

**MAUI PLANNING COMMISSION  
REGULAR MINUTES  
JANUARY 26, 2010**

**Approved: 3/9/10**

**A. CALL TO ORDER**

The regular meeting of the Maui Planning Commission was called to order by Chairperson Wayne Hedani at approximately 9:05 a.m., Tuesday, January 26, 2010, 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 January 26<sup>th</sup> 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 allowed to testify again when the agenda item comes up before the commission unless new or additional information will be offered.

Before we begin with the people that have signed up for public testimony, the Planning Program Administrator has asked to make a few comments.

Mr. Clayton Yoshida: Good morning Mr. Chair, Members of the Commission, Clayton Yoshida, Administrator of the Current Planning Division. I'm here substituting for Planning Director Jeff Hunt. As you know there is a Council meeting, full Council meeting occurring this morning and one of the items before the Council is a first reading on the Countywide Policy Plan. I'm sure the commission can appreciate the amount of time that the GPAC and the planning commissions have put into the Countywide Policy Plan. So the Planning Director will be here after the Council takes up that agenda item. So he will be joining you sometime during the course of the meeting.

Secondly for point of information with respect to the Item E-3 on the SMA Exemption for the Department of Environmental Management's replacement of the injection wells no. 1 and no. 2 at the Kahului Wastewater Treatment Plant, I would inform the commission that yesterday the DIRE Coalition of Maui and Save Kahului Coalition filed a request for the director to reconsider his decision and/or appeal of the issuance of the exemption.

Looking toward your rules with respect to appeals and I distributed copies of excerpts from your SMA Rules, Section 12-202-31 states, that the commission, this is a contested case. Also, Section 12-202-32, disposition of the appeal, the commission is the decision maker on the appeal so in the context of public testimony I would caution the commission against making position statements because you are the judges on the appeal and so we don't want to prejudice or one of the parties states that you should be recused because you have already established a position before the contested case hearing has occurred. I believe the same set of facts applies to Item C-2 on the Hana Beachfront Associates appeal of the director's decision to require an SMA Major permit.

Also we would note that with respect to Item C-3, Friends of Mokuula requesting a four-year time extension, we have a report prepared but it hasn't been distributed to the commission so I guess the department would request if that could be placed on the next February 9<sup>th</sup> agenda so the commission would have adequate time to review the report and we could bring the matter before you. With that, that's our comments Mr. Chair.

Mr. Hedani: Commissioners, any objection to moving Item C-3 to February 9<sup>th</sup>? No objection. Go ahead and place that on the February 9<sup>th</sup>.

Mr. Yoshida: Thank you.

Mr. Hedani: Okay with that, we'd like to go ahead and open it up for public testimony. I have four people that have signed up. First person is Cheryl, K. Okuma.

The following individuals testified at the beginning of the meeting:

Ms. Cheryl Okuma - Item E-3, Dept. of Environmental Management, SM5 2009/0360  
Mr. David Taylor - Item E-3, Dept. of Environmental Management, SM5 2009/0360  
Mr. Howard Hanzawa - Item B-3, Proposed Amendments to Chapters 19.32, 19.36A, 19.40, 19.45  
Mr. Clyde Murashige - Item B-3, Proposed Amendments to Chapters 19.32, 19.36A, 19.40, 19.45  
Ms. Irene Bowie - Item E-3, Dept. of Environmental Management, SM5 2009/0360

Their testimony can be found under the item on which they 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. Clayton.

Mr. Yoshida: Thank you Mr. Chair. Our first public hearing item is a request from Mr. Rodrigo Bumanglag for a Special Management Area Use Permit in order to construct two other main single family dwellings on a 27,225 square foot lot in the R-2 Residential District at 357 South Kihei Road, TMK 3-9-041: 006, Kihei, Maui. The staff planner is Jim Buika.

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

- 1. MR. RODRIGO BUMANGLAG requesting a Special Management Area Use Permit in order to construct two other main single family dwellings on a 27,225 square foot lot in the R-2 Residential District at 357 South Kihei Road, TMK: 3-9-041:006, Kihei, Island of Maui. (SM1 2008/0026) (J. Buika)**

Mr. Jim Buika: Good morning Commissioners, Chairman Hedani, Corporation Counsel and Planning Director. My name is Jim Buika and I'm a planner in the Planning Department just give you briefly an outline of my presentation.

What I'll first do is present the purpose of the application and review the proposed project from the Planning Department point of view and from the land use perspective. I also have with me the owners as well as the owner's representative Mr. Wil Spence, who'll provide the commissioners with a short power point presentation overview of the project. My comments are about five minutes long and the consultant's presentation will be no more than 10 minutes long. Following the consultant's presentation we can answer any of your questions. Following that I'll provide my recommendation of approval of this SMA project. Is this acceptable to the Chair?

Before I start I had handed out an Exhibit 21 which is the preliminary drainage plan for the project.

And also this morning there are four letters of testimony, written letters of testimony in front of you that are in support of the project from neighbors as a result of a neighborhood meeting that they had in January.

The purpose of the project or the purpose of the application is to approve the applicant's request for the Special Management Area permit in order to construct to additional main single family dwellings and the pertinent utilities on a 27,225 square foot lot in the R-2 Residential District at 357 South Kihei Road. There is another SMA permit for a separate garage structure that has already been permitted that has not been constructed yet but it is behind the main house and there is no ohana planned for the property because the two new homes and the garage will maximize the useable space of the property.

The property is located mauka of South Kihei Road and is not located within the shoreline setback area and the two proposed houses are located mauka of the existing single family dwelling and clearly outside of the shoreline setback area.

The property presently has one single family dwelling located on the mauka side of South Kihei Road by a local family Mr. and Mrs. Rodrigo Bumanglag. The reason for the project is to provide two houses for their two sons on the same lot. As far as consistency, the project is fairly straightforward. It's consistent with the land use requirements and is also consistent with the special management area review criteria. The project is consistent with surrounding uses, single family residential and the property to the north, directly to the north also has multiple dwellings on it on an R-2 zoned lot.

And there is an SMA trigger, the reason we're here today is because of – there's a trigger in the SMA law even though the project conforms with the land use designations the development is – you can only have one exempted single family home per property so this is – because we're building the second and third it's considered a development and also because it is triggered by the valuation which is a half a million dollars for the two homes combined we are required by the SMA criteria to hold a public meeting and make it a SMA Major. So that's really the reasons we're here today.

As far as testimony, again, there was no written testimony prior to the ones that we gave you for today. And finally, I'll just conclude my comments with reviewing the mitigation activities related to the project and also agency comments, there were very few agency comments. I'll just list them very quickly. Again, there will be no work performed in the shoreline setback area.

The project is in the 100-year flood plain but it will be, it will comply with Maui County Code the Flood Hazard Ordinance 19.62 and the houses will be raised on a pad at least one foot above the base flood plain elevation.

Best management practices will be used during construction to protect the shoreline and marine environment and there will be no increase in runoff downstream caused by the project. I'll allow Wil Spence to show you the preliminary drainage plan on that. With the additional homes, the two homes, there will be an increase calculated of about .76 cubic feet per second. There will be four small landscaped drainage basins created on the property that will mitigate that additional runoff. So there will be no predevelopment, post development runoff as calculated.

No archaeological monitor will be required for the construction because the grading is minimal plus no cultural resources will be impacted. An archeological assessment report was completed and the property was accepted by – the report was accepted by State Historic Preservation Division.

As far as fees, there will be a Department of Water Supply meter fee, \$6,000. Wastewater will have an assessment fee of \$7,800. There will be a Department of Education fee levied to be determined by Act 245. There is no Parks and Rec fee at this level of development. There's minimal impact to public services and infrastructure and no significant public view plains will be altered. So those are – our review of the mitigation activities as far as the department. There was a public meeting held in January just recently with the neighbors and the applicant is willing to provide mitigation to a neighboring property that borders the property at the request of the neighbor and that's actually written up in some of the testimony from the neighbor. And again, the project complies with all the drainage requirements of the Maui County Code. That concludes my remarks and at this point, with the permission of the chair to have Wil Spence to do a short review of the project. Thank you.

Mr. William Spence: Good morning Commissioners, Chairman Hedani. My name is Wil Spence. I'm here with my clients, Rudy and Vangie Bumanglag and we also have Mark with Stacy Otomo's Office if the commissioners have any questions on drainage.

Staff pretty much explained the basis of the project. They want to build two more homes on the property. This is for two – they have three children, one is still a minor. They have two children they want to build homes for them. You know the housing is very expensive. When they purchased this property back in 1990 and then they subsequently built their own home, you know, they purchased a large lot with the idea that they could build more for their kids.

This is the location map. South Kihei Road is right here. This is North Kihei. Ohukai Road, Kenolio. You can see that the property is one of four fairly large lots right in a row, probably an old family subdivision. It's about 66 feet wide, 411 feet long, fairly deep. Right across the street and somebody is going to correct my pronunciation, it's Mai Poina 'Oe La'u Park. It's the Korean Memorial Park, Korean War Memorial Park.

This is off of Google Earth. This is my client's property right here. You can see the existing home on it and the depth of it. The property just to the north is developed four homes. These have been condominimized. The two adjacent properties just to the south are undeveloped except for the one home here. The very large lot here, that's now Kai Makani. It came before commission a number of years ago. It's fully built out now.

This is a little walk through the neighborhood, various types of homes. Most of them are pretty modest. You have a couple that are very large. This one's about 4,700 square feet. Some with ohanas, some without. And then of course, Kai Makani which is built out now, this is three properties down from my clients.

This is my client's home, this is Rudy and Vangie's house. It appears a lot larger than it is. Actually about 3,500 square feet. But they have the wrap around lanai that makes it look a lot bigger. This is the mostly undeveloped two properties next door. This is the property to the north with the four units on it. The condominimized property. One of the units was I believe one time was for sale.

This is their current residence. And then looking across the street, you can see the pavilion and the Memorial Park. This is the back yard and where the homes will be located. You can see the CMU wall that entirely goes around the property. The garage will be right about here. Second home, and then clear in the back will be the third home.

This is looking from the very back part of the property looking makai into the residence here. The back home, the middle one and then garage will be up close to the existing residence. This is the lot layout. It's kind of long. The existing home is down at South Kihei Road, garage, the middle home and then the one on the end. It will house four bedrooms, 2,500 square feet. He sized these – when he started this project back in 2005 he sized them with the idea that the kids are going to have their own families and you know they're going to be able to grow within those homes. So there's you know, full size residences rather than just ohanas.

We've already developed the landscaping plan. South Kihei Road here, you know, you kind of split them up so you can get the whole lot on one page and still be able to read it. Existing home, garage, these landscaped areas in here you'll see on the next slide that this is where the drainage basins are going to go and I should have switched this around. South Kihei Road here, there's going to be one basin up next to South Kihei Road, one between the garage and then between the two additional homes. As staff said, these will contain a 50-year, one-hour event.

We had community input. Early on we went to the Kihei Community Association. They basically – their letter should be a part of the report. They had no issues. They didn't to discuss it any further. We did talk to the neighbors or try to talk to the neighbors and adjacent to the property we sent out a letter in the middle of December 2009, and almost three weeks later held a small meeting at the Kihei Community Center. Only one owner attended and because of that another person responded, the neighbor immediately to the south he was really concerned that you know, there's going to be two more really large homes on the property. So I talked to him a little bit. I mailed him all the illustrations, the landscaping plan, lot layout, everything and just explained to him, you know, these homes are pretty far set back. One they're not as large as the existing residence but they're also set pretty far back. He's not even going to be able to see them. He won't know that they're there. I haven't heard anything since.

And then the last thing, when we had this meeting, the one person who attended, you know she was a little concerned there's going to be a two-story home right, you know, in her backyard and so we talked about a little bit and my client agreed to move the home another five feet further away from her property and she provided testimony to that effect that she was happy with that. And we're agreeable to make that a condition on the permit. Any questions Commissioners?

Mr. Hedani: Questions from the Commission? Commissioner Starr.

Mr. Starr: Where's the runoff from the driveways and parking areas going to go?

Mr. Mark Matsuda: Morning, Mark Matsuda, I'm the civil engineer. As you can see we are proposing a basin at the front of the property so it can be directed towards that and I believe the front in that area is walled off. So it will be directed towards that basin.

Mr. Hedani: Commissioner Starr.

Mr. Starr: Yeah, currently from the roadway that's on ...(inaudible)... on the southern boundary of the property does that flow down into South Kihei Road and into the county or state drainage which then flows into the ocean.

Mr. Matsuda: Yes, I believe some of it does.

Mr. Starr: So is there a way to divert that into the drainage basin because the one real concern I have is that, you know, parking areas now for three houses there will be – people will work on cars, there will be oil spilled on that, I want to see it contained on the property and not go down onto South Kihei Road and end up in the ocean.

Mr. Matsuda: Yes, the new driveway will be graded so that runoff does enter the basins at the various locations. As we mentioned they are sized for the total post development runoff so it would be able to handle it and it will be directed toward those basins.

Mr. Starr: How about the existing driveway down at the bottom though?

Mr. Matsuda: Up until the very front we can look at how that goes and even if required, you know catch basins could be ...(inaudible)... conveyed towards the basin, to the basin.

Mr. Starr: Can we get a commitment that that water will be intercepted and retained on site?

Mr. Matsuda: Up until the front of the property? Yes.

Mr. Hedani: Any additional questions? Commissioner Mardfin.

Mr. Mardfin: Mr. Spence, can you go to the plot map? Does that reflect the 15, I'm sorry, five-foot moving of the – it's the back house that's moving?

Mr. Spence: No, that does not. So it's going to be –

Mr. Mardfin: So five feet toward the bottom?

Mr. Spence: Yes. This home will be another five feet. We'll just adjust everything.

Mr. Mardfin: Okay, I just wanted to know whether this had incorporated that or not. It hadn't. Thank you.

Mr. Hedani: Any additional questions from the commission? Seeing none – Commissioner Hiranaga.

Mr. Hiranaga: The large CMU wall along the right side that is in compliance with any flood zone regulations?

Mr. Spence: As far as I know it is. Mark would be a better person to ask that. It does –

Mr. Hiranaga: Can we ask Mark?

Mr. Spence: Yes.

Mr. Matsuda: We weren't involved in any permitting of this wall if required, but I mean, as far as I'm aware it would comply.

Mr. Hiranaga: I think you need to take a closer look at that since you are in a flood zone that you're not diverting potential surface runoff into adjoining properties because of that wall. I would think that wall needed an SMA permit also, it's over four feet tall which it looks like it is. So maybe you could include that as part of your Major SMA application I'm not sure what the process is.

Mr. Spence: I'm not sure. It was built I don't know four years ago and at that time I know that — I looked in the county, in KIVA, you know, there was an inspection done and it was fine. I will say though it does not divert any runoff onto any other properties. It contains everything on site.

Mr. Hiranaga: I'm not sure where the hundred-year flood zone is and where that water originates from. I'm assuming it's coming from upstream so there is a natural topography that's creating this flood zone. So as long as you're not altering the natural flow of that potential flood so that it impacts neighbors more than it should is my question.

Mr. Spence: It's in the flood zone because of the elevation, because it's in the low laying area it's not —

Mr. Hiranaga: Oh, it's a flood zone for tsunami inundation or for —

Mr. Spence: Part of it is and part of it is just because it's low laying. It's not going to affect any of the flows around the property or through the property or anything.

Mr. Hiranaga: Okay. I have one more question. I just wanted clarification. Mention has been made that the entire post development runoff will be contained on site and some engineers say post development means pre and post and some engineers say post means post so I wanted clarification if your post means pre and post or post means post?

Mr. Spence: My understanding is post development for a 50-year event. If it rains like three inches in an hour you know, that's going to be a lot of water. It will contain that on site.

Mr. Hiranaga: Are you capturing the 1.72 cfs or are you capturing the .76 cfs?

Mr. Spence: Total post.

Mr. Hiranaga: Which is 1.72?

Mr. Spence: Yes. Pre and post.

Mr. Hiranaga: Thank you.

Mr. Hedani: All of the water.

Mr. Spence: All of the water, there you go.

Mr. Hedani: Any other questions from the commission? Commissioner Tagorda.

Mr. Tagorda: This just is a follow up with your –

Mr. Hedani: Orlando if you can use your microphone.

Mr. Tagorda: This is just a follow up with your Kihei Community Association feedback that was called for did you say nobody attended that meeting?

Mr. Spence: Just one landowner. There's six adjoining property owners. We sent out six letters, I mean, adjoining property owners are going to be the most interested, yes, so one person attended.

Mr. Tagorda: The reason why I bring this up Mr. Chair, I looked at the packet very well, read it very well and looks like there was so many positive analysis on this project and to get back to that retaining wall or wall that colleague Kent Hiranaga is asking for, I don't want to stall this project. I encourage people especially parents who are able to afford dwellings for their children. It should be a no-brainer for us to go along with the proposed project.

Mr. Hedani: Thank you Commissioner Tagorda. Any additional questions? Commissioner U'u.

Mr. U'u: I agree. Two words.

Mr. Hedani: Additional questions from the commission? Commissioner Mardfin.

Mr. Mardfin: My questions are for James. Tell me about – it's zoned R-2 is that correct?

Mr. Buika: Yes.

Mr. Mardfin: That allows how many buildings per acre?

Mr. Buika: One single family residence per 7,500 square feet.

Mr. Mardfin: And he's got three times 7.500 feet so he's allowed three residences?

Mr. Buika: Yes.

Mr. Mardfin: You didn't mention it today but I liked in your report you wrote that it could be viewed as an infill and affordable housing and both those struck me as consistent with the Maui Island Plan that we struggled with so long and with the idea that you don't have to expand the government services if you do infill sorts of projects. So that was impressive.

Mr. Buika: Thank you.



Mr. Hedani: Additional questions? Seeing none, you want to go to a public hearing or do you want to do your staff recommendation first?

Mr. Buika: Public hearing I guess, it's up to you.

**a) Public Hearing**

Mr. Hedani: Why don't we open it up for public testimony at this time. Are there any members of the public that would like to offer testimony on this item? If so, please step to the microphone and state your name. Seeing none, public testimony is closed. Staff recommendation.

**b) Action**

Mr. Buika: Thank you. Regarding conclusions of law, the Special Management Area Use Permit application complies with the applicable standards for the special management area as presented on pages 2 and 3 of the department's recommendation report, your green report there. The Planning Department based on the facts presented in the department report finds that the proposed action will not have a significant adverse environmental or ecological effect provided mitigation measures are incorporated into the project. Proposed action meets the objectives, policies and guidelines of the SMA Rules and the proposed action is consistent with the county zoning and the Kihei Community Plan.

The department's recommendation, the department recommends approval of the SMA permit application request subject to 14 standard conditions and the nine site specific conditions in the recommendations report. And I will add several other conditions from this conversation here.

A condition no. 24, "that the rear setback of the parcel shall be 15 feet."

A condition 25, "that all predevelopment and post development runoff for a 50-year, one-hour storm shall be met."

A condition 26, "that the CMU wall for the parcel complies with Maui County Code 19.62, Flood Hazard Ordinance."

So I'll add those three conditions. And in consideration of the conditions in the foregoing the Planning Department recommends that the Maui Planning Commission adopt the Planning Department's Report and Recommendation prepared for the January 26, 2010 meeting as its findings of fact, conclusions of law and decision and order and to authorize the Director of Planning to transmit said written decision and order on behalf of the Maui Planning Commission.

Mr. Hedani: Thank you Jim. Commissioners? Commissioner U'u.

Mr. U'u: Motion to approve with added conditions.

Ms. Domingo: Second.

Mr. Hedani: Moved by Commissioner U'u, seconded by Commissioner Domingo. Discussion?

Commissioner Starr.

Mr. Starr: Yeah, I'll be in support of the motion but I just want to kind of express my reason for support is because we are here for the SMA and we have specific criteria which are mainly about the guardianship of the shoreline and the nearshore waters and the beaches and so on and I don't think that this will have much of any impact on them and I'm very happy that they're retaining all of the runoff on site including that coming from the driveway. It's good to see the family building houses for themselves, really the shoreline issue is the important one for us and I'm glad to support this.

Mr. Hedani: Additional discussion? Commissioner Hiranaga.

Mr. Hiranaga: I visited that park across the street a couple of times this past December and I was sitting on the bench looking across street wondering who owned that beautiful house across the street, now I know who. Thank you.

Mr. Hedani: Commissioner Tagorda.

Mr. Tagorda: Thank you Mr. Chair. Again, this project a very good project. The key elements, the analysis made people about this project are positive and like I said, but there are things that I'm skeptical about this project but I'm so willing to support it. I'm for it all the way. This South Kihei Road is flooded when there is a heavy rain but because the applicant and the owner of the property Mr. and Mrs. Bumanglag is a willing to comply with every conditions that this department and this commission imposing then I think there's no problem. I'm all for it Mr. Chairman.

Mr. Hedani: Additional discussion? Commissioner Mardfin.

Mr. Mardfin: I actually have another question. There was somewhat cryptic language in there about whether this would be condominiumized in the future or subdivided in the future would you explain to me what – if they wanted to subdivide what they would have to do, if they wanted to condominiumize what they would have to do and by what they have to do, I mean, in terms of the Planning Department.

Mr. Buika: I'll allow Wil to – he's researched this here. Wil Spence.

Mr. Spence: Thank you. Commissioners Wil Spence for the applicant. The desire of the applicants are to be able to give these homes in fee to their children so they can have outright ownership. I don't think they can subdivide the property because of the width requirements or roadways and all of that, but they could possibly condominiumize the property if they say you know, this is your space. I'm not too familiar with that process. It's a state process. You file all the proper papers with the metes and bounds descriptions and CC&Rs and all the rest of that.

Mr. Mardfin: But it wouldn't involve the Planning Department any further?

Mr. Spence: No, it would not.

Mr. Mardfin: Okay, thank you.

Mr. Hedani: Any further discussion? Seeing none, all those in favor of the motion to approve, as amended – well as recommended with the additional conditions signify by saying aye. Opposed nay.

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

**VOTED: To Approve the Special Management Area Use Permit, as Recommended with Conditions.  
(Assenting - B. U’u, D. Domingo, K. Hiranaga, O. Tagorda, W. Mardfin,  
L. Sablas, J. Starr)  
(Excused - W. Shibuya)**

Mr. Hedani: Carried. Thank you.

Mr. Buika: Thank you.

Mr. Hedani: Congratulations. Chair’s comment is that every child should have parents like you. Unfortunately for my children they’re on their own.

Mr. Hedani: Mr. Yoshida.

Mr. Yoshida: Thank you Mr. Chair. The second public hearing item is a request from Charme Taksony for a State Land Use Commission Special Use Permit in order to operate the Aloha Kai Academy, Inc., Preschool, a licensed childcare education program for up to 24 children at the Holy Rosary Church in the State Ag District at 954 Baldwin Avenue, TMK 2-5-005:003, Paia. Staff Planner is Gina Flammer.

Mr. Hunt was in attendance at 10:04 a.m.

- 2. MS. CHARME TAKSONY requesting a State Land Use Commission Special Use Permit in order to operate the Aloha Kai Academy, Inc. Preschool, a licensed childcare education program for up to 24 children at the Holy Rosary Church in the State Agricultural District at 954 Baldwin Avenue, TMK: 2-5-005:003, Paia, Island of Maui. (SUP2 2009/0017) (G. Flammer)**

Ms. Gina Flammer: Good morning Commission Members. The item before you today is for a preschool to operate at the Holy Rosary Church church hall which is located on state agricultural land. A special use permit was issued for a preschool in 1984 and that school operated for 11 years until 1995. The building in which the preschool will operate is in full compliance with all county building code requirement and the Department of Public Works will issue a Certificate of Occupancy upon approval of this permit. The program will also receive its license through the Department of Human Services upon approval of this permit.

The early childhood education program is for children ages infant to five years old. The facility will be licensed to serve up to 24 children. Both teachers Charme Taksony and Melanie Adams are

early childhood teachers and preschool director certified. The applicants have satisfied all the state and county requirements with the exception of the special use permit which we're reviewing today and there were no significant agency comments and I did just place two letters of support on your desk it's on both sides of the paper.

So getting back to the legalities and why we're here. The proposed use of a preschool is permitted under the Maui County Code. In the community plan the parcel is designated Public/Quasi-Public which allows nursery schools and churches and the County zoning is Interim which also allows daycare, nurseries and churches.

The need for the permit arises out the fact that the parcel is located in the State Agricultural District. So even though the Holy Rosary Church was built in 1926, been used as a church for the past 84 years including during the time of statehood and when the State Land Acts of the 1960's were passed the state designation does not reflect the use of the parcel for a church or a preschool. Google Earth wasn't available back then to assist state policy makers. So we're here today to review the preschool under Hawaii Revised Statues.

Now to give you a better idea I'm going to show you a few slides. Just to familiarize yourself Holy Rosary Church is along Baldwin Avenue in Paia. There's the church. Here's the church hall that the preschool will operate in. Here's the inside of the hall, then you have the other side of the hall. You have the kitchen area, then you have the backyard where they're going to have – the children will play.

This is Google Earth to show you what the parcel looks like. And if you go one more you can see why we're here. It's in the middle of sugar cane land.

So the five criteria to review a state land use permit are listed and analyzed in the report on page 5. I can go through it if anybody would like. It's spelled out pretty clearly. I think in the interest of time I see it's okay to go ahead and skip it. So what I'd like to do now is proceed to questions. We can take public testimony and then I can give the department's recommendation. Both teachers are here if there are questions?

Mr. Hedani: Questions from the commission? Commissioner Mardfin.

Mr. Mardfin: I'd like to ask one of the questions, can one of the teachers come up? Either one or both. I'm just kind of curious, is this open to all students or only the children of Catholic parents?

Ms. Charme Taksony: It's open to the whole public.

Mr. Mardfin: The whole public.

Mr. Hedani: I'm sorry, can you state your name please?

Ms. Charme Taksony: Charme Taksony.

Mr. Mardfin: And you charge – your tuition charge for this?

Ms. Taksony: We have different rates for different ages. We have in fact - toddler age and then a preschool age so it's dependent on their age.

Mr. Mardfin: And in the Paia area are there any other preschools around?

Ms. Taksony: Right below us there's Doris Todd and they have a preschool. Above at the Makawao Union Church there's another preschool there. Further up Baldwin there's Montessori and at the very top at Makawao there is St. Joseph's.

Mr. Mardfin: And I take it you've already figured out that a demand for 24 more students.

Ms. Taksony: Yeah, we have letters – also my fellow teacher brought letters of intent. We have enrollment already. We were set to open in September and we did all everything for the Certificate of Occupancy and fixed up and did a ton of work and then they said oh you need the special use permit that we didn't know we needed so we have parents that have been waiting for us to open.

Mr. Mardfin: Okay.

Ms. Melanie Adams: One thing also, I'm Melanie Adams –

Mr. Hedani: Use the microphone please.

Ms. Adams: The difference between what we're offering and a lot of the other places that Charne did mention is that we're offering a toddler program. Montessori offers a toddler program but it's only a two-day or three-day part schedule. The only other upcountry program that's not family childcare that offers a toddler program is Waldorf and then that again is only a part-day schedule. We're offering to the community that is a high need and that is the infant-toddler parcel part of our program and we'll be operating from 7:15 a.m. to 5:15 p.m.

Mr. Mardfin: And I think my, I hope my last question, you – in there, this building used to be used for preschool and then it stopped. Why did it stop?

Ms. Taksony: It has a special use permit for a preschool as mentioned for 11 years and then it wasn't a preschool. I actually taught at this site from 2006 to 2008 and then the school closed. And so I asked if I could, my partner and I have our own school there. Apparently the school that I was working from 2006 to 2008 did not have a special use permit because it had expired when the original school was done they never renewed the special use permit.

Mr. Mardfin: And that's why it was shut down because it didn't have the special use permit?

Ms. Taksony: No, I think they just closed. It was Montessori, now they have their new site and then the school I worked for 2006 to 2008 was a different company and then they closed for their own reasons.

Mr. Mardfin: Thank you very much. Good luck.

Mr. Hedani: Commissioner Tagorda.

Mr. Tagorda: Yes, good morning. I envision that preschool is comprised infant to five years old and if you reach the maximum numbers of 24 is it going to be a problem when there's only two of you?

Ms. Taksony: Well, they go by ratios. Like certain ages you have to have one adult for four kids or five kids. So we have right now ourselves and we have two, part-time aides, but once we reach certain amount of kids, we cannot have more than 24 but once you have the certain ratios then you have to have more staff.

Mr. Tagorda: You folks is going to do this in church and from Monday through Friday or seven days a week?

Ms. Taksony: We're Monday through Friday.

Mr. Tagorda: Monday through Friday. And looking at that place there, on the backyard with the big trees is that fenced where children can play.

Ms. Taksony: Yeah, it's totally fenced in. And we've met all the requirements. All the inspectors have come in, the building inspector, plumbing, electrical, we've fulfilled every requirement.

Mr. Tagorda: That's very good but the only thing I didn't see is the comment from the Fire Department.

Ms. Taksony: Oh it's in –

Mr. Tagorda: There's not in here.

Ms. Adams: We did have the Fire –

Mr. Tagorda: I want to see the comment from the Fire Department if you folks can provide that.

Ms. Flammer: As part of the Department of Public Works building code review, Gina Flammer –

Mr. Hedani: Just recognize yourself for the record.

Ms. Flammer: Gina Flammer. As part of the Department of Public Works building code requirements, fire safety is a part of that. So in order for them to issue a Certificate of Occupancy that would need to be reviewed and approved by that department. We're here today to look at the land use designation and permitted uses within the code.

Mr. Tagorda: Thank you.

Mr. Hedani: Additional questions from the commission? Why don't we go ahead and open it up for public hearing.

**a) Public Hearing**

Mr. Hedani: Are there any members of the public that would like to offer testimony on this item?

Seeing none public testimony is closed. Staff recommendation.

**b) Action**

Ms. Flammer: The department recommends that the Maui Planning Commission approve the State Land Use Commission Special Permit subject to the eight conditions listed in the report. I will read through them if the commission wishes me to, but I see shaking heads no.

The department recommends that the Planning Commission adopt the Planning Department's Report and Recommendation prepared for the January 26, 2010 meeting subject to the stated conditions of approval as its findings of fact, conclusions of law and decision and order and authorize the Planning Director to transmit said findings of fact, conclusions of law and decision and order on behalf of the planning commission.

Mr. Hedani: Commissioner U'u.

Mr. U'u: Motion to approve as stated.

Mr. Mardfin: Second.

Mr. Hedani: Moved by Commissioner U'u, seconded by Commissioner Mardfin. Discussion?  
All those in favor signify by saying aye. Opposed nay.

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

**VOTED: To Approve the State Land Use Commission Special Use Permit, as Recommended.**  
**(Assenting - B. U'u, W. Mardfin, K. Hiranaga, O. Tagorda, D. Domingo, L. Sablas, J. Starr)**  
**(Excused - W. Shibuya)**

Mr. Hedani: Carried. Thank you. Congratulations. Director welcome back.

Mr. Hunt: Thank you always good to be here. The next item involves the Planning Director transmitting proposed amendments to Chapter 19.32, Planned Developments, Chapter 19.36A, Off-Street Parking, Chapter 19.40 Conditional Permits and Chapter 19.45 Project Districts of the Maui County Code that would delegate approval and/or renewal of permits to the Planning Director along with other miscellaneous revisions. Joe Alueta is the planner assigned to this. We also will be having Ann Cua attend and help us out to give a little introduction I'll start off.

- 3. MR. JEFFREY HUNT, AICP, PLANNING DIRECTOR transmitting proposed amendments to Chapter 19.32 Planned Developments, Chapter 19.36A Off-Street Parking, Chapter 19.40 Conditional Permits, and Chapter 19.45 Project Districts of the Maui County Code that would delegate approval and/or renewal of permits to the Planning Director and other miscellaneous revisions. (J. Alueta)**

Mr. Hunt: Essentially the proposal before you is to find the efficiency in processing –

Mr. Starr: Excuse me Mr. Chair?

Mr. Hedani: Commissioner Starr.

Mr. Starr: Could we have a short recess before we get into this?

Mr. Hedani: Okay, we'll go ahead and take a five-minute recess.

A recess was called at 10:15 a.m., and the meeting was reconvened at 10:24 a.m.

Mr. Hedani: ... back in session. I can see by your faces that you're much more comfortable now, so with that, Director.

Mr. Hunt: You have a package of four bills in your planning commission packet today. The intent of these bills is to find efficiency or improve efficiency in the processing of our permits. One of the more common complaints that I hear as planning director is that our permitting process is rather burdensome and we also believe that having a streamlined permitting process would promote economic development which is important especially given what's being described as the great recession that we're currently in. At the same time we still want to provide for adequate review so there's that balance that we're seeking in these bills. I believe it's important for everyone, the Council, the planning commission and even the director to look for streamlining efforts.

The Planning Director signed a signature memo back in 2007 that delegated the authority to approve certain actions down to the division heads or even staff level. There's also memos on our department website that speaks to the streamlining efforts that the department's made, 22 items is on the list at this point. Everything from hiring more staff to providing blanket exemptions for SMA, certain SMA park improvements, you have rule change through the planning commission regarding SMA permit time extensions, a rule change regarding no longer requiring a variance in the SMA, we've had rule changes for the Board and Variance and Appeals, the new B&B Ordinance that you recently recommended approval on delegated approval down to the department for B&Bs. So there's several examples of where this has been important.

Just to be up front this is not a power grab. There has been some description of other initiatives in this manner that oh, this is power grab. It's aimed at smaller actions. And by freeing us up and the planning commission and the Council up from reviewing smaller actions we believe it will free everyone up for having more time to review larger projects which tend to have larger impacts. It also free us all up to having more review for legislation particularly ordinance updates and also updates to our General Plan which was – is going to be in the very near future an ongoing nonstop process. Once the Maui Island Plan is adopted we will start reviewing the community plans. We don't initiate those processes right now.

Another thing you should keep in mind is Paul Zucker, who's a consultant for managing planning departments and he was the author of the audit that the Planning Department had done back in I believe it was completed in 2006 in the prior administration. He speaks that planning commissions should spend more of your time on reviewing legislation than on permitting. And in my opinion, our



three planning commissions are doing just the opposite. You spend a majority of your time on permit review.

Specifically these four bills we tried to focus on the less critical items. The actions that we're proposing address permits that have already been approved or already reviewed. We're not making the initial approval except for one of the bills and that's on off-street parking. And that bill is a quantifiable action, 400 feet a number of spaces, trees, so on, etc. So between the already approved or reviewed permits and the quantifiable permits we believe there are some legitimate reasons to delegate down the approval for these permits. We've also tried to establish parameters that you would only do this in certain instances such as if there's nonsubstantial changes or no significant increase above what is already allowed by the permit. So I'll admit that these types of bills are challenged to commissions that generally like to retain their power and also the Council. I don't always agree with the actions that my staff has made when I delegate it down to them but I realize that I can't do it all and it's imperative that we all delegate down and work to resolve issues and concerns as they come up from that delegation down. And that it's necessary to accept this tradeoff because it's better than the alternative and again we're trying to provide for economic development. So that's the introduction and Joe will take us through the specific bills. I suggest we go through them one at a time and if there are specific language that you have concerns with perhaps we can modify the language rather than throwing out the bill altogether.

Mr. Hedani: Commissioner Starr.

Mr. Starr: Yes Mr. Director, I like the idea of trying to move some items off our plates so we can concentrate on the bigger meals. There are times when you know, the one out of ten conditional permits or the one out of ten phase 3 becomes controversial and to me, those are the times when it's really important to have a public airing of it. I like what we've done in some other areas where we delegated down the review of items, however, there was also a trigger that would allow the commission to look at it if we felt that was a unique case. You know, in some of these items before us I'm wondering whether the department would be amenable to creating some kind of trigger situation where you know, when there is a public concern or a specific reason why we feel it needs to – an item needs to be aired out then the commission could have the power to make sure that happened and it's not really – I'm not really worried about your – while you're in office, but I don't know who's going to be the next director and so on and I would like to have the commission have a way to bring something before since it is right now our jurisdiction but in most cases I feel we can rely on the director.

Mr. Hunt: The department again, we're here to help you folks become comfortable with these bills and to be honest we're recommending approval of them. So anything we can do to get a recommendation, a positive recommendation from this body we'll work towards that. It seems like you have several options. One is to have a trigger that if something certain happens you spell it out and then that goes to the planning commission. Another one is we could provide notice to the planning commission that we are doing these actions similar to the SMA process. You could also give very specific direction to us that – if we missed one you can scold us and let us know, well you shouldn't have missed that one and we'll work with you and bring things to you. There's going to be some judgement involved and a lot of that is just discussion. When my staff makes a decision that I delegated down and I don't agree with it, I don't take away the delegation I communicate with them and say, lets improve the system. Where did it go wrong and how can we change it make it

better? And so again, most of these decisions that we're recommending streamlining are going to be initially done by the planning commission or Council. We're talking about renewals, time extensions, somebody comes in and wants a modification that we consider is nonsubstantial do we have to take it through the process again? An example, somebody is approved for 120 units, they come back and say well, you know really we only want a 110, that's a change do we want to have to take them all the way back through that process for that kind of change. Now there's also changes that and we can't account for all of them in legislation and that's where it gets tricky but we're here to work with you and hopefully we can get some positive recommendations on the bill.

Mr. Hedani: Additional questions? Commissioner Mardfin.

Mr. Mardfin: I share my colleague's concerns. I understand your position on this and I think you have the right attitude. You said there are there things that we can do. I would think something like the, you know, we get the SMA exempt, you know, if we're just a computer list like that you go through it, you look and see, oh this one I have some questions about but if we don't have questions, we kind of shrug our shoulders and let it go. I think that would preserve our ability, particularly if we know in advance preserve our ability to have input if it seems relevant and we shrug our shoulders and let things go if it doesn't seem relevant. That would be a— to me a good resolution.

Mr. Hedani: Commissioner Starr.

Mr. Starr: Yeah, as we begin this discussion I'd like to request that some wording, you know, someone can start writing down wording that perhaps we might be able to consider that would allow us to know they're coming and in the once in the blue moon occasion when we want to air out a phase 3 or something like that we can choose to do it and if we don't, if no one mentions it at the meeting it just goes by and the director deals with it.

Mr. Hunt: We'll work on that as we're going through the bills.

Mr. Hedani: Commissioner Mardfin.

Mr. Mardfin: I notice that, I think it was three out of four of these there was a comment from the Public Works Department that it does not give Public Works a chance to review items under our jurisdiction. Verbiage should be added to provide such review and oversight. That hasn't been added yet I guess. Does Mike want to comment on that at all?

Mr. Hedani: Before we go into a discussion on any one of the bills maybe we should get a presentation from the department.

Mr. Mardfin: Okay, but I think since it applies to three out of the four we may, after the presentation we should get –

Mr. Hedani: Questions for the Director? Okay Joe, dazzle us with your presentation.

Mr. Joe Alueta: Apologize for the sniffing, the vog has gotten to me. I don't have much more than what was presented by the director. I was just going to take you through individually through the

changes. If you want to just get into that as far as individually we'll start with the –

Mr. Hedani: Why don't we take them one at a time?

Mr. Alueta: Yeah. We'll start with 19.32 which is your planned developments and again, planned developments are allowed for under 19.32. I passed out the overall ordinance this morning. So you can either work from – it's your choice, you can either work from Exhibit 1 which is the amendments that are proposed, but again, it only has that section that's being amended or you can look at 19.32 which is the entire one and I have ramseyered that one. Me and the director are on the same wave length but sometimes we format a little differently. I don't like brackets because I can't tell what's being taken out. I prefer to strike out the word, that way you can still read the word but you can see that is actually being removed. Because sometimes when you read the bracketed it can be a long bracket and you can't really tell. I think attorneys do that on purpose just so you don't know what's going on. Try to be as clear as possible.

Planned Unit Develops or Planned Developments, we often call them Planned Units Developments among the staff to differentiate them from the project districts. Quick Planning 101, Planned Unit Developments use the county zoning, they use like R-1, R-2, A-2. Project Districts, right, create their own zoning standards. Their zoning is project district and they create their own zoning standards within. Planned Developments keep the zoning standards and is allowed for density bonuses if you combine the two. Your last one that you saw or examples of Planned Developments can range in size from small ones as Puamana and then to very big ones such as Wailea.

The last one that this commission did and which I processed was the condominium complex from my Mai' Poina 'Oe La'u Park, Korean Memorial in North Kihei along South Kihei Road if you remember that one. There's a new condominium complex on the left-hand side. A lot of windsurfers use that. At that time we did a combination where it was apartment, had apartment zoning as well as about two or three acres of residential. So they did a combination where the density stayed they got a little bit density bonuses. On the zoning, the zoning is still there, R-2 but they're allowed to build apartment basically complexes as long as the – overall densities on unit counts didn't change. So that's what you call a planned development. So that's an example.

And what – even though it's not labeled out there's basically three steps. Step 1, Step 2, Step 3. Step 1 is your main thing to identify it where the boundaries are going to be and what they're going to get overall. And then Step 2 is primarily like your design, what's the building going to look like. And then Step 3 is basically building permit review meaning it comes in we look at the plans. Several years ago when I joined the department we always did Step 3. It wasn't until like later on somebody pointed out no, you're actually supposed to take that to the – Mr. Giroux pointed out that I don't think you guys have the authority. So we were mistakenly doing this all along, reviewing the building permit plans saying yes, it meets the design. It looks just like what they presented to the planning commission. And you gotta remember the vast majority of these planned unit developments are within the SMA. So the commission's already seeing it not only as a Step 2 approval, they're seeing it as an SMA 1 or a major SMA. And then like I say the administratively the building permit is you know, we get these hunks of rolls. And if you recall some of you were complaining that because we all of sudden – we recognize that the code says you're supposed to review it we started bringing the building permits and you were getting these huge rolls for Step 3 and you were going, what I am going to do with this – I got 500 pages of mechanical drawings,

structural drawings, so you weren't really equipped to review it. You were only concerned with that it looked like, density and it's really kind of a technical plan review examination and so this amendment is basically doing it back the way we used to do it. It just codifies it saying that the department is going to review the building permit. It doesn't take away your overall density review, doesn't take away any of that other powers.

It's Step 1 and Step 2, and it also just if you look at it, it just even though it's written out and remember these are code amendments from 1966, '67 carry over, we're just putting in, the director is correctly is putting in okay, what's a Step 1 and he's correctly identifying what is Step 1. In-house, oral history we all called this Step 1 and our permits say Step 1 but in the code it doesn't say Step 1 so we're just putting in what is Step 1, what's Step 2 and what is Step 3 and so we're just calling it out. So that's the main thing and then also again moving the – delegating the power down to the department to review the building permit as a Step 3 approval.

And then you have your (D) and that's probably the most controversial item is nonsubstantial amendments. And that again, that's an authority that we already have during SMA review. When you approve an SMA major permit there's a certain latitude because you're dealing with preliminary plans and you don't expect detailed building permit drawings at the SM1 much less at the Step 2 approval and so there's going to be changes in certain design elements such as mostly like location. You have an idea where the buildings going to be. When they do the final engineering for the drainage they discover well I need a little more area. I need to make my basin a little deeper or wider and they have to shift the building over 20 feet. Okay, those are the kind of changes that we look at and we approve administratively and that's kind of – I'm assuming that that's what the director had in mind as far as nonsubstantial or you may reduce, you know, if you got a 132-unit project and you say well you know what I'm only going to do a 130. Most of the time as long as the number doesn't go up, we don't bring it back or if the overall densities. And that's true of even SMA majors when you have a subdivision. Somebody comes in with an 86-lot subdivision they say well I'm going to have 85 or even one more lot we're saying we reviewed it, it's nonsubstantial. But that has been with the other two commissions that has been what is that definition and most their – what to have some kind of quantification of that and so that's just food for thought, but again, this first one is basically just moving back the building permit review to us and then having this nonsubstantial amendments to the overall plan.

Mr. Hedani: Questions from the commission? Commissioner Starr.

Mr. Starr: Yeah, as you pointed out they're usually nonsubstantive and it's only in a rare case where you know the devil is in the details. It's like, you know say there's a project and there's a very serious concern in the community about a view plane and it may as originally set out provide them – provide a window for the view and then it gets moved 20 feet and then it doesn't. You know, I think there was some feeling about that in something on the edge of Wailea not too long ago. So you know, I know I, for one, want to have some kind of way that we don't have to 90% of the time we don't have to do that. It can be done by staff, but there's another issue as well which perhaps goes beyond the changes that are being suggested and I'd like to discuss mechanisms for that which is the – a lot of these PDs take a long time to come to fruition and sometimes it's two owners down the road before the final build out is done and the history – institutional history is not quite that long and times when there are conditions, when there are agreements made and so on at the beginning of the process. Right now I don't think there's sufficient system in place to make sure that those

are – those conditions are enforced, that they're researched, that agreements made are – end up in the final product. You know, not through a lack of will or lack of intent on the part of the department but simply because you know, there's no firm mechanism. And I'm wondering what we can put in place to make sure that no matter how long a project takes to reach completion that those are substantially implemented when it finally gets put in the ground and this would seem like the time to do it.

Mr. Alueta: Well actually the time to do it is during your Step 1 and Step 2 and it's like you know, it's called documentation, documentation, documentation, a lot of times the things that we miss are private agreements which we are not beholden to, the county is not and so during an SM1 or SMA Major or the Step 1 or Step 2 those types of view corridors should be identified. Also understand that you're kind of a public trust agency. You're looking at what the public in general and so all of our view corridors including the Maui Coastal View Corridor Study which is you know, extremely outdated but it is a study that we reference and look it deals with public view corridors from the highways or from any roadway or from where the public has access. And again, these private view corridors one, deals in a private matter. So I think that's the issue where some people have is like well, I loss my view and it's like well, I wasn't party to it and the county was never and it was never a condition and if they want that then it needs to be identified during the Step 1 and Step 2 approvals. Again, the Step 3 is going to be a building permit and I think Wailea is the only one where you have a long build out. The vast majority of these project dist – planned developments are quite small and go hand in hand with that two-year period of an SMA permit or whatever type of permits they have. They don't tend to be drawn out like this one. Puamana was the first planned development out there, experimental and that still goes and we continue to refer back to the documents and we continue to require, give me your calculations on the open space, you need "x" amount calculate it all out. It's a chore for them but if it's in the permit, if it's in the original approval then we will catch it.

Mr. Hedani: Commissioner Starr.

Mr. Starr: Yeah, could you explain what the process, you know a PD comes before us and we make a condition, you know, a specific condition, what's the process to make sure that all stages that condition is met and that 20, 30 years from now that will still be observed?

Mr. Alueta: Well, if you look at the ordinance itself it tells you exactly when you're going to have you know tentative approval after ...(inaudible – changing of tape)... utility grading, landscaping, open space lot and lot land use, recreational and community facilities, buildings, structures and programs. During that Phase 2, that Step 2 that's where you're going to have your preliminary elevations, right and grading plans and the detailed changing is going to be like when okay, you know what we can't put a road here because there's a historical archaeological site we need to realign because we did more detailed studies. But for the most part, during this Step 2 you should, especially if there's an SMA you're going to have archaeological sites identified already. So your roadway system is pretty much going to be called out especially internally. The rare exception maybe if Public Works changes their mind on where you want that roadway connection or if there's another – or DOT there's an outside agency who hasn't given you any concrete answers during the Step 2. Okay, that's why I guess to address some of the comments and concerns from Public Works is that they reviewed the building permit, they are involved in the Step 2, so it's Step 3, that's obviously within their purview again and it's just not going to be come before the commission. So

I don't see how – they're always going to have a play in it because they issue the building permit at Step 3.

Mr. Hedani: Additional questions? Commissioner Mardfin.

Mr. Mardfin: Yeah, I'd like to ask Mike since it did come from Public Works, what – they say “under this chapter does not give Public Works a chance to review items under our jurisdiction, verbiage should be added to provide such review and oversight.” You have such verbiage that you would like to see in here?

Mr. Miyamoto: No, in talking with staff I think the concern is with the – when something is approved or changed by the director that we haven't had a chance to look at. There may be some implications, there may not be it depends on the level of severity. But typically if we have concerns like lets say something changes that may impact how the drainage patterns. It may not be significant from a land use standpoint but infrastructure wise it may have some minor impacts that we might want to be aware of. I think that's where staff was coming from when they –

Mr. Mardfin: And how could that be fixed in the language here or does it not need be and you'll deal with it when you get the building permit application?

Mr. Miyamoto: We can deal with it at that point if we have to. We can – you know what will happen is if it's not consistent would be what we have as being the original intent then we'd have to contact with the Planning Department to rectify the differences or we can have the applicant to rectify the differences.

Mr. Mardfin: So you're not suggesting any specific language to be changed here to accommodate your department?

Mr. Miyamoto: Not at this point. I think we can work it through our process. It doesn't necessarily need to be in the code but it's something that we need to address in the process of how these changes are made and how we can better coordinate to make sure that we're on the same page when the plans come in.

Mr. Mardfin: So basically it's not a change in the wording of the ordinance, it's a – you'll work out a ad hoc procedure to deal with these things?

Mr. Miyamoto: Yes.

Mr. Mardfin: Thank you.

Mr. Hedani: Additional questions? Commissioner Hiranaga.

Mr. Hiranaga: Just to clarify, a PD does not have to be in the SMA area necessarily and if it is in the SMA we would have review over – during the SMA application process.

Mr. Alueta: Correct. And typically you have it as a combination.

Mr. Hiranaga: Right, if it is in the SMA area.

Mr. Alueta: Right. You normally see a SMA and PD2.

Mr. Hedani: Additional questions? Commissioner Tagorda.

Mr. Tagorda: I picked up a word that you said is very conflicting, "substantial" and "unsubstantial" element of the Step 1 and Step 2. How do you determine substantial and unsubstantial and who should determine that? You give me a good case scenario about reducing a number of units, you can always yeah say no. You don't have to go through you know step, all the process, yeah.

Mr. Alueta: It would only take it back to Step 2. It wouldn't necessarily kick to Step 1, it would just be Step 2.

Mr. Tagorda: But sometimes the word "nonsubstantial" and "substantial" is pronounced a different meaning to a different person so I'd to know who should determine that.

Mr. Alueta: Right now any changes right, would basically is fall back to the commission. Okay, no matter you know the change is.

Mr. Tagorda: So that would be that trigger then?

Mr. Alueta: That would be the trigger. Any change to it from the preliminary, from the plans that were approved during the Step 2 because the change in the roadway or change in the unit counts or change in you know, heights or anything like that typically you know, I hate to say this but a lot of times it's like well it looks – because they are preliminary plans for the most part, they're not construction drawings is there is a certain amount of leeway and I think the department has already been making that call on whether or not. I think if there's definitely a unit increase that's a change that needs to come back to the commission because they're changing the amount, the units. And I think that for – I think the point is is that the director is trying to codify of what we're doing. But again, it has been a what is considered substantial and nonsubstantial and that's where you may want to try to add some language I mean if you are uncomfortable with it to try to provide some clarity.

Mr. Tagorda: Yeah, to follow up, I agree with the director's assessment or objective of trying to streamline, update and codify this – all this ...(inaudible)... Maui County Codes but a lot of people, no me though, don't want their power to be pass on to be taken away from them.

Mr. Alueta: Right.

Mr. Tagorda: I understand the situation of the department now that they had so many complaints about the permitting process that takes so long. And a lot of people don't like that power grab if I may use your term. I can give that power –

Mr. Hunt: I was saying it's not a power grab.

Mr. Tagorda: I use that term so – or let go the authority my own words see. So if it's going to get

the permitting process streamlined to benefit the department and the community I'd go along for it but there are some things that we have to insert and omit and add on to the ordinances as we go along.

Mr. Hedani: Director.

Mr. Hunt: We tried to address that by putting in language that speaks to amendments that are not substantial and do not result in significant impacts above what would result from the already approved planned development. So the example on unit counts would be if somebody is reducing the unit count well that's a change, that's an amendment but it's – how would that result in a greater impact? So we would say well, in that instance we believe we would have the authority under this language. Now if you folks want to narrow that down or give some examples you could say including but not limited to increases in density or something like that to spell it out. The other option again as Mr. Starr alluded to was perhaps have some kind of notice were we inform the commission that we approved an amendment and here's what it is and you guys have the right to call it up or review it or waive it.

Mr. Hedani: Commissioner Hiranaga.

Mr. Hiranaga: I'll defer to –

Mr. Hedani: Jim, since this is all your fault to begin with.

Mr. Giroux: Since I started the mess. The struggle for legal counsel is when you see a department not exactly following the rules but it seems to work and so I mean, seeing that this is largely a commission process, this is a largely – this 19.32 is largely a planning commission process, what as a lawyer what we want to see is does the code allow the commission to delegate authority to the director? Instead of the department just doing stuff and saying well, we thought we could do this because we always did it. And to address Member Starr's concern is that you can look at Section D, and if Section D were to be modified to say that commission is allowed to delegate authority of amendments and extensions and stuff like that and what it would do and also say that you know you would develop rules according to Chapter 91 then what you would do is that in your planning commission rules you would actually develop your own rules of what you would define as substantive and nonsubstantive so you can say in a subsection in your planning commission rules processing of conditional permits and then within that you would say, the director shall be given authority to review substantive and nonsubstantive changes. These types of changes shall be seen as substantive increase in units, increase in density, increase in – you know, and you can actually list a litany of what you feel is substantive and then a litany of nonsubstantive, a reduction of units, reduction of density, ... and then you can also put in that clause of whatever, you know, some type of triggering mechanism that would allow you, you know the director shall upon receiving a request for an amendment notify the commission you know, so many days prior to issuing the decision or something like that. So I really encourage you to look at the different levels of this because it is commission, I'm not going to give you the same advice for the other things because it's more legislative action but because this is so much within the commission's purview and what you're looking at is does the ordinance allow you go to give the director some directive as far as delegating some type of – so some streamlining can occur because I think the staff has really pointed out is that when you guys were given that big role by that time is that efficient use of your time. So I think



that if you look at the issue of, you know, what do you want to achieve through the ordinance then you don't have to spend all of the time today trying to actually get to that point, but you can just see is that the direction you want to go and I think that will help the discussion because you won't have to have all of the wording all done yet. It will be part of that process, your commission process.

Mr. Hedani: Commissioner Hiranaga.

Mr. Hiranaga: I may be repeating myself but this is about – this regards planned development and not SMA so we're not altering any of our powers regarding SMA permit application. So I'm thinking you did say a majority of PDs are in SMAs and I'm trying to think of examples where there are not. And if you consider Pukalani a PD, Pukalani Terrace was that a PD?

Mr. Alueta: No. I think Kula Lodge is the only one I can think of.

Mr. Starr: Maui Lani.

Mr. Alueta: Maui Lani is a Project District not a Planned Development. Ann has –

Mr. Hiranaga: She looks like she has something to say.

Mr. Hedani: Ann.

Ms. Ann Cua: Thank you I do. First of all, if I could, I think I represent, I do represent the Current Division of the Planning Department and I know you're talking about Planned Developments but the four bills that you're being asked to review today we pretty much process all those permits and I really ask that you strongly consider these because you have so much work that is before you. And Jeff had come to us just in terms, you know, there's additional permits that we've been receiving once the B&B got passed there'll be different legislation in the future that will require additional permits and so we were trying to look at the best use of staff and commission time in terms of reviewing projects and for these bills here you know, a lot of what we do that come to you is pretty much a confirmation of what you have already done already.

In terms of Planned Developments, Joe is definitely correct that probably 95% of the Planned Developments if not more that come before you come to you also in the context of an SMA permit. Pukalani is a Planned Development. We didn't even realize that, we were going through the zoning – part of Pukalani in the Terrace actually there's a project actually that my friends live in that when we were looking through the map, I was like oh my gosh I didn't even realize this is a planned development. It's in Pukalani Terrace Center by the wastewater treatment facility, but you know that happened many years ago, it's been existing. You would never know if you passed by that it is a planned development but for the most part, two kinds of planned developments come before you.

One, the case of Wailea where an entire area is a planned development and just because you are in that area whatever you want to do has to go through this process. You've seen the Grand Wailea, the Renaissance just because they wanted to renovate their hotel and they need an SMA permit they're in a planned development so they had to go through this process. But Joe's project that he was talking about is another use of the planned development tool where you want to create

additional densities. When you looked at like Grand Wailea and Renaissance, they weren't asking you for additional densities it was just because they were in the planned development they needed this approval. In Joe's project that he did they wanted to create through the use of existing zoning additional densities but they have to preserve you know, 20% open space on the site. So that's a different use of it. But you'll see that whether it's in an SMA or outside of an SMA you're going to see the plans and make the decision through the Step 1 and Step 2 process. We feel it is appropriate before you at that time because that's when the harsh decisions are made.

The Step 3 all it is is a confirmation of what you have approved. It's the building permit plans. It's the construction drawings, it's those big rolls of plans that we get and basically what we're looking at is, you know, are the roads in the same place, is the design what the commission approved. If it's substantially different and I understand and I appreciate your question about substantial we have a lot of professional planners that really take our job very, very seriously and if we do not feel comfortable with plans that come to us in the context of a Step 3 application that we feel you know, it doesn't feel right in terms of what you approve and what they're planning to construct, we're going to bring it before you.

We haven't had that much instance with that type of permit. We have had a little bit more example with the Project District plans and we can go through that when we get to that section, but I'm here as a resource. I'd love to be able to answer any questions that you have just to increase your comfort levels, but you know, we really in the Current Division hope that you can support this and you know we're open to any language that you would feel more comfortable in making this a reality.

Mr. Hedani: Commissioner U'u.

Mr. Hiranaga: Mr. Chair, may I ask a follow up question?

Mr. Hedani: Commissioner Hiranaga.

Mr. Hiranaga: I know it has a different name but Wailea 670 is that a PD?

Ms. Cua: Wailea 670, no. No, Wailea 670 is a Project District.

Mr. Hiranaga: Is that outside of the SMA?

Ms. Cua: It is. That's outside of the SMA.

Mr. Hedani: Commissioner U'u.

Mr. U'u: So I got a question Ann, do you feel it's appropriate that we add a condition potentially to bring it back to the commission is right? Would you recommend a condition of some sort or a modification of some sort to if it's an oversight to bring it back to the commission?

Ms. Cua: I believe – I don't have the bill in front of me but I believe the director talked – well, can you show me that section where the Planning Director was talking about – from what I understand it's only going to allow us to do this when there's not a substantive change. Planning Director may approve amendments to approved planned developments if the amendments are not substantial

and do not result in significant impacts. Now, you can choose to try and further define that, the challenge with that is you can't, and we couldn't think of every different scenario and so we're hoping that there's some degree of trust in the professionalism of the staff. I'm here to assure you that we do take our job extremely seriously. We come before you all the time so we don't want to get in trouble with you. So we try, we know your issues. We know who's the drainage person, we know who's the traffic, we know who's the archaeological person, so we know that when we look at stuff we need to make sure that these issues are covered.

Mr. Hedani: Did she answer your question Bruce?

Mr. U'u: Yes, but what about the day you retire then I going be retire. Don't retire.

Mr. Hedani: Commissioner Starr.

Mr. Starr: First of all, I have complete and total confidence and respect in the Current Division and the department right now. So it's not about that, but I have lived through eras where the Planning Department was completely political and what was ruled to be substantial or insubstantial was totally based on whose project it was and whose friend they were and so on. I hope we never live through that again but we might. And for me, it's very, very important if we're going to delegate this really important authority to have a fallback type of safety value and so that in delegating it we're not just giving it up but we're retaining the ability if we feel that there is a problem or potential problem to be able to continue to do our duty to the fullest letter of the original ordinance. So I, for one, feel we need to have that kind of fallback and I doubt it will get used often if ever but it's – I think it should be there and so you know, I, for one, would need that to support it but if that was there I wholeheartedly support it. I think we've moved in a good direction.

There is one other item I'd like to discuss and I'd like to ask your opinion on it because I know you're very much involved in that, in this process which is I have in the past and this is before you know, the way the current administration of the department, the way it's functioning now had problems with the belief that conditions were not being applied at least, you know, to their intent, you know, it's not an easy thing to do, there's always some gray area. And you know, one possibility I believe there's a document called the final compliance report and my idea would be to create a mechanism where this final compliance report be made available to the commission if we want to review it and in most cases I'm sure we wouldn't but if we do feel that there was something that was a condition or it's something that was discussed but it's not happening we could at that point look – have a chance to look at the final compliance report and make comments to the director and I don't know what the mechanism for that would be, but I'm asking how we could make something like that work without it being onerous for the planners.

Mr. Hedani: Anybody? Ann?

Ms. Cua: Well, you know as you say that I'm not only thinking of the planners, I'm thinking of you and you know, I see sometimes how heavy your agenda is and you know, again, I have to say that you know, I would hope that there could be a certain amount of – it's all going to come back to trust, everything you're talking about here comes back in my view, and this is just my opinion, it's not that of – you know, I'm not speaking for the director, but I would really hope that you feel comfortable, you know all of the – most of the planners, we have a lot of new ones but you know, I would hope

that as much as we come before you you do have a certain degree of trust and we do look at both compliance reports, the preliminary and the final compliance very seriously. I'm not going to say that there's some times that you know, maybe we decide a condition is met that maybe you wouldn't have. I'm sure that would occur but again, I would hope that you trust our professionalism in doing our job in trying to administer the conditions that you had set forward.

Mr. Starr: Yeah, what I'm asking for in both areas is that you know as part of this document that we receive for each meeting that there be an added column put in where, you know, say compliance reports have been offered for the following projects and then if no one brings it up at the subsequent meeting then there's – that's the only thing that's happened is that it's been added to a list if in the chance that one of the commissioners wants to bring it up and have commission review then that becomes an opportunity for us and the same thing with the Phase 3. You know, probably in almost all cases if not all cases all that would be done would be just giving us notice so that we have the ability to review it and that's what I'm asking to be added into this ordinance and I think by that the public trust will be properly being served.

Mr. Hedani: Joe.

Mr. Alueta: Mr. Chair, as I always like to say, trust but check. So I agree with your concerns as far as that and I think we can massage the language within this "D" to provide you with a list of the project districts or the planned developments where the director has issued a changed or an amendment and that – or has a made a determination. Now, my concern in the functionality is we can give you a list, right, it's hard to – it would take a little more complex language writing for us to make you, give you a list and then wait for you to approve that list before he actually issues the amendment. If you want that then that's going to take me a little more time to draft language but if you feel more comfortable with just having a list and then if we violate that trust doctrine then you know, there can always be an amendment again. But –

Mr. Hedani: Commissioner Mardfin.

Mr. Mardfin: Let Commissioner Starr, I think he wants to follow up directly.

Mr. Hedani: Commissioner Starr.

Mr. Starr: Yeah, I don't think we need to respond, to me, if it's given to us and if you know we don't respond then it can be deemed to be completely in the director's purview, but you know, if there is something that lights a lightbulb and you know, it's really hard to define it like density. You know, sometimes a decrease in density can create an impact because we're moving more toward an era where projects are approved with greater density, you know, with transit oriented development and so on, most municipalities are requiring more density. So it's not clear cut line you know, less is better or more is better or anything I think it's just a case if there's something that is lighting up a lightbulb or ringing a bell in the community then that creates an opportunity and otherwise if we don't take that opportunity, it's gone.

Mr. Alueta: Right, conferring with Ann here, as soon as we receive the request something like that that can be placed as a – we can provide you a list that we received these and because you do meet twice a month you'll get them and hopefully it will be on the list before an action is taken. I

mean, that would be the ideal situation for us to provide you a little more trust.

Mr. Hedani: Commissioner Mardfin.

Mr. Mardfin: I agree with your idea but I would have said trust and verify was the term used a few decades ago, and agree with that. I think there are two issues here. One is, Paragraph C and the other is Paragraph D, and I know that we don't have a motion on the floor yet, but I have suggested wording for Paragraph C. It would be, "the Planning Director shall review the unified site and building program, notify the commission, and upon final approval by the Director, the owner may proceed to finalize the Planned Development." Notify the commission would be just sticking it on this spreadsheet and again, we shrug nothing happens, if it is more than a shrug then we can deal with it. And so that would be my wording. "The Director shall review the unified site and building program, notify the commission, and upon final approval by the Director," so it's clear that the Director is making it, "the owner may proceed to finalize."

I think D is a different issue and D I think we need to go to something like James suggested where we're clearly retaining the power but we're delegating the authority. And I don't know if James had particular wording involved, but as far as I'm concerned you guys can work it out, but I think his intent was clear that we do it within the rules of the – the responsibility stays with us but within the rules of the commission we can have delegated it to the director.

But I do think C and D are different things. C is the Step 3 plans and 4 is seems to be changes in those plans at some point.

Mr. Alueta: That is correct.

Mr. Hedani: Okay, do we have any more general questions for the department on this particular measure and then what I'd like to do is entertain a motion to at least consider a motion for this particular bill and then specific amendments to that after that. Commissioner Hiranaga.

Mr. Alueta: Still gotta do public hearing Mr. Chair.

Mr. Hiranaga: What is the difference between a Planned Development and a Project District?

Mr. Alueta: Again, the Planned Development deals with primarily the zoning. You're dealing with the existing county zoning under Title 19 and the standards within that and you're seeking a density bonuses or a mixture of uses across zoning categories within one unified plan provided that the density do not increase. And then with a Project District you're basically creating your Title 19 or your own zoning situation where that's why you have Maui Lani and Kehalani where you have these 3,500 square foot lot or a 4,000 square foot lots because they don't use an R-1 or and R-2 or an R-3 standards they create their SF-1 through SF-6 and they have their own setbacks, their own densities and that's approved by Council. So Planned Developments are approved by the commission. Project Districts are approved by the County Council.

Mr. Hedani: Any further questions? What's your pleasure?

Mr. Starr: Public testimony.

**a) Public Hearing**

Mr. Hedani: Okay, public hearing. Are there any members of the public that would like to offer testimony on this item. Please step to the microphone and state your name for the record.

Mr. Charlie Jencks: Mr. Chair, the name is Charlie Jencks. Listening to the testimony and discussion I would just say that I would support the direction of the commission and support the director's approach on streamlining the permit process in this regard.

Mr. Hedani: Thank you. Questions from the Commission?

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

Mr. Hedani: Mr. Howard Hanzawa.

Mr. Howard Hanzawa: Good morning Chairman and Commissioners, staff, my name is Howard Hanzawa. I'm with Kaanapali Land Management Corp. I'm here this morning to talk about the proposed bills by the Department of Planning pertaining to project district, planned development and conditional use permits as well as Chapter 19.36, Off-Street Parking and Loading. I believe that the department were looking at these bills, considering these bills in order to streamline the process of issuing these permits a couple years ago. I have to commend the director and the department for looking at this in order to help to streamline permitting and to help the economy. I just – I'll be brief, I just want to say that in that regard, I support the bills and I hope that you do also. Thank you.

Mr. Hedani: Thank you very much. Questions from the Commission? Seeing none, thank you very much Mr. Hanzawa. Next person to testify is Clyde Murashige.

Mr. Clyde Murashige: Good morning Mr. Chairman, Members of the Commission. My name is Clyde Murashige of A&B Wailea and I, too, am here to support the four bills before you today proposed by the Planning Department. I believe all four of them will streamline the permitting process and of particular interest to A&B Wailea is the planned development bill in which the Step 3 would be reviewed by the Planning Director. As the commission knows, Steps 1 and 2 come before the commission and it's again through the SMA permit review process. Step 3 is actually construction drawings in which having the Planning Director review it for compliance with Step 2 approvals would save a tremendous amount of time. Typically in the planned development process we would have to prepare two sets of construction drawings, one for the Step 3 and one getting ready for the building permit process. I think ultimately time wise this will probably save us six to eight months in the permit process. So I ask for your support on the bills. Thank you.

Mr. Hedani: Thank you very much. Questions from the commission? Thank you Clyde.

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

Mr. Hedani: Are there any other members of the public that would like to offer testimony? Seeing none, public testimony is closed. Commissioners? Commissioner Starr.

**b) Action**

Mr. Starr: I'd like to make a motion and the motion will be to – what will my motion be. My motion will be to recommend approval of the proposed bill for an ordinance with three changes. And bear with me here.

The first would be regarding Item C that a wording be added to the extent that a list will be provided, you know, a list or this notice of the receipt of the plan will be given to the commission and if no action is taken by the commission at the subsequent meeting then it will go to the director for approval.

Mr. Alueta: Is that on the same line Commissioner Starr that Commissioner Mardfin had?

Mr. Starr: Well, it's a slight extension of what Commissioner Mardfin was doing and I would ask you to wordsmith it so that it's consistent with the language of the ordinance.

Mr. Hedani: Commissioner Starr, why don't we go with a main motion first and then pick up the individual items as amendments so that we can decide each on individually.

Mr. Starr: I don't really want to do it that way because I would like to see it –

Mr. Hedani: This is going to be a really long motion if that's the case.

Mr. Starr: That's okay.

Mr. Hedani: That everyone may not understand by the time we're done if you have three amendments.

Mr. Starr: Yeah, I don't w –

Mr. Hedani: You want to continue with your motion?

Mr. Starr: Okay, so I'm asking for some help in wordsmithing that.

Mr. Alueta: Okay.

Mr. Starr: I'm looking to add similar language to Item D.

Mr. Alueta: Okay, the way – I mean, I kind of – Commissioner Mardfin's comments if you want to work from there because I think he –

Mr. Starr: Yeah.

Mr. Alueta: He had a good point where basically he's just saying, "that the Planning Director shall review the unified site plan," and I'm reading from page 1, line 35 for those following along, "site plan and building program, and notify the commission and upon approval by the director, the owner may proceed to finalize the planned development."

Mr. Starr: I would have a concern with that because we're being notified but if we don't like it there's still nothing we can do.

Mr. Alueta: Again, that's that matter of trust in which you're going to get notified and the director is going to wait until it's on your list and if no one raises a concern he'll go ahead with it to issue it because there's a trust between you and –

Mr. Starr: Well, let's put that in wording. We have had directors who I wouldn't trust enough to shake their hand.

Mr. Alueta: Okay.

Mr. Starr: I trust the current director completely but I want to have wording so that if we have the possibility we're covered. In other words, I want us to be able to get involved in the process if we deem necessary.

Mr. Hedani: Commissioner Starr?

Mr. Starr: Yeah.

Mr. Hedani: Is that the end of the motion?

Mr. Starr: No.

Mr. Hedani: I'm going to ask you to restate the motion once you're done.

Mr. Starr: Yeah. Basically I'm looking for similar wording that will work in C that will work in D and it will work in a new item regarding final compliance reports where we don't have to be given the final compliance report just that a final compliance report, a list of final compliance reports that have been submitted and then if we don't act on it, it's out of our purview. Can you give us some?

Mr. Alueta: Yeah, well first of all the main idea is to streamline the process and then having you review and approve final compliance reports would be going in the opposite direction of the intent of these amendments. Secondly, I think that the whole – I mean, I understand the point, and that you want to be notified and you want to see it and we're trying like I say, build that trust where we're giving you notice and we're not going to proceed until you give it, but again, the authority would lay within the commission, I mean, with the director and not the commission. If you want that then we can just modify this and leave it as a the commission.

Mr. Starr: No, I see that as a theft of our authority, Joe.

Mr. Alueta: Right, and that's why I'm saying is then you need to just leave the amendments – I mean, then not amend it. Then leave the approval of Step 3 or modify it based on – leave it back in that the commission shall approve, review the unified site plan and program and upon approval you know, owner shall proceed. I mean, there's no –

Mr. Hedani: Joe, at this point what I'd like to do is get a clear statement of the motion so that we



know what the motion on the floor is and then we can go into debate rather than the motion being debate on the issue itself. So Commissioner Starr is that the end of the motion? I'd like to call for a second at this point.

Mr. Starr: I'll be happy to restate the motion.

Mr. Hedani: Go ahead.

Mr. Starr: The motion is to recommend approval with three changes. In Item C on line 36, the wording shall be, "the Planning Director shall provide a notice to the commission that regarding the site plan and if the site plan is not – there is not a motion at the subsequent commission meeting for review by the commission then the Director shall review the unified site and building program, etc., etc., etc. If the commission votes to review then the item shall go before the commission," as is currently the case. Those words will be left out. Similar wording in D. And then they'll be a new item with similar wording regarding the final compliance report.

Mr. Hedani: Is there a second? Motion dies for lack of a second. What's your pleasure? Commissioner Mardfin.

Mr. Mardfin: I support Commissioner Starr's amendments but I want to deal with it one by one. So I will move adoption of the proposed wording of the ordinance as proposed to us.

Mr. Hedani: That's to recommend approval to the Council?

Mr. Mardfin: Yes.

Mr. Hedani: Is there a second?

Mr. U'u: Second.

Mr. Hedani: Moved by Commissioner Mardfin, seconded by Commissioner U'u to recommend approval to the Council of the ordinance recommended. Discussion? Commissioner Mardfin.

Mr. Mardfin: I move changing Item D to the following.

Mr. Alueta: D?

Mr. Mardfin: D as in dog. "The planning commission may adopt rules pursuant to HRS Chapter 21, to delegate approval of amendments to approve planned developments to the Planning Director."

Mr. Hedani: Is there a second?

Mr. U'u: Can you restate the condition?

Mr. Mardfin: Sure. "The planning commission may adopt rules pursuant to HRS Chapter 91, to delegate approvals of amendments to approve planned developments to the Planning Director." So we'll adopt the rules that will allow us to delegate.

Mr. Hedani: Okay, is there a second? Jim, you want to chime on it? My question is whether or not we already have the authority to establish rules within the commission you know, that could cover that.

Mr. Giroux: Well, you have the power to establish rules but pursuant to 19.32 the way it's written now you don't have that authority. You don't have authority to create rules regarding this process. So –

Mr. Hedani: Would you have specific language that you would recommend?

Mr. Giroux: Well, I think Ward stole my paper but what you would be doing is because the legislature is the one that's holding the authority over 19.32 and what they've done is they've given the planning commission authority to process the project district. So what you're asking for in asking for this amendment would be you would be asking the legislature to allow you the opportunity to create your own rules pursuant to this process. So you have SMA Rules, you have rules of procedure, you have rules of contested case and what you would then do is you would have rules on processing Step 2 Project District and you can do that for every permit that you guys have that's under your authority. You can have, you know, even a state land use, you can create rules now because the state allowed you to do a certain amount of state land use permits. Anything that you're given authority of, you then have the ability to create rules under Chapter 91, but for this process right now, you don't because it's not in the statute or it's not in the ordinance. So what you're asking for is to include that language in the ordinance if you adopt the change.

Mr. Hedani: Commissioner Starr.

Mr. Starr: Director Hunt were you able to craft some wording that would put this in the category that we discussed before where for C and D we would get a list and have the opportunity to either bring the item up or not and if we don't then it is completely under the purview of the director?

Mr. Hunt: The wording that I would propose would be similar to one of the previous motions. "Notice shall be submitted to the planning commission at its next regular meeting regarding any director approved amendments, the planning commission may review the amendments or waive its review." Something along that line but I believe your legal counsel is suggesting a other way.

Mr. Starr: Can we ask counsel if that's okay?

Mr. Hedani: Jim.

Mr. Giroux: I really don't want to interfere in the Planning Department's – you know, this is their initiative, what I'm telling you is that as part of your powers of reviewing the ordinance is that you know you can deal with it in the ordinance or you can deal with it in your rules because what's happening is you're trying to craft rules and put them in the ordinance and that sometimes can get a little sticky because you're going to lose control of the ordinance. It's going to go up to Council and they're going to decide what to do with it. So what you're doing is you're trying to get a process going up to Council to let them know that you want this authority to make your rules on how to process these types of amendments. I mean, I can't agree or disagree with Jeff, he's trying his best to craft something that actually helps streamline. So I don't want to get involved in the policy

making all I'm saying is I've offered alternative language that allows the policy maker to decide whether how they want to distribute the decision making and delegation.

Mr. Hedani: Commissioners? Commissioner Hiranaga.

Mr. Hiranaga: Looking at C, you've proposed to insert the word, on the first line, "Step 2 preliminary plan," so down at the second to the last line you say, "shall review the unified site and building program and upon approval the owner may proceed to finalize the planned development." So this unified site and building plan is that shall we say Step 2 final unified site and building plan?

Mr. Alueta: That's Step 3. ...(inaudible - changing of tape)... Line 26, page 1, shall review Step 2 preliminary plans for conformance with the standards of development in this chapter and ...(inaudible)... the tentatively approved, the Step 2 preliminary plans. And then once they receive, paragraph C goes on and talks about once you've got that Step 2 approval from the commission the owners can then prepare basically building plans and that's your Step 3.

Mr. Hiranaga: It seems to me like there's a step missing in between Step 2 preliminary plan and Step 3 which would be Step 2 plan approval.

Mr. Alueta: Your plan approval is your Step 2 that's why it's called Step 2 preliminary plan on the bottom of B.

Mr. Hiranaga: Why do we need the word, "preliminary" then, shouldn't it just be Step 2 plan? Preliminary indicates you're not finalizing the plan. You're still in draft form.

Mr. Alueta: I think the intent of putting that language in was to distinguish the steps from having conceptual plans and you know from the point of building permit plans.

Mr. Hiranaga: Step 3 is building permit plans, right?

Mr. Alueta: That is correct.

Mr. Hiranaga: I have no interest in Step 3 but I think I have interest in once they have received our comments in Step 2 preliminary plans ...(inaudible)... come back with a final Step 2 plan.

Mr. Hedani: Director.

Mr. Hunt: The way the process works in the Step 2 is that we bring it to you and you review and if you're comfortable with it then you approve it and it may take one meeting, it may take several meetings but the final approval on the Step 2 is with the commission. Now I agree with your comment about a Step 3, we should probably insert language in the bill that speaks to a Step 3 to clarify and the Step 3 would then be construction drawings that the Planning Department reviews and makes sure they're in conformance with the Step 2 that the planning commission approves. Very similar to what is currently the process in the project district.

Mr. Hiranaga: So maybe you should eliminate the word, "preliminary" on the first line 32, "upon approval of this Step 2 plan."

Mr. Hunt: We would have no heartburn over removing that word if that gets comfort level of the commission.

Mr. Hiranaga: Makes me feel more comfortable.

Mr. Hedani: Any further discussion? Currently we have a motion on the floor that's been seconded. We have a motion that wasn't seconded, well motion for an amendment that wasn't seconded. That's where we are. Commissioner Mardfin.

Mr. Mardfin: I'll propose another amendment, and Jeff I'm going to need a little help on this. This is for paragraph C, and on line 35, it says, "the Planning Director shall review the unified site," before unified I'd put "Step 3 site and building program," and Jeff you had wording for the rest of C that I liked could you read it please? It's something about giving us notice and –

Mr. Alueta: Oh you mean, the Planning Director shall review the unified –

Mr. Mardfin: The Step 3 unified site and building program.

Mr. Alueta: The Step 3 unified site and building program and notify the commission and upon approval by the director, the owner may proceed to finalize the planned development.

Mr. Mardfin: Those were my wordings, but Jeff had a better one I thought when he came – something about notify us and if we don't reject it or something it would –

Mr. Starr: Yeah.

Mr. Hunt: After building program there would be a period. And you would insert a sentence, "notice shall be submitted to the planning commission at its next regular meeting regarding any director approved" – well, this was amendments to – regarding any director approvals, "planning commission may review the approvals or waive its review."

Mr. Mardfin: I like that wording very much, so that's what I'll move.

Mr. U'u: Second.

Mr. Hedani: Okay there's a motion to add that amendment by Commissioner Mardfin, seconded by Commissioner U'u. Discussion? Jeff.

Mr. Hunt: We'll probably need to massage the language, the intent was that the director would review the Step 3, notify the commission that we are in the process of reviewing that, the commission would have the option to review it or waive its review of the Step 3. If you waive the review, then the director may go ahead and approve it.

Mr. Mardfin: And I like that very much because –

Mr. Hedani: So you would delete the last portion of that sentence.

Mr. Hunt: I think we can leave in the last sentence, "the owner may then proceed to finalize the planned development."

Mr. Hedani: Upon approval.

Mr. Hunt: Upon approval.

Mr. Hedani: Discussion?

Mr. Hunt: Oh just upon approval because there may be an instance where the planning commission approves the Step 3.

Mr. Alueta: Correct.

Mr. Hedani: Discussion? Commissioner Starr.

Mr. Starr: Yeah, I think we can make it a little – the process a little easier. I don't think we need to take action to waive it. I think we should be able to specifically call it up and take action and if we don't then it's deemed as a property of the director. So perhaps you could massage the language slightly so that it –

Mr. Hedani: Can we leave it to the department to wordsmith that?

Mr. Starr: Department and counsel.

Mr. Hedani: Counsel invented this problem to begin with you know. Commissioner Hiranaga.

Mr. Hiranaga: I'd like to offer a friendly amendment that you delete the word "preliminary" on line 32 between the word, "Step 2 and planned."

Mr. U'u: Second.

Mr. Hiranaga: No, it's a friendly amendment.

Mr. Hedani: I'm sorry we have two motions on the floor.

Mr. Mardfin: That's a different motion.

Mr. Hiranaga: It's a friendly amendment.

Mr. Mardfin: No.

Mr. Hedani: We have a motion to approve, an amendment by Commissioner Mardfin that was seconded by Commissioner U'u to add this particular language under line 35. You want to dispose of that first before you make another amendment?

Mr. Starr: Yeah.

Mr. Hedani: This is to add, "the director shall review the Step 3 unified site and development program. Notice shall be provided submitted to the planning commission. Upon approval the owner may proceed with the finalized planned development." Subject to additional wordsmithing if they see that it's appropriate. I think that's what we're considering, right?

Mr. Hunt: There would be a sentence, the planning commission may review or –

Mr. Mardfin: Or waive review.

Mr. Hunt: Or waive its review.

Mr. Hedani: Planning commission may review or waive review. Commissioner Hiranaga.

Mr. Hiranaga: Again, it's wordsmithing but if you could put language in that says the Planning Director intends to approve, provide notice to the commission that the Planning Director intends to approve Step 3, it's not approve Step 3 and then give us notice. Give us notice that you intend to approve.

Mr. Starr: Or is considering approval for.

Mr. Hedani: Notice shall be provided to the commission of the Planning Director's intent to approve.

Mr. Mardfin: I'll accept that as a friendly amendment.

Mr. Hedani: Or something along those lines. Additional discussion?

Mr. Tagorda: Can I offer an amendment Mr. Chair?

Mr. Hedani: Amendment to the amendment?

Mr. Tagorda: Amendment to the amendment.

Mr. Hedani: Commissioner Tagorda.

Mr. Tagorda: Okay to make the ordinance very simple for my opinion is I like the full thing already what is written there and what's been bracketed, what's been omitted but hearing from the department I think they're so concerned about – so the word I would like to omit is on No. 17, commission.

Mr. Hedani: No. 17 where?

Mr. Tagorda: No. 17 commission.

Mr. Hedani: Line 17?

Mr. Tagorda: Line 17, I'm sorry. Commission, put that as the Planning Director.

Mr. Hedani: Okay, that would be a separate amendment.

Mr. Tagorda: Yes.

Mr. Hedani: Okay, we need to dispose of this one first.

Mr. Tagorda: Okay.

Mr. Hedani: Commissioner Mardfin.

Mr. Mardfin: I like the wording about we review or waive review. Can I ask the director, how many of these occur in a year? More than five?

Mr. Hunt: I'm getting maybe from my staff who would know better than me.

Mr. Mardfin: If it's less than a dozen, I would suggest that, I like your thing, review or waive review because that keeps it in our hands, we can waive review in about five seconds for 98% of them and if one, we don't want to waive review, we review it, and so I think that keeps this in our hands. I really like that wording. I would put the Step 3 part in before unified site and that my colleague had some wording that I – Kent, I forget your wording exactly but it looked good when you said it.

Mr. Hiranaga: Regarding intent?

Mr. Mardfin: Yes, you're doing it after he intends to approve.

Mr. Hunt: It's deleting preliminary.

Mr. Mardfin: No. Not deleting preliminary, that you're not bringing it to us until you're ready to approve it.

Mr. Hunt: The director intends to approve.

Mr. Mardfin: Director intends to approve and then you list it to us, we can either review or waive the review but we know – I don't want to see it four weeks, you know, if you're going to massage it don't give it to us then do it after you've worked it out and I think that will speed things up which is your main intent anyway.

Mr. Alueta: Mr. Chair?

Mr. Hedani: Joe.

Mr. Alueta: If I may, the way I have it written right now on page – on line 35, "the Planning Director shall review the Step 2 unified site plan and building – I'm sorry, Step 3 unified site and building program and notify the commission of the Planning Director's intent to approve," and then, "the owner may proceed upon – proceed to finalize the planned development."

Mr. Mardfin: No.

Mr. Hedani: You're missing –

Mr. Mardfin: You missed an important sentence.

Mr. Alueta: I'm sorry. And notify the commission, I'm sorry there were so many amendments going around.

Mr. Hunt: The sentence that you're missing Joe would read something to the effect, "the planning commission may choose to review the Step 3 approval or waive its review."

Mr. Alueta: Okay.

Mr. Mardfin: That's what the amendment is.

Mr. Hedani: Okay so what we're dealing with is the insertion of the word "Step 3" before "unified site plan," a period after program. Jeff.

Mr. Hunt: Add two sentences after program. "Notice shall be submitted to the planning commission at its next regular meeting regarding the director's intent to approve the Step 3. The planning commission may choose to review the Step 3 approval or waive its review." And we can massage the wording as long as we're all on the same page as to the substance.

Mr. Giroux: Chair, can I just comment as far as that review, I think there's got to be wording that's clear that review is, you know, review and approval or review and comment because you don't want to leave it so vague that later on we're going to have litigation between oh, the director saying well you guys reviewed it and now I'm making my decision. It's got to be a review and approval or review and comment.

Mr. Mardfin: Mr. Chairman?

Mr. Hedani: Commissioner Mardfin.

Mr. Mardfin: I would take that as a friendly amendment. It's review – if we review it, if it meets our approval we waive it.

Mr. Hedani: So the recommended language would read?

Mr. Mardfin: We're talking about the planning commission will review and approve. Yeah, but we don't necessarily have to approve –

Mr. Starr: And approve or deny.

Mr. Mardfin: And approve or deny or waive. It's clear Wayne.

Mr. Hedani: Keep in mind we're trying to streamline the process.

Mr. Mardfin: We don't want to say we have to approve it, we want to be able to deny it. So he



notifies, the planning commission reviews and either approves or disapproves.

Mr. Alueta: The planning commission may review and take action or waive its review of the Step 3 approval.

Mr. Mardfin: Yes, that would be fine.

Mr. Giroux: Maybe take final action.

Mr. Alueta: Thank you.

Mr. Mardfin: That's even better.

Mr. Hedani: Joe you want to restate the motion?

Mr. Alueta: A helpful suggestion from counsel.

Mr. Hedani: Joe, you want to restate the amendment?

Mr. Alueta: Through my allergies I will try. "The planning director shall review the Step 3 unified site and building program and notify the commission of the planning director's intent to approve. The commission may choose to review and take final action or waive its review of the Step 3."

Mr. Mardfin: Keep going.

Mr. Hedani: Approval.

Mr. Alueta: The owner may proceed to finalize the plan – I'm sorry, "upon approval the owner may proceed to finalize the planned development."

Mr. Mardfin: And that is the amendment as proposed.

Mr. Hedani: Is that okay with the second? Any further discussion? I think we've beat this one to death. Any further discussion? All those in favor of the amendment signify by saying aye. Opposed nay.

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

**VOTED: To Amend Paragraph C, "the planning director shall review the Step 3 unified and building program and notify the commission of the planning director's intent to approve. The commission may choose to review and take final action or waive its review of the Step 3. Upon approval, the owner may proceed to finalize the planned development." (Assenting - W. Mardfin, B. U'u, K. Hiranaga, O. Tagorda, D. Domingo, L. Sablas, J. Starr)  
(Excused - W. Shibuya)**

Mr. Hedani: Carried. Any further amendments? Commissioner Starr.

Mr. Starr: Yeah, I'd like to make a similar amendment to Item D in terms of approving amendments, maybe director can help again here I think he's been writing this down.

Mr. Hunt: We would use the same base language, "notice shall be submitted to the planning commission at its next regular meeting that the director intends to approve amendments. The planning commission may choose to review and take final action on the amendments or waive its review of the amendment.

Mr. Mardfin: Second.

Mr. Hedani: Moved and second, add that stated language to Paragraph D. Is there any discussion? Commissioner U'u.

Mr. U'u: Question for staff. Is that all right with the staff the conditions we putting on?

Mr. Alueta: I think that will work in the sense that it maintains your authority as far as reviewing – of determining what is substantial. It gives us the first crack at it to say we don't think this is a substantial amendment and then you could – you'd be able to just say yea or nay really quickly. And it would be in the step in the right direction.

Mr. Hedani: Director Hunt.

Mr. Hunt: Ann, do you have any comments on this, I mean, how much burden will it be on staff? I mean, you deal with these more than probably any of us and you know them better than any of us so I think your input would be valuable.

Ms. Cua: You know, I think the way you have it proposed the way I am interpreting it, you just want a list basically, a list of the projects and that's easy and then – that would be when we get the application in, we've done a preliminary review, we're planning to – I would think we'd want to do our preliminary review sooner rather later because now we have to wait. You know, we're trying to streamline so we don't want to create something that now makes the applicant wait longer for something they could have got a month ago because we did our review and if we would have notified – you know, put it on your agenda just when we got the application, that would have been sooner, but that's okay. You know, we can put it on that we're planning to approve it. It's kind like what we do with SMAs you know, very similar to that. It's not like – you know if we had to prepare a whole report then I would say you know what forget it leave it the way it is because we do that anyway you know, if we're going to have to do a whole report it's like lets save everybody the time and we'll just come before you. We were just trying to make your work easier and ours.

Mr. Hedani: Commissioner Mardfin.

Mr. Mardfin: Right we don't want to see that big report except –

Ms. Cua: Right.

Mr. Mardfin: For the 5% of the projects that start flashing red lights at us.

Mr. Hedani: Further discussion? Commissioner Tagorda.

Mr. Tagorda: Yes, ..(inaudible)... about this streamlining.

Mr. Hedani: Orlando if you can use the microphone.

Mr. Tagorda: I think I'm kind of little bit very simple in this amendment to the amendment. I like to make sure that the commission doesn't play a role so much here in this pertinent ordinance. There are two words that I think we missed on No. 14 the commission. I want that to be under the planning director. And also on No. 25, the commission again, I want that to be on the planning director but I don't want to omit complete involvement of the planning commission in this you know ordinance. I want always an involvement.

Mr. Hedani: Okay. That would have to be a new amendment if you wanted to amend that.

Mr. Tagorda: I want to amend that word, the commission to planning director.

Mr. Hedani: Ann did you have a comment?

Ms. Cua: I can appreciate what you're saying. I think though from the department's standpoint we do feel it is important for the commission to have the review of the Step 1 and 2. Like I said, 95 probably percent of the time this is going to come to you in the context of a major SMA permit. That has to come to you anyway. So the planned development although it's listed as a communication item on your agenda, it's not any more work for us when it's reviewed in that context of a major SMA permit so I really appreciate your thoughts. I think however we've talked about it as a department and we feel very comfortable with your review of the Step 1 and Step 2. It was the Step 3 which we feel a formality that we wanted –

Mr. Hedani: Commissioner Starr.

Mr. Starr: Yeah, it would be difficult for me to support that because that's what we do here basically and that's why the commission is chartered to exist is to look at these PDs and SMAs and if we just turned it all over to the director then I mean we wouldn't need the commission but I think we're here because we allow the public to enter into the process. We kind of represent them and if we were out of it then it would just be the director doing all of this.

Mr. Tagorda: But like I said I'm not done with the amendments that I'd like to provide that's only two simple words, simple things that I did on the –

Mr. Hedani: Right, you can introduce that once we dispose of the current amendment.

Mr. Tagorda: Commissioner Starr and like I said, I don't want the involvement of the planning commission omitted totally here. I want to be involved. So what I'm trying to do is the wordings that was submitted to us –

Mr. Hiranaga: Mr. Chair, can we have point of order. Do we have –

Mr. Hedani: Orlando, that would be a separate amendment that we have to consider after the current amendment. We have to dispose of the current amendment first.

Mr. Tagorda: I withdraw my amendment.

Mr. Hedani: Is there any further discussion on the amendment on the floor to Paragraph D? Commissioner Starr.

Mr. Starr: Yeah, just that I think it's good. I think that we'll all be together in supporting this and I just want to thank the director for helping craft the wording.

Mr. Hedani: Any further discussion? Okay, the amendment on the floor is to add similar language to what we did to Paragraph C to Paragraph D regarding the commission's waiver or review of items. Any further discussion? All those in favor signify by saying aye. Opposed nay.

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

**VOTED: To Place Similar Language that was Placed in Paragraph C in Paragraph D that notice shall be submitted to the planning commission at its next regular meeting that the director intends to approve amendments. The planning commission may choose to review and take final action on the amendments or waive its review of the amendment.**

**(Assenting - J. Starr, W. Mardfin, B. U'u, K. Hiranaga, O. Tagorda,  
D. Domingo, L. Sablas)**

**(Excused - W. Shibuya)**

Mr. Hedani: Carried. Thank you. Any further amendments?

Mr. Tagorda: Mr. Chair can I just put one simple amendment on Letter D, Line 39, it says the planning director may approve. What my amendment would be is the planning commission and the planning director having same power to approve or disapprove. Just the wording planning commission or if you want the authority Mr. Chair, commission chairman and the planning director.

Mr. Hedani: You're talking about an amendment to Paragraph D.

Mr. Tagorda: Yes, yeah amendment to Paragraph D, I would insert the word the planning commission and the planning director may approve amendments to approve planned development.

Mr. Hedani: Is there a second?

Mr. Alueta: I'm sorry, point of order, clarification. Didn't you just make an amendment to that adding the director's language?

Mr. Hedani: Yes.

Mr. Alueta: So?

Mr. Hedani: This is a new amendment without a second. There's no second.

Mr. Starr: Which line, I'm confused.

Mr. Hiranaga: 40.

Mr. Tagorda: 39.

Mr. Hiranaga: There is no line 39.

Mr. Tagorda: It's the new one.

Mr. Alueta: On the one I passed out which has the entire code.

Mr. Tagorda: The new one.

Mr. Hedani: So Paragraph D would have been to add planning commission after planning director under Paragraph D, Line 40 on the original submission? Is there any further amendments? Jonathan, did you have a third amendment that you wanted to submit?

Mr. Starr: Yeah, I'm still trying to understand Mr. Tagorda's suggestion. I mean, would this allow, this would allow us to make amendments to the PD without the director involved? I'm trying to understand the idea of what you're trying to do.

Mr. Hedani: Commissioner Mardfin.

Mr. Mardfin: Mr. Chairman, the amendment, the motion to amend, the prior motion to amend passed so the wording that we're looking at is no longer there. I believe the wording we just approved in our last vote takes care of your concerns.

Mr. Hedani: It will come back to the commission for one final review by notice.

Mr. Tagorda: I withdraw my amendment.

Mr. Hedani: Any further amendments? Commissioner Starr.

Mr. Starr: Yeah, I'd like to a new Item No. E and that the commission shall be provided with notice of the director's intent to approve a final compliance report for PD and then the same wording would kick in.

Mr. Mardfin: I'll second it for the purposes of the discussion. I'm not sure I'm going to go with it at the end.

Mr. Hedani: Okay, the motion is to add a Paragraph E regarding final compliance report. Commissioner Starr.

Mr. Starr: Yeah, this is –

Mr. Hedani: Seconded by Commissioner Mardfin. Discussion? Commissioner Starr.

Mr. Starr: The intent of this is on a situation where a PD goes on for decades and years for the commission to be able to help to insure that conditions that were imposed and other, you know, anything else that was involved with the original approval is being complied with on a project. I don't see it as something that would very often if ever be called into play but there have been occasions in the past and when it seemed like the final approval did not necessarily reflect everything that had occurred in the Step 1 and this may be a way if there's a feeling in the community that this is occurring for a review and discussion of it. I would prefer to do it in a way that is more global so we're not dealing with one specific item in this case the PD because I do feel this is, you know, more a global problem not specific to PDs but I would think that this would be a way to kind of start the movement in that direction.

Mr. Hedani: Additional discussion? Commissioner Mardfin.

Mr. Mardfin: I think I'm going to vote against the motion to amend on a couple of reasons and let me outline them both. One is in the specific instance of the planned development we have five-year terms. I think our institutional memory as a commission is shorter than the institutional memory of the department. So if they've lost track of things we're almost certain to have lost track of the same commitments being given. So I don't think putting this in will get us any further in insuring the promises made in the past are adhered to in the present and the future.

My second concern is I share your concern about things change, circumstances change, that's why I believe that environmental impact statements can't be more than a certain number of years old because circumstances change, standards change, concerns change and so I think your general concern is a good one but it has to be – I would do it in a more global context or general rules rather than attached to this specific bill.

Mr. Hedani: Commissioner Hiranaga.

Mr. Hiranaga: Thank you. Just wanted to understand the process. So Planning Department says compliance report has been satisfied. Is there public notice or it's just in-house approval process?

Mr. Hedani: Director.

Mr. Hunt: I would ask Ann Cua step to the mike and take us through the process and candidly give your opinion on the impacts of this kind of a legislation.

Ms. Cua: Candidly. The compliance report process kind of goes like this, once the project receives your approval and I'm not only talking about planned development. I'm talking about an SMA or – there's normally a condition that talks about preliminary compliance report and final compliance report. Prior to the applicant being able to get a building permit, they have to submit to the Planning

Department a preliminary compliance report. So they have to go through all the conditions. And any condition that is applicable prior to receiving a building permit like getting a noise permit, getting an NPDES permit, things like that all of those conditions must be fully complied with before we approve a preliminary compliance report. So lets say they give us everything we need for every condition that needs to be complied with prior to issuance of a building permit so we approve that preliminary compliance report. They get a building permit. They build the project. Now they want to occupy. Before they can get a certificate of occupancy from the Department of Public Works they have to submit to the Planning Department a final compliance report and for all of the conditions they have to show proof that they have complied. So, any reports that were required have to be in, any kind of improvements, lets say if we wanted road improvements, if we wanted beach parking, additional beach parking, we have to verify and they have to prove to us that that's all been done. If that has all been done, then we approve the final compliance report and that allows Public Works to be able to issue a certificate of occupancy.

Mr. Hiranaga: My question is, is there public notice that you're ready to issue the final compliance report approval?

Ms. Cua: No there is not.

Mr. Hedani: Any further discussion? Commissioner Starr.

Mr. Starr: I really do feel there should be some way for the commission and by doing that the public to know that this is being done and it's not to find fault with the planners that's not the intent. The – it's really to just provide a way if there is something that's really problematical and the community feels that way for there to be a way to open it up to the public.

Mr. Hedani: Commissioner Hiranaga.

Mr. Hiranaga: This file is public record and available to the public for review?

Ms. Cua: Correct.

Mr. Hiranaga: So if someone had a interest in this particular project and felt that certain conditions were not fully complied to their sense of satisfaction what would their recourse be? If they challenge your final compliance report?

Ms. Cua: Well, we would definitely have to investigate it first because if there is a question we would look into if there's any validity. We will weigh it if we feel that the complaint is correct and we find that a condition had not been complied with then you know, we could retract our approval. I don't know. See it all depends, there's so many different scenarios whether they've been issued the certificate of occupancy or they haven't been. If they haven't been issued the certificate of occupancy yet and it's come to our attention and we find something out we can always retract our approval. If the certificate of occupancy has been issued already and people are occupying, I think that makes it a little bit more challenging.

Mr. Hiranaga: So there is recourse for the public if they're not satisfied.

Ms. Cua: Well, the RFS system Request for Service system through the county is the community's avenue to be able to question any project, bring any concerns for the county to actually go and research it. Whether you're having you know, noise, too much from a neighbor or somebody that lives next to you you think is building something illegal or you know of a permit that has a condition that says they're not supposed to be open past 10:00 and it's 11:00 and you know they're open, the county is able to use RFS system to be able to make their complaint and the county then has to investigate and close that complaint.

Mr. Hedani: Any further discussion? Commissioner Starr.

Mr. Starr: I don't know if anyone's ever tried to do this but it's not very easy and I believe it also stretches out the people who are you know, working trying to get their jobs done. There is no way for either us who are supposedly the public entity that's overseeing the process or the general public to know when a compliance report is being approved or what it says. This would allow it to see the light of day and in the rare occasion when there's a public concern for the public to know about it and have some impact.

Mr. Hedani: Any further discussion? Commissioner Hiranaga.

Mr. Hiranaga: Yeah, this is a recommendation to council and so I won't be voting in favor of the motion, but I'd like to bring it to a vote.

Mr. Hedani: Okay, any further discussion? Director.

Mr. Hunt: We appreciate the idea. We believe it would be a burden to staff and it's counter to the whole streamlining efforts that we're going through today. State would recommend against the amendment.

Mr. Hedani: Any further discussion? All those in favor of the amendment to add the language as suggested on the final compliance report and notice to the commission signify by saying aye. Opposed nay.

**It was moved by Mr. Starr, seconded by Mr. Mardfin, and**

**The motion to Add a Paragraph E regarding the commission shall be provided with notice of the director's intent to approve a final compliance report for PD and to add the language that was incorporated into Paragraphs C and D to this paragraph also was lost.**

**(Assenting - J. Starr)**

**(Dissenting - K. Hiranaga, O. Tagorda, W. Mardfin, D. Domingo, L. Sablas)**

**(Excused - W. Shibuya, B. U'u)** (Mr. U'u stepped out of the room during the vote)

Mr. Hedani: Motion is lost. Any further amendments? Commissioner Hiranaga.

Mr. Hiranaga: I'd like to understand why and I guess I'm looking at the old handout page 20 there's the word, "tentatively," and on page 22 there's "tentative," and on line 29, there's "tentatively."



What do you call those tentative approvals? If they've got Step 1 approval isn't that Step 1 approval, it's not tentatively approved Step 1?

Mr. Alueta: Remember again, these are dealing with an ordinance that was first written in 1967 so you know before I was born so I think that that's – and that's why we've always said well Step 1 is the tentative approval so because we are adding in the Step 1 and the Step 2 it is possible but I think it provides clarity to what the intent of that Step 1 and Step 2, but if you want to strike it because you've got all the other words explaining what you want in that Step 1 and the Step 2 and what you expect to review I don't see a problem with removing "tentative" or the "preliminary" I think is what you were talking about earlier.

Mr. Hiranaga: Yeah I mean, –

Mr. Alueta: And just having Step 1 and Step 2 and then we're going to have that Step 3.

Mr. Hiranaga: It's wordsmithing, I don't know if you need our action to do that. It would make me feel more comfortable. It seems odd either you have approval or you don't. What's a tentative approval?

Mr. Hedani: Your recommendation would be to remove the word "tentative" and "preliminary."

Mr. Hiranaga: I can make the motion to delete the words "preliminary" and not all the preliminaries but on the original handout, line 28, 30 and 32, the word "preliminary" and on lines 20, 22 and 29 the words "tentatively" or "tentative."

Mr. Hedani: Okay, there's a motion on the floor to delete the words "tentative" and "preliminary" on lines 20, 22, 28, 29 and 30 and 32 and 30, discussion? Is there a second? Is there a second? Moved by Commissioner Hiranaga, seconded by Commissioner U'u. Discussion? Commissioner U'u.

Mr. U'u: Again, how does the staff feel about that?

Mr. Hedani: Joe.

Mr. Alueta: I don't think I have a problem with that, for my own clarity since I was working off of the handout I gave you this morning. I think most of you were, if you can just give me the lines again or if you just –

Mr. Hedani: Lines would be 20, 22, 28, 29 and 30.

Mr. Alueta: Okay.

Mr. Hiranaga: Depends on which handout you're looking at.

Mr. Hedani: That's on this one. Commissioner Mardfin.

Mr. Mardfin: I'm going to vote against the motion to delete the tentatives and the preliminaries. The

tentatives were in the original ordinance and if we were comfortable with it before, I don't know why we have to remove it now. To my mind saying a tentatively approved is saying, you know, keep going ahead, looking good but you don't get the stamp of approval until we get to Step 3. On the preliminary, Paragraph A deals with Step 1, Paragraph 2 deals with Step 2, Paragraph 3 deals with Step 3 and in B, Step 2 it's a preliminary plan to be followed up by a Step 3 which is a unified site and building program plan. I think the preliminary appropriate. I think the tentatively is appropriate.

Mr. Hedani: Additional Discussion? Commissioner Starr.

Mr. Starr: Yeah, I'll also be voting against. I have concern that by taking those words out it may create a legal pathway to say that the project is being approved.

Mr. Hedani: Any further discussion? Ready for the question? Motion on the floor is to amend by deleting the word "tentative" from line 20 and 22 –

Mr. Hiranaga: And line 29.

Mr. Hedani: I'm sorry?

Mr. Hiranaga: Line 29.

Mr. Hedani: And 29. 20, 22 and 29.

Mr. Alueta: I think we're working from two different sets Mr. Chair, I think that –

Mr. Hedani: I'm looking at Exhibit 1.

Mr. Hiranaga: This is the original. This is the official exhibit that was given to us.

Mr. Alueta: Okay.

Mr. Hedani: I'm looking at Exhibit 1 of the report that was originally passed out.

Mr. Alueta: Okay, so from 20 –

Mr. Hedani: So we're looking removing the word "tentative" from line 20, from line 22 and from line 29, and the word, "preliminary" from lines 28 and 30.

Mr. Hiranaga: And 32.

Mr. Hedani: And 32.

Mr. Alueta: Okay.

Mr. Hedani: You're going to retain it on line 24 or 25?

Mr. Hiranaga: Yes.

Mr. Hedani: Any further discussion? You understand what we're voting on? All those in favor signify by raising your hand. One, two. Opposed same sign. One, two, three, four, five.

**It was moved by Mr. Hiranaga, seconded by Mr. U'u, and**

**The Motion to Delete the word "tentative" from Lines, 20, 22 and 29; and the word "preliminary" from lines 28, 30 and 32, was Lost.**

**(Assenting - K. Hiranaga, B. U'u)**

**(Dissenting - O. Tagorda, W. Mardfin, D. Domingo, L. Sablas, J. Starr)**

**(Excused - W. Shibuya)**

Mr. Hedani: Motion is lost. Any further discussion? Ready for the main motion? Okay, the main motion as amended adds, well, you know what it adds. I don't want to restate it. Director.

Mr. Hunt: I'm sorry in talking with our legal counsel, we would suggest adding a sentence at the beginning of D that would read, "the owner may request amendments to the Step 3 by applying to the Planning Director.

Mr. Mardfin: I so move.

Mr. Hedani: Moved by Commissioner Mardfin.

Mr. Starr: Second.

Mr. Hedani: Seconded by Commissioner Starr to add language as just stated by the director. Any discussion? All those in favor signify by saying aye. Opposed nay.

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

**VOTED: To Add a Sentence at the Beginning of Item D, "that the owner may request amendments to the Step 3 by applying to the Planning Director."**

**(Assenting - W. Mardfin, J. Starr, K. Hiranaga, B. U'u, O. Tagorda, D. Domingo, L. Sablas)**

**(Excused - W. Shibuya)**

Mr. Hedani: Carried. Any further amendments? Ready for the main motion? Main motion as amended all those in favor signify by raising your hand. One, two, three, four, five, six, seven. Unanimous. Opposed same sign.

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

**VOTED: To Recommend Approval of the Proposed Amendments to Chapter 19.32 Planned Development to the County Council, as Amended**

**(Assenting - W. Mardfin, B. U'u, K. Hiranaga, O. Tagorda, D. Domingo, L. Sablas, J. Starr, W. Hedani)**

**(Excused - W. Shibuya)**

Mr. Hedani: Carried. Congratulations. Thank you. We're going to go ahead and take a break for lunch right now. We'll reconvene at 1:15. One down, three to go.

A recess was called at 12:15 p.m., and the meeting was reconvened at 1:20 p.m.

**Chapter 19.36A Off-Street Parking**

Mr. Hedani: January 26<sup>th</sup> is back in session. We are on item B-3, Chapter 19.36A Off-Street Parking. Director

Mr. Hunt: Again, this is part of the four bills that we're offering to streamline permitting, but balance the review in hopes of providing economic development. Three of the bills are based on approvals either by the council or the commission. This bill actually is the odd one out. This is 19.36 regarding Off-Street Parking and it would proposed to delegate the approval down to the department and the reason why we're suggesting this is if you look at the off-street parking requirements they're fairly quantitative, measurable. It either meets it or it doesn't. It doesn't require or involve a lot of discretion or judgement. One example is it has to be within 400 feet of the subject parcel. There's parking stall number requirements. There's shade tree requirements, etc. So in this case, the department is offering or suggesting that the director, the department be allowed to approve off-street parking.

There are some substantive changes in the specifications for off-street parking and that's under Section 2 of the bill and those suggestions were just brought up kind of in the light of well, as long as we're reviewing Chapter 19.36 lets take care of some of these other issues also. It clarifies the standards. It also adds ingress and egress, no maneuvering shall include i.e., ingress and egress from a parking space shall occur in any public street alley or walkway. And then we added a clause except for single family dwellings ingressing or egressing a local street that's because in talking to our staff we don't really enforces provision that you can't back out onto a local street. Pretty much everyone in the community does it and there's no safety concerns. We talked to Public Works they didn't have any problem as long as it's a local street.

And then we also changed the paved parking requirements so that you'd only need to pave your parking if you have five spaces rather than three. There could be some instances where even a dwelling requires three spaces and it's just an attempt to get less pavement in our community. So essentially that's it. Joe, I did a summary while you were gone you want to add anything?

Mr. Alueta: No, think this is great, this is kind of the – especially with the off-site parking that's a lot of people within the 400 feet especially in our small towns where that's come before you and other industrial areas where they intensify the use from either a retail to a restaurant use and the need for additional parking because you did not foresee the intensification of the use. So you make arrangements with your neighbor, kind of goes along with the smart growth. Where you can have shared and you remember we did some recent amendments that allowed for shared or joint use of parking that would come into play also. One thing that was pointed out by the Deputy director of Public Works is that, if you look on Exhibit 1, Line 41, although it's not an amendment there's a typographical error. That should be zero where it says parking angle, it says 0 to 45 and then you

notice the next line is 41 to 50. That actually should be 0 to 40. A typo error that we spotted. So we'd recommend that be corrected since we're making some changes to the code.

And again, the thing I passed out is separate from Exhibit 1. Although the – I guess when this thing was drafted it was under 19.36 but in reality, in the new code it's 19.36A and you were given a copy of it.

Mr. Hedani: Questions from the commission? Commissioner Starr.

Mr. Starr: Visionary actually wish there were more flexibility because I think we're heading for the – you know a place where instead of parking when you have transit oriented development there's other things that can be provided that do as much good as ... (inaudible -- changing of tape)... I do think there are other factors that can be taken into account and whether it should be here or in other sections of the ordinance I'm not sure but I think that in – you know, in urban where we're looking for density then you know, there should be allowances for less parking you know or for alternatives. How can we bring that about?

Mr. Alueta: We've already done that. That's already incorporated into the code. So if you look at the exhibit that I passed out which is 19.36A, it was passed out to you, that's actually the new code. That's the new parking ordinance at least the last time I checked. And this code basically one, Ricki Hokama's amendments took into account for mixed use developments and if recall this you know, about a year and a half ago, two years ago that mixed use development he came up with his own parking standards which greatly reduced the amount of parking stalls that was required for "mixed use developments:" and this dealt with mostly – you had to be designated as a mixed use development such as Maui Lani has that code.

The department felt at that time that it should be more broader and go beyond the mixed and so we ended up having to come back and amend it right after he did his in which we have mixed use development or mixed use projects and we at that point also incorporated if you look at through the code you'll see images or graphics dictating the type of landscaping we wanted but also allowed for people to come in for what we call parking waiver or parking reduction and the analysis we felt should not be a blanket, oh I'm a mixed use – I'm a residential mixed use development therefore this is my code.

We felt that there was more analysis and more planning involved. One you had to figure out whether or not how close you are to a transit oriented stop, what are the other uses in the area, residential, commercial. Is there a bus stop? Is there a train? Is there excess parking next to the shopping center? Do you have bikeways? Is there adequate sidewalks not just motorized or rail or whatever and that analysis is done by the department staff and this commission granted the approval to the director to waive up to 30% of the parking requirement if it met certain criteria. So if K-Mart decides to add, my example was if Walmart added five residential units above Walmart, okay, that's really not a residential mixed use development, you're just adding five units above. So you have a certain economies of scale as well as located. It makes – you can get those waivers if you're located more in the urban core as opposed to in the agricultural district. So that's already been done and that's under 19.36A.160, Parking Reduction or Waiver. And you'll see that and what we did back then was we consolidated – churches had a waiver, industrial storage parking had a waiver, live/work mixed use, off-site parking agreements, off-site facilities of more than 400

feet away, nearest principal entrance, so all of that was consolidated and I guess what's happening now is that I guess in this new amendments is that it's allowing the director to make that call.

Mr. Hedani: Additional questions from the commission? Commissioner Starr.

Mr. Starr: The second thing is with pervious, using pervious pavement and filtration of automotive byproducts and so on. That's kind of the one area I'm a little bit reluctant to give it up because you know, we do have control over the SMA but we don't have control outside of it. If there's a way of dealing with that I would feel more comfortable leaving that out.

Mr. Alueta: That has to do with parking design. The purpose of the amendment is just basically having – if someone has a unit they changed it from retail to restaurant or some more intense use so now their parking requirement instead of being five which they have on site, they require 15. They have an agreement next door there's a warehouse, they have 10 stalls or 10 their warehouse, but they have 10 extra parking stalls they never used because they're using it for warehousing rather than retail. They're able to enter into a joint private agreement, right, that says this guy I'm within 400 feet I can use his 10 stalls located on his site and that covers my parking requirement and before it used to be you come before this commission and you would approve the use of having another parking on. The last one I did was probably Miyake Concrete in the Kihei area where they used the vacant lot across the street because they were using most of their site for warehousing so Miyake came in for an off-site parking agreement and this commission – and most of the time commission goes why are we seeing this? You know, it's pretty manini, we see it all the time.

To address your question regarding oil, again, SMA requires it. As part of that last amendment the department had we agreed with you on that and therefore we didn't want to see excess parking lots built. And so we put in our code that you can build – you cannot build more than 10% of more parking than you need. If you look at Home Depot and Walmart they actually put in twice the amount of stalls that they were required. That creates a lot – I mean, so instead of having 300 they put in 600 stalls and they never use the 600 stalls and that's a lot of runoff. So we felt that you don't need to do that.

We also put in as part of this parking in the last amendments that you had was that someone could do grasscrete which is a little more environmentally sensitive and has more infiltration. We felt you can also do that which allowed for those types of alternative services.

Other things that we've also incorporated as part of – that was part of this parking waiver is that – which we see in a lot of other municipalities is that they come in and they have a use and they say because of this my transit oriented design, I'm in the urban core, I have a lot of other mixed uses around me I don't think I'm going to need as much parking. Well we said fine. You don't need to put in the 150 stalls. Put in a hundred stalls provide me with a grass or landscaped area that can accommodate or design in another 50 parking stalls and lets run with it. We'll let you see how it goes and if we have a problem later on at any point in time if the county says you need to put in that extra 50 stalls you take out that extra grasscrete or I mean extra landscaped area. So that creates one, you don't put in all the hard surface. You have a temporary – you have some landscaping in there that looks nice and you get to test out your theory but at the same time you don't have the site over developed with commercial. Because once you put a building up it's very hard to put parking back in. So it's – like I said we've kind of accommodated – this is more of a what we consider part

of the streamlining bill in the last go around a year ago we kind of hit that new urbanism joint use parking area as well as some of the environmental things and temporary other uses.

Mr. Hedani: Additional questions? Commissioner Mardfin.

Mr. Mardfin: I have two questions. One is, and maybe the less important, we had a consultant here that we talked to about a year or so ago about backing in, I don't know, what reverse diagonal is what it was called.

Mr. Starr: Yeah, reversed diagonal.

Mr. Mardfin: Is reverse diagonal permitted under this?

Mr. Alueta: That has more – It's not prohibited lets put it that way.

Mr. Starr: So 45 degrees is just 45 the other way.

Mr. Mardfin: Diagonals are diagonals that's okay?

Mr. Alueta: Yeah, how you access those is –

Mr. Hedani: Commissioner Mardfin.

Mr. Mardfin: My second question or set of questions has to do with it's off-site parking, this is primarily dealing with off-street parking but then there was that off-site parking. We dealt with one a meeting or two ago in Kihei with a rent a car place and that seemed to be kind of reasonable and nothing we should worry about. But what we made – I made sure about was that it was exclusive to that operation. Maybe a year, year and a half ago we had on in Lahaina where they – a building was trying to use off-site parking but it wasn't on – it was a commercial parking lot and they were just using 10 and I was seeing this as phantom parking places because they could have had this store use it and some other store use it and the parking places would have been used – could have been used up to 10 different places. I remember voting against it but I was – understanding we don't want to have Lahaina parked over, but these phantom parking spaces bother me and I don't know how to deal with that in this proposed ordinance.

Mr. Alueta: Phantom parking in Lahaina in particular is a little more difficult to deal with and that's the Historic District. I think – this one deals with you know for the most part outside of that district and you should be able to try to keep an accounting of it because they can't lease the same stalls over and over.

Mr. Mardfin: So it's an exclusive parking stall for a particular – if it's an off-site parking for a particular store it's exclusive to them, they can't multiply rent it out?

Mr. Alueta: Yes, most places like – you have to have excess in beyond your stalls. In Wailuku it tends to be the Korean bars because they have a higher parking requirement and that's who comes in and adjacent to a retail spot or – because they tend to be in the Wailuku Industrial area and so you have an industrial – like I say, an industrial use next door they were required "x" stalls, they put

in more stalls than they needed because, you know, you put up a warehouse you just pave a bunch of stalls and then you have the next door bay or next door complex changes from – they came in and did warehouse space and then they changed into a bar and they need stalls and so what happens is they will then put up signs in the other next door property. A lot of times you can't even tell it's two different properties because they have a joint driveway and –

Mr. Mardfin: And that's fine as long as it's exclusive and there can be a time usage. I can imagine one set of uses during the day time and another set at night. I don't mind them switching back and forth there if it's nonexclusive in terms of place and time. But what I want to make sure is that we're not going to – and I don't know how to put it in, but I would just hate to us be approving spaces at the same time and place they're expected to be used by four different establishments. I don't know how to deal with that.

Mr. Hedani: Director Hunt.

Mr. Hunt: Just to clarify a little bit. The department will track and monitor the leased spaces so no private parking company can lease the same spot to two different companies to fulfill this requirement. What the issue was in that Lahaina project several years ago was what should we make them sign those spaces so that those spaces are exclusive to that one business for the whole time, 24 hours a day and that's where the department had trouble because in a number of businesses in Lahaina they're only open a portion during the day and it seems like a waste to say you can't park there even though the restaurant's not open till 6:00 at night and so that was that issue. So we need to distinguish the signing versus the actual double leasing and we monitor so there is no double leasing.

Mr. Mardfin: Okay, I think there was in that case and you're argument to me at the time was in my recollection I don't think it was time thing because I would have accepted that quite easily. I think that there was no assurance that this company, it was a public parking lot that they rented spaces out in and there was no way to distinguish those they rented out to anybody else to those that were specifically this building and if that's the case then it could have to been specific to any building. I mean, I'm just – And I remember your argument at the time was well, what's the alternative to recreate a whole lot more parking spaces and I agreed for Lahaina that wasn't a good thing. You know, I bought your argument.

Mr. Hedani: Additional questions for staff? Okay, I'd like to open it up for public hearing at this time, are there any members of the public that would like offer testimony on this item? Seeing none, public testimony is closed. Staff recommendation. For some of the commissioners that came in late there is one correction to the department's submission and that is changing 45 to 40 on Line 41 that was a typo on the original submission.

Mr. Alueta: Correct.

Mr. Hedani: What's your pleasure? Commissioner Starr.

Mr. Starr: Yes, I was kind of conflicted whether we should try to add language like we did to the last one and I decided not to. Let the director deal with this one. So I move to recommend approval.



Mr. Hedani: Move to approve. Is there a second?

Mr. U'u: Second.

Mr. Hedani: Seconded by Commissioner U'u. Discussion? All those in favor signify by saying aye. Opposed nay.

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

**VOTED: To Recommend Approval of the Proposed Amendments to Chapter 19.36A Off-Street Parking to the County Council, as Amended.  
(Assenting - J. Starr, B. U'u, K. Hiranaga, O. Tagorda, W. Mardfin,  
D. Domingo, L. Sablas, W. Hedani)  
(Excused - W. Shibuya)**

Mr. Hedani: Carried. That's to recommend approval to the Council. Director.

#### **Chapter 19.40 Conditional Permits**

Mr. Hunt: Keeping in chronological order or numerical order pardon me, the next bill is Chapter 19.40 Conditional permits. Conditional permits currently go to the Council for approval with a recommendation from the planning commission starting out with a recommendation from the department. We're not proposing any changes to that. What we're trying to do is streamline the process where if we have a time renewal they're usually issued for a certain number of years that time renewal could be issued by the department under circumstances such as there's been no changes and I believe there's criteria spelled out in the bill.

I believe there's also language that speaks to the no substantial changes again. The issue with the conditional permits is we have many with them. We average about over the past five years there's been an average of 9.6 conditional permits a year and if all those get up to Council and approved and granted not all of them are approved and some drop off but nonetheless there's just a logistical issue of should Council be the only body that can renew a permit if there's no changes, there's no problems, etc., so we're trying to again delegate down in instances where there's a comfort level and with certain circumstances. So that's the overall philosophy and Joe do you want to give it a little more detail, a little more technical review?

Only that in – for the granting of extensions it should be clear that the director needs to meet the following criteria before he grants a time extension and that is one of the – and that's on Exhibit 1 going through Line 41 through 46. And so those are the criteria that needs to be identified before he can grant a time extension. And then again, you have your approval of changes that are not substantial and not result in a significant impact. Again, that's you know, somewhat subjective to some people. I can tell you on Molokai their issues and concerns were that public doesn't have an opportunity to comment and the only time that they have an opportunity to make the commission or the Council aware is during the time extension process. So they may not file a complaint during the course of a project so they may have an approval that has no changes, they're operating and we haven't – they may not file a complaint but they problems and they're the next door neighbor

or live a couple door down. They come out, they'll testify when they see that it's up for a time extension and that's – so that was the issue, the comments coming from the planning, Molokai Planning Commission. Also on Molokai, they, again it was what's substantial, there were concerns over that. One of the more moderate commissioners on Molokai was concerned because you have that marginal threshold, the straw that breaks the camel's back. What seems marginal to the director or the administration may be the line in the sand or the straw that breaks the camel's back to the commission or to the public as a whole.

Mr. Hedani: Questions from the commission? Commissioner Starr.

Mr. Starr: Yeah, I wonder whether the director would be willing to support language similar to what we put in on the PD people. In most cases I'm happy not to have to deal with them, but then there's the one once in a while when I would like the option to.

Mr. Hunt: We can – in the spirit of compromise we could support that. I would request or suggest that that language be added to the changes and amendments. The time extension has explicit conditions that are spelled out in the bill at this point. Hopefully there's some comfort level with those conditions. We would only issue a time extension is if the permit holder is still in compliance with the original conditions, the approved use is not – well, substantially change or new uses added, agencies have not identified new concerns in that case we would be arguing well it's the same permit that's just going forward again for time renewal.

Mr. Hedani: Commissioner Mardfin.

Mr. Mardfin: I have questions about this. I understand Commissioner Starr's amendment but it doesn't come to us as far as I'm reading it. It goes to the County Council and you don't submit spreadsheets to the County Council on a regular basis what you're planning to do so I don't know how we write it so that it comes – my reading of it is it doesn't come to us under any circumstances.

Mr. Alueta: That is correct. You only review it as part of a – you see it as a time extension, you make a recommendation to the County Council.

Mr. Mardfin: Oh, it comes to us for recommendation to the County Council?

Mr. Alueta: Yes.

Mr. Mardfin: I withdraw my comments.

Mr. Hedani: Commissioner Starr.

Mr. Starr: You know, the extension I feel just the same way the commissioner on Molokai apparently felt which is that you know, there's someone operating something and all of a sudden they're having Red Bull parties till two in the morning, you know, There's no criteria listed here that would necessarily change that but the neighbors may be really upset over what's going on. So I still would like that option which you know, I doubt would get used much but I do feel that option should be on renewals where even if they're still doing the same thing if it's bothering a community we're the outlet for it in terms of creating a recommendation for the Council.

Mr. Hedani: Okay, we have no motion on the floor at this point. Commissioner Mardfin.

Mr. Mardfin: I'm not ready to make a motion yet. I still have a question. Will somebody show me in the ordinance here it refers to the commission at all?

Mr. Alueta: It does not.

Mr. Mardfin: It does not.

Mr. Alueta: No, what we're doing is this is taking a step from Council approval. Everything is approved by Council. Okay, the original permit is approved by Council and you recommend to Council and amendments are approved by Council.

Mr. Mardfin: But under the existing ordinance –

Mr. Alueta: But what we're proposing is to bring it all the way down to the Planning Director for time extensions and to allow the director to approve nonsubstantial changes to a conditional permit.

Mr. Mardfin: I understand that but in the bill unedited, unchanged, I don't see where it comes to us maybe I'm missing it.

Mr. Alueta: On the one that I passed out this morning, page 2, line 14 which is the establishment of the conditional permit. "Upon findings by the appropriate planning commission."

Mr. Mardfin: Okay.

Mr. Alueta: "that reasons justifying the granting of a conditional permit exist."

Mr. Mardfin: Thank you.

Mr. Hedani: Director Hunt.

Mr. Hunt: The confusion is the bill that's in your packet was condensed so that only those sections that we're proposing for changes are in that bill and to help you out Joe handed out a complete copy of 19.40.

Mr. Hedani: Additional questions? You ready for a motion Commissioner Starr.

Mr. Starr: Yeah, I never got a response from the director regarding whether he would help us and support wording that would allow us to get a notice and possibly act on concerns on time extension as well as changes to the permit if we deemed it problematical.

Mr. Hunt: Certainly. I mean, just philosophically our job we often wear two hats and our first hat is we make a recommendation to you folks. If you want to start going in a different direction we're always here to help you out.

Mr. Starr: Yeah, I just see it as a safety valve.

Mr. Hunt: I would suggest that we start with the substantial changes provision at the top that's the first one and we could add similar language that we added regarding 19.32 Planned Developments where the commission would be noticed and you would then have your choice whether to review and make the final decision, final action I think was the term we used or waive that review. So that would be for changes to the conditional permit.

Mr. Hedani: Commissioners what's your pleasure?

Mr. Starr: Public testimony.

Mr. Hedani: We didn't do that? Are there any members of the public that would like to offer testimony on this item? Seeing none, public testimony is closed. Commissioners? Commissioner Starr.

Mr. Starr: Yeah, move to recommend approval with the addition of language that would –

Mr. Hedani: As proposed by the director.

Mr. Starr: As proposed by the director for substantive changes and also time extensions.

Mr. Hedani: Is there a second?

Mr. Tagorda: Second.

Mr. Hedani: Moved by Commissioner Starr, seconded by Commissioner Tagorda to recommend approval with amendments as recommended by the director. You got the changes?

Mr. Alueta: No, I'll –

Mr. Hedani: This would include language Joe, like notice will be provided to the commission regarding the director's intent and the commission will have the ability to review or waive review.

Mr. Hunt: Yes, are we in discussion?

Mr. Hedani: Yeah, we got a motion and a second, we're in discussion.

Mr. Hunt: I was thinking that the time extension we could modify the language so that the director might be able to approve some if the use is absolutely the same or the use has not been changed. Right now it says not substantially changed.

Mr. Starr: How about if no - and complaints have been received?

Mr. Hunt: That's fine with us.

Mr. Starr: I don't need to restate it, you got that?

Mr. Hedani: Just take that as a friendly amendment to the language. I'm sure Joe will work it out.

Mr. Alueta: Yeah, I'm just trying to figure out you know for the condition amendments and modification, that first section on the nonsubstantial I was just trying to think if we could put upon - it would be simpler if we put, "upon concurrence of the planning commission, the planning director may approve changes to the conditional permit if changes are not substantial and do not result in significant impact upon the result from the approved conditional permit." So if you put upon concurrence of the planning commission then you still gotta -

Mr. Hedani: That would mean we would have to -

Mr. Starr: Then you have to come to us.

Mr. Mardfin: We don't want to do that.

Mr. Alueta: Okay. So I'll put the other language in.

Mr. Hedani: Commissioner Hiranaga.

Mr. Hiranaga: Maybe this is a question for Corp. Counsel. Conditional permits are granted by the council.

Mr. Giroux: Yes, per the code it's done by an ordinance.

Mr. Hiranaga: Is there a conflict that these powers are being granted if adopted to an administrative department?

Mr. Giroux: Well, that's going to be the policy decision. I mean, once it gets up to council, but again, it's whether or not the ordinance allows you to delegate that and what you're doing is you're putting it in the ordinance so council is going to have to decide if that's what they want to do with that ordinance.

Mr. Hiranaga: But from a constitutional viewpoint, Corp. Counsel has no concerns, separation of powers?

Mr. Giroux: We can look at it further but at this point it's really, we're letting the department kind of look at -- their mandate is to look at what can they possibly do to streamline? So we're trying not to - I think we've yanked their chain a little bit too much. But you know, if that issue is something that we need to delve into further to see if - right now I believe that we're comfortable but if we have to go in and dig through the, you know, deeper, at this point, we haven't come out strongly against it. But I'm sure that issue will come out at the council level.

Mr. Hedani: Commissioner Starr.

Mr. Starr: Yeah, I want to look at something a little more basic with this. Why do these go to the council and not to the commission? I mean, wouldn't it even streamline things more if it was just planning commission. It's a planning issue, it seems like that's really our kuleana and not the council. I know the ordinance says otherwise. I'm just saying why - what's the logic for, why don't we just say it should go to the planning commission and not the council?

Mr. Hedani: James or director.

Mr. Hunt: The department philosophically would support that. I mean, it's in line with streamlining, delegating down. Realistically we're having difficulty with council delegating and they seem to be very concerned about letting go of issues and permit review that's in their control. So I would have no problem forwarding that recommendation to the council but I'm not sure - I guess that's why we didn't propose it originally is we just didn't feel it was realistic.

Mr. Hedani: Commissioner Starr.

Mr. Starr: Would the second be willing to withdraw his second in light of the idea of making a motion that would just delegate it to the planning commission instead of the council which is where it really belongs?

Mr. Mardfin: I think that could be handled easier with just an amendment. Amendment of the wording. If you want it, I'll withdraw, but I think it's cleaner to take - there's a motion on this, put an amendment in that will just change it. It's probably only a two-word amendment.

Mr. Starr: I need some help though, you know. I'm not really qualified to -

Mr. Hedani: Additional discussion? Commissioner Starr.

Mr. Starr: Yeah, I'd like to make a motion to that effect and I would like the staff and if necessary, help from counsel to help draft this, the idea being that it becomes a function of the commission instead of the County Council.

Mr. Hedani: Mr. Mardfin.

Mr. Mardfin: As I see it, I'm looking at the original handout we had from Joe. 1.20 to 22 says, summary of change, provides for Planning Director approval of nonsubstantial changes. Rational, nonsubstantial changes should not require council approval. So that's already pulled them out of the -

Mr. Starr: I'm talking about the big wording which is in another section.

Mr. Hedani: Commissioner Starr, would you let Commissioner Mardfin -

Mr. Mardfin: 1.39 to 46 provides for time extensions if criteria are met. That would put it out of the hands of the council.

Mr. Alueta: You would need to amend if I may Mr. Chair and Commissioner Mardfin is if you look at the original - the one I handed out which has the entire code.

Mr. Mardfin: Yeah.

Mr. Alueta: Where it says, general, the commission shall hear and review an application for a conditional permit and provide a recommendation to the council. So you would just strike out, it

says the commission shall hear, review and approve an application or review period, an application and just cross out, and provide a recommendation to the county council. And then we would need to find out whether or not where in other statutes it talks about conditional permits that state that it needs to be adopted by an ordinance that as Mr. Giroux pointed out because that needs to be taken out.

Mr. Giroux: I guess just a little historical note on - this is an aberration of zoning and zoning is always done by ordinance. When you do a conditional permit you're allowing a use in a zoning district that is not permitted. And you're conditional permit is kind of - it helps the county avoid the problem of people going into the Board of Variances and asking for a use variance which are heavily frowned upon by the law. It raises and it's raised issues on the floor of Council about spot zoning. Within the conditional permit ordinance itself part of the commission's review is to give council guidance that a conditional permit may not be appropriate in a situation where a change of zoning would be the recommended action. So I guess all I'm trying to say is that I don't think council would be very responsive to the idea of letting go of conditional zoning. I think from a legal standpoint the lawyers have sometimes trouble with the idea of conditional zoning because it is an aberration of zoning. So I mean, I don't know how much this is going to add to the conversation but just so there's some background on why it's an ordinance and why it's with council instead of at another level and I think the whole TVR issue has really blurred this line because TVRs if we had gone forward in a different manner we probably could have gone forward as a permitting process and not use the conditional zoning or - you know, the conditional permit as a methodology of permitting and so, I mean, either way it's going to be rough ride on this one because it's - even when we were following the process, it was a rough ride. Just to throw in my two cents.

Mr. Hedani: Thank you. Commissioner Hiranaga.

Mr. Hiranaga: I agree that conditional permits are spot zoning and it should be adopted by ordinance. One way to streamline this process is to remove the planning commission's involvement. Because we just make a recommendation and you're going to have public hearings on it anyway.

Mr. Giroux: I think by ordinance - by Charter because we look at it as a land use ordinance that's why it comes through the commission. I think that's why the code is fashioned the way it is.

Mr. Hiranaga: Please note future Charter Commission may need to make a change there.

Mr. Giroux: Like Wayne said, I'm just part of the problem.

Mr. Hedani: Any further discussion, Commissioner Starr?

Mr. Starr: Yeah, I would like to give it a shot and it is redundant and the real problem with it is that it is redundant. It goes to - it first goes to the director then it goes to this body which becomes advisory and then it goes to the council for decision making. I'd like to in the spirit of trying to streamline, I'd like to make an amendment to do as suggested by the director which would be to change the language and lines 13 and 14 on today's handout and any place else that would - needs to be done for conformity to give the power to the planning commission.

Mr. Hedani: Is there a second?

Mr. Mardfin: Second.

Mr. Hedani: Moved by Commissioner Starr, seconded by Commissioner Mardfin to?

Mr. Starr: Director can you repeat what you gave us before?

Mr. Hunt: Well there's two issues going on. One is the delegation of the renewals and time extensions down to the Planning Department and there's been some suggested language that we include similar to what we included in the 19.32 revision. Now there's a discussion about delegating the actual approval, the initial approval from council down to the commission that would involve several - a cursory review I went through it real quick, it would involve amendments to line 13 and 14 on page 1 and line 18, 22, 27 and 28 on page 2 of the full ordinance. I mean, another way to do it would simply be to pass on your recommendations regarding the delegation of the time extension and the renewal, I mean substantive changes and then also make a comment the commission also would recommend final approval be delegated from the council on down without making specific language changes.

Mr. Alueta: Right, yeah.

Mr. Hedani: Okay, I'm confused.

Mr. Hunt: Sorry about that.

Mr. Hedani: And if I'm confused, you're confused. Commissioner Mardfin.

Mr. Mardfin: I understand what the director is saying. It is clear to me. What he's suggesting I believe is that we defer for the time being the issue about -- the big change about moving it from the council to the commission, deal at the micro level deal with the particulars that we have on the changes that were proposed by Joe namely on extensions and renewals and small changes and then after we've adopted this, add a second amendment where we make a recommendation that the council consider moving it from their level down to the commission level.

Mr. Hedani: Okay, the maker of the motion was Commissioner Starr, seconded by Commissioner Mardfin to amend to add language regarding notice to the commission. That was the amendment that I recalled that we never voted on yet. If it's changed let me know. Commissioner Starr.

Mr. Starr: Yeah, this amendment is that basically that line - instead of line 13 and 14 reading shall provide a recommendation to the County Council, shall hear and review an application for a conditional permit and what do we do, we grant or deny that the conditional permit and any additional language that needs to be changed for conformity to be so changed. That was the intent of my amendment.

Mr. Hedani: Okay, the amendment is not an amendment to the amendment that was being considered. It's on a different section right? So what we needed to do was dispose of the first amendment first.



Mr. Starr: Okay, lets dispose of the first amendment, I'm sorry.

Mr. Hedani: The motion on the floor is to add language regarding noticing of the commission under the substantive changes section and not on the time extension.

Mr. Mardfin: No, and on the time extensions.

Mr. Starr: I thought we had voted on it, I'm sorry.

Mr. Hedani: No. Director did you want to exclude time extensions since that's pretty cut and dried or do you want to include notice on time extensions as well?

Mr. Hunt: I've lost track of where the motion is, whether it included both substantive changes and time extensions.

Mr. Hedani: I think the motion did include both.

Mr. Hunt: I would prefer that we separate them and deal with extensions. I would like to try and get a little bit more precise wordsmithing on that one but it's up to the body whether you want to do them both or -

Mr. Hedani: Commissioner Starr.

Mr. Starr: I thought we'd do them both but I was willing to make part of my amendment that the time extensions need to - okay, lets do the first one. Lets do the --

Mr. Hedani: The motion would be restated to include the provision regarding notice to the commission first relative to substantive changes.

Mr. Starr: Yes.

Mr. Alueta: To section 19.40.080, Conditions, Amendments and Modifications, and we'll add similar language as 19.32, as you did in 19.32.

Mr. Hedani: Right.

Mr. Alueta: That's the only section we're modifying right now.

Mr. Starr: Yeah.

Mr. Mardfin: And that will be paragraph A?

Mr. Starr: Right.

Mr. Alueta: That is correct.

Mr. Hedani: Do we all understand what we're doing?

Mr. Hiranaga: Repeat the motion.

Mr. Hedani: Okay, the motion is to include language that would go along the lines of notice shall be provided to the commission relative to the intent of the director to grant or approve changes to the conditional permit, nonsubstantive changes in conditional permits and subject to the commission's review or waiver of review like we did in the prior ordinance and that would be amendment to Section 19.40.080, Section A. Commissioner Hiranaga.

Mr. Hiranaga: Does that include time extensions?

Mr. Starr: No.

Mr. Hedani: No. That would be covered separately. Any discussion? All those in favor signify by saying aye. Opposed nay.

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

**VOTED: To Include Language that Notice Shall be Provided to the Commission Relative to the Intent of the Director to Grant or Approve Nonsubstantive Changes in Conditional Permits and Subject to the Commission's Review or Waive Review.**  
**(Assenting - J. Starr, W. Mardfin, K. Hiranaga, B. U'u, O. Tagorda, D. Domingo, L. Sablas, W. Hedani)**  
**(Excused - W. Shibuya)**

Mr. Hedani: Carried. Any further amendments? Commissioner Starr.

Mr. Starr: Okay, and this is regarding time extensions and under time extensions, director can you help me?

Mr. Hunt: How about if we try and give the department some ability to grant a time extension and so the criteria under 19.40.090 there's proposed language A, B and C. How about if we change the item B to say, "the use approved by the County Council has not been changed or new uses added." Or "No uses added from the approved conditional permit." So essentially if it's the same exact permit and it's just a time extension that would be delegated to the department.

Mr. Starr: And no complaints have been received.

Mr. Hunt: And no complaints. Sorry.

Mr. Alueta: We can add under C, "agencies or neighbors do not identify any new concerns need to be mitigated."

Mr. Mardfin: Under C.

Mr. Alueta: Make a D? Oh, okay, it's up to the commission. You want to add it as a D. Just make a D then, no complaints have been received by the -

Mr. Hedani: Director's recommendation I think as an amendment to Section B?

Mr. Hunt: Yes, and then Mr. Starr suggested adding another clause, another criteria saying no complaints have been received regarding the conditional permit.

Mr. Mardfin: I'll second that motion.

Mr. Hedani: Okay, why don't we take the change to B first and then we can cover D second. Any discussion on the change recommended that would restate 19.40.090 lines 43 through 45 to read, "the use approved by the County Council has not been changed or new uses added from the approved conditional permit;" Discussion? All those in favor signify by saying aye. Opposed nay. Carried. Commissioner Starr.

Mr. Starr: Add a new Item D which is that, Joe.

Mr. Alueta: No complaints have been received from the public.

Mr. Starr: Didn't you say departmental?

Mr. Alueta: Well, that's in C, already identifies agencies.

Mr. Starr: Oh, okay.

Mr. Alueta: So no complaints have been received from the public.

Mr. Hedani: Moved by Commissioner Starr.

Mr. Mardfin: Second.

Mr. Hedani: Seconded by Commissioner Mardfin to add a paragraph D as stated. Discussion? Commissioner Hiranaga.

Mr. Hiranaga: I guess I have a concern with the language, "no complaints received." I would be more comfortable if notice is provided within the 500-foot radius because neighbors may have changed, owners may have changed. Some people don't realize that that entity is there due to a conditional use permit and you think they have the proper zoning. So I don't necessarily want it to come to us but I think the people in the neighborhood, the 500-foot radius should be notified that an extension has been applied. And if then they have objections they can write letters to the director.

Mr. Hedani: Director.

Mr. Hunt: ...(inaudible - changing of tape)... 500 feet and if no complaints have been received then the director could approve it.

Mr. Alueta: So D would read, "no complaints have been received from the general public after a notice of the surrounding 500-foot properties and after 30 days of sending out a notice to a 500-foot

radius," something to that effect. So we just add, "no complaints have been received from the general public."

Mr. Hedani: Commissioner Hiranaga.

Mr. Hiranaga: What's the statutory period once notice is sent out, for say SMAs that you're supposed to receive comments.

Mr. Hunt: Is it 45?

Mr. Hiranaga: Just be consistent with whatever that is.

Ms. Cua: I think the only one that has actual requirements is the new B&B law where you have to respond within 45 days, is it from notice - I'm not sure - we could use that same B&B because that is the most recent - every other permit there's nothing that says you can only - it's only going to count if you send a letter within so many days. Every other permit you can get the letter here and you're going to count it, but the B&B one they have only 45 days. So that's your choice.

Mr. Hedani: Additional discussion? Commissioner Starr.

Mr. Starr: Yeah, I'm willing to accept that as part of the motion if the seconder -

Mr. Hedani: Is that acceptable to the second?

Mr. Mardfin: Yes.

Mr. Hedani: Any further discussion? My question is does this extend the review process or is it the opposite of what you're trying accomplish in terms of stream -- is this reverse streamlining?

Mr. Alueta: I think we took eight steps forward and six steps back. So you kind of gained two steps somewhere along the way because one, if this amendment approved amendments are going to the council and the amendments or time extensions aren't going to council. Time extensions definitely aren't going to the planning commission. You are providing additional notice requirements to the general public which is handled - which can be handled by the applicant and should be handled by the applicant. So if they submit a time extension request and they show that they've notified everybody within 500 feet and we don't receive any complaints and they're not changing anything the director would just be able to issue a time extension.

Mr. Hunt: How do we process time extensions now? Do we renotify neighbors?

Mr. Alueta: Yeah, it goes through the whole public hearing process again.

Mr. Hunt: So we're not adding a step, we do that anyways.

Mr. Hedani: Additional discussion? Commissioner Mardfin.

Mr. Mardfin: Director, I have a question on lines 24 through 27 it says, "the planning director may

consider unusual circumstances that prevented an applicant from filing a timely extension and may waive the requirement that the extension had been filed no later than 90 days prior." What kinds of things come up?

Mr. Hedani: I'm sorry, Commissioner Mardfin, does that relate to what we're discussing right now which is addition of Item D?

Mr. Mardfin: It might. It might. I mean we could handle it separately. If you want to deal with D first then I'll ask the question again. I'm okay with that.

Mr. Hedani: I'm just concerned because we're jumping all over this ordinance, all over the place.

Mr. Mardfin: Okay, lets handle D first.

Mr. Hedani: Okay, the amendment on the floor is to add a section D, Commission Starr which reads?

Mr. Starr: Sure is a lot easier when the director or someone's writing it down and reading it for us.

Mr. Hunt: A rough attempt. Item D would be, "no complaints had been received from the public after notice to neighbors within 500 feet of the conditional permit had been mailed."

Mr. Hedani: Ann.

Mr. Alueta: Well, we just wanted to point out -

Mr. Hedani: Joe.

Mr. Alueta: I know, too many cooks in the room as far as I'm concerned, but you have time extensions if you under - for extensions right now no public hearing is required. If you look under 19.40.090 you follow the same rules except for no public hearing needs to be held. So there's no notice currently.

Mr. Hedani: So we're adding a notice provision?

Mr. Alueta: Correct, but you don't go to council. So again, eight steps forward, six steps back.

Mr. Hedani: Commissioner Hiranaga.

Mr. Hiranaga: Are conditional permits transferable?

Mr. Alueta: Only by the commission - I mean by council.

Mr. Hedani: Any further discussion? The motion on the floor is to add a paragraph D under 19.40.090 which as per the director read relative to notice to the commission - I'm sorry, notice to the public within 500 feet. Is there any further discussion? Ready for the question? Everybody know what the question is? Director you want to read it one more time.

Mr. Hunt: We would add another criteria this is under the scenario the director could approve a time extension of a conditional permit if no complaints had been received from the public after notice to neighbors within 500 feet of the conditional permit had been issued or mailed.

Mr. Hedani: All those in favor – Commissioner U'u.

Mr. U'u: So if complaints have been filed now what?

Mr. Hunt: I was intending to try and craft some additional provision where it would go to the planning commission rather than all the way up to the council.

Mr. Hedani: Any further discussion? Commissioner Tagorda.

Mr. Tagorda: In relation to the complaint, how many complaints would you entertain before it goes to the planning commission?

Mr. Hunt: The way it's worded is if we get one, the director can't approve the permit or the renewal.

Mr. Hedani: Commissioner Mardfin.

Mr. Mardfin: I'm going to vote for this but I'd like to add this doesn't necessarily have to lengthen the process. If they put in their application for an extension and right a way they put in the notice you know, two things can be done at the same time. We can chew gum and walk at the same time so it won't necessarily lengthen the process.

Mr. Hedani: Additional discussion? Ann, speak now or forever hold your piece.

Ms. Cua: That is correct. It's just a step that doesn't exist now.

Mr. Hedani: Any further discussion? All those in favor signify by saying aye. Opposed nay. All those in favor please signify by raising your hand. Five. Opposed same sign. Three.

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

**VOTED: To Add a Paragraph D that the director could approve a time extension of a conditional permit if no complaints had been received from the public after notice to neighbors within 500 feet of the conditional permit had been issued or mailed.  
(Assenting - J. Starr, W. Mardfin, K. Hiranaga, B. U'u, W. Hedani)  
(Dissenting - O. Tagorda, D. Domingo, L. Sablas)  
(Excused - W. Shibuya)**

Mr. Hedani: Motion is carried, five to three. Commissioner Mardfin.

Mr. Mardfin: I'd like to ask Mike a question. This is the same question I asked earlier. The Department of Public Works said that under this chapter does not give Public Works a chance to review items under our jurisdiction verbiage should be added. Is your answer the same to the

earlier one that essentially you're dealing with it?

Mr. Miyamoto: Yes, it will be the same. We can work it out with the Planning Department any conflict.

Mr. Mardfin: So we don't have to change any language?

Mr. Miyamoto: No.

Mr. Mardfin: Thank you.

Mr. Hedani: Commissioner Mardfin.

Mr. Mardfin: Now I'd like to ask the director what unusual circumstance would prevent somebody filing a timely extension?

Mr. Hunt: The clause you're referring to was suggested by that task force. I'm not sure exactly what they were thinking of but from experience I can tell you we hear all sorts of excuses anything from stuff that makes you roll your eyes to stuff that puts tears in your eyes. Somebody's mother has cancer and they're dealing with that and they just didn't have time.

Mr. Hedani: Commissioner Starr.

Mr. Starr: Yeah, I'd like to point out that a conditional use is basically a use that's not allowed. So you know, it's not just a normal course of doing business for someone to have a conditional use, but basically they're doing something in a place where it's outside of zoning, outside of the community plan. They're getting special kind of license to do this. So you know, it is unusual and there should be a certain threshold regarding the community acceptance of it. Anyway with that being said, I would like to offer another amendment.

Mr. Hedani: Go ahead.

Mr. Starr: And the amendment is that lines 14 be changed so that it states – 13 and 14 read, "the commission shall hear and review and application of a conditional permit and shall approve or deny the – approve or deny the permit after a public hearing." Is that the right way to say that Joe?

Mr. Alueta: I'm not sure where – are you going from –

Mr. Starr: I'm looking at this one.

Mr. Alueta: Okay.

Mr. Starr: In other words, I'm changing the whole entire process.

Mr. Alueta: Okay, and then on what page?

Mr. Starr: First page, 13 and 14, and what I want to do is I want to take it out of – take the whole

thing out of the kuleana of the council and put it into the planning commission and it may not fly but I feel it's the right thing to try to do.

Mr. Alueta: Okay. Just going to put down the commission shall hear and review an application for a conditional permit.

Mr. Starr: Yes.

Mr. Hedani: Does that suffice, period. Director.

Mr. Hunt: Just for clarification, the section would be 19.40 subsection 020 would be amended.

Mr. Alueta: Right.

Mr. Starr: And you know, if anything else needs to be changed to be consistent with that, I'll ask that if it passes that the department make those other changes.

Mr. Hedani: Is there a second?

Mr. Mardfin: I'll second for purposes of discussion.

Mr. Hedani: Okay, it's been moved by commissioner Starr, seconded by Commissioner Mardfin to amend – this is on the handout that we received today, 19.40.020 to read, “the commission shall hear and review an application for a conditional permit.” Deleting the words, “and provide a recommendation to the County Council.” Commissioner Hiranaga.

Mr. Hiranaga: I'm wondering if this portion of the proposed ordinance was properly noticed because the official exhibit is Exhibit 1 which starts at 19.40.080 and we are covering something that was not part of the public notice.

Mr. Hedani: Corp. Counsel please chime in here any time.

Mr. Giroux: Well, I wasn't going to stop you from discussing it.

Mr. Starr: The agenda doesn't say that.

Mr. Giroux: The agenda just says 19.40 which is basically the whole conditional permit zoning. What they've – what the department handed you is their proposed changes. I mean as far as the sunshine law it's covered. So as far as I'm concerned it's covering the whole chapter. Additional discussion? Commissioner Hiranaga.

Mr. Hiranaga: So you're saying the words, “and other miscellaneous revisions” would cover.

Mr. Hedani: It just says 19.40 conditional permits so it includes the whole chapter. Commissioner Mardfin.

Mr. Giroux: I think what Member Hiranaga is concerned about is because when we do our own



rules and we publish them we actually publish the changes verbatim. So it's a different, we looking at a different process. We're doing legislative action and comment and not rule making.

Mr. Alueta: Mr. Chair?

Mr. Hedani: Joe.

Mr. Alueta: If you look under 19.40.070, we would have to do some language modification there because there's reference to council there also because it talks approval of the conditional permit application shall through enactment of an ordinance by the council.

Mr. Hedani: Okay, why don't we take it that the motion would include any changes to substantive portions of the 19.040 if it's approved. If this particular amendment passes.

Mr. Alueta: Correct and I'll leave it to Corporation Counsel to make those changes.

Mr. Giroux: I think it's good that we're discussing this at this level though because what's going to happen when this goes to Council Services is that they're going to want a proposed bill based on our recommendations so we are going to have to – something's coming out of the commission that's going to go to council and yeah, Joe is right, I'm ultimately probably going to have to draft it. So just as clear as possible have what you do want to be transmitted to Council because there will be a type of draft bill most likely presented and agendaed at the Council level.

Mr. Hedani: Commissioner Mardfin.

Mr. Mardfin: I seconded it for purposes of discussion but I am going to vote against this amendment however and after this – the main motion has passed or failed I will propose a new main motion to recommend that the council consider having the commission do this instead of the council but I think that should be a second – I want to give the Planning Department a clean bill to the take the council and then a second motion recommending that this more fundamental change take place as a separate motion.

Mr. Hedani: Any further discussion? Commissioner Hiranaga.

Mr. Hiranaga: Yeah, I'll be voting against the motion although we have a fine group of commissioners here, the council is elected by the people and commissioners are appointed by the mayor and if a mayor has two terms which is eight years there's a possibility that that mayor may have weighted the commission in a certain slant which I don't think is appropriate to have the power to grant spot zoning. So council comes up for reelection every two years. They're elected by the people and I think spot zoning should remain with the council.

Mr. Hedani: Any further discussion? Commissioner U'u.

Mr. U'u: The consecutive terms of mayor hasn't been done in a while, just kidding, that was funny. No, but I agree with Commissioner Hiranaga where the appointed – we being appointed by the mayor will be unfair, I would rather give it to the people who was people have a chance to vote on.

Mr. Hedani: Commissioner Starr.

Mr. Starr: We're looking to try to find ways to streamline this thing. It takes very often six months for someone to get to the council. It's a lot easier in terms of staff, in terms of everything to go through this commission. It may not be perfect but I think it works pretty well and I really trust our planners here and it ...(inaudible)... more than sometimes the analysts for the council. So I really think this would be – if this were passed this would be a real major help to people who were looking to go through the process.

Mr. Hedani: Any further discussion? Okay, my only comment on this item is that I'd like to give all of the proposals that the department has for changes and streamlining as much possibility for success as possible. My personal perspective is that if this is perceived by the council as the commission usurping power from the council the director has already been accused of empire building by the council with his exemptions that are approved by the director or recommendations for approval by the director. So from a personal perspective I would have a tendency of agreeing with Commissioner Mardfin that if you want to pursue this, you know, pursue it separately from this particular item so that it doesn't bring down the whole ...(inaudible)... in the process. Any further discussion? All those in favor of the amendment to amend lines 13 and 14 of 19.40.020 to delete the words, "and provide a recommendation to the council." Signify by raising your hand. Opposed same sign.

**It was moved by Mr. Starr, seconded by Mr. Mardfin, and**

**The Motion to Amend Lines 13 and 14 of 19.40.020 to delete the words, "and provide a recommendation to the Council," was Lost.**

**(Assenting - J. Starr)**

**(Dissenting - K. Hiranaga, B. U'u, O. Tagorda, W. Mardfin, D. Domingo, L. Sablas)**

**(Excused - W. Shibuya)**

Mr. Hedani: Motion is lost. Any further amendments? Okay the main motion on the floor is to make a recommendation to the council for approval of the changes as amended. Any further discussion? Any further amendments? All those in favor signify by saying aye. Opposed nay.

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

**VOTED: To Recommend Approval of the Proposed Amendments to Chapter 19.40 Conditional Permits to the County Council, as Amended.**

**(Assenting - J. Starr, W. Mardfin, K. Hiranaga, B. U'u, O. Tagorda,  
D. Domingo, L. Sablas, W. Hedani)**

**(Excused - W. Shibuya)**

Mr. Hedani: Carried. Thank you. Commissioner Mardfin.

Mr. Mardfin: I move that the commission recommend to the council to change the processing of conditional permits so it's within the purview of the commission and does not need to go to the council.

Mr. Hedani: Is there a second?

Mr. Hiranaga: Mr. Chair, did we just not vote on the main motion?

Mr. Hedani: We voted on the main motion. The main motion was changes to the recommendations as presented to us as amended.

Mr. Hiranaga: Right. So why are we returning to this agenda item? I thought we just voted on it.

Mr. Mardfin: It's a new motion.

Mr. Hedani: It's not on this particular item. It's not on the recommendation that's going to the council. It's a separate recommendation that he's recommending.

Mr. Alueta: Then it's not a specific amendment to the bill itself. It's just a general in concept.

Mr. Hedani: I guess what you're asking is for the council to consider.

Mr. Mardfin: I'm asking for the council to consider delegating or changing and it would be may places and it would need to be carefully looked at but consider having conditional permits come under the purview of the commission rather than the council as a way of streamlining.

Mr. Hedani: Maybe this could be a recommendation to the department to bring something back to the commission for further consideration.

Mr. Mardfin: I can live with that.

Mr. Hedani: I think we gotta walk before we run, yeah. It sounds like running. Commissioner Mardfin. I'm sorry, is there a second?

Mr. Starr: Second.

Mr. Hedani: Seconded by Commissioner Starr. Commissioner Mardfin.

Mr. Mardfin: The only problem with doing it the other way is I think this ought to – it ought to go in together with this and if you're asking the department to come back with something I think the council should get the micro changes at the same time they get a macro change presented to them, macro suggestion presented to them.

Mr. Hedani: Jeff.

Mr. Hunt: The department can support that approach. We appreciate that we have some concrete language changes that we can take to council and we have no problem saying at the same time, if the commission does recommend this, at the same time in addition to these specific language changes the planning commission made a recommendation that the council consider further amendments to 19.40 that would make the approval in the court of the planning commission and not the council. So it would be an additional comment or recommendation from the commission.

Mr. Mardfin: Right.

Mr. Hedani: Any further discussion? You ready for the question?

Mr. Hiranaga: This is a motion.

Mr. Hedani: It's a motion to make a recommendation to the County Council for consideration of amending Chapter 19.40.020 to have conditional permits considered by the commission. It would accompany the changes that are submitted in the recommendation that we just approved. Any further discussion? Commissioner Starr.

Mr. Starr: Yeah, just that this would, this certainly would be streamlined because our process right now is that we see it first make a recommendation then it goes to the council for decision making instead of having to do that it would just come to the commission.

Mr. Hedani: Commissioner U'u.

Mr. U'u: Question maybe for the director or staff, upon we voting on the recommendation or giving a recommendation to the council what is the length of time before we give a recommendation and on average and it actually gets taken up in council under normal circumstances. I know there's no normal but average.

Mr. Alueta: Probably six months because it's probably going to take about three months to get the minutes from this commission. Because I mean, you have Island Plan, you have like an incredible amount of minutes and these meetings last hours and hours compared to some of the other commissions that have smaller agendas.

Mr. U'u: So if we say half less, you saying three months.

Mr. Alueta: Oh I thought you meant, this amendments. Yeah, like normally it would take six months just for me to prepare, three months to get all the minutes and to transmit it up, it would sit up at council for at least good three to six months before it's scheduled onto an agenda item on the Planning Committee and the same thing with conditional permits from the time it's – a conditional permit is approved or recommended for approval by this commission they can sit, transmit up there for sometimes years. I've had conditional permits sit there for years.

Mr. Hedani: Commissioner U'u.

Mr. U'u: So you got – so what is the time line to get one conditional permit extension 90 days prior before expiration? What's the?

Mr. Alueta: To submit their?

Mr. U'u: For the most part it actually expires prior to the council.

Mr. Alueta: That is correct.

Mr. Hedani: Any further discussion? Commissioner Hiranaga.

Mr. Hiranaga: So conditional permits are pursued, applied for because the underlying zoning does not permit the requested use.

Mr. Alueta: This is where I guess my personal or planner's position on conditional permits and some attorney's conditional permit what you're saying is how we've been using conditional permits is spot zoning that is correct. How as a planner I view conditional permits or conditional uses is it is supposed to be for uses that is not listed anywhere in Title 19 and you have not assessed the impacts of it and so if somebody comes up with a roller blading repair shop that was our classic example and there is no roller blading because our euclidean zoning is inclusive. If it's not included in the zoning, it's excluded. But if we had a district that said in the light industrial you can do roller blading repair shop that's where you go do it –

Mr. Hiranaga: Or a change in zoning.

Mr. Alueta: Or a change in zoning and the only time you get a conditional permit is if roller blading repairs were not listed anywhere in the entire Title 19 and it was not added in any of the zoning categories but it looks similar to some of the other uses, you would get a conditional permit to add roller blading to a certain category. That's how it's supposed to be used but that's not how it is used and so right now we're using it as I'm in the agricultural district I want to run a mini hotel give me a conditional permit. Technically you can get a conditional permit to do a drug shop, brothel, anything you want, you can apply for a conditional permit.

Mr. Hedani: I can.

Mr. U'u: Good examples.

Mr. Alueta: You can do anything you want. A conditional permit is – that's how it's been –

Mr. Hedani: Commissioner Hiranaga.

Mr. Hiranaga: So I understand it you know, if the ordinance says roller blading is allowed in a certain zoning but it does not address ice skating you might want to get a conditional permit for ice skating in zoning that allows roller blading.

Mr. Alueta: That is correct. That's how it's supposed to be used.

Mr. Hiranaga: So to me this argument about streamlining I mean to me it needs to be reviewed properly because you are trying to legalize a use that's not permitted under the underlying zoning and if there is a permitted zoning for that use they should go for a change in zoning. This is a short cut. Zoning changes take years. Conditional permits take months. So I don't really see the need to start streamlining it to a point where you're excluding council. I rather exclude the commission, but you can't do that because of the Charter.

Mr. Hedani: Any further discussion? Director Hunt.

Mr. Hunt: Just to give a few more thoughts. The way our zoning code words is we list all these specific uses. Most zoning codes just group them together and just say in your business district you're allowed commercial uses and you're allowed professional offices. The Maui County Code breaks them all out and when we were going through the business district remember they had like women's apparel and men's haberdashery and it goes on and on. So the way our scheme works and whether we like it or not this is what we have if you have a men's haberdashery and you have a women's shoe shop but you want a woman's hat shop that's a similar use but it's not specifically listed so you would get a conditional permit. What's happened is frankly the conditional permit has been abused and we've been through the conditional permit process we've been allowing uses that aren't similar to those that are allowed, it's more a safety gap or it's not listed at all and so therefore, we went through the conditional permit to allow a use. And so if it was the – if we had kept to our original intent, the conditional permit wouldn't be such a problem, but it becoming spot zoning.

Mr. Hedani: Additional discussion? Commissioner Starr.

Mr. Starr: I want to state it differently conditional use permit means you're allowed to do the thing which is illegal to do under ordinance. You know, it's like kind of a exclusion but in practicality you know, in comparing this commission with the council, you know, I do think it's something you should take really seriously but the council at times acts with political will and it you know the level of kind of scrutiny and advice it gets sometimes on these things in the Land Use Committee is less scrutiny than in the commission because we have basically the current planners processing it who are planning experts and I actually have more confidence in the process here. So I do think this is a good direction to pursue.

Mr. Hedani: Okay, we've beaten this one to death. Commissioner Mardfin, can you just restate the motion please?

Mr. Mardfin: The motion was to recommend to the council that they delegate the approval of conditional permits to the commission.

Mr. Hedani: Consider.

Mr. Mardfin: Consider.

Mr. Hedani: Any further discussion? Ready for the question? All those in favor signify by saying aye. Opposed same sign. All those in favor, raise your hand. Two in favor. Opposed same sign, one, two, three, four, five, six.

**It was moved by Mr. Mardfin, seconded by Mr. Starr, and**

**The Motion to Recommend to the Council that they Consider Delegating the Approval of Conditional Permits to the Commission was Lost.**

**(Assenting - W. Mardfin, J. Starr)**

**(Dissenting - K. Hiranaga, B. U'u, O. Tagorda, D. Domingo, L. Sablas, W. Hedani)**

**(Excused - W. Shibuya)**

Mr. Hedani: Motion is lost. Director next item.

Mr. Alueta: Five minutes.

Mr. Hedani: Break, five minutes.

A recess was called at 2:45 p.m., and the meeting was reconvened at 2:52 p.m.

Mr. Hedani: Commission meeting is back in session. We are still on Item BI-3. Director.

### **Chapter 19.45 Project Districts**

Mr. Hunt: So this is the last of the four streamlining bills. This one's very similar to 19.32. It's actually simpler. There are some minor wordsmithing proposals but essentially the heart of the bill would be to allow the planning director to approve revisions to a Phase 2 if the revisions are not substantial and do not result in significant impacts. Right a way we could suggest that you add language like you did to 19.32 and we would be content with that. I don't believe there's any other issues of substance. Joe you want to take it from here?

Mr. Alueta: Thank you. As I said earlier Project Districts are kind of like their own little zoning category, they create their own standards. So you see on, if you look on Exhibit 1, line 24 where you have like they're adding – you have your permitted uses and your accessory uses we're adding special uses and then other developmental standards because a lot of times these project districts not only are they their own zoning category and they have their own uses that are allowed within each district they want to have accessory uses but they never put in the provision for special uses so they're just doing that in this section as well as other development standards which could be sometime they have adopted design guidelines for that and so they would adopt those as part of their – as their standards to that project district.

There's this whole unilateral agreement stuff that happens. There's representations made and so that's why they put in accordance with the representations made to council and a lot of times. So the unilateral agreements is really between the Mayor's Office or the administration and the applicant and the council doesn't necessarily approve those agreements or the negotiations of how those agreements to working around so that's all that does there. And then, concurrent applications it just makes it clear that you can file a concurrent application. This is on page on 2 of Exhibit 1, line 9, so you don't have to go through each step one at a time. It just allows for the consolidation of that applications, we currently allow it here in the Planning Department – Planning Commission in fact we encourage it. And then again, just labeling, identifying what's a Phase 1, what's a Phase 2 and when does a Phase 3 come in or Phase 2 and a Phase 3 approval. And in Project Districts Phase 3 is already approved by the department already. That pretty much covers the changes.

Mr. Hedani: Questions? Commissioner Starr.

Mr. Starr: So to my understanding the only real changes this is making is revisions of the Phase 2 is that correct?

Mr. Alueta: That is correct.

Mr. Starr: And the director is willing to add language in that would give us the same ability to look

at it if we so choose?

Mr. Hedani: Any further questions? Commissioner Mardfin.

Mr. Mardfin: I'm ready to do a motion.

Mr. Starr: Public hearing.

Mr. Hedani: Any further questions for the department? Are there any members of the public that would like to offer testimony on this item? If so, step to the microphone and state your name for the record. Seeing none, public testimony is closed. Staff recommendation.

Mr. Alueta: Making the recommendation that we – that you approve it as presented and I guess I'll leave it at that and let you make your amendments.

Mr. Hedani: Commissioners what's your pleasure? Commissioner Mardfin.

Mr. Mardfin: I move that we recommend approval of this to the Council with the addition of the proposed language that we discussed earlier.

Mr. Starr: Second.

Mr. Hedani: On notification to the commission.

Mr. Mardfin: On notification to the commission our ability to waive review or take action.

Mr. Hedani: Discussion? Moved by Commissioner Mardfin, 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 Recommend Approval of the Proposed Amendments to Chapter 19.45 Project Districts to the County Council, as Amended.  
(Assenting - W. Mardfin, J. Starr, K. Hiranaga, B. U'u, O. Tagorda,  
D. Domingo, L. Sablas, W. Hedani)  
(Excused - W. Shibuya)**

Mr. Hedani: Carried. Thank you. Director.

Mr. Hunt: The next item involves a communication item, C-1 on your agenda. Hawaiian Cement requesting a 10-year time extension on the following permits for it's Pohakea Quarry and Base Course operation at TMK 3-6-04:007 in Maalaea. The planner assigned to this is Paul Fasi.

## **C. COMMUNICATIONS**



1. **HAWAIIAN CEMENT requesting 10-year time extensions on the following permits for its Pohakea Quarry and Base Course operation at TMK 3-6-004:007, Maalaea, Island of Maui: (P. Fasi)**
  - a. **County Special Use Permit to continue to operate a rock crushing and base course production facility. (CUP 2006/0001)**
  - b. **State Land Use Commission Special Use Permit to continue the Pohakea Quarry and Base Course operation. (SP06-0400)**
  - c. **Conditional Permit to continue the concrete recycling and green waste composting operation. (CP-07/0002)**

Mr. Paul Fasi: Hi, good afternoon. This next matter is arising from a request dated July 5, 2009 for three, 10-year times extension on three permits that are running concurrently and all three permits have since expired December 15, 2009.

The applicant's requesting 10-year time extensions for all three permits and the department to make a long story short is going to recommend approval on all three permits. The commission is looking at today is one County Special Use Permit of which you will make a decision on and two other permits that you will make recommendations on the Conditional Use Permit and the State Land Use Commission Special Use Permit.

So this is an excellent example of why we should be streamlining the whole process. The County Special Use Permit is required because the mining and resource extraction is a special use in the Ag District and the State Special Use Permit is required because the area of land is greater than 15 acres so it will fall under the purview of the State Land Use Commission. So you're going to make a recommendation on the State Land Use Commission Permit. Gotta go back to the State Land Use Commission. You're going to make a recommendation on the Conditional Permit which then has to go to Council. The reason for the Conditional Permit is for the concrete recycling and rock crushing activity on the property.

There has been no change to the use of the property. The applicant is in compliance. Their last compliance report was February 9, 2009. The department did accept it and so we have reviewed and it made the recommendation to approve on all three permit applications. As of January 13, 2010 we have not received any communications on this matter.

The applicant's representative is here, Karlynn Fukuda from Munekiyo and Hiraga. There's no power point but if you have any questions either she or I will answer them.

Mr. Hedani: Questions from the commission? Commissioner Mardfin.

Mr. Mardfin: I have to two questions. One is how common is it for a 10-year time extension as say opposed to a five-year time extension?

Mr. Fasi: It's rare. I have yet to see it, but considering the use that this applicant is requesting for I think it's justified. They have a substantial investment in terms of equipment. There's not a lot of other places where they can do what they're doing on this island. They have been in full compliance in the five years for this past renewal and so we have no concerns with the 10-year

extension.

Mr. Hedani: Director.

Mr. Hunt: If I could add. It probably has been rare in the past but you're going to hear longer time extensions recommended by the department as we go forward in the future, again, just to streamlining. If there's instances where we believe the operation has not been a problem we don't want to just keep bogging up the system reviewing it and going through a rubber stamp and issuing another permit. So even though it's rare you're going to see it more often in the future.

Mr. Hedani: Further discussion? Commissioner Mardfin.

Mr. Mardfin: I'm not trying to cause a problem here but has it – the permits have expired have they not?

Mr. Fasi: Yes they have.

Mr. Mardfin: I assume they haven't shut down their operations.

Mr. Fasi: Excuse me?

Mr. Mardfin: I presume they haven't shut down their operation.

Mr. Fasi: The department doesn't require them to. As long they're making an effort to apply for the renewals in a timely manner which they have done.

Mr. Mardfin: So they applied in a timely manner and it's just taking time.

Mr. Fasi: Pardon me?

Mr. Mardfin: They applied in a timely manner –

Mr. Fasi: Yes they have.

Mr. Mardfin: And we have been the ones, "we" collectively have been the ones that have taken time.

Mr. Fasi: Yes.

Mr. Mardfin: Thank you.

Mr. Hedani: Commissioner Starr.

Mr. Starr: Yeah, I'd like to ask the applicant whether the material from this site is being exported from Maui and also other rock and what sand exports by this company from this other sites are over the last year.

Ms. Karlynn Fukuda: Thank you Commissioner Starr. Karlynn Fukuda of Munekiyo and Hiraga, Inc. If I may jump ahead to the recommendations report, there is Condition No. 14 of the County Special Use Permit which requires a base coarse material from the quarry shall not be exported off island.” And this was done at the last – the application for the permit or the approval of the special use permit. And to date, Hawaiian Cement has not exported any of the material, the quarry material from this site.

With regards to sand mining, sand mining is not done at this quarry operation. I know that Hawaiian Cement has permits in with the department for approval of sand mining at other locations, but this is not sand mining at this location.

Mr. Hedani: Commissioner Starr.

Mr. Starr: Yeah, is Hawaiian Cement continuing to export just sand from Maui?

Ms. Fukuda: That’s not a question I can answer and it’s not necessarily I guess relative to this application or to this request, but I have received confirmation from the Hawaiian Cement representative that they are not exporting sand from the island.

Mr. Starr: Okay, so Hawaiian Cement is no longer exporting sand from Maui?

Ms. Fukuda: Yes, that is the confirmation that I received from the Hawaiian Cement representative.

Mr. Starr: Thank you.

Mr. Hedani: Any further discussion? Commissioner Mardfin.

Mr. Mardfin: Paul, Condition 3 has insurance of a million dollars, is that sufficient? I mean this is a huge company isn’t it?

Ms. Fukuda: It’s – the standard condition I believe that the county has on all of their permits. I believe there’s been some discussion about whether or not that, you know, that amount should be increased but the last I understood was that, you know, that was sufficient, but maybe, I don’t know if the director or the department has any other understanding.

Mr. Hedani: Director.

Mr. Hunt: I agree with Karlynn it’s a standard procedure. We haven’t it in the past, it’s a standard condition, we haven’t in the past crafted it towards the scope of the project either enlarged it or reduced it to the best of my knowledge.

Mr. Hedani: Any further questions? Mr. Tagorda.

Mr. Tagorda: Hawaiian Cement quarry operation, how many you have in the island? And where are they located?

Ms. Fukuda: I know on Maui as far as the rock crushing operation there are two that I am aware of.

There is the Puunene facility that they have that are covered by separate permits and not this permit and then there is this Pohakea quarry that they have out in the Waikapu area. I guess it's the Waikapu - Maalaea area.

Mr. Tagorda: Okay, the Waikapu area is that almost – operation is almost over, it's going to end?

Ms. Fukuda: No, my understanding in speaking with the Hawaiian Cement representatives earlier that the life of this quarry that the permits that we are seeking for are at least 20 years. So they have at least have 20 more years of quarrying that they can do at this site.

Mr. Tagorda: Do you know if there is a quarry operation on the west side?

Ms. Fukuda: In West Maui? Not for Hawaiian Cement.

Mr. Tagorda: Why is it that you think that this not being explored?

Ms. Fukuda: I'm not sure – where this Waikapu one I can tell location is, it's very central. The entrance to that quarry site is at the intersection of Kuihelani Highway and Honoapiilani Highway so for a lot of the purchasers of the base coarse it's a convenient location because you can either go you know, South Maui, you can go West Maui, you can go Central Maui because of the location.

Mr. Tagorda: There's a stream in that Maalaea quarry.

Ms. Fukuda: There is the Pohakea Stream which is not a perennial stream but it is identified as a stream.

Mr. Tagorda: And I think there was 25 feet buffer zone to protect the stream.

Ms. Fukuda: Yes.

Mr. Tagorda: I've never been there, I don't know what's going on there, is that 25 feet buffer zone enough to protect the stream?

Ms. Fukuda: Hawaiian Cement feels that it is. There is, you know also again a condition that was placed on the permit at the last approval of the conditional – I'm sorry County Special Use Permit that said, it is Condition No. 13 that says, "the applicant shall maintain the existing natural landscape buffer along the southern boundary of the project site for the life of the quarry to provide a visual buffer," and Hawaiian Cement has no intention of you know, quarrying near the stream because it will trigger additional permits that they would need in order to do that. So they are staying away from the stream.

Mr. Tagorda: I don't know, I really don't know how they restore or revegetate the quarry after they are done doing their operation. Do you have any plan that we can look at?

Ms. Fukuda: There is a requirement Condition No. 11 that upon cessation of the – so basically the completion of the quarry operations that we will have to submit a closure plan to the Department of Planning for review and approval. So there will be a plan that has to be submitted and I should

clarify that Hawaiian Cement doesn't own the land, it's a lease that they have with Pohakulepo Recycling.

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

Mr. Fasi: I'd like to make one change to the recommendation. Since this permit application request has to go to the State Land Use Commission as well as the County Council they dates may change so if I may I would just like to suggest rather than putting in a date that we could put in some wording such to the effect it would be the date last decided upon by the – the latest date last decided upon by the last hearing body but no more than 10 years. So in other words, if the State Land Use Commission brings it back down to five years, then five years would be applicable. If they recommended 15, this body would automatically have to bring it back down to 10.

Mr. Hedani: Which line are you referring to Paul?

Mr. Fasi: Either the – not body, but County Council or State Land Use Commission. They may decide on other time frames but since this is the body that's hearing this item first, I was wondering if you be amenable to –

Mr. Hedani: So rather than specific dates you're saying subject to whenever the last body hears it?

Mr. Fasi: Correct, but not more than 10 years.

Mr. Hedani: Okay, that's the recommendation.

Mr. Fasi: Yes.

Mr. Hedani: Commissioners? Jim.

Mr. Giroux: Paul, that's going to make it really tough for Corp. Counsel to draft a ordinance. I'm having a hard time with it right now and I just had a coffee so I'm – already as it is because it's approval to continue a use the ordinance already is difficult to draft. Just the logistics, timing. I don't want to add that as another level of drafting because then it's going to get stuck in Corp. Counsel for about four years while we try to figure out how to draft it. I really encourage you, maybe you should get the Land Use Commission to review this first, give us a date and then we can just model our ordinance to that. I mean, it puts – It just puts us in a really tough spot.

Mr. Fasi: I understand that. We have no problem with that. I would prefer to just pick a date and we'll just go with that. Right now, we've got December 15, 2020, and if the director is fine with that this planner is fine with it as well.

Mr. Hedani: Commissioner Hiranaga.

Mr. Hiranaga: Could just use 10 years starting from today. I mean it takes them 18 months to process it. They're still in business and they got eight and a half years left.

Mr. Hedani: Okay, Commissioners what's your pleasure? Commissioner Mardfin.

Mr. Mardfin: When did this permit expire?

Mr. Fasi: It expired December 15<sup>th</sup>.

Mr. Mardfin: My preference is since there's no motion on the floor and we're not ready for a motion but my preference would be to keep it the date you put in here 10 years from that time so that there's continuity in permitting and 10 years seems to be much longer than normal so even if it took a year or so, they're still four years ahead of the game rather than 10. So that would give you a continuity in permitting which strikes me as a smart thing to do.

Mr. Fasi: Well, in the recommendation all three permits have the same date so we would gladly accept that.

Mr. Mardfin: I would use that.

Mr. Fasi: Thank you.

Mr. Hedani: Commissioners are you ready for a motion?

Mr. Starr: Public hearing.

Mr. Hedani: We just closed it. Commissioner U'u.

Mr. U'u: Are we going to take each item separately or can a motion – Motion to approve as stated.

Mr. Hedani: Okay, the motion is to approve as stated and Paul you're going to revise the dates that's listed to reflect the understanding?

Mr. Fasi: Okay, so the recommendation is we'll work on the Conditional Permit first and the State Land Use Commission since those are both permits that you're going to make recommendations on and the expiration date will be December 15, 2020.

Mr. Hedani: Okay, the motion is to approve the recommendation as stated for all three permits Paul.

Mr. Fasi: And that date would be December 15, 2020.

Mr. Hedani: Is there a second?

Ms. Domingo: Second.

Mr. Hedani: Seconded by Commissioner Domingo. Discussion? Commissioner Mardfin.

Mr. Mardfin: Shouldn't it be 2019? You're giving them a 11-year extension. From 2009 to 2019 or are you anticipating it's going to take a year to get –

Mr. Fasi: I was anticipating the time frame. So if it's 2019, that's fine.

Mr. Mardfin: I think 2019 – I move to amend to make it 2019 so that it fits with all the language about a 10-year time extension because I don't want to go having to change 10 years to 11 years.

Mr. Hedani: Okay, you want to take that as a friendly amendment?

Mr. Fasi: It's accepted and so the date will be December 15, 2019.

Mr. U'u: Friendly amendment.

Mr. Fasi: Donna, is that okay with you? Any further discussion? Motion on the floor is to approve all three permits to the year December 15, 2019. Further discussion? All those in favor signify by saying aye. Opposed nay.

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

**VOTED: To Approve the County Special Use Permit and Recommend Approval of the State Land Use Commission Special Use Permit and Conditional Permit, as Recommended as Amended.**  
**(Assenting - B. U'u, D. Domingo, K. Hiranaga, O. Tagorda, W. Mardfin, L. Sablas, J. Starr)**  
**(Excused - W. Shibuya)**

Mr. Hedani: Carried. Thank you. Director.

Mr. Hunt: Your next item involves Item C-2 Communication item on your agenda, Mr. Gary Stice of Hana Beachfront Associates appealing the Planning Director's decision requiring a Special Management Area Major Permit on the Special Management Assessment for the proposed residential structures at Mauka Haneoo Road, Koki Beach in Hana. Application No. 2008/0004. Trisha Kapuaala is the planner assigned to this.

The commission may select a mediator, a hearings officer or take action on the appeal or take some other action. We do have legal counsel here representing the Planning Department as well as your, I'll remind you you have your own legal counsel. With that, I turn it over to Trisha, you're going to start?

- 2. MR. GARY STICE of HANA BEACHFRONT ASSOCIATES appealing the Planning Director's decision requiring a Special Management Area Major Permit on the Special Management Area Assessment for proposed residential structures at Mauka Haneoo Road, Koki Beach, Hana, Island of Maui. (APPL 2008/0004) (T. Kapuaala) (The Commission was notified of the SMA Appeal as an agenda item on its February 24, 2009 agenda.)**

Ms. Trisha Kapuaala: Good afternoon Commissioners Trisha Kapuaala with the Zoning Administration and Enforcement Division. We have before you an appeal of the Hana Beachfront properties SMA determination. The planner that originally processed that case was Mr. Thome

Abbott now assigned to that case is Mr. Jim Buika of the Current Planning Division. We have the appellants here and representing the County is Mary Blaine Johnston.

Ms. Mary Blaine Johnston: Good afternoon, Deputy Corporation Counsel Mary Blaine Johnston representing the Planning Director Jeff Hunt in this matter. This matter is before you as indicated on your agenda for mediation, selection of a hearings officer, a determination whether this commission wants to hear this appeal directly or further action.

I have had several discussions with Mr. Stice who is here today, he's in the principal in the Hana Beachfront Associates. I think if you, I think you'd like to maybe hear what his preference is. The County is pretty good with whatever you decide to do whether you decide to appoint a hearings officer or hear it yourself but I think maybe if you could hear from him that might help during your consideration of what you want to do.

Mr. Gary Stice: Okay, I'm Gary Stice as you know and this is my wife Applonia who was born here on Maui and my, I guess you could say my calabash niece Chevon Eason who is a long time resident of Hana. We're involved in a partnership of this property and I believe you received or you should have the letter from the Planning Director which I feel is a very good discussion of the background and history of this project which has been going on far to long for us. But the main reason we feel that we should appeal this decision is that we are only proposing a three-bedroom house and an ohana on a one and a half acre lot that was previously used for three family residences and we are not developing the property for sale, we are simply trying to create our own kuleana for us and our descendants. We have no intention of doing anything else with the property except for our own personal use. And I think it's sort of an overkill to put us in the category with a major SMA to have to jump through more hoops. We feel that the points mentioned in the denial are really not – are very difficult to mitigate and feel we've mitigated most everything that is brought up there. We've had our archaeological study. We've had 35 trenches on the site and nothing was found but an ulu maika that was broken and an old midden which was very small. We've had our Burial Council agreement filed with the Bureau of Conveyances. We have our Flood Hazard Permit. We have our Shoreline Setback Permit and we feel – oh, and also our septic system has been approved and we just feel that going with the major SMA is not going to really create any better solution than what we already have done and considering the size of the project just the three-bedroom house and an ohana unit we hope that the commission will consider our appeal to give us the major SMA exemption. And as far as the procedure that you decide we're fine with anything. I do notice that you can pretty much handle this any way you want and we'd rather just deal directly with the commission rather than getting involved in hearings and things like that is our personal preference. Are there any questions or anything?

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

Mr. Starr: Yeah, this is a question for counsel and I leave it to either Mimi or Mr. Giroux. It's my understanding that it probably would not be advisable for us to deal with the actual issue today at this meeting but rather to decide on a process to handle it at a later date either by us or by another individual advising us. Am I correct with that?

Ms. Johnston: In preparing for today I reviewed what's been done. There's very little before you. I think you either got in the mail or Trisha gave it to you today, the notice the way it appears on the



agenda is not the notice required for a Chapter 91 proceeding. There has to be notice of your rights and so forth and that has not been actually given to Mr. Stice, so it probably be unwise to try to proceed to do any decision making today. What I'd recommend, as I say, the county has no opposition to the commission hearing this is to pick a hearing date, ...(inaudible)... the appropriate notice can be given and then we can all be prepared to come in and discuss the matter.

Mr. Starr: Okay, I have another question which is that if the commission decides to hear it, I know that there is a lot of concern in the Hana community on this and on one hand, I wish there was an option to delegate to the Hana Advisory Committee but I don't think that they – that really that would be a proper thing to try to do, but would it be possible for this body to decide to hear it but to proceed that with a public hearing in Hana before the Hana Advisory to allow people in the Hana District to be able to say their piece before it comes back to us for that hearing.

Ms. Johnston: I don't see any reason why you couldn't. In fact Mr. Stice and I have discussed that and he very much would like that to happen to have there be a chance. There's a problem that if – in having it delegated for any kind of decision making to the Hana Advisory Board in the event that you deny the appeal and then it comes back for an SMA major then it gotta go to the Hana Advisory Committee who's already sat on it there may be some kind of peculiar conflict there, but I would say, I don't see why – James you see any reason why they can't have a public – schedule a public hearing in Hana before they have the hearing on?

Mr. Giroux: Procedurally, my only concern would be that the Hana Advisory Committee not be put in the position – because I advise them too – not be put in the position of a decision or commenting body. If you want a public hearing where the public – it's noticed, the public can show up, the applicant can I don't know present what their project is and the public can testify, I don't see too much problem with that, but what I wouldn't want if for the Hana Advisory Committee to then either vote on a position or even enter into discussion would you know, opinions would be stated for or against the project itself because if slated for an SMA major that same agency would in a very awkward position having made statements for or against the project earlier.

At this stage what I would direct the questioning from this body is that procedurally as your counsel what I would be concerned and you can ask the parties is, how much discovery they intend to do, how many witnesses they intend to call, how long they perceive their case to take to present and what the parties can do – I mean if you decide to take it as a commission, the parties can actually per your rules stipulate to the procedures they want to follow because that would take care of an additional hearing of trying to get a prehearing schedule and the such. So if the parties can stipulate to their witness list, the type of discovery that they want to conduct in order to limit the amount of discovery then you may be in the position to feel comfortable taking it as a commission or delegating it to a hearings officer.

Mr. Hedani: Commissioner Starr.

Mr. Starr: And it is okay for us to do that before deciding on what body will hear it?

Mr. Giroux: Yeah, that would be permissible to at least find out the scope of your case, not the merits but the scope. You know, I mean, if they have a preliminary witness list or they can at least give you a rough estimation about what they think their case would entail as far as time and

documentation and such.

Mr. Hedani: Commissioner Starr. I'd like to ask both the applicant and Ms. Johnston the same question. The same question the first regarding the witness list and those people you would care to depose, can you give us an idea of the extensiveness of that perhaps?

Ms. Johnston: You can go first.

Mr. Hedani: Mr. Stice, if you could just speak directly into the microphone since it's being recorded.

Mr. Stice: Okay, sorry. No, we don't have an extensive list at all. I mean, a number of things are already in our application. The view plain analysis and all of the permits that we have acquired up to this point. So I don't really know what else we would present other than what's in the file now. So I don't think we'd have much of a list in that regard. It would be very brief.

Mr. Starr: And in terms of discovery?

Mr. Stice: I don't – can't think of – I'm not a lawyer. Yeah, we would present of course the plans and the view plain analysis and anything else that the council might desire or the community might desire for us to show that we have but that's about the extent of it. It's not very complicated.

Mr. Starr: Can we ask Ms. Johnston?

Mr. Stice: It's just a house, it's not a major development.

Mr. Starr: I think people do come in with a 20-page list so –

Mr. Hedani: Mary do you have any comments? Counsel.

Ms. Johnston: Mr. Stice has had helping him in this project an engineer named Tom Tanaka who most of you are probably familiar with and I imagine he would be somebody you might want to have come and testify on your behalf. There are a number, as he said, there's a number of studies that have been done that the county can just simply stipulate into evidence without any kind of foundational stuff, have no problem with that. Other than we have a planner assigned to the case, Jim Buika is assigned to the case and he would be making his presentation you know, on the part of the department. Beyond that, I can't and I don't anticipate the county would be calling maybe more than two or three witnesses at that. I think it's pretty straight forward. A lot of documentation has been done.

Mr. Hedani: Does your office have any recommendation at this point?

Ms. Johnston: Well, I'm all for getting this – lets do it and get on with it you know so that there can be finality. So I would – I feel perfectly comfortable with the commission hearing this matter if the commission's willing to do so. I do think Member Starr's suggestion that there be a public meeting in Hana ahead of this because it's the one thing that both the rules and the statutes suggest that public participation input is one of the things that needs to be considered and that's the one area that there hasn't been any participation and you're in opposition if you guys are hearing the appeal

you're sitting in your adjudicatory function rather than you know, you're taking public testimony although public testimony will come in, but it might be – at least step will have been met and Mr. Stice can get feedback from the community and I think already he has some ideas in mind that he shed with me about making some changes to the plan to maybe accommodate what he anticipates as might be objection to.

Mr. Hedani: Commissioner Hiranaga.

Ms. Johnston: I'm sorry it's a little vague, I think as we get further along you know the hearing's coming we can be more specific.

Mr. Hiranaga: I guess I'm a little confused. Before us is a request to appeal the Planning Director's decision to require a Special Management Area Major Permit. So if we deny the request to appeal he must apply for a major SMA which comes before the Planning Commission.

Ms. Johnston: Correct.

Mr. Hiranaga: If we grant the appeal and we decide to hear the contested case hearing, he comes before us with his documents and displays to convince us that he does not need a major SMA permit. It almost seems like it's the same process.

Ms. Johnston: It is but all that your hearings officer is going to do anyway is make recommendations and you're still gonna have to make the final decision either way whether you do it you know, off the top or whether you get a recommendation and do it, the same information will come back.

Mr. Hiranaga: Do we have to have a hearings officer if we grant the appeal?

Ms. Johnston: No, the hearings officer would be making a recommendation to you on whether or not to grant the appeal or not grant the appeal.

Mr. Hiranaga: Based upon testimony –

Ms. Johnston: That the hearings officer, – so we'll take the whole proceeding that would come in front of you and we'll put it somewhere else and have it. He'll come up with written recommendations, he'll come back to the commission with those recommendations. You then consider the recommendations and you still make the final decision. So you're gonna have to – and then if you deny the appeal then he comes back with an application for a major permit then you're going to hear it in that context. So no longer are you considering whether you should be exempt or not you're considering his permit application and what conditions maybe should be tied to that. So it's a consideration of different factual things but yes you would – either way, you are gonna probably hear him twice.

Mr. Hedani: Does your office have a recommendation relative to mediation or a list of hearings officers for the commission's consideration?

Ms. Johnston: I haven't thought about hearings officers. To me mediation I don't think is appropriate in this case it's kind of black or white. Yes, you get the exemption, no, you don't. I

don't Mr. Stice wants to – there's no way to give on that. I guess if you could have an exemption, and maybe, Jim, you can't have an exemption with conditions right? It's exemption or not exemption, right?

Mr. Giroux: Yes, that's – the exemption should be based on the offer what the proposed actions are going to be. It shouldn't be a exemption with a litany of conditions.

Ms. Johnston: Right. So that's the problem. Whereas you can attach them to the permit, you can't attach them to the exemption, yeah.

Mr. Hedani: Commissioner Hiranaga.

Mr. Hiranaga: And we're not supposed to discuss the merits of the director's decision to require a major SMA permit? Can we ask technical questions that might be in the special management area rules at this time?

Mr. Giroux: At this time, you don't want to get into the substantive issue of whether or not the director did the right thing or not. At this hearing, what you want to do is figure out do you want to have the board take up the issue of whether or not the director made the right decision or do you want this issue to go to the hearings officer, have them conduct a hearing, do the findings of fact, conclusions of law and have a proposal given to you as a board to then review that decision and then take action.

Mr. Hiranaga: I have a follow up question. My experience being on the planning commission, I've sort of formulated an opinion being it right or wrong so, is that okay?

Mr. Giroux: Well, I wouldn't state what your opinion is until you hear all of the facts and all the evidence to be fair to both parties.

Mr. Hedani: Commissioner Starr.

Mr. Starr: Is it – I believe I'd like to make a motion or if Commissioner Mardfin wants to make a motion.

Mr. Mardfin: I'd like to ask a question.

Mr. Starr: Oh, okay.

Mr. Hedani: The only question that I have in my mind is that you know, if this is being presented by Corp. Counsel at this point and our agenda item calls for consideration of a mediator or a hearings officer or taking action on our own why hasn't that been considered at this point?

Ms. Johnston: No, I have considered that. As I pointed out, taking action beyond either appointing a hearings officer or making a determination when you do the hearing yourself, he hasn't been given the notice required by Chapter 91 for a contested case hearing. It has to be in writing. It has to say this is a contested case you have a right to call witnesses and put on evidence. You have appeal rights and so forth. That needs to be done in writing. The way this case has come down,

it came on the first agenda as just a communication that he'd filed the appeal. We were on the agenda for August but were taken off because you had something else that you were considering for that day on the agenda so it didn't come up on that second date. So now it's listed on this agenda as just a communication and you know, I mean, if you – I don't think you can proceed forward and make a determination because a lack of that notice, the proper notice.

Mr. Hedani: Commissioner Mardfin.

Mr. Mardfin: Mimi, you asked Mr. Stice if he had a long list of witnesses and discovery. From the point of view of – but then we're talking about having a – at least considering having a public meeting in Hana of the Commission to sit and determine whether or not the director made a proper decision. If it's a public hearing there's going to be a lot of people coming up. They're not going to be on any discovery list is that correct?

Ms. Johnston: I would think not. No, I would think they would be in the form – I mean, if the commission's conducting the meeting and I don't know – is that what was being suggested or that there should be a public meeting set and held. I don't know whether the commissioners would necessarily even have to be at that meeting. My reading of the statute and the rules, there's – for this situation there's just a requirement of public participation. It doesn't specify it has to be in one form or another. So if there's just a meeting set, I suppose a transcript could be made and kept and that could be presented to the commission in its consideration to get a feel for what the community is thinking or it could be presented to a hearings officer.

Mr. Mardfin: But I guess what I'm asking is, if you're expecting Mr. Stice to have a list of witnesses and things that he wants discovery on there doesn't seem to be a balancing out on the community side because anybody – he's not going to have a list of which people might want to be testifying in Hana or what they're going to do and I just want to make sure that that's procedurally fair.

Ms. Johnston: Well, I think if there's a advertisement, well, I guess, James, what do you think to actually have a commission meeting scheduled for Hana? I'm not sure exactly how that should be set up.

Mr. Giroux: You know the feeling with 205A trying to balance the policies and objectives of public participation and the rights of a contested case applicant is it's a really tricky balance because you're using two sections of HRS. You're using 91 which is the contested case and then you're also using 92 as the public hearing to just allow the public to voice their concerns. However, because you have a public hearing it doesn't make it part and parcel to the contested case because the decision made by the body has to be based on all the evidence on the record not anything outside the record. So if you have a public hearing your decision has to be made on what's presented by the litigants at the contested case hearing. If somebody testifies at the public hearing and that information wants to be used as part of the contested case either the person would have to be you know sworn in, take an oath and be open to cross examination by both parties or both parties have to stipulate that that person's testimony comes in as part of the record. So it balances – the procedure would balance the policies and objectives of 205A by allowing some public participation but also preserving the rights of the litigants to have all of their information presented to the body under a controlled situation where any evidence coming in can be cross examined and discussed by the body. So even though you're having a public hearing I would not assume that

everything happening at that public hearing would be part of the contested case.

Ms. Johnston: So your recommendation would be then – say the commission chooses to hear it, the county and Mr. Stice stipulate that the public testimony and there is – there are a couple of documents I gave you that came in earlier that I think some of you may have seen and then I received this morning couple emails also making comments on this. It would be the county's position to stipulate testimony, written testimony, oral testimony as part of the contested case again to get it all in one place for the commission to consider and I think that would be okay with you I think.

Mr. Stice: Sure.

Ms. Johnston: Yeah.

Mr. Giroux: Yeah, that is a tricky issue because the rules of the contested case say that here say is admissible but an applicant also has the right to you know, present witnesses and to have some type of you know, cross examination. So I mean, if hearsay is going to be used I think that there should be some type of stipulation as far as letting that in as part of the case.

Ms. Johnston: And also providing for the parties to be able to ask questions of the person coming in because it wouldn't be just like a member of the public coming in before the hearing and saying this is what I think, they would actually be involved in the details. So it would be a little bit different you know, if somebody from the public comes in and testifies you know, Corp. Counsel can't get up and ask that – cross examine that person. It's kind of an unusual process. But I think that if there's a same issue will happen if you guys appoint a hearings officer we're going to have the still, the same issue about public participation and that unless we, you know, we could probably have it in this room and then that doesn't usually get put on the agenda because it's not really the commission's agenda. So I think the goal would be to get as much public participation as your rules will allow you to get ...(inaudible)...

Mr. Hedani: Commissioner Hiranaga.

Mr. Hiranaga: So on the agenda as noticed these are the things we can do as a commission select a mediator, hearings officer or take action on the appeal or take some other action? Confirming with you that that's – that's not correct?

Mr. Hedani: So 20 questions Jim. What can we do at this point?

Mr. Giroux: Yeah, I would disagree with the last one, take action on the appeal. The appellant hasn't been given the proper notice to be prepared to present all of the information that they would need to meet the burden of production and persuasion which would be -- they would be allowed to – all of the documents that he mentioned should be presented to you marked and made in duplicate or made in copies to be presented to you for you to review. He hasn't had that opportunity so I don't think that it's accurate that you can take action on the appeal. What you can take action on is choosing your process.

Mr. Hiranaga: Whether to grant or deny the appeal is part of the process?

Mr. Giroux: No, no that would be part of the substantive issue of whether or not the director was right or abused his discretion or whether or not this is a actual development. The litigants would have to lay that down as far as what is exactly they're asking you to decide regarding the case. What we're asking right now is we need to choose a process to get to that point.

Mr. Hiranaga: Which is contested case hearing or?

Ms. Johnston: That's it.

Mr. Giroux: Whatever you do it's going to be a contested case. Who is the finder of fact is what you're trying to decide now. Is it going to be this body or is it going to be a hired hearing officer?

Mr. Hedani: Are we clear? Commissioner Starr.

Mr. Starr: Are we ready for a motion Mr. Chair?

Mr. Hedani: If you understand what it is that they're asking us to do proceed.

Mr. Starr: Okay.

Ms. Johnston: Before you do, could I make a comment. I hate to you interrupt you. Under the catch all or other action it would seem to me that you would be able to set a hearing on the appeal, take the public testimony, the parties will stipulate that all that testimony will be made a part of the contested case appeal hearing, you might have to do it in two sessions, one take testimony, we take that and then we have the hearing in front of you guys and all of that by agreement of the parties will become part of your record that you can consider. I mean, it might be a simple way to do it.

Mr. Hedani: Commissioner Starr.

Mr. Starr: Yeah, I would like to move that this body appoint itself as the hearings officer on the contested case and that that hearing be preceded by a public meeting in Hana to allow the public to give input in the area in proximity to the project and that an attempt be made to deal with this in one session.

Unidentified person: ...(inaudible)...

Mr. Starr: Do that one session plus the one in Hana. In other words, one session here.

Mr. Hedani: Is there a second?

Mr. Mardfin: Second.

Mr. Hedani: It's moved by Commissioner Starr, seconded by Commissioner Mardfin that the commission take on the responsibility of hearing this particular case and that it include a hearing in Hana.

Mr. Starr: Public meeting in Hana.

Mr. Hedani: A public hearing in Hana.

Mr. Starr: A public meeting in Hana.

Mr. Hedani: A public hearing in Hana.

Mr. Starr: A public meeting in Hana.

Mr. Hedani: Is there a difference?

Mr. Starr: Yes. I made the motion.

Mr. Hedani: A public meeting in Hana followed by a hearing here.

Mr. Starr: Yes.

Mr. Hedani: In one session. Discussion? Commissioner U'u.

Mr. U'u: Clarity so, the commission is the body in Hana?

Mr. Starr: Um –

Mr. U'u: Or is the Hana Advisory?

Mr. Starr: The Hana Advisory would facilitate that meeting.

Mr. Hedani: Commissioner Mardfin.

Mr. Mardfin: I think that last statement is problematic because they need – the Hana Advisory Committee needs to be clean of this preliminary hearing because– which will collect evidence and will make a recommendation – will collect information that would be presented to this body to determine whether to uphold the director's decision or to uphold the appeal. Should the appeal – the director's opinion that the SMA exempt is proper then the applicant would have to file an SMA major. That SMA major would be assigned by us to the Hana Advisory Committee and they would have been tainted at that point because they would have determined the earlier information. They need to be at arms length with this process.

Mr. Hedani: Corp.Counsel are you okay with motion?

Mr. Giroux: As long as the Hana Advisory Commission does not make statements about a pre decision I believe that the public being able to at least see what the project is and testify as to their feelings about the project would not be sufficient to taint the Hana Advisory Commission. In their review of the SMA major hypothetically they would also still be a recommending body to this body. So at the time of the SMA major whatever their recommendation is regarding the project, I do not believe would taint the process because this body would ultimately have to make the decision on



the SMA major.

Mr. Hedani: Any further discussion? Commissioner Starr.

Mr. Starr: Yeah, I mean, I would be happy for us to go have a meeting Hana but I don't think the department and staff would really like to do that because it's really difficult and really expensive to set it up and also it would mean all of our commissioners would have to travel out there for just this item of going to a meeting where there won't be any real discussion just to hear the public. So my feeling is it would be better for the Hana Advisory to hold that and to hear what the public has to say. Mr. Giroux tends to advise that body, I'm sure there will not be any problem with them acting with impropriety since he is very eloquent and then it would come to us for the decision making on the subject at hand.

Mr. Giroux: I think if it were to be agendaed for the Hana Advisory Commission that it's clear that it's under a communication and that no action will be taken that would help.

Mr. Hedani: Commissioner Hiranaga.

Mr. Hiranaga: Well, if you put it under the Hana Advisory Committee wouldn't Planning staff have to attend anyway? So why could the Planning staff go alone within the Hana Advisory Committee because it's a public meeting and just collect testimony. That way the Hana Advisory Committee won't expose themselves to possibly being tainted. So we'll just send couple lucky people out there to take testimony.

Mr. Hedani: Any further discussion? Commissioner Mardfin.

Mr. Hiranaga: I'm asking for an opinion. Can staff go out there and hold a public meeting?

Mr. Hedani: Jim.

Mr. Giroux: Yeah, again, the public participation isn't – there's nothing in your rules that mandates this process. What we're trying to do is balance the objectives and policies of 205A that says that whatever we do we should try to include the public to some extent but we have to balance the right of the litigants to have a full, fair and impartial tribunal and that's difficult when you have people who want to participate but they're not under oath. So what we're trying to do is give the people of Hana a chance to voice their concerns about this project, learn about the project but we are also trying to give the litigants an opportunity to have a full and fair hearing so that this body can make a decision based on purely the merits and what is before this body that comes in through a contested case hearing.

Mr. Hiranaga: Was that a yes or a no?

Mr. Giroux: You can talk to the department of whether or not they want to conduct that type of hearing or you can use the process of having the Hana Advisory Committee be purely a venue for this communication.

Mr. Hiranaga: But you're not opposing just staff going out on their own and conducting a public

meeting?

Mr. Giroux: I don't think it would hurt this process. What I'm trying to do is preserve the contested case. However the department decides to allow public participation I think that – I mean, they're going to have to make that decision based on their resources and timing and such.

Mr. Hedani: Commissioner Mardfin.

Mr. Mardfin: I understand Commissioner Starr's consideration of the commission members not having to go to Hana, however, it seems to me that a field trip, later today we're going to be discussing going up to Kula Lodge so the commission is familiar with the situation at hand. It would seem to me that the commission wants to go to Hana to see this site itself and get a feel for what is there as a method of information gathering. I'm familiar with the general area, Commissioner Starr is familiar with the general area but the rest of you may or may not be and it seems to me that seeing the situation is better than photographs or Google Maps or anything else and I would recommend that the commission attend.

Mr. Starr: Mr. Chair?

Mr. Hedani: Commissioner Starr.

Mr. Starr: Could I suggest since I was the maker of the original motion perhaps Commissioner Mardfin if he feels strongly I would go along with that, why doesn't he make an amendment saying that the public meeting and we should call it a meeting not a hearing will be held by the Maui Planning Commission in Hana preceded by a drive by of the site.

Mr. Hedani: Is that the consent of the second?

Mr. Mardfin: No, I was going to make the motion.

Mr. Starr: Yeah, the amendment.

Mr. Mardfin: I was going to make the amendment but before I did I wanted to –

Mr. Starr: I made the main motion.

Mr. Hedani: You're restating the main motion, right?

Mr. Starr: No, I was just –

Mr. Mardfin: I'm going to be amending it.

Mr. Starr: He's going to be making an amendment.

Mr. Mardfin: But I wanted to as Mimi if there is a – if she perceives a procedural problem in this.

Ms. Johnston: I don't. I just had a thought as you were talking –

Mr. Hedani: You need to use the microphone.

Ms. Johnston: Okay, I'm sorry. In the event that it's not convenient for most of the commissioners to make a trip to Hana whenever it's scheduled propose where you could videotape this meeting better than having notes or anything like that and then you guys, they could come back and you could look at it as part of your other meeting. And I think if the parties stipulate that the representations made at the meeting, the testimony that people give, if you do it by video, tape recording or whatever that that can come into evidence as part of the proceeding that you'll then have the advantage of actually hearing what the people are saying as part of your deliberations.

Mr. Hedani: Commissioner U'u.

Mr. U'u: Couple things. Personally I wouldn't object for going to Hana and I not going be jumping for either but I don't want to step on anybody's foot going there especially the Hana Advisory Board. And some advice that any time we take up something to this degree that we are dealing with right now and I find it very complex at times for a simple-minded person like myself that you folks make it clear to us in the direction we're going instead of we kind of nimbling through the process where it takes up a lot of time. That will be you and that will be you. I need more clarity instead of we juggling this act. And any time we go through this procedure it's so time consuming because we're juggling. I'm not an attorney so I look for you guys for advice and clarity in this direction. Now after March I don't care, I'm not here. But I need the clarity from you guys instead of we kind of finagle and we can ask this – I know you guys try to make it clear but you gotta make it crystal clear to us instead of we guessing because I tired of the guessing.

Mr. Hedani: The Chair heartily agrees with your perspective especially since I won't be here after March 31<sup>st</sup> either.

Mr. U'u: And that's on you guys not us.

Mr. Hedani: Any further discussion? Commissioner Hiranaga. For the people that are going to be here after March 31<sup>st</sup>, I suggest you chime in now.

Mr. Hiranaga: Yeah, I guess I have a concern. You know in the past Hana Advisory has had quorum issues and this request may have a quorum issue. You know, I'm sure not all commissioners are familiar with the west side, the south side, the north side, do they make trips to all these areas before every commission hearing or is it just because it's Hana? I, for one, will probably not be attending. So you may want to look at are you going to have a quorum because it would be a financial waste to send everyone over there and you don't have a quorum. So I'm willing to say I will not plan to be there.

Mr. Hedani: Commissioner Mardfin.

Mr. Mardfin: I move to amend the motion to have the Maui Planning Commission go to Hana a trip to hold the hearing –

Mr. Starr: Meeting.

Mr. Mardfin: Meeting, excuse me. To hold the meeting and a trip to the particular site that this meeting – I'll stop there.

Mr. Hedani: Is there a second? Is there a second to the motion? Commissioner Starr.

Mr. Starr: There is a second and my understanding and -

Mr. Hedani: Are you seconding the motion?

Mr. Starr: I am seconding the amendment.

Mr. Hedani: Okay.

Mr. Starr: And what I'm trying to understand because now this commission is prospectively going to Hana does that mean that we can hold the hearing and decision making in Hana at the same time we hear the public talking about it?

Ms. Johnston: It's a good question and Mr. U'u there's very little that's black and white in the law so we're dealing with a situation it's kind of unusual. I don't know if this has ever come up before and what going through our mind and Mr. Starr, if you guys go see it, the two of you that are not going to be here after March and your decision making is mostly going to be after March and then we say, we can use whatever happened there as testimony well, then you haven't heard the testimony so that will reduce the number of people that can actually act. So I think that could be a problem in the future. I would suggest set a meeting, whoever can go can go, video tape it, bring the tape back, whatever, whoever's on the commission at the time can look at the tape, they don't have to have been there, they didn't have to be a commissioner at the time if you want to incorporate that as part of your consideration. I mean, there's a practical way out of this kind of unusual situation.

Mr. Starr: Mr. Chair?

Mr. Hedani: Commissioner Starr.

Mr. Starr: That brings up another issue which I'm sure Mr. Giroux is about to jump in because we can't hold an ad hoc meeting because if we're more than two of us we're breaking Sunshine Law so either we need to have a notice official meeting with quorum or we need to be, you know, only one or two members.

Mr. Johnston: Okay, well I don't know if there's – is there any way that we can have a non official meeting and just have a public hearing that the –

Mr. Hedani: Stop, can we just speak one at a time? Jim.

Mr. Giroux: Once this is declared a contested case which it is once the applicant files, there's been no intervention, there's no public party. Okay. So the rules change. The rules of Sunshine Law change. You are now a tribunal. You're executing your adjudicatory process and so as long as the applicant and the appellant are given sufficient notice of the time, place, the statutory function of

the meeting, the notice that they have the ability to present their evidence, as long as that legal requirement is met then this board can meet anywhere, any time, any how as long as the applicants are given notice of that hearing and it's sufficient time to prepare their case and present their case fairly. So it's not a sunshine issue.

Now once you start using the Hana Advisory Commission and you post it as a communication now the Sunshine Law is an issue because you're using the public process to have an ability for the public to communicate their concerns. You do not have to use the Hana Advisory Committee. Again, the applicant could go to Hana and just have a meeting and hear the concerns of the public. Again, there's no rule saying that there has to be a public meeting. Okay, so we have no rules on that. But if you're going to use a government process, an agency then you have to follow the Sunshine Law but it doesn't have to stop this board from executing its adjudicatory powers. Because once you start collecting evidence, deliberation, that is all part of that Chapter 91, not Chapter 92. Okay.

Mr. Hedani: Trisha.

Ms. Kapuaala: Hi Mr. Chair, thank you. I'd like to also I'd like to chime in and say that yes, it's not required that you remand this to the Hana Advisory Committee. This is not a public hearing process, this is a closed to the public. When we take matters such as this to the Board of Variances and Appeals they accommodate the public who would like to speak and it does not have to weigh on your decision because like they said there's a process, a due process that's required by Chapter 91 of the Hawaii Revised Statutes. If you do go to Hana, I guess I'd like some clarification. If the Hana Advisory Committee holds this would they – like James said, would it just be a venue and they, the public just gets to speak and then you get to hear what they say and then have a hearing? If that's the case what we do often times with the Board of Variances and Appeals we have the hearing but before we start or maybe after you can have it open to the public and then they can speak, close the public hearing, and make your decision. As staff, I would recommend that we do take care of this matter swiftly and I think we can take care of it in a day but it would have to be the only item on the agenda. Maybe we can go to Hana. You guys see the site, come back have a public hearing, close the public hearing, hear the testimony and the exhibits and the you know, have both sides do their cross examinations and then you can make your decision that day. The Hana Advisory Committee does not have to be involved because I realize that there will be conflict issues if you decide to you know, grant the applicant's appeal. And that would be staff's recommendation. I'm sorry, I didn't voice that sooner. This is a new process for everybody.

Mr. Hedani: Okay, Trisha we've spent close to an hour on this particular agenda item. Personally I'm nowhere clearer on the process or what is expected in this particular process as I was at the beginning of the meeting. But we do have four additional agenda items on our agenda for today I'd like to really hear staff recommendation and what you would recommend before we actually make a decision on this motion.

Ms. Kapuaala: Well, we have emails and letters from members of the Hana community that would like to hold the meeting in Hana. I would recommend that – I would support the commission's desire and Mr. Stice's request that the Maui Planning Commission be the board, be the hearings officer and hear it and not remand it to a hearings officer and we set a public hearing date in Hana with enough time for the appellant and appellees to submit their prehearing documents such as

exhibit lists, witness lists, exchange their pleadings and have a hearing in Hana with this being the only agenda item.

Mr. Hedani: Thank you. Commissioner Mardfin.

Mr. Mardfin: I would suggest that this meeting in Hana be held after March 31<sup>st</sup>. There are two people that will be off and presumably we will have new people on so I would suggest a date in April or May so that the new members could all get up to speed on this, all hear testimony, see the site and if the hearing were held, the meeting were held after that then everybody would be in a good position to understand all the issues.

Mr. Hedani: Commissioner U'u.

Mr. U'u: Or it get taken up before then. The only reason I'm saying, it's going to be done in a day.

Ms. Kapuaala: Yes.

Mr. U'u: Supposedly.

Ms. Kapuaala: I would agree.

Mr. U'u: So you don't have to do it again if we do it now with the information we have and I actually understood what you said earlier so good job. Kinda sorta.

Ms. Kapuaala: Thank you.

Mr. Hedani: Any further discussion? I've lost track of what the motion on the floor is right now actually at this point. Commissioner Hiranaga.

Mr. Hiranaga: Yeah, I understand that you can do your expedition out to Hana, do your site visit and hopefully have the presentation and make a decision on whether to grant the appeal or not in one day. I think that's feasible. And you can do it before March 31<sup>st</sup>, but you may want to poll the commissioners to make sure you do have a quorum.

Ms. Kapuaala: Excuse me, Carolyn what hearing dates do we have for March?

Mr. Hedani: Commissioner U'u.

Mr. U'u: I would suggest that we swap out the last meeting in March and go to Hana.

Ms. Kapuaala: Would that be March 23<sup>rd</sup>?

Mr. Hedani: Any further discussion? Are we ready for the question? The question on the floor is for the commission to be the hearings officer essentially and that we hold the meeting in Hana and that it be done in one session? Was that it?

Mr. Starr: Yeah.

Mr. Hedani: That's essentially it. Any further discussion? Commissioner Mardfin.

Mr. Mardfin: If it's held in one session does that give everybody the appropriate ability to respond to testimony?

Mr. Stice: We've submitted everything to the Planning Department. I can't think of anything else. I really can't think of anything significant that you don't already have in the Planning Department.

Mr. Mardfin: You won't need to respond to anything that the community says?

Mr. Stice: We'll answer them. And if they request something that involves a detailed study or something of course, I couldn't do that but all the information we're planning to present is already in the Planning Department.

Mr. Hedani: Any further discussion? Ready for the question? All those in favor of the motion signify by raising your hand. Opposed same sign.

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

**VOTED: For the Commission to Hold the Meeting in Hana and Also Visit the Site.**  
**(Assenting - J. Starr, W. Mardfin, B. U'u, O. Tagorda, D. Domingo, L. Sablas)**  
**(Dissenting - K. Hiranaga)**  
**(Excused - W. Shibuya)**

Mr. Hedani: One opposed. Motion is carried. Thank you.

Ms. Kapuaala: Thank you very much. That was the amendment.

Mr. Mardfin: That was the amendment.

Mr. Giroux: Chair, if we could just one procedural –

Mr. Hedani: I'm sorry, Commissioner Mardfin, indicates that we just voted on the amendment. Wasn't it a restatement of the main motion?

Mr. Starr: It was an amendment.

Mr. Hedani: Vote on the main motion which was essentially the same thing.

Mr. Starr: That we hold the hearing.

Mr. Hedani: Now we vote on the main motion if that's the case. All those in favor, signify by raising your hand. Two, three, four, five, six. Opposed, same sign. One opposed.

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

**VOTED: For the Commission to Receive Public Testimony and Hear the Matter in Hana and That it be Done in One Session and Have a Site Visit Before the Meeting.**

**(Assenting - J. Starr, W. Mardfin, B. U'u, O. Tagorda, D. Domingo, L. Sablas)**

**(Dissenting - K. Hiranaga)**

**(Excused - W. Shibuya)**

Mr. Hiranaga: For the record.

Mr. Hedani: Chair abstains. Motion is carried.

Mr. Giroux: Chair, can we have some further discussion just for procedure proposes. If the Chair could be given the authority to review the stipulations as far as the timing of the witness list, the documentation that's produced and the exchange, the timing of the exchange of documents.

Ms. Kapuaala: I'm sorry James, what does that mean, the review the timing?

Mr. Giroux: What I'm looking for is that the government's attorney to write up a stipulation so that the applicant will understand what is necessary to have the hearing so you can both agree in writing and have it signed what, who the witnesses are, what the documents are that are going to be used at the hearing and timing as far as exchanging that information and have it reviewed by the Chair. So when we get to Hana there's no procedural questions left you know, out there and that the Chair will be authorized to clarify anything and I'll help the Chair out as far as reviewing that.

Mr. Hedani: You better. Commissioner Mardfin.

Mr. Mardfin: James, shouldn't it also be stipulated that any and all public testimony would become part of the record?

Mr. Giroux: Well, I think that we're going to have to leave that up to the applicants because if something comes up during public testimony that is just absolutely you know, unmanageable, I mean, preserving public testimony is great but when you're trying to get down to facts I think that you need to leave that up to the applicants to agree of whether or not they can agree that that testimony is factually based. If it's not, then the government and the applicant have to have what they have and present it to the board because I mean, I've been in enough public testimony and public hearings that I really, you know, without the luxury of cross examination and an oath it's very difficult to take everything on it's face. And I think once the contested case hearing goes, there's going to be enough protection and enough information for both parties to present a fair and impartial case to the board.

Mr. Hedani: Okay, just so we can move along Chair entertains a motion as suggested by Corp. Counsel. Commissioner Starr.

Mr. Starr: Yeah, I make that motion regarding discovery, etc.



Mr. Mardfin: Second.

Mr. Hedani: Moved by Commissioner Starr, seconded by Commissioner Mardfin to follow the Corp. Counsel's recommendation regarding whatever the hell he said.

Mr. Giroux: Matters of stipulation and we'll leave it at that.

Mr. Hedani: On matters of stipulation. Discussion? All those in favor signify by saying aye. Opposed nay.

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

**VOTED: That the Chair could be given the authority to review matters of stipulation as far as the timing of the witness list, the documentation that's produced and the exchange, the timing of the exchange of documents.**  
**(Assenting - J. Starr, W. Mardfin, K. Hiranaga, B. U'u, O. Tagorda, D. Domingo, L. Sablas)**  
**(Excused - W. Shibuya)**

Mr. Hedani: Carried. Thank you.

Ms. Kapuaala: Thank you.

Ms. Johnston: Thank you very much.

Mr. Stice: Thank you

Mr. Hedani: Do we need a recess or can we just press on? We'd like to finish this meeting by 5:00 p.m. Director.

- 3. FRIENDS OF MOKUULA, INC. requesting a four-year time extension on the period to initiate construction for the proposed construction of an 84 stall parking and ancillary improvements at TMK: 4-6-007: 001, por. of 002, and 036, Lahaina, Island of Maui. (SM1 2003/0008) (E. Wade)**

Mr. Hedani: Director has called to my attention that Item C-3 was deferred to the February 9<sup>th</sup> agenda.

Mr. Hunt: So your next item is Item D is approval of Action Minutes of January 12, 2010 meeting and Regular Minutes of August 11, 2009 Meeting.

**D. APPROVAL OF ACTION MINUTES OF THE JANUARY 12, 2010 MEETING and REGULAR MINUTES OF THE AUGUST 11, 2009 MEETING**

Mr. Hedani: Okay those minutes will stand accepted as circulated unless there are corrections. Seeing none, Director's Report.

**E. DIRECTOR'S REPORT**

**1. Scheduling of the date, time, and place for the following public hearing in the Makawao-Pukalani-Kula Community Plan region:**

**MR. FRED ROMANCHAK, Owner of the KULA LODGE, requesting a Phase II Project District Approval for the redevelopment of the existing Kula Lodge at 15200 Haleakala Highway, TMK: 2-3-022: 087, Kula, Island of Maui. (PH2 2008/0001) (P. Fasi) (Previously discussed at the January 12, 2010 meeting.)**

Mr. Hunt: The first item is scheduling of the date, time and place for the following public hearing in the Makawao-Pukalani-Kula Community Plan Region. Mr. Fred Romanchak, owner of Kula Lodge requesting a Phase 2 Project District Approval for the redevelopment of the existing Kula Lodge at 15200 Haleakala Highway, TMK 2-3-022: 087 in Kula. The project file number is PH2 2008/0001. This was previously discussed at the January 12, 2010 meeting. I believe there's two options in front of you in Pukalani Community Center on March 17<sup>th</sup>. Dick Mayer has also suggested that on March 17<sup>th</sup> the Kula Community Center is also available.

Mr. Hedani: Commissioners? Commissioner Starr.

Mr. Starr: Mr. Chair, I move that the meeting be held at the Kula Community Center on March 17.

Mr. Hedani: Is there a second? Is there a second?

Ms. Domingo: Second.

Mr. Hedani: Seconded by Commissioner Domingo. Discussion? Commissioner Hiranaga.

Mr. Hiranaga: I know the staff had some concerns, logistical concerns of Kula Community Center versus the Pukalani Community Center.

Mr. Hedani: Clayton.

Mr. Yoshida: Well reflecting on an earlier iteration of this project nine years ago, you know, there was a lot of community turn out and we're just worried about the capacity of the facility, parking accommodations because there seems to be – that time nine years ago there was a lot of interest from the community in this particular project.

Mr. Hedani: So you're suggesting the Pukalani Community Center.

Mr. Yoshida: That's why we have basically reserved the Hannibal Tavares Pukalani Community Center because it is a larger facility, has more parking.

Mr. Hedani: Commissioner Starr, you want to restate your motion?

Mr. Starr: I would prefer it at the Kula Community Center. That's what I believe the Kula Community Association has requested of us through Mr. Mayer. The parking has been expanded there and I really think it's plenty large. You know, I do go to quite a few meetings.

Mr. Hedani: Commissioner Hiranaga.

Mr. Hiranaga: Will staff be going early to reserve stalls for us for parking? Because if the parking lot is full, I might have to go home.

Mr. Yoshida: I recall us doing that in the past even for some of these larger meetings --

Mr. Hedani: Any further discussion?

Mr. Yoshida: Like I think we had one on Kaanapali Ocean Resort in Lahaina Intermediate School where we exceeded the capacity according to the Fire Marshall of the cafeteria of 400 people.

Mr. Hedani: What's the turnout at the last meeting?

Mr. Yoshida: Well, it was at the I think it was at the adjacent, the swimming pool meeting room and it was pretty full. That particular facility. The Tavares meeting hall is much larger than that facility was – but there seem to be quite a few people from the community elsewhere who showed up.

Mr. Hedani: Any further discussion? All those in favor of the motion for March 17<sup>th</sup> at the Kula Community Center signify by raising your hand. Wednesday. Two in favor. Opposed same sign. Okay, you guys gotta vote.

Mr. Mardfin: I wasn't clear on the motion.

Mr. Hedani: The motion is to hold the meeting on March 17<sup>th</sup> at the Kula Community Center.

Ms. Domingo: What time?

Mr. Mardfin: What time?

Mr. Starr: 6:00 p.m.

Mr. Hedani: It's an extra meeting on a Wednesday, right?

Mr. Yoshida; Yes, I believe the discussion that we had at the January 12<sup>th</sup> meeting was the commission wanted it on a off regular meeting week which this is because commission has a meeting on March 9<sup>th</sup>, the commission has a meeting on March 23<sup>rd</sup>. March 3<sup>rd</sup> did not work because of another precinct caucus night or whatever it was so we moved it to March 17<sup>th</sup>.

Mr. Hedani: Okay, let me take the vote again, all those in favor raise your hand. One, two, three, four, five. Opposed same sign.

**It was moved by Mr. Starr, seconded by Ms. Domingo, then**

**VOTED: To Have the Meeting on March 17, 2010 at the Kula Community Center at 6:00 p.m.**  
**(Assenting - J. Starr, W. Mardfin, B. U'u, O. Tagorda, L. Sablas, D. Domingo)**  
**(D. Domingo - Abstained)**  
**(Dissenting - K. Hiranaga)**  
**(Excused - W. Shibuya)**

Mr. Hedani: Motion is carried.

Mr. Yoshida: And is that to start at 6:00 p.m.

Mr. Hedani: That's correct.

Mr. Hunt: The next item involves notification of issuance of a Special Management Area Emergency Permit pursuant to the Special Management Area Rules of the Commission, Special Management Area Emergency Permit by letter dated December 29, 2009 to Ms. Laura Valenzuela, General Manager of Kahana Sunset AOA to complete temporary emergency protective measures and repairs to the Building "F" foundation and adjacent seawall at the Kahana Sunset, 4909 Lower Honoapiilani Highway, TMK: 4-3-003: 015 in Lahaina. File number SM3 2009/0005 and Jim Buika is the planner assigned to this.

**2. Notification of issuance of a Special Management Area Emergency Permit by pursuant to the Special Management Area Rules of the Maui Planning Commission:**

**Special Management Area Emergency Permit by letter dated December 29, 2009 to MS. LAURA VALENZUELA, General Manager of the KAHANA SUNSET AOA to complete temporary emergency protective measures and repairs to the Building "F" foundation and adjacent seawall at the Kahana Sunset, 4909 Lower Honoapiilani Highway, TMK: 4-3-003: 015, Lahaina, Island of Maui. (SM3 2009/0005) (RFC 2009/0280) (J. Buika)**

Mr. Jim Buika: Good afternoon Commissioners. This is just a required report to you as the commission on an emergency permit that was permitted over the holidays to the Kahana Sunset AOA and I can just report out very quickly you have a packet in front of you with the circumstances. I also have with me Dr. Kiumars Siah who is a structural engineer who the department worked very closely on the temporary protective measures at this point and also Laura Valenzuela here. So we can make it short or we can have a – we just have some poster boards if you want some details on the project.

Mr. Hedani: Is there any action that you're requesting of the commission?

Mr. Buika: Just to accept the emergency permit. I mean, it was issued but I don't believe there is an action. It is just a communications report out item and what did happen was it was clear that the

structural foundation of a major building of the Kahana Sunset was threatened and we had to – because of the December 3<sup>rd</sup> I don't know if you recall, beginning of December we had all the major storms, the big Jaws waves etc., on both west side and the north side and seawall was undermined, the lanai was undermined and the foundation was severely threatened. So even though it's a temporary protective measure there had to be some structural strengthening to it and that was well understood. We looked at three protective measures and decided on one and it's underway right now. So I can answer any technical questions you desire. But no action on your part.

Mr. Hedani: Questions from the commission? Commissioner Starr.

Mr. Starr: Yeah, I'd like to see the poster boards and have a description of how this will affect public access and the beach process over there.

Mr. Buika: Okay. We can – I'll hold these up in front of you and we can – there is – there should be no lateral beach access issues whatsoever. It's just a protective measure that is replacing what was already basically the lanai in front of the building which was fronted by a seawall. So I have Dr. Siah present this to you. And what was the other question Jonathan? You said the beach access – oh, the beach processes.

Mr. Starr: Yeah.

Mr. Buika: It's an existing seawall. We are going to do a second site visit on Thursday with the Office of Conservation Coastal Lands to look at issues out there as far as – anyway what I was going to say is we do believe that it is nonconforming seawall that's been there since the '60's or '70's part of it there.

Mr. Hedani: Jim, lets go ahead with the presentation. If we could make it fairly brief since we have another issue on our agenda that needs to be addressed that affects everybody flushing their toilet in Kahului.

Dr. Kiumars Siah: Good afternoon, my name is Kiumars Siah as he mentioned.

Mr. Hedani: I'm sorry can you introduce yourself again please?

Dr. Kiumars Siah: Good afternoon Commissioners and Chairman, my name is Kiumars Siah, I'm the consulting engineer for Kahana Sunset and the project manager for this. On December 3, 2009 there was a collapse of the lanai which is a covered –

Mr. Hedani: You have to use the microphone in order to speak because it's being recorded.

Dr. Siah: A lanai walkway collapsed. The lanai – on one side of the lanai was a seawall and on the other side an existing building. As you can see after the collapse almost five, six feet dirt had been removed and eroded throughout here, through here and basically what we ended up, we had a big hole with all the debris. The seawall was undermined, the water was seeping through and on the other side of the foundation of the old building was exposed and the sand was coming down. So we were quite astounded by the severity of the situation. I flew from Oahu. I'm stationed in Oahu.

The next day although I had seen the pictures, the actual site was more impressive so we had to do something very fast especially considering the fact that a 50-year old storm surge had been forecasted for the Monday. The collapse happened on Thursday. The surge was forecast for Monday so the first thing we did, we obviously evacuated the building. We corded it off and we prevented public access and the next thing to make sure that nothing will be further exacerbate the situation where will worsen, provided a temporary roof structure so that it can protect it and we can pass through the surge that is what we did and after that – immediately after that we met with the Department – the Maui MDP and then we considered three different options to address the structural issues and also make sure that the concerns by Maui Department are met.

As far as you can see on these pictures, as you can see on the pictures this is the seawall. Everything is on the mauka –

Mr. Hedani: You need to use the microphone because it's being –

Dr. Siah: I'm sorry. Everything on the mauka of the seawall and none of the – no impact on the ocean and wave and coastal processes, nothing. Basically what we have done we have tied the back the seawall so that it doesn't fall actually on the makai side and we have prevented the foundation of the building to be undermined and the collapse of the building. That's basically it.

Mr. Hedani: Questions from the commission? Commissioner Starr.

Mr. Starr: I don't really have the problem with the emergency repairs but I do have a real concern for what will be the permanent situation and you know, I want to ask what your strategy is here because the ocean's coming up, these storms are going to do more damage and I don't want to see the beach lost there permanently because we end up with a situation where we just have waves breaking against the stone wall. So I want to know what your strategy is to deal with the fact that sea level is rising and this will become not only recurring but increasing.

Dr. Siah: I did understand the concern. We are basically preventing an existing seawall to collapse and more damage to the building and also more damage, more erosion of the shore. That's all we are doing on the mauka side.

Mr. Buika: I'll comment on that Jonathan. In the emergency permit we have requested that they come in with a permanent strategy within a 180 days and that's within the rules. So we haven't gotten to that stage yet. So they still have some time to put a – this was just a temporary solution and we'll look for permanent solution and we'll consider your comments.

Mr. Starr: Okay, you'll come back to us for an SMA?

Mr. Buika: Yes.

Mr. Starr: One comment is this is kind of God's way saying there's a problem there and it's going to get worse. So find a solution that's not going to harm the beach and the public's access to it.

Mr. Buika: Yes. Thank you.

Mr. Hedani: Any further comments, questions from the commission? If not, thank you very much Jim.

Mr. Buika: Okay, thank you.

Dr. Siah: Thank you.

Mr. Hedani: Director.

Mr. Hunt: The next item involves discussion on the SMA exemption No. SM5 2009/0360 issued for the Department of Environment Management's replacement of injection well no. 1 and no. 2 at the Kahului Wastewater Treatment Plant. The planner assigned to this is Jim Buika. The planning commission requested that this item be placed on the January 26, 2010 agenda.

**3. Discussion on the SMA exemption no. SM5 2009/0360 issued for the Department of Environmental Management's replacement of Injection Well Nos. 1 and 2 at the Kahului Wastewater Treatment Plant. (J. Buika)**

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

Ms. Cheryl Okuma: Good morning Chair Hedani, Commissioners, Cheryl Okuma, the Director of the Department of Environmental Management. With respect to the agenda item regarding the Kahului facility I'd like to request that the commissioners consider a few points which I would like to just brush upon briefly.

Mr. Hiranaga: Who are you?

Ms. Okuma: Cheryl Okuma, Director of the Department of Environmental Management. First of all, what we are talking about is the replacement of two injection wells with no increase of capacity. This is a one for one well replacement of two existing wells. The reason for the well replacement is to insure legal compliance with Department of Health permits and the law. For operational purposes the State Department of Health allows the county the flexibility to use these eight wells in part or in total. In other words, this is a total system comprised of eight wells including these two replacement wells and by law there must be capacity to handle the flows as set forth in the permit. If there is no injection well capacity we are in violation.

For the most part at any particular time in the year six wells are normally used. That's because two are usually undergoing some sort of maintenance work and except during the winter months we have rainy peak wet weather flow and in order to handle those wet weather flows operationally we would need eight wells in order to provide the needed capacity to handle these flows. So when we talk about injection wells and these replacement wells it's a total system. It's a total system of eight wells and capacity is a legal requirement.

Failure to replace the wells means that there is no legal method of discharging our wastewater. Injection well failure could result in leakage, blockage in these wells and that would mean sewage discharge into the ocean. This failure would subject the county to enforcement action by Department of Health as well as fines.

Today we are expressing our concerns regarding the integrity of these two wells at issue and the importance of these two wells as being part of a total system, a total eight-well system. We are concerned about the risk of failure if we do not replace them and doing nothing is not an option because there is no alternative if these wells should fail. Therefore it's imperative that we ..(inaudible)... this one to one well replacement as soon as possible.

I'd just like to note that there is of course a strong desire within the community and it is a goal of the department as well to expand the ...(inaudible)... program but nothing we're doing here or nothing that's happening here today will prevent that from happening.

I'd just like to end by saying that following up just behind me is Dave Taylor, he is our Division Chief for the Wastewater Reclamation Division. He is a licensed engineer who has been working in the County of Maui's Wastewater Division since 1992 and he'll be following up with testimony behind me. Thank you.

Mr. Hedani: Thank you very much. Any questions from the commission? Commissioner Mardfin.

Mr. Mardfin: I just have a brief one. When we get to this item is there going to be somebody from your department here?

Ms. Okuma: You mean as a contested case hearing or you mean this afternoon?

Mr. Mardfin: Yeah, I don't know when we're going to get to the item but when we get to the item.

Ms. Okuma: This afternoon, yes, someone will be here.

Mr. Mardfin: Thank you.

Mr. Hedani: Thank you very much Cheryl. Mr. David Taylor.

Mr. David Taylor: Good morning Commission, I'm Dave Taylor, I'm the County's Wastewater Division Chief. Just going to follow up a little on some things the director said. Our existing wastewater system collects wastewater from the island, from the community, treats it, treats it to this level. This is water I took from the injection wells yesterday. This is the water that goes down the injection wells. So this is what we're talking about. A lot of people think that it's raw sewage or it's really dirty, and I'm free to pass this around if you want to take a look at this. This is the water that goes down the injection wells just so we're all clear about what we're talking about.

Whatever future improvements are made to the wastewater system whether that's quality improvements or reuse systems, etc., the system we have now where that water is collected goes down injection wells, that is the system that exists now. That is the only — please don't open it, I just want — if you want to open it and smell it that's absolutely fine. Just don't drink it, please don't drink it. Frankly if you drank it I doubt anything would happen. Technically it's probably cleaner than what comes out of the tap, but just because of DOH rules we're not supposed to drink it. But if you took that water to the water lab and you didn't tell them where it came from and they went through their tests, they'd say this meets Federal Safe Drinking Water Standards. So I just want to be clear about how clean that water is. So feel free to smell it. Whatever future improvements



happen this is the system now, this is the only system now.

The project in question involves replacing two of the eight injection wells. Two of the wells are experiencing degradation, they're not working very well. We want to make a simple switch. Take two out of service, put two into service. This is the same thing we have going on division wide with pumps and pipes and all kinds of equipment. Basically what our greatest effort is is replacing aging infrastructure. This is just another piece of infrastructure that we need to replace to keep existing capacity. The new injection wells proposed would have the same size, the same capacity, it will be in the same location, they will serve the same purpose. It is maintenance by definition.

Without adequate capacity of the injection wells, people say just turn them off, that water will back up, it will back up into the plant, overflow the walls, fill the back of the plant, run through the back gate over the beach into the ocean. This is not a matter of not wanting injection wells, that's what's there, that's the only thing that's there, that's where the water goes.

This project will not increase capacity, it will not change any of the way the wastewater is treated. It's a simple maintenance replacement. It will only insure that the existing system continues to function. It really is – has nothing to do with whether or not future improvements will be made, it only serves to make sure the system we have now will continue to function reliably until whatever happens in the future happens. So that concludes my testimony.

Mr. Hedani: Questions from the commission? Commissioner U'u.

Mr. U'u: Yeah, the testifier prior to you said the potential of fines, what is the potential of fines?

Mr. Taylor: The Clean Water Act says, the Federal Clean Water Act basically says that if any partially or untreated wastewater that is in our control is not disposed of down the injection wells which is what we're permitted to do, if it comes out of a manhole as untreated sewage, if it overflows the wall of the plant and runs to the ocean and it runs to a water source that is a violation of the Federal Clean Water Act. By our consent decree and the agreement we have with the Federal Government, every time that happens we are fined \$25,000 and those fines go up if it's something that happened before and continues to happen. So the fines are pretty hefty.

Mr. Hedani: Additional questions for the commission? Dave, why did the department seek an exemption for this particular project?

Mr. Taylor: We have many, many, many projects of replacing pipe, pumps, concrete structures, injection wells. We spend tens of millions of dollars a year on the replacement. To be consistent with everything else we do this fits our criteria of a one for one replacement. We realize of course that disposal of effluent by injection well is controversial. It's in the paper, we know that. That itself wasn't a reason for us to not get an exemption. If went for a full SMA for this, it would basically be saying that we're going to go get an SMA for all of our replacements just everything. I mean, we basically need you guys to have an extra meeting every month because we have so much replacement of everything which is all one for one, same thing, same place, same purpose. We do so much replacement and so do all the other infrastructure groups, Public Works, Water, Highways, Airports. If we all, the large infrastructure groups start coming for a full permitting, every time we do a replacement, I mean, can you imagine the effort onto the Planning Department, onto

yourselves, onto the community, I think in the big picture we're trying to keep maintenance, maintenance and keep new things as new things.

Mr. Hedani: Additional questions from the commission? Commissioner Starr.

Mr. Starr: Mr. Taylor is an interesting argument and I understand that you know, it's much more convenient for government not to have to go through the process and you know, the SMA process is somewhat onerous but it does put what goes through it in the light of day and allows the public and people who want to comment on it to comment. Now any private entity, any individual who's doing a project in the shoreline management area would have to go, does not have the ability to get an exemption and does have to go through the process. Why do you think government is different and should be able to avoid having to go through the same type of process that any private citizen or any corporation would have to do?

Mr. Taylor: I can't speak to what the Planning Department's rules are for who qualifies to get exemptions and who doesn't. I don't know whether or not private entities can. Let me talk about our project. This plant and the injection wells – when the injection wells were expanded in around 1990, got an SMA permit. The last expansion or upgrade of the plant happened in about 2001, I remember I was the project engineer on that, we came to the planning commission and got an SMA permit. This plant, how it exists right now was completely permitted. As far as light of day, this project, the injection well replacement, we've gone to County Council twice in budget, once for design, once for construction. It was published in the Mayor's Proposed Budget. As everyone knows, everybody reads that, the paper covers it. Those meetings are on Akaku. They were on individual line items that said countywide injection well system replacement something like that two different years. Those meetings are carried live on Akaku, they're rerun again and again. We had to say exactly what the project was and we got questions from Council and the County Council in full light of day voted twice to support and fund these projects. So to say we didn't get permits isn't really correct. Everything at that plant had been permitted even this upgrade, this maintenance upgrade has gone through the light of day, been funded by Council and what we're really saying is maintenance, replacing something that's failing with something new of the same size, type, location, purpose, we're saying that's maintenance, that's not a new project. So we're certainly not saying that government shouldn't have to go through the process, we do, we always do. This is maintenance. I think that's really the key, this is maintenance.

Mr. Hedani: Additional questions from the commission? Thank you very much Dave.

Mr. Taylor: Thank you.

Ms. Irene Bowie: My name is Irene Bowie, Executive Director with Maui Tomorrow Foundation. I didn't come here today prepared to testify because I was told that the exemption of the SMA for Kahului injection wells would be deferred and there wouldn't be any testimony taken. But in light of Department of Environmental Management speaking I'd like to just briefly mention that I am part of the group that is appealing this exemption and we do feel number one, that it's disingenuous for Dave Taylor to say that this was in full public light when as I stated here at the last meeting back in December at our Community Working Group for Wastewater I personally asked this question of Dave Taylor. He told me that all eight wells at Kahului were operational. So to find out that two weeks later an exemption was granted for two of these I don't think really brings that public process

into view. We could have discussed this.

I just would also like to mention that in the file on this replacement there are two contradictory statements one says that the two wells have been abandoned and are not now being used. However, later in the statement it says that the stopping of these wells is anticipated to occur in March 2011. So we question that.

Also, if the new injection wells would not increase the overall capacity of the plant then how will helping build them meet the shortfall in capacity that Kahului claims it's faced now? We question that. I'd like to further say that Mr. Taylor passing around a bottle of water that seems to be clear doesn't really address that it's now known that the waters of Kahului Harbor and the bay are already impaired and this means that applicable water quality standards are not attained for fecal bacteria as well as for nutrients. Furthermore, it is known that the injected wastewaters at Wailuku Kahului treatment plant are not subject to UV treatment to disinfect them from bacteria or pathogens. I'd like to point out that although the 2000 EA found no significant impact it did not consider changes or additions to the wastewater inject wells at the facility nor did the 2001 EA include an analysis of the water quality of Kahului Harbor and bay. Therefore, it erred in relying in part on the final environmental assessment review that was held in 2001 and finding no substantial environmental impact.

Our main point in this is also, as part of this SMA we have learned a lot about injection wells and treatment since 2001 and we feel it's now 2010 this is almost a decade later we need to take a second look at this. We have Save Kahului Harbor as a co-filer in this appeal, they are canoe paddlers, there are people that use those waters everyday and we just want a discussion on this brought out in the open. Thank you.

Mr. Hedani: Thank you very much Irene. Questions from the commission? Irene, what is the outcome that you're looking for at this point as a member of DIRE?

Ms. Bowie: What we want is a full discussion with the public about this because part of what's in the report on this is also looking at the replacements that are considered for Lahaina and Kihei. So if we're really looking at the Mayor's goal of phasing out the injection wells we want an open discussion about how many will need to be replaced, what we're looking at, what options we have, all of us in the community working group recognize that a 100% phase out is probably not possible but we want a discussion of alternatives. We also want to look realistically at what chance we have for Kahului to be able to reuse some of their water, some kind of UV treatment such as Lahaina and Kihei has. We have HC&S right now in a dire water situation and there's water that could be treated and reused for HC&S. It would also lessen the impact of what's going in the injection wells at Kahului and out into the harbor.

Last year I was at this meeting when it was talked about the Central Maui Landfill and the leachate in the lining that goes down to Kahului and it's injected into the wells there. Again, it's an area where there's a lot of recreational users and I personally feel that this is a socioeconomic issue too and it's a social justice issue. People are looking at Lahaina, they're looking at Kihei, who's taking care of Central Maui and looking out for the people in Central Maui and the kids that are at those canoe clubs everyday and the kids that are going out there surfing. We need the water tested and we need an open look at this in a conversation and really resent be deluded in our Community

Working Group meeting to say that everything is fine there.

Again, we have a group that's meeting for year. If we can't have a conversation about that there, when can we? We would rather not be at this point where we've got an appeal on this, but we ask if you'll at the file on that we said that we would possibly take back the appeal if we could have an open conversation about this.

Mr. Hedani: Thank you.

Ms. Bowie: Thank you.

Mr. Hedani: Additional questions from the commission? Thank you very much.

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

Mr. Hunt: The department has received an appeal based on the issuance of the exemption. I would suggest you confer with your legal staff about how much discussion you can have on this given that there is an appeal. I will say that unless you're counsel stops me that the appeal included a section that said that they would be willing to meet with the department, departments and discuss the situation and perhaps withdraw the appeal if there's satisfactory resolution and in discussing with that with my legal counsel, the department's legal counsel, he suggested that discussions are always a good idea to avoid appeals and litigation, etc. So at this point, I can't – I'm not comfortable saying much more but I'll turn it over to the Chair, and again, there is an appeal on this.

Mr. Hedani: Any questions or comments? Jim, you have anything that you want to add? Any questions from the commission? Commissioner Starr.

Mr. Starr: Yeah, you know, I did have some issues but I don't really want to give much comment on the thing while there is an appeal being filed. However, I would like to ask that what the process or what would be our options for dealing with that appeal would be. I'd like to ask that to Mr. Giroux.

Mr. Hedani: Jim.

Mr. Giroux: I believe your rules are – because the appeal was filed so – you know, the timing was such that I believe on your next agenda it will be noticed that an appeal was filed. Then it will be put on your agenda again similar to what we saw with the appeal we just handled the issue of a contested case you know how you're going to deal with it. Are you going to deal with it with the commission or get a hearings officer. That's basically going to be the procedure from there. So again, you know, the same cautions that we talked about with the previous appeal is that you're going to be the final adjudicatory board so we want to preserve you know the appearance of impartiality.

Mr. Starr: In that case I have no further questions or comments but it would be a wonderful, wonderful thing if somehow the director can find a way to work the people so it doesn't become a major draw of time and energy for everyone.

Mr. Hedani: Is there any action that's being requested of the commission at this time?

Mr. Giroux: No, this was put on purely for discussion issues per prior request from the commission but without the knowledge that there was an appeal filed so there's no action.

Mr. Hedani: So this is purely a communication item for the commission.

Mr. Giroux: Yeah.

Mr. Hedani: Okay, any further questions? If not, lets move on.

Mr. Buika: Thank you.

Mr. Hiranaga excused himself at 4:30 p.m.

#### **4. Planning Commission Projects/Issues**

Mr. Hunt: The next item involves planning commission projects and issues. This is your opportunity to raise issues and generally speaking we come back with them at a future meeting after more research.

Mr. Hedani: Any questions from the commission? Seeing none.

#### **5. Discussion of Future Maui Planning Commission Agendas**

##### **a. February 9, 2010 meeting agenda items**

Mr. Hunt: Next item is the future planning commission agenda, February 9, 2010 meeting agenda. There should be a tentative agenda in your packet. You have a State District Land Use Boundary Amendment, Environmental Assessment for the Hale Hui Kai Community Plan Amendment in Kihei, two SMA time extension, the Lahaina Cannery Mall and the Kahului Town Center.

Mr. Hedani: And we're going to add the Friends of Mokuula to that agenda as well.

Mr. Hunt: Duly noted.

Mr. Hedani: Okay, any questions on the EA/EIS Report?

Mr. Starr: Mr. Chair on the last item.

Mr. Hedani: Commissioner Starr.

Mr. Starr: Yeah, we're going to go to Kula and to Hana if there's an opportunity to make some extra mileage and see anything that may be coming up. I just request the department see if we can tie that in if it works out.

Mr. Hunt: Tie in site visits or something that's appropriate?

Mr. Starr: Yeah, if there's anything that's pressing.

Mr. Hunt: Okay, we'll keep that in mind.

- 6. EA/EIS Report**
- 7. SMA Minor Permit Report**
- 8. SMA Exemptions Report**

Mr. Hedani: EA/EIS Report, SMA Minor, SMA Exemptions Report any questions or comments?  
Commissioner Starr.

Mr. Starr: Yeah I have one on the SMA Minor and this regarding the demolition of the former central power plant. I'm sorry to see it go. I always thought it would be a great location for Maui's House of Blues. Anyone who's been to Myrtle Beach would understand. But my understanding is this is a possible candidate for a super fund site that is quite a bit of environmental contamination on that site and because of that, I'm curious about the SMA minor and whether in that consideration for the SMA minor the, whether it was a Phase 1, a Phase 2 done, whether that's leaching into the shoreline waters or what Mr. Director.

Mr. Hunt: To be honest I can't answer your questions. Mr. Yoshida do you have any information we can help them out with?

Mr. Yoshida: I'm not – the specifics but probably could report before the next meeting.

Mr. Starr: Okay.

Mr. Hedani: Any other questions on the EA/EIS Report, SMA Minor or SMA Exemptions? Okay, if not those will stand accepted as circulated.

Mr. Starr: Mr. Chair?

Mr. Hedani: Commissioner Starr.

Mr. Starr: This is a follow up on a question that I had asked several weeks, month or so ago and I never really got an answer to and I would like to kind of ask the department to pursue this when we were having – this was in Olowalu. I had seen a bunch of excavation, two large backhoes on the ocean side of the highway just before the first house when heading from the Pali and they were digging a trench and I went by there, I was at the beach snorkeling and there was a new culvert placed under the highway and then a long, almost like a streambed ..(inaudible)... that runs alongside the road and then cuts right through the beach. So a new trench, looks like a stream mouth was cut across the beach right onto the coral reef and then there were – the boulders that they had excavated were left either alongside this ditch or piled up in a big pile along with the kiawe trees that the State had cut. I hadn't seen that the State had gotten any kind of exemption or had gotten any permits and I was there and there was a guy operating a small backhoe right at the site and I was asked him – he was planting bamboo he had nothing to do with it but he said that the

State guys came along and saw him there and asked him if he would please bury all the trees and the boulders that they left for them. And it's really an unholy mess and it's a mosquito breeding site and now when it rains the runoff that comes under the road through the new culvert is connected up to the drainage system for the subdivision uphill and exactly what the State Highways was doing creating a basically a new stream there and there's standing water and there's fish in it and it's just really ugly. So I would like some more information about it and I ask the both the members and the department to enjoy these photo essay that I took and to stop by there on their way through.

Mr. Hedani: Do you know what the mile marker location is at that?

Mr. Starr: No.

Mr. Hedani: This was work done by the State Highways Department?

Mr. Starr: Yeah, when you travel from the pali before Camp Pecusa you know there's a house on the left with a wall around it kind of a beige wall, it's right kind of in front and before that house.

Mr. Hunt: With the red driveway.

Mr. Hedani: That's where they launch all the kayaks for the kayak tours.

Mr. Starr: Yeah, exactly. And the reef is covered in mud right off there I was snorkeling. The thing is really already doing damage.

Mr. Hedani: There was a drainage culvert in that location prior to that.

Mr. Starr: It was a small one like this and next to that small one like that there's now one like this. You can kind of see the small one next to the big one if you look in the picture.

Mr. Hedani: Okay, do you think it's a violation of the SMA rules that the State Highways did remedial work without getting a permit for? Okay.

Mr. Starr: I'll pass them around.

Mr. Hedani: We can circulate that and we can take that under consideration.

Mr. Hunt: We'll have staff look into it. Is that okay Mr. Yoshida?

Mr. Yoshida: That's fine.

Mr. Starr: You can keep the pictures.

Mr. Hedani: Any other items from the commission? If not, our next meeting is February 9<sup>th</sup>, and we stand adjourned. Thank you.

**G. NEXT REGULAR MEETING DATE: February 9, 2010**

**H. ADJOURNMENT**

The meeting was adjourned at 4:45 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 (excused @ 4:30 p.m.)  
Ward Mardfin  
Orlando Tagorda  
Lori Sablas  
Jonathan Starr

**Excused**

Warren Shibuya

**Others**

Clayton Yoshida, Planning Department  
James Giroux, Department of the Corporation Counsel  
Mike Miyamoto, Department of Public Works