

**MAUI PLANNING COMMISSION
REGULAR MINUTES
NOVEMBER 24, 2009**

A. CALL TO ORDER

The regular meeting of the Maui Planning Commission was called to order by Chairperson Wayne Hedani at approximately 9:01 a.m., Tuesday, November 24, 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. Hedani: Planning Commission meeting of November 24th will come to order. Public testimony will be taken at the start of the meeting on any agenda item in order to accommodate those individuals who cannot be present at the meeting when the agenda item is considered by the commission. Public testimony will also be taken when the agenda item is taken up by the commission. Maximum time limits on individual testimony is three minutes. A person testifying at this time will not be able to testify again when the agenda item comes before the commission unless new or additional information is offered. Are there any members of the public that would like to offer testimony at this time? We have one person that has signed up that's Dick Mayer. Go ahead Dick.

The following individual testified at the beginning of the meeting:

Mr. Dick Mayer - Item C-3

His testimony can be found under the item on which he testified on.

Mr. Hedani: Are there any other members of the public that would like to offer testimony at this time? Seeing none, public testimony is closed. Director.

Mr. Hunt: Your first item involves Mr. Gregg Blue requesting a Conditional Permit under Section 19.30A.040.C for the Blue Family Subdivision in order to subdivide out an additional two-acre lot for a family member in the county agricultural district as the maximum number of under the sliding scale was previously obtained for property situated at 15 Mauu Place, TMK 2-7-008: 021 in Haiku. The file number is CP 2008/0006 and Joe Prutch is the planner assigned to this.

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

- 1. MR. GREGG BLUE requesting a Conditional Permit under Section 19.30A.040.C for the Blue Family Subdivision in order to subdivide out an additional 2-acre lot for a family member in the County Agricultural District as the maximum number of lots under the sliding scale was previously obtained for property situated at 15 Mauu Place, TMK: 2-7-008: 021, Haiku, Island of Maui. (CP 2008/0006) (J. Prutch)**

Mr. Joe Prutch: Good morning Chair, good morning Commissioners. Today I have before you a request for a conditional permit to create a two-acre agricultural lot for the applicant's son, Mr. Blue's son, that it all be in the maximum number of lots permitted in the Ag District.

The four-acre lot in question is an ag property that was one of the 14 lots created by the West Kuiaha Meadows Subdivision a few years back. This subdivision was allotted a maximum of 14 lots with no future lots.

Property's located is 15 Mauu Place in Haiku. It's just off West Kuiaha Road. The land use designations for this property are all ag, state ag, Paia-Haiku Community Plan Ag, zoning ag and it's not within the special management area permit.

A little background this project was given preliminary subdivision approval on May 15, 2008 by the Public Works Department. Within that approval, there's a Condition No. 18 that states, that the applicant shall submit documentation that the subdivision complies with Section 19.30A.030.G which is pertains to the maximum number of lots that can be created and to 19.30A.040 which is a limitation on resubdivision. The documentation needed for this condition is an ordinance from the Maui County Council. So you guys are acting as the recommending body to the Council for this conditional permit.

Let me read some of the regulations. Bear with me I'm going to have to read the code so just bear with me, I'll get through it. For the regulations, for 19.30A.040.C this is within the limitations on resubdivision it states that, "if the original lot has been subdivided into the maximum number of lots," in this case it was, "additional lots may be created for family members as described in subsections 18.20.280.B1 and B2 with the approval of the council, the application for such additional lots shall be processed in the same manner as applications for conditional permits." Which is why that is before you here today.

If look under section 18.20.280 for a family subdivisions, B1A says, "that the applicant must be an owner of real property who is a parent or who intends to transfer property to his spouse or child." In this case Mr. Blue plans to transfer property to his son, Jason. "The transfer shall be immediate and shall be limited to persons related to the applicant by blood, adoption or marriage to spouse, children, brothers and sisters." Now what I'll do in this is I'll read the regulations and then I'll give staff's interpretation of the way we interpret the code to read. So for this one we believe that the application does not comply with these regulations as the above is a method to for more lots in a family subdivision if there are more family members than the maximum lot allocation allows. Allowing the proposal to create an additional lot from a lot that is subject to a maximum lot allocation and that has been sold on the market that was never part of a family subdivision would set a precedent for many others to request resubdivision of their agricultural lots as well. In effect this would negate the maximum lot allocation in the ag district. The accumulative effects of allowing this application could be contrary to the intentions of the ag district.

So within the ag district what I wanted to do is just read off some of the intentions of the ag district from the Maui County Code. This is four of the six that pertain to this proposal. Number one is that reduce the land use conflicts arising from encroachment of non agricultural uses in the agricultural areas. Number two, mitigate rising property values of farm lands to make agricultural use more economically feasible. The third intention is to discourage developing or subdividing lands with the ag district for residential uses and thereby preserving agricultural lands and allowing proper planning of land use and infrastructure development. And the fourth one is to discourage the establishment of non agricultural subdivisions. For these regulations, staff believes that the proposal would be contrary to the intent of these Maui County Codes that basically seeks to

promote and preserve agricultural land and seeks to discourage the subdivision of agricultural lands for residential purposes.

Now we go into the conditional permit regulations from 19.40 in the code and the intent of the conditional permit process. The intent of the conditional permit is to provide the opportunity to consider establishing uses not specifically permitted within a given use zone where the proposed use is similar, related or compatible to those permitted uses and which has some special impact or uniqueness such that its effect on the surrounding environment cannot be determined in advance of being proposed to a particular location.

Number 070, under the establishment under conditional permits, it says in A, "that upon finding by the appropriate planning commission the reasons justifying granting a conditional permit exists and that the proposed use would not be significantly detrimental to the public interest convenience and welfare and will be in harmony with the area in which it is to be located, issuance of a conditional permit may be recommended subject to such terms and conditions for such period of time." For this One staff believes – for the conditional permit, staff believes that the application does not meet the intent of the ag district containing a minimum lot size which is used to establish a maximum lot allocation. The effective subdividing agricultural into many small parcels was already determined in advance to be contrary to preserving ag land. Also it is difficult to see a uniqueness to this proposal. Anyone who owns an ag lot could make the same argument that they wish to create a new lot in ...(inaudible)... allocations for a family member.

And furthermore, we did receive three letters of opposition that we received from neighbors living within the 14-lot ag subdivision all stating that they do not want to see a four-acre lot in their subdivision reduced to a smaller size. Staff believes that the proposal would set a precedent for allowing further resubdivision of ag lots beyond a maximum lot allocation. It would be contrary to the intent of the ag district and would be significantly detrimental to the public interest.

And if you review it to the County General Plan, Theme No. 1 of the five themes in the General Plan is to protect Maui County's agricultural land and rural identity. Underneath that, underneath the population land use environment cultural resources section in land use one of the objectives is to preserve for present and future generations, existing geographic, cultural and traditional community lifestyles by limiting and managing growth through environmentally sensitive and effective use of land in accordance with the individual character of the various communities and regions of the county.

One of the other objectives in land use is to preserve lands that are well-suited for agricultural pursuits. And within that objective couple policies are to protect prime ag lands from completing non ag land uses and to discourage the conversion through zoning or other means of productive or potentially productive ag lands to non agricultural uses including but not limited to golf courses and residential subdivisions. For this one staff believes that the intent of this theme is to preserve agricultural lands and thus provide and maintain for Maui's agricultural ...(inaudible)... and open space resources.

Further, under the land use section, the individual character of the 14-lot Kuiaha Meadows Subdivision is one of four-acre plus size ag lots with farm dwellings. Subdivision of one of these

four-acre lots into two-acre lots may disrupt this agricultural community of the county. Staff also believes the objectives and policies listed here may not be met because the ALISH maps which are the Agricultural Lands of Importance to the State of Hawaii they show this parcel to be prime agricultural land. Conversion of a four-acre prime ag parcel to two, two-acre parcels may create lands that may compete with agricultural uses and would be residential in nature.

And the last General Plan theme here is under economic activity, under agricultural this one states, "that the objective is to maximize the use or yield of productive ag land throughout the county." Couple of policies are to insure the availability of land that is well suited for ag production and to discourage establishment of pseudo agricultural subdivisions. For this one staff believes that allowing a resubdivision of lots that have been allocated on a maximum basis would be counterproductive to maximizing use and yield of production ag lands.

In conclusion, wrap up all those regulations and staff comments. Staff believes that the proposal is inconsistent with the policies of the General Plan. The proposal is contrary to the intention of the ag district that seeks to promote and preserve agricultural land and seeks to discourage the subdivision of ag lands for residential purposes. The proposal would set a precedent that would lead to a proliferation of agricultural lots being resubdivided beyond the maximum lot allocation. The proposal would negate the maximum lot allocation in the ag district. The effect of subdividing agricultural land into many small parcels was already determined in advance to be contrary to preserving ag land. The proposal does not have a special impact or uniqueness to it. Three letters of opposition were received from neighbors and the proposal would be significantly detrimental to public interest.

With that, staff is recommending denial of the – recommending that the commission recommend denial of this application to the County Council and I know the applicant Mr. Blue is out in the audience. If you have any questions be happy to answer.

Mr. Hedani: Questions for staff?

Mr. Prutch: Oh, one thing I forgot you should have got a handout Leilani handed to you of the three letters of opposition from the neighbors. They were listed in the staff report, the addendum report they just weren't attached as well as the map showing the location of where those letters came from.

Mr. Hedani: I have a question. Joe, when they set the maximum allocation of lots for an agricultural subdivision what criteria do they use for that?

Mr. Prutch: They use, there's a sliding scale in Chapter 19.30.030, 19.30.AO30 that dictates how many lots can be created from a certain size property. I don't know the exact nuances of how it gets broken down but that's the code that they used to determine. So from this one there was 52 acres originally, the parent parcel, it was determined that 14 lots was the maximum 4-acre size and plus to make up that 52 acres and then that's recorded as a I believe it's a unilateral agreement that states that those are the 14 lots. That's the maximum number allocated. That's the way the ag subdivisions are processed through Public Works.

Mr. Hedani: Any other questions for staff? Commissioner Mardfin.

Mr. Mardfin: I've got a number of them. First, does this subdivision have a owners association?

Mr. Prutch: I don't believe – okay, sounds like it does have a –

Mr. Mardfin: Have they taken any position on this as an association?

Mr. Prutch: I have not heard anything from an association, no.

Mr. Mardfin: It says that the applicant states that he's guaranteed a water meter. Is the water issued – the water meter is not issued by the county is it because it's a private system.

Mr. Prutch: In this case this is a private water system so –

Mr. Mardfin: What does guaranteeing a water meter mean? That he's going to split his line?

Mr. Prutch: That's what I'm not sure. That was stated in the application that he did have a water meter, but since it was through a private water system

Mr. Mardfin: What does guaranteeing a water meter mean that he's going to split his line?

Mr. Prutch: That's what I'm not sure. That was stated in the application that he did have a water meter, but since it was through a private water system county didn't comment on that.

Mr. Hedani: Go ahead.

Mr. Mardfin: I just read this today of course since we just got it, but in reading the letters of opposition from his neighbors it says, "Gregg Blue does not nor has he ever lived on the property. The existing farm dwelling on the property is and has always been a rental." Has that been verified?

Mr. Prutch: I don't know past history of the site I just know that the applicant does live elsewhere I think within a mile of the property and that the home is long term rental. I don't know how long that's been going on but that's currently.

Mr. Mardfin: Not short term rental though?

Mr. Prutch: No, no, no.

Mr. Mardfin: Okay, thank you.

Mr. Hedani: Any additional questions from the commission? I have a couple more Joe.

Mr. Prutch: Sure.

Mr. Hedani: In this particular subdivision is there agricultural activity going on on this particular lot?

Mr. Prutch: There is. It's a horse grazing property, horse property.

Mr. Hedani: So there's a pasture?

Mr. Prutch: Yes.

Mr. Hedani: Okay. How many dwellings are on the four-acre lot?

Mr. Prutch: There's just one dwelling.

Mr. Hedani: And they'll be entitled to how many dwelling if they were to be subdivided?

Mr. Prutch: I guess a house and accessory house on each lot.

Mr. Hedani: So four dwellings?

Mr. Prutch: Sure.

Mr. Hedani: Commissioner Mardfin.

Mr. Mardfin: Does that mean that he could put on even if there wasn't a subdivision he could put on an accessory building for his son?

Mr. Prutch: Yeah sure, yes.

Mr. Hedani: Commissioner Starr.

Mr. Starr: Yeah, what's the history or precedent in ag subdivisions that are maxed out in lot numbers of doing further subdivision under family subdivision ordinance?

Mr. Prutch: My understanding is this conditional permit process, this is the first time. That's kind of why the staff report was late. We were trying to determine we needed to do since this wasn't done before.

Mr. Hedani: Any additional questions from the commission? Thank you very much Joe.

a) Public Hearing

Mr. Hedani: We'd like to open this item up for public hearing at this time. Are there any members of the public that would like to offer testimony on this agenda item? If so, please step to the microphone and state your name. Seeing none, public testimony is closed. Staff recommendation?

Does the applicant want to offer any comments to the commission before we take action.

Mr. Gregg Blue: Yes I would.

Mr. Hedani: You need to use the microphone. Please state your name for the record.

Mr. Gregg Blue: Good morning Planning Commission. My name is Gregg Blue. I've been living in Haiku for 25 years and this is my proposal. I would like to address some of these comments by the Planning Department. I'm right now in a - since I received this document five or six days ago I'm in a state of bewilderment and confusion and I just want to say a few words about this proposal.

This proposal is about sharing a piece of land with my son in the future. He wants his own place. I want my own place and this family subdivision would allow us to share the same piece of property. In this subdivision in the CC&Rs it clearly states that if any of the four lots of more than four acres is subdivided in the future that that lot will be provided a water meter from the present private water system. So in that respect I'm guaranteed a second water meter. The lateral is in place if the lot was ever further subdivided. So when I read the County Code that is very specific about family subdivisions, it's not easy to do and previous to this code I'll just give you a little bit of information on previous family subdivisions, you didn't need to come before the planning commission because there was no maximum lot allocation. If you had a hundred acres and you could squeeze 49 lots out of it you could do it. And so when they changed that to a maximum allocation for example 12 lots on 100 acres you had to file this paper with the state and county stating that you have reached the maximum allocation and you cannot subdivide any more. The only way that you can further subdivide a property that had its maximum allocation is with the family subdivision provision which I am the first person to try to use that to do this.

So when this document came back from Planning, you know, I was just floored because in my view not only did they you know, recommend against it but they crossed a line as far as their interpretations of this County Code that gives me the right. Do I have three minutes?

Mr. Hedani: No, you're not restricted by time.

Mr. Blue: I mean, as far as I'm concerned I have the right if I qualify with what the law stipulates to do a family subdivision, that's what the law says. I filled in my application, I turned it in, they said yes you can fill out your subdivision application, I filled that out, got all the conditions I had to meet by all the departments, turned it into Planning about a year and a half ago. It was an ordeal but I finally got Planning to make their decision and you know I've been around a long time. I've spoken up here before this commission before. You know, I've been on Citizens Advisory Commissions before and you know, usually when Planning has an issue with something they'll attach conditions, well I've never seen a document like this before that just is so against the issue. Like I say, I'm bewildered. So I would just like to go through few of these conclusions that the Planning Department came with and one in particular that I would like the Planning Director to explain to myself and the commission on how they arrived at that conclusion.

This family subdivision, I mean, after seeing all these conclusions up here that I'm still looking at looking at these I don't know how they can approve any subdivision whatsoever whether it be with the maximum allocation or not. In this particular subdivision there's 14 lots. There's two of us I have to three ... (inaudible - problem with sound system)...

Mr. Hedani: Go ahead.

Mr. Blue: My property as it stands now is divided in three separate feedlots for horses. Myself and my neighbor are the only ones in that 14-lot subdivision who do have agricultural uses. Most of these subdivisions you know, I mean, it says right here they shouldn't be made into residential subdivisions and in reality they all are. But in my case for some reason I figured out that if the subdivision was approved and a house and a cottage were built on it that would take a half an acre. So the net loss of agricultural land by doing this would be one-half an acre. There would still be three and a half acres of agricultural use.

Anyway at this point I'd just like you to follow me on this. On page 2 of the Planning Department's Report, on Theme No. 1. It's my application, page no. 2. It's this one. I'm on the recommendation, sorry about that. Mine aren't colored green. Okay, so the conclusion here you know, it says here that the intent is to provide for and maintain the ag community and open space resources and it says, "further resubdivision of ag lots could result in less ag and open space land." That's true, but the only way you can do it is with a family subdivision and I think that the Planning Department never looked at the fact or took into consideration that it is a family subdivision. Okay, this is not a subdivision to sell off a lot, it's a family subdivision and families are what kept Maui together and keep Maui together.

Number B on Land Use, at the bottom of page 2, it says, "that to preserve and present the future generation with cultural and traditional community lifestyle." Well, community lifestyle is families. There's so many families in Haiku living on old family subdivision right next to each other. So I think that my subdivision complies with land use as far as preserving traditional and cultural lifestyles.

If we go to page 3, they talk about the minimum lot sizes. I am not asking for anything less than a minimum lot size. I'm not coming here saying I want to subdivide two acres into two, one-acre lots. You can subdivide four acres into two, two-acre lots and so, I'm not asking for a zoning change. I'm not asking for a smaller than allowed minimum lot size. My lot size is in the regulations.

And as far as the people that are objecting, I sent out about 21 letters I believe, and I got three letters back. Those people from the subdivision when they signed their purchase agreements knew that it was possible for these four-acres lot to resubdivide. They knew that when they signed on. If they're not happy with it now that's - I mean, that's their right but they were informed when they purchased it that there was a possibility of that.

Objective, to preserve lands that are well suited for agricultural pursuits. I would be doing that because it would still be pasture and/or crops.

Protect prime ag land from competing non-agricultural uses. I'm in ag.

Lets move down to B, Agriculture on page 3. "Allowing resubdivision of lots that have been allocated on a maximum basis would be counterproductive to maximizing the use and yield of productive agricultural land." I agree to that but there is a law in the County Code that allows you to do it and it's called the family subdivision law.

Lets move to page 4, Chapter 10.30A near the bottom of the page. Limitation on resubdivision, in my view is directed towards anybody who wants to do a subdivision. There's nothing in this that said anything about family subdivisions. It says that when you do your subdivision you get so many lots and once you've got that many lots you have to file the paper it's on record. The only provision in No. 4 says, "no lot or portion thereof which is in the ag district shall be further subdivided beyond the maximum number of lots permitted pursuant to this chapter and as recorded with the Bureau of Conveyances except as provided by subsection 19.30A.040C," which is a family subdivision. So it's very clear here that you can do this but you gotta meet the requirements.

Now this is what I would - this next one here I would like to give my view and then I would like a response from the Planning Department because this one really confuses me. Okay, again, under this chapter and in my view this is directed towards anybody doing a subdivision, C says, "if the original lot has been subdivided with the maximum number of lots permitted additional lots may be created for family members as described in the subsection whether or not a deferral of improvements is intended with the approval of Council." Okay, the Planning Department is saying they're interpreting subsection C as if you've already done a family subdivision and now you want to come back and say that wasn't enough lots I want to resubdivide it again. Okay, my view of this says that if anybody does a subdivision and you get your maximum amount of lots you don't need to ask for a family subdivision, you are allowed that. Okay, so their interpretation of subsection C is questionable in my mind because they're acting as if subsection C pertains to a lot that has already been through a family subdivision and as far as their contention that says that a lot - it wasn't meant for lots that have been resold on the market. For every piece of property on Maui was purchased on the market at some time and I don't know how they can read that into the law and say that that was not intended. There's no supporting evidence that pertains to that. So I would like to ask now if possible, subsection C, how does the Planning Department come to the conclusion that subsection C refers to family subdivision. If I could get a response from them? Because this is a huge issue.

Mr. Hedani: Okay, do you have any other testimony you want to offer?

Mr. Blue: Yeah, okay I'll finish my testimony first. Page 5, again, at the top of the page, this land would be used in accordance with the individual character of the various communities and regions in the county because it is an ag district, it's already being used for ag, I'm actually in ag and there would not be a change of use for this property. It would not be a change of use. My son would be able to someday you know, build a house there and have a family.

Lets go to page 5 please. In 18.22.80 at the top, family subdivisions. I'm just a layman but I mean, I do have a pretty good command of the English language and this seems really simple to me. It says, "The Director of Public Works shall approve," this sounds to me like it's the director, "Director of Public Works a request for subdivision approval when he gets one of these family subdivisions under the following conditions: A parent who intends to transfer property to a spouse or a child." That's me okay. When we get down to the conclusion, okay, in their document the Planning Department says, "that the staff has interpreted subsection C as a method to allow for more lots than a family subdivision." I can test that. In my view that's not true. Section C is a method to do a family subdivision a subdivision that has already its maximum allocation. That needs to be cleared up.

And then when they say, "allowing the proposal to create an additional lot from a lot that is subject to a maximum lot allocation and has been sold on the market and was never part of a family subdivision would set a precedent" and they go on. Well, again, where does it say that you know, if a lot is sold to a family that they can't do a family subdivision so I don't know where they came up with this but to me it's totally unsubstantiated and you know, it seems like they're grasping for some kind of another way to you know, to turn down this proposal.

And as far as this would lead to proliferation of ag lots being resubdivided beyond the maximum lot allocation. You know, there's not going to be a line down to town out the door if I get this subdivision with people you know, coming up here and cutting up the island into family subdivisions. I mean, it's just not going to happen. There's too many things that you have to comply with, I don't see that happening.

And their last comment in effect this would negate the maximum lot allocation in the ag district. It wouldn't negate it because the only way you can negate it is with a family subdivision. It's the only way you can do it. So it's not like it's going to take their law and you know, be an end to life on Maui as we knew it, you know. It's just - it's a family subdivision and I don't believe you know that I think they lost sight of the fact that it is a family subdivision. Nowhere in this document is that taken into consideration and that's the whole object of the law.

Okay, I have a couple more comments and it's done. As far as this conditional permit goes, in my understanding this application is processed, I'll quote, "in the same manner as applications for conditional permits." So in my view I'm not here for a conditional permit, I'm here to seek approval or disapproval of my request and no matter what happens it's going to the Council. So when they keep referring to the intent of the conditional permit, I don't believe that applies to me because I'm not here for a conditional permit.

Onto page 6 at the top, this particularly disturbed me. "Anyone who owns an ag lot could make the same argument that they wish to create a new lot in violation of the maximum lot allocation for a family member." So here it's like they're saying that it's like they're almost accusing me of trying to violate the maximum lot allocation by creating a subdivision for a family member which the law says I'm allowed to do. So you know, it's like - I just having a really hard time making sense out of this. Okay, I'm allowed to do it, but they're telling me if they allow me to do it that it would violate the law. So this is - I can't make sense of it.

Furthermore, right below that and this just adds to my belief that there's some kind of bias in this report. "Furthermore specifically in this case they state, three letters of opposition were received." Well, you know, I've got three opposition letters, everybody's against you know, somebody doing something but for them to use the language, "specifically in this case." I mean, what is that. You know, there's people protesting things all the time and it just adds to my feeling that this is so tilted and biased that they just went to any extent that they could in you know trying to just you know, shoot this thing down. It's an amazing document to me.

My last comment. Summary conclusions of law, okay, "the proposal isn't consistent with policies in the General Plan." I disagree. You know, my son would love to have a piece of property with a farm that he could live on next to his dad in Haiku. I think that's a great thing.

"The proposal would set a precedent that would lead to proliferation of ag lots being resubdivided beyond the maximum lot allocation." I don't believe so. It's too hard to do, it's too ... (inaudible)... it took me two years to get up to this microphone today and my guess is if I got approval I'd be in it for at least another two to four years knowing how the County works, it's an onerous, onerous procedure.

That's my comments. Thank you for taking the time to listen.

Mr. Hedani: Do you want to restate your question that you want an answer to?

Mr. Blue: Yeah, I would like the Planning Department to explain to the commission and myself how they came to the conclusion that subsection C refers to family subdivisions being resubdivided into more family subdivisions because if they're correct in that then nobody is ever going - I mean, I'm not just concerned for myself, there may be more people who want to do family subdivision and this Planning Department clearly is, you know, just doesn't want to allow in any way, shape or form. So I would like them to explain to me how they came to the conclusion of subsection C and how they interpret it that way when I think this is directed towards anybody, limitation on subdivision that's what it says. It's directed towards anybody who wants to do a subdivision.

Mr. Hedani: Joe or Director any comments on that? Jeff.

Mr. Hunt: We'd be happy to answer any questions from the commission.

Mr. Blue: Excuse me I asked the department.

Mr. Hedani: He's indicating that he'll answer questions from the commission if it's posed by members of the commission.

Mr. Blue: So I can't get him to answer this?

Mr. Hedani: I guess not.

Mr. Blue: Why not? I'm allowed to look at this document and it's their statement and I want them to enlighten myself and the committee on how they made that determination. It's a simple question.

Mr. Hedani: In the course of discussion on the action portion of this, the commission is going to make a recommendation. We're not the final determining authority on this particular item. We're just going to make a recommendation either yea or nay to the County Council basically and just our reasons why. During the course of that discussion perhaps you can get a commission member from the commission to pose that question to the director but at this point I guess he's deferring an answer.

Mr. Blue: You mean, I asked him he can choose to say he doesn't want to answer me?

Mr. Hedani: We'll take it up under discussion. Are there any members of the commission that have questions for the testifier at this point? Commissioner Shibuya.

Mr. Shibuya: Now in your knowledge Mr. Blue, what are the average lot sizes in this area?

Mr. Blue: In Haiku?

Mr. Shibuya: In the area that you are in because you subdivided it prior to this into four-acre lots is it true?

Mr. Blue: Did I, did you say?

Mr. Shibuya: Yes.

Mr. Blue: No, no, no. This was a subdivision done by Kent Smith. He took two parcels of land that were total of I believe 58 acres and he got a maximum allocation of 6 lots on one and 8 lots on another and he combined them all and he sold them. And I purchased this lots from Mr. Smith I believe in the year 2000.

Mr. Shibuya: And the average size of the lots are?

Mr. Blue: There's four, two-acre lots and 10 - four, four-acre lots and 10, two to three-acre lots in the subdivision. All of them are between two to four acres. Two acres, three acres, three and half, four, they're mixed. It's actually a gated subdivision. There's a gate.

Mr. Hedani: Any other questions from the commission? I have a couple of questions Gregg. There was testimony from the staff that you don't reside on the property.

Mr. Blue: That's correct.

Mr. Hedani: Do you own property other than this parcel?

Mr. Blue: Yes I do and I plan to move to that property at a later date.

Mr. Hedani: Okay, so your primary residence is somewhere else right now.

Mr. Blue: Down the street.

Mr. Hedani: I see. Do you get an agricultural exemption for this property?

Mr. Blue: Yes, I do.

Mr. Hedani: The intent of the agricultural subdivision is to preserve agricultural lands for productive agricultural use is there any revenue that you derive off of the property from agricultural uses?

Mr. Blue: \$200 a month.

Mr. Hedani: \$200 a month. Is your son interested in agriculture?

Mr. Blue: Yeah, he's actually growing palm trees. He picks the fruit on our farm and sells it, oh yeah.

Mr. Hedani: And it's a rental property to you right now.

Mr. Blue: Right now.

Mr. Hedani: And what do you derive in terms of rental income from the property from that house?

Mr. Blue: That's \$2,200 a month for a 1,000 square foot cottage and workshop garage that's 800 square feet.

Mr. Hedani: Okay, so the primary income from the property is basically from a residential use because that person is not engaged in agriculture.

Mr. Blue: Well, he's on – he's not engaged.

Mr. Hedani: Your tenant is not a farmer?

Mr. Blue: No, no, even though it's a pasture, he lives there. He's not engaged.

Mr. Hedani: Okay, thank you. Commissioner Shibuya.

Mr. Shibuya: I just have a question. I believe I heard the word homeowners association.

Mr. Blue: Yes.

Mr. Shibuya: There is such a thing?

Mr. Blue: In this particular subdivision, yes.

Mr. Shibuya: And this subdivision is gated?

Mr. Blue: It's gated. It's the only gated subdivision in Haiku.

Mr. Shibuya: That's very troubling unless you're growing pakalolo then I would keep other people out.

Mr. Blue: Believe me the type of people that live in that subdivision would never think of growing pakalolo.

Mr. Shibuya: I was just wondering why you have gated agricultural area. I come from an agricultural district and we don't have gatedness.

Mr. Blue: I don't like the gates. The gates were put there by Kent Smith. I don't like them. They're there.

Mr. Hedani: I vaguely recall this particular subdivision when Kent I believe came before us for the initial subdivision and I think the intent was to not have future subdivision.

Mr. Blue: That was the intent.

Mr. Hedani: Of the original subdivision.

Mr. Blue: But it's stated in the CC&Rs that upon further subdivision of any four-acre lot of which there are four that you would be entitled to another water meter. So he knew about the family subdivision. It's in the provisions of the CC&RS.

Mr. Hedani: Okay, the other question and this is my final question. The only other question that I have was there's a schedule that's attached to the property under Exhibit A that talks about maximum allocable lots, maximum lots allocable to the subdivision. In that exhibit it states that for your particular lot which is Lot 1 that there are no zero future subdivision lots that are applicable to that lot. Were you aware that that exhibit was part of the property?

Mr. Blue: Of course, I provided it but you have to understand that you can't resubdivide any lot that's had maximum subdivision allocation anywhere on Maui unless it's a family subdivision. So that's the only way to supercede that maximum allocation. There is no other way that you can subdivide except by that rule.

Mr. Hedani: Okay, cause from my interpretation when I looked at that particular schedule the question that I had and I noted down in my comments was it's zero applicable lots for this particular lot. So what interpretation of zero is it that you don't understand?

Mr. Blue: Well, what the point that I'm trying to make I'm agreeing with you, okay. You cannot resubdivide any of those lots in there because of the maximum allocation has been met, but if you want to do a family subdivision, that supercedes that zero – in other words that supercedes the maximum lot allocation and enables you to take a lot that was unsubdividable and resubdivide it again for a family member. That's what the law says.

Mr. Hedani: That's your interpretation?

Mr. Blue: That's my interpretation.

Mr. Hedani: Thank you. Are there any other questions for the testifier? Commissioner Shibuya.

Mr. Shibuya: Mr. Blue, I'm very concerned in terms of this private well. Is this private well for the entire subdivision?

Mr. Blue: Yes it is.

Mr. Shibuya: And it's one well?

Mr. Blue: It's a well with backup pump, backup boosters, 50,000 gallon tank, it's been tested, it's

got great water. There's no issues with the well, it's maintained by the homeowners association with a backup fund in case anything goes wrong.

Mr. Shibuya: And in terms of capacity now this is where I'm very troubled because the more you accommodate land uses, the population is increasing, the needs for water increases it conflicts with agricultural uses. If we permit this type of subdivision to occur then now you have a larger loading of population, a greater need for water, what is the capacity of this subdivision's water source?

Mr. Blue: Well, the capacity was figured out for more than the 14 lots existing and there's a couple lots that aren't even hooked up yet. And the people up there don't use that much water. We've never had – there's no question about the capacity of the water supply. We have plenty of capacity. We can produce half a million gallons a day if we want. Okay. We've never had an issue of any kind of shortage or I mean there's plenty of capacity there and yes, if this lot was allowed there'd be another water meter and you're talking may 200 or 300 gallons a day of water. I mean, anywhere that you subdivide you know if the water meters ever get issued to upcountry there's going to be a lot more water usage. But the water is used for ag. It is used for ag.

Mr. Shibuya: But there's no ag being used right now, right?

Mr. Blue: Yes there is.

Mr. Shibuya: Limited.

Mr. Blue: With ag. It's a pasture. It's in full use. We have three separate pastures in there.

Mr. Shibuya: I have the other infrastructure type questions. Normally when you start subdividing you have what is called traffic impact analysis report.

Mr. Blue: Yes.

Mr. Shibuya: You're aware of that?

Mr. Blue: Oh, let me say that when you enter the gates of that subdivision I am the first lot on the left. So you would go 200 feet in, you would turn left and that's it. No other part or other lot of that subdivision would be impacted by that newly created lot except my own lot because it's just drive in front and turn left. All the rest of the lots are further in. I'm the first lot in.

Mr. Shibuya: And also there's a impact for education and schools.

Mr. Blue: Yes, that's stated in one of my conditions.

Mr. Shibuya: Do you have a well on the property somewhere?

Mr. Blue: No. The subdivision has a well.

Mr. Shibuya: Subdivision that's correct.

Mr. Blue: I don't have a well.

Mr. Shibuya: Right, okay. Thank you.

Mr. Hedani: Any additional questions for the testifier? Gregg, the \$200 that's derived from agricultural uses, the pasture does that mean that you lease the pasture to someone else?

Mr. Blue: It's rented to someone, yes.

Mr. Hedani: Okay, so it's somebody else's horses that are on there?

Mr. Blue: Yes.

Mr. Hedani: Okay, I understand. Thank you. Any further questions from the commission? Thank you very much Gregg.

Mr. Blue: So you're telling me that I still cannot get the Planning Department to answer this question?

Mr. Hedani: I'll pose the question on your behalf when we get into the action portion of the meeting.

Mr. Blue: I would appreciate that. Thanks.

Mr. Hedani: Staff recommendation. Thank you Gregg.

b) Action

Mr. Prutch: Staff recommendation is based on the summary of the conclusions of law which are there and which I read into the staff report. I'll go ahead and go through them real quick. Based on the conclusions of law that:

1. The proposal is inconsistent with the policies of the General Plan.
2. The proposal is contrary to the intention of the ag district that seeks to promote and preserve ag land and seeks to discourage the subdivision of agricultural land for residential purposes.
3. The proposal would set a precedent that would lead to a proliferation of agricultural lots being resubdivided beyond the maximum lot allocation.
4. The proposal would negate the maximum lot allocation of the ag district.
5. The effect of subdividing agricultural land into many small parcels was already determined in advance to be contrary to preserving ag land.
6. The proposal does not have a special impact or uniqueness to it.
7. Three letters of opposition were received from neighbors.
8. The proposal would be significantly detrimental to the public interest.

The Maui Planning Department is recommending that the Maui Planning Commission recommend denial of the applicant's proposal to the Maui County Council based on the above conclusions of

law and the department's report and recommendation.

Mr. Hedani: Commissioners? Commissioner U'u.

Mr. U'u: Motion to deny.

Mr. Hedani: Is there a second?

Ms. Domingo: Second.

Mr. Hedani: Moved by Commissioner U'u, seconded by Commissioner Domingo to deny the conditional permit application.

Mr. Hiranaga: Recommendation.

Mr. U'u: Motion to deny recommendation ...(inaudible)... to Council.

Mr. Hedani: Basically what you're saying is you concur with the staff report.

Mr. U'u: Correct. Not deny but yes.

Mr. Hedani: So that would be a motion to accept staff report which is a recommendation for denial to the Council.

Mr. U'u: Correct.

Mr. Hedani: Okay, is that okay with the second? Okay, discussion? Joe, you want to tackle the question that was posed by Mr. Blue. I think he deserves that this point. Mr. Hunt.

Mr. Hunt: I had no problem answering the question. There's a matter of protocol and we traditionally don't allow testifiers to question staff and that would lead to ongoing discussions. We've always – protocol has always been they have their testimony. They provide it and if it's of interest to the commission by all means ask us any questions. That's why we're here.

The interpretation of staff is that there is a maximum lot allocation that has been adopted by our Council and there is a lot of public input that went into that to determine how many lots are allowed in a subdivision of our agricultural land and the reason why there's a maximum is if we allow too much the findings are that that would be detrimental to the preservation of our agricultural land. There is a provision in our code that says and Mr. Blue has found that provision that says we can go beyond that maximum lot allocation if the lots have already been subdivided to their maximum and it refers to a family subdivision.

So the Planning Department can only interpret that what happened is during the adoption of that sliding scale somebody said, well what happens if I have a family farm and I'm trying to divide it up for my family so it can remain in my family and I've got four kids but I can only subdivide three lots. So they threw in a provision saying well, we'll allow you an extra lot for a family member. That's

the only logical interpretation we can come in with because otherwise anyone can buy a lot in the agricultural district and come forward and say I want to subdivide that beyond the maximum allocation for a family member which can include a spouse and it would essentially negate the maximum lot allocation. We're not saying that there's no circumstances that we would ever approve such an exception but it is a conditional permit and the conditional permit speak to uniqueness and speak to public interest and we don't believe that this is in the public interest to recommend approval of this particular application.

Mr. Hedani: Any additional discussion? Commissioner Mardfin.

Mr. Mardfin: Your last statement gets to where I was reading it. On page 2 of the original staff report without the recommendations under applicable regulations it says, "the intent of the conditional permit is to provide the opportunity to consider establishing uses not specifically permitted within a given use zone where the proposed use is similar, related or compatible to those permitted uses and which has some special impact or uniqueness," and I don't see that in this case. I don't see a special impact or uniqueness to this. It's anybody that seems to have a family that wants to do it.

Mr. Hedani: Additional discussion? You're ready for the question? Okay. All those in favor of the motion which is to approve the staff recommendation recommending denial to the County Council signify by saying aye. Opposed nay.

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

VOTED: To Accept the Recommendation to Recommend Denial of the Conditional Permit.
(Assenting - B. U'u, D. Domingo, K. Hiranaga, W. Mardfin, W. Shibuya, L. Sablas, J. Starr, W. Hedani)

Mr. Hedani: Motion is carried. Thank you.

Mr. Mardfin: Unanimously.

Mr. Hedani: Director.

Mr. Hunt: Your next items involves Ms. Joan McGrath of Haiku Hay and Grain, Inc., requesting a 10-year time extension on a State Land Use Commission Special Use Permit to continue operation of a livestock feed, lumber, hardware and garden supply store on approximately three acres of land in the state agricultural district at TMK 2-7-010: 002 in Haiku. The file number is 90/SUP-002. The planner assigned to this is Livit Callentine.

C. COMMUNICATIONS

- 1. MS. JOAN MCGRATH of HAIKU HAY AND GRAIN, INC. requesting a ten (10) year time extension on a State Land Use Commission Special Use Permit to**

continue operation of a livestock feed, lumber, hardware, and garden supply store on approximately 3.12 acres of land in the State Agricultural District at TMK: 2-7-010: 002, Haiku, Island of Maui. (90/SUP-002) (L. Callentine)

Ms. Livit Callentine: Good morning Commissioners and good morning Mr. Chair. This morning you're looking at an application for a time extension of 10 years of a Special Land Use Commission Permit, Special Use Permit on this property located in Haiku. It's on 3.12 acres of land and it's located on the north shore as you can see not far from Hana Highway and the next slide please.

The special use permit for this project which is an agricultural operation of a store which provides livestock, lumber – livestock feed, lumber, hardware and garden supplies to various agricultural uses within the surrounding area. The state special use permit was first granted in 1983. That permit was renewed but subsequently expired in 1989. A new permit was granted in 1994 and in April of 1998, the Maui Planning Commission approved a 10-year time extension and that's also what you're reviewing today. This extension was filed timely.

Land use, state, community plan and zone agriculture and not in the special management area. Surrounded by agricultural uses to the north also Pauwela Town, to the east pasture and the Lowrie Ditch and again agricultural dwellings on the south and the gulch and to the west pasture lands and the gulch. The project is located as you see in between Haiku Road and the Lowrie Ditch. The store itself is located within a barn structure. It's 1,200 square feet. In addition, the applicant operates a 1,999 gallon liquid propane gas tank and sells that gas to area residents. This tank also has a dispenser area and it has a full fire protection system which I'll show you a photograph of that in a moment. Also, there is what was a former a rabbit processing building and that is no longer carried out on the property but now the applicant and her son process fish that is locally caught and brought in and it is in a Department of Health approved kitchen. There are parking areas throughout the property which I'll show you on the site map which comes next. There's also two farm dwellings on the property.

As you'll see in the site plan the feed store is part of a barn area. It's showed up at the top in kind of that yellowish green color. Below that the red dot indicate a fire extinguisher. The blue area, both blue areas indicate parking areas. The lower one has at least room for two stalls and the upper one leaves room for three stalls. Where the fish processing area is down by the entrance right next to the driveway. On the upper right-hand corner just below the ditch is you'll see kind of a blurred unfortunately a blurred word, it says residence, that is actually the main residence and I'll show you a photograph of that in a moment and just beyond that to the right there is a second smaller dwelling which the applicant actually lives in and her son or son's children live in the main residence.

This shows you a picture of the sign at the main entrance or the only entrance as far as I know. Then we have again a picture of the entrance with the driveway going up, the barn area, the fish processing area is the first building on your left in the lower photo and beyond that is the liquid propane tank and the barn and on the right just in the corner on the right of the driveway you see the roof of the first residence and the top photo shows you a picture of the barn and the retail store is in the front of that doorway and I'll show you a picture of that in just a moment. So the liquid propane tank is protected by a fire system. You see the parking stalls in the top photo on the right

of the picture and you see the fire protection system in activation just a demonstration.

The main residence is in the top photo and I believe the residence that you can just barely see a building to the far right I think that is the second dwelling but I'm going to ask the applicant to nod to me if it is. Okay, sorry, that building is the laundry area. The second dwelling is further to the right. And then down below is a photograph of the retail store area.

I conducted a site inspection September 30th of this year and the application was not transmitted to agencies for comments. There were no substantive complaints, sorry, there were no substantive comments that were resolved the last time the time extension came before this commission. In 1998, there were over 200 people that signed a petition in support of the project and there are no complaints on the property.

So in conclusion, the Planning Department believes that the sale of agricultural products and services supports agricultural activity in the region and we do recommend approval of a 10-year time extension subject to 10 conditions which are shown in your report. Thank you.

Mr. Hedani: Questions for staff? Commissioner Mardfin.

Mr. Mardfin: Hi Livit. I'm a tad bothered by the idea of not submitting this to agencies just because there were no comments the last time around because over the last 10 years they could have developed new policies or new concerns have arisen and I sort of wished they'd been done. It's not enough to –

Ms. Callentine: Yeah, we did make a judgement call on that Commissioner Mardfin. There's no new development proposed, there's no change in operation proposed and –

Mr. Mardfin: But my point is the agencies may have changed their view of things over the 10-year time period.

Ms. Callentine: They may have and this is existing non-conforming. Well, if it's non-conforming it's already existing.

Mr. Mardfin: Right.

Ms. Callentine: So it's a fair point and that's not the direction the department chose to go.

Mr. Hedani: Any further questions? Commissioner Shibuya.

Mr. Shibuya: Livit, can you tell me a little bit more about the infrastructure particularly the roadway leading to this property about how wide is it, what kind of improvements are there? I know you didn't mention it here.

Ms. Callentine: Yeah, it's a two-lane country road. I am not sure how wide it is perhaps the Director of Public Works may, I mean, the Deputy Director of Public Works may be able to answer that. I'm guessing it's about 30 feet wide but I didn't measure the width of the roadway.

Mr. Shibuya: I'm concerned in the sense that you're now having lots of customers and these are third-party responsibilities that I'm very concerned about. They are residents in the local area, however, they are purchasing a product or products and they have to traverse this area and so it could be a dangerous area.

Ms. Callentine: Yes thank you Commissioner. As I mentioned, this property has been – this operation has been ongoing since at least 1983 and there have been no complaints. I did check sight distance views as I was entering and leaving the property and I didn't observe any obstructions to views in either direction.

Mr. Shibuya: And I was very interested what generated or started the need to have a petition being signed 10 years or 11 years ago?

Ms. Callentine: Now that I cannot answered but the applicant is here and I'm certain she would be more than happy to answer your questions.

Mr. Shibuya: And then why are we – if we did it then, why are we not renewing it again? Because the request is to renew the conditions, right?

Ms. Callentine: Why is there not a petition this time around?

Mr. Shibuya: That's correct?

Ms. Callentine: And again, I cannot answer that question.

Mr. Shibuya: Thank you.

Ms. Callentine: Would you like the applicant to answer that for you?

Mr. Shibuya: Yes.

Mr. Hedani: Are there any further questions for staff at this point? Commissioner Hiranaga.

Mr. Hiranaga: Yes, I have to echo Commissioner Mardfin's disappointment that you did not circulate this request to agencies because I believe there have been some changes in the past 10 years regarding various laws. One of them is the Environmental Protection Agency's requirement for septic systems for commercial activities or septic systems for two dwellings or more being serviced by a cesspool unless they have two individual preexisting cesspools that are grandfathered in. You have a fish processing plant there that I guess empties into a cesspool and this property is located directly above Pauwela Stream.

Also, the Fire Department and the Water Department has I believe been moving toward requiring fire hydrants versus standpipes because of the inadequate flow out of standpipes. So maybe the Fire Department and Water Department may have required that a fire hydrant replace the existing standpipe.

So at this point, you know, I'm going to have difficulty approving this request unless these agencies have an opportunity to comment. Just because it was okay for the past 10 years doesn't mean it's going to be okay for the next 10 years and that's why we have this process or review.

Also the roadway, is this property actually located on Haiku Road or is it located on Hogback Road, the entry?

Ms. Joan McGrath: Good morning, I'm Joan McGrath. I have Haiku Hay and Grain. It's a family corporation. Now which questions shall I answer first?

Mr. Hiranaga: My question is your access driveway is it located on Haiku Road or on Hogback Road?

Ms. McGrath: It's entered from Hogback Road. It's entered and exited from – no, I beg your pardon, Haiku Road.

Mr. Hiranaga: Could you repeat your answer?

Ms. McGrath: It's both entered from Haiku Road and exited back onto Haiku Road. This portion of the property. I have two driveways, the other is an entrance to the other dwelling on the other side.

Mr. Hiranaga: So access to the commercial enterprise is not off of Hogback Road?

Ms. McGrath: Neither of the driveways are, but yes.

Mr. Hiranaga: Okay, thank you.

Mr. Hedani: Any – while we got you up there Mrs. McGrath, are there any questions for the applicant at this point? Commissioner Shibuya.

Mr. Shibuya: My question earlier was the petition was created about 10, 11 years ago what was the driving force for that?

Ms. McGrath: Just to let the commission know and the people that I had to deal within the county that people in Haiku in the surrounding areas were interested in what I was doing and just kind of substantiated, you know, what I have to say and what I have to sell.

Mr. Shibuya: And is there any reason why this was not, it continued or this practice not completed or done in this application whereas 10 years ago you did and here you're not doing.

Ms. McGrath: Well, I guess I don't feel the need to do it. I have a steady base of customers. Some people leave and other people come aboard.

Mr. Shibuya: Right I understand.

Ms. McGrath: If you, you know, in the future need that type of substantiation I think can do it.

Mr. Shibuya: Yeah because during that time the population may have shifted and the interests of the groups living in this area or being serviced changes because I believe you have competition in Central Maui would you not?

Ms. McGrath: I've always had competition in Central Maui, but people can drive down here if they wish.

Mr. Shibuya: Thank you.

Mr. Hedani: Do you have any other comments you'd like to offer Joan at this time?

Ms. McGrath: Do you want to know about cesspools or any of these other questions?

Mr. Hedani: Sure.

Ms. McGrath: I do have a cesspool for each and every building that's there including the processing plant which I had done rabbits. There's a cesspool for each of the homes. I don't have a public restroom as such but they can use the one in the processing plant if I do have customers and need to go to the bathroom, but they're all legal. I do not have had two buildings that run waste into the same cesspool period. Each building has its own cesspool. Yes sir.

Mr. Hedani: Commissioner Hiranaga.

Mr. Hiranaga: My understanding of the EPA Federal regulations is that all commercial operations must be serviced by a septic system. So you have a fish processing plant there which is commercial.

Ms. McGrath: Yes.

Mr. Hiranaga: So would you have any objection to the department sending a specific inquiry to the Department of Health requesting their approval of your cesspool now servicing your fish processing plant?

Ms. McGrath: Not at all.

Mr. Hiranaga: And if they require an upgrade to a septic system that you would comply?

Ms. McGrath: Yes.

Mr. Hiranaga: Okay.

Mr. Hedani: Commissioner Mardfin.

Mr. Mardfin: I have one main question but I want to kind of – what were the rabbits for? Meat or

fur?

Ms. McGrath: Both, and also for experimental purposes. I dealt with Tripler Hospital on Oahu. A lot of studies were done with eyes and their legs, especially the front legs for finger joints and service men that were injured.

Mr. Mardfin: Very interesting. My main question, it says here that in January 28, 2008 you wanted to operate a small engine repair service and then about a year and a half later you withdrew that is there a story behind this?

Ms. McGrath: My son no longer had the initiative to do it. He thought he would stay with construction.

Mr. Mardfin: Okay, thank you very much.

Ms. McGrath: You're welcome.

Mr. Hedani: Any additional questions from the commission? Commissioner Hiranaga.

Mr. Hiranaga: Would you have any objection if the Fire Department or the Department of Water Supply requires you to replace the existing standpipe with a fire hydrant?

Ms. McGrath: If I have to pay for it, yes. Now I have a fire system that you will find in most of the theaters, the new theaters here on Maui. It has two detection systems that read and determine there is flame. One reads ultraviolet and infrared, this sends a signal to a main panel that I have in that processing plant for fish which then sends a signal back to the tank area which opens the hydraulic valve and out comes all that water you saw in that one picture. Now that is piped straight up from the ...(inaudible)... main which is out in front and that was approved here a few years ago. I have no reason to believe that I need a fire hydrant whereby that sophisticated system can call the fire department in Paia, but Paia is not sophisticated enough to receive it.

Mr. Hiranaga: So if the Department of Water Supply or the Maui Fire Department requires that you place the standpipe with a fire hydrant you will object to that?

Ms. McGrath: Yes, my system's quicker. It tells me automatically there's problems. I don't have to wait for the fire truck to arrive from Paia to use the standpipe or that fire hydrant out in front. You do me no good by that. Not at all.

Mr. Hiranaga: That's why when we have this process where the department should circulate your application to all the reviewing agencies so that they can provide comments and gives you an opportunity to review these comments and provide answers to these comments prior to this hearing.

Ms. McGrath: Well, I'm not against the Fire Department to come and look, but this is after the fact.

Mr. Hiranaga: No, it's not after the fact.

Ms. McGrath: If the fire system that I now have was adequate and still is adequate, I'm more you know, I'm better off with it than to put a hydrant on the road which takes you know, 15 minutes, 20 minutes for the Fire Department to get there to use it.

Mr. Hedani: Okay, Joan I think all Commissioner Hiranaga is saying is that you know, the application wasn't submitted to all of the departments. One of those comments coming back from those departments may be that the standpipe should be replaced with a fire hydrant for protection of all of the structures within the property. That's all he's saying.

Ms. McGrath: But I have something which protects that tank, what is it, the National Fire Code permits fires propane tanks are concerned with adequate pressure.

Mr. Hedani: I understand.

Ms. McGrath: But no, if the Fire Department wants to come and look, the boys come and get their propane at my place, they know what I have.

Mr. Hedani: Thank you. Commissioner Shibuya.

Mr. Shibuya: No, was going to say because of public interest many of the agencies have upgraded their requirements and I think it's a prudent measure here to have agency review on this matter. So I'm in very much in favor of having that to reassure both you and us that your operation is –

Ms. McGrath: Well, I'm assured, but if you need to be assured bring on the fellas whatever from the various groups that need to come and look.

Mr. Shibuya: Thank you.

Ms. McGrath: Thank you.

Mr. Hedani: Thank you very much. Any further questions? Commissioner Hiranaga.

Mr. Hiranaga: This is more of a question for staff. Was there any discussion –

Mr. Hedani: Thank you Joan.

Mr. Hiranaga: Was there any discussion regarding the appropriateness of a propane, retail propane gas distribution center on an agricultural property? How does propane relate to agriculture?

Ms. Callentine: I think that's another question for the applicant but there was discussion in 1998 in the records about the fire protection system, but I didn't locate any discussion about their being a question of the appropriateness of this. I think in an agricultural area and as has been mentioned here today certainly the Haiku area has changed quite a bit. This appears to me to be an actually legitimate agricultural use of agricultural land. She's not growing houses, she's not subdividing. The liquid propane in a rural area is a way of life, everybody uses liquid propane so she's filling a need of the residents. There's liquid propane gases being used for – I'm sure it's being used on

other people's farms for their agricultural uses.

Mr. Hedani: Commissioner Hiranaga.

Mr. Hiranaga: Well, there's a difference between propane use for a personal consumption and retail sales of propane on an agricultural district. You know, there are commercially zoned properties in Haiku.

Ms. Callentine: Yeah.

Mr. Hiranaga: That pay commercial real property tax rates and commercial rental rates that also dispense propane.

Ms. Callentine: Sure.

Mr. Hiranaga: So I'm just wondering what the legitimate.

Mr. Hedani: I think the microphones are really sensitive Kent.

Ms. Callentine: Yeah, they're new.

Mr. Hedani: You gotta move away from it a little bit.

Ms. Callentine: I know what you're saying and I just want to bring the commission back to what the purpose of this request before you is. It is to do a time extension on something that's been in operation for 23 years. This is not a new application you're considering commissioners, it's a time extension.

Mr. Hedani: Commissioner Mardfin.

Mr. Mardfin: Livit on page 7 of your report, Item 9 near the top, it says, "on December 18, 1998, the County Council adopted Ordinance No. 2749 which effectively rezoned properties from interim to agriculture if they were designated agriculture in the community plan." I'm not worried about it for this particular property but in general, was that countywide?

Ms. Callentine: To my understanding it is.

Mr. Mardfin: So any place the community plan is agriculture and it had said interim?

Ms. Callentine: Well, I believe that was the intent of this. I believe it was the intent of this ordinance now whether it's actually applied to every single property I can't answer that.

Mr. Mardfin: Maybe Commissioner Starr can help me.

Mr. Hedani: Commissioner Starr.

Mr. Starr: You know, it's an exclusion for certain areas and particularly in East Maui.

Mr. Mardfin: Thank you.

Mr. Hedani: Any further questions for either the applicant or staff? Commissioner Shibuya.

Mr. Shibuya: I just wanted to say help Commissioner Hiranaga's question relating to the uses of propane. Many of the people in the area, Haiku area, I know are self-sustaining. They use the propane primarily for their cooking, heating of water and they are generating electricity and they're using it for batteries, ...(inaudible)... batteries so they're really off the grid self-sustaining type of operation. I do know that that's primarily what they're using it for. They use it also in Kula too, the same type of self-sustaining type of propane use.

Mr. Hedani: Commissioner Hiranaga.

Mr. Hiranaga: Just for clarification. I wasn't asking what is propane used in the agricultural district. I said what – why should the retail sale of propane gas be allowed on an agricultural district ...(inaudible)...property when you have commercial and industrial zoned land very close, Haiku Town, that pay commercial real property taxes and you know, is there a safety issue if that tank should ever explode, I know it's very remote but I know that there are homes very close, across the street from this property so should there be any concerns for their safety when you have a gas tank like this and if the fire system should fail?

Ms. Callentine: That question is out of the range of my expertise on liquid propane gas.

Mr. Hedani: Any further questions for staff? Okay, seeing none, are there any members of the public that would like to offer testimony on this agenda item? Seeing none, public testimony is closed. Staff recommendation.

Ms. Callentine: Yes, thank you Mr. Chair. I also wanted to mention that the applicant does raise lychee trees and she have five very mature trees and they're selling the fruit. She has rainbow showers and the rainbow shower trees are harvested for air lays and they are sold. There's also hibiscus planting, cuttings which are sold and she also raises pigs for sale.

Pursuant to Hawaii Revised Statutes 205(6)(c) the department finds that use continues to promote the objectives and effectiveness of Chapter 205 Hawaii Revised Statutes. Pursuant to the foregoing the Maui Planning Department recommends that the Maui Planning Commission approve the applicant's request for a State Land Use Commission Special Use Permit time extension subject to 10 conditions which are shown in your recommendation report and I don't see a need to go over any one of them individually unless you so desire.

Mr. Hedani: Commissioner Starr.

Mr. Starr: Yeah, move for approval as recommended.

Mr. U'u: Second.

Mr. Hedani: Moved by Commissioner Starr, seconded by Commissioner U'u to approve as recommended. Discussion? Commissioner Starr.

Mr. Starr: Yeah, this use is frankly one of the more positive and benign uses that I've ever seen come before this body. We have talked a lot about the need for food production and real ag for serving the community of Maui for raising food and for keeping people employed. When local farmers are able to acquire their needs from a neighbor in close proximity to where they farm it's a good thing. Propane, the people who buys – go fill propane tanks are not the people who are living in subdivisions for them Gas Co. comes in the truck. It's those people who are either in a remote place on a farm or they're using the tanks to use in the fields, for welding, soldering, you know, whatever. This use is supporting fisheries. It just seems uncomfortable to me to kind of put a type of pressure that feels as though well you know, here's a person making it doing ag and supporting ag lets see where we can destroy them. I really think on the contrary, this is the type of use that we should be supporting and we don't need to look under very nook and cranny to see if we can catch on a gotcha so we destroy them. I really want to thank this applicant for continuing to service the real agriculture on Maui.

Mr. Hedani: Any further discussion? Commissioner Mardfin.

Mr. Mardfin: Livit, I wanted to ask you about Condition No. 8, it's seems extremely specific to me and I was wondering what the thought process was on this.

Ms. Callentine: Yes, I was reading it. Thank you Commissioner Mardfin. I don't know the history of this condition. This condition was added at the time of 1994 approval and I think there might have been some discussion about various different types of products that would be for sale I would trust the applicant to –

Mr. Mardfin: The reason it's here is because it was there 10 years ago?

Ms. Callentine: Yes.

Mr. Mardfin: Okay.

Ms. Callentine: Yes, historic.

Mr. Mardfin: That's enough. Thank you.

Mr. Hedani: Commissioner Hiranaga.

Mr. Hiranaga: I am not opposed this SUP application but I feel the department has not fulfilled their responsibility in the review process. I believe that if this use needs to come into conformance with new Federal and State laws it needs to be brought into compliance. And I'm surprised that with a commercial activity occurring in an agricultural area that the Department of Health has no comment regarding the septic system. I mean, that's to prevent contamination of our water supply and you're right above Pauwela Stream. So I - at this point, the motion to approve I will have to vote against it until my concerns are answered. I again repeat I'm not opposed to this application. And also if

the Department of Water Supply or Fire Department feels that the standpipe needs to be upgraded to a fire hydrant for public safety because it is a commercial activity then so be it. I mean, I appreciate that this person has been in operation for all these years but that doesn't grant them the right to not be brought into compliance with new laws and regulations. And also, I would like the staff to review the appropriateness of a retail propane gas sales on this property. How is that related to agricultural use? So at this point, I will be voting against the motion to approve.

Ms. Callentine: Can I just ask you a question Commissioner Hiranaga? Would that mean you be possibly submitting a motion to defer if the approval – if the request is denied?

Mr. Hiranaga: Like I said, I'm not opposed to the application, I just don't believe the application is complete.

Mr. Hedani: Commissioner Shibuya.

Mr. Shibuya: I was going to make a proposal here to defer this action until Department of Health, the Public Works and Waste Management, Fire Department and the Water Supply were able to comment. I am fully in support of this project and I hope that the input that we get will reflect the proper type of review and I hope that if we do have agency review that I would feel much more comfortable with it. I am not trying to stop this project. I want to have this but for public safety and concern for these actions.

Mr. Hedani: Livit, thank you. You don't have to respond to every commissioner's comment.

Ms. Callentine: I understand, but I do have a question and so I need to ask it.

Mr. Hedani: You have a question for the commissioners?

Ms. Callentine: Well, for Commissioner Shibuya, just a clarification if I might please. You mentioned Department of Public Works, Wastewater, Department of Health and Department of Water Supply. And I'm curious as to why Waste Management when this is on a private waste system.

Mr. Shibuya: There is a stream going by and it's downstream, I mean it's down the property and I do want to make sure that the public waste or any kind of waste is handled properly.

Mr. Hedani: Any further discussion? Commissioner Mardfin.

Mr. Mardfin: I'd like to ask the applicant if she has any statements she want to make?

Ms. McGrath: Okay, now the thing about sewage and where my – where these waterways are the Lowrie Ditch is up from my property. I am below that. The other Pauwela Stream as it winds around goes through the bottom of the gulch which is gotta be more than a thousand feet away. Now if you allow homes and what are these seepage systems that you now build and I know of a place where this is in the Pauwela Gulch that that has to be only 50 feet away from the stream. How can you complain about me and I'm over a thousand feet from it. Now if you got a good picture of my

property here, can I go over there, now let me show you, this is the Lowrie Ditch which was above my place and I'm down from it. The building on which the store is is right here. The propane tank is right after that and now when you get to the front is the processing plant where we smoke marlin fish. Okay, Haiku Road and Hogback Road is here. Pauwela Stream is down here. Now if you got a scale of how many feet that is it's a good thousand feet away. So there's no way any cesspool system on my property is going to go underneath the road and come out down here at the Pauwela Stream. I just don't think so. And if it's true, where some of these other places that I've checked this out 50 feet you can be away from a waterway like that and build your cesspool and put in the seepage system along with it and I'm much further away from those waterways than that.

Mr. Hedani: Commissioner Starr.

Mr. Starr: I really think that to kind of put this time extension under more scrutiny than we put other time extensions is really going in a wrong direction. I mean, this is supporting agriculture, it's supported by the community, it's used by the community, there's never been a complaint, it just seems like you know, something's wrong here. It seems that when we see real agriculture, real people working the earth and supporting working the earth to grow food you know, we jump on them because it's not you know, it's not necessarily squeaky clean, they don't have racks and racks of consultants. You know, it's like we like to – we look at agriculture – you know we support some kind of industrial process that ships things somewhere else but you know, why don't we for once you know, support the real agriculture that's taking place throughout our community and not try to give them death by a thousand cuts. There's a motion on the floor, you know, lets vote for it.

Mr. Hedani: Commissioner U'u.

Mr. U'u: I understand where both commissioners are coming from. I think it's part of the process that certain agencies overlook or foresee potential problems in the future making that point, past history it shows that it's been for awhile and I like the nature of this type of business so at times I might overlook things of those nature where in a normal procedure before us we would have all agency comments, but at times would delay and not only delay but make it so expensive that they're not willing to operate a business. And looking at the loophole they had to go through since 1983 I would never own a business. I give you credit. So a motion's on the floor, I'm ready to vote. Thank you.

Mr. Hedani: Commissioner Hiranaga.

Mr. Hiranaga: I guess I'm confused. We're talking about agriculture and supporting agriculture, if this is a permitted use in an agricultural district why is she applying for a special use permit? I mean, there's statements by some commissioners that we're trying to do a death blow to agriculture? But if it's a permitted use in an agricultural district why is a SUP required. And if a SUP is required. Then it needs to be processed appropriately because it is a unique application in an agricultural district.

Mr. Hedani: Any further discussion? Ready for the question? All those in favor of the motion to approve the recommendation as provided signify by raising your hand. Five. Opposed same sign. Two opposed.

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

VOTED: To Approve the 10-Year Time Extension of the State Land Use Commission Special Use Permit.
(Assenting - J. Starr, B. U'u, W. Mardfin, D. Domingo, L. Sablas)
(Dissenting - K. Hiranaga, W. Shibuya)

Mr. Hedani: Motion is carried. Thank you. The vote was five to two. Why don't we take a 10-minute recess before we go onto the next agenda item?

A recess was called at 10:50 a.m., and the meeting was reconvened at 11:00 a.m.

Mr. Hedani: ... is back in session. Director.

Mr. Hunt: Your next item involves a Communication item C-2, concerning David Dantes and Beverly Livingston requesting an amendment to Condition No. 1 of a State Land Use Commission Special Use Permit to allow for a five-year time extension for the continued operation of the Maui Tradewinds Bed and Breakfast located in the state agricultural district at 4320 Une Place, TMK 2-8-002: 158 in Haiku. The planner assigned to this project is Joe Prutch.

2. DAVID DANTES and BEVERLY LIVINGSTON requesting an amendment to Condition No. 1 of a State Land Use Commission Special Use Permit to allow for a five-year time extension for the continued operation of the Maui Tradewinds Bed and Breakfast located in the State Agricultural District, 4320 Une Place, TMK: 2-8-002: 158, Haiku, Island of Maui. (SUP2 2002/0002) (J. Prutch)

Mr. Joe Prutch: Good morning again Chair and Commissioners. This is a special use permit that the applicant currently has for the operation of the Maui Tradewinds. They also have a conditional permit in order to operate as ...(inaudible)... vacation rental. Both these permits are set to expire on December 14th of 2009. We're here today to request extension of the special use permit. The applicant asked for five years. We're going to request eight years and I'll get to that when we move on.

The property is approximately two acres in size. It's got two farm dwellings on it. The main farm dwelling has three bedrooms of which one is used for a bed and breakfast or guest use. The cottage is a two-bedroom cottage which is used exclusively for guest use. The applicants were recently issued a farm plan back in August of this year.

The reason we're not here to request a recommendation of approval for the conditional permit is because the applicant has just recently requested conversion of their conditional permit to a bed and breakfast permit which we were able to approve just a few months back, September 8th I believe it was. Because ag as you know of course, bed and breakfasts are now permitted in the ag district with a special use permit. So they have their bed and breakfast permit. Their bed and breakfast permit is valid until September 30, 2012. What we plan to do or the applicant plans to do is just let the conditional permit expire in December and they'll have a bed and breakfast valid

until 2012. If you give approval today they'll have a special use permit that could either be valid to 2012 or we're requesting 2017.

The reason for that is we can give them three years for the B&B initially and then if there has been no issues and no complaints which there have not been so far with this property at all. We don't have any complaints, we don't have any request for service on this property or on this operation then the applicant could apply for a renewal of his B&B and request a five-year time extension and if all is the same as it has been and there are no more complaints we could issue another five years for the B&B permit. So what we're planning to do is have this coincide with our anticipation of – we know he's got three years for the B&B till 2012 we're anticipating probably another five years after that. So there's an eight-year permit for the bed and breakfast. Our plan is to alleviate the additional work and to help streamline is to ask you to approve an eight-year extension of the special use permit so that the applicant only has to come back eight years from now for an SUP approval and it coincide with the B&B approval at that time as well. But of course the commission may choose an expiration date if you want to.

If I can, can I go into the recommendation or do you want to wait for that?

Mr. Hedani: Questions for staff? Commissioner Starr.

Mr. Starr: Does Dr. Dantes live on the property?

Mr. Prutch: Yes.

Mr. Starr: And does he intend to live there for the eight years?

Mr. Prutch: Yes.

Mr. Hedani: Any further questions? Commissioner Shibuya.

Mr. Shibuya: I just wanted to find out in terms of the number of bed and breakfast applications as well as those that do have approved, what is the ratio now in terms of that we already obligated and what's remaining? Because if we extended the approval for eight years it could impact the number of opportunities for other people.

Mr. Prutch: Well, I don't have the numbers in the Paia-Haiku district off the top of my head. I do know that there's no other bed and breakfast application within the 500-foot of this property. There was I believe I did an analysis that there's one pending B&B application within a one-mile radius of this property. From this specific example there's no B&B within 500 feet and there's only one pending B&B within a mile in this case. However, his B&B permit is already approved so that takes one more off the list of caps of bed and breakfasts. Whether we give him three, years or eight years or twenty years, he's already on the list of B&Bs so that takes one off the list of the possible caps. Does that answer your question or?

Mr. Shibuya: Kinda I just did not know how much closer we were to fulfilling the total requirements.

Mr. Prutch: Again, I'm trying to remember from the past planning commission, I think we had, I want to say there was 16 to 18 bed and breakfasts in Paia-Haiku. I'm just trying to remember from last meeting.

Mr. Hedani: Director Hunt.

Mr. Hunt: I don't recall the number but it's well under the cap. We're not in any sense approaching the cap at this point. In terms of preventing somebody else, what we're anticipating is if the B&Bs are operating and there's no complaints and no issues those people would be allowed to continue. They would have the priority over somebody new starting up an operation and in this instance we had no concerns or complaints. What we're getting at with the SUP is the SUP really is focused on agricultural uses and if you make a - if this body makes a determination that the agricultural zone is being complied with it seems to us that that's kind of a long term issue and it shouldn't have to be reviewed as often as the B&B. The B&B will be coming up repeatedly on a shorter term and if there's concerns that's the opportunity to address the concerns from the neighbors or the operation of a B&B. But I think it would behoove us all, today's an unusual meeting agenda, but most of your meeting agendas are full. The staff has more than enough work to do and I imagine the Dantes and the Livingston have other things to do with their life than come in to the commission every five years or every three years. So that's the intent is we're just trying to extend the SUPs. The B&Bs would still be processed in the ..(inaudible)...

Mr. Hedani: Any further discussion, questions for the staff? Okay, are there any members of the public that would like to offer testimony on this item? The applicant have any comments that you want to offer? Staff recommendation.

Mr. Prutch: Okay, staff's recommendation, our conclusion is that the previous special use permit that was approved on August 27, 2002 by the Maui Planning Commission is still applicable with the inclusion of the department's memo report dated November 24, 2009. Appears that all conditions have been satisfied adequately. Further the department has received no complaints or opposition of this special use permit.

Staff recommendation is to amend Condition No. 1 of the August 27, 2002 findings of fact, conclusions of law, decision and order as amended as follows, simply to change the date to strike out, "from one year from the date of approval," and to change that to, "until September 30, 2017," essentially giving them eight years to operate with a special use permit.

Mr. Hedani: Commissioner Starr.

Mr. Starr: Move to approve as recommended.

Mr. Hedani: Is there a second?

Mr. Shibuya: Second.

Mr. Hedani: Moved by Commissioner Starr, seconded by Commissioner Shibuya. Discussion?
Commissioner Starr.

Mr. Starr: Yeah, why didn't you go out to all kind of different agencies for review?

Mr. Hedani: It sounds like a familiar question.

Mr. Starr: It's unusual. It would be unusual to do so, isn't it, wouldn't it?

Mr. Prutch: We usually if there's issues or if there's conditions that are related to a certain agency we'll send out to those agencies. Normally we'll send out the normal ones would be Public Works, Water maybe Fire. There's not too many agencies we will send to, but it's something we could do I guess is to send these applications -

Mr. Starr: No, I don't want you to. I just was making a point that it would be unusual for you to do so unless there were a problem.

Mr. Prutch: Yes, yes, unless there's a problem.

Mr. Hedani: Commissioner Hiranaga.

Mr. Hiranaga: Did you confirm that there is not a fish processing plant on the site? Commercial fish processing plant.

Mr. Prutch: I don't know the fish processing.

Mr. Hiranaga: Commercial fish processing plant. How about a retail hardware store? No?

Mr. Prutch: No hardware store that I know of.

Mr. Hiranaga: Okay, all right thank you.

Mr. Hedani: Commissioner Shibuya.

Mr. Shibuya: I'm just responding to my colleague here Commissioner Starr. The comment is that the review is not really necessary in a sense the last review was done in 2002 whereas the other case it was done 10 and 11 years ago. So there's a big difference there and since then there were some regulations and changes.

Mr. Hedani: Commissioner Mardfin.

Mr. Mardfin: I guess if the department can enlighten me. I thought we were generally approving B&Bs for three years and yet the department's approved this for five years, did I get it wrong?

Mr. Prutch: We approved this for three years just a few months back. Okay, so he's got three years to operate a bed and breakfast through 2012. At that time when he comes in for renewal assuming everything stays hunky-dory as it is and no more complaints, no issues come up at that point he would come in for renewal of the bed and breakfast and then the code allows us to give him up to five years. So at that time we would most likely give him five years to operate his B&B

and then from that point on it's five-year increments.

Mr. Mardfin: And the three years is because we do that for places that have not had complaints and seem all ...(inaudible)...

Mr. Prutch: When we initially approve a bed and breakfast we can approve up to three years. So if everything's looking good, we don't have complaints, we'll issue them three years is maximum.

Mr. Mardfin: And that's what you've done.

Mr. Prutch: And that's what we did.

Mr. Mardfin: Okay, thank you very much.

Mr. Prutch: You're welcome.

Mr. Hedani: Joe, what's the agriculture use on this property?

Mr. Prutch: You want to come up and explain the ag use? I'll let the applicant explain what she does with the ag use.

Mr. Hedani: If you could just state your name for the record.

Ms. Beverly Livingston: Beverly Livingston. The lot is very steep and so there are broad swaths of land they're in conservation. I talked with you people about that. But where it is farmable I'm growing things that I give to Maui Food Bank and feed my sheep and things like that rather than selling it. I think it's very important that food be produced but I don't think marketing it is a wise thing because there's so many other people trying to earn their living doing that. So I'm trying to make sure the community especially the ones that had need get the food, but I'm not trying to go out and compete with somebody else for the market.

Mr. Hedani: What kind of products do you produce Bev?

Ms. Livingston: I've got apple bananas, I've got lilikoi, I've got vegetables like Japanese eggplant, peppers, things like that. I'm starting some papayas. I've got some taro planted. So it's not all one crop. I don't believe in monoculture. I have varied things that I do.

Mr. Hedani: Thank you. Any further questions for staff? Any further discussion? Motion on the floor is for approval of the staff recommendation. All those in favor signify by -

Mr. Mardfin: Public testimony.

Mr. Hedani: I'm sorry. I'm sorry, are there any members of the public that would like to offer testimony on this item.

More than one commission member speaking at once - not able to decipher.

Mr. Hedani: Yeah, I think we did. Just testing my memory. All those in favor of the motion on the floor to approve the staff recommendation signify by saying aye. Opposed nay.

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

VOTED: To Approve the Amendment to Condition No. 1 to Allow for a Five-Year Time Extension of the State Land Use Commission Special Use Permit. (Assenting - J. Starr, W. Shibuya, K. Hiranaga, B. U'u, W. Mardfin, D. Domingo, L. Sablas, W. Hedani)

Mr. Hedani: Carried. Thank you. Director.

Mr. Hunt: Your next item involves another Communication item No. C-3. The Director Planning Director is requesting your comments on his intention at this point, but that's why we want to talk to you first, intention to rescind the January 8, 2008 policy of non-support for community plan amendment during the General Plan update.

3. Planning Director requesting action on his intention to rescind the January 2008 policy of non-support for community plan amendments during the General Plan Update.

Mr. Hunt: There should be a copy of that January 10, 2008 memo in your packet. The department promulgated that policy in 2008. Essentially we said we would not support a project requesting a community plan amendment with some exceptions as noted in that policy during the update of the General Plan and this was intended to forestall a last minute rush of people coming forward, a rash of community plan amendments to beat the Maui Island Plan.

The draft Maui Island Plan and its designated growth areas we believe has received substantial input and review by the citizens, the General Plan Advisory Committee and this commission. It has been transmitted to the Council for their review and adoption and because it's up there at Council now the Council would have the opportunity to review any project that is coming subsequent to that in terms of entitlements such as a community plan amendment.

So for the sake the benefits of economic development and due to the severity of the current recession, the department believes it's in the public interest to facilitate development projects if they can be supported. And so based on that logic the department believe the purpose of this January 2008 memo has been fulfilled and it should be rescinded.

We wanted to talk to you folks because it would affect you and also to get your input and also we wanted to use this as a public forum to announce any decision so that we're not just talking to anyone individually. It should be noted that if we rescind, if the department rescinds that policy memo we're not replacing it with any kind of memo stating we will support or will not support, it's simply that any community plan amendment now coming forward would be reviewed on a case by case basis as opposed to right now, the policy is very restrictive and says we automatically do not support it. We believe this would allow for flexibility by rescinding the policy and the department

may in some instances be able to support projects and move them along which we think again would be a benefit given our current recession. Well, technically the recession's over but given the current downturn shall we say.

So the department believes again, let me make one note of caution, clearly one of the major factors in any community plan amendment application coming to the department in terms of our recommendation will be whether it is within a recommended growth area or not. We will clearly take that into consideration but we just don't want to have a blanket policy at this point any longer giving all the facts that I just outlined. But again, the department's position would be if we rescind it from now on, community plan amendments and other projects would just be on a case by case basis.

Mr. Hedani: So Jeff, what you're looking for is basically comments from the Commission?

Mr. Hunt: Correct.

Mr. Hedani: Any comments from the Commissioner? Commissioner Mardfin.

Mr. Mardfin: I'd like to say a couple of things. First, I really like the policy. I think it's a very good one. A little hesitant to actually have it rescinded. I can see reworking it perhaps. I mean, I think it -- I think anything that is recommended should be consistent with what was sent forward to the Council until - see I'd liked to have it stay in effect till the Council actually acts. But I understand your position about the downturn but I think that any - the department support or nonsupport should be contingent upon whether it is consistent with the Maui Island Plan as proposed to Council. Does that make sense?

Mr. Hedani: Commissioner Starr.

Mr. Starr: Yeah, I think it's really wrong to rescind it if it's ...(inaudible)... I think it's you know, half way done and it's going to create a lot of confusion and kind of a bifurcation of process because the Maui Island Plan has not been approved, it is still nothing more than a recommendation at this point and so it has no, you know, it has not legal bearing. I believe that there are potential legal problems if you base a - an application will be processed or not based on a potential new ordinance that is not an ordinance but is just at this point a recommendation. Also, it's creating two paths. One path being the community plan process which the island plan followed by the community plans are being updated. And then the allowing of process of community plan amendments to occur simultaneous with the update of the community and island plan means that the applicant is able to cherry pick which process is kind of easier to get through whereas that's not the idea. That the idea that is that years after the real process which is the community plan process occurs you know, changing conditions should allow a community plan amendment not while that process is going. So I you know, I understand, you know, that sentiment well lets build good or bad just because we need to build something but from a planning perspective I don't think that's good and I think that you know, we are on the right track. We've been doing the right thing now. We should be disciplined for a little while longer and it will help us to maintain momentum through the process whereas the other way I think there may be a tendency to just let, to just bog down the island and community plan process because it's easier to sneak through community plan amendments. So it may be counterproductive as well.

Mr. Hedani: Commissioner Hiranaga.

Mr. Hiranaga: The director was reading from a document. I'm sorry, was that a draft or do we have access to that?

Mr. Hunt: That was just my own notes.

Mr. Hiranaga: Oh.

Mr. Hedani: Any further discussion? Commissioner Shibuya.

Mr. Shibuya: I believe there's several developments that already been approved and they're entitled to be constructed but have not proceed, they have not started and I just wanted to know what volume are we talking at this point. If we were to use this more moratorium or continue with this moratorium what impact would we have on future development and our economy. Well, I just want the record straight that I believe we do have entitled and approved projects that have not been put into practice. Director Hunt, can you tell us approximately how many housing unit type projects that have not been developed so far?

Mr. Hunt: I can't tell you off the top of my head the number but I believe it is correct to say there's a number of projects that are on hold given the economy. The intent of rescinding the policy would be to say that projects can continue through their entitlement process which takes years and years several years usually with the idea being that once the economy, once the market is there and the economy is strong then everything would be in place for them to proceed with the project. So it's giving them a little bit of a head start rather than waiting, continuing to wait.

Mr. Hedani: Any further comments from the Commission? Commissioner Mardfin.

Mr. Mardfin: What I'd like to really support what commissioner Starr had said I had referred primarily to the Council and the General Plan but I also think that since this is community plan amendments we ought to wait for the community plans to be fully, new community plans to be fully developed so that we don't short circuit that process as Commissioner Starr pointed out.

The other thing is as the director has said these projects take a long time to do so this isn't a counter cyclical policy that you put in place now that jump start things to help the economy grow. By the time anything, any community plan amendment came through here now would get implemented would be, knock on wood, well after the economy is in the a healthy growth phase which is not when you want it because it would just tend to be more inflationary. So I really hope that you don't rescind the policy. I think it's a good policy.

Mr. Hedani: Any further discussion or comments? Commissioner Hiranaga.

Mr. Hiranaga: I'm just trying to understand the process. The Maui Island Plan does that include the community plans or is community plans another step?

Mr. Hunt: The Maui Island Plan sets direction for the community plans in theory it should be fully

adopted before we start getting too far into the community plans but it is definitely a separate step.

Mr. Hiranaga: So this policy which was established in January of '08 only addresses the Maui Island Plan, it doesn't address the community -- so if the Maui Island Plan was adopted then this policy would be moot.

Mr. Hunt: As it's worded, yes. It was never intended to apply to the community plans.

Mr. Hiranaga: It seems like we're only to second place on this Maui Island Plan, we haven't reached home plate yet until the community plans are --

Mr. Hedani: Commissioner U'u.

Mr. U'u: What would have been the due date for having the Maui Island Plan, General Plan and the community plan done in an ideal world, when should have that been completed?

Mr. Hunt: The Maui Island Plan has a deadline to be adopted by October 16, 2010. The community plans have not even started yet. By the time we got through all six of them it will be years and years and down the road.

Mr. U'u: When will it take place, the plan is from what to what year? It starts on what plan?

Mr. Hunt: The Maui Island Plan would become effective virtually immediately and through the year 2030.

Mr. U'u: So it's actually a 20-year plan from 2010 to 2030?

Mr. Hunt: Approximate, yes.

Mr. U'u: But we're not meeting that schedule, correct, the 2010? It's never going to be completed by 2010 the Maui Island Plan, General Plan and community plan, correct?

Mr. Hunt: Not the community plans. It's an optimistic schedule to argue that the or to believe the Maui Island Plan will be adopted by October 16, 2010, but there's some people who are optimistic and think we can do that.

Mr. U'u: In a perfect world again, when should all three plans have been adopted if we had to start over at what date, this should have take place prior to 2010 then or at 2010 at the beginning of your fiscal year of 2010? So we are delayed -- how long are we delayed and the reason I'm going at it is I understand Commissioner Mardfin's remarks because the economy doesn't affect it like me and other working people who can sit back and say, no we should wait awhile, but the bulk of the people, the bulk of the residents here rely on work, they're not retired and we're talking lifelong residents, 80% of the population and to sit back and say, no we should wait, might have been suffering for years, is unbelievable for me because that is the bulk of the community. We're not retired. We need the income and we need help and this is where you guys come in and it's a case by case and if we don't like it, shoe it down. At least give the guys a that a project going take place

eventually. You stop it now, you stop them all until it comes on track then we take it from there to now, but what about -- in fact, what about from 2008 when we stopped it? And granted some projects that got approved are on hold but you also got the consistency and conformity bill where even if they get the funding they can't build because we waiting for that issue. We also get projects that's stuck in permitting and that's an issue for working class people which makes up 80% again of Maui County. A lot of them are lifelong residents here on the County suffering but you guys don't see it. So I think that is a good start by the Planning Director I feel and we gotta get out of the idea of looking and I agree with Jonathan Starr but if the plan would have been done on time it would been okay with everybody, but it's not, but it's not the fault of the 80% of the working class who's being affected right now. And we shouldn't be penalizing them for something that they don't have control of and that's my remarks.

Mr. Hedani: Commissioner Shibuya.

Mr. Shibuya: Director Hunt, can you tell us when does the Council approve this changes to the Maui Island Plan? Is there a date? There's a 180 days review, right?

Mr. Hunt: By law there's a one-year period. It was delivered to them on October 16, 2009. Their first meeting is tentatively scheduled for December 14th.

Mr. Shibuya: Okay, so this is what I'm trying to drive at. Perhaps if we can't get a good vote we'd probably could have a compromise in terms of when we could allow this decision to occur perhaps in 2010? That might be another alternative.

Mr. Hedani: Any further comments from the Commission? Commissioner Hiranaga.

Mr. Hiranaga: I guess this could be a question for the director or Corporation Counsel but we have a plan in place currently, right, which was adopted by Council so that is in effect the law, the current law? And the process we're going through now with the Countywide Update and the Maui Island Plan Update and the community plan update are proposals to enact new laws which would replace the current laws but until those ordinances are adopted we do have laws in place regarding the General Plan. Yes, no, maybe?

Mr. Hedani: Jim, this is your 15 minutes of fame.

Mr. Giroux: I promised the Chair I wouldn't speak today. Yeah, we do have a community plan, a General Plan, it's all there and until a new one is adopted that's -- they're standing, you know, ordinances that we look at in order to process permits. I think it's important to look at this memo because it's not a moratorium. If you look at it closely, it says that the policy is to support not to -- it's not about processing, it's about supporting it once it hits the bodies, like planning commission and council. So it's just that they're saying that they're looking at the planning principles saying you know, since there's a limbo, that they can't fully support a project, but it's not that they won't process it. If somebody submits it then it has to go through the process just like you saw you know, Gregg Blue's. He had a recommendation of a denial. You know, that he had a right to ask this body for a compromise or for a, you know, an extension of the law, that's part of the law that he has a process, but the Planning Department looks at it under a planning eye and says, well we don't

support it and that's the same thing with any other project. I mean, you've seen 99.99999% of almost all the projects that come through here, but that 1% that doesn't get you know, support from the project it's a big shocker. So that's -- I think you have to look at this policy in that light not that it's a moratorium or anything like that. It's just they're using their planning eye. They're not using the legal eye. They're using a planning eye.

Mr. Hedani: Commissioner Hiranaga.

Mr. Hiranaga: I guess when you read Item 4 of the letter dated January 10, 2008, it says, "the department will not support any proposed development." It does not say ...(inaudible).. So I believe it is a process. They're not going to even look at any proposed -- so unless I'm not reading this correctly it says, "not support any proposed development."

Mr. Giroux: Yeah, and I think you have to look at support as are they going to recommend approval or denial? They don't approve projects. I mean, they recommend to you so they're not -- they're saying that the process is still here, so -- it's going to be up to you, but it's not you know, -- I mean, that's the way I read it. You can ask the department if that's the way they see it. But if they were to not -- if somebody filed a community plan amendment and they refused to move it to this body, I think they would find themselves under a lot of fire and I don't think they've done that, I hope.

Mr. Hedani: Commissioner Mardfin.

Mr. Mardfin: I'd just like to point out that the not support -- it didn't say not support any proposed development period. It says, "not support any proposed development that involves a community plan amendment."

Mr. Hiranaga: I understand that. I do have the same letter.

Mr. Mardfin: If there's no community plan amendment it can perfectly well go through. There's nothing stopping those.

Mr. Hiranaga: I understand.

Mr. Hedani: Any further discussion or comments? Commissioner Starr. Understand that we're just making -- just providing comments to the director. It's his decision. Commissioner Starr.

Mr. Starr: You know, you have the list of the extent of entitlements that have you know, already been given and are outstanding in the different community plan areas right now? I know we went through this on the Maui Island Plan, but do you happen to have that with you Director?

Mr. Hunt: I don't have it with me but it's extensive. I believe at one point there was -- I'm going off the top of my head but 15,000 units that are already entitled or something to that effect. That was one of the comforts that we relied on in promulgating the policy back in January 2008 is that there were a number of projects already entitled.

Mr. Starr: Yeah, and it's my belief that there is you know, if anyone who wants to actually build

something there is so much out there and people are right now horse trading and would love to get rid of projects to anyone who's willing to build. It's not like you know there are all these people standing there who want to build and there's no entitled projects, entitled land or you know, even stuff without drawings and everything else. We all know that. It's -- you know, and it's something it's national. I saw it at the Urban Land Institute, there's no -- there is money out there at a low interest rate but it requires approximately 15% equity to get the money and people who do that sort of thing don't like actually putting up their own house or equity or money, they like doing it with other people's money. So that's why stuff isn't getting built because you know no one's willing to really put up their own land, their own house to get it built. I just really think that you know, this is a political type of -- you know, doing it would be a political statement but it would be bad, it would be wrong but it would be, you know, kind of making one of those kind of political statement that doesn't really proof out on the ground and we're on the right track, we should not change it.

Mr. Hedani: Any comments, any further comments from the Commissioner? Commissioner Hiranaga.

Mr. Hiranaga: Director I'm not sure if you know this, but the last community plan that was adopted I believe was the Wailuku-Kahului Community Plan and I believe it was adopted in 1989. It was supposed to be effective 1980. I'm not sure if that's correct. That's my recollection. I don't know if you --

Mr. Hedani: It's about right.

Mr. Hunt: Is there a question or?

Mr. Hiranaga: Is that correct?

Mr. Hunt: I don't know off the top of my head.

Mr. Hedani: Any further comments? Commissioner Sablas or Domingo? Commissioner Hiranaga.

Mr. Hiranaga: Before we go to public comment. I feel that every community plan amendment should be reviewed by the department based upon its merits and not have some type of blanket policy saying we will not support any proposed development that involves a community plan amendment at this time. And also I disagree also with No. 3 it would be counter to public policy for a development to be approved now in an area where the updated plan may not provide for that type of development because we don't know what the updated plan will be until it's adopted by council and for those reasons I believe that this -- that I agree with the Director's intent to rescind this policy which I've never agreed to. Every application should be reviewed by the its merit. That doesn't mean it's going to be approved.

Mr. Hedani: Additional comments from the Commission? Personally my comments is that I concur with the director's position. The memo I think was appropriate at the time it was put out. It's served its purpose in terms of preventing projects from trying to get in under the wire before the Maui Island Plan was submitted. I think that's been done, the plan's been finalized, it's in the Council's hands. Who knows if they're going to take one year or three years to approve it like the General

Plan Advisory Committee took three years to approve their portion of the work which should have been done in six months. And I think that we have enough arterial sclerosis in the county process now that any project that's going to come forward should be offered at least a fair hearing before appropriate bodies. So I concur with the recommendation to rescind the policy. That's my personal opinion. Commissioner Starr.

Mr. Starr: Just one other point is that. You know we've been going through this act real in depth work with the Island Plan in creating a consensus, you know, ...(inaudible)... discipline of where and what type of development should take place. By opening the door now to community plan amendment proceedings, the Island Plan what will do is allow people to sneak through stuff that is in conflict with the work of the GPAC, with the work of this body and the ongoing work of the Council. It really will kind of kneecap this whole process and I think it will be good for people who want to make a quick buck on entitling lands that are outside the growth boundaries but it will be a really, really bad thing for building sustainable communities.

Mr. Hedani: Commissioner Mardfin.

Mr. Mardfin: I have a question, depending on the answer maybe a comment. My question is I don't know the council operation well enough, is -- There's a committee I presume that's looking at the Maui Island Plan. If we passed any -- recommended for or against, if we recommended for a project that needed a community plan amendment would that go to the same council committee or would it go to a different one?

Mr. Hunt: I would in all likelihood go to a different committee but the members are interbred if you will.

Mr. Mardfin: So it wouldn't necessarily slow down the adoption of the Maui Island Plan?

Mr. Hunt: I don't believe so.

Mr. Mardfin: Okay.

Mr. Hedani: Are there any further comments from the commission? If not, we'd like to give an opportunity for the public to participate on a discussion on this agenda item. Are there any members of the public that would like to offer testimony please step to the microphone and state your name for the record.

The following testimony was received at the beginning of the meeting:

Mr. Dick Mayer: I'm going to hand something out. Didn't recognize that you'd be so efficient in getting out to me. I'm speaking with regard to an item that's on your agenda from the director, communication that he's going to be giving to you later this afternoon I suspect but I won't be able to be here at that time.

It regards the item on the agenda to rescind a present policy that the department now has and I'm not sure which way the discussion is going to go on it because we don't have a draft of what is

going to be proposed at this time for the public to see, but I would like to call to your attention the document that I handed out here which is something the General Plan Advisory Committee drafted and approved 14 to 7 two years ago. On the day, the same week the Planning Director promulgated his policy which was that no - the department would not support community plan amendments during the whole General Plan process and that's something that the GPAC had been pushing for and had voted on on more than one occasion and the director went along with that. We think it was an excellent policy for the director to enunciate.

We did provide some exceptions that we thought should go through and I'd like to read to you the bottom part of that first page there which was our recommendation. "The Maui GPAC recommends that until the work of the Maui GPAC is completed with the adoption of the Maui Island Plan," in other words, we wanted to wait until the plan was finally adopted by the Council, "new not entitled projects and subdivisions in all categories shall not be approved except for family housing subdivisions of three lots or less if and only if enforceable provisions against the subsequent sale of those units to non family members are included. B. Residential projects of a 100% affordable homes or rentals as defined by the residential workforce housing policy ordinance. C. Public facility projects, schools, roads, parks, etc., that would be needed by the general public."

We're urging that the planning commissioners talk with the director and if he's intending to rescind the policy which he enunciated which I understand a copy of which was sent out to you, I would urge you to not go along with that. That you urge the director to maintain his present policy which I think has worked very well until the Council has adopted the Maui Island Plan. At that time, comprehensive planning will be much more effectively done. Right now there are three sets of urban growth boundaries, the GPAC, the planning commission's - your, your - and also the directors. If you were to go ahead and give approvals to -

Mr. Hedani: If you could wrap up your comments?

Mr. Mayer: 30 seconds she said?

Mr. Hedani: Three minutes and 30 seconds. You're 30 seconds over.

Mr. Mayer: Oh, I'm sorry.

Mr. Hedani: Wrap up your comments.

Mr. Mayer: There are three sets of urban growth boundaries out there and it would be a bit confusing to the Council to be ...(inaudible)... to recommend some of these projects before the plans are adopted. So please keep the policy in effect.

Mr. Hedani: Thank you very much. Any questions from the Commission? Commissioner Starr.

Mr. Starr: Yeah, when this promulgated was the - do you remember if the rule was kind of followed the outlines that came from the GPAC vote?

Mr. Mayer: The director put his own guidelines out and it paralleled very closely with the GPAC had

recommended. It was in his own words and he had an exception on there also for public facilities. He didn't have the A&B, he really simply said for projects that would really be in the public benefit and I think the GPAC felt that was very - and they never questioned it, never challenged it and thought that was a very good way of doing it and we're happy with what the director had done.

Mr. Hedani: Any additional questions from the commission? Dick, this resolution that you circulated to the commission is that something that was voted on by the GPAC?

Mr. Mayer: It was voted 14 to 7. It was transmitted to the Mayor, to the County Council, to your planning commission, ...(inaudible)... bodies because we felt as a body that as the planning process goes through there shouldn't be all these challenges to what we were all recommending that might - including what you've done for example, you've made recommendations so -

Mr. Hedani: Thank you very much.

This concludes the testimony received at the beginning of the meeting.

Mr. Peter Martin: Yes, thank you. I was raising my hand back there because I wasn't sure you were going to give the public -- I thought you had forgotten us, so I apologize for that. My name is Peter Martin, good morning.

Just a quick comment about this is, this is regarding my Olowalu land ...(inaudible- not speaking into the microphone)... award that I'm trying, Debbie and I would like to build a house on. I'd like to pass out, I went by the office, my office and brought a bunch of material and just grabbed it quick because that was my neighbor on the neighboring parcel he'd like to build on told me about the meeting this morning and I think it's appropriate to pass these out. I just grabbed a brochure, Bob Horcajo and I created that or at least he created it 10 years ago or so approximately and this is the map that's ...(inaudible)... a drawing of my -- which parcel is mine I think I gave all the copies, 46A Doug is next to me. And this is a letter JoAnne Johnson wrote a long time ago. I think you probably all saw it about all the terrible things I've done. I wanted to share it, you seen that too, but how does this relate to what you're talking about? Well one thing my property is open space, it doesn't match the community plan. I guess it was a Land Commission award and a house lot with a 100 and -- before the Great Mahele so many years ago and people lived on that lot and same with the lot Doug has. I hired Munekiyo in September 07 to help me get through this process to build on this particular lot. It's state land use conservation which I assume kind of trumped everything.

So September 7 about three years ago, I hired Munekiyo. They prepared this \$50,000 EA where you study everything and you send it to the Planning Department and they didn't respond at all and then we go and get a conservation district use permit through the Board of Land and Natural Resources. We got that, we got that on January -- we applied on January 3rd, we got it August 11, 2008 and then I immediately applied for an SMA exemption.

Mr. Hedani: Peter, are your comments going to somehow tie back to the agenda item?

Mr. Martin: It will in a round about way.

Mr. Hedani: You have three minutes you know.

Mr. Martin: I'll finish up. So, instead of 30 days later when the Planning Department is supposed to give an answer by law I get my answer nine months later denied telling me they can't process it. Okay, because of inconsistency. So now we're going to appeal that position and I still haven't gotten – another year has passed and the point is Doug's 70, I'm 62, I mean, by the time we get through this stuff, we might get our permit but we'll be too dead to enjoy it.

Mr. Hedani: Do you support the rescinding of the ...(inaudible)... or not?

Mr. Martin: I do so we can ask for their support in the community plan amendment as a alternate approach.

Mr. Hedani: Thank you.

Mr. Martin: You're welcome.

Mr. Hedani: Are there other members of the public that would like to offer testimony please step to the microphone and state your name for the record. You have three minutes.

Mr. Doug Posely: Thank you Commissioner Chairman and Commissioners. My name is Doug Posely and obviously I have somebody that's trying to build next door to me in Olowalu and the only thing that I would say in response mainly to Jonathan Starr is that there are small landowners or people that own just like one lot that want to build a house on it and they're put in the same category as people trying to get subdivisions and build big projects. So no matter what happens in regards to the decision I think that they should be allowed due process and as it stands now you know, I'm in there trying to get a community plan amendment for five or six years or an SMA exemption and I can't get either because it's stopped in the Planning Department and they won't process. So I would just say that they should be – the people that are trying to get an SMA or a community plan amendment on one lot and trying to get a permit for that should be always considered regardless to what's happening. You know, whether they get turned down or not it doesn't really matter because they should be allowed to process or be able to have the community plan amendment processed. That's all.

Mr. Hedani: Thank you. Question from Commissioner Starr.

Mr. Starr: Yeah, what are you trying to get changed? Are you trying to get ag land changed into something else?

Mr. Posely: Well, it's a lot that is community planned park, zoned apartment, state land use ag and it's in the middle of a cane field and not on the water and it's a half an acre and it's in Olowalu. So it's very strange, you know, and it's got nothing around it.

Mr. Starr: So it's park and ag.

Mr. Posely: Basically you would say park to either rural or ag, but because it's half acre it can't go

ag, it's going to have to be rural and that's what I'm trying to get done.

Mr. Hedani: Question from Commissioner Mardfin.

Mr. Mardfin: I'm looking at this map that Peter Martin passed out, are you Lot 45 or are you Lot 47?

Mr. Posely: 47.

Mr. Mardfin: Thank you.

Mr. Posely: It's not on the water.

Mr. Hedani: Commissioner Starr.

Mr. Starr: Did you buy it with that community plan and zoning?

Mr. Posely: Did I buy it in the present state?

Mr. Starr: Yeah.

Mr. Posely: Yes, I did.

Mr. Starr: So you're just trying to make a buck by entitling it.

Mr. Posely: No I've lived in Olowalu for 10 years and I had the opportunity to buy it and Munekiyo and Hiraga who I hired did not feel there would be any problem getting an SMA exemption or community plan amendment and that was five years ago, six years ago.

Mr. Starr: You bought it that way, buyer beware.

Mr. Posely: Yeah, really. Thank you very much.

Mr. Hedani: Thank you very much. Are there any other members of the public that would like to offer testimony, please step to the microphone and identify yourself for the record.

Mr. Clyde Murashige: Mr. Chairman, Members of the Commission, Clyde Murashige representing A&B Properties. We would like to support the Planning Director's recommendation to rescind his decision. As we understand it basically this will – the rescinded position will give the director flexibility in looking at community plan amendments when they're filed. As he indicated the processing still goes on right now but he can take a look at the projects on a case by case basis on a community plan amendment including looking at the proposed Maui Island Plan in terms of making his recommendation to the commission.

We have a couple projects that are actually within the proposed urban growth boundaries of the Maui Island Plan and looking at a time frame of waiting without processing a community plan amendment projects that really are focused on providing housing to the local residents you know

we're projecting that it might take us 10 years to get through the process because it's step by step process. As we indicated, the Maui Island Plan would take at best a year to approve and then if the community plans have to be changed there's no time frame for that approval. After that you know, you're talking about zoning and then building permits and so forth. So it is a lengthy process. So we do support the director's recommendation. Thank you.

Mr. Hedani: Questions from the Commission? How many units are you talking about Clyde?

Mr. Murashige: I believe our Kihei residential project we're looking in a range of 500 to 600 units and our Waiale Project District we're still looking at that but it is a couple thousand units over the whole project district Waiale, excuse me, Kahului.

Mr. Hedani: Thank you. Are there any other members of the public that would like to offer testimony on this item. Seeing none public testimony is closed. Commissioner Mardfin.

Mr. Mardfin: Yeah, we've just heard Mr. Murashige say that the director could look at projects and consider the proposed Maui Island Plan, we heard Commissioner Starr earlier say that it's not law so you can't look at and I guess my question would be of James as to what – whether or not he could consider the proposal in recommending or not recommending change?

Mr. Giroux: Like I said I promised not to talk at this meeting, no. You know, I think that's going to be part of the, you know, the director is going to have to review projects, you know for their merit and I think on top of that notify the bodies that are doing the decision making of what the current proposal for these documents are. So you know, it really is we're in a flux where we have these documents that aren't currently ordinances and everybody's saying well they're so old why are we using these and then we have a document that's so new that we're not exactly sure what it's going to be because it's subject to change. That puts Planning in a, you know, difficult position. That's why they get paid so much. And so, yeah, I think that any decision that you know, if you're going to hang it on the law, you're going to have to look at what's ordinance presently.

Mr. Hedani: Commissioner U'u.

Mr. U'u: You know it's a process and I think people are entitled to the process. I don't think you're opening a gateway for people to make money, it's not about money. An example was today we had person come here looking to subdivide and on our decision which was based on the Planning Director's decision we went on that decision. So he went through the process and you can vote aye or nay and today was aye for some and nay for some. So it's just a case by case process. They're not opening no flood gates. But the process should be respected and not put on hold until the process catches up with the process while the community sits at home and waits for the process to finish which like Kent Hiranaga said, the community plan took years. I mean nobody has that – it's unfair to treat people like that.

Mr. Hedani: Okay, lets kind of wrap this up within the five minutes or so. Commissioner Hiranaga.

Mr. Hiranaga: I just wanted verification. A community plan amendment, planning commission makes a recommendation to Council and the Council adopts is that the process?

Mr. Hunt: The department would make a recommendation to the commission, you folks would consider our recommendation and make your own recommendation to Council and then Council has the ability to either adopt it or not.

Mr. Hiranaga: And it would be a public hearing through that process.

Mr. Hunt: The whole process.

Mr. Hiranaga: So pretty hard to sneak things through you think?

Mr. Hunt: We'd have to be asleep at the wheel for that to happen.

Mr. Hiranaga: Okay, just wanted to make sure I understood the process.

Mr. Hedani: Commissioner Mardfin.

Mr. Mardfin: Well, as I expressed earlier, and I still feel, I like this particular policy and would prefer not to see it rescinded. If the director in his wisdom decided to rescind it I would suggest substituting another policy as opposed to just leaving the slate clean and in that – and a replacement policy I'd recommend that he put words such that he would respect the plan, the Maui Island Plan as recommended to Council in their decision making as to recommend or not recommend policies. This would be maybe a halfway position where it wouldn't be left totally open and yet it would be looser policy than this. As I say, I prefer leaving it as is, but if you're not going to do that, I think a substitute policy where you would give yourself the ability to work on the proposal to affect the department's decision to recommend or not recommend projects.

Mr. Hedani: Any further comments? Commissioner Shibuya.

Mr. Shibuya: By and large the Maui Island Plan is consistent with the previous Maui Island Plan. The biggest problem that we have now is on the map designating growth or delineating growth for Olowalu and that was the only map that showed huge discrepancies and if there is some way to however bring this to the attention of the planning commission when that particular project comes before the Maui Island Plan is approved then that would be acceptable with me. I have a little problem in terms of short circuiting this process by rescinding the current rule or policy. I would like to have the policy rescinded probably maybe in a year from now, maybe that be appropriate time.

Mr. Hedani: Commissioner Starr.

Mr. Starr: I agree with Commissioner Shibuya that a year from now would be better. I tend to be a little bit skeptical about the political process maybe I've seen too much but you know, to do it at this time it sounds like all we're doing is creating a real good campaign fund-raising opportunity for Council members, you know, a way to line campaign coffers at the expense of selling community plan amendments. It's happened before, we'll likely be seeing it again. I, for one, would really hate to see such a political move occur at this time before a big election season.

Mr. Hedani: Okay, anyone that has not spoken before have any comments to offer? If not, I think

we've beaten this one to death. Director, do you want to go ahead with the next agenda item or before lunch or do you want to actually take a break for lunch now?

Mr. Hunt: If you would, could I respond and just let people know?

Mr. Hedani: Sure go ahead.

Mr. Hunt: First of all, I understand the concerns that are expressed, have been expressed about rescinding the policy. It's important that people realize the policy is not a moratorium. All the policy was is that we would not support, I have to process applications, the policy was is that it would come forward with a recommendation of not support from the department. The issue of SMA that was discussed at the podium, that's different issue, that's based on consistency and that's a whole different issue. Those people can apply for a community plan amendment. This policy was only about support.

The problems with the policy is that it's a blanket, with a few exceptions, it's blanket non-support. So it's a negative recommendation and given the amount of input that the Maui Island Plan has received we believe there may be instances where we can support a project. Hypothetically if it's within the department, GPAC and Planning Commission recommended growth boundary perhaps the department could support that. There's talk that well, we shouldn't be using that because it's a draft, I think we can use it as information, citizen input. Legislation is very broad and in the criteria we can say, by the way this information is a fact that the project is within all three of them.

So given that, we don't want to misconstrue that if we rescind this policy, when we rescind the policy that we're going to approve all the community plan amendments, that's not the point. The point is it allows the department to analyze them on a case by case basis and make a determination of whether we will support or will not support. If we make a recommendation, as the process is it comes to this body and then you folks have an ability to make your own recommendation and that goes to Council. They can listen to all recommendations. They can take the Maui Island Plan and look at it side by side and then it can make, they can make their decision. So I just want to let the public know that effective immediately the policy January 10, 2008 is rescinded.

Mr. Hedani: Okay, Commissioners, you guys want to take a break for lunch or do you guys want to press forward with the remaining items on the agenda? Why don't we go ahead and take a break for lunch. We'll reconvene at 1:00 p.m.

A recess was called at 12:00 p.m., and the meeting was reconvened at 1:00 p.m.

D. APPROVAL OF ACTION MINUTES OF THE NOVEMBER 10, 2009 MEETING and REGULAR MINUTES OF THE JULY 14, 2009 MEETING

Mr. Hedani: Approval of Action Minutes of November 10th meeting, and regular meeting minutes of July 14th. Any additions, corrections, deletions to the minutes? If not, then the minutes will stand approved as circulated. Commissioner Mardfin.

Mr. Mardfin: I just want to ask, I had in my packet that I got at home action minutes for 10,

November and then there was one on my desk here today and I'm wondering if there's a difference between them?

Mr. Hedani: Probably just an additional copy that they're providing.

Mr. Mardfin: It looks like a different font.

Mr. Hedani: There was one correction on the action minutes in regards to the vote on the Wailea project which hadn't been correctly recorded so they corrected that. It was approved by this body but it didn't reflect that in the action minutes. So that was corrected.

Mr. Hedani: Director's Report. Jeff.

Mr. Hunt: So we'll take that as approval of those minutes?

Mr. Hedani: Right.

E. 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 request:**

MR. MICH HIRANO, AICP of MUNEKIYO & HIRAGA requesting a 2-year time extension on the Special Management Area Use Permit condition to initiate construction of the Hana Ranch Store Redevelopment project at TMK: 1-4-003: 056, Hana, Island of Maui. (SM1 2004/0020) (D. Dias)

Mr. Hunt: Director's Report, Item 1, Director notifying the commission pursuant to Section 12-202-17(e) of your rules of his intent to issue time extensions on the following: Mr. Mich Hirano, AICP of Munekiyo and Hiraga requesting a two-year time extension on the SMA Use Permit condition to initiate construction of the Hana Ranch Store redevelopment project at TMK 1-4-003: 056 in Hana. The file number is SM1 2004/0020. Danny Dias is the planner assigned to this and he is here if you happen to have any questions. The intent is for the commission to acknowledge receipt of this request. The commission may decide whether to waive it's review or review the time extension request at a future meeting.

Mr. Hedani: Commissioners? Commissioner Mardfin.

Mr. Mardfin: I move we acknowledge receipt of the request and waive our review of the time extension.

Mr. Hedani: Move by Commissioner Mardfin. Is there a second?

Mr. Starr: Second.

Mr. Hedani: Seconded by Commissioner Starr. Discussion? All those in favor, signify by saying aye. Opposed nay.

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

VOTED: To Acknowledge Receipt of the Request and Waive Review of the Application.
(Assenting - W. Mardfin, J. Starr, K. Hiranaga, B. U'u, D. Domingo, W. Shibuya, L. Sablas, W. Hedani)

Mr. Hedani: Carried. Thank you.

Mr. Hunt: The next item in the Director's Report is Item 2a, update on disbursement of funds from the Community Benefits Fund established by the West Maui Preservation also known as WMPA for the Honua Kai SMA settlement agreement. Joe Prutch is here if you happen to have any questions on that.

2. Planning Commission Projects/Issues

a. Update on the disbursement of funds from the Community Benefits Fund established by the West Maui Preservation Association (WMPA) for the Honua Kai SMA Settlement Agreement

Mr. Hedani: Commissioners?

Mr. Hunt: Joe, maybe you should give them a little briefing?

Mr. Joe Prutch: Yeah, okay. The last commission meeting we had with the Honua Kai project on their annual report you guys asked to pursue why WMPA has not come in to give their annual reports. I looked on their website, I found an email address, I emailed them questions and asking them what we want, you guys want and if we could get either someone from WMPA to come back or Lance or whoever to provide something that we can give to you guys. That email I sent out got kicked back because that email address is no longer there. So that came back. So then I decided okay, they have an address I'll send a letter off to them. I sent that on November 17th, of course, I haven't received anything back yet, but the letter's out there assuming the address is correct. I did email Lance Colins as well on the same day and he did respond. I'll go ahead and read that response to you since I didn't make copies of this.

He essentially says, well, I'll just read it to you. He says, "he would like to request that the department send all correspondence by U.S. Mail," okay, I did that. "For my information, his office requested more information regarding the nature of the planning's commission request by a letter dated April 17, 2007. Neither my office nor WMPA received an official response to this letter." He says, "further I am under the impression that Charles Fox or Lahainaluna Foundation both intervenors and beneficiaries of intervention settlement agreements at North Beach have never been asked to provide accounting of funds or other annual reports on intervention benefits." And

so, "he's requesting some clarification regarding what the commission's interest and jurisdiction would be." My thinking is, I can try to get a little more information from you guys to answer that question and I'll go ahead and send a letter to Lance and hopefully I can get some kind of response that I can share with you in the future.

Mr. Hedani: Commissioners? Commissioner U'u.

Mr. U'u: Somebody from WMPA gave us a report and I think it was due to after the intervention was done by the commission that we ask them to give us a breakdown report. I don't know if you can check exactly what project it was but there was a specific project that they intervened on that was finalized by the commission at the – they were part of the intervention process that they come back and give us a breakdown analysis or itemized analysis in how the expenditures were going to be spent. I think Madison, what was her name?

Mr. Prutch: Sharyn Matin I believe it is.

Mr. U'u: Sharyn Matin showed up one day and stated that we spent some money for our attorney, some money some place else and we're not sure where some of the money was. So it wasn't exactly – they didn't fulfill their duty to giving us a report and we told her to go back and polish up the report. That must of been four years ago or three years ago. So maybe you can look in the records specifically what project or what intervention was that that they was supposed to come back and do a breakdown or itemized report on the expenditures from that money since it was for the public benefit in their eyes.

Mr. Prutch: I thought that was the Honua Kai one but I wasn't here when that happened and that's what I think you guys mentioned at the last meeting. I can try and double check.

Mr. U'u: I know it was on North Beach I'll tell you that much.

Mr. Hedani: They could have intervened on several, all of North Beach basically.

Mr. U'u: In fact I think they did intervene on North Beach.

Mr. Hedani: And I think their representation was that they were a nonprofit 501 whatever and we never had evidence that they were a bonafided 501(c)(3) or community benefit – you know nonprofit.

Mr. Prutch: I think at the last meeting Anthony Plitts said that they did finally get their nonprofit together that's what he had mentioned, but we haven't heard anything from WMPA on that.

Mr. Hedani: We just want to know if they took the \$100,000 and went to Brazil or whatever.

Mr. Prutch: Is it more, is it for any of the North Beach projects not just for the Honua Kai project. It's just overall, all this money was given to WMPA via all these different North Beach projects what's been done with, what are the plans with it?

Mr. U'u: Correct. And to add to that note, I think it was when Susan Moikeha was Chair which was my first year here. We as a commission decided we wanted to see the settlement agreement of intervention and part of the process was getting to see what they settled on and I think with that was the breakout. Prior to that in the intervention we had no idea what was going on after the intervention ended but from that day forward we were handed exactly what was the outcome of the intervention cases. I know for a fact that last BVA they filed an intervention again WMPA. So you know see them at the filing time but at the end, back end you not see them. So we're just hoping that they fulfill their duty knowing prior to intervention what's the outcome and I think we're missing that response from them. It's been four years.

Mr. Prutch: I'm pretty sure I can get a copy of the settlement agreement for Honua Kai because I can get that from Anthony Plitt. The other projects I have to do some digging to see where I can find those, but I can at least get the Honua Kai one to see a sample of one of the settlement agreements to see how they settled with WMPA on that one, on that specific project.

Mr. Hedani: They just gave us a detailed accounting of where the settlement funds were going which we received yeah. Everybody received that. Now what we never received was how they spent the \$100,000 which they received directly.

Mr. Prutch: Or more.

Mr. U'u: Well, total in the millions of all the interventions.

Mr. Hedani: Yeah, it's like \$5 million for the total.

Mr. U'u: To me, when you do it for a public benefit the public should be the people receiving the benefit and I'm not sure if that's the case and hopefully I'm wrong. I would love to be wrong.

Mr. Hedani: Any other questions, comments on Item E-2? Thank you.

3. Discussion of Future Maui Planning Commission Agendas

a. December 8, 2009 meeting agenda items

Mr. Hunt: Item E-3 involves discussion of future Maui Planning Commission Agendas there is a memo dated November 23rd to the Commission from Clayton Yoshida explaining public hearing items at this time. There's bed and breakfast in Haiku on Kokomo Road, bed and breakfast in Kula Glen in Kula and then there's five bills regarding our business districts.

The first one, 19.15, country town business district, 19.16 the B-1 neighborhood district, 19.18, the B-2 community business district, 19.20 the B-3 central business district and finally BR business resort commercial district. The department is continuing with the update of the Title 19 zoning district and at the same time we're looking for opportunities to not just reformat and streamline these bills, pardon me, districts but also to address issues and particular in the business district we are recommending that residential uses be allowed on a second floor above a business on the first floor and this is a smart growth/mixed use concept. It's kind of blending or blurring the distinctions

that has been in euclidian zoning for a long time, euclidian zoning being based on these uses are different and there's conflicts and so lets separate them and that's still holds true for a number of uses. You certainly wouldn't want a glue factory or something in the middle of a residential neighborhood, but with our economy going from what some people have argued it evolved from agricultural economy to an industrial economy now some people are describing it as a informational economy. The conflicts between business uses that are based on a information exchange are not nearly as dramatic as an industrial type of business. So in the planning industry there's this tendency to start blurring these distinctions when possible. We don't want to carried away.

The business district bills also are proposing to allow TVRs. These are certain districts that we think they're appropriate in and a TVR again wouldn't have to have a owner on site it would be a business. We're also proposing in some of the districts the reintroduction of hotels. They were eliminated, deleted from a permitted use many years ago, the concern being that the business districts would be turned into tourist districts. We're trying to make a distinction between a tourist hotel and business hotel and the idea being if somebody's coming over from Honolulu to attend a meeting before the planning commission they may just want to stay in a hotel near here and not be out on the beach and lay around by the pool and sip a mai tai. They just a need a room overnight. So that's the concept there that will in all likelihood raise some discussion in the community because right now hotels are not allowed in our business districts, but I think if we can make that distinction we'll be okay. So again, not to get into the debate of those bills, but just to give you some food for thought so you can mull it over between now and then.

Mr. Hedani: Any questions? Are you ever going to tackle the agricultural ordinances and rewrite those?

Mr. Hunt: That's coming up soon. That's a tall task but we are working on it, yes.

- 4. EA/EIS Report**
- 5. SMA Minor Permit Report**
- 6. SMA Exemptions Report**

Mr. Hedani: Any questions on the EA/EIS Report, or SMA Minor and the Exemptions Report? Commissioner Starr.

Mr. Starr: Yeah, I have a number of items here. Lets start on the last page, page 12 of 12, what is this temporary repair to seawall and Hololani Association. I don't know where that is.

Mr. Hunt: I don't know off the top of my head. We can have someone report back to you.

Mr. Starr: You know, as a general question who's handling the shoreline projects now? Is there a specific planner that's handling shoreline?

Mr. Hunt: Most of the time it would be Jim Buika now that Thorne Abbott is no longer with us, but I don't want to say absolutely every time.

Mr. Starr: There's another one, Lahaina Road seawall repair on the page previous.

Mr. Hunt: What's the number Mr. Starr?

Mr. Starr: SMX 2009/0393 middle of page 11 of 12. And then injection wells on page 10 of 12 and we're still waiting for an answer on that. I don't want to press you but, we're looking for updates if anything's happening with that.

Mr. Hunt: I can tell you on the injection wells we haven't come to any conclusions at this point we're still analyzing the proposal. Do you know the number on that one just so I can –

Mr. Starr: Well, it's in two places. It's on this – you know, I kind of wish the pages were definitely numbered through the whole document so it would be easier. But this is on the yellow page 2 of 2, SMX 2009/0362 and then it's on page 10 of 12 on the white sheets.

Mr. Hedani: 2009/0362.

Mr. Starr: Page 10 of 12, it's 2009/0362. I'm not sure why it's in two places.

Mr. Hunt: But it's the same number. I can answer that one again. We haven't reached a firm conclusion yet at this point. The other two I don't know I'll have to get back to you.

Mr. Starr: Did I mention Lahaina Road seawall repair?

Mr. Hunt: Yes.

Mr. Shibuya: Spreckelsville seawall.

Mr. Starr: Yeah, that's the Haines one I think.

Mr. Shibuya: Yes.

Mr. Hunt: The number?

Mr. Shibuya: 2007/0481.

Mr. Hunt: Okay.

Mr. Starr: I'm mentioning some of these even though they're old because the planner who was ...(inaudible)... is not, I think not with us any more and I want to be sure that nothing falls through the cracks and they don't get approved out of lack of response or something. There's one more Honoapiilani Highway shoreline improvements State DOT, I'm curious what that is, I know it's an old one that's 2009/0005, I guess that's a Jeff Dack one.

Mr. Hunt: Okay.

Mr. Starr: Then I had one last question which was something I called up the director and asked him about but I did want to mention it which is that is various subdivisions in Maui Lani have just installed gates across the pedestrian and bicycle walkways. There were gates across the vehicular areas and now they're just gated it so that people can walk or bike and I do know several who were walking and biking to work and to school and now they can't do it any more. So the only way in or out of the communities now is by automobile, you know, and if you want to pass through these gates you have to have a key, go through the car gate. This seems to be a really thing and you know, I mean, can anyone put up gates and just block pedestrian and bicycle access through their communities at will. I had asked the director to look into it and I don't want to rush him on that. I'm sure he will, but I did want to make everyone aware that this is going on.

Mr. Hedani: Any other questions on the EIS/SMA/SMA Minor? Commissioner Shibuya.

Mr. Shibuya: I just have a couple of them. One, is 2009/0079 because nourishment monitoring report – September 9, 2009. Sort of curious about that. And the other one is, next one is 2009/0081 which is photovoltaic foundation. I'm not too sure what that is.

Mr. Hedani: Actually if it helps the department in the future if the commissioners have questions on items you could probably email the department directly and they can be prepared by the time meeting rolls around for a response.

Mr. Hunt: We can try.

Mr. Shibuya: If that's the process then yeah, I would love to do that. Okay.

Mr. Hunt: Sometimes it takes time to research and get a good status report together.

Mr. Shibuya: All I'm looking for is maybe one or two sentences that describes the project.

Mr. Hedani: So that would be a email to you, Jeff?

Mr. Hunt: You can send it to me or the Planning Department has a email site on the website. It will get to me or Clayton.

Mr. Shibuya: I've been sending it, couple of them I sent directly to Carolyn and she sent to the planners.

Mr. Hunt: That would work. We'll take them in a number of different avenues.

Mr. Hedani: Any other questions, comments on the EA/EIS Report, SMA Minor, SMA Exemptions? If not, our next meeting is scheduled for December 8th and we are adjourned. Thank you very much.

F. NEXT REGULAR MEETING DATE: December 8, 2009.

G. ADJOURNMENT

The meeting was adjourned at 1:26 p.m.

Submitted by,

CAROLYN J. TAKAYAMA-CORDEN
Secretary to Boards and Commissions II

RECORD OF ATTENDANCE

Present

Wayne Hedani, Chairperson
Bruce U'u, Vice Chairperson
Donna Domingo
Kent Hiranaga
Ward Mardfin
Lori Sablas
Warren Shibuya
Jonathan Starr

Others

Jeff Hunt, Planning Department
James Giroux, Department of the Corporation Counsel
Michael Miyamoto, Department of Public Works