

Mr. Alueta: And that's defining what a solar energy facility is. And then for agricultural district, they're going to limit it because of the state agricultural district limitation, they have their own limitations.

Mr. Mardfin: But if the State limits it, why does the County also have to limit it? Why don't the County just be silent on it. The State regulations apply. If the State should in their wisdom liberalize it we wouldn't have to go back and change ours. If the State, if we leave it in and the State liberalizes we'd have to go back to change it because you said the County can be more restrictive than the State. I'd just assume that we not be more restrictive than the State. That the State allows it on C land for instance that we go along with C land without having to go back and revisit this. And I think if you put a period after code, so you don't have, "that provided that use shall apply only to land with soil classified blah, blah, blah," you get the point without – and we're not really changing anything in fact for people because they're still going to have to meet with State requirements anyway.

Mr. Alueta: Yeah, provided that they are state ag in which the majority, the vast majority of lands in the County of Maui would have a dual classification of county ag and state ag.

Mr. Mardfin: So I don't see the point in – at this point in time duplicating what the State has, just be silent on it. The State regulations will still apply and if the State should liberalize then we don't have to go back and change this thing.

Mr. Starr: Commissioner Hedani.

Mr. Hedani: I disagree. You know, I think that sometimes the State, the State of Hawaii, the best of intentions creates the worst of laws. The two-acre ag lot thing, right, it's intended for family subdivisions that want to subdivide so I can pass my land on to my children and you end up with 400-acre subdivisions that are two-acre ag lots that go half way up the mountain because it's not good enough. They gotta be able to see over the next guy's roof and it just gets crazy. And so in this particular case, I think maybe, some oversight over the wisdom of the State's jurisdiction might be appropriate.

Mr. Starr: Commissioner Mardfin.

Mr. Mardfin: I certainly don't disagree with you about certain acts being passed that don't make sense in retrospect. But it seems, I took your point that you made earlier about even D and E land could be an inappropriate place. So I don't have any problem with putting a few oversight restrictions on it. But I don't see where the productivity of the land is a relevant issue to do that on. And while I'd be willing to entertain a motion to have some kinds of, you know, it has to be approved by the Planning Department Director or by the planning commission, while I can see some of that stuff being there, I don't think it relates to the agricultural productivity issue. So I would still argue to take out that, you know, put a period after code and not have it specified to the agriculture

productivity. If on a separate condition where it has to go through some process I may or may not agree with you, but I think it could be done separately. I don't think it's the agriculture productivity of the land that's of concern to you. I think it's some other issues that are of concern.

Mr. Starr: Commissioner Hiranaga.

Mr. Hiranaga: Just for clarification, so if someone was to propose a solar energy facility in ag lands classified D or E, they would not need any type of state land use permit or conditional permit, it's just a permitted use?

Mr. Alueta: It would be an outrightly permitted use on both state and county levels on state and county land use levels and the only issue that we would have would be with building permits or electrical permits. That's the only review that we would have.

Mr. Hiranaga: Thank you.

Mr. Starr: I have a question that's kind of a follow up from questions that Commissioner Hedani and Hiranaga had asked and I wanted to ask you Mr. Alueta, what would be a reasonable mechanism for making sure that this isn't, doesn't create any real visual blight but also is not something that's obstructive to those who are trying to take advantage of it where, in a more, you know, innocuous way. I don't know really what body or what mechanism, you know, should look at it and if they should only look at it if, you know, Planning Director or someone feels that there's a concern. Can you suggest some kind of mechanism that would keep an egregious situation from occurring without being a – making it difficult for most people.

Mr. Alueta: From the department and administration standpoint is like we're not trying to impede and we're trying to encourage solar facilities. So I think that at this rate in time, I can tell you that from the director's standpoint is that we're not going to encourage trying to create some kind of review, additional review. Having said that in trying to help you out with trying to figure out what can be done, the only methodology is going to be through some type of special permit or you know, either you have that it's either reviewed by the director or reviewed by the commission. And then you have to weigh that desire and need to regulate with desire of what's the chances of it happening. You know what are the chances of a large scale solar facility being you know, as you say from right below the conservation land from the pali all the way. Well, given the insulation costs and inefficiency of doing that chances are that's not going to happen. And you have to decide where and how big. I mean, given the overall grid size of Maui itself and the amount of alternative energies that can be supported within our existing grid through MECO without creating havoc. As you know, the windmill has its own issues with the fluctuation and power generation. Solar would have its own fluctuations given that it could only be during the daytime obviously and so it's a little more predictable. So I think that the carrying capacity of our system on Maui is also going to limit the amount of photovoltaic farms out there and where they're going to be located. So I think that, again, but again, if you wanted to have some type of oversight or review of these facilities so that they don't somehow the guy decides to put in the worst location as far as visual plane. It's going have to be through some type of permit or language which says that view corridors because we do have a view corridor which mostly deals with makai view corridors and a few mauka, but that Maui County study is like I say, a little outdated and has not been updated in the recent years that I know

of. So the only methodology would be to establish some type of review by the director or by the commission.

Mr. Starr: Commissioner Hedani.

Mr. Hedani: Let me give you an example of something that would be visually obtrusive to the community would work, it would work and it's not the radical. You put up a 200-foot tower and around it you build an array of solar mirrors that focuses the sunlight. It's tracked by computer, focuses the sunlight onto the central tower, the tower glows to the point where it's so hot that it produces mega amounts of energy, enough to power this whole island probably. It's not conceptual. It's something that was thought about back in the '70's and plans for that were reviewed in West Maui for a project like that. Whether or not something like that can go through without review is the question. Those types of technologies exist. They're not all necessarily completely benevolent and from that perspective, I think we need to, in our rush to become green and to embrace the green theory we need to take some time to insure that what happens is appropriate.

Mr. Starr: Commissioner Hiranaga is next, but I'd like to suggest and maybe you could think of some mechanism, Commissioner Hiranaga.

Mr. Hiranaga: One idea would be to set some type of acreage ceiling so that, you know, something, and I don't know what that number is, one acre or two acres would not require any type of oversight, but if it exceeds a certain size then that would require some type of public review and I don't know if it's two acres or five acres or ten acres. We'll let the other people figure out the acreage.

Mr. Starr: Commissioner U'u.

Mr. U'u: For clarity. So the type of permitting we're looking at wouldn't be – looked over say by someone like CRC in a cultural sensitive area? They would bypass?

Mr. Alueta: During your building permit process DLNR does review it. So if there's a cultural site or you know, during the initial scoping most people are going to find those if it's a blatant cultural site, but DLNR also have – they would comment on the building permit.

Mr. U'u: So at this point, the Planning Director has no intentions of implementing some type of measure to be restrictive to scenic areas? By the same token our Planning Director could move back mainland tomorrow. So I think we got to stay on it because I'm here for life.

Mr. Alueta: Well, I'll say it's the County Council and their resolution does not have any restrictions on it right now. They are making it an outrightly permitted use that if you are in the state agricultural district and you are D or E and you're in the county agricultural district also and you want to do these facilities and your lands are rated D or E, right, then it would be an outright permitted use.

Mr. U'u: And that's why I'm saying as part of the planning body your kuleana to follow up and make sure it's done right.

Mr. Alueta: Yeah.

Mr. Starr: Commissioner Hedani.

Mr. Hedani: On the plus side Joe, I would like to see photovoltaic panels on every single house in Wailuku, Kahului, the entire island, every single industrial building that we have out there. If it's, you know, an inert, nonmoving, flat roof type structure.

Mr. Alueta: And again, off topic, but it is, those are becoming more prevalent again, as costs of electricity is high, people are looking to that and so I know of, you know, there's several contractors on this island, there's only about three I think on this island that actually can install photovoltaic panels and they're doing a good business. I mean, they're doing – and they're doing large scale projects. I mean, they're doing, you know, Macys. So they are going – I mean, it's happening, but this is something that the Council wanted to come up with to be consistent with what the State law has so that there is no impediment from the county side if someone wanted to do a photovoltaic panel system within D and E, and again, protecting the intent of what the agricultural district is for. I mean, theoretically the primary purpose for agriculture is for farming and so then again, they wanted to restrict that to the least productivity ag and that was the balance that both the State Legislature and the County Council did was that, what's the intent of ag, but we also want green and so they came up with this compromise and the whole issues of that have been brought up today which is great issues is how do you incorporate the scenic corridors or the scenic concerns and I guess the only methodology is either going to be through some type of review board or some type of permit that has to happen at the county level in addition to its building permits or you're going to have to come up with a restriction that you feel comfortable with and again, it seems like the commission it's going to be more of an arbitrary number in which always makes me nervous and lawyers nervous when numbers are pulled out of the sky. But I think that, you know, that's what you need to discuss, that's why it's here before you today.

Mr. Starr: How about we go onto public testimony and then we'll come back for deliberations.

a) Public Hearing

Mr. Starr: We'll now open public testimony on this item. Henry come on up, introduce yourself and thank you for being patient.

Mr. Henry Spencer: Good morning. My name is Henry Spencer. I live in Paia. I'm excited about the opportunity that legislation like this offers us as a community. Listening to your comments, I'm greatly encouraged that you guys got it and that there are issues that have be flushed out and resolved and this is not one size fits all or just the issue of the D and E lands. And that's what really initially brought me to come and testify. Like Jonathan and Wayne, I believe that we're headed down the wrong road if we just limit this to D and E lands.

We have the opportunity to take the lead in power generation. We used about, statewide we used almost three and a half billion dollars worth of oil last year and we've got a long road to go and I'm not worried about the rest of the state right now. I'm just worried about Maui. We've still got a long road to go before we wean ourselves off of petroleum power generation to wind, solar, wave,

geothermal, whatever it is. Today, we're talking about solar power generation.

I think some of our solutions lay in perhaps maybe one definition and that is, a couple of you guys have mentioned does this qualify on a ag lands in the definition of farming and everything? And I think one of the things that we should do is perhaps think about redefining farming and include the farming of solar energy and the farming of wind energy and qualify those as farming and then you have to take a look at where is that appropriate. And you're so right that many of the D and E lands are exactly where you don't want it and that the central valley is really where you do want it. In the A, B and C classified lands.

And so, I'm one of those guys that will be doing a project like this. I'm a developer. I have an idea of wanting to do something like this and I'd like to do, you know, 15 acres, 30 acres, 50 acres and the market will solve its own problem of well, how much ag land are you going to take? How much land are you going to consume doing this? When we reach our saturation point, we've reached our saturation point and we've achieved our goal of diminishing our use of petroleum power generation and it's a good thing to have these solar panels and the wind panels.

And Jonathan's example of Germany they are the leader, it's almost counter intuitive but they're the leader in the world in solar generation and also solar panel production. You know, right now we're dealing with efficiencies in the 20th percentiles and very soon we're going to be looking at efficiencies in the 30, 40, 50 percentile of the amount of energy they take in and put back out. And there are inventions out there that are real and on line such as the vibrating wind generation panels that are low profile and they don't require these giant towers and then you have the lower profile cylindrical turbines that you can put on the side of buildings and the tops of buildings and you guys have the opportunity to take the lead and I'm glad you're questioning the way the state has looked at this and we do have a great opportunity.

One of the things I would caution about and I know that you're going to struggle with this after I walk away from the podium and this is going to be one of your big issues is, I think you're going to be able to solve the problem of where do we put it and knowing that once we have enough solar panels, there are enough solar panels out there and we're not going to be – it's not going to take up thousands of acres of land out there. But how do you administer the process. And the problem is is that for somebody like me if you make it too difficult, it's kind of like the affordable housing bill. If it's not cost effective, it's not that somebody's doing it to make money but you're also not doing it to lose money and so, you gotta figure out the appropriate way to make it effective, efficient and that when somebody comes with a good idea that it gets on line and gets built quickly as opposed to being dragged down in a series of public hearings and testimony and this and that and that's what's going to make these things not come to – come on line.

Mr. Starr: I'll have to ask you to wrap.

Mr. Spencer: The other thing is the issue about the scenic views is well-taken and I think we should include the A, B and C and maybe even not include D and E or just leave it open. But the key thing that I want to get across is that we have the opportunity to redefine what farming is and so lets include solar, wind and other alternative energy things as farming. So that's my testimony.

Mr. Starr: Okay, thank you. Any questions? Commissioner Mardfin.

Mr. Mardfin: More a comment than a question. When I had been reading this at home in preparation I sort of got the same idea you're suggesting. I mean, basically we could be taking sunlight, mix it with water, grow sugar cane, burn the sugar cane for energy or we can put a panel out there, use the sunlight, not even have to use the water, that's a plus side for people from Hana and get the energy. I don't see this huge distinction between the two.

Mr. Spencer: There's no distinction.

Mr. Mardfin: The comment you made at the end was A, B and C lands. The problem is we can't supercede what the State says on that, so you'd have a separate fight there. But I do very much take Commissioner Hedani's point that there needs to be some level of review of this so that it doesn't – the one nice thing about sugar cane it's great for the tourists as a nice thing to see. You don't want to put something there that's harmful to tourists. I can see some level of review but again, I don't think it should be related to the productivity of the land because you're basically taking land and producing a product just like we do with sugar cane or with cattle.

Mr. Starr: Mr. Spencer, in the kind of projects that you're envisioning that you might participate in, I mean, do you see integrating an ag type of use with the PV or would it just be, you know, PV panels on concrete or something? What's your vision would be on A, B ag land for a large scale project?

Mr. Spencer: I think it would depend on the size of the TMK. If it was a 400-acre parcel as opposed to a 40-acre parcel. A 40-acre parcel I could see the whole thing being solar panels. A 400-acre parcel I think there should be some kind of way of laying it out that has some aesthetic value, is that what you're driving at is that it should have some – it shouldn't just be 400 acres of solar panels without being broken up a little bit. For example, as the way that you saw it in Germany.

Mr. Starr: Okay, thank you very much for coming and sharing your – Commissioner Guard?

Mr. Guard: After.

Mr. Starr: Okay, thank you Mr. Spencer. Do we have any other members of the public wishing to offer testimony on this? Seeing none, public testimony is closed. Commissioner Guard.

Mr. Guard: Just for comment that this thing that came in from the Lanai farm was a 10-acre farm, right Joe? So, we don't really need to be that nervous of multiple 500-acre ones coming in. But possibly just the height and size of acreage to consider or distance from the road. I know a lot of people in Kihei and Makena want it and you probably wouldn't even know it was there unless they built it 40 feet up to make shade underneath right along the highway.

Mr. Starr: Members, would you like to go this? Commissioner Mardfin.

Mr. Mardfin: As I understand it the Council wants comments on this. They don't want us to – or do they want us to vote approval or disapproval?

Mr. Starr: My understanding is that it gets sent to us and normally we will recommend approval, recommend denial, recommend any modifications or not be able – or if we don't have a majority not be able to offer any recommendation. But it would certainly be in good form if we could either recommend approval, denial with or without changes.

Mr. Mardfin: There are two ways to go about this. One would be to move approval of the entire document and then make amendments or suggestions. The other would be to start with the amendments and suggestions and vote approval at the end. Which would you prefer?

Mr. Starr: My preference would be see if there are, you know, changes or additions we can get consensus with, and then if there's a feeling that the whole package is something that we want to support to approve or deny. Yeah, please continue.

Mr. Mardfin: I'd like to move that we request the deletion of the reference to the C and D lands and that would be done by – in the proposed bill, Section 2(a)(8) where it says, "solar energy facilities are defined in Section 19.04.040, Maui County Code; provided that," that we put a period after code and delete the restrictions by lands since that just duplicates what the state already has.

Mr. Starr: Okay, we have a motion for deletion of the mention of C and D, is there a second to that? No one wishes to offer a second. Motion dies for lack of a second. Moving right along do we have any other, anything else either as a motion or for discussion, Commissioner Hiranaga.

Mr. Hiranaga: I propose an, is a motion or an amendment to the resolution?

Mr. Starr: We don't have a motion on the floor for an amendment, I mean, you're also welcome to put it out there and we can see if there's – you know, if there seems to be a consensus we could have it written up.

Mr. Hiranaga: I guess I can make a motion to approve subject to proposed amendment.

Mr. Starr: Yeah, that would be fine.

Mr. Hedani: Second.

Mr. Hiranaga: That the Council deliberate the concerns of the commission regarding some type of threshold relating to size and height of the proposed solar, call it a farm I guess, solar farm since it's ag land, that would then require public review. So, you know, and I don't want to say what size that should be because it would be an arbitrary, but some type of threshold should be established that would require public review.

Mr. Starr: Okay, if we get a second I'll ask Mr. Alueta to phrase that in a way, but lets see if we have second. Do we have second to the motion that's been offered? Commissioner Hedani.

Mr. Hedani: Second.

Mr. Starr: Okay, so we have a motion by Commissioner Hiranaga, seconded by Commissioner

Hedani, the motion states, Mr. Yoshida shall we leave it to Joe?

Mr. Yoshida: I think the gist of it was to have the Council consider some sort of acreage threshold which would trigger some sort of additional public review.

Mr. Starr: Yeah, acreage and height.

Mr. Alueta: If I may, if you look at the definition that's being proposed by the County Council. I would limit maybe that threshold to only the generation of electricity because if you look at all the rest, they're using it, the first three appears, I mean, I could be interpreting this wrong, appears to be that they're relating to a cooling of buildings or within. So if you set up a height, it would preclude – it would require that if someone had a large warehouse structure or farm building, and they wanted to put solar panels on the roof of it, you would then require them to come in even though solar panels are directly related to the farming activity or they're accessory to that farming activity. I'm just concerned that, you want to – you're trying to limit it only to, if someone does a purely a –

Mr. Starr: Freestanding.

Mr. Alueta: Freestanding generation facility. I'm assuming that's what his limitation wants to be on.

Mr. Starr: Perhaps the wording the freestanding would be there. Commissioner Hiranaga.

Mr. Hiranaga: Just to question, is there a building height limitation for ag land?

Mr. Alueta: Yes, –

Mr. Starr: 35

Mr. Alueta: I think silos are higher and again, you have – like I say you have huge warehouses out there that are pretty big.

Mr. Starr: A mill stack is tall.

Mr. Hiranaga: So there is no height limitation.

Mr. Starr: 35 feet. Mr. Yoshida.

Mr. Alueta: I don't have the code in front of me. Mr. Giroux?

Mr. Starr: Or Mr. Miyamoto.

Mr. Miyamoto: We don't regulate ...(inaudible)...

Mr. Starr: Lets wait a minute until we get this. While we're doing this I want to take an aside here, I want to congratulate Mr. Perry. I just see he's over there, welcome him. He's the new City Editor

of the Maui News. It's good to see him here.

Mr. Giroux: Joe, I'm looking at Chapter 19.30A, Agricultural Districts, District Standards, Subsection E, Maximum Height Limit, "unless otherwise provided in this chapter the maximum height of any dwelling shall be 30 feet except that vent pipes, fans, chimney, antenna and solar collectors on roofs shall not exceed 40 feet. Any non-dwelling structures such as barn or silo that is over 35 feet in height shall be setback one additional foot for each foot in structure."

Mr. Alueta: So in that case, if you have a large lot there's no limit.

Mr. Starr: Commissioner Hedani.

Mr. Hedani: Just a comment. I think we're kind of getting tangled up on the words over here because I don't know that we're necessarily wordsmiths for ordinances for the County of Maui. What I was thinking was somehow implementing into the language that it can be implemented in a manner which will not destroy or impair significant scenic resources or a suggestion along those lines to the Council.

Mr. U'u: Second.

Mr. Starr: Okay, Mr. Alueta, you want to offer some wording that would kind of satisfy the – what we've heard and that the Council could use to craft?

Mr. Alueta: I think I could, you know, get from the minutes later exactly what Mr. Hedani said with regards to you know, provide – where in which you would for 8, it would be solar energy facilities as defined by the section and then provided that the lands – it shall apply to soil classification of lands bureau detailed land classification overall master productivity of D or E and then just add on, and shall not be, you know, developed. But I think it's going to be, when you put in those types of language, there's some type of judgement.

Mr. Hedani: Plus the restriction of total size which would trigger an oversight mechanism.

Mr. Alueta: Again, at this rate again, I would recommend that we try not to wordsmith right here as far as that and that those become your comments to the Council that you would like to see some type of one, limitation and you have concerns over that you have no problem with it provided that it does not have any adverse impact on scenic corridors as far as visually without trying to wordsmith it into the definition and then let Council decide how they want to handle it. Whether they want to then boot it to have that limitation installed and then anything greater than that would require an additional review or permit.

Mr. Starr: Commissioner Hiranaga as the maker of the motion I want to go back to him and get an understanding of his feelings on whether this is going as far as wording. He was – the motion seemed to have more definitive language in it and now it's getting pretty diffused.

Mr. Hiranaga: Yeah, the reason I wanted some type of specific threshold is because someone who's proposing a solar farm, say it's under five acres knows that they will not require any type of

public review. If you say will not impact scenic, who's going to determine that it's a scenic vista that should not be impacted? Then every application needs to be reviewed to see if there's going to be impacts. I wanted some type of threshold so that someone who's thinking of doing it, says well, if I'm under five acres I've got nothing to worry about, if I'm over I gotta go somewhere and get some type of a permit. That was the purpose of creating a threshold.

Mr. Alueta: And that would be my – again, that would from a department standpoint we would prefer that preference if you are going to establish a threshold. Again, from the administration side we're looking to establish any type of limitation here, we want to encourage it. But if the commission wants to recommend that there be a threshold, a definitive number would be better than an ambiguous number or a determination later on and that would be easier.

Just for clarification you know you got, you had a couple motions going on. You had his original motion and then you had a motion here and then a second, so I think you gotta possibly backtrack.

Mr. Starr: No, we have one motion with a second and we're discussing that. Commissioner Guard.

Mr. Guard: This is just something to consider. It seems like one, two and three, the heating or cooling of structure, heating or pumping of water, industrial commercial ag processes all have to do with owner user using that energy and item four is the generation of electricity to sell back to the community. I think at that level that's where you're going to get into the larger scale processes. So maybe we don't need to look at Maui Cattle Company wanting to build a slaughter house or a packing facility for their own use whether a freezer or a nursery putting up on one or two acres of structure. But if someone wants to come in with a two to five to 100 acres for public use, maybe those – if you're going to do Item four that that would be a public review process. If you're using in-house on a building you already own and built to reduce your own bill, I don't think the commission needs to review that, but if it's going to be an Item four you could start with a view plane analysis and go from there and that would be the review. Or like Macys how you're saying they could a fairly large one but I don't think – that's their own business because they're going to use that electricity.

Mr. Starr: Commissioner Mardfin.

Mr. Mardfin: I'd just like to ask a process question. Hopefully we'll pass something, but will the Council see all our discussion in our minutes, typically?

Mr. Starr: No.

Mr. Alueta: They get it. They just don't necessarily – how much they review it. And that's why it's important that whatever your comments or recommendation there be a motion to send these comments up. Typically if you can't through a discussion, agreement, but in principle agree with the bill, you can say, we recommend approval of it, however, please take note of our discussion on limitation of view corridors or potential adverse impact that were not anticipated if that's your desire. But if you want to have amendments then again, you're going to have to take a vote on.

Mr. Mardfin: But because the discussion of agricultural productivity didn't get a second they

wouldn't see any of that discussion?

Mr. Alueta: They'll see it in the minutes. They all get your minutes, verbatim minutes.

Mr. Starr: Commissioner Guard.

Mr. Guard: I guess I'd like to ask Commissioner Hiranaga of what he thinks about that because that's kind of on the lines of the view plane analysis and it's mainly for those issues. I just don't want to see it die but if Maui Land and Pine on their cannery if they ended up putting up photovoltaic that would be a few acres of building, right? So I don't know if we want to get into that zone or HC&S has a few large warehouses as well versus something that's in the plains above Kihei and whatnot if that's your intention.

Mr. Hiranaga: I'm sorry, say the question again.

Mr. Guard: I'm looking at Section 1, No. 4, first page of Exhibit A if that's where you'd like to – if that's one that you want to identify something to trigger public review, if it's something for outside of the owner user, customer generator.

Mr. Hiranaga: I guess I don't want to get that specific. I just want the issue to be raised for their deliberation.

Mr. Starr: I know my own desire is that if we're looking at – if it's in terms of height, you know, it would be in terms of freestanding installations even for size, that we really be talking about freestanding. Because if they're putting photovoltaic on other structures or existing structures, it's hard for me to see any harm to that whereas, you know, it's the monster freestanding thing in a, you know, in a great view plane that maybe should be looked at by some entity. You know I think my own preference would be maybe, you know, if it's over 10 acres or it's a freestanding structure over, I don't know, 25 feet then it should have some review. You know, just to kick out some starting point numbers.

Mr. Alueta: It might be easier if that's one of your thresholds just to say that's anything less than that would be allowed. So what you could do is, you know, under Section 8, where, solar energy facilities as defined on soil classification, you know, that whole bit just saying, "and encompassing less than 10 acres." And therefore, anything greater than 10 acres would have to go through some type of permit process. So you would just come up with the acreage at the end of how much, how big of a facility would be allowed without any type of review. That would be simplest way methodology. Otherwise, there's going to be some significant wordsmithing here as far as –

Mr. Starr: Okay, members? Commissioner Guard.

Mr. Guard: I'd just like to see a view plane analysis at least to come through the Planning Director or some entity. I mean, they're going to need a building permit anyway, but to have some consideration that if it comes across your desk and it's right up against the highway 30 feet looking at it, just to be able to say, hey push it back in a little bit more on your thousand acres especially if it's going to be – if there's a building already and it's on top of that or if it's part of the slaughter

house or the freezer operation or the nursery, I think that's a big difference than 10 acres on Lanai in a basin, right, I mean, it's kind of out of the public view I believe. I haven't been there. That's my own thoughts we'll pass on.

Mr. Starr: Yeah, Commissioner Hiranaga, lets try to clear this up one way or another.

Mr. Hiranaga: Yeah, I'm pretty happy with what I had proposed. I really don't want to get into specifics, ten acres, seven acres, six acres, three acres, I have no basis to.

Mr. Starr: Okay, I'd like to go back and ask Mr. Yoshida to restate the motion as it was originally made.

Mr. Yoshida: My understanding is the motion is to recommend approval of the proposed bill with the recommendation that the Council consider in its deliberations consider placing some sort of threshold on the height and acreage which would trigger, over which would trigger public review.

Mr. Starr: Okay, yeah Commissioner Hiranaga.

Mr. Hiranaga: The only comment I would have is I would prefer the word, the acreage to be in front of the height because I think that's more important.

Mr. Starr: Okay, Commissioner Mardfin.

Mr. Mardfin: If we pass this will that preclude any other amendments because it says passage with this one change. Would that preclude any other changes?

Mr. Starr: If you have an amendment to make, you should make it now before we vote on the main motion.

Mr. Mardfin: I'll remake a motion because it's on an amendment not a main motion.

Mr. Starr: Well, you're welcome to offer an amendment.

Mr. Mardfin: The amendment will be that on Section 8, we put a period after code and eliminate any reference to D and E, agricultural productivity.

Mr. Starr: Okay, we have a amendment, is there a second?

Mr. Guard: I'll second that.

Mr. Starr: Okay, we have an amendment by Commissioner Mardfin, seconded by Commissioner Guard and the amendment states, Mr. Yoshida?

Mr. Yoshida: The amendment is under Item 8, to put a period after code –

Mr. Mardfin: And delete the remainder of the paragraph.

Mr. Yoshida: And delete the remainder that clause.

Mr. Starr: Okay, discussion? Commissioner Guard.

Mr. Guard: I went along with it mainly because at this point, the State only allows it in D and E still, correct?

Mr. Alueta: That is correct.

Mr. Guard: So if the State feels that C or if someone loses their water rights to a property that then they may be better off doing solar, but just to simplify the process later was my intention and why I change my or decided to second that.

Mr. Starr: Commissioner Hiranaga.

Mr. Hiranaga: I guess I'll be voting against the amendment because kind of echoing Commissioner Hedani's comments on what the state decides it may not necessarily be suitable for the County of Maui. You know, one size does not necessarily fit all. I'll be voting against that amendment.

Mr. Starr: Okay, members? Commissioner Guard.

Mr. Guard: This is just a final comment on the whole process. I think we all know it is a great thing and this might be up for the Council is that the funniest part is that Kaheawa Wind Farm which I like to see those windmills, they stop a lot of soot from going on my one man canoe at the canoe club, but for years and years it goes back and forth is how many people, there's so many different opinions out there so that's why some of these public generating facilities, electricity facilities may be good to have some type of process that people get to have a say earlier on.

Mr. Starr: Okay, members? I'd like to offer a comment. I'm very much in favor of this in general. I'm also in favor of the amendment. I think the more we go toward producing our own power from natural means the better off we are. I've been living off the grid since 1972 on wind and photovoltaic. My residence is the first residential photovoltaic installation that was approved by the County of Maui electrical inspectors and I installed it, built it myself and it's been working great for many, many years and the more we can encourage that, the better we are. Anyway, we ready to vote on the amendment? All in favor of the amendment which would delete the language limiting it to D and E, please raise your hand. All opposed.

It was moved by Mr. Mardfin, seconded by Mr. Guard, and

The Motion to Amend Section 8, to Place a Period after the word, Code and Delete the Remainder of the Clause Failed.

(Assenting - W. Mardfin, J. Guard, W. Iaconetti, J. Starr)

(Dissenting - W. Hiranaga, B. U'u, D. Domingo, W. Hedani)

Mr. Yoshida: We have four votes in favor and four votes against, the amendment fails.

Mr. Starr: Okay, we're back to the main motion unless anyone wishes to offer another amendment or discussion. We can vote on the main motion. Are we ready? So on the main motion which is to recommend approval with a request for triggers for further review on size and height as per Mr. Hiranaga. All in favor of the main motion please raise your hand. All opposed.

It was moved by Mr. Hiranaga, seconded by Mr. Hedani, then unanimously

**VOTED: To Recommend Approval of the Proposed Bill with the Recommendation that the Council Consider in its Deliberations Placing Some Type of Threshold on the Acreage and Height Over Which Would Trigger Public Review.
(Assenting - K. Hiranaga, W. Hedani, B. U'u, J. Guard, W. Mardfin, D. Domingo, W. Iaconetti, J. Starr)**

Mr. Yoshida: Unanimous. The motion passes.

Mr. Starr: Thank you Mr. Alueta. Well presented. We're going to take a recess till the call of the Chair. I'll be heading up and turning it over to Mr. Guard.

A recess was called at 9:57 a.m., and the meeting was reconvened at 10:07 a.m.

Vice Chairperson Guard took over the meeting when Chairperson Starr excused himself to attend the State of the County Address by the Mayor.

Mr. Yoshida: Mr. Vice Chair, Members of the Commission, the second public hearing is a request from Pacific Warehouse Inc., for a Special Management Area Use Permit in order to expand and renovate the exterior of the existing Kihei Foodland Supermarket building and related improvements at 1881 South Kihei Road, TMK 3-9-003: 012, Kihei, Island of Maui. The staff planner is Paul Fasi.

- 2. PACIFIC WAREHOUSE, INC. requesting a Special Management Area Use Permit in order to expand and renovate the exterior of the existing Kihei Foodland Super Market building and related improvements at 1881 South Kihei Road, TMK: 3-9-003: 012, Kihei, Island of Maui. (SM1 2008/0014) (P. Fasi)**

Mr. Paul Fasi: Good morning. Thank you. The applicant is proposing the expansion and the exterior renovation of the Foodland Supermarket in Kihei. The building expansion will result in about 6,800 additional square feet. Also, in addition to the additional square feet they are looking to upgrade the exterior of the structure and in addition to that they are going to modify and include and finish their original parking plan that they had earlier submitted back in '99 which was approved by this by this body back in '99. They were able to complete about half of the project as approved and the permit expired. So now they're going to come back and reapply for an SM1 update with the same plans basically. There are no significant changes to the updated plans. So just bear that in mind and again, this thing was approved back in '99. There are no significant changes to

anything. This was approved by this body on December 14, 1999.

There was a comment letter from the Police Department regarding parking and the Police Department made a request that they wanted a little bit larger stalls for their vehicles for their officers getting in and out of their vehicles. They just needed more room and the applicant did accommodate that request. So they are going to restripe the parking for the Police Department in that shopping plaza.

There is an additional 34 stalls that was part of the original application. They are going to be completing that parking lot which is behind the store. The applicant will give you an overview of this additional parking.

The Urban Design Review Board reviewed this project. They had one comment and the comment was that they just wanted to see more landscaping along the side of, excuse me, Keala Place and I believe they wanted more palm trees, 10, 11, 12 palm trees along that side of the facility. That was their only comment.

I'm going to turn this over to the applicant so they can give you an overview of the project. If there are no questions, I will let them commence. Thank you.

Mr. Kyle Ginoza: Good morning Vice Chair Guard and Members of the Maui Planning Commission. My name is Kyle Ginoza and I'm with Munekiyo and Hiraga. Thank you for the opportunity to be before you today to discuss a SMA use permit application for the proposed Foodland Supermarket renovation expansion at the Kihei Town Center. We're representing the applicant, Pacific Warehouse which is also the owner of the Kihei Town Center.

As Paul had mentioned, the applicant was previously granted an SMA use permit for the renovation and expansion activities in December 1999. The applicant was able to complete some of the scope of work granted under the 1999 SMA permit but was unable to complete the work within the allotted time. This request is to allow the applicant to complete the renovation and expansion activities and I'll go into more detail later on in the presentation.

So for those of you who don't know where the Foodland is, this is Kalama Park and the Foodland is in the Kihei Town Center across the street from Kalama Park at 1881 South Kihei Road. The property is bounded on the north and on the south by Hale Lani Place and Keala Place respectively.

Beyond Hale Lani Place to the north is a building containing 7-Eleven and KFC and beyond Keala Place to the south is the Kihei Kalama Village. As I mentioned, Kalama Park is located more makai across South Kihei Road. On the eastern part of the property there are some single family residences which currently exists.

This is a photo on – northeast view of the front of the Foodland building. What they proposed in the original 1999 application was to redo the storefront, basically the exterior elevations as well as to redesign the entry, the entry facade of the building and we'll show plans later on showing the change. This is what is existing there now.

This photo is looking south at the rear. This is the rear of the Foodland building. In this rear portion is where they're going to put expanded walk-in beverage coolers, beverage and dairy coolers and then on this side there will be a building expansion as well on the north side of the building. In this far area over here is where the loading space, and in back here there's a warehousing space that will be improved.

Right here in this grassed area where you see the parked car is where the additional parking that was part of the 1999 SMA application what they could not complete before the SMA permit expired. So this parking expansion was included in the original application as well.

I'd like to give you a little bit of background on Foodland. Foodland Supermarket is a local company with four Foodlands and one Sac and Save on Maui. Foodland has 29 stores across the state and employs approximately 2,000 employees. Foodland Supermarket is proposing the project to provide additional product offerings and to modernize its storefront. The project will result in approximately 7,000 square feet from approximately 21,000 square feet existing. So roughly a third increase in space.

This is the site plan for the proposed expansion. So this is the existing parking lot that, it will remain unchanged as well as the buildings on this side. This is where Sansei is and there's other various stores along the northern portion of the property. This is the existing Foodland building where there'll be some building expansion here, expansion over here and expansion here for the building itself and I'll go into the merchandising floor plan in a later slide.

This parking area in the back was completed as part of the 1999 SMA approval. However, as I mentioned this parking lot was not able to be completed in the '99 approval. So they're seeking to finish off the improvements for this parking area to satisfy the parking requirements for the expanded space. So in essence, the main difference in the 1999 proposal and now is they changed the exterior elevation just a little, very slightly that you could really hardly ever notice as well as they changed some of the uses within the expansion area itself. But I'd like to note that the actual expansion is scaled back from what was proposed in 1999. In 1999 they have proposed also a mezzanine level expansion which they have since omitted. So it's a reduction from the previous approval in square footage.

The proposed improvements include warehousing and storage space, loading zone improvements, additional parking, a space for a subtenant which I'll go into later, an expanded bakery section, walk-in coolers and actually also, storefront improvements.

The expanded areas of the building will be this north side, some along the east side, and then in this area on the south side. In this front portion is where I had labeled as the subtenant. What will be there is a Coffee Bean and Tea Leaf Store which is a subsidiary of Foodland, but it will occupy this space. Right here is where the expanded bakery area would be. Here's the bakery now and then they will also put in a R. Fields which contains like wines and liquors as well as this is where the walk-in beverage cooler will be. Also, there will be a walk-in dairy cooler and some storage as well as they will have this warehousing space. So that's the interior improvements.

And so if you compare the photo I had shown previously which is that elevation that you were

looking at, you can see that they're building up the facade and you know, they're going with a green metal roof. This is very similar to what was approved in the 1999 application. Like one difference was these down pointing lighting to the signage wasn't included in the original application but it is in the design now.

This Foodland is open 24 hours a day, seven days per week. In addition to selling groceries this Foodland offers other services such as bakery, seafood, deli and the Western Union.

Deliveries are currently handled in the southeastern area of the building that's where it was in this area of the site plan and will continue in that same area. Deliveries occur basically between 6:00 a.m. and noon. There will be a six-foot high boundary wall constructed at the mauka boundary.

As far as drainage, the proposed project will increase storm drainage post development. The applicant has worked with the County of Maui in implementing drainage measures to eliminate local area flooding issues by installing a series of catch basins in the parking area to collect storm runoff. Graded catch basins will be installed in the expanded parking area behind the Foodland building which will convey additional runoff to onsite dry wells. Filtration to separate petroleum products and other contaminants will be installed at the dry wells as necessary. As a result, the proposed development will not have an adverse effect on downstream property.

A traffic impact analysis report was prepared for the project and traffic improvements warranted in the TIAR have already been implemented these include consolidation of the driveways along South Kihei Road, the addition of driveway access on Hale Nani Place was in this location and participation in the installation of the traffic signal at Keala Place and South Kihei Road. Further no changes in operations or deliveries anticipated as a result of project implementation.

With regards to parking, an updated parking analysis was submitted as part of the building permit application. It showed that 271 stalls were required and 279 are provided. So there will be a surplus of eight stalls.

As far as energy conservation measures, Foodland will replace existing store light fixtures with higher efficiency ones. They'll replace the roofing insulation and will install a high efficiency refrigeration system which will reduce energy by roughly 20% or more.

We have as part of the project team here today, Todd Hondo from Pacific Warehouse representing the applicant and owner. Myself and Karlynn Fukuda from Munekiyo and Hiraga and representing the architect and landscape architect Gerald Gambill and Neal Izumi from Retail Design Group.

That concludes our presentation and thank you for the consideration.

Mr. Guard: Any questions for the applicant? Commissioner Mardfin.

Mr. Mardfin: Two things, one is on the parking. You say you're going to add parking and then you're going to have a surplus of eight. Are you now deficient of parking by standards?

Mr. Ginoza: No, before in the original plan which had more square footage there was actually more

parking, but that parking area was scaled back to have just the additional 34 in that back parking lot. So it's actually adding the 34 which will result in a surplus of eight.

Mr. Mardfin: Let me ask my question slightly differently because I don't think –

Mr. Gerald Gambill: I don't think he quite –

Mr. Mardfin: Yeah, I don't think he got it either but that's okay.

Mr. Gambill: Good morning my name is Gerald Gambill. I'm from Retail Design Group. We're the in-house architects for Foodland. To answer your question, we've been adding the parking as the development was done. So in this instance because we're adding square footage to the building we would need additional parking. Currently the property meets parking requirements.

Mr. Mardfin: That was my question. You're increasing so you want parking but you added – it looks like you're adding a lot of parking and I didn't know whether that was sufficient. If you're insufficient now and you're making up for deficiencies, it sounds like you're not.

My second question, drainage since Chairman Starr isn't here, I'll take his question. Are you retaining 100% of pre development runoff?

Mr. Gambill: The current system was developed along with the County of Maui back in 1999 when that particular site had severe flooding. So we incorporated into the design of the parking lot when it was redesigned catch basin systems on top of an existing underground system very antiquated at the time in order to maintain all existing water onsite, get it into an underground system and take it out to South Kihei Road where it dumps into the County system. That was the design back in 1999. As we developed this last round to try and finalize the plans our current civil engineer is telling us they could not hook up all of the development to that system. They could only hook up one more catch basin which is essentially where we had left off. All additional waters and runoff would be diverted to dry wells within the site. Our concern there is a little bit in that our percolation rate is very low and the fact that we have a very high water table and very low elevation. So we only have a small amount of water or small amount of area of soil for retention of the water for percolation purposes.

Mr. Mardfin: So there will be additional runoff?

Mr. Gambill: Only for the one catch basin.

Mr. Mardfin: So there will be additional runoff?

Mr. Gambill: Yes, for the one catch basin.

Mr. Guard: Commissioner Hedani.

Mr. Hedani: Gerald, my concern was over the property boundary that bounds the single family residences, what is the visual effect of the parking lot or how is that going to be addressed?

Mr. Gambill: We had worked with our neighbor Lieutenant Cuomo throughout the process and we informed him that we had intended to build the property line boundary wall along there which he was quite encouraged to see something would be done because now it's wide open and people can walk into his background. So right now he no protection whatsoever. We also agreed to assist him in developing his driveway and access as part of our development.

Mr. Hedani: Does that encompass all of the single family abutting the property?

Mr. Gambill: Yes, he is the only one that we have yet to satisfy. The other side has already been done under the 1999 SMA.

Mr. Hedani: Thank you.

Mr. Guard: Commissioner Hiranaga.

Mr. Hiranaga: Could you restate your response to Commissioner Mardfin's question regarding drainage again? So there's pre development and there's post development and there's two drainage systems. One, an existing antiquated and one proposed dry well. Can you explain where the water is going and how much of it is leaving the property?

Mr. Gambill: Let me get a site plan up here so we can try to show you diagrammatically at least what has occurred due to the civil engineer's final map. Again, the development was essentially done throughout here. The only thing left to do was this section. There is one additional catch basin. This one right here was not installed under the 1999. It is now being installed. That is the one additional catch basin. There will be a catch basin put here, a catch basin put here and a catch basin here. All of those go through dry wells on site. That's the drainage system as it stands now.

Mr. Hiranaga: And so where is the post development drainage going from the existing hard surfaces?

Mr. Gambill: Well, the existing system already runs underground and connects up to this underground system which goes underneath the park. That was all pre development. Post again, is just this one catch basin is being added back in and then the other area will be taken care of with onsite dry well.

Mr. Hiranaga: Now, what you're saying, there's pre development which is raw land and post development which is parking lots and buildings. So my question is, you're capturing in dry wells the additional runoff from the proposed additional parking area.

Mr. Gambill: Correct.

Mr. Hiranaga: But the existing post development from the parking lots and the buildings you're saying goes into the ocean?

Mr. Gambill: Correct. That was under the original development 1999 that we worked with the County on. The whole underground system was – we were asked in 1999 to take care of severe

flooding of this area. The whole intersection used to flood every rain and it was due to the runoff coming from our site as well as the adjacent properties.

Mr. Hiranaga: Well, actually your project was created before 1999, right?

Mr. Gambill: Correct, '74.

Mr. Hiranaga: So basically the post development runoff created in 1974 goes into the ocean?

Mr. Gambill: Correct it had since '74 it was developed.

Mr. Hiranaga: My concern is, I don't know if that's socially and environmentally acceptable at this time. It may have been you know 35 years ago and for me, when you're coming in for an SMA to basically redevelop a portion of this project I would like the developer to look at retaining more so called post development runoff to try and eliminate any runoff from entering the ocean.

Mr. Gambill: That is a very admirable idea and it would be fantastic for us to do. My concern even with the amount of onsite drainage we are retaining is we could be turning what little greenery we have into swampland. Our water table is at 2.5 or 3 and most of our elevation is at 7. So that only gives you essentially three feet of soil to maintain all of this water. In a heavy rain it would take a long time to percolate in. So, this particular site doesn't give us the opportunity to retain all of the water that we have currently.

Mr. Hiranaga: Financially it's prohibitive or physically it's prohibitive?

Mr. Gambill: I think it's physical.

Mr. Hiranaga: So there's no financial barrier to do it?

Mr. Gambill: I don't see how you could do it at this stage other than take up the existing system.

Mr. Hiranaga: Or convert a large portion of your parking area to underground retention system.

Mr. Gambill: I have not studied that I wouldn't know if it would be appropriate. I do know there was concerns from the civil engineer of water percolation rate at this location.

Mr. Hiranaga: I'll release the floor to other commissioners but you may want to have your civil engineer here for additional questions if he's available.

Mr. Guard: Commissioner Mardfin.

Mr. Mardfin: Let me attack this a different way. Right now because of past development you're putting a whole lot of water into the ocean. Is – and a lot of this is from parking area.

Mr. Gambill: Correct.

Mr. Mardfin: Which will have petroleum products.

Mr. Gambill: That's assumed, yes.

Mr. Mardfin: What do you do to prevent the petroleum products, to separate the petroleum products from the water that's going into the wastewater system?

Mr. Gambill: I believe we're taking the same measures the County does on the roadways.

Mr. Mardfin: Which is?

Mr. Gambill: None.

Mr. Mardfin: Taking no things, the petroleum runs right into the ocean?

Mr. Gambill: I believe most catch basins do now.

Mr. Guard: Paul Fasi.

Mr. Fasi: I'd just like to make a few comments. I just want to remind the commission that this project was approved in '99 and so they're basically coming back just to more or less get a time extension on this existing permit, on this existing project that was approved. I think you have to give the applicant credit for addressing the flooding issue that was addressed down on South Kihei Road that admittedly came from their property as well as the neighboring property. So to their credit, they took care of a big flooding issue for the county in that particular area of Kihei. So I just want to remind the body here that this basically for all intents and purposes is a renewal on the existing permit that was approved in '99.

Mr. Guard: Thank you. Commissioner Hedani.

Mr. Hedani: Yes, Gerald, the commission's concern regarding petroleum products entering into the ocean is with every new development that has come along, we've asked them to either try to retain it on site or minimize the amount of runoff that leaves the site and ends up in the ocean. I sympathize with your situation where the water table is so high and your elevation is low and water goes where water wants to go which is down hill. But in this particular case is there a minimize the amount of – you mentioned that you're putting filtration systems on your drainage system, is that going to be just for the new portion or is there a way to intercept the existing drainage that's within your existing parking lots and to add filtration to those systems so that whatever water leaves the site is essentially clean water. We could investigate that. I know that there is a request that we do for the dry wells some kind of filtration. And if that is asked of us we will. So again, if there is a request –

Mr. Hedani: So that's possible.

Mr. Gambill: Yes, it's possible.

Mr. Guard: And other questions? Commissioner Mardfin.

Mr. Mardfin: This is more for Planner Fasi. I understand your argument you know, this is sort of a long term time extension but I had earlier asked Corp. Counsel sort of privately have there been any changes in the rules under which we look at a project? While they missed the deadlines I think they have to come up under whatever rules that evolved. And while there might not have been formal rules that have been evolved, there certainly are different standards that were applied to projects now as opposed to projects past. And so I don't think it's unreasonable to have them – they want something out this. I don't think it's unreasonable to ask that they make accommodation to meet our new standards.

Mr. Fasi: I appreciate your comments and I can understand that, but there have been no significant rule changes as far as this project is concerned. You know, the question you might ask yourselves if it floods now and nothing is done, where does the water go now? I don't know, that could be worse if nothing is done. I've sat in this chair at several other meetings and this body has expressed a desire not to second guess the other planning commission's decisions. I would also remind you of that. So you have to bear these things in mind when you are debating the merits of this pretty much time extension on this approved permit.

Mr. Guard: You addressed this, you address it in Item 14 in your conditions. We're you thinking just for future filtration or considering the entire project like Commissioner Hedani requested or proposed?

Mr. Fasi: These are one of the standard conditions that we put in all SMA permits. And at the building permit review process, all of these standard conditions are reviewed at the level again before they can acquire their building permit. So this is not the only review period of these standard conditions. They do have to meet these conditions before they can get their building permits.

Mr. Guard: So with all of the hardscape, Item 14 maybe possibly changing to filtering all of the drainage basins might be a consideration. And then is Public Works coming back any time soon? He's at the speech. Commissioner Hiranaga.

Mr. Hiranaga: Yeah, I would like to suggest that the applicant make their civil engineer available for more specific answers because I'm going to have a hard time voting for this unless my questions are answered. So I just want to give them notice that if he's available try and be here before we bring this matter to a vote.

Mr. Guard: Well, let me ask the applicant, is the civil engineer on island or on Oahu?

Mr. Gambill: He's on Oahu.

Mr. Guard: Has he been to Kihei in a storm before or did he do the original ones when it used to flood?

Mr. Gambill: No. The original one was done by Stacy Otomo and all of that information was transferred to this civil engineer who used it as a basis. I don't know –

Mr. Guard: So Stacy may know what the size of the basins are right now.

Mr. Gambill: Actually there is a listing on the drawings the size of the storm drain system under Kihei Road.

Mr. Guard: Where the water enters, goes subsurface to see if there's filter mechanisms that might be able to be implemented into those basins.

Mr. Gambill: There's one right, lets see, just makai of our driveway coming out at Keala and I know that that is just a standard opening, curb cut, standard curb opening.

Mr. Guard: Paul, you had something?

Mr. Fasi: Yeah, what's the dimension of the new parking area the uncompleted portion, what are the physical dimensions? Approximately, 50 x 50?

Mr. Gambill: Hold on we'll get you –

Mr. Fasi: Well, the point I'm trying to make here is that the physical dimension of the expanded, of the pre approved parking area, although there is some runoff, I don't see it as being significant enough to bring in their civil and defer this matter to another date. I would like to see this thing move along and for this body to move onto bigger and better things.

And also, I would like the applicant to address happens now when it rains. Where is that water going now?

Mr. Guard: I think we all know that. Doc, I saw you move earlier. Did you have a question or comment?

Mr. Iaconetti: I'm just wondering if there's more dry wells on the property they could utilize?

Mr. Guard: To place dry wells into the existing parking lot.

Ms. Karlynn Fukuda: I guess I'll let the architect, but if I may Mr. Chair, Karlynn Fukuda, Munekiyo and Hiraga, I also just wanted to clarify that the system that – the existing drainage ties into is the County of Maui drainage system that exists within South Kihei Road. So in terms of, you know, petroleum treatment, pretreatment, if anything it would be only within the catch basins that are on the property. I don't know that we could actually install filtration for the remainder of whatever is feeding into that County of Maui system. So I just wanted to make that clarification.

Mr. Guard: Commissioner Iaconetti.

Mr. Iaconetti: When was the last time this area flooded?

Mr. Gambill: I can't give you an answer. I really haven't – I really don't know the last time it did flood offhand.

Mr. Guard: Could we open it up for public testimony and go from there? I understand Commissioner Hiranaga's thoughts on not being able to make a decision at this time, but with the engineer on Oahu and I don't think we're going to stop all of the flooding going into the behind the whale at Kalama Park, I'll open it up for public testimony at this time.

a) Public Hearing

Mr. Guard: Any members of the public wish to come forward and speak on this project? Last chance. Okay, seeing none, public testimony is closed.

b) Action

Mr. Guard: Commissioner Mardfin.

Mr. Mardfin: I have a question, I don't know who to ask it to. Currently once water goes into the wastewater system, what happens to it? They talked about it, goes into the public wastewater system. Is that treated at some point?

Mr. Guard: I don't think it goes into wastewater.

Mr. Gambill: No. You're talking storm drainage.

Mr. Mardfin: I'm talking about the water that you said comes off of your property and goes into some sort of county.

Mr. Gambill: That's storm – storm runoff, that is actually collected into the county system which the county then takes under South Kihei Road diverts across South Kihei Road to Kalama Park, goes through Kalama Park and empties into the ocean.

Mr. Mardfin: With no further treatment?

Mr. Gambill: Don't know what the county system is. You would need to check with the County.

Mr. Mardfin: And how far out in the ocean does it empty?

Mr. Gambill: Again, I'm not certain. That is the county system that we connected to as required.

Mr. Guard: Commissioner Hiranaga.

Mr. Hiranaga: My recollection is there is I think a natural gully, gulch or stream right there by the whale and it just empties into the ocean, the existing gully or gulch. When there is no storm water entering that, it sort of sits there like a little pond.

Mr. Guard: Paul.

Mr. Fasi: You know while we're on the subject of parking I know the drainage is an important issue,

however, I would also like to point out that the applicant is accommodating Maui Police Department with additional parking with this approval. The Police Department required 23 spaces, they've got 15 now and the applicant did accommodate them in their new revised parking plan. With your approval the Police will get their additional spaces that they required and requested. Thank you.

Mr. Guard: Maybe our Acting Planning Director has any insight into these projects in Kihei over the years.

Mr. Yoshida: Well, I guess this project had come before the commission in '99 as previously stated and I don't know if the standards of the commission, well I guess has changed since then. I guess that's all I could say relative to Public Works representative being at the Mayor's speech.

Mr. Guard: Commissioner any decisions? Commissioner Mardfin.

Mr. Mardfin: Let me ask one more question. How LEED standard compliant is this whole project? I'm doing this because Jonathan's not here and he would normally ask that.

Mr. Gambill: We haven't done a LEEDs calculation for this particular project. We tend not to use LEEDS. We just go with the Hawaii Model Energy Code and we meet or exceed that and then on top of that we have in our own internal desire to reduce the amount of energy consumption as low as possible because we pay for that and comes out of our profits. So I could tell you that every dollar we have to spend is a dollar they don't want to and so we try as much as possible to reduce the energy consumption accordingly with whatever architectural measures that we can take.

Mr. Mardfin: What's on your roof?

Mr. Gambill: Currently it is a built up. We are proposing ...(inaudible)... white so that it's much reflective and then that will be put on top of I believe R13, R19 insulation which currently there is none.

Mr. Mardfin: You wouldn't be envisioning a huge photovoltaic panels or anything like that?

Mr. Gambill: We are investigating at this time but again, it's one of cost.

Mr. Mardfin: Yeah, if it's a plus benefit sort of thing.

Mr. Gambill: That's a long range plan. Ideally we would like to be just like the Chairperson net zero, paying nothing to any of the electric companies. At this time, we unfortunately need to.

Mr. Mardfin: Thank you.

Mr. Guard: Any ideas? Staff recommendation, or Commissioner Hiranaga you were hesitant earlier to move forward.

Mr. Hiranaga: I guess from a procedural perspective, from a procedural perspective I guess I'm ready to make a motion but I think we should hear the staff recommendation.

Mr. Guard: Okay, why don't we do that. We'll hear the staff recommendation.

Mr. Hiranaga: If there's no further questions from the commission.

Mr. Fasi: The Planning Department is going to support this project with the conditions as listed in the staff report and recommendation documentation.

Mr. Guard: As stated in here? No changes?

Mr. Fasi: No changes.

Mr. Guard: Commissioner Hiranaga.

Mr. Hiranaga: I'd like to make a motion to defer and we can have discussion if there's a second.

Mr. Mardfin: Second.

Mr. Hiranaga: What I would like in order to make a determination is I would like their civil engineer/drainage expert to look into how much storm runoff can be captured on the property to reduce the storm runoff entering the county system and also look at filtration devices that would mitigate the impact of unfiltered water that's not retained on the site that enters into the county drainage system. My concern right now is its proximity to the ocean, the fact that the drainage runoff, storm runoff now basically enters the ocean untreated through an existing gully and I think what may have been acceptable 10 years ago from an environmental standpoint may not be acceptable now. It provides the commission an opportunity to review this application from a current philosophical point of view. Maybe that's just my personal point of view but that's the reason for the motion to defer. I'd like them to take a closer look at the drainage issues.

Mr. Guard: If that motion passes are there any other items we want them to come back with or is that the main one? Looks like the main one. So is that a motion by Commissioner Hiranaga and second by Commissioner Iaconetti. Any other comments or are we ready to call for the question? Commissioner Hedani.

Mr. Hedani: This is just my personal opinion. Although it's admirable to try to keep all of the water on site, it's admirable to make sure that a hundred percent of the water on site is filtered before it enters the ocean. I think that's something that needs to be changed at the code level if it's something that we want to enforce and that it's something that should be – it's something that should be deliberated and voted on and passed by a legislative body rather than implemented through the commission ad hoc. I also, in the existing circumstances, I prefer not to defer everything that comes before the commission and I personally would like to see this project move forward.

Chairperson Starr was back in attendance at 10:50 a.m.

Mr. Guard: I agree with that. Well, we see that Chairman Starr is back in the room, possibly Director of Public Works may soon follow if that would help, if we wanted to take a recess on this

item before we defer it into a few months into the future if that would help. Commissioner U'u.

Mr. U'u: I agree with Commissioner Hedani. The rules we set are much higher. It's just like going over the TVR and B&B, most of the B&B when it was there's no clarity and we're pulling things out from the sky at times. I know they took care of the drainage problem and for me if they could separate the petroleum products for the each of the catch basins somehow that would satisfy my needs. Okay, now we have Director of Public Works here if anyone would like to request his opinion on the matter. Commissioner – oh, he's being filled in right now. Commissioner Hiranaga.

Mr. Hiranaga: I just wanted to clarify my comments. I'm not mandating that all post development be retained on site or mandating that all surface runoff leaving the site be filtered. I just want them to take a look at it and provide a – have their engineer the situation and come up with a proposal or tell us what can be accomplished. Right now basically you're going to allow them to try, but you know, what is that? You're going to try. How hard are you going to try? I'm not setting any requirement as to what needs to be done, but I'd like their engineer to take a close look at it and then come back to us and tell us what they're capable of accomplishing.

Mr. Guard: Commissioner Mardfin.

Mr. Mardfin: I'd just like to echo what the commissioner just said. We're looking for answers. I understand Planner Fasi's position that basically this was once approved, we should apply the same standards that were applied back then and just go ahead with it. I'm not trying to stop the project, I do think that we ought to have some questions – if we pass it today, we won't get – I don't believe we'll get a serious look at it and get answers to the questions and there might be an additional condition we would put on in the future. I'm not trying to stop it. I don't know how long it would take to do, but I don't think it has to be a long delay, a long deferment but I would just like some answers to those questions.

Mr. Guard: Chairman Starr.

Mr. Starr: I did not see a drainage report on this project and I'm wondering if one was created and if so, whether Public Works has examined it.

Mr. Guard: Public Works.

Mr. Miyamoto: Mr. Chair, I don't recall if one was generated but in looking at the plans, basically the expansion is over an area that's currently – is already. So I don't see how the expansion would increase the incremental drainage flow because it's already an impervious surface to begin with. So just from looking at it on a quick basis just from a site plan look. I mean, if they were converting an area that was vegetated into a non vegetated area, yes, that would increase the drainage runoff, but if it's already an impervious area then it shouldn't be increasing the runoff that they're already mitigating.

Mr. Guard: Commissioner Hiranaga.

Mr. Hiranaga: I believe they are converting a grassed area into a paved parking lot and you can

correct me if you're not. If I'm incorrect.

Mr. Ginoza: Yeah, that back area is going from grassed to paved. That's where the dry wells will collect the storm runoff, the increase in storm runoff from that area.

Mr. Guard: Mike, I think the main concern was the unfiltered water from the 1974 shopping center development going behind of the whale into the kind of a swampland that runs through Kalama Park into the ocean by the retaining wall or the rock revetment. Paul.

Mr. Fasi: Just wanted to point two things. What was the dimensions of this particular parking lot?

Mr. Gambill: 200 by a 100.

Mr. Fasi 200 by a 100.

Mr. Gambill: The total and about, it's almost half, half. Loading dock, parking lot.

Mr. Guard: I think we all understand those comments. The idea is if there's a way to make it better than what's happening now which was the 1974 standard and in this planning commission we ask for such high standards of other developments that just to filter the chemicals that are running into the ocean now into a fairly popular beach area at Kalama Park and Cove Park and whatnot, I think Foodland would be commended for that. Commissioner Starr.

Mr. Starr: Yeah, I didn't get an answer to my question. This is an SMA, how come there was not a drainage report or was it just not given to us and where are the calcs?

Mr. Ginoza: There was a drainage report included in the SMA application and provided to Public Works, the whole document.

Mr. Guard: Paul.

Mr. Fasi: If the applicant is willing to agree – Commissioner U'u's comments regarding filtering out the petroleum products from the other contaminants I think it's a good suggestion and is the willing to agree to that?

Mr. Gambill: Yes, we're willing to look into filtration in existing catch basins if that would satisfy and I would like to point out that we are trying, we are utilizing dry wells for the majority of the expansion area. The only additional catch basin is the one that was left out which was intended for the future development parking lot but was not put in. It simply got installed where the corner of the existing underground system exists now.

Mr. Guard: Okay, well the motion on the floor right now is to defer. Further questions? ...(inaudible - changing of tape)...

Mr. Starr: Yeah, Mr. Fasi had his hand up.

Mr. Fasi: I was just going to make a comment that the Planning Department feels that although drainage is an important issue, you know, we're only talking about 200 by 100 square foot section here and I don't think that's grounds to defer this project. You know, there's other concerns here as I mentioned. The HPD parking which they've been waiting – MPD parking which they've waiting for. And you know, as I mentioned earlier the project was approved in '99 although our standards are stricter and more ridged, they are going to have to meet today's standards and if they're willing to agree to Commissioner U'u's condition I would urge this body to approve this particular renewal of permit and move on.

Mr. Guard: Commissioner Hiranaga.

Mr. Hiranaga: Was there a motion to amend the motion? There's reference to Commissioner U'u's condition.

Mr. Guard: The motion was to defer.

Mr. Hiranaga: So there's no amendment proposed to the motion?

Mr. Guard: Correct.

Mr. Hiranaga: So I'm kind of confused what he's talking about.

Mr. Guard: Well, I think he's, well hoping that the motion dies. Ready to call for the question or is there any further discussion and then with that motion do we want to set a date to defer?

Mr. Hiranaga: I think you need to ask them when they would be ready to come back because we're asking for –

Mr. Guard: Mainly for some engineering questions to be answered. In the meantime, Mike, the question came up, the main issue was that, they're being asked to filter all of their drainage while the entire county system goes into this same, I guess culvert or gully down to the ocean all unfiltered, correct?

Mr. Miyamoto: Yes, that's currently correct. We do not have any filters inserted into the County system other than what developers have inserted as part of their development projects.

Mr. Guard: And there's no – nothing in the future to maybe try to clean up that water that goes into Cove or just Kihei coastline in general?

Mr. Miyamoto: Not at this point. Right now we have other priorities and to some degree that pond area serves as somewhat of a sedimentation, it helps us because the outlet isn't free flowing to the ocean. It's only open during rain events so that that pond somewhat serves as a, somewhat as a quality control of the water that currently outlets to the ocean.

Mr. Guard: Commissioner U'u.

Mr. U'u: Question for Mike. Mike, looking at the plan, and being that their civil engineer is not here, you have any thoughts how they could better the drainage on their project being that they're just four feet or three feet from water to hard surface?

Mr. Miyamoto: Typically if we have our county drainage system that's in the vicinity they're allowed to deposit their runoff into that facility. As stated in their document, I think their incremental amount is 2.8 cfs based on the 10-year storm and their proposal was to connect to the county system. And the presumption is that the county system can handle the additional flow. Regarding filtration and quality control that's certainly not something that's in our purview for requirement but as the commission has done in previous projects they can certainly make the requirement for the addition of inserts into the catch basins that lead to this existing drainage facility to incrementally help clean up that water.

Mr. Guard: Commissioner Mardfin.

Mr. Mardfin: Thank you, I appreciate what you just said. Can you give me a, I know you can't give me a precise number. Can you give me an approximate feel? This would account, suppose there was petroleum, we know that – they admitted that there would be petroleum products that are going to enter the wastewater system. I don't know the whole scope of that area. Would this be like, if they totally cleaned it up would it save like one percent, would it save ten percent, would it save fifty percent? Which would be closer? The one percent sort of thing?

Mr. Miyamoto: I wouldn't be able to answer that at this point, I'd have to look further up. I know the mauka area for this drainage area is starting to get developed with a lot of the residential housing in that area. I really can't answer that but if the site were to have the inserts, I mean, that certainly would be a positive help to that drainage facility.

Mr. Mardfin: And any new development we virtually insist that they not let petroleum products go in.

Mr. Miyamoto: Yes.

Mr. Mardfin: So helping to reduce what's already going in there would be a net positive for the system?

Mr. Miyamoto: Yes.

Mr. Mardfin: Thank you.

Mr. Guard: Ready to call for the question regarding deferral? All those in favor of deferral signify by raising your hand. All those opposed.

It was moved by Mr. Hiranaga, seconded by Mr. Iaconetti, then

**VOTED: To Defer the Matter to the February 24, 2009 Meeting in Order for the Applicant's Civil Engineer to Address the Commission's Concern Regarding Drainage.
(Assenting - K. Hiranaga, W. Iaconetti, W. Mardfin, D. Domingo, J. Starr)
(Dissenting - B. U'u, W. Hedani, J. Guard)**

Mr. Yoshida: We have five votes in favor, three against. The motion passes.

Mr. Guard: Okay, we'd like to set a date that we can bring the engineer back?

Mr. Ginoza: Pretty much we'd be ready in two weeks so if we can get scheduled for the next meeting because the engineer basically looked at where they could add more drainage capacity on site.

Mr. Guard: So for you guys you're looking at, well now we're seeing if they can filter all of the existing that may be a possibility.

Mr. Ginoza: Yeah, which they've agreed to being able to do it.

Mr. Guard: They agreed to look at it actually.

Mr. Mardfin: They agreed to look at not to do it.

Mr. Guard: Not to do it.

Mr. Gambill: If imposed we would do it. If required we would do it.

Mr. Guard: Okay, Commissioner Hiranaga. I guess what we're looking for is your ...(inaudible)... civil engineer saying basically based upon the physical characteristics of this site that we are able to filter "x" percentage, 100%, 90%, 60% of the total surface runoff leaving this site. So I want some type of a definitive, you know, scientific or calculation by the civil engineer in a report basically, an amended report, drainage report, undated revised drainage report, not saying yeah we would – I mean, if you're saying we're going to filter 100% of all post development surface runoff from all impervious surfaces that's fine. But if he says, well I can't do it because we're only eight feet above sea level, this and that, there are these physical limitations then I'd like to know specifically what those physical limitations which would prevent you from doing that. I'm not mandating you guys do anything but I'd like to have a formal study done by your engineer.

Mr. Gambill: I think I'm confused as far as why this deferral is happening because I don't understand your question as far as what's being asked of us.

Mr. Guard: It sounded like –

Mr. Gambill: It sounds like two different –

Mr. Guard: We want the civic engineer on site to maybe answer questions as a professional instead of third party saying our engineer said it couldn't be done or we'll look in. I think maybe it was semantics on –

Mr. Gambill: Well, I would try to clear those up for you right now because I direct the civil engineering.

Mr. Guard: Well, I think the motion's been made. Is there availability in two week's time? It looked like the agenda was fairly light.

Mr. Yoshida: Yes, I've circulated the list of items for the February 24th meeting. We have one public hearing item which is on the Kahului Airport access road. We have to environmental documents to review.

Mr. Guard: Commissioners think we can make it through a nighttime hearing if we squeeze this drainage report in? It looked like a light agenda today. Okay, so in two week's time. With that I'm going to take a short five-minute recess so Chairman Starr can come back. The next meeting date will be February 24th as Unfinished Business.

Mr. Starr: Take the next item J.B.

Mr. Guard: Next item as well. I'm still going to take a short recess, let them set up.

A recess was called at 11:07 a.m., and the meeting was reconvened at 11:14 a.m.

Mr. Guard: ... February 10th is now back in session. Next agenda item.

Mr. Yoshida: Under Unfinished Business we have a request from the William Spence Company of behalf of MEH Limited Partnership for a Special Management Area Use Permit for the Sunset Estates Residential Subdivision consisting of 25 improved single family lots an related improvements in the R-3 Residential District on Waipuilani Street at TMK 3-9-046: 013, Kihei, Maui. Public testimony was received at your last meeting of January 27th. The matter was deferred due to the time constraints.

Mr. Guard: And the planner's Thorne Abbott or are we going right into presentation?

C. UNFINISHED BUSINESS

- 1. THE WILLIAM SPENCE COMPANY on behalf of MEH LIMITED PARTNERSHIP requesting a Special Management Area Use Permit for the Sunset Estates Residential Subdivision consisting of 25 improved single family lots and related improvements in the R-3 Residential District on Waipuilani Street at TMK: 3-9-046: 013, Kihei, Island of Maui. (SM1 2006/0031) (T. Abbott) (Public hearing was conducted on January 27, 2009.)**

Mr. Thorne Abbott: We're going right into presentation given your time constraints.

Mr. William Spence: Good morning Commissioners. My name is Wil Spence. I'm assisting my client, Steve Parker, his wife, Michelle and Wayne Arakaki our engineer this morning and presenting this project to you and of course we'll answer whatever questions you may have.

This is Sunset Estates. It's State Urban, community planned single-family, R-3 Residential which means 10,000 square foot lots. This is an infill project as you'll when we get to the aerials and other things like that, it's – This is the last undeveloped property right in that area. The project is for 25 ready to build lots. So we're proposing to put in the infrastructure and let people then purchase those and build pretty much to suit. This will probably come as a deed restrict but we're restricting the main dwelling on the property to single story and then if they want to, if an owner wants to build an ohana they can put on top of the attached garage. The reason we're doing this is my client's an appraiser, so when he goes around and he does appraisals on property he sees a lot of everything and one thing that he's trying to avoid is the situation where somebody builds a house and an ohana, you know, a two-story house and an ohana which is legal. But then a lot of times people convert the upstairs and the downstairs and so you end up with three units on a lot. So he's saying no, lets restrict the ground – the main house to one floor. So ohanas would be permitted only over the garage.

This is a location map. Liloa Drive here, Waipuilani Road, South Kihei Road. If you're familiar with the Meadowlands Subdivision these are approximately 4,000 square foot lots. It's kind of a congested subdivision where people have done some of these conversions. This is the older part of Waipuilani just to the north. Our property is right smack in the middle. This is – Kihei Kauhale is already approved, people are currently building their homes there.

This is the project site here. Piilani Shopping Village. This is the Meadowlands Subdivision here. Kihei Kauhale you can see the loop road that's in. This is the older portion of Waipuilani. Longs Center and Azeka's Mauka and Makai.

Again, a little bit closer view of the property. As you see it's developed on sides around us. This right here this is a wetlands. This was a mitigation project for when the Meadowlands Subdivision went in.

Just driving along going down makai Waipuilani. This is Kihei Kauhale here. Our property begins where you see all the kiawe trees. Little bit closer you can see the right of way here. All the kiawe trees here are on our property. And you can see, I'm going to point out this fence and the sidewalk. This was a comment we received when we went to the neighbors. They said, please continue the sidewalk. Please continue that kind of thematic fence. So, you know, there's some kind of continuity in the neighborhood. And you can see there's no room on the other side over here to put in sidewalks. So they actually said, this is a good thing. We'll now have a sidewalk from South Kihei Road all the way up to Liloa.

Little bit further down Waipuilani. I included this one because of the speed bump. This is the second speed bump in the roadway and that will be a part of discussion later on. Again, you can see the kiawe trees on our property. People use this shoulder over here a lot for parking.

Kaikane Road. This is a private road. This is our property here. I should say my client's property and it's – so this is just of makai of it. This is the subdivision that went in. Looking mauka from

Kaikane back up towards Liloa. Just so you have different views.

And then if we go on the other side, if we go on the south side of the property, this is my client's property from the Meadowlands Subdivision.

We went overboard, in my opinion we went overboard on public participation. We went to the Kihei Community Association three times. You know trying to accommodate their desires. And then when we went to the Waipuilani neighborhood and to the Meadowlands Homeowners Association they kind of disagreed with what the Kihei Community Association had to say so we would go back to the KCA and so we did a lot of horse-trading back and forth to try to make this thing as accommodating to everybody in the area as possible.

This was the original design. Two entrances, two exits but it was essentially two subdivisions. KCA didn't like that at all. We tried something like this. This produced one neighborhood, one subdivision, but just with one entrance, one exit, that didn't work too well. What we also came up with also was a bike path connecting Meadowlands down here with this area and also Waipuilani. We tried to loop like this. Our engineer says this has some engineering difficulties and you know, he does a lot more subdivisions than I do. So, we tried also something like this where we had a throughway between the Meadowlands and Waipuilani. This was something that the Kihei Community Association really wanted, you know, the connectivity between neighborhoods and the Meadowlands people when we went to their annual homeowners association meeting, they basically said, over our dead bodies. You are not going to do this. And so we went – you know, instead of just hearing us up here today, you would be hearing a petition to intervene. I'm serious. They were very firm in their opinions of it not going to go through like that.

So this is what we ended up with. We ended up with a loop design. So you have right in, right out from two different entrances. You also have the bicycle path that we talked about before. That way we are, you know, allowing some connectivity between the different neighborhoods. The Kihei Community Association said, well, okay. And the Meadowlands people said, okay, this is fine as well. So we got the different parties to agree and so this is the final design that we came up with. Of course there's internal sidewalks around here with the road widening that we're going to be doing there'll be sidewalks along the Waipuilani Road.

This is just a conceptual of what it's going to look like. As you can see, it's going to fit pretty much in like Kihei Kauhale, sort of like the Meadowlands except, you know, the lots are going to be significantly larger.

Thank you. That was short and sweet, and I know that staff's going to bring up some things about traffic calming and so when that happens I have some other slides to show you.

Mr. Guard: I thought that was because this is second speed hump coming to the planning commission. Okay, questions for the applicant?

Mr. Mardfin: Can you go back to final, the one you decided on the final design, I want to ask a question about it. Did you get the same number of lots out it by the way? I couldn't, I wasn't fast enough to count. One back from there. That's the one. Same number of lots as earlier or different number?

Mr. Spence: From the original subdivision design we've lost a lot.

Mr. Mardfin: If you look at the left-hand leg coming in, and you go in one lot, right there, what is that strange looking?

Mr. Spence: That's an access road.

Mr. Mardfin: Oh, to get – so that you can get to the ones in the back?

Mr. Spence: Yes. There's no – this is Kaikane Place back here. This is a private roadway. We do not have access here. So this is the most efficient means to.

Mr. Mardfin: And then you got a couple of long driveways it looks like in the southwest.

Mr. Spence: That's correct.

Mr. Mardfin: Okay. Just one last final comment. There is no such thing in overdoing community input. You did a really good job.

Mr. Spence: Thank you.

Mr. Guard: Any other questions or comments? Chairman Starr.

Mr. Starr: What's the retention as far as runoff and where is it going to go.

Mr. Spence: I would like to defer to our civil engineer. I know that, you know, we are designing to standards. This is Wayne Arakaki for the applicant.

Mr. Wayne Arakaki: Wayne Arakaki, engineer for the project. On the preliminary design that we had, we had located along Waipuilani Street we had infiltrators that would be like dry detention basin that would be covered and that would be to take care of the runoff that's generated by the subdivision.

Initially I had approximately 9,000 cubic feet of space, but I understand the drainage things have changed so I'm going to increase the retention pond. This was, the 9,000 cubic feet was actually to take care of any increase or runoff due to the development, but I guess the standard has changed where we need to take care of the pre development, what's generated now and whatever increase and then I can factor that in also, that wouldn't be a problem. Any questions?

Mr. Starr: So what I'm hearing, you're saying is that you're taking care as well as the post development runoff, a lot of the pre development runoff?

Mr. Arakaki: Yes.

Mr. Starr: Good, thank you for doing that.

Mr. Guard: Any other questions? Commissioner Hiranaga.

Mr. Hiranaga: In the staff report it's indicated that there's no homeowner's association. These dry wells they would need some type of maintenance in the future? Wouldn't they fill up with silt at some time?

Mr. Arakaki: The dry wells are designed where they'll be catch basins where the water would accumulate. The inlet or the pipes that's in the dry wells is usually about a foot higher. So the silt would collect on the bottom and then you can take out that soil out where there's minimal siltation that's going into the bed, the leaching bed. The homeowners usually takes care of it. I've seen cases where the landowner where the thing rests on takes care of it. It depends on what the developer decides.

Mr. Hiranaga: So if there is no homeowners association there will be a deed requirement that the lot owner maintain that dry well that's located on his property.

Mr. Arakaki: That's right.

Mr. Hiranaga: This is probably a pretty difficult question to answer but, what do you think the maintenance cost would be to that landowner if every, I don't know, every ten years he has to do this clean up. I think that needs to be disclosed to the lot owner that he has this future obligation.

Mr. Arakaki: Well, you know, the catch basins would probably be something like 4 x 4 boxes and if it's maintained, you know, every time when there is a storm, I'm sure there's not going to be more than 18 inches or a foot of silt. So someone can go in and go with a shovel. I'm sure it's not going to take that long. But you're right, I mean, it would be part of the deed requirements if there's no homeowners association where he would have to take care of it. The only positive thing is that he has top soil.

Mr. Hiranaga: I mean, I guess there needs to be some type of a enforcement requirement to get the lot owner to clean basin because I don't everyone is going to be that conscientious about doing it. And if the basin fills up, it no longer functions, right?

Mr. Arakaki: That's right. You know, that would probably be, I would have to refer back to the developer and do some kind of enforcement. I don't know if the County can enforce that because at one time the drainage was taken care of the County which they didn't want the responsibility so it's been pushed back to us. So I don't know where it goes from here, but the developer should put in their deed restrictions or something about maintenance.

Mr. Steve Parker: Commissioners, this is Steve Parker, I'm the general partner of MEH. I as a professional and private person despise homeowners' associations. I've testified in court as a negative impact on property owners that associations have. So I designed this thing not to have an association because my opinion of associations is that they become, a lot of them become vigilante committees. So yes, there will be deed restrictions in those properties that they will have to be maintained but I do not like associations. I designed this thing specifically not to have one.

Mr. Guard: Commissioner Hiranaga.

Mr. Hiranaga: So what if a lot owner refuses to maintain the dry well on his property, who's going

to enforce this?

Mr. Parker: Just like any other thing on the deed restrictions is you can sue. The other property owners can sue them but you don't have vigilante committee, a homeowners association doing other things besides enforcing which I think is a fairly minor issue.

Mr. Hiranaga: I have difficulty believing that interior lot owners will sue a person that has a dry well along Waipuilani Street because the surface runoff will just go downstream. It won't impact these people in the interior lots. So I'm having – that's your problem. I belong to a subdivision that has a homeowners association for the past 10 years we have not turned into a vigilante group. We have a common area that needs to be maintained and our dues have not increased over 10 years. I just feel, those five lot owners are not going to clean those dry wells, it's my personal feeling.

Mr. Parker: Well, you're lucky to have an association like that but you can talk to people in Kaanapali Hillside and they're constantly suing, the association's suing the owners in there. So that's my personal preference on a subdivision.

Mr. Guard: Commissioner Mardfin.

Mr. Mardfin: On page 15 of the report it says, "the applicant's willing to pay the appropriate fee for school improvements. However, on March 6, 2007, DOE stated that it does not request a school fairshare contribution for projects only seeking an SMA permit. Furthermore, school assessment fees should be collected through other ordinance or means ...(inaudible)... SMA rules." I'm trying understand what's going on here. Is it cause they're just making the lots now and when they build the houses then they'll ask for the fairshare contribution or they'll never get a fairshare contribution?

Mr. Spence: I'm not sure. I know the Department of Education normally gets some kind of fees, you know, from larger projects. This particular project is not – well, it didn't fall under the category of large. It's very moderate.

Mr. Mardfin: So they have rules that it has to have a certain number of properties before it applies and this has fewer than that number.

Mr. Spence: Yes.

Mr. Mardfin: Okay.

Mr. Guard: Commissioner Hedani.

Mr. Hedani: I believe the DOE's criteria is 50 lots.

Mr. Mardfin: five zero. Thank you.

Mr. Guard: Chairman Starr.

Mr. Starr: Yeah, is there any mechanism for encouraging energy efficiency in projects that get built on these lots?

Mr. Spence: Other than looking at your monthly MECO bill and all the surcharges, I don't think so. I mean, I'm kidding a little bit, but we can, all we can say is, as individual homeowners come in and they will have to get their own SMA assessment to build their home on the property, they're going to have their own incentives through MECO or through Water Department or whatever to be energy conscious.

Mr. Starr: I know in a lot of other projects, there have been – first of all there's a standard condition regarding that. I believe that's in our recommended conditions. Thorne is that, what does it read?

Mr. Abbott: Typically we request the use of things like solar panels and other energy conservation devices. The challenge here is that this is just a subdivision and so the applicant is not proposing to build a building per se and therefore, the condition wouldn't be appropriate because there's no buildings. Now subsequently when people put up their houses we'd certainly want to encourage them to put something on it but by putting that condition in, the developer really has no way of enforcing that onto the individual private landowners unless it was deed restriction and then that has cost inherent to it. We'd also have a difficult time I think, not impossible, but a difficult time in enforcing such a condition when people come in to build their home. So there's some challenges. And in this particular case I believe that particular condition which is a standard condition was actually left out of the department's recommendation, but I'll check on that here in a moment.

Mr. Guard: But the CC&Rs wouldn't be able to prohibit like solar hot water and whatnot.

Mr. Abbott: Oh, absolutely not.

Mr. Guard: In Kihei, they'd be almost crazy not to.

Mr. Abbott: Since he is doing things like single story requirements it could be a CC&R.

Mr. Guard: Chairman Starr.

Mr. Starr: In a lot of – a number of previous subdivisions that were in the SMA we've had energy efficiency language, you know, especially regarding use of solar hot water and energy efficient, energy star, energy efficient appliances and so on. Since there is a definite connection between the shoreline, the SMA and sea level rise which is related to more power generation creating greenhouse gas emissions and so on. So is there a willingness on the part of the applicant to put language in the CC&Rs regarding an attempt toward energy efficiency in what gets built on the lots. We won't be seeing it later when it comes back for the individual lots.

Mr. Parker: No, we'd more than likely put that in there I think.

Mr. Starr: Well, can we get –

Mr. Abbott: Yes.

Mr. Guard: Solar hot water is that what you're asking for. Because they're going to insulate, right, you have to insulate.

Mr. Starr: Since our Building Code currently doesn't call for insulation or you know, other higher standards that just about every other community.

Mr. Guard: They call for insulation.

Mr. U'u: It's a code.

Mr. Starr: It is in the code?

Mr. U'u: Roof.

Mr. Starr: Yeah, in the roof but not walls. But anyway I would be looking for some language, commitment to some kind of language that, you know, energy efficiency standards be utilized in construction.

Mr. Guard: I understand where Commissioner Starr is coming from. However, it could be costly for some people. For myself, solar I stubbed that out, later on when I had the money I did it. Energy saving appliances, you know, I know people who buy secondhand out there and get what you get with the money you have. And if you have the money it's fine and dandy. You know, but that's the problem I see. If it's cost effective. Are we forcing the homeowners to do something that possibly could cost more money when we struggling to pay the bills just to make a mortgage payment and put food on the table. I think you gotta balance the two.

Mr. Spence: Commissioners, Wil Spence for the applicant. If I could comment? Part of the goal of this project is to do some thing really moderate, provide an opportunity to somebody to purchase a piece of property and then build their own home on it if all they can do right now is the ohana and then later on do the main house or you know, so we're not doing a house with a set price. You know, we're trying to provide an opportunity. So what Commissioner U'u is saying, you know, it's going to be up to the individual budgets of each buyer. We're not doing one model that we can just automatically attach things to. We can put something in the CC&Rs to encourage it. I don't think we can require that somebody, you know, put in a \$20,000 photovoltaic system though.

Mr. Guard: You're using drought tolerant plants, the trees on the perimeter are natives?

Mr. Spence: To the degree as we can, you know, as the street plantings, etc., yes.

Mr. Guard: Commissioner Starr followed by Commissioner Iaconetti.

Mr. Starr: I'm willing to accept language encouraging it, but it is false economy to utilize a non energy star appliances or to, you know, cheap air conditioners that use twice as much power because you may save a hundred dollars on the appliance and you're going to paying, you know, \$10.00 more a month in electric bill. You know, especially for people who, you know, are trying to make ends meet. It makes a lot more sense to buy the efficient stuff. In fact our energy code has not been updated since '96, and we've become a dumping ground, you know, single pane glazing and non energy star air conditioners and all that which are not sold in just about every other 43 other states and most municipalities means that we need to create encouragement where we can and it will help people live and save money in their daily lives. It doesn't cost more. I agree that

photovoltaic is kind of that icing on the cake, but the real basic stuff like properly insulating if you're going to air conditioning and using double glazing and energy star appliances I'd really like to see something to that effect. Solar hot water is another one especially in Kihei.

Mr. Guard: Thank you. Maybe the developer can just pass out some educational brochures for that, on the reservation contract. Commissioner Iaconetti followed by Commissioner U'u.

Mr. Iaconetti: Are there going to be restrictions as to on-street parking?

Mr. Spence: Yes. We're going to require – I mean, the CC&Rs that we're going to incorporate are very basic. This would be one of them that everybody provide their own onsite parking. So you don't have some of the crowded streets that you witness in Kihei and other areas of the island.

Mr. Guard: Just a comment, I don't think when you're pinching pennies you're thinking about putting one AC unit. If you're pinching pennies, you're pinching pennies and I understand what Commissioner Starr is saying but like myself, I got one secondhand ice box given to me free and it's done me well for the past five years, granted I bought a new one. You know, over time you get what you get. Some people don't even have cabinets. You build the boxes. You stretch your dollar as far as you can and then you save up the money to buy the energy saving appliances which I agree with Commissioner Starr it does work in the long run.

Mr. Guard: Okay, I think we just try to educate people because refrigerators, new ones will pay for itself in two years and then you're home free. Commissioner Mardfin.

Mr. Mardfin: Quick one. On page 24, you refer to you're trying to build lots that are moderately priced. What does moderately priced mean?

Mr. Spence: I don't know if my client would shoot me to quote that. I looked at MLS a couple weeks ago, the remaining lots in Kihei Kauhale are on the market for about \$350,000 and those are not selling very quickly. Well, of course, it's the, you know, we're in that market anyway. We're looking at more \$250, \$275 along those lines.

Mr. Guard: For a two-unit property?

Mr. Spence: ... moderate.

Mr. Guard: Commissioner Hedani.

Mr. Hedani: I agree with Commissioner U'u's comments regarding specific restrictions for the houses. You know, I wouldn't put in double pane windows in my house and I don't have air conditioning. I don't have a heating problem, I don't have air conditioning problem. I have cross ventilation and it works and it's cheap.

From the standpoint of this particular subdivision I had a question although it might sound like a weird question I'm going to ask it anyway. Because you have so few lots, 25 lots, have you considered a one-way street instead of a two-way street that's really wide? Giving more land area to the lots themselves.

Mr. Spence: We would certainly consider something like that. I don't think that Public Works would probably –

Mr. Hedani: Doesn't fit the mold.

Mr. Spence: I see Mr. Miyamoto there laughing a little bit.

Mr. Hedani: Just a thought.

Mr. Spence: Okay. We still have to meet subdivision standards.

Mr. Guard: Any questions or should I call for public testimony? Commissioner Hiranaga.

Mr. Hiranaga: Just a couple of personal questions. I'm not sure if you actually answered Commissioner Iaconetti's question about is there any restrictions on street parking. You said that you're going to have onsite parking but you didn't say yes or no regarding say, overnight street parking.

Mr. Spence: I can clarify. All the parking for the homes that are, we're going to require that onsite parking for each of the homes on the property. So if you have a house and ohana, you're probably going to have to do either three or four spots on that. We're going to prohibit on-street parking. I mean, there's going to be occasions, you know, Super Bowl party or whatever, where you're going to have friends over, but as a general rule for the – CC&Rs are going to say no on-street parking.

Mr. Hiranaga: I think the norm is to say no overnight on-street parking. And another comment. I'm that keen about ohanas on top of garages but that's the developers personal decision. I don't have a problem with house on a house as long as it doesn't look like a house on a house. Those are just couple of comments. I think by eliminating overnight parking you limit the footprint on the property, but then if you don't have an association I don't know who's going to enforce overnight parking restrictions because that's not a county requirement. So thank you.

Mr. Guard: Commissioner Mardfin.

Mr. Mardfin: In Exhibit A 13 from the Department of Water Supply. Would you clarify for me what your situation is with respect to water?

Mr. Spence: I don't have that particular exhibit, my apologies.

Mr. Mardfin: They say, "source availability and consumption, demand for 25 residential units with potential ohanas would be about 21 to 30,000 gallons per day based on system standards. Currently no restriction on obtaining meters in Central Maui. However, water may not be available for development of these lots until new sources are on line."

Mr. Spence: Okay, our response would be first off that's a pretty standard Department of Water Supply comment. Second, we in an earlier iteration of this project we had submitted construction plans and one way or another, after SMA approval we have to deal with show me the water ordinance. It's something we have to do.

Mr. Mardfin: So nothing gets built, you can subdivide, you can sell the lots, but nothing gets built until they get water is that what you're saying?

Mr. Spence: We will have to – I would think we would have to obtain the meters before – so we're going to have to deal with the show me the water ordinance before we can sell lots.

Mr. Guard: Any other final comments? Ready to call for public testimony? Okay, any members of the public wishing to speak on this agenda item, come forward. Seeing none, public testimony is closed. Staff recommendation.

Mr. Abbott: Prior to staff making a recommendation I wanted to thank Commissioner Starr for inviting Mark Fenton to speak to us last week, I'm sorry, last commission meeting and Mr. Fenton and also Ann Cua for reminding all us planners to actually come and get out of cubicles and learn something pretty cutting edge.

Mr. Fenton has been to this particular site. He took some time during the nice rainstorms we had and one of his recommendations he had was relevant to a mini rotary, roll over type rotary for this site. You know, the engineering drawings haven't been worked out. I believe Wil has some additional information if you'd like to consider that as a potential addition to this project.

Mr. Guard: What is that?

Mr. Abbott: What is which?

Mr. Guard: We don't know what a mini rotary is, sorry. Okay, a few of us.

Mr. Abbott: It's a traffic calming device. I'd be glad to pass a copy of it out. In fact, I have one here. Staff would like to encourage the applicant to present this if the commission would be interested in hearing more about it.

Mr. Guard: Sure. So this is in lieu of the first speed hump? Instead of putting a speed hump there, is that what you're discussing Wil?

Mr. Spence: I did come up with a number of slides if commissioners would like to go through it. I'm not exactly sure whether, what staff is talking about would replace speed humps or whatever. We do have some questions and we've been talking with staff is this going to work or is it not. So we kind of came up with a mutual recommendation for commission. But again, going down Waipuilani, right in front of our property there's the first speed hump, there's the second which is several hundred feet further down and then even closer to South Kihei Road past us there's a third one. So at the last meeting you heard one testifier say, people speed along Waipuilani. In all of our meetings with the different associations and area members and whatnot, that was not a comment that we had heard previously. Possibly because the speed humps are already there or whatever. You did hear that one person testify and so Thorne approached us with the concept of putting in a mini rotary, okay that's a chicane. I pulled this right off of the handout that Thorne gave you. So here's this mini rotary here in the middle of the street and you know, we're – we would consider, you know, installing something like that to help calm the traffic. Our only questions are, you know, we're not sure if it's going to entirely fit. You know, without additional right of way or more right of

way without losing a lot or two.

This was, you know granted this is staff's sketch, and granted it is a conceptual sketch, but you know, when Thorne first approached us with, we took a look at this and we went, oh my God. You know, you look at the curvilinear and we're going, oh my God how are we going to redo Waipuilani. And looking at this too, and we're going – so we posed a bunch of questions. I know Public Works has looked at it and they'll have their own comments. But we're pretty – we're pretty satisfied now if this was something the commission would want us to install, traffic calming devices including or considering a mini rotary, you know, we could work that out with Public Works.

This is just the right of way along Waipuilani. I mean, you can see how narrow it is here. This is one of the reasons why we were gasping is because there isn't any room within the current right of way to do something like this. But we could kind of try to jostle things around and work with Public Works to see if it happens.

Mr. Guard: Chairman Starr.

Mr. Starr: Yeah, I had thought though the suggestion of this on Mark's part on the roadway inside the subdivision, Mr. Abbott. Do I have that wrong? I didn't think it was on Waipuilani, but I wasn't there for the conversation.

Mr. Abbott: Yes, both in subdivision also somewhere along Waipuilani Road because that's where the speeding primarily occurs. He also, you know, was encouraging bicycle friendly use and this might contribute to that. And where the bicycle path comes in is marked, is highlighted in yellow from Meadowlands. There's actually a bit of an elevation change. So that would be not a full scale rotary but maybe just a very small elliptical, you know, curb area or something in the middle so a kid doesn't come down on his skateboard and go flying out into the middle of the road and get smacked. And so having some kind of divider there, physical barrier would probably encourage safety. It would also cause the driver to be more attentive, you know, what's coming down the bike path.

I really just want to thank the applicant for being willing to do this. I asked him why are you having one-story restrictions? You know, you could sell these lots for a lot more if you did two stories. And he seems to just want to do the right thing. If this isn't real costly and if they can work it out with Public Works and it really improves or calms traffic in that area, we just wanted to offer it as a opportunity.

Mr. Guard: That would be great. Commissioner Starr.

Mr. Starr: Yeah, you know, I really want to thank staff for doing that and the applicant. You know, I've spent time in communities where this is being done rather than just making the street straight and using speed bumps which are, you know, as Mark said, is a good opportunity to gain air in your lower rider truck. So I was wondering whether staff had a suggested wording that would not – I don't think we want to punish the applicant here, but we want to encourage something that we can use and having this be a showcase for something might actually help the project. It's something we could point to later on assuming it's successful which I hope it will be.

Mr. Abbott: Us too. Yes, we do have some wording. I might mention that the Fire Department did look at a preliminary sketch, this sketch and had no issue with it as well as the pictures from Mark Fenton. Public Works also looked at it and did have some comments and in fact, was not supportive of it. But they, Public Works did indicate a willingness to sit with the applicant prior to the building permit stage or final subdivision stage and so the recommendation language of the condition would be: "as represented by the applicant and to the satisfaction of the Department of Public Works traffic calming devices such as a mini rotary will be implemented to the extent practicable."

Mr. Guard: And so that's your Item 28?

Mr. Abbott: That would be Item 28 and staff actually recommends deleting two conditions, Condition 17, actually just one, 17, "that low level lighting shall be used on buildings, landscaped areas and parking lots and shall be fully shielded and/or shaded subject to applicable design guidelines in crime prevention through environmental design." The reason we recommend striking that is the subdivision is not proposing any lighting whatsoever or buildings.

Mr. Guard: Did the neighbors to the north of Waipuilani Street did they see your sketch and agree to the ...(inaudible)...

Mr. Abbott: No. But I will say that the intersection into the makai, I'm sorry, the mauka subdivision there's a four-way intersection there and I took my Honda Accord and made a very gentle circle, round, and around and around. So there's plenty of room and they're going to be responsible for doing the same kind of road widening as the mauka. And the only thing really in the center there is a nice sewer manhole. And I think it'd be nicer to have something a little more attractive that actually contributed to slowing people down. I did see some people, someone on the motorcycle enjoying the speed bumps. I also saw a bicyclist while I was there and then finally, you know, it reduces the impervious surface area and why are we pouring all this asphalt and then just striping it. It seems like a waste of the developer's money, it doesn't contribute to runoff situation very well and so the applicant's willing, Public Works is willing to talk about it. This is a pretty broad condition and hopefully we could work it out to everyone's satisfaction.

Mr. Guard: Commissioner Iaconetti.

Mr. Iaconetti: Without lengthening the discussion, what exactly was Public Works concerned about?

Mr. Abbott: Where the entrance is currently for the makai entrance for the subdivision the parcels right across the street, the way their driveways are situated it could create a safety issue for them and so that wouldn't be appropriate. But somewhere maybe on the middle of the road or somewhere along the stretch of road where it would be safe to have something like this would be appropriate.

Mr. Iaconetti: So they don't have a problem with this being a county road putting traffic slowing devices on a county road?

Mr. Abbott: I'll let Public Works speak to that.

Mr. Miyamoto: Thank you Mr. Chair. We're always looking for creative solutions on traffic calming. Typically we fall back to the speed humps because those are on existing roadways that are pretty much developed on both sides so the opportunity to create these traffic calming facilities isn't there. So that's why typically you'll see the speed humps because there's just no roadway right of way at this point. With this project you have half the road undeveloped. Our concerns were that on the north side of the roadway those are existing homes that have limited space as the applicant had pointed out and there's driveways that would be very difficult to relocate. And without really seeing a design, you know, we just came through some scenarios, what happens if the driveway's partially in the roundabout? You know, how do you get in, how do you get out? Those types of concerns were things that we were concerned about and we didn't want the applicant to be stuck if he was required to do something and it wasn't technically feasible. We didn't want him to have to come back to this commission and ask for a change in the condition to allow him to go back to the traditional traffic control.

Mr. Guard: So with that Thorne, we made the two changes to your staff recommendation?

Mr. Abbott: That's staff recommendation. Drop Condition 17 and add –

Mr. Guard: The new 27?

Mr. Abbott: Yeah.

Mr. Guard: Okay, Commissioner Starr you had something earlier.

Mr. Starr: I was going to make a motion but if Commissioner Hiranaga has questions.

Mr. Hiranaga: I believe Condition No. 22 needs to be modified, second sentence, "that all increases in runoff from the site development," shouldn't that say, "that all runoff." The applicant made that commitment. Or the applicant's civil engineer made that commitment.

Mr. Guard: Commissioner Starr.

Mr. Starr: Yeah, before I make a motion I just want to clarify Mr. Abbott, is that part of the staff recommendation now? That wording change?

Mr. Abbott: That was represented by the applicant and I think we should qualify it as a one-hour, 50-storm, runoff produced by one-hour, 50-year storm.

Mr. Starr: With that in mind, I move – do you have a question for staff?

Mr. Iaconetti: Yeah, are there any restrictions as far as B&Bs in this development?

Mr. Guard: I believe there's no TVRs in there.

Mr. Abbott: No, there would be no restrictions. It is zoned for single family use. So someone could come in and open a B&B, but they'd have to go through the regular permitting process. Also, all these lots presumably will have to come by and get an SMA assessment. They'll be exempt as

long as they meet all the codes.

Mr. Guard: Commissioner Hiranaga.

Mr. Hiranaga: Just one question about this mini rotary. So if a fire truck is coming down the road do they drive over the rotary or they still go around it?

Mr. Abbott: The edge of the rotary is kind of a curved, kind of curve, it's not a hard 90 degree curb so it's very curvy so that they can actually roll right over. In fact, they don't even have to swerve they just straight on –

Mr. Hiranaga: They drive over it.

Mr. Abbott: And they go right over it, yeah. And Fire as I said, did not comment adversely to what was shown to them.

Mr. Guard: Commissioner Starr.

Mr. Starr: Okay, I move that we approve as recommended with the recommended conditions.

Mr. Mardfin: Second.

Mr. Guard: We have a motion by Commissioner Starr and a second by Commissioner Mardfin, any discussion? Commissioner Hiranaga.

Mr. Hiranaga: Could the staff read that additional condition again?

Mr. Abbott: Sure. "As represented by the applicant and to the satisfaction of the Department of Public Works traffic calming devices such as a mini rotary will be implemented to the extent practicable."

Mr. Hiranaga: And you're fine with that?

Mr. Spence: That's fine with the applicant.

Mr. Guard: Any further discussion? Commissioner Hedani.

Mr. Hedani: Because there's no homeowners association tied with the subdivision and the mini rotary that we see in the photograph is very nicely landscaped, is Public Works going to handle the landscaping duties for the rotary?

Mr. Guard: Maybe that's a little kokua project in the neighborhood.

Mr. Abbott: Actually the way it's designed there's a little slots in the concrete of the rotary that allows that to actually behave as an infiltration basin according to the representations by Mr. Fenton.

Mr. Hedani: So that's a yes?

Mr. Abbott: Yes.

Mr. Guard: Yes, no? Public Works answer your own questions.

Mr. Miyamoto: Thank you Mr. Chair. Typically landscape medians there's an agreement between Public Works and Department of Parks to take care of. We have in the past made arrangements with adjacent property owners to maintain these grassed areas. For example, we have one off of Kealii Alanui where the adjacent subdivision would take care of the median strip. In this project seeing as there's not going to be any homeowners association we'd have to probably rely on Parks Department at this point. But it looks very minimal so we may have to think of some creative solutions with the applicant on how we can minimize the maintenance of that island.

Mr. Guard: Neighborhood pride. We have a motion on the floor and a second. Any further comments. Ready to call for the question? All those in favor of the motion signify by raising a hand. All those opposed.

It was moved by Mr. Starr, seconded by Mr. Mardfin, then

**VOTED: To Approve the Special Management Area Use Permit as Recommended with Conditions.
(Assenting - J. Starr, W. Mardfin, K. Hiranaga, B. U'u, D. Domingo,
W. Iaconetti, W. Hedani, J. Guard)**

Mr. Yoshida: Eight in favor and none against. The motion passes.

Mr. Spence: Thank you very much Commissioners.

Mr. Guard: Thank you for the project.

Mr. Abbott: Thank you very much.

Mr. Guard: Thanks for your time Thorne. Okay, it looks like we might be able to bomb ahead.

Mr. Starr: Lets lunch then.

Mr. Guard: You want lunch for an hour? We have communications.

Mr. Starr: We got any more items?

Mr. Guard: No, there's no more items. It's all extensions and communications. I, for one, would rather use my afternoon better than coming back in an hour for a half hour of meeting.

Mr. Hiranaga: I disagree Vice Chair.

Mr. Starr: Oh, we do have a serious item.

Mr. Guard: Is that a communication?

Mr. Starr: No, it's a serious item.

Mr. Guard: Okay, well, I thought it was a communication. Okay, with that recess for lunch.

A recess was called at 12:10 p.m., and the meeting was reconvened at 1:10 p.m.

Mr. Guard: ... February 10, 2009 is back in session. Next item is.

Mr. Hunt: Your next item involves Ms. Dawn Lono, Chairperson of the Hana Advisory Committee to the Maui Planning Commission transmitting the Hana Advisory Committee's recommendations on the requests by Mr. James H. Barry of Sea Engineering, Inc., on behalf of the State Department of Land and Natural Resources, Division of Boating and Ocean Recreation for a Special Management Area Use Permit and a Shoreline Setback Variance for the improvements to the rock revetment and boat landing docks at the Hana Wharf, TMK 1-4-004: 036 in Hana. The file number is SM1 2007/0007 and SSV 2007/0003. Thorne Abbott is the planner assigned to this project and he should be joining us shortly.

D. COMMUNICATIONS

- 1. MS. DAWN LONO, Chairperson of the Hana Advisory Committee to the Maui Planning Commission transmitting the Hana Advisory Committee's recommendations on the requests by MR. JAMES H. BARRY of SEA ENGINEERING, INC. on behalf of the STATE DEPARTMENT OF LAND AND NATURAL RESOURCES, DIVISION OF BOATING AND OCEAN RECREATION for a Special Management Area Use Permit and a Shoreline Setback Variance for the improvements to the rock revetment and boat loading docks at the Hana Wharf, TMK: 1-4-004: 036, Hana, Island of Maui. (SM1 2007/0007) (SSV 2007/0003) (T. Abbott)**

Mr. Thorne Abbott: I was just checking on some things with the consultant. Thank you for the delay.

Mr. Hunt: We introduced the item already so take it away Thorne.

Mr. Abbott: So as you know, this is a DLNR project ready to go. I did find out that it was previously bid out and the bids were extremely high. The budgeted \$4 million, the bid came in at \$7 million. So they're scrambling to find some extra money for that. Could be a potential recipient of the stimulus package if that goes through the Fed. The Legislature allocated this money primarily at the push of Kalani English and it's ready to go. They have cut some things within the project in order to lower the cost to meet their needs.

Primarily what's happening is that the revetment right now is being under scoured and is collapsing. They've tried to repair it a number of time. In addition, the actual boat ramp itself is uplifting. Air is getting under there and being pushed during high swells and that's causing it to lift up. So it does need a repair. This is not for pier. There would be nothing on the pier.

This is an example of what's happening there. You can see these are actually were sand bags that were concreted in there. It's pretty ugly.

This is the current dock. This is not ADA compliant. This will be changed to be ADA compliant. It will also have improved lighting so that the fishermen can come and go 24/7.

This is the existing condition. Important thing to note is the green area and the red line on the top. ... (Inaudible - not speaking into a microphone)...

Mr. Hunt: Thorne you have to speak into a mike.

Mr. Abbott: Sorry. If you'd use this for the reference and the width of the breakwater and this is the proposed. This is access for ADA compliance down to the loading dock. And then the revetment would be expanded on this side. And you wouldn't lose any turning radius here with the boats. The trailers come up and they turn around here and go back. So this wouldn't be any major loss. Down here there would be some loss of turning radius.

This is a typical section. This is an ungrouted revetment so you have a big toe stone and then behind that you have smaller stones that are fit together so that it can endure for a long period of time. On the other side is a CRM wall, CRMU wall that go down to I believe -6 feet. Likewise, this will be pretty much submerged in the water at about this level. Another general construction plan as well as down at the bottom of the new ADA loading dock design.

The applicant met with the public on three occasions I believe. There was one occasion in Hana where they did not have quorum so they had a public meeting. There were 23 people in attendance or so. They were all pretty favorable to it. The applicant has represented initially they were going to put up a fence between the old pier and the new boat ramp. Hana Advisory said we don't like that very much. It's just going to get torn down, it's a waste of money, cut it out. They're also going to do some changes with the striping there as far as parking and the signage. Right now a lot of people park by some rocks. Can't really see it on any of the site plans. There's some rocks over here and they tend to park over there. So they'll do some new signage to keep that area open so people can turn their boats with their trailers around.

The only other major issue is two other issues where when they do staging of the project where are they actually going to put things because the park is very heavily used. So they agreed that they, they don't have a contractor yet, but when they do, they'll get the contractor to sit down with the community, probably at Helene Hall and have a discussion about where things will be and hopefully there'll be some flexibility in that.

And then the last item is how it will be closed down for. Obviously the fishermen need this, they want it. There's a wide range of support for this but there's concern of course if they're going to close it for a year that would really decimate the subsistent fishing and the commercial fishing of the individuals down there. So the contractor will have a meeting to discuss that and there's various alternatives that might be available such as placing moorings, temporary moorings off shore. There's some issues with that because eventually they have to refill the boats with gas and that kind of thing and presently beside the boat ramp and going towards the park it's a very sandy beach area and there's not enough draft to pull the boats in there. There's an old boat ramp that

basically goes across the beach, but there's very, very little draft there so most of the boats couldn't pull out.

With that, we recommend approval of the Hana Advisory Committee had made some changes in the language and some changes in the conditions as well as adding to project specific conditions. Thank you.

Mr. Guard: Thank you. Any questions? Commissioner Mardfin.

Mr. Mardfin: You mentioned that the Hana Advisory Committee didn't want the fencing and hear that. I think there was an issue about a washdown area also?

Mr. Abbott: Correct. Originally this had a washdown facility proposed. That's been dropped. That saves money. The Hana community didn't seem to support that very much. I commend the Chair of the Hana Advisory Committee, when we had the meeting she actually interrupted the meeting, we took a break, we walked out on site with the applicant and the consultants as well as the community and stood around and actually pointed, okay where is this going to be, where is that going to be? So it really put things on the ground in context for sizing. So that was a very popular and correct thing to do.

Mr. Guard: Commissioner U'u.

Mr. U'u: Yeah, my question, the budget approximate estimate was at \$4 million.

Mr. Abbott: Correct.

Mr. U'u: And it's \$7 million as of now.

Mr. Abbott: That's what I was just told, yes.

Mr. U'u: Department of Public Works recommended that the heavy equipment come by water.

Mr. Abbott: Correct.

Mr. U'u: Is that what we're doing and is it feasible?

Mr. Abbott: This was a long topic of discussion at the Hana Advisory Committee. First off, they can't really dictate how it's going to come because that's kind at the contractor's discretion. They don't want to say okay, well come by barge and then they can't get any bids or that increases the price to \$50 million. So they're going to leave that kind of open at this juncture. The concern was that when this project originally went to Public Works, we had road closures in the Kaupo section of the island. So what if you had a truck tip over on a bridge in Hana and suddenly you locked everybody in Hana, there would be no routes out. That's not the case any more, so that issue's kind of solved.

And secondly, you can't go across those bridges without you know, they have load limits so you wouldn't be able to exceed those. I believe they just had some delivery of some very large stones

that they took down to repair the bridges from the recent washout in the Kaupo - Kipahulu section of the island. So obviously they can get the equipment there. There's some logistics issues.

Mr. U'u: So you guys have the funding?

Mr. Abbott: Right now they have \$4 million. They're trying to scramble together and get some more money.

Mr. U'u: When is the approximate start date?

Mr. Abbott: This is ready to go. Once it receives all government approvals and I believe you're the last one.

Mr. Guard: Commissioner Starr.

Mr. Starr: Yeah, I just want to make some comments. I've used that ramp a number of times with my boat. It's really dangerous, it's really marginal. There's no dock along side so you kind of have no way to go to control your boat once you get it in the water. The slabs and the ramp actually move up and down with the swell while your trailer's on them so your trailers like that, and it's just really hairy. So it's great to see it happen. There's definitely some compromises here. Not having a washdown, but understand why the fishermen don't want it because they – there's so little parking and there's so little turn around space already that that will cut into that. So that's a tradeoff for sure. The handicapped – the fact that they have to take away from the turnaround area to build the handicap ramp down there is too bad because it's going to make it a lot harder for them to turn around and to move stuff around but I guess a state project they have to do it and there's no other way. But really it's just tight in there already, it's going to make it tighter. It's good to see it happen and I really think it's important not to close off the pier. They were going to chainlink fence off the pier and you go down to the pier and there are people who have been fishing on the pier for 70 years, you know, and their parents and grandparents before them and the kids and to say that suddenly they can't do it, it's kind of I don't know, maybe not quite pono in a place like Hana.

Mr. Guard: Any other questions, comments? Should we open it up for public testimony at this time? Any members of the public wishing to speak on this agenda item? Seeing none, public testimony is closed. Staff recommendation.

Mr. Abbott: Staff recommends approval of the project pursuant to the Hana Advisory Committee's recommended conditions and verbiage.

Mr. Guard: Commissioner Hedani.

Mr. Hedani: So move.

Mr. U'u: Second.

Mr. Guard: Motion to approve by Commissioner Hedani, seconded by Commissioner U'u. Any discussion? Commissioner Mardfin.

Mr. Mardfin: I just want to make sure I understand the motion. Is it to approve the SMA Use Permit and Shoreline Setback Variance?

Mr. U'u: Yes.

Mr. Abbott: Yes it is.

Mr. Guard: Commissioner Starr.

Mr. Starr: I just want to be sure that the wording to not have fencing is in there and not to have a washdown area is in there.

Mr. Abbott: I believe that's in the department's recommended conditions but we make sure it's explicit.

Mr. Starr: Thank you.

Mr. Guard: All right, ready to call for the question? All those in favor of the motion, signify by raising a hand. All those opposed.

It was moved by Mr. Hedani, seconded by Mr. U'u, then

**VOTED: To Approve the Special Management Area Use Permit and Shoreline Setback Variance as Recommended with Conditions.
(Assenting - W. Hedani, B. U'u, K. Hiranaga, J. Starr, W. Mardfin,
D. Domingo, W. Iaconetti, J. Guard)**

Mr. Guard: I have that as eight in favor and zero against.

Mr. Abbott: Thank you very much and I'm sure the people of Hana very much appreciate it.

Mr. Guard: That you Thorne. Good work.

Mr. Hunt: Your next item involves Mr. August S. Percha, architect requesting a two-year time extension on the County Special Use Permit to operate the Kihei Seventh Day Adventist Church and Preschool on the Maalaea side of the Piilani Village project at TMK 3-9-001: 149 in Kihei. The file number is CUP 2004/0001 and Jim Buika is the planner assigned to this action.

2. MR. AUGUST S. PERCHA, architect, requesting a 2-year time extension on the County Special Use Permit to operate the Kihei Seventh Day Adventist Church and Preschool on the Maalaea side of the Piilani Village project at TMK: 3-9-001: 149, Kihei, Island of Maui. (CUP 2004/0001) (J. Buika)

Mr. Jim Buika: Good afternoon Vice Chair Guard and Commissioners. My name is Jim Buika, planner with the Planning Department. The purpose of this agenda item is for the Maui Planning Commission to take action on the request by the applicant to approve a time extension of an additional two years for the existing County Special Use Permit in order for the permit to remain

valid to allow the construction of the Kihei Seventh Day Adventist Church and the Preschool. It's located on a parcel along the Piilani Highway and it is makai of the Piilani Highway in North Kihei.

The purpose of the time extension request is for the applicant to continue to work with several agencies in order to finalize the building permits and we have the applicant, a representative, August Percha here who can answer any questions on the status of the agency requirements to obtain the building permits if you need.

The Maui Planning Commission unanimously passed both a County Special Use Permit and an SMA permit for the proposed project on January 24, 2006. The existing permit Condition No. 1 for two years expired on January 31, 2009 requiring the requested time extension. The applicant filed a timely request for the extension and along with the time extension request as I mentioned, the applicant requested a similar time extension for the SMA use permit which was also later on on this same agenda in the director's report.

The Planning Department has recently approved the preliminary compliance report. Landscape plans for the project have been approved. There are seven fairly standard conditions for the County Special Use Permit. These conditions will remain in effect and as stated the applicant is present to answer any questions that you may have and provide you more information about the project.

Mr. Guard: Any questions for the applicant? Commissioner Hiranaga.

Mr. Hiranaga: Why is the SUP required?

Mr. Buika: Because it's a special use permit the zoning had changed to from ag to open space and apartment 1 and it was required for the county to build the church and the preschool.

Mr. Guard: Commissioner Hedani did you have something?

Mr. Hedani: Just a motion to approve as recommended.

Mr. U'u: Second.

Mr. Guard: Do we need to do public testimony on this? Okay. You guys want to hold off on that agenda item. Looks like we've got people filling in the room. You have a comment prior to public testimony Commissioner Starr.

Mr. Starr: I guess we can approve. I would think we were going to waive our review of it and leave it to the director. I guess we could just approve it, but I think our normal process is to waive our review.

Mr. Guard: I think that's on a different item. It comes up again in G.

Mr. Starr: Oh, okay.

Mr. Buika: Yeah, we have two items. One is the SMA permit which we have requested that you

waive the review in the Director's Report later on.

Mr. Starr: I apologize.

Mr. Guard: We've had people waiting in the room all day for this item. Any members of the public wish to testify on this agenda item at this time. Seeing none, public testimony is closed. Is there a staff recommendation?

Mr. Buika: The Maui Planning Department recommends approval of the request to amend Condition 1 to extend the County Special Use Permit for an additional two years or until February 28, 2011. All other conditions will remain effect and will remain the same. This concludes the Planning Department's recommendation.

Mr. Guard: Thank you sir. Commissioner Hedani.

Mr. Hedani: So move.

Mr. Guard: Commissioner U'u still second?

Mr. U'u: Yes.

Mr. Guard: Okay, motion by Commissioner Hedani, seconded by Commissioner U'u, any discussion? Commissioner Mardfin.

Mr. Mardfin: Quick question. Why did they change from five – requesting a five-year extension down to a two-year extension?

Mr. Buika: It's the Planning Department's policy to extend a Special Use Permit for two years. After an additional two years, we would most likely extend it for five years, but the first extension for two years.

Mr. Mardfin: Thank you.

Mr. Guard: Anything else? Commissioner Hiranaga.

Mr. Hiranaga: If you could just briefly describe the drainage plan for the property. I see there's two large basins here.

Mr. Buika: August can you take a crack at it? I know there's a drainage in far western part there. This is August Percha who is the architect on the application.

Mr. August Percha: I believe this is what you're looking at. The retention basins east and west. They're surface retention basins with gentle sloping sides, more as ponds than ditches and all of our site runoff that's generated post developed is directed into these two retention basins. The amount of retention provided greatly exceeds the amount required.

Mr. Hiranaga: So that's downhill?

Mr. Percha: Oh yeah, we're high and dry with the building. The whole site flow is this way. This is Kulanihakoi Gulch.

Mr. Hiranaga: ... flip the exhibit around. There you go now it's – what's that pink area, just gulch?

Mr. Percha: Well this is an area on the site that we're not even going to touch.

Mr. Hiranaga: Scrub land, gulch.

Mr. Percha: It's gulch and it's in the flood plane and it's part of the NPDES permit to leave this. We're going to make a structural barrier right here first and then all the materials that's taken away from the high points cut will be filled here to make that embankment.

Mr. Hiranaga: Okay, thank you.

Mr. Guard: Thank you. Any further questions? Ready to call for the question? All those in favor of the motion signify by raising their hand. Any opposed?

It was moved by Mr. Hedani, seconded by Mr. U'u, then

**VOTED: To Approve the Two-Year Time Extension of the County Special Use Permit as Recommended.
(Assenting - W. Hedani, B. U'u, K. Hiranaga, J. Starr, W. Mardfin,
D. Domingo, W. Iaconetti, J. Guard)**

Mr. Hunt: I have that eight in favor and zero against.

Mr. Buika: Thank you.

Mr. Guard: Thank you. I don't know if people are here for Item E to listen to that, if you want to go in order before taking on the Director's Report. That was Corp. Counsel's suggestion. G1a is the same property. Commissioner Mardfin.

Mr. Mardfin: I move we adjust our agenda to take up item G1a at this time since it deals with the same basic issue.

Mr. U'u: Second.

Mr. Guard: Any comments or are we ready to call for the question. Motion by Commissioner Mardfin, seconded by Commissioner U'u to move G1a up on the agenda to the present time. Signify with a raise of the hand. Any opposed?

It was moved by Mr. Mardfin, seconded by Mr. U'u, then

**VOTED: To Bring Forward Item G1a.
(Assenting - W. Mardfin, B. U'u, K. Hiranaga, J. Starr, D. Domingo,
W. Iaconetti, W. Hedani, J. Guard)**

Mr. Hunt: I have that eight in favor, zero against.

Mr. Guard: Okay, next agenda item is?

Mr. Hunt: Your next agenda item involves the Director's Report. The Planning Director is notifying the Maui Planning Commission pursuant to Section 12-202-17(e) of the Maui Planning Commission's SMA Rules of his intent to issue time extensions on the follow requests.

Your first request is by Mr. August S. Percha, architect, requesting a two-year time extension on the period to initiate construction of the Kihei Seventh Day Adventist Church and Preschool on the Maalaea side of the Piilani Village project at TMK 3-9-001: 149 in Kihei. The file number is SM1 2004/0003 and Jim Buika is the planner assigned.

The action available to the commission is the commission shall acknowledge receipt of the request. The commission may review the time extension request or waive its review.

G. DIRECTOR'S REPORT

- 1. Planning Director notifying the Maui Planning Commission pursuant to Section 12-202-17(e) of the Maui Planning Commission's SMA Rules of his intent to issue time extensions on the following requests:**
 - a. MR. AUGUST S. PERCHA, architect, requesting a 2-year time extension on the period to initiate construction of the Kihei Seventh Day Adventist Church and Preschool on the Maalaea side of the Piilani Village project at TMK: 3-9-001: 149, Kihei, Island of Maui. (SM1 2004/0003) (J. Buika)**

Mr. Guard: Any motion to waive?

Mr. Starr: Mr. Chair, I move that we waive our review of this.

Mr. Mardfin: Second.

Mr. Guard: And acknowledge the receipt of the request?

Mr. Starr: Yes sir.

Mr. Guard: Okay, motion by Commissioner Starr, seconded by Commissioner Mardfin, acknowledging receipt of request and waiving review. All those in favor of that motion raise your hand. Any against?

It was moved by Mr. Starr, seconded by Mr. Mardfin, then

**VOTED: To Acknowledge Receipt of the Request and Waive Its Review.
(Assenting - J. Starr, W. Mardfin, K. Hiranaga, B. U'u, D. Domingo,
W. Iaconetti, W. Hedani, J. Guard)**

Mr. Hunt: I have that eight in favor, zero against.

The next item involves Mr. Lloyd Kimura requesting a two-year extension on the period to initiate construction of an auto parts store and related improvements at 81 Halekuai Street, Kihei Business Park, TMK 3-9-051: 007 in Kihei. The file number is SM1 is SM1 2004/0034. Paul Fasi is assigned to this but we have planners I believe covering. And again, the commission's action are to acknowledge receipt request and then either review the time extension request or waive its review.

- b. MR. LLOYD KIMURA requesting a 2-year time extension on the period to initiate construction of an auto parts store and related improvements at 81 Halekuai Street, Kihei Business Park, TMK: 3-9-051:007, Kihei, Island of Maui. (SM1 2004/0034) (P. Fasi)**

Mr. Guard: Chairman Starr.

Mr. Starr: Mr. Chair, while we're waiting for a planner. I just want to disclose that I have a long term business relationship with Lloyd Kimura. He's with my accountant. I do a lot of work with him and friendship over the years. But since I'm not involved in this project, I won't recuse myself but I do want to disclose my relationship.

Mr. Guard: Okay, Commissioner Hedani.

Mr. Hedani: Move to acknowledge receipt of the request and waive review.

Mr. Iaconetti: Second.

Mr. Guard: Okay, we have a motion on the floor by Commissioner Hedani and a second by Commissioner Iaconetti. Any discussion? All those in favor of the motion signify by raising a hand. Any opposed?

It was moved by Mr. Hedani, seconded by Mr. Iaconetti, then

**VOTED: To Acknowledge Receipt of the Request and Waive Its Review.
(Assenting - W. Hedani, W. Iaconetti, K. Hiranaga, B. U'u, J. Starr,
W. Mardfin, D. Domingo, J. Guard)**

Mr. Hunt: That's eight in favor, zero against.

Mr. Guard: Shall we go back up to the top?

Mr. Hunt: Going back to agenda item E, this agenda item involves discussion on the meeting scheduling for the Maui Planning Commission's review of the Maui Island Plan. The Maui Island Plan is scheduled to be transmitted to the Maui Planning Commission in April 2009.

- E. Discussion on the meeting scheduling for the Maui Planning Commission's review of the Maui Island Plan. The Maui Island Plan is scheduled to be transmitted to the Maui Planning Commission in April 2009. (Long Range Division)**

Mr. Hunt: This is being handled by the Long Range Division but I'm here to help you understand some of the issues that we're grappling with. Again, the Maui Island Plan is due to be completed by the GPAC at the end of February. Staff will take some time to compile it and get it to you folks. Staff also needs a vacation. They've been going very, very hard with GPAC lately. A lot meetings, a lot of night meetings. We had four last week, four night meetings in one week.

The Maui Planning Commission review then will start in April either the first meeting or the second we're not sure which. Either the 14th or 28th. The law requires you to review the plan within six months unless you get an extension from the Council. We would encourage you to try and meet the six months.

Some of the items you need to think about is how you would like to review the plan. What we've been doing with the GPAC is kind of a two-step review. We bring them the element, one element out of the plan, they review it and make some comments. Staff takes it back and revises it and then brings it back for their review and adoption.

Some considerations on your meetings and we talked a little bit about this in the past, staff is recommending ... (inaudible - changing of tape)... in the past that you hold special meetings and we would recommend you hold one extra meeting a month plus four special regional meetings at night. So you'd have your standard three meetings a month and one meeting approximately every month and a half out in the region some place. West Maui would be one area, South Maui, Upcountry, Pukalani perhaps and then one in Hana. So that's up to you folks.

The alternative is to try and squeeze these into your regular meetings and your regular meetings are very full already as you know. They're going to get even more full with the B&B legislation that was recently passed. All the B&Bs on agricultural land have to be reviewed by you folks for the State Special Use Permit essentially the agricultural impacts. Right now we have 31 B&B applications, 13 out of those or 40% is what we're averaging right now are on agricultural land. That's only 31 that we've received so far. So if the trend continues you can anticipate 40% of the B&B applications are going to be coming before you folks. We can talk about abbreviating that process some, but perhaps that's another issue.

Some time management issues that you folks should consider. The GPAC had some challenges and we're bringing this to your attention so that perhaps you guys can be more proactive on it. We recognize you guys deal with time management on a more regular basis and you're used to dealing with agendas and managing time.

Some of the challenges they faced was testimony and if your testimony is not managed it can consume a lot of time. You folks – We would recommend that you really stick to a time limit and be fair about it and consistent and when that time limit's up say thank you and next. Otherwise, a lot of these people and you know, their intentions are good but they'll keep talking as long as you let them.

The other issue that they struggled with is questions and answers from the commission. After someone speaking their three minutes is up, some of the commissioners would start asking questions which is okay, but sometimes they'd start getting into pontificating their own opinion or conclusions and that could drag on for quite a long time.

Another thing that seemed interesting is of course, a lot of leaders in our community are coming forward to testify in this plan and there's a tendency to want to just engage them in conversation and talk story while their hearing. It's interesting and it's informative and it's valuable, but is it leading to a policy in the plan? Is it applicable to the plan that you're reviewing and you need to keep that in mind.

The third one is the developers and what the GPAC worked out was in order to not have the developers coming to every meeting and trying to pitch their project they gave them five minutes early on in the process and a question and answer period followed up by that with the agreement that they wouldn't come back time and time again and clog the testimony with trying to pitch their projects. Most of the developers abided by that. Unfortunately, not all of them. There was a handful that did come back. But it did seem to manage the developers time impacts to some extent.

So we believe with the time management addressed that you can achieve a six-month review of this plan. Again, it's a second review. The Planning Department did a draft based on public input and the talk story and walk story and all the technical reports then the GPAC has reviewed it and revised it and we'll bring that to you. So in theory we should be narrowing the issues and there shouldn't be as many to address at this next level before you folks. And with that, I'll turn it over to questions and hopefully staff can get some feedback on some of these issues that I raised.

Mr. Guard: Chairman Starr.

Mr. Starr: Yeah, I'd like to support the recommendation by the Director. You know, I did look at it and had a meeting with staff on this and it was a little bit sobering by how much workload we're going to have. I kind of thought with the slowdown things would actually get easier for us, but I think, you know, if anything our current schedule is going to increase with all the B&Bs for the special use permit. We did have a discussion to see if there's any ways to streamline those if they're not controversial and I know we'll hear back from the Director about any ways we can do that. But our plate on our regular meetings is going to be full even if we push things you know as efficiently as we can. So I agree that handling in separate additional meetings is probably the only way we'll get through it in six month. I'd hate to have to, be – for us to have to ask for an extension of time the way the GPAC did, I think we ought to be able to handle it in six months. But it will take at least six full day meetings plus the meetings out in the community. So you know, I know it's tough for all of us, but if there's any way we can justify the time to do it and then try to keep it on track as much as we can and move it as fast as we can we can survive it and not end up stuck at the end having a whole bunch of emergency meetings in the last week or two which I don't think we want to do. Anyway, that's my thoughts.

Mr. Guard: Do we need to set a definite date or like the fourth Tuesday? How did you want to handle that when we do start doing the additional meetings?

Mr. Hunt: Well, we need some direction today on, do you support these extra meetings, to what extent? And then from there we can take it to the next step. We still have time. That's why we're talking about this in February. So then we can start massaging and laying out the schedule depending on the direction we're given today.

Mr. Guard: Commissioner Hedani.

Mr. Hedani: What is the staff recommendation Jeff?

Mr. Hunt: We'd recommend one extra meeting a month which would be six meetings during the day. So – ideally on a Tuesday and then four regional meetings and maybe those are more early on or maybe later on, we're not sure the exact schedule but those would be night meetings so that the public can attend them better in the region. They'd be focused on the development proposals in that area or the urban growth boundaries in that area.

Mr. Hedani: Is staff prepared to address a portion of the plan at each regular meeting?

Mr. Hunt: We can meet the schedule that we just outlined.

Mr. Hedani: What about if we took a portion of each regular meeting like the afternoon from 1:00 to 5:00 or 2:00 to 5:00 or whatever to hammer out a portion of the plan at each regular meeting?

Mr. Hunt: And that's an alternative. Staff can accommodate that also.

Mr. Hedani: In addition to the six meetings?

Mr. Hunt: Let me talk to my Long Range Division. I believe so, but I don't want to commit but I can take that as a somewhat of a direction and try to accommodate that.

Mr. Hedani: Yeah, from my perspective I think the plan is important enough that we should at least dedicate a portion of each meeting towards addressing a portion of the plan and then supplementing it with whatever the six meetings that you need in order to make sure that it gets done by the time it needs to get done.

Mr. Hunt: I think that's a good comment in the sense that we don't want to preclude your regular meeting reviewing part of the island plan. Today, it looks like we would have had a shorter agenda and we could have gotten in some review.

So am I to understand that you're supportive of the extra meetings and the regional meetings and in addition to that trying to squeeze at least some of part of it in during the normally scheduled meetings?

Mr. Guard: Chairman Starr.

Mr. Starr: Yeah, Director, can we set up with Long Range to be flexible so if we can you know, get done, you know, like we are today and we can get three hours in, four hours in, we can call them up and they can come down. But if we got a room full of people waiting to testify on items we haven't got to we can say well, you know, we'll skip it for today and that way, you know, we can keep full regular agendas when we need to and still where we can take our hours in the afternoon for the plan.

Mr. Hunt: We can do that. There's legal issues. We have to agenda it first of all, and then to

agenda it we don't just want to just say discussion of the Maui Island Plan we want to say specifically what we're discussing. I think that's fine. I would again recommend that we try and figure out a schedule where we can meet the time requirements of reviewing the plan and then if we happen to have a little extra room left over on the regular meetings that a bonus and that will help us out. I wouldn't count on that being available a lot.

Mr. Guard: Because if we agenda on every meeting people can testify on General Plan ideas at every meeting and if it's anything like TVR or some of the other GPAC meetings we may not even get to our general meeting. So maybe to have the one special meeting and maybe only agenda at the most on other, one of our other Tuesdays.

Mr. Hunt: Or look for opportunities if the agenda happens to be short like that day, add it to the back. We can also schedule testimony at a certain time or try and manage the testimony so it should be an afternoon not in the morning. But you raise a good point on the testimony.

Mr. Guard: Commissioner Mardfin.

Mr. Mardfin: Two things. One, I support Commissioner Hedani that we ought to – if we're only meeting only six times once a month I think things can slip through the cracks and get really tough. Using the extra time at our regular meetings mostly to ask questions or to kind of pre prepare us for the daylong meeting could be a very useful thing if we have a rough idea where things are. Sometimes we could raise questions and say look, like we've done with some of our normal stuff, we have questions about this, this, this and this and then they know – they can make the daylong ones more efficient because we figured out what is bothering us or what we're thinking about.

Mr. Guard: If we're not taking action, do we have to open up public testimony. Say if we just take on information, if we're just absorbing information at the end of our meetings?

Mr. Hunt: Technically you don't but we always recommend that if there's any agenda item on there as part of the public process you should allow someone to testify.

Mr. Guard: Commissioner Starr followed by Commissioner Hiranaga.

Mr. Starr: Obviously people want to testify at the beginning of a meeting and we can't stop them if by subject matter. But what I wanted to see if we could get a feeling from the commissioners about the ways of streamlining the special use permit on B&Bs in cases where there's no opposition and Planning is kind of telling us that these are the models of the B&B bill. You know, in other words if they're noncontroversial, if they're very low impact type of ones we still have to by law go through the special use permit even if the CUP is out of the way by the ordinance. Would commissioners be receptive to creating a way to maybe handle them in a more streamlined fashion and I'm not even sure what that would be. But rather than – right now it takes us several hours to get through each of them. Maybe a few of the commissioners could sound off on that on their feelings?

Mr. Guard: Director.

Mr. Hunt: Not to get into or not to get off our agenda, but as long as we're talking about streamlining for the Maui Island Plan, I think we can focus on the agricultural aspects of the B&Bs and the B&B

permits themselves technically are administrative approvals. So you folks can constrain yourselves from reviewing parking and number of bedrooms and that kind of an issue unless it happens to impact agriculture somehow. But perhaps you might want to just focus on the farm plan and the actual agriculture, impacts to agriculture and I think that might streamline your review of these B&Bs.

Mr. Guard: Commissioner Hiranaga, you had something prior to that.

Mr. Hiranaga: Couple of questions. These regional meetings do they have to be at night?

Mr. Hunt: They don't have to be. An alternative is a weekend. To be honest with you, weekends are really hard on staff. The intent is to hold them other than during the working day so that the public has a better opportunity to attend. We hear a complaint commonly expressed that holding the meetings during working times when other people are working, how can they come and testify? So either at night or on a weekend. Staff prefers middle of the week at night.

Mr. Hiranaga: Or we could start at 1:00.

Mr. Hunt: 1:00 on a weekend.

Mr. Hiranaga: A weekday.

Mr. Hunt: You could. If they were working the standard to 8:00 to 5:00 it doesn't help much.

Mr. Hiranaga: Well I mean if you start the meeting at 6:00, I get really grumpy after 10:00.

Mr. Guard: At night?

Mr. Hiranaga: Right. So if you start it 1:00 you're going to have eight hours and we'll be done by 8:00 or 9:00 and those people will be coming off of work and we provide an opportunity for testimony.

Mr. Hunt: So 1:00 till 7:00 or 8:00 at night.

Mr. Hiranaga: Yeah, something like that.

Mr. Guard: Or even 3:00 p.m. after school hours gets a lot of people off of work.

Mr. Hiranaga: Yeah, versus waiting till 6:00 in the evening.

Mr. Guard: Yeah, I would agree with that.

Mr. Hunt: GPAC started some meetings at 4:00. So they're run 4:00 to 8:00 or 4:00 to 9:00, so that kind of gave them a little extra hours and still ran into the night time.

Mr. Hiranaga: My other comment is for me, I would not be opposed to having a special meeting say first and third Tuesdays of each month and keeping the General Plan separate from business at

hand on the Tuesdays 2nd and 4th Tuesdays. You know, you've got applicants bringing in consultants for various reasons and we hate to have to cut them off at noon and say, hey we just didn't finish your application, bring your consultants back. If we meet 1st and 3rd Tuesday of each month and we get through early, we get through early and if we don't, we have that extra time. But I would prefer to keep the General Plan meeting separate from so called you know regular business, personal opinion. Try to avoid as much night hours as possible.

Mr. Guard: I think that would just help to not encumber with the same testimony every week.

Mr. U'u: I agree.

Mr. Domingo: What do you agree with?

Mr. U'u: Everybody. I agree with Kent.

Mr. Guard: Commissioner Domingo.

Ms. Domingo: I'll agree as well, as Kent, but the only thing is that I would like to have it on the 4th Tuesday. If you're going to pick one extra meeting could we have the 4th Tuesday.

Mr. Guard: Aren't we already the 4th Tuesday.

Ms. Domingo: Well, for me personally it works better for me. I don't mind the night meetings or early meetings. I would like to also maintain our agenda and to be able to work through. There were times where we did have, those planners come in and their experts came in and we ram it through. So I think that extra meeting on the 4th Tuesday and then some early night, evening meetings.

Mr. Hunt: Right now your schedule is the 2nd and 4th.

Ms. Domingo: Oh.

Mr. Starr: So it's 3rd.

Mr. Hiranaga: Actually my comment was to have two meetings a month, 1st Tuesday and the 3rd Tuesday. So that we don't end up running out of time. If we get done early we're done with it. That's what my proposal is.

Mr. Hunt: Mr. U'u, did you agree with that?

Mr. U'u: I agree with them all.

Mr. Guard: Commissioner Starr.

Mr. Starr: Yeah, I was originally hoping we would do 1st and 3rd as well, but thinking about it, I thought that it would, you know, everyone would be against it. But I mean, if we could get ahead we're better off, if we can do the work up front and if staff can keep up and then maybe instead of

six months we do it in four months, it's something we can be proud of instead of being behind and feeling like at the end we gotta push.

Mr. Hunt: One thing that's happened is the urban growth boundaries are the most interested to be reviewed and in order to review them you have to, in planning you do your basic planning process. You address the land, you address the population, the housing, the economy and you get all your base information and then you start doing your land use. Well, by the time the GPAC done all their base information your land use is starting to get short attention and that's the one that's the most interesting to them. So I think Mr. Starr's comments are well taken.

Mr. Guard: Commissioner Iaconetti.

Mr. Iaconetti: Being the only commissioner here that will not be involved with any of this, would it be appropriate for me to move that we the 1st and 3rd Tuesdays of every month as special meetings.

Mr. Starr: Second.

Ms. Domingo: Would that work for you.

Mr. Guard: You don't want every day? You can have us do it every day.

Mr. Iaconetti: I'm trying to be kind.

Mr. Guard: Commissioner Domingo.

Ms. Domingo: For the department to be every Tuesday every month?

Mr. Hunt: I believe we can make it work. Let me take this as direction or a request and it's not absolute and if my staff tells me I'm nuts, we'll come back and try and massage it. But we want to accommodate you. We agree with a lot of the comments that have come up. The importance of the plan, getting ahead. If you can get it done in five months rather than six, that would be a bonus.

Mr. Guard: We'll have one free Tuesday in June and September. But that's also, so now we're adding two more meetings and a night meeting once a month as well. So three extra meetings per month. Commissioner Starr.

Mr. Starr: My feeling is that if we're doing four meeting a month then one of them could be the night meeting. I think four a month is enough.

Mr. Guard: So one will be a full Tuesday day here and one would be a Tuesday afternoon/evening in a project district.

Mr. Starr: It would be like every other month or something.

Mr. Guard: Well, there's at least four. So if we're trying to go for four months, we're going to meet three Tuesdays in here and one Tuesday off property.

Mr. Hunt: Regionally.

Mr. Guard: Is that everyone's understanding? Commissioner Mardfin.

Mr. Mardfin: I understand where the chairman is on this. I have a hunch that might not be the most efficient, might not be the best way to handle it. I don't know how the GPAC is structured, but what we know in the first month might be very different from what we know in the fourth month. So I would almost suggest that the four community meetings be held relatively close together so that, I don't think you want to go to the community too early before you have something ready and you don't want to go too late when it's locked in. And so maybe do two days a week, two extra days a month to get it ready and then maybe the May meetings instead of doing – do the community ones and then come back for the last ones.

Mr. Hunt: And I think GPAC actually did that. They did consolidate their regional meetings. So again, we don't have to lay out a calendar today, but we need some clear direction or at least some semi clear directions. I feel like we're getting it.

Mr. Guard: Commissioner Starr.

Mr. Starr: Where are the four community meetings?

Mr. Hunt: Well, I would suggest West Maui, South Maui, Upcountry either Pukalani or whatever and then Hana.

Mr. Starr: Okay, so like one would be somewhere Haiku, between Paia and Haiku and Upcountry.

Mr. Hunt: I usually like to hold them in Pukalani because it's centrally located between Kula and Paia and Haiku and there's a nice community center there.

Mr. Guard: So this is starting in April we're thinking.

Mr. Hunt: This would start in April. I can take this suggestion, direction back to our staff and talk about it and start fine tuning it and come back again and revisit the issue with you folks.

Mr. Mardfin: Mr. Director, I have a different question. How much of these plans depended on the data breakdown by community? Was that a major input into the way decisions were made? The reason I mention is I looked at the data for Hana very closely and found it totally unusable. So if a lot of decisions were made based on that, I'm going to have a lot of issues. If it was just put out there and nobody really used it much then I don't have much of an issue.

Mr. Hunt: The data is community plan based and some of the data has been revised as we've gone through but it has been reviewed and the GPAC and the Planning Department are very comfortable with the data that we are using now. I'm confident that this body will also be. Is there any other comments on the time management? Again, what we did with the developers is we gave them one day to come forward and question and answers. Do you want try and manage the developers or just let them have free rein or how do you –

Mr. Guard: I would think we'd want to manage them. I haven't seen it as much as GPAC has so we're going with your recommendations I think. Commissioner Hiranaga.

Mr. Hiranaga: I guess I'm concerned about setting some type of constraint like that because you've got some people who have one project and you've got people who've got 10 projects. You're going to give them both five minutes?

Mr. Hunt: Essentially we give every project five minutes.

Mr. Hiranaga: Oh, okay, you said developer that's why.

Mr. Hunt: That's why we're talking about it to clarify. So they would have a handout and some of the more professional ones had little booklets or whatever and that was their project handout and then there would be five minutes of testimony and questions and answers and then there would be the next project.

Mr. Hiranaga: And I guess Commissioners could always make a request to bring someone back.

Mr. Hunt: Yes.

Mr. Hiranaga: If they needed to, wanted to.

Mr. Guard: Commissioner Hedani.

Mr. Hedani: That would be relatively simple to manage, right Jeff? I mean, everybody that doesn't comply with the guidelines that you set down automatically be dropped from the plan.

Mr. Starr: I like that.

Mr. Guard: Mr. Mardfin.

Mr. Mardfin: Regarding public testimony, I know at least personally I find it much better if somebody gives me something in writing and then for them to stand up and read it to me, I find a total waste of time. I can read. I think people should be encouraged to prepare written testimony in advance. I mean, I don't want to have to read it that day because it can sometimes not work, but if I have time to read it, I'll read it. And if they were there and we gave them one minute for any questions people had about their testimony I'd be happy with that. You know, if I read it and I have a problem I'll raise the problem. If I don't then I have their testimony and I think the public should be encouraged to do it that way. Have written testimony instead of solely oral testimony. I know you can't, probably can prevent it being oral but –

Mr. Hunt: You can limit the oral time, and make it clear that once their time limit's up, you know, we'll read your written testimony. The other thing the GPAC finally did out of – they were starting to run out of time is they passed a policy that they were not going to ask questions of the testifiers. So the last two meetings, the testifiers give their three minutes and thank you, next. I mean, the reason it came about, here's some examples, is they had six testifiers and it took two hours to get through six testifiers at one meeting. So when you give them three and a half minutes it's roughly

20 minutes, maybe 22 minutes changing the microphone or whatever and the rest was the GPAC. And yet, the perception was well, our testimony is taking too much time. Well it wasn't the testimony. And that happened a second meeting and we kept reminding them and finally with some statistics and information they realized that okay, ...(inaudible).. we've the enemy and it is us. So they finally said, okay no more questions. You know, you guys have those tools available to you.

Mr. Guard: Commissioner Hedani.

Mr. Hedani: I would suggest that we learn from the lessons that the GPAC went through and follow those kinds of guidelines. You know, if it's three minutes then it's three minutes or we might want to restrict it two minutes or whatever and then just hold our questions.

Mr. U'u: Second.

Mr. Guard: You don't want to reinvent the wheel ourselves?

Mr. U'u: No.

Mr. Guard: Commissioner Hiranaga.

Mr. Hiranaga: Personally, you know we have nine commissioners versus 25 GPAC and most of us have been coming to meetings and know that if we ask a lot of questions, the meeting gets a lot longer, but I prefer to leave it to the discretion of the Chair. If we start off with three minutes, questions and if it becomes a problem then commissioners can approach the chair you know, out of session and say, we need to come up with something and let the Chair adjust to the situation because that's what the Chair is for.

Mr. Guard: I agree with that. I know the GPAC had very different individuals on there. Commissioner Starr.

Mr. Starr: I want to say I think this body is a much more disciplined body and you know, I know that, I think the feeling is there that it's moving too slowly, if the Chair knows that that's how everyone feels then the Chair can kind of speed it up. But we do have to be fair. You know, that if, you know, one guys is getting three minutes, it's hard to cut the next guy off after one minute and then give the next guy five minutes. So I guess, you know, as long as, when someone feels like it's moving too slow or too fast they make that comment and we can adjust and try to do it in a fair way. I'm sure we can get through it a lot more expeditiously. I've sat through some of the GPAC meetings and you know, there's a lot of care and concern, but it's not maybe being handled as efficiently as one would like.

Mr. Guard: So Jeff you have quite a bit of information to take back to maybe make a tentative calendar of us to review?

Mr. Hunt: Here's what I'm hearing. Correct me if I'm wrong. Four meetings a month, two regular and two special devoted just to the GPAC, pardon me, the General Plan, the Maui Island Plan. We're also going to leave it up to the Chair to manage the time management as we go along if there's issues we'll try and correct it as we go. I'm not sure about the developer's project limits.

I guess what I heard is we should set up a day where the projects get five minutes each and from then on we're saying in agreement you don't come back and pitch your projects. Looks like I'm getting a head nod. Commissioner Hiranaga.

Mr. Hiranaga: Maybe 10 minutes. I mean, this is something that's really important to these people for the next 10 years. I mean, I don't how many developers you had. If you had a hundred developers or 200 hundred developers.

Mr. Hunt: A stack of proposals that big. Again, as was mentioned earlier, a lot of it is reading. You can read it on your own, but it's up to this body.

Mr. Guard: So that's two minutes more than the general public has that they could come against.

Mr. Hiranaga: It seems a little short.

Mr. Guard: Yeah so I mean, if two of those, if developers had a team they got more time than that. So I mean, 10 minutes how many projects is that 200?

Mr. Hunt: I don't think that many, but it would consume some time.

Mr. Guard: So 100 would be 25 per – at the evening meetings that would be about four hours of just developer presentations at each afternoon meeting if they came to their project district.

Mr. Hunt: I don't think there's a hundred.

Mr. Guard: So maybe five to 10 minutes depending on the scale of it.

Mr. Hunt: Five or 10 minutes. Okay, we'll come back with that. And we're okay with the regional meetings as I understand it?

Mr. Hiranaga: The regional meetings is one of the four meetings?

Mr. Hunt: Correct.

Mr. Starr: Yeah.

Mr. Hunt: Jonathan.

Mr. Starr: The only thing we might want to think about with the regional meetings is whether there should be a real Upcountry meeting and a Paia/Haiku meeting because there are considerable differences and I know that both – people in both communities take offense when they get lumped together. So I, you know, I hate to stretch the four to five but it might be better to do five community meetings. Have one at coastal and one up there.

Mr. Guard: That would be go along with the community plans anyway, right? Paia/Haiku has its own community plan. It's pretty different than Makawao/Pukalani/Kula.

Mr. Hunt: That's correct. I think we can accommodate that. Any other comments?

Mr. Guard: We try to avoid an evening one on cinco de mayo.

Mr. Starr: And check the moon and tide calendar.

Mr. Guard: Just letting you guys know how many Tuesdays there are. Commissioner Hiranaga.

Mr. Hiranaga: I guess my question is, you're talking about having regional meetings for South Maui, West Maui, East Maui, Upcountry and yet the largest population concentration is Wailuku/Kahului but you're not going to have a regional meeting for them? That's outside of business hours. I don't understand.

Mr. Hunt: Well, we could. I think the feeling was is because the meetings are held here normally that the disadvantage to those folks isn't as great. But you raise a good question. I believe the GPAC had a least one regional meeting in Wailuku. So we can add it. We can have six regional meetings if that's the wish of this body.

Mr. Hiranaga: I mean if the argument is to do it after hours, just because people live in Wailuku/Kahului doesn't mean they can take time off from their work.

Mr. Hunt: I think that's a good point.

Mr. Guard: Commissioner Starr.

Mr. Starr: So if we have six months and we have six communities and one of the ones we could just start late here and then open testimony at after 5:00 p.m. You know, in other words, run from noon to 8:00 or something like that and have late testimony and then that will cover central and then we've got six community meetings.

Mr. Hunt: So unless there's objections we'll go with six community meetings, regional meetings. Okay. Any other comments?

Mr. Guard: Commissioner Hedani.

Mr. Hedani: Just a question, do we get the plan in its totality at the beginning of the process?

Mr. Hunt: Yes, you'll get the original Planning Department plan, you'll get a GPAC plan and then you'll either get a Planning Department's revised plan or perhaps an appendix to the GPAC plan. We're going to try, we are trying to agree on as much as we can, the department and the GPAC and for the most part we agree with on overwhelmingly all of their recommendations. As hard as we're trying there's going to be, it looks like there's going to be some areas where we just simply can't agree. We've got planning principles that we have to adhere to as professional planners. They have their community perspective and they're both legitimate perspectives and so I think on those small handful of issues we'll bring it to this body and you know, you guys are the tie breakers to some extent. So you'll have the GPAC plan, the original Planning Department's plan and then a Planning Department either plan or appendix with some issues that we need to resolve.

Mr. Guard: Commissioner Starr.

Mr. Starr: Yeah, I want to throw something out and it maybe a little bit crazy but if you have all of it in, you know, on line or electronic, and I don't know if you do, could there be a mechanism for where those who, those of us who want to can handle it all on electronic and bring our laptops and not have to deal with the stack paper at all on the plan? I don't know if it's feasible but if it is, is it something we could talk about?

Mr. Hunt: It should be. All our documents are generated electronically. We would love to reduce copying costs. And most of the review would be a power point up on a board something like that. We can try and accommodate that.

Mr. Starr: And I think we should make it an option since it's the first time we're doing it.

Mr. Guard: Anything else? Ample instruction?

Mr. Hunt: Yes, thank you. Your next item involves action minutes of the January 27, 2009 meeting and regular minutes of the December 9, 2008 meeting.

F. ACTION MINUTES OF THE JANUARY 27, 2009 MEETING AND REGULAR MINUTES OF THE DECEMBER 9, 2008 MEETING

Mr. Guard: Any comments? Commissioner Starr.

Mr. Starr: Move for acceptance.

Mr. U'u: Second.

Mr. Guard: Okay, motion by Commissioner Starr, second by Commissioner U'u. All those in favor raise your hand.

It was moved by Mr. Starr, seconded by Mr. U'u, then

**VOTED: To Accept the Action Minutes of January 27, 2009 and the Regular Minutes of December 9, 2008 Meetings.
(Assenting - J. Starr, B. U'u, K. Hiranaga, W. Mardfin, D. Domingo,
W. Iaconetti, W. Hedani, J. Guard)**

Mr. Hunt: It's unanimous.

Mr. Starr: Well done Carolyn.

Mr. Hunt: Your next item involves planning commission projects and issues.

G. DIRECTOR'S REPORT

2. Planning Commission Projects/Issues

a. Requiring Project Application Signs for Major Permit applications

Mr. Hunt: This is in response to a request a meeting or two ago to look for opportunities to require project notice signs for each development for major permit applications and we've done a little bit of research. It's just preliminary at this time, but the planner assigned to this is Danny Dias and he will go through the options that are available to this group. This is kind of triggered by the B&B new legislation where there is a notice sign required prior to approving the permit and that is about, as I understand it, that's our only notice sign requirement but it has been talked about. Other jurisdictions require this. The staff is okay with it. We need to determine where to draw the line. We don't want to do it for every permit. Our community would be littered with signs, it would be sign pollution. So with that as a preamble I'll turn it over to Danny.

Mr. Danny Dias: Thanks Jeff. Good afternoon Commissioners. I'll try to just take about five minutes. Just to give an overview of the process that we've done so far. Basically we had a meeting last week Wednesday I believe with Mike Hopper from Corp. Counsel, the Planning Director, Clayton Yoshida and myself. We just sort of tossed around how we can go about incorporating project signs and the parts of the County Code or what rules and regulations we might have to change to allow for that.

The assumption is basically that this is going to go beyond just the SMA. This is for all major type projects and if that's correct then it's not going to be as simple as just changing the rules. It's going to involve changing either two things, either the Rules of Practice and Procedure for the Maui Planning Commission or it's going to require changing Chapter 19.510 in the Maui County Code.

We still have to talk with Corp. Counsel and determine if changing the Rules of Practice and Procedure would be sufficient. Just the research I've done so far, I think we can go that route. The part we would amend or seek to amend would be Section 12-201-14(i) and that part has to do with loosely lists what has to be done for public hearings and how it should be noticed. I think we might be able to insert something in there that would require a project notice sign. If Corp. Counsel tells us that that's not going to do it or that's not thorough enough then we would have to change Chapter 19.510 in the Maui County Code and the section that we would have to change would be 19.510.20(4)(a) and that section lists everything that the applicant has to do for a public hearing and we'd just add that they put up a sign.

The plus to changing the Rules of Practice and Procedure is pretty obvious. That's within your hands. I think that could be done fairly quick. But it might arguably not be as thorough because I mean, how many people read the rules, not much. Chapter 19.510 it would be more clear for applicants. The challenge with that however, is that would be something that would have to go before the County Council and there's two issues with that. One is timeliness. With budget coming up and forth, you know, how long it would take them to hear this time. That's sort of a wild card. The other thing is they might not go for it. So that's the downside. So that's what we need to figure out with Corp. Counsel. I think we're well on our way on that.

Just to throw out what we're thinking of doing should this pass. We're thinking, you know, doing something along the lines of the bed and breakfast signs with some changes. One of the – we haven't had a whole lot of complaints but one of the complaints that we have been getting every so often is that the signs are just huge, you know, 4' x 4' that's pretty big. So one of the changes

I think we'd probably want to do is reduce the size of the sign or maybe do a two-tiered type thing where if it's under a certain amount of acres it's 2' x 2' but if it's some big you know, 500-acre project then they should have a bigger sign just to keep in line with the size of the project.

The other thing we have to think about is the time line that the sign will be put up because some fo these projects as you folks know, I mean, it takes years sometimes if it's a, you know, a change in zoning, DBA, CPA, I mean, do we really want a sign out there for two, three years?

But that's where we're at in a nutshell right now and if you folks have any comments or things that you want us to consider while we go through this process, we would certainly appreciate it.

Mr. Guard: Commissioner Starr.

Mr. Starr: Yeah, even if we did change our rules or Title 19, I would assume we would still – that wouldn't affect the SMA, we would want to change the SMA rules. So would it make sense for that to be kind of a starting point?

Mr. Dias: That's part of the discussion that we're going to have to have with Corp. Counsel. What I was thinking was regardless of the SMA rules, the Rules of Practice and Procedure it's all encompassing for everything, very public hearing item.

Mr. Starr: So we wouldn't have to do the SMA rules if we –

Mr. Dias: I don't think so, but until we confirm that.

Mr. Guard: Why don't we get some comments from Corp. Counsel on the quickest way to get something like this going.

Mr. Giroux: I was asked fairly recently about this, but our office has been taking with Danny about this. Personally I'm of the opinion that if you're going to change your rules, that might be the quickest way, but actually by looking at Title 19 and looking at the SMA rules and actually incorporating those changes in those it really is the tightest thing because what's going to happen is in the future you know, somebody is going to come and say, oh that guy didn't put up a sign and then the guy's going to say well, I didn't have to and you know, the idea where I'm coming from as an attorney is I just don't want to be in litigation. I want my rules to be solid. I want them to be based on solid ...(inaudible)... and I don't want anybody turning to the rules and saying, well it's not in the County Code or it's not in the SMA rules, I don't have to do it. You know, it is the rules of the Practice and Procedure possibly, but again, that might be the quickest way to do it but to just stop there I don't think would be to anybody's benefit. I think thoroughness is always the best avoidance of any type of litigation.

Mr. Starr: What would the process be if we were to change Title 19 and our rules?

Mr. Giroux: Well, I think like Danny said, the quickest thing you could do is change your own rules because you initiate it, the Planning Department send up to Corp. Counsel, you know, it would be just a matter of adding one line probably into your rules. Then it would come down back to the Planning Department. They would advertise it, publish it, you would have a public hearing, you

would vote, then it would go back up to the I believe the Mayor's Office for signing and then to the Clerk's and then you have a change. Same thing for the SMA rules, same process. And for the Title 19, you could direct the director to start the process. I believe it would go up to Council, go to committee, come back here to the planning commission and then go back up to Council, back to committee and through first and second reading and then it would be an ordinance. So changing Title 19 would be a very long route but ultimately I think because Title 19 has a public hearing section where it affects all public hearing that would be the most universal way to avoid any type of complaint that, oh it's not in the rules or we don't have to follow that for my permit, blah, blah, blah.

Mr. Guard: Commissioner Iaconetti.

Mr. Iaconetti: Is there some reason why you can't do both?

Mr. Giroux: No. That's what I'm recommending is you know, start with the low hanging fruit, whack that out and then start the process of the harder process. But I think if you can complete everything and it's not going to be in a perfect order but we're dealing with the government here, you gotta throw the bread in the oven and let it cook at different temperatures.

Mr. Starr: Well said.

Mr. Guard: Well, I see it as a good thing but I mean, like a lot of other planning commissioner adoptions we've had turned to go against us. You guys see any negatives to adding this on for larger projects?

Mr. Hunt: No, we actually support the concept, the devils and details of course. Again, we would be concerned of sign proliferation. There's issues of the size of sign. I think our staff is realizing that the 4' x 4' is a little bit large. But perhaps there's a tier on a huge, huge subdivision, maybe you want one that size. So those are the issues that we would deal with, the content of it would need to be spelled out, for which applications, we would suggest ...(inaudible - changing of tape)... we don't want those noticed.

Mr. Giroux: Just to add is that once you get into Title 19 or possibly you get it into the SMA rules, the director is also able to make rules of the department and you can actually leave those nitty gritty things to the department to say, you know, to make up their own rules about you know, project type, project size, project location, you get a different size sign. There's a lot of tiers of rules that you can make in order to make sure that it's thoroughly looked at as far as something that's required. Because that's ultimately that's what you're doing is creating a requirement and once you do that you want to make sure that you got all your ducks in line because just like your notice requirement you've seen we've had like five or six times where we're like, okay was all the owners notified. Well, the husbands were. Oh, we don't have – you know, I mean it's like does it ever end? Are we ever going to be able to avoid litigation with this kind of stuff, I mean, no. That's why the more solid you get it, the less you have to worry about litigation. You can – because even in those situations we've flipped to Title 19, and we go, oh wait, yeah there is more guidance there.

Mr. Guard: Commissioner Hedani.

Mr. Hedani: The purpose of it was just to make sure that people don't get surprised when a project pops up. That was the purpose of the whole thing.

Mr. Guard: That was my thought when I saw it like along Waikoloa where you have an open vista and then you see a sign off in the distance and then you're kind of like oh, we know something might be happening here.

Mr. Hedani: My only concern would be that they take advantage of it and it becomes a sort of an additional advertising you know, like billboard type advertising for the project.

Mr. Guard: I think once it's approved you wouldn't need it. Commissioner Starr.

Mr. Starr: How about Molokai and Lanai?

Mr. Hunt: If it's Title 19 we would have to take it to them. If it's just for this island, I don't believe we would. We would probably just for consistency, we like to argue that we're one community, and we should all be the same. Doesn't go over real big on Molokai. They kind of look at themselves as a different community which is fine. So that's one of the issues we'd have to iron out.

Mr. Starr: Would it make sense to, you know, just for whoever staffs their meetings to just mention that that's happening here and see if they say never here, or oh boy we love that.

Mr. Hunt: Yeah, that's a good comment.

Mr. Guard: Commissioner Mardfin.

Mr. Mardfin: I understand James' concern about litigation. I feel better about it however if we could apply it to some things first. Danny sort of quickly went over the SMA thing. You said you want it for more than just SMA don't you. You know, if we started out just to SMA, and not doing it to other things initially we could see how it works, but that might not avoid the litigation problem that James is concerned about.

Mr. Giroux: Because I mean, I think in SMA because you are the final authority on that, it would be really easy for you to just incorporate it into your SMA hearing requirements in your procedures and also it would also be easy to put it into your rules of practice and procedure.

Mr. Mardfin: If that were the case, then I'd suggest we start with that, do it for six months or a year, find out if it seems to be working, if it's having the right kind of effects. If they're using it for advertising or whatever and try it out and then if it works then start to apply it, go through Title 19 and try to apply it to more things.

Mr. Guard: The SMA would be lowest hanging fruit.

Mr. Giroux: I think for this body I think it would be the easiest to start.

Mr. Guard: Chairman Starr.

Mr. Starr: Yeah, I think the one that I'd – you know, I'd love to see it on SMAs but I think the large, the project districts and you know, where suddenly there's 300 acres of mountainside is going to turn into you know, mixed use. I think those are the kind of things that are – it's really critical that we do this because, you know, when all of the sudden the bulldozers show up and people say, oh, what's happening there it's kind of too late.

Mr. Guard: From what Corp. Counsel said, we could start the soonest with SMA just as practice and procedures and move on to say like this subdivision right up the hill that someone who lives right next door may not know that's happening for a while.

Mr. Hunt: We can work with Corp. Counsel and come back with a draft on the SMA rules. One of the issues I would like to raise and have you folks think about between now and then is how do we verify that they actually did this. This is what we're running into with the B&B right now. It's up to them to put the sign out. Some jurisdictions have the planning staff put the signs out so we can say, well we did it and we know what's on there. We don't have the staff to do that, so there's some reliance on the developer and then you need to prove it somehow.

Mr. Guard: Chairman Starr.

Mr. Starr: How about they submit a photo to staff.

Mr. Hunt: And that's what we've been requiring. Just think about it, it's an issue we'll need to address in the future.

Mr. Guard: Any other discussion? Commissioner Hedani.

Mr. Hedani: The only other comment that I'd like to make is that whenever we invent something like this and add it to the system or the process, you know, although we complain about – well, I hear public complaints about the length of time that it takes, the fact that it costs a \$100 thousand to produce a study for us to review a project which we may or may not read, that we're adding to the bureaucracy and to some degree we are becoming a part of the problem at the same time.

Mr. Guard: I would hope that this is somewhat concurrent with everything else. This isn't another step that would go kind of on the same time line as other – sending it out only to the owners of 500 feet correct but this is something that passersby can get a better idea of what's happening and maybe not right next to their house but possibly still in their backyard.

Mr. Hunt: The general intent is to, the 500-foot notice only captures those people literally within 500 feet and the concern is that there's actual impacts that go beyond that and so this would help capture those people give them an opportunity. I think if we draw the line somewhere and say this isn't for every application and it's only for bigger ones with a bigger impact I think it would help alleviate some of that concern, but we will hear that concern. We hear it all the time. You know, we're constantly being told to streamline, streamline, yet we're hearing things that go opposite of streamlining and they're legitimate and we support them but we have to be cognizant that it is against streamlining.

Mr. Guard: Chairman Starr.

Mr. Starr: Yeah, we certainly don't need it for someone who's going to modify their trellis or something, but I have to say I've heard comments recently that the process of going through the process has been getting faster and easier and more friendly so I did want to kind of issue some kudos from what I've been hearing that as bad as it is, it's actually somewhat improved.

Mr. Hunt: I appreciate that because we have made that a department goal and we are really working on it though I think some people would be skeptical.

Mr. Guard: Commissioner Mardfin.

Mr. Mardfin: And if this results, Jonathan was saying that the people wanting the projects are feeling better about it and if this serves to make the public happier with what we do I think that's another step in the right direction.

Mr. Hunt: You could argue that it could alleviate some of the last minute testimony blitzes. It could be more efficient. I don't know.

Mr. Guard: I think it's a great step forward.

Mr. Hunt: Danny you have enough?

Mr. Dias: Yes.

Mr. Hunt: The next item involves discussion of future Maui Planning Commission agenda.

3. Discussion of Future Maui Planning Commission Agendas

a. February 24, 2009 agenda

Mr. Hunt: I believe there's a handout in your packet.

Mr. Guard: Chairman Starr.

Mr. Starr: I had Charlie Maxwell talk to me recently and say why aren't you referring stuff to the Burial Council. You know, he saw some of our meetings where we were discussing stuff going to Cultural Resources and he said, you know, the Burial Council that's really the Burial Council thing. I thought, I don't know much about the Burial Council but he said he'd be willing to come and talk to us briefly and explain their role. He's the chair of that. I was curious to see if there would be support to have him come down and give him 15, 20 minutes and we can understand better where we do get into stuff where possible iwi that we would understand what the right process is.

Mr. Guard: Any opposition to that? Seeing none.

Mr. Hunt: We'll see if we can get him scheduled here. Generally speaking as I understand it the Burial Council is in charge of iwi if it's found before the project started out. Once the project is ongoing and they inadvertently find a dig, a remain, then it goes through the SHPD. But he can talk to that in more detail.

Mr. Guard: Commissioner Mardfin.

Mr. Mardfin: Sort of on a related note, I got – there's a small bridge in Hana that they want to start to repair I think. I got – I'm the Treasurer for the Hana Cultural Center. We got a letter at the Hana Cultural Center asking are there – from one of these consulting companies in Honolulu asking do you at the Hana Cultural Center know anything about this area and whether what the traditional Hawaiian use has been, what is it, traditional and customary usage. And I looked at it, and I personally didn't know but it was coming to us, if I hadn't been on the planning commission, I would have found the nearest garbage can and tossed it away. And that's why we get so many of these things where they say no response, no response, therefore, the Hawaiians never used it. And that's been driving me nuts as you guys have known from my questions. What I did is I found some people in Hana that knew the area and I passed it along to them for them to make input. But it relates to the Burial Council, these guys are fulfilling the letter of the law by sending these notices out, but not fulfilling the spirit of the law by really making an effort to contact people that would know the area. And so I'm just saying on my own little kuleana we're trying to get it out to the right people and I think getting the Burial Council in is another step in the right direction.

Mr. Guard: Good, good. So try to get them on there. Looks like the next agenda was fairly light and maybe the ones after that are getting – before all the B&B flood permits start in what, two and a half more months?

Mr. Hunt: Yeah, I don't know off the top my head. Clayton generally schedules the agenda. We'll try and get – we'll try and talk to them and get them before you. Moving along the next agenda items are all regarding the reports we provide to you folks regarding the EA/EIS, SMA Minor Permits and Exemptions.

Mr. Guard: 4 thru 8.

- 4. EA/EIS Report**
- 5. SMA Minor Permit Report distributed with the January 27, 2009 agenda.**
- 6. SMA Minor Permit Report**
- 7. SMA Exemptions Report distributed with the January 27, 2009 agenda**
- 8. SMA Exemptions Report**

Mr. Guard: Questions, comments?

Mr. Hunt: The last one is the next regular meeting is February 24th. We always ask if you know right now you're not going to be here let us know.

Mr. Guard: Next one is February 24th. Everyone's here? All right.

G. NEXT REGULAR MEETING DATE: February 24, 2009

H. ADJOURNMENT

The meeting was adjourned at 2:38 p.m.

Submitted by,

CAROLYN J. TAKAYAMA-CORDEN
Secretary to Boards and Commissions II

RECORD OF ATTENDANCE

Present

Jonathan Starr, Chairperson (excused from 9:57 a.m. to 10:50 a.m.)

John J.B. Guard IV, Vice Chairperson

Donna Domingo

Wayne Hedani

Kent Hiranaga

William Iaconetti

Ward Mardfin

Bruce U'u

Others

Jeff Hunt, Planning Department (in attendance from 1:10 p.m. to 2:38 p.m.)

Clayton Yoshida, Planning Department (in attendance from 8:30 a.m. to 12:10 p.m.)

James Giroux, Department of the Corporation Counsel

Mike Miyamoto, Department of Public Works (excused from 9:40 a.m. to 10:50 a.m.)