

**MAUI PLANNING COMMISSION
REGULAR MINUTES
MARCH 9, 2010**

A. CALL TO ORDER

The regular meeting of the Maui Planning Commission was called to order by Chairperson Wayne Hedani at approximately 9:01 a.m., Tuesday, March 9, 2010, Planning Conference Room, First Floor, Kalana Pakui Building, 250 South High Street, Wailuku, Maui.

Mr. Hedani: Planning Commission meeting of March 9th will come to order. Public testimony will be taken at the start of the meeting on any agenda item except for contested case proceedings subject to Chapter 91, Hawaii Revised Statutes in order to accommodate those individuals who cannot be present at the meeting when the agenda items are considered by the commission. Public testimony will also be taken when the agenda item is taken up by the commission. Maximum time limits for 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. SMA Special Management Area appeals are contested cases as specified in the Maui Planning Commission SMA Rules and as such, subject to Chapter 91, Hawaii Revised Statutes.

I have one person that have signed up for testimony, Patricia Nishiyama. Would you like to testify at this time? Please step to the microphone.

The following individual testified at the beginning of the meeting:

Patricia Nishiyama - Item B-2, John Rapacz, SVOP's Annual Disbursement of Funds Report

Her testimony can be found under the item on which she testified on.

Ms. Lucienne deNaie: Good morning, I haven't signed up yet. It's Lucienne deNaie. I'd like to speak on behalf of the motion for the Surfrider Foundation to intervene on the SMA Minor Permit Exemption Reconsideration matter. I've served on the board of Surfrider for 10 years and I want to say that one of the reasons I got involved because their work with clean water. Surfrider Foundation some of you may not know but it's an international organization. They're in 12 different countries and all over the United States. It's not just about beaches and waves. There's chapters on Lake Michigan, there's chapters in Tasmania, there's chapters in Japan and basically it's about the –

Mr. Hedani: Clayton.

Mr. Yoshida: Yeah, I believe the counsel for the applicant has some comments relative to the testimony.

Ms. deNaie: Oh, this isn't appropriate right now?

Ms. Jane Lovell: ...(inaudible – not speaking into a microphone)... A point of order, this is a contested case and it's coming up next on the agenda. I don't think that this is a proper subject of public testimony. Obviously when the agenda item is called and the Surfrider organization makes its pitch to intervene I think that would be the appropriate time for the remark.

Ms. deNaie: Thank you. I was just trying to go early because I have another meeting at 10:00. So I'd be happy to go at the appropriate time and –

Mr. Hedani: Why don't you just finish up Lucienne.

Ms. deNaie: Okay. I just want to point to the fact that clean water is one of the priorities of Surfrider and because of that we get letters like let me just read one to you. This is from a doctor –

Mr. Hiranaga: Chair, I'm just wondering –

Mr. Hedani: Commissioner Hiranaga.

Mr. Hiranaga: You have an objection from Corp. Counsel and you're still allowing the individual to testify. I'm wondering if that's proper procedure. You may be jeopardizing the next item if you're –

Ms. deNaie: I'm happy to do whatever you guys want to do.

Mr. Hiranaga: You should have Corporation Counsel express an opinion.

Mr. Hedani: Jim.

Mr. Giroux: We should probably go to the next item.

Ms. deNaie: Thank you very much.

Mr. Hedani: I guess you're going to have to stick around Lucienne.

Mr. Hedani: Before we go to Item B-1 which is the next item on the agenda, we did get a written request from Mr. John Rapacz who's scheduled on Item B-2 he is suffering from pneumonia and will not be able to be present today so if there's no objection from the commission we'll go ahead and defer that item to March 23rd meeting which has been – the agenda has been passed out to you and lists that. So we'll go ahead and defer Item B-2.

2. **MR. JOHN RAPACZ, attorney for SVOP, INC., submitting by letter dated February 11, 2010 SVOP's annual report of its disbursements of funds to intervener West Maui Preservation Association and to the West Maui Community Benefit Fund pursuant to the Lot 3 Settlement Agreement between the Applicant and the Intervener as a required by Condition No. 44 of the Special Management Area Use Permit for the Kaanapali Ocean Resort Villas - Lot 3 project at TMK: 4-4-014: 005 (por.), Kaanapali, Island of Maui. (SM1 2006/0018) (P. Fasi)**

Condition No. 44 of the SMA Permit states:

"44. That an annual report shall be filed with the Commission for its

information on the disbursement of the funds in the Lot 3 Settlement Agreement by the applicant to the intervener and to the West Maui Community Benefit Fund.”

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

Ms. Patricia Nishiyama: Aloha ka kahiaka. My name is Patricia Nishiyama aka Aunty Patty Nishiyama representing Na Kupuna O Maui. When West Maui Preservation Association WMPA and intervened and won two North Beach developments the West Maui community was very pleased with the results the establishment of two non profits to provide grants for funding of worthy West Maui community projects. We were also very grateful and thankful. The Foundation are North Beach West Maui Benefit Funds and Honua Kai Benefit Funds. What a great gift for the West Maui community resource of funds for non profits in need.

Unfortunately, west siders are little aware of this opportunity. The North Beach and Honua Kai Benefit Funds are poorly publicized. Most foundations of this nature proudly promotes themselves as a resource to the community. Press releases are distributed to the local media outlets announcing grant applications are available, where to get grant applications, application deadlines and grant criteria and so on. Has anything been published in our community papers? We haven't seen it. The North Beach West Maui Benefit Funds and Honua Kai that are our West Maui Benefit Funds have been silent, why?

There is the Harry and Jeanette Weinberg Foundation, the Hawaii Community Foundation, the Castle Foundation, Alexander and Baldwin Foundation to name a few. There is a list on the internet of top benefactors in the State of Hawaii listing the amount given per year organizing from \$23 million to \$5,000 per year. The North Beach West Maui Benefit Funds and Honua Kai are not included on that list. What have they been given and what have then given, we want to know.

Na Kupuna O Maui has serious questions who is serving on the board of North Beach West Maui Funds. Do they have a grant application committee? Are they composed of representative group of westsiders or just Kaanapali home owners mostly absentee. What is their agenda? Is this board fulfilling its responsibility to the community? How much money have they awarded over the years? What are their expenditures? We would like to see that their income and expense statement. In these economic times these two West Maui community organizations should be sharing their aloha instead they choose to withhold it's for reason we are unable to comprehend. This goes beyond all that is Hawaiian. Mahalo.

Mr. Hedani: Thank you very much Patricia. Questions from the Commission? Commissioner Starr.

Mr. Starr: Ms. Nishiyama, thank you for coming today. Do you know anyone who's serving on that board?

Ms. Nishiyama: WMPA, no. I heard that there were homeowners of Mahana but they live up in the mainland.

Mr. Starr: Okay, I know when they came before us I don't know if it was one year or two years ago they were having trouble finding people to serve. I mean, we don't obviously control that but I mean would you be interested if they opened up spots?

Ms. Nishiyama: I think WMPA has its own, they can choose who they want but Honua Kai is from the community and I sit on Honua Kai. There's going to be Dr. Iaconetti and I and Bruno, you know –

Mr. Starr: Oh, okay that's the one.

Ms. Nishiyama: Yes, so – but funds has not been distributed yet from Honua Kai yet. It's almost been five years now, yeah, four years, yeah.

Mr. Starr: So words the funds are going to come from one organization to the other and you'll be able to make sure it goes to the community.

Ms. Nishiyama: But we're still waiting, yeah.

Mr. Hedani: Commissioner U'u.

Mr. U'u: Also, good morning. How much is Honua Kai – what was they held to, how much?

Ms. Nishiyama: Well, they had –

Mr. U'u: How much money we're talking about?

Ms. Nishiyama: I would say like - almost a million already, yeah. Because when they sell the condo, to the second party, we get a percentage from it for Honua Kai. So almost a million.

Mr. U'u: And so far how much has been handed down, given out, from Honua Kai. Nothing.

Ms. Nishiyama: Nothing.

Mr. Hedani: Thank you very much. Any other questions from the Commission? Thank you very much Patty.

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

With that, we'll come back to Item B-1. Director.

Mr. Hunt: This is a communication item, DIRE Coalition and Save Kahului Harbor submitting a Statement of Objection, Request for Reconsideration and/or Appeal to the Planning Director and the Planning Commission dated January 25, 2010 on the Special Management Area Exemption to Mr. Taylor, Chief of the Wastewater Reclamation Division, Department of Environmental Management for the replacement of two injection wells and appurtenant facilities at the Wailuku-Kahului Wastewater Reclamation Facility at TMK 3-8-01: 188, in Kahului.

The commission and public were notified via the February 9, 2010 meeting agenda that this appeal had been submitted to the Planning Department.

Pursuant to the Planning Commission's SMA Rules the parties in the appeal as of February 24, 2010 are DIRE Coalition - Appellant, Save Kahului Harbor - Appellant, Department of Planning - Appellee, Department of Environmental Management - Applicant.

You have four items before you under this communication item. The first is a request to intervene in the appeal proceedings from Mr. Tim Lara of the Surfrider Foundation dated February 24, 2010. The commission may take action on the intervention request.

And we have Trish if you want to give an overview of the process that we're going through. She'll touch on the overall process that the commission is to review today.

B. COMMUNICATIONS

- 1. DIRE COALITION and SAVE KAHULUI HARBOR submitting a Statement of Objection, Request for Reconsideration and/or Appeal to the Maui County Planning Director and the Planning Commission dated January 25, 2010 on the Special Management Area Exemption to MR. DAVID TAYLOR, Chief of the WASTEWATER RECLAMATION DIVISION, DEPARTMENT OF ENVIRONMENTAL MANAGEMENT for the replacement of two Injection wells and appurtenant facilities at the Wailuku-Kahului Wastewater Reclamation Facility at TMK: 3-8-001: 188, Kahului, Island of Maui. (T. Kapuaala) (APPL 2010/0001) (SM5 2009/0360) (SMX 2009/0362)**

The Commission and the public were notified via the February 9, 2010 meeting agenda that this appeal had been submitted to the Planning Department.

Pursuant to the Maui Planning Commission's Special Management Area Rules and its Rules of Practice and Procedure, the parties in the appeal as of February 24, 2010 are:

- 1. DIRE Coalition - Appellant**
- 2. Save Kahului Harbor - Appellant**
- 3. Department of Planning - Appellee**
- 4. Department of Environmental Management - Applicant**

Ms. Trisha Kapuaala: Thank you Mr. Hunt. Good morning Commissioners. Trisha Kapuaala of the Zoning Administration and Enforcement Division. I prepared a little presentation to focus you on what the decisions at hand are today. This is a DIRE Coalition, Save Kahului Harbor appeal before the Maui Planning Commission. APPL 2010/0001 which is again an appeal of the Department of Planning, the Planning Director's decision to grant a Special Management Area Exemption to the Department of Environmental Management for two injection wells and appurtenant utilities at the Wailuku-Kahului wastewater reclamation facility in Kahului.

Again, the parties are DIRE Coalition the appellant, Save Kahului Harbor which is the co-appellant, the Department of Planning which is the appellee, Department of Environmental Management which is the applicant and today before you we have a request to intervene from the Surfrider Foundation.

Now the commission may again may take action on the intervention request that is to grant or deny the petition to intervene. They may select a mediator. You may or you shall select a hearings officer or hearings body and should you determine yourself to be the hearings body then the commission shall determine the briefing and hearing schedule.

Now on interventions, your rules say that all departments and agencies of the state and the county shall be admitted as parties upon timely application for intervention. All persons who have a property interest in land subject to commission action who lawfully reside on said land or can demonstrate that they'll be so directly and immediately affected by the matter before the commission that their interest in the proceeding is clearly distinguishable from that of the general public shall be admitted as parties upon timely application for intervention. And for your information, this application, petition to intervene was timely.

All other parties may apply to the commission for leave to intervene as parties and leave intervene shall be freely granted. However, the commission may deny an application to intervene when the commission or its hearings officer in its sound discretion appears that the position or interest of the applicant for intervention is substantially the same as the party already admitted to the proceeding, the admission of the additional party will render the proceeding inefficient and unmanageable and three, the intervention will not aid in development of a full record and will overly broaden the issues.

So again, you may grant this intervention based on the petitioners burden of proof saying that they're immediately affected by the matter before the commission and their interests is clearly distinguishable from the general public. However, you may deny the petition based on these three criteria.

So again, the commission may select a mediator. All parties to a contested case shall participate in good faith in one mediation conference. The length of the mediation conference shall be determined by the mediator. The cost of the mediation conference shall be borne by the department. A mediator shall be selected jointly by the parties appointed or appointed by the commission if the parties fail to agree. The mediator shall not be the person appointed as the hearings officer. So in other words, should you decide that you are the hearings officer you must appoint another individual to be the mediator.

The mediator shall facilitate the voluntary resolution of issues, assist the parties in simplifying, clarifying or reducing the issues and no agreement shall be reached which results in the improper delegation of powers of the commission or prevents the commission from making the final determination on the permit application. So in other words, although you give it to a mediator, the final authority still lays with you.

Upon motion by a party the commission may waive the mandatory mediation for good cause shown by the movant.

And again, this is just – what this says is that at any time before, during or after a contested case the parties may hold informal meeting and try to settle and in no way does usurp the power of the commission. You still have the final authority. Any settlement whatsoever still comes to you.

So the commission shall select a hearings officer or a hearings body. In a contested case proceedings a hearings officer shall be appointed. If more than one person is appointed a presiding officer shall be selected.

Definition of a hearings officer, any person or persons including the entire commission designated and authorized by the commission to conduct a contested case hearing, to take testimony and to submit proposed findings of fact and conclusions of law with recommendations to the commission on matters that are within the jurisdiction of the commission.

And should the commission decide that they will be the hearings body then the commission may determine the briefing and hearing schedule. So the hearings officer or presiding officer shall have the power to administer oaths, receive and rule on questions of evidence, set date and hold prehearing conferences to simplify the issues, formulate and simplify the issues, rule on objections or motions which do not involve the final determination of the proceeding receive offers of proof, ...(inaudible)... These are all pursuant to the contested case hearing rules of your rules Subchapters 3, 4 and 5.

So staff's recommendation, whether the commission decides to grant or deny the petition to intervene the department recommends that the commission be the hearings body. The department feels that this is not a overly complex issue. It's simple enough that – the decision is this, did the director's decision was it based on erroneous findings of fact or erroneous application to the law, was it arbitrary and capricious or was it a clearly unwarranted abuse of discretion. Did the director commit error in his decision and we feel it's simple enough that the commission can be the hearings officer, the hearings body.

We believe, we recommend that the contested case be held in one, on regularly scheduled meeting day which means that the commission would administer oaths, receive and rule out questions of evidence, rule upon objections and motions and take action deemed necessary for the order of the proceeding. I also staff the Board of Variances and Appeals, Mr. James Giroux has helped out chair in doing this and he's very good. He was a trial attorney before he was at Corp. Counsel and I must say that he does help the proceeding and conducts it in a orderly fashion.

And should mediation be deemed appropriate and the commission set the contested case hearing date today and whereby the parties shall report back to the commission should a settlement be reached any time before that. And that all prehearing documents and briefs be submitted to the department two weeks prior to the contested case hearing. Mahalo.

Mr. Hedani: Thank you. Any questions for staff? Commissioner Starr.

Mr. Starr: I'm a little confused about the difference in the status of the Surfrider Foundation as compared to the DIRE Coalition and Save Kahului Harbor which are listed as appellants.

Ms. Kapuaala: I would have to defer that to our petitioner to intervene and our appellant. I'm unable to tell that distinguishment.

Mr. Giroux: Jonathan, they have to argue about the petition. It's like a motion. They're going to have to put all the facts out for your guys to chew on.

Ms. Kapuaala: I can answer any technical questions regarding the processing of the contested case other than that we have Corp. Counsel here, the appellants and the petitioner to intervene to answer any questions regarding their standing.

Mr. Hedani: Trisha.

Ms. Kapuaala: Yes.

Mr. Hedani: Item B, the commission may choose to select a mediator. That's separate. That's related to the appeal not related to the intervention, right?

Ms. Kapuaala: Yes, correct.

Mr. Hedani: Okay. So the first thing that we need to do basically is hear the request for intervention and take action on that request.

Ms. Kapuaala: Yes sir.

Mr. Hedani: Any additional questions? Commissioner Mardfin.

Mr. Mardfin: I remember when you were doing the part about mediation you said there shall be mediation.

Ms. Kapuaala: Yes.

Mr. Mardfin: That means it's beyond our power. It has to go forth.

Ms. Kapuaala: Yes, however should there be a motion to not require mediation you can grant that. They shall unless somebody moves that no mediation is necessary and of course, you're the final authority.

Mr. Mardfin: My understanding from the last time we met is that the parties are basically interested in mediation are they not?

Ms. Kapuaala: I cannot answer that. I would have to defer to the parties.

Mr. Mardfin: Okay.

Mr. Hedani: Jeff.

Mr. Hunt: What's Trisha's trying to do is just kind of lay out the process for everybody and then the actual detailed questions we should deal with those as we go through each item individually.

Mr. Hedani: Okay, any other questions? Commissioner Tagorda.

Mr. Tagorda: Thank you so much for your presentation, but it looks like I have a little bit concern about those things that you read and it should have been given to us ahead of time because our

decision will be based on those Maui Planning Commission Rules and it looks like very intricate to me just going through that I need more time to read all those things before I can make a very sound decision and I don't know why the staff never provided me this notes.

Mr. Hedani: It's all in your binder Orlando.

Mr. Tagorda: Yeah it's easy for you to say –

Mr. Hedani: But you haven't gone through the orientation.

Mr. Tagorda: I never been through orientation and like I said, that's my problem now.

Ms. Kapuaala: I see, looking forward I can provide staff reports in the future. The parties and I know Corp. Counsel will be able to expound upon any misunderstanding that you have on the rules. Every step of the way you'll be advised. Is there any specific thing that you're concerned about that I can help you with as far as the procedure?

Mr. Tagorda: It should be very you know, easy for you to tell me that you go on your Maui Planning Commission Rules and I will be – instead of giving me all these things right there I can just follow it up and just you know making a notation commissioners please read MPC Rules for ...(inaudible)... and I will be very happy to read for myself.

Ms. Kapuaala: Okay. The rules are listed here on the power point presentation. Going forward I know how to better accommodate you sir, thank you.

Mr. Tagorda: That's all my question. Thank you sir.

Mr. Hedani: Commissioner Hiranaga.

Mr. Hiranaga: Is it possible for you to provide us a copy now of your power point.

Ms. Kapuaala: Sure.

Mr. Hiranaga: We can review it during discussion.

Ms. Kapuaala: Sure. I'll just need a little, probably 10 minutes and I'll be right back down with a printout.

Mr. Hedani: Commissioner Starr.

Mr. Starr: You know, I've been through one of these and I've been here and I'm still really very confused about not about the arguments and the issues because I know we haven't gotten to any of that or even close to that, but I'm still very confused over where we are in the process and what has occurred have you know, – are there interventions that have been filed by two agencies. You know, can we just get a real background of where we are now without talking about the arguments for or against anything because it is confusing and I want to understand where we are with the different entities that have asked to be involved with this. So whether Corp. Counsel should do it

and I kind of feel that maybe we might want to get some help from Corp. Counsel here because the department is kind of one of the two parties to this.

Mr. Hedani: Jim.

Mr. Giroux: Thanks Jonathan. We dealt with some of the issues at earlier hearings and what's happened is that we've gotten now subsequent petitions to intervene that we need to deal with. So just to boil it really down to the nitty gritty is that you have parties who are parties now other parties also have the right to file their petitions in order to become parties into this action.

Mr. Starr: So it's to add a new party.

Mr. Giroux: Yes.

Mr. Starr: In addition, so it would become like the other party.

Mr. Giroux: Yes.

Mr. Hedani: It's all very confusing to me.

Ms. Kapuaala: And basically Mr. Starr, this is what's before you. As listed on the agenda you take action on the intervention first of all whether they're going to a party to the contested case or not, the contested case goes forward whether you grant the intervention or deny the intervention. You may select a mediator. The rules shall, however, there's a way out. You shall select a hearings officer, you either appoint it to a hearings officer outside of this body or you choose to hear it yourself and you have a hearings officer list in your packet and you determine – and should you determine yourself to be the hearings officer we would want to set the prehearing briefs deadline to two weeks prior to the actual hearing date so that way it can be mailed out to you in the way that you normally receive your agenda packet. That's it. These are your choices for action today.

Mr. Hedani: Trish has the department contacted any mediators or lined up any mediators should we choose not to be the mediator.

Ms. Kapuaala: Well, we have a hearings officer list and those are – that's our list. Through the procurement process through the Department of Finance any one of those individuals can be appointed as a mediator and they'll just ...(inaudible)...

Mr. Hedani: Okay, but they've not been approached with this relative –

Ms. Kapuaala: No, typically what happens is you appoint one and/or maybe three and then we'll contact them in the order should the first one be unavailable then we'll go onto the second or third. Yeah, there's no problem with that.

Mr. Hedani: Thank you.

Ms. Kapuaala: You're welcome.

Mr. Hedani: Any other questions before we proceed? Commissioner Mardfin.

Mr. Mardfin: The first thing we do is take action on the intervention request.

Ms. Kapuaala: Yes sir.

Mr. Mardfin: This is by DIRE and Save Kahului?

Ms. Kapuaala: The appellant is DIRE and Save Kahului. The intervenor is the Surfrider Foundation. They would like to be admitted as a party. So the parties will be one, the appellant, DIRE and Save Kahului Harbor; two, the Department of Planning which is the appellee, they're appealing the department's decision; three, the Department of Environmental Management, they are automatically admitted as a party because they're the applicant and then four, should you grant you know, Save Kahului – I mean, sorry, Surfrider Foundation they'll be a fourth party intervening.

Mr. Mardfin: Do we decide on the Surfrider Foundation before they join? I mean, before we decide whether to allow DIRE and Save Kahului to be intervenors?

Ms. Kapuaala: Opposite. They are already a party to the case. The only thing you will decide on is if you're going to allow Surfrider Foundation to join in on the contested case. Should you deny their petition to intervene, they're gone.

Mr. Mardfin: So they're already. DIRE and the other is already an intervenor?

Ms. Kapuaala: A party to the case. They're not a intervenor, they're a party to the case. They are the appellant because they appealed they are before you today.

Mr. Mardfin: And it's a contested case.

Ms. Kapuaala: Yes.

Mr. Mardfin: So this is beyond just merely asking whether to overturn or support the decision of the director.

Ms. Kapuaala: Yes.

Mr. Mardfin: We're ready past that.

Ms. Kapuaala: No, we're not even – We're outside of that. We're not even there yet.

Mr. Mardfin: We've already become a contested case.

Ms. Kapuaala: It is a contested case. As soon as they appeal it's a contested case.

Mr. Mardfin: Okay.

Ms. Kapuaala: So we only we only want to decide –

Mr. Mardfin: And it's a contested case because it's a third party.

Ms. Kapuaala: It's a contested case by – go ahead James, thank you.

Mr. Giroux: It's a contested case because it is an appeal. Once you have an appeal you have automatic parties. Automatic parties are the appellant and the appellee. Okay. All we're doing is somebody else in the public, a public group now wants to join into the party because we all want to party. So if they get an invitation to the party, they get to party. If you don't they gotta go home. Okay. It's all they want to do is come through the door, we gotta decide whether we're going to let them in or not. That's it.

Mr. Mardfin: Now, under the first thing, they take action on the intervention request. Does that mean we can turn down the intervention request?

Mr. Giroux: After you hear both sides of the story you can decide whether or not that's what your action is going to be. But you need to listen to both parties on whether or not they should be allowed or they should not be allowed.

Mr. Mardfin: I'm just asking what our options are.

Mr. Hedani: Ward turning down the intervention request doesn't stop it. It just means that the Surfrider Foundation will not be a party to the contested case. Well, they could be represented through the DIRE Coalition or the Save the Kahului Harbor Coalition or whoever.

Mr. Mardfin: The intervention is only by this third party, this new group?

Mr. Hedani: It's a request to be admitted as an intervenor.

Mr. Mardfin: Ahh, I get it. Thank you.

Mr. Hedani: Commissioner Hiranaga.

Mr. Hiranaga: Just a question. If the intervenor's request is denied are they still allowed to provide testimony at some point in the process?

Mr. Hedani: Jim.

Mr. Giroux: If – really wish we could just get to the arguments of the intervenors. I mean this is getting ridiculous. I'm going to answer that question and I hope we can move on from here. If they were called as a witness in the proceedings that is probably the only way that they would participate. They would not be treated as a party, they would not be given a chance to have additional testimony. Once this goes into contested case we're not anticipating for the public testimony. It is a contested case, it needs to start moving, start moving today I hope.

Mr. Hedani: Commissioner Shibuya.

Mr. Shibuya: James you can correct me if I'm wrong or heading in the wrong direction. We are to

determine whether the arguments provided for by the intervenors DIRE Coalition and the Kahului Harbor – Save Kahului Harbor, their arguments are the essentially the same as what is being proposed by the Surfrider Foundation. If it is essentially the same then we can deny it because we're going to hear the same thing over again. We're not trying to expand it or extend it. What we're trying to do is expeditiously review the points and judge on that.

Mr. Giroux: I believe that's accurate. Part of your analysis is to listen to the parties when they argue for or against the petition to intervene and see if they're bringing anything different than the parties already admitted.

Mr. Hedani: Okay, with that on counsel's advice why don't we go ahead and proceed. The first item is the request to intervene in the appeal proceedings from Mr. Tim Lara of the Surfrider Foundation.

a. Request to intervene in the appeal proceedings from MR. TIM LARA of the SURFRIDER FOUNDATION dated February 24, 2010.

Ms. Jane Lovell: May I just state my appearance for the record?

Mr. Hedani: Could you just state your name for the record?

Ms. Lovell: Yes, thank you. Jane Lovell, Deputy Corporation Counsel and I'm here today representing both the Planning Department and the Department of Environmental Management. Thank you.

Mr. Hedani: Commissioner Starr.

Mr. Starr: Yeah, I have a question for Mr. Giroux. Is it seemly for the same counsel, the same individual to request the Department of Environmental Management which was the original applicant and the Department of Planning which had issued the Exemption. It seems like they're two different entities with different interests and it seems that there may be question whether it's seemly for them to have joint counsel.

Mr. Giroux: That's probably an issue for Corporation Counsel. Just kidding Jane. I will address that issue. As long as the attorneys who are representing their client have screened the case and have found that the representation will not interfere with defending the rights of both parties then they can proceed under the rules that as lawyers we're bound by and supervised by the Supreme Court.

Mr. Hedani: Go ahead. Tim.

Mr. Tim Lara: My name's Tim Lara. I'm the Chairman for the Surfrider Foundation Executive Committee for the Maui Chapter. First off, I'd like to just start by reading our mission statement, "Surfrider Foundation is a nonprofit environmental organization dedicated to the protection, enjoyment of the world –"

Mr. Hedani: Tim you don't have to go so fast. You're not restricted to three minutes.

Mr. Lara: Okay, thank you. "Dedicated to the protection and enjoyment of the world's oceans,

waves and beaches for all people through conservation, activism, research and education represented by over 60,000 members in nearly 80 chapters worldwide." The Surfrider Foundation local chapters are the heart, soul and body of the Surfrider Foundation. As I said, I'm the Executive Committee Chairman for the Maui Chapter. Thanks for the discussion and thank you so much for the slide show I think that really helped to put the focus on what it is that we're doing right now which is just simply the first one here which is deciding whether or not Surfrider Foundation can intervene on that appeal that's already out there. We submitted our intervention. I hope you guys had a chance to read this. If not, I'll go over a couple of the key points which kind of outlines why we think that we should be allowed to fill or intervene on the appeal.

First off, as I mentioned before we're a grassroots organization. We represent the recreationalists, the users of the ocean. I think that's different from DIRE Coalition with the fact that DIRE Coalition is simply a specialist in the field of water quality. You know, it's a coalition of people of that sort where as again, we're representing the people that are actually out in the water using the ocean on a daily basis. I, myself, am a surfer, outrigger canoe paddler and coach and I happen to coach and paddle in the harbor at Kahului. And last year every single one of the women that I coached ended up catching staph or mrsa at some point during the season. That's just one small example of the people that we represent.

Also, Surfrider Foundation is a national organization. So we have experience in this throughout the world as was mentioned earlier when Lucienne started doing her presentation which again separates us from Save Kahului and also DIRE Coalition in that fact that we have expertise in this area at a national level as well as our attorney who helped draft this letter that we sent in to you guys.

There's approximately 500 people that use the harbor waters and the surrounding waters. Each year we have several regattas there, we have kite surfers, wind surfers, surfers, divers and fishermen using those waters and again, those are the people that Surfrider Foundation represents when we come and speak.

Another thing I think is pertinent is that we were in the meeting with the Planning Director last month we sat in on that, the reason that we weren't on the original appeal was we needed to get it cleared by our board as well as talk to our attorney at the national level before we could join on so there wasn't really time. It kind of came upon us pretty quick and we didn't have an opportunity to get in on that appeal when it was submitted. But once we did get the clearance from not only the Maui Chapter, the Hawaii Chapter and the national, you know, we you know, went ahead and filed for a petition to intervene as soon as we could.

Lastly, I'll just read the last statement on our petition to intervene here, "Surfrider Foundation also requests a full public hearing with proper notice and stakeholder input striving utmost community awareness and public participation as stated in the Planning Director's decision letter. Surfrider Foundation's in the preceding can add to the community's awareness and involvement in the commission and striving to obtain." So that was one of the key points why we felt, you know, which isn't really pertinent here why we feel the appeal should go through, but that's one of the main reasons is we think we need to be involved as far as the community awareness and public participation part. We want our members of Surfriders to have an opportunity to speak out on this issue.

Mr. Hedani: Thank you very much.

Mr. Lara: Thank you.

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

Mr. Shibuya: Thank you Tim for presenting your side. I was just wondering what kind of expanded information that you're planning to provide this group? Can you elaborate some of those expanded information that you'd be providing so that we can make a proper decision?

Mr. Lara: Are you speaking directly as far as separate from what Save Kahului and –

Mr. Shibuya: Yes.

Mr. Lara: Again, I think what it comes down to is our individual members and their stories because that's who we represent so the paddlers, the surfers, the kite surfers, the fishermen that we represent a chance for their individual stories to be heard through the Surfrider Foundation as well as expertise that can be brought forward through our national organization and experts that we can have brought in to make statements. As again, this is a campaign that we've done all over the world with water quality. So it's not just something that myself and the local users of the water can weigh in on which is a huge part of what we represent but we also have resources on the national worldwide level that I think would definitely benefit the argument.

Mr. Shibuya: Are you planning to come up with recommendations and solutions and alternatives in how we can manage this issue?

Mr. Lara: We definitely want to be a part of that discussion.

Mr. Shibuya: Thank you.

Mr. Hedani: Commissioner Starr.

Mr. Starr: Yeah, give us an idea of how many members of your organization might actually use the water along the say within a half mile or mile – say within a mile of where the supposed injections, new injection wells are.

Mr. Lara: In Hawaii we have 1,300 members on Maui we have about 200 members. You know what their day in and day out activities probably depends on which way the winds blowing and where's the swell's at for that day. But you know, Kanaha Beach is heavily used for kite surfing and surfing, Pier 1 for surfing, ...(inaudible)... surfing, fishing, diving inside the harbor, paddling inside the harbor. There's you know, over 500 people that use the waters inside the harbor every year just paddling along. So between practices, regattas, Hawaiian Canoe Club just had their Keiki Invitational this weekend which was also paddlers from all over the State of Hawaii coming over for that.

Mr. Hedani: Any additional questions? Commissioner Hiranaga.

Mr. Hiranaga: Are any members of the Surfrider Foundation also members of the DIRE Coalition or the Save Kahului Harbor organization?

Mr. Lara: So when you say members we have our general members who's anybody that holds a membership in Surfrider Foundation which again there's over 1,300 in the State of Hawaii. Then specific we have a board or executive committee which oversees the functioning on Maui's chapter. I'm the Chairman for it, Lucienne deNaie is also an executive committee member who I believe serves on the DIRE Coalition as well. So I'm not sure about the other 1,300 members if they have any affiliation to Save Kahului or DIRE Coalition. But I know Lucienne serves on our board as well as on their board I believe.

Mr. Hiranaga: So the answer is yes, there is at least one member of Surfrider Foundation that's part of the DIRE Coalition and Save Kahului Harbor.

Mr. Lara: DIRE Coalition, right.

Mr. Hiranaga: Thank you.

Mr. Hedani: Commissioner Tagorda.

Mr. Tagorda: Mr. Lara, you mentioned about you having a national lawyer, that represent you in this case. Is it going to be the same lawyer that the DIRE Coalition – it's a different lawyer.

Mr. Lara: Yeah, a different lawyer and she won't represent us in this case unless we need her to. She's there to help us out. She helped the draft the letter of intervention that I sent in. We have a staff lawyer for Surfrider Foundation National and just another point if I could, divert back to Kent's suggestion that Surfrider will be heard through our member that serves on both boards. I don't really think that that's accurate because again when members representing DIRE Coalition that's their aim is to represent DIRE Coalition. I represent Surfrider Foundation and Surfrider Foundation alone and I think that it's important that Surfrider Foundation is heard on this issue and that's why we filed the letter to intervene. We don't want to serve underneath or have our voice spoken through somebody else. We think it's important that the voices of our members are heard from our organization, Surfrider Foundation.

Mr. Tagorda: Follow up question Mr. Chair.

Mr. Hedani: Commissioner Tagorda.

Mr. Tagorda: Would your organization be able to provide dates, things that you do in that harbor, volunteer things that you folks do, names of your members that signed for this request for intervention?

Mr. Lara: I'm sorry, you're asking for names and dates of our individual members that use the waters?

Mr. Tagorda: Yes.

Mr. Lara: I can pull lists of our members, our current members and then you know it would be a pretty daunting task to go through and call each of them and ask them when they last used the water around the harbor.

Mr. Tagorda: Okay, and would you be able to provide us some kind of different information from DIRE Coalition and Kahului Harbor, pictures that you folks do different DIRE Coalition and Kahului Harbor organization?

Mr. Lara: Yeah again, what that comes down to is it's twofold, one is we represent the individual members that are out using the waters. We also have an illness report form on our website that we use for anytime anybody gets sick in the waters anywhere on Maui. So we have data that's collected that way as well. They simply go to our website and fill out that information so that we continue to know where people are getting sick. So it's an ongoing campaign. We also do, we have a campaign called Blue Water Task Force where we monitor for bacteria in the water. So there's I think big differences between DIRE Coalition and Surfrider Foundation. Again, DIRE Coalition if I understand right is comprised of expertise – people of expertise in the field of water quality that created a coalition to talk about redirecting water instead of injecting it. Surfrider Foundation represents our members which are paddlers, surfers, divers, kite surfers, so on and so forth.

Mr. Tagorda: Last question Mr. Lara, you mentioned that your organization you called – you said that you have a unique substantial interest to be an intervenor on this case. It seems to me those things that was written down here in your application is nothing but same with DIRE Coalition and Kahului Harbor. I don't know what's unique in your substantial interest when the things that you're trying to argue is about the same with DIRE Coalition, Kahului Harbor. Anything different?

Mr. Lara: Although some of things that will come up in the argument, in appeal will probably be along the same lines. We represent a vastly different group. Like I said, one, we're worldwide organization which represents over 60,000 members which neither DIRE Coalition or say if Kahului does we have past experience in situations like this throughout the world which is again, unique to Surfrider Foundation. And then lastly, again, we are representing the people that are out there using the waters, getting sick in the waters on a daily basis. So I think there's three different things that set us apart right there alone.

Mr. Tagorda: You mentioned those incidents about infectious diseases that your members is contacting from that water would you be able to provide those informations too?

Mr. Lara: Testimony from them, absolutely.

Mr. Tagorda: Thank you.

Mr. Hedani: Commissioner U'u.

Mr. U'u: Good morning Tim. I'm familiar with mrsa and people having that in Kahului Harbor. It's a shame but I'll be honest I got it in Lahaina also. You know, so I don't know if you guys did studies on where it's most infectious than certain areas or if you did a study on the highest potential contaminants that would bring out mrsa because I got infected one year not paddling. I got infected

just boat holding in Lahaina and that's the only water I'd been in and I had it on two places. So I had the mrsa and I know your girls a lot of them got infected and it may be that they got infected in Kahului Harbor, good potential and the possibility of them getting infected in Lahaina where I had is another potential. I just saying if you get any statistics to show because I know we as paddlers we paddle in Lahaina, Kahului, Kihei but at what point do you determine that you got infected at one certain area. Because the year I got mrsa in two places I wasn't paddling I just was boat holding and this happened to be Lahaina. And so I just wanted to know if you get any information that would suggest that Kahului is more contaminated than Lahaina or any stats that would support where it's just in Kahului.

Mr. Lara: Yeah, I think it's pretty well known that there's bacteria problems throughout the island.

Mr. Hedani: Hold on Tim. Jane.

Mr. Lovell: Just a point of order.

Mr. Hedani: Jane, you need to use the microphone.

Ms. Lovell: Thank you sorry. Just a point of order, I think these are all interesting questions but I think we're moving away from the discreet decision that you have to make based on discreet criteria today. This is not the time to give evidence or to make argument on lets say merits or lack of the merits of this issue. This is a time to – for the commission to determine whether or not the intervention should be granted based on the criteria that were provided to you and those are very separate criteria. So I know that this is an interesting topic and everyone is eager to jump into the evidentiary portion of it, but we're not there yet. I think first you have to decide based on the three specific criteria whether to allow the intervention and then at the contested case of course, people are free to give their evidence. Thank you.

Mr. Hedani: Thank you Jane. It's just that most of the members of the commission breath a different kind of air so the legalese really gets to us after a while. Commissioner Hiranaga.

Mr. Hiranaga: Is there anything that prevents Surfrider Foundation from joining DIRE Coalition or Save Kahului Harbor? Is that a closed organization or are they accepting people that want to join those two organizations? So again, is there anything that prevents Surfrider Foundation from joining those two organizations?

Mr. Lara: Actually I'm going to answer that question, I'm not sure how their organizations work. I'm not a member of either of them and never attended any of their board meetings so that would be a question for that. I think I know where you're going with this though is that we could be heard through one of those organizations. And again, that's exactly why we're– we realize we could have done that and had we wanted to do that we would have just sat back and said hey, tell them this and we could go and talk to them, but we want to be heard as Surfrider Foundation which is why we took the time to have our lawyer draft this petition to intervene, submit it and why I'm here today speaking to you on behalf of Surfrider to intervene. Because again, we feel that we have a unique angle to this that's separate from those two and we want our voice to be heard as Surfrider Foundation not whispering in the ear of another organization for them to put our message out there.

Mr. Hedani: Commissioner Mardfin.

Mr. Mardfin: I just want to clarify something that I think I heard you say earlier, but I want to put a slightly different spin on it. You said the reason you didn't join with them initially and have a group of three come up is because you needed extra time to contact people. Had they not intervened you would have been out of luck because they were pushing a – there's a deadline by which one has to intervene on a contested case. So in a sense what you're trying to do is piggyback on at this point now that you do have permission from your higher ups and have had board meetings and that sort of thing. Is that basically correct?

Mr. Lara: Yeah, one we had to talk about it as a chapter here on Maui. Even though I am the Chair of the Board, I don't make decisions that you know, carry the name of Surfrider Maui. So we, you know, I'm sure as you guys do vote on it and then it carries the name of – and so we had to do that and then I also wanted to check with our lawyer as well to see if this is something that we wanted to proceed forward with and with the people at national. So there's a process that has to happen. Just because I catch wind of something and I think it's a great idea I don't speak for Maui Surfrider.

Mr. Mardfin: But my point is had DIRE and Kahului Harbor not intervened you'd have been out of luck at this point.

Mr. Lara: Had they not appealed but we knew that they were already going to appeal. As I said, I sat in on that meeting with Mr. Hunt last month and knew that the next step from them was to file an appeal as it was spoken about with Mr. Hunt that if the decision to change his recommendation wasn't there that the next step would be to appeal. So then from there we started looking at if we can join in. Originally we would have liked to have just joined on and then we found out because of the way the rules are set up that we couldn't just simply join on. So that was found out later. We were just trying to make a decision if that's where we wanted to go and join in on this appeal. Once we found we did want to then we found out, oh well there's these rules and we have to file a petition to intervene and it's not as easy as we thought it would be to simply so that's why we're doing this now.

Mr. Mardfin: Thank you very much. That explains your situation a lot clearly to me.

Mr. Hedani: Any additional questions for Tim? Any other comments Tim?

Mr. Lara: No, thank you so much for your guys time. I appreciate it.

Mr. Hedani: Thank you. Director. Guide us along this legal mine field please.

Mr. Hunt: Your next step would be to hear the attorney representing the two departments from the County.

Mr. Hedani: Jane.

Ms. Lovell: Thank you. Good morning Chair and Commissioners. Ordinarily we would have drafted some kind of response to this motion. But unfortunately we did not receive formal service of the motion until late last week. There have been a number of procedural issues that are quite

bothersome such as failure to properly identify the lawyer for example who's representing the Surfrider Foundation so that there could be proper communications with the attorney. Now that I know that there's an attorney for example, it becomes ethically challenging for me to talk directly to Mr. Lara or to any of his members.

But I think that the main point here today is to ask yourselves whether the position or interest of the applicant for intervention is substantially the same as a party already admitted to the proceeding. And one of the parties to this proceeding who is already in the proceeding is the Save Kahului Harbor Coalition. And in their appeal, Save Kahului Harbor Coalition describes itself as a group of people who use the harbor and the ocean in the vicinity of the harbor and in the vicinity of the wastewater reclamation facility for activities such as surfing, paddling and so forth. So that is one question that you have to ask yourself.

You also have to ask yourself whether the admission of this additional party would render the proceedings inefficient or unmanageable. And if we are talking about 200 extra people you know coming in to testify, if we're talking about bringing in worldwide experts and so forth that might render the proceedings inefficient and unmanageable.

And the third thing you have to ask is, whether the intervention would overly broaden the issues. And I am concerned listening to Mr. Lara's testimony that what Surfrider Foundation has in mind here is precisely to over broaden the issues and to bring in a large number of members to testify that will render the proceeding inefficient and unmanageable. That wouldn't be so much of a problem but we already have Safe Kahului Harbor Coalition in as party which as far as I can tell from their papers represents the same interests. I think you have to differentiate between what a party's interests are and what the evidence might be that any particular witness might give. What you're asked to look at is the interest – are the interests of this group any different or substantially different from the other group that's already in or for that matter are they different from the interests of the general public. So I would ask you to focus on those specific criteria that are found in rule 12-12-201-41 of the Maui Planning Commission Rules and particularly subsection d of those rules that you now have in your packet thanks to Trisha. Are there any other questions that I can answer at this time?

Mr. Hedani: Questions for Jane? Commissioner Mardfin.

Mr. Mardfin: I understand – the question one, the petitioner interest is different from the parties already admitted, I will be exploring that more in depth, but you also commented on criteria two, the admission of additional parties will render it inefficient and you made it – you suggested it's going to be inefficient because of more testifiers, but there's no reason to think that DIRE Coalition and Save Kahului Harbor couldn't call same 200 members.

Ms. Lovell: Well, technically that's correct. Although whether actually under the rules the hearing officer has the opportunity to prevent what's called cumulative testimony. So in order to move things along quickly the hearing officer can ask for example what's called an offer of proof and that is if you have 20 people all going to say exactly the same thing they make an offer of proof that if they were called they would say, you know x, y and z and then you don't have to hear 20 or 30 or 40 or a hundred.

Mr. Mardfin: Well, then if that would happen there could be – same thing could happen if Surfrider were in and the – using the same methodology it would prevent it from being inefficient and unmanageable.

Ms. Lovell: That is true it could – either way, whether they intervene or not the hearing officer has some power to control the proceedings. I was concerned however at Mr. Lara's description of what his group proposed to do. It sounded to me as if they were more geared towards public testimony. I mean he spoke of you know wanting to have maximum public input from stakeholders and so forth and that is really not the kind of hearing that we are going to have under the contested case procedures. What this contested case is about is not putting injection wells per se or these particular injection wells on trial is the focus of this contested case is whether the director in making his decision followed the criteria by which he was required to make his decision. The Department of Health is the body that regulates injection wells. The Department of Health regulates what can go down them. The Department of Health issues permits and decides how many injection wells you can have. How many must be functioning at length and time and so forth. So I don't want us to lose focus of what the purpose of all of this is. The purpose is to decide whether the Planning Director when he made his decision that this particular application to replace two nonfunctioning or badly functioning wells with new ones that will function properly. Whether he followed the legal criteria that he had to follow in making his decision.

Mr. Mardfin: I understand that, but we're not at that stage yet. That's when it gets to the hearings body. The stage right now is whether to allow Surfrider to intervene.

Ms. Lovell: Right.

Mr. Mardfin: And I'm looking at those three criteria and in particular right now, criteria two, and you suggested letting them intervene would make it inefficient and unmanageable and yet the two existing bodies could already bring in – attempt to bring in the same thing. The hearings officer or hearings body could I don't want to short-circuit – could make it more – could maintain efficiency.

Ms. Lovell: Yes, yes I agree –

Mr. Mardfin: So this is no reason to not allow Surfrider to intervene.

Ms. Lovell: Well, the criteria is there. One of the things you have to ask yourself is will bringing additional parties whether Surfrider or anyone else will make the proceedings inefficient and unmanageable. It's true that the hearing officer or the commission itself can impose certain limits. But one of the things you have to ask is the more people who are proposing to come in will that make it inefficient or not. You're absolutely right that there are ways to deal with that, but that is a question that you have to ask yourself and of course, that's not the only one. The other one is well, we have an over broadening of the issues. – stick to the issues that are, you know, directly before you or will we start broadening it out into other areas. That's another one of the criteria that you have to ask yourself in making this decision.

Mr. Hedani: Commissioner Hiranaga.

Mr. Hiranaga: You mentioned earlier that you're not provided an opportunity to prepare I guess

for this meeting because of certain lapses that you allege, but my question is are you still prepared to move forward at this time?

Ms. Lovell: Yes, yes, definitely and thank you Mr. Hiranaga, that's a good question. There are a lot of procedural issues that we have, but it's very important to especially the Department of Environmental Management, the applicant, that we move this whole process forward as quickly as possible and that's in part because the permit under which they operate their treatment plant requires eight functioning injection wells. If you've got two that aren't functioning properly there is a risk of being held out of compliance with the permit and being fined. So therefore even though we could raise all kinds of procedural issues, we could you know, complain about standing, we could complain late service, we could complain about the fact that the Kahului Harbor Coalition for example never signed the appeal and didn't give us an address of where we can contact their representative, there are all these little issues but at this point it's more important to move forward as quickly as possible and so that is why we're not presenting any kind of procedural roadblocks, we're not briefing things, we're not trying to get anybody thrown out on some kind of technicality at this time. We just want to move forward and get a decision as quickly as is legally possible.

Mr. Hedani: Thank you. Any additional questions? Commissioner Mardfin.

Mr. Mardfin: On Condition 3 which you've cited, the intervention will not aid in development of a full record and will overly broaden the issues. These seem slightly conflicting in my mind. I agree there's a danger of over broadening the issues and I think that needs to be guarded against, but again, discipline during the process can avoid that. The question is, would they aid – the intervention will not aid in development, if they will aid in the development of a full record then it's desirable to have them in it would seem as long as you don't over broaden the issues.

Ms. Lovell: Yes, you can certainly look at it that way and I agree it's kind of funny to have them both in one section because it's kind of yin and yang but again, I think we have to look at the interests of one group as compared to the interests of another group and are the interests the same or substantially similar then you wouldn't allow the intervention. If you decide that the interest are different enough –

Mr. Mardfin: But that's criterion one and we have to address that.

Mr. Hedani: Ward, you need to allow her to respond.

Ms. Lovell: No, I think I'm finished. I really don't want to take up any more of your time than necessary.

Mr. Hedani: Any additional questions for Jane? Questions from the request for intervention Tim? You need to use to the microphone Tim.

Mr. Lara: One of the questions, that one of the first things she said about not putting it in a timely fashion nor having access to our lawyer. The lawyer simply helped draft the letter. The letter is from me and my email and address is on the bottom of the letter and it was in a timely fashion as I think Trisha said in her presentation that we did turn it in a timely fashion or else I wouldn't be here before you guys today I don't think.

Mr. Hedani: Thank you. Jane, I have another question for you. The Surfrider Foundation submitted something to us in writing which we had a chance to review. Have you had a chance to review that?

Ms. Lovell: Yes, I have and I just want to clarify one thing that Mr. Lara just said, the petition to intervene was filed in a timely manner but the rules require that all parties be served and there is a difference between filing and service. So therefore, when you file something you also have to immediately give copies to all of the parties. The commission staff doesn't do that. It's up to the parties to do that. Therefore, any thing I file I would have to make sure it gets into the hands of the Kahului Harbor – that's why we need their address and also into the hands of the DIRE Coalition and I do have Mr. Schwartz's address and I know, you know, where to serve those things. So it's two separate things, you gotta file on time and then you have to also properly serve. But we're leaving all of that aside. I did receive the petition, I did read it.

Mr. Hedani: I guess the question that I had was on the material that was submitted did you have any objections to the material that was submitted as being factually incorrect?

Ms. Lovell: Well, it's actually not – this is not the time to probe whether or it's factually correct or not.

Mr. Hedani: Let me ask the question in a different way.

Ms. Lovell: Sure.

Mr. Hedani: If the information that I'm provided is factually incorrect it has a bearing on my decision as to whether or not to allow them to intervene.

Ms. Lovell: I see. Well, I think at this early stage in the proceedings I have no way to know whether information that's provided is correct or is not correct. I think that's up to the, you now, the fact finder whether it's the commission or a hearings officer to decide. So do I know that they have 200 members for instance, no I don't. I assume that they do because that's what they said for purposes of today. All I look at is I look at what interests they say they represent and I look at the interest of the Kahului Harbor Coalition says that they represent and to me it looks like the interests are pretty much the same. I don't have any way right now to determine one statement is accurate or not, I think we assume at this state that they are both accurate.

Mr. Hedani: Thank you Jane. I see hands jumping up and down and you wanting to either pose a question or a present an argument for or against the intervention. You want to step to the microphone and identify yourself for the record?

Ms. Irene Bowie: Im Irene Bowie with Maui Tomorrow Foundation also a member of DIRE Coalition. I just wanted to speak for the record to the point of the service of the documents. I worked with the Planning Department and did exactly what I was told. I am not an attorney, I'm citizen coming in and learning this process and I was told originally to make 16 copies, one original and 15 for the planning commission which I did. I have a certificate of service that documents all of this. I was told weeks later that I needed to serve copies to the Department of Environmental Management which I immediately went and did. I was told last week that I needed to serve Corporation Counsel which I immediately went and did. When I gave it Corporation Counsel they said why are you doing this,

people don't give us copies of this, we get it from the planning commission. I do have a certificate on that, so again, I just want to say we've done everything as we were told. It's not an easy process to go through this. You're not given a document that says this is what you need to do. So you know, the intent has absolutely been there to comply with everything that we need to do. Thank you.

Mr. Hedani: Irene, did you have testimony relative to the Surfrider Foundation?

Ms. Bowie: I would just say I know that Mr. Schwartz would like to speak on that, but I would say that one point that we felt that was particularly important that Surfrider could bring are these health reports that they have on line and Surfrider members and other people in the community know that you can report illnesses on that and you can track and see where things, you know, where there seems problems in the water. And so that's absolutely something that both DIRE Coalition and Save Kahului Harbor don't have any means of doing and we felt that that's very important.

Mr. Hedani: Irene, do you represent DIRE or the Save Kahului Harbor?

Ms. Bowie: DIRE.

Mr. Hedani: DIRE. Okay, are there questions from Save Kahului Harbor Coalition relative to the intervention? Why don't you step to the microphone and state your name for the record.

Mr. Jeff Schwartz: My name is Jeff Schwartz and I am the principal spokesman for the DIRE Coalition. Karen Chun who represents Save Kahului Harbor had planned to be here today to speak on behalf of Save Kahului Harbor. However, her son in Bali took seriously ill and she is now in the process of trying to arrange for his care and transport back to the islands and so she regrets her inability to attend and she asked me to speak only on this occasion to try to address their point of view with respect to the intervention.

Mr. Hedani: Go ahead.

Mr. Schwartz: I do want to ask one question of the County's counsel in this matter it wasn't clear to me whether the county is saying that it objects to the intervention petition. I can't tell whether or not it's simply raising questions for you to consider or taking a position that the petition should be denied and it would be helpful for us to know in our remarks what to say if we know does the county object or not.

Mr. Hedani: Jeff, are you an attorney?

Mr. Schwartz: I'm a former attorney. I'm no longer a member of the bar and don't hold myself as practicing law.

Mr. Hedani: Thank you.

Mr. Giroux: We call that a recovering attorney.

Mr. Hedani: Jane.

Ms. Lovell: Yes it is our position that from everything we can see it appears that the Surfrider intervention does not comport with the criteria and particularly number one on the interest being substantially the same as a party already admitted to the proceeding namely the Kahului Harbor.

Mr. Hedani: Commissioner Mardfin.

Mr. Mardfin: I'd like to ask the recovering attorney.

Mr. Schwartz: Former attorney.

Mr. Mardfin: Former attorney.

Mr. Schwartz: It's an important distinction. I don't – it would be unethical for me to represent myself as an attorney when I know I'm no longer a member of the bar.

Mr. Mardfin: I understand, my wife is an attorney in retirement.

Mr. Schwartz: In recovery too. Okay.

Mr. Mardfin: What I wanted to ask you and maybe you can answer it – first with one hat and then with the other hat, is the question number one, do you see that the interests of Surfrider is substantially the same as your organization not the information they're going to provide because they could provide the information through you but is their interest substantially the same?

Mr. Schwartz: Their interest is similar but not the same. And an important way very different.

Mr. Mardfin: In what way?

Mr. Schwartz: Well, the way is that the DIRE Coalition as the name implies is a coalition of a number of different organizations and individuals and so the way we look at things requires a consensus among differing opinions in order to present our point of view and keep the coalition together and our focus, the DIRE Coalition's focus overall is on the question of injection wells and the reuse of waste water on land. We have focused a bit on the impact of the injection wells on the ocean but most of our members are not necessarily committed to recreational use of the ocean, some are and some aren't. And so our perspective is different on that question, the information that we have is different and so our – and in terms of for instance a mediation we might be perfectly willing to agree to certain things that the Surfrider Foundation would not agree to or vice versa. They might be willing to agree to things that we would not agree to. And likewise, they might take positions about what would be an appropriate end result or conclusion here that would differ from ours. We don't know because we haven't played this out.

Mr. Mardfin: Now saying the Save Kahului hat.

Mr. Schwartz: Save Kahului I think has closer connections to the perspective of Surfrider as I understand it. But Save Kahului is a much smaller organization with somewhat different perspective too.

Mr. Mardfin: And you are with them.

Mr. Schwartz: They have a different perspective from the DIRE Coalition but my understanding and I'm a little reluctant to speak for them, I would rather Karen were here but in her absence I'll do the best I can. My understanding is that they represent not just people who use the harbor but people whose property interest are affected by the quality of the water and so it's partly about property ownership and land interest that they have the value of the lands associated with how Kahului Harbor is used and what the water quality is which is somewhat different from Surfriders who may or may not have a land owning interest in the properties near Kahului Harbor.

Mr. Hedani: Any additional questions for Jeff? I have a question Jeff.

Mr. Schwartz: Sure.

Mr. Hedani: If the Surfrider Foundation through Tim Lara wanted to become a member of either DIRE Coalition or the Save Kahului Harbor Coalition as a spokesperson for both at this point, would you admit him to your coalition?

Mr. Schwartz: I really can't speak on that question for Kahului Harbor. I just don't know what the answer is.

Mr. Hedani: What about DIRE?

Mr. Schwartz: But for DIRE Coalition, yes. If Surfrider Foundation said they wanted to become a member of our coalition they could do it but under the terms and conditions that the other members are which is that no individual member of the coalition gets to decide the policies and strategies. They would simply become one of the contesting players in our coalition to try and ...(inaudible)... the interest.

Mr. Hedani: I see. Thank you. Commissioner Mardfin.

Mr. Mardfin: How many groups are in your coalition?

Mr. Schwartz: It's honestly, it's a very loose coalition so I'm not sure I can give you a very firm answer to that but the – there are roughly I'd say between six and ten organizations that are represented by people who are on the board of those organizations or associated with them in some other way. In addition, there are a number of individual members who have signed up and worked hard and signed petitions and so on.

Mr. Mardfin: Thank you.

Mr. Hedani: Thank you very much, any other questions? Jane, do you have any additional comments?

Mr. Schwartz: May I have an opportunity at some point to make a statement about the –

Mr. Hedani: This is your opportunity.

Mr. Schwartz: Well, I just want to say to be clear about several things that I think are relevant here. I want to agree with counsel that the issue before us is not a broad question about our injection wells good or bad or whether the water should be reused on land, but that's not the issue. The issue is the legality of the decision made by the Planning Director for the Planning Department that's – we completely agree on that.

We also feel, understand and are respectful of the need for an expeditious resolution of this matter and wrote early on when we wrote for the appeal we actually asked for several things. First of all, we said, would the Planning Director be willing to reconsider because if he would reconsider in some ways we might resolve this without an appeal which would be more time consuming and costly and we had a meeting to discuss that, the answer I gather was no.

We also wrote and said very clearly we would be open to dropping our appeal if we could meet with the department and try and work out – discuss our concerns that one of the key issues in this appeal is we did not feel that there was adequate public discussion of the environmental impact of the construction of those two wells or even whether these two wells would be genuine replacements or would additions to the existing wells. And we thought there needed to be public discussion about this and so – and that goes right to the heart of whether or not an exemption from the environmental assessment ought to have been done or not. And we just made it clear we thought we ought to have a conversation with the department we were recognized as one of the major spokesmen on this and never told about this, these permits. We were – I'm a member of the community working group on waste water reuse and injection wells and this was never brought to the attention of that group. So the point was, there was not adequate public discussion of this permit before it was raised in our view and we think we could still get to a resolution if we could talk to the department or have a mediation and not have to go through all of this. We hope that's still a possibility.

But if it comes down to the point where we are going to have to objections, we are going to have appeals and we're going to have to go through this and address these issues, we think there's very important information that only the Surfrider Foundation is in a position to provide and that has to do with the impact of the county's violation of the Clean Water Act by failing to get a permit that's federally required and state required as well for the discharge of waters, for the discharge of waste water into the ocean under the federal law and the state law it's required that you get an NPDES permit which is not ever referenced in the decision at all and the health consequences of failing to get that permit and failing to have adequate controls on those wells is a key issue that's central to this and we don't have access to their information and database. We can call witnesses but that's a different thing than having the access and having the experience and being able to present that.

So our view is we don't object and we are willing in order to help deal with the county's concerns and the concerns the commission may have to try to limit our presentations to expedite matters to make sure it's not burdensome we'll follow whatever rules are necessary to get this thing resolved quickly. We don't want to be obstructionists we want to be problem solvers and we want to collaborate in that and we're happy to try and work that out informally so we don't have to take up any more of your time if we can get there, if we can't then we want to pursue the appeal. That's our perspective.

Mr. Hedani: Thank you Jeff. Jane did you have a comment?

Ms. Lovell: Yes, just for the record, I just wanted to object and move to strike to the testimony given about violation of permits, violation of laws and so forth. First of all, that's beyond what we're doing here. It's beyond the issues before you on whether or not to allow intervention and with all due respect to Mr. Schwartz those are issues for another time and another proceeding. I don't want this body to believe that the department, either department whether the Planning Department or the Department of Environmental Management believes that it is violating any such laws or the Clean Water Act. Also I think maybe this is the time to clarify that what we are talking about here is whether injection wells that are not working properly should be replaced with injection wells that are working properly. What goes down them and what happens to what goes down them is a very separate issue and I think we really need to focus.

Mr. Mardfin: Point of order, Mr. Chairman.

Mr. Hedani: Point of order, Commissioner Mardfin.

Mr. Mardfin: This is, you know, I understand your point when you were saying that he was raising issues that we haven't come to decide but you're doing the same thing now, so please lets not –

Mr. Hedani: Ward, what's your point of order.

Mr. Mardfin: My point of order is that she's out of order in dealing with the merits of the issue. We're supposed to be dealing with whether to allow the intervention not the merits of whether the decision should be appealed or not.

Mr. Hedani: Jane.

Ms. Lovell: Right, and I totally agree, you know the trouble is that when one side starts arguing the merits it really puts a problem on the other side so that I just want to be sure that the commission understand where we're coming from and what issues are actually before you and not somehow by our silence adopt a position that the other side is taking.

Mr. Hedani: Commissioner Hiranaga.

Mr. Hiranaga: Just a comment regarding the point of order. I think we should not be using the word, "injection wells" at all during our discussion. That is not the issue. The issue is whether Surfrider Foundation has a basis to intervene. So please don't use the word, "injection wells" any more because that's irrelevant.

Mr. Hedani: Okay, does anybody have any additional questions for either Jane or Tim Lara at this point? Commissioner Mardfin.

Mr. Mardfin: I'm going to interpret your question a little bit broadly.

Mr. Hedani: Make it a question.

Mr. Mardfin: The question is, is there anybody in this room that can speak – that's also on the Save Kahului Board or nobody else directly from it, thank you.

Mr. Hedani: Well, Mr. Schwartz has been authorized to speak on behalf of them for today only.

Mr. Mardfin: Well, I asked him the questions I was just hoping there was a second person.

Mr. Hedani: No further questions? Okay, thank you very much. Commissioners, what's your pleasure? Commissioner Hiranaga.

Mr. Hiranaga: I have a question for Corp. Counsel. My experience, limited experience with the intervenors is do they then – if they're allowed standing do they negotiate with the appellant? I'm not quite sure what their standing becomes in the process. I know there's big concerns about, you know, like what happened with WMPA. My experience was with Maui Lu Resorts where they agreed to a decision which left the planning commission out, I guess this would be the Planning Department. If you could explain if standing was granted, what involvement of the parties would be?

Mr. Giroux: I think I understand your question. What your concern is is that what role an additional intervenor would play in the process.

Mr. Hiranaga: Well, not additional. I guess there's only one intervenor right?

Mr. Giroux: Well, there's three, four parties that this one additional party would be the additional intervenor.

Mr. Hiranaga: I thought they were the appellants.

Mr. Giroux: You're talking about Surfrider Foundation?

Mr. Hiranaga: Well, DIRE and Save Kahului Harbor are?

Mr. Giroux: They're appealing, right.

Mr. Hiranaga: So they're not intervenors, right?

Mr. Giroux: No, they're already being treated as parties.

Mr. Hiranaga: Surfrider Foundation if they were granted standing as intervenor would their standing be equal to DIRE and Save Kahului Harbor or they have a superior?

Mr. Giroux: No. Basically what everybody's trying to do is become a party. Once you're a party you're given certain rights and privileges in the process. And one of them is the ability of the mandatory mediation. Once you're in mediation, the rules do not allow any settlement that would take away any of or delegate any of the rights that this commission has over a final decision because the Charter says that you're the final decision maker in the CZMA and your rules say that you are to make a final determination if somebody appeals the director of the – decision of the director. So you have to understand the type of decision that is being appealed. They can't – and I think this is going to come out in the future as far as what they are able to mediate. Because the rules say that they cannot come up with any decision that would delegate the powers of the

commission. And I think that's very important. What you're concerned is one party going to become a priority over the other and the answer is, no. If they're going to agree to something, if some parties may not get what they want or whatever but ultimately if they're no settlement per se, it's going to have to be decided by the commission ultimately any way unless everybody withdraws their petitions and their appeals.

Mr. Hiranaga: So they're appealing the director's decision to grant a SMA exemption for this proposed action. If the intervenor was granted standing and they become party of the action to mediate Save Kahului and DIRE say okay, we're happy with these terms as far as mediation Surfrider says no we're not, then they don't have an agreement.

Mr. Giroux: You still are going to be forced into a contested case.

Mr. Hedani: Commissioner Starr.

Mr. Starr: I'm prepared to make a motion if it's in order.

Mr. Hedani: Go ahead.

Mr. Starr: I move that the Surfrider Foundation be added as a party to this proceeding and as justification our rules 12-201-41(d) says, "that leave to intervene shall be freely granted." I believe that the interests and the membership of the three organizations –

Mr. Mardfin: Before he goes any further I'd like to second his motion to allow the intervention.

Mr. Starr: Okay, and then may I?

Mr. Hedani: Go ahead.

Mr. Starr: Thank you Commissioner Mardfin I should have done that. I believe that they should – our rules state it should be freely granted. I believe that the three organizations you know, I'm not a – don't know too much about the workings of them but from what I hear DIRE is kind of a scientific group that is dealing with injections wells and I'm sorry to use the term Commissioner Hiranaga but you know, they kind of do the science with that, their land based scientific. I see Kahului Harbor Coalition as stakeholders in Kahului Harbor whether it's maritime or landowners or people who use there and then Surfrider are the people who are daily in the ocean and have the specific day to day evidence of what's going on not only inside the harbor but outside the harbor where the plant is located.

Mr. Hedani: Additional discussion? Commissioner Shibuya.

Mr. Shibuya: I'm going to have to take the opposing view here because I was more in planning to say that we need to focus on the scope of this material before us and the DIRE Coalition does protect or has the interest to protect the coral reef and coral reef ecosystems, ocean water quality and the Save Kahului Harbor represents the nearby residents, the recreational users, fishermen and it talks in terms of seeking a balance of Kahului Harbor use as well as the ocean waters. I see no difference in the Surfrider Foundation. In fact, I read through the briefs on both and the only

difference that I can find out is on paragraph 9 on Surfrider the presentation here contends that the Surfrider Foundation contends that the injection well project cannot be undertaken without consideration of the cumulative impacts of additional injection well replacement projects planned for Kihei and Lahaina to understand the comprehensive effect of the projects on the area. And that's not the issue. The issue is what the decision of the Planning Director and the Environmental Management Department has and we're expanding the scope of the effort here. We need to be focusing on those issues and both DIRE and the Save Kahului Harbor ably in fact has a more extensive type of summary and so I support that>

Mr. Hedani: Additional discussion? Commissioner U'u.

Mr. U'u: I'd like to add that I'm for clean water, one. That's for sure. I'm in that water a lot. I get a lot at stake. My kids are also in the water at Kahului Harbor. I paddle Tim. I also know Karen Chun from Save Kahului Harbor Coalition. I agree that Surfrider will be directly and immediately affected as to the general public but reading paragraph, where was I reading, freely granted, it's getting blurry. It's almost the same. It's not substantially different and the way I look at it is they're ocean users. I do it the easy way, non ocean users, ocean users and I believe you gotta get the two involved. I think you need DIRE, great. If the Surfrider Foundation was in it earlier prior to Save Kahului Harbor Coalition, great. But I don't see it as being substantially different. I see it as being in the same interest which I like it where, like I said, you have a ocean user and a non ocean user looking at it from both sides, but they are pretty much the same and that's my view. If I looking at reading that my intention would be no to the intervention.

Mr. Hedani: Additional discussion? Commissioner Mardfin.

Mr. Mardfin: The reason I seconded it is because I've had a fairly long standing reputation here as believing in the leave to intervene shall be freely granted. And there are three unlesses and so in principle I believe in freely granting intervention. I think two and three, I don't think are relevant in this. It is one whether it is substantially the same as a party already admitted. But the reason I seconded it and I will vote in favor of the intervention is because I think and I hope I'm not wrong that there is a willingness to proceed expeditiously in this. I thank the Corporation Counsel for not pursuing technical delays. I think that's on the good side. I particularly appreciate the appellants and their expressed desire to handle all this through mediation rather than have it come back to this body or some hearing officer and so – and I don't think it will be unduly delay or make inefficient the proceedings even the mediation if Surfrider is admitted as an additional appellant. So I'm comfortable in voting. And I will – let me just add, none of this – the fact that I think they should be allowed as an appellant should not be taken as a prejudice as to how I feel about the ultimate issue when that comes to us.

Mr. Hedani: Commissioner Tagorda.

Mr. Tagorda: I'd just like to have a brief comment. I would just like to say Surfrider Foundation if you really care about the environment go along with Kahului Harbor Coalition. I'm in the position not to give you that intervention because I believe this needs to be resolved immediately. The county needs to meet the conditions by the state permitting process and the more people that will come in as a intervenor will have to prolong the process, the hearings and all that because I read you brief, I hear you there, it's the same facts, the same arguments that the two already as an

appellant, the DIRE Coalition and the Kahului Harbor is giving the commission. So that's where I coming in.

Mr. Hedani: Thank you. Commissioner Hiranaga.

Mr. Hiranaga: Yeah, I would just like to comment that I do respect and appreciate Surfrider Foundation's efforts especially regarding Maalaea Harbor and the proposed expansion of Maalaea Harbor that may impact various surf spots. Thank you.

Mr. Hedani: Any additional discussion? Ready for the question? Question on the floor is to grant intervention, the intervention request to the Surfrider Foundation. All those in favor signify by raising your hand. Two in favor. All those opposed same sign.

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

**The Motion to Allow the Intervention by the Surfrider Foundation was Lost.
(Assenting - J. Starr, W. Mardfin)
(Dissenting - K. Hiranaga, B. U'u, O. Tagorda, W. Shibuya, W. Hedani)
(Excused - D. Domingo, L. Sablas)**

Mr. Hedani: Motion is lost. Any additional motions? It's lost, it's lost, right we move onto the next item. Commissioner Shibuya.

Mr. Shibuya: Did you need a motion? If you need a motion, then I'll make a motion to deny the Surfrider Foundation intervention.

Mr. Hedani: Is there a second?

Mr. Tagorda: I second.

Mr. Hedani: Moved by Commissioner Shibuya, seconded by Commissioner Tagorda to deny the intervention. Discussion? Commissioner Shibuya.

Mr. Shibuya: I find that even though I respectfully – you know, I really like the Surfrider Foundation for what its principles and its mission is I feel that they are providing information that is similar, in fact it's duplicative of what has been provided to us in this brief and I specifically asked for different alternatives and I did not get that whereas in the DIRE as well as Save Kahului Harbor there are remediations. There are mediation types of efforts. They are more scientifically succinct in their arguments and so therefore I really prefer just continue with DIRE and Save Kahului Harbor.

Mr. Hedani: Additional discussion? Commissioner Mardfin.

Mr. Mardfin: I'm going to vote in favor of the motion to deny even though I would have preferred that they be allowed in. I just encourage them to work with DIRE maybe even formally join DIRE Coalition if that's possible. I think the two appellants will do their best to convey your desires and I do think there's – it's fairly close to Save Kahului but you know, I think you can work with it.

Mr. Hedani: Commissioner U'u.

Mr. U'u: I'd just like to add I like the passion between Karen Chun which I know personally and Tim Lara that they are concerned about water clarity and the ocean especially where we practice every day coming up today five, six days a week we'll be there practicing to continue the passion. And this doesn't go against me not being passionate. I looking at the laws and the law says it is similar, to make it clear, it is similar and I believe that they can use the word strap on and work towards water quality and I like to thank Tim for stepping forward, stepping up to the plate.

Mr. Hedani: Any additional discussion? Okay, all those in favor signify by raising your hand. Opposed same sign.

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

VOTED: To Deny the Request to Intervene by Mr. Tim Lara of the Surfrider Foundation.
(Assenting - W. Shibuya, O. Tagorda, K. Hiranaga, B. U'u, W. Mardfin, H. Hedani)
(Dissenting - J. Starr)
(Excused - D. Domingo, L. Sablas)

One opposed, motion is carried. The intervention is denied.

Ms. Kapuaala: Excuse me Mr. Hedani, for the drafting of the decision and order, can we ask Corporation Counsel as the prevailing party to draft that order and as a matter of procedure for the Maui Planning Commission does that order need to be presented before you before it's signed or can you sign it and serve it on the parties without the commission putting it on the agenda.

Mr. Hedani: Jim.

Mr. Giroux: Normally we just have the Chairman sign.

Ms. Kapuaala: Okay, thank you James. Thank you Mr. Hedani.

Mr. Hedani: Jane go ahead and do that. Thank you. Director.

Mr. Hunt: Your next item would be to choose a mediator. You want to take a break?

Mr. Hedani: Why don't we take a 10-minute recess?

A recess was called at 10:48 a.m., and the meeting was reconvened at 11:05 a.m.

Mr. Hedani: Planning Commission meeting of March 9th is back in session. So far we're on Item B-1, (b). We've managed to take care or dispense of Item B-1(a). Director.

Mr. Hunt: Your next item involves the commission choosing to select a mediator. However, I

believe that at our attorney would like to go to the hearings officer body decision first because that might influence our recommendation for a mediator. It's up to the planning commission.

b. The Commission may choose to select a mediator.

Mr. Hedani: Jane, you have any comment?

Ms. Lovell: Thank you very much Chair and thank you Jeff. Because the mediator has to be a different person from the hearing officer if you decide to go with a hearing officer as opposed to hearing it yourselves we would appreciate if you could take that decision out of order and decide first whether you hear it as a body or do you want to send it to a hearing officer. Once that decision is made then I think it might be easier for us to support a mediator. Does that make sense?

Mr. Hedani: Jane, I'm sorry, you said the hearings officer and the mediator have to be two separate entities?

Ms. Lovell: Exactly Mr. Hedani and that's a problem. So for instance if you decide to send it to a hearing officer and the parties agree that the hearing officer could be you know, Judge Mossman for example, then Judge Mossman wouldn't be eligible to be the mediator. But if you decide to hear it yourselves then that means that everybody that's on the hearing officer list is at least theoretically available to be a mediator.

Mr. Hedani: Okay, thank you. Commissioners what's your pleasure? Commissioner Starr.

Mr. Starr: Move that we take up the hearing officer before the mediator.

Mr. Mardfin: Second.

Mr. Hedani: Any objection? No objection. Jeff, want to cover C?

Mr. Hunt: So we'll move to Item C and then come back to B. C is the commission may choose to select a hearings officer or hearings body.

c. The Commission may choose to select the Hearings Officer/ Hearings Body.

Mr. Hunt: And briefly the hearings officer is an individual generally an attorney or judge. We have a list. The other is the hearings body and that would be the planning commission itself and I would ask that you listen to both sides from the parties and make your decision.

Mr. Hedani: Anybody. Jane.

Ms. Lovell: Thank you. Basically the Planning Department and the Department of Environmental Management requests that the commission hear this matter as the commission sitting as the hearing officer. Frequently we don't do that, we send things off to a hearing officer, it's often a retired judge or someone with specific legal knowledge that can help with thorny legal issues and so forth, but there are two reasons why we think this particular appeal would be well suited to being heard by the commission itself.

First of all, we don't think that the legal questions that are presented are really out of the ordinary or much different than you decide, you know on a daily basis. You're looking at certain criteria and the question is did a particular action fit within those criteria. So I don't think is legally very complicated.

Secondly, as I indicated before we really want to move this forward and the problem with hearings officers is that, you know the good ones that the parties always prefer are busy, you have to deal with their schedules and also just getting a hearing officer in place can be time consuming and somewhat cumbersome because of the contracting issues and so forth.

So for those two reasons, first we think it's well within the confidence and expertise of this body to make the decisions, and two, we believe it will go faster. I think we could structure this so that it could all be done during one day. We've asked you to put in on your agenda just, you know, at your earliest possibility and perhaps another plus is that you know it's going to come back to you eventually anyway. So instead of hearing it twice, you know, once through a hearing officer and then again, we'll just do it once, it will be in a public hearing, it would be broadcast, you know, people can attend and observe and so forth. Whereas often contested case hearings are I don't want to say behind closed doors but they have a more private kind of nature. So for all of those reasons we think it would make more sense to have you sit in the first instance as the body hearing the appeal.

Mr. Hedani: Any comments from appellant? Please step to the microphone, identify yourself for the record.

Mr. Schwartz: My name is Jeffrey Schwartz and I speak for the DIRE Coalition and today for the Save Kahului Harbor. We, first of all, want to say that we are sympathetic to the need for expedition and are willing to work collaboratively with the county and with the commission to try and move things quickly to a resolution. And one of the reasons we want – think mediation is a good idea is that if you're not bound by all the rules of evidence and procedures and appeals and objections you can have a conversation and try and figure out what do you agree on, what do you disagree on, even if you disagree can you resolve something quickly. So we strongly urge you and think that there's a reason why it says shall, strongly you to appoint a mediator.

Having said that, we think that although the county would like to keep the issues narrow understandably, this is a much more complicated matter than appears at first blush. Even the question of whether or not these are in fact replacement wells or not replacement wells but supplemental wells is going to be a contentious issue. We don't have to go into it now but just that's one example.

Another issue is the reason why the county wants to expedite the resolution of this is it wants to get in compliance with a state permitting requirement, but there is a federal permitting requirement which it is in our view not in compliance with which if you – if the counsel or the hearing officer, the determination of the commission is to authorize this, you are in effect taking a local action which we believe contravenes federal law and supremacy issues, supremacy clause issues have to be resolved. These are complicated, constitutional issues and statutory and regulatory issues.

Mr. Hedani: Jeff.

Mr. Schwartz: Yes.

Mr. Hedani: The only question that we're trying to answer right now is whether or not the commission should be the hearings officer or not.

Mr. Schwartz: And it goes to that. It says, because there's complexity in there, we'll make more progress in getting this resolved. If you get a hearing officer with legal expertise who can manage this expeditiously and get the issues to a place where you get conclusions of law and findings of fact that you can review, but we think you'd need a hearings officer because we think the issues are complex. We understand why the county would like to keep them simple but we think that's ignoring some key issues that are right at the heart of the decision that has been made.

Mr. Hedani: So your perspective is that the commission should not be the hearings officer.

Mr. Schwartz: Should not be the hearings officer. Should appoint a hearings officer. We would work expeditiously with them, put on a case and get it done, but we'd prefer to get it mediated altogether.

Mr. Hedani: Commissioner Hiranaga.

Mr. Hiranaga: You first used the word mediation and then at the end of your presentation you used the word hearings officer. You said you should mediate but we're really addressing hearings officer. Did you mean to say hearings officer at the beginning or did you –

Mr. Schwartz: I'm sorry because the commission flipped the order of the agenda, I thought we were going to talk about mediation first and all I'm saying is I do think mediation should come first but I think we would prefer the appointment and think the appropriate method to get the greatest expedition is to appoint a hearings officer rather than to have this group sit as the initial body for resolution.

Mr. Hedani: Thank you. Irene do you have any comments? No. Any discussion? What's your pleasure? Commissioner U'u.

Mr. U'u: Just a comment that you know, we probably not going to be here Wayne.

Mr. Hedani: I hope not.

Mr. U'u: We probably won't be here so, my input on when it's held between a mediator is it's behind closed doors and I thought the purpose behind this was to have an open discussion and some input of not one hearings officer but more like nine. At times when they disclose to us what was side behind closed doors it's at times not what we intended it to be on the planning commission side. At times it might be too late, at times and sometimes it's good, sometimes it's totally different than we perceived it to be. So I would like to second what Jonathan's motion was to leave it to the body, the planning commission.

Mr. Hedani: Commissioner U'u.

Mr. Starr: I think Commissioner U'u is caught in a time warp because I've not made that motion but I'm about to if it's in order Mr. Chair.

Mr. U'u: I'm in the future.

Mr. Hedani: Can you bring us up to the present?

Mr. Starr: Let discussion peter out and then I'll be happy to make a motion.

Mr. Hedani: Commissioner Mardfin.

Mr. Mardfin: At the risk of getting our counsel fired I'd like to ask him a question and my question is this, I understood the Corp. Counsel's position quite clearly. I understood what the appellant's position is but what I don't know is how – you're our attorney not either party and he raised the issue of this could involve some federal actions and if it does then I think it may be beyond our capacity to deal with and I was wondering what your view of this was.

Mr. Giroux: This is one issue of, you know, when we review these types of decisions we often ask are attorneys involved and I think we found our answer earlier on. But it's going to be the hearings officer's determination or the Chair if it's the body sitting on the matter about what the scope of what evidence is going to be allowed in to determine how to get to the end of the question of whether or not the decision made by the director was in compliance with the law. I don't think at this time you have to be worried about knowing federal law, knowing state law, what you have to know is what is the standards necessary to make a determination of whether something is within the scope of the director's decision making and whether or not it fits within the scope of 205A which is something that you, this body processes SMA majors like no other island. You guys sometimes take three to five SMA majors in a sitting. I mean, you guys start at 8:00 in the morning until 5:00 at night doing that. So now you're asking to be reviewing a determination of an SMA minor or an exemption. So whether it's within your ability to understand the material, I am fully confident that you do have that expertise.

Mr. Mardfin: May I ask a follow up?

Mr. Hedani: Commissioner Mardfin.

Mr. Mardfin: Thank you. That explained to me and helps me in my decision making today on this issue, but let me ask a hypothetical question which I know attorneys hate. The hypothetical is suppose we upheld the director's decision then presumably the appellants could delay this even more by appealing not our decision but the ability to go forth with what they want because they could claim it's violation of federal law at least potentially. Is that correct?

Mr. Giroux: I'm not sure if you're mixing apples and oranges. As far as this body is being put in a position to do decision making. That's where you are at. Whether or not somebody is going to collaterally attack your decision or whether they're going to go to another jurisdiction or whether or not they're going to create another legal issue that is in the federal courts, the state courts, I don't think you have to worry about that. The Charter clearly states that you are the final authority in the coastal zone management area. All courts will look at you as being having the expertise and the

knowledge to determine these types of administrative decisions.

Mr. Mardfin: Thank you.

Mr. Hedani: Commissioner Hiranaga.

Mr. Hiranaga: Looking at the lists of potential hearing officers, which one of these are retired judges?

Mr. Shibuya: McConnell and Mossman.

Mr. Hedani: Trisha.

Mr. Hiranaga: I don't see them on my list, are they on your list?

Ms. Kapuaala: There are two. Judge E. John McConnell and Judge, Boyd P. Mossman.

Mr. Hiranaga: Oh, I didn't see the flip side. I see, sorry. Gomen.

Mr. Hedani: Commissioner Starr.

Mr. Starr: Are we ready for a motion?

Mr. Hedani: Please.

Mr. Starr: Okay, I move that this body serve as the hearings officer.

Mr. Hedani: Is there a second?

Mr. U'u: Second.

Mr. Hedani: Moved by Commissioner Starr, seconded by Commissioner Starr that the commission serve as the hearings officer. Discussion? Commissioner Starr.

Mr. Starr: Yeah, I do think that the arguments that it is better to do this in the public light and allow the community to not only to understand it is important. I also understand that we are the final authority with the SMA law. So I do feel that we're the right entity to deal with this.

Mr. Hedani: Additional discussion? Ready for the question? All those in favor signify by raising your hand. Opposed same sign.

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

**VOTED: That the Commission Serve as Hearings Body.
(Assenting - J. Starr, B. U'u, K. Hiranaga, O. Tagorda, W. Mardfin,
W. Shibuya)
(Excused - D. Domingo, L. Sablas)**

Mr. Hedani: Carried. Thank you. So the commission will serve as the hearings officer. Going back to Item B. Trish or Jeff.

Mr. Hunt: We're now going back on your agenda to item that you skipped and that's the commission may choose to select a mediator. Trisha will expound on this more.

b. The Commission may choose to select a mediator.

Ms. Kapuaala: As we go back to 12-201-68 of the Rules of Practice and Procedure for the Maui Planning Commission:

(a) All parties to a contested case shall participate in a good faith in one mediation conference. The length of the mediation conference shall be determined by the mediator. The cost of the mediation conference shall be borne by the department. Additional mediation conferences may be convened on a voluntary basis the cost of which shall be shared by the parties of the contested case. The mediation conference shall be held within 30 days of the granting a intervention by the commission. The parties may mutually agree to extend this time.

(b) The mediator shall be selected jointly by the parties or appointed by the commission. If the parties fail to agree the mediator shall not be the person appointed as the hearings officer for the contested case proceeding.

Mr. Hedani: Jane, do you have a recommendation for mediation?

Ms. Lovell: Thank you Chair. Again, Jane Lovell for the appellee and the applicant. We were originally going to ask that the mediation step be skipped, again, only to move things forward and to avoid delay. However, I think maybe there's a way that we can all get to where we want to go and that would be that if the commission could schedule the contested case hearing now, you know, find a place in your schedule for it and then if we could hold the mediation, you know, in between while we're waiting for it to come up on your calendar then we wouldn't be waiting any time. Because we understand you know, you're not going to be able to hear this tomorrow. You've got other things on your schedule. I know you've got a couple of trips to Hana coming up and so forth. But if we can get the earliest date possible that the commission could hear this contested case then I think we have no problems whatsoever with going to mediation. Mr. Schwartz has suggested that even if we couldn't agree on everything maybe there would be a few things we could agree on and that seems like a very reasonable approach. So assuming we can get all this done without further delay, we will not ask to be relieved of the requirement of mediation.

Mr. Hedani: Do you have a recommendation for a mediator?

Ms. Lovell: Well, I think either Judge Mossman or Judge McConnell would be well suited to that if their schedules allowed.

Mr. Hedani: Do you have a third alternative?

Ms. Lovell: Could I consult for a moment with my clients?

Mr. Hedani: Sure.

Mr. Starr: Why don't we hear from the other side?

Mr. Hedani: Irene or Jeff do you folks have any preference for a mediator?

Mr. Schwartz: ...(inaudible - not speaking into a microphone)...

Mr. Shibuya: Mr. Chair?

Mr. Hedani: Mr. Shibuya: I was wondering if the parties would be willing to go into mediation rather than maybe avoiding mediation and going directly into the hearings.

Mr. Schwartz: We made it clear –

Mr. Hedani: Jeff you need to use the microphone.

Mr. Schwartz: I'm sorry. We've made it clear –

Mr. Hedani: And you need to state your name for the record.

Mr. Schwartz: I'm sorry, I won't make this mistake again.

Mr. Hedani: It will make Carolyn's job a lot easier in terms of trying to figure whose voice that is.

Mr. Schwartz: Sorry Carolyn. My name is Jeff Schwartz. I'm speaking for the appellant, DIRE Coalition and in this case for Save Kahului Harbor and we do think that the best step is to get to mediation as soon as we can and hopefully that will reduce the need or even hopefully eliminate the need for the appeal. So we are very supportive of that and we'd like to be able to consult with the county on the selection of the mediator.

Mr. Hedani: Do you have any objections to either Mossman or Judge McConnell?

Mr. Schwartz: There may be. I've gotten a couple names that are of people who we would be content with and I'd need to consult with some people about the two particulars involved but Irene's indicated to me that we could support the selection of Mr. Niles or Mr. Hall as mediators.

Mr. Hedani: Commissioner Mardfin.

Mr. Mardfin: I'd like to – the Corporation Counsel suggested that at today's meeting we set the time for the hearings officer to meet to you have any objections to the procedure?

Mr. Schwartz: To setting the date for the hearings? No, we have no objection to setting the date today.

Mr. Mardfin: Okay, I'm glad to hear that because it struck me as perhaps being – not going into mediation with full faith exactly but if you don't have a problem with it then it's fine.

Mr. Schwartz: We are hopefully and a mediation could resolve a great deal. We would like to see that expedited but we understand the County's concern about getting an expeditious resolution with this and we don't want to be obstructionists or ask you to delay unduly. So we're okay with that. We'd like at least to have some opportunity to come in on the date that's selected just in terms of the schedules of the people who we need that's all.

Mr. Mardfin: Thank you very much.

Mr. Hedani: Trish you have any comments? You have any recommendation from the department for a mediator?

Ms. Kapuaala: I have worked with both, with all of the judges, both judges and Mr. Niles and Mr. Hall as hearings officers. Mr. Niles is very orderly, very good at mediation. I have not mediated with Mr. Hall and of course, the retired judges are very good as well, they especially the retired judges they are very well trained and experienced to expedite matters in mediation.

Mr. Hedani: Jane, do you have any additional comments?

Ms. Lovell: Thank you. I do have some experience not with mediating with Isaac Hall but I did actually have a case in which he was the hearing officer and I think he actually did a very able job and despite the fact that he and I have been on, you know, opposite sides of things in the past, I thought he was actually judicial in his temperament. However, I think in this particular case he might not be the appropriate mediator if only because of his very close association with Maui Tomorrow and with Irene where he has represented Irene and I think still has an ongoing representation. So that's a little bit. That might be a little bit problematic. I'm not sure he would even, you know, want to do it. I think Dennis Niles would be fine if he's available. He's certainly a very knowledgeable person. I understood he had more or less retired from the practice of law. That might be a good thing. It might mean that he has time for us. But it might also mean that he's traveling and not available. And I think either Judge Mossman or Judge McConnell would also be fine. They're both very distinguished jurists. Judge McConnell I think is a little overloaded because we send so many things to him. On the other hand, Judge Mossman is pretty busy with OHA and other affairs. So basically any of those are fine with us but we want to get to where we're going quickly.

Mr. Hedani: Commissioner Starr.

Mr. Starr: It sounds to me like both sides could live with Mr. Niles, I know he's also really knowledgeable with, you know, aquatic issues and with maritime and ocean law. So I would suggest, I also believe he'd be able to expedite it a lot faster than the judges.

Mr. Hedani: My recommendation would be to appoint more than one so that if their schedules won't permit within 30 days you would have three options to go through. Commissioner Starr.

Ms. Lovell: I think we could agree that you could appoint in this order Niles, Mossman, McConnell and then we'll just see which one of them is able to take it on.

Mr. Hedani: Thank you Jane. Commissioner Starr.

Mr. Starr: I'd like to make a motion that a mediator be appointed that three names be submitted in order of preference they be, Dennis Niles, they be Judge Mossman, Judge McConnell.

Mr. U'u: Second.

Mr. Hedani: Moved by Commissioner Starr, seconded by Commissioner U'u to appoint mediators in order of preference Niles, Mossman and McConnell. Discussion? Commissioner Mardfin.

Mr. Mardfin: I'd like to ask if the appellants are content with that?

Mr. Schwartz: Jeff Schwartz for the appellants, yes.

Mr. Hedani: Thank you. 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 Select in the Order of Preference Dennis Niles, Boyd Mossman and John McConnell as the Mediator.
(Assenting - J. Starr, B. U'u, K. Hiranaga, O. Tagorda, W. Mardfin, W. Shibuya)
(Excused - D. Domingo, L. Sablas)**

Mr. Hedani: Carried. Thank you. Jeff. Now we'll back to Item D which is the commission since you have determined yourself to be the hearing body then the commission may determine the briefing and hearing schedule and we'll ask for help from Clayton Yoshida on this.

d. If the Commission is determined to be the Hearings Body, then the Commission may determine the briefing and hearing schedule.

Mr. Clayton Yoshida: Thank you Mr. Chair, Members of the Commission, as you know you are dealing with the Stice appeal. I guess in March you have a special meeting on the 17th and you have a regular meeting on the 23rd. There's two public hearing items, we distributed what the other items are. We may have a change over from April 1st. On the 13th we have our traditional orientation session and we have two public hearings scheduled. On the 27th you're going to Hana to do the site inspection on the Stice property and to hear from the community on the Stice appeal. In May, on the 11th we have the –

Mr. Hedani: Clayton, don't you have a 30-day time frame that you have to have the?

Mr. Yoshida: We have a 45-day time frame to notify the applicant.

Mr. Hedani: Well, 30 days for the mediation.

Mr. Yoshida: Oh for mediation, yeah, 30 days.

Mr. Hedani: Oh, okay. So 45 days for the hearing?

Mr. Yoshida: No, for us if we have any public hearings scheduled we send out notices to the applicants.

Mr. Hedani: Oh, 45-day notice.

Mr. Yoshida: 45 days prior to the hearing. So we're booking up to the May 11th meeting where we have four, at this time four public hearings scheduled for items that like the Maui Memorial Park expansion which didn't get heard at the last meeting because the applicant did not do the proper notification. We have the bus shelter at Kaahumanu Center for the County Department of Transportation, we have the Seabury Hall creative arts building, we have the Hawaiian Cement sand mining.

Mr. Hedani: What's your recommendation Clayton?

Mr. Yoshida: Well, it depends if the commission wants to have it on a regular meeting day.

Mr. Hedani: Commissioner Hiranaga.

Mr. Hiranaga: I made this comment earlier about using a regular scheduled meeting date for the Hana site visit and I'll repeat again, I think the Hana site visit should be rescheduled to a nonregular meeting date and you could use the 27th of April for this contested case hearing.

Mr. Hedani: Is that a motion?

Mr. Hiranaga: If you want it in a motion I can make that motion.

Mr. Hedani: Is there a second?

Mr. Shibuya: Second.

Mr. Hedani: Moved by Commissioner Hiranaga, seconded by Commissioner Shibuya that the hearing be scheduled for April 27th. Discussion.

Mr. Hiranaga: For Tuesday.

Mr. Hedani: Director.

Mr. Hunt: Clayton do you have any comments on that? Have we already sent out notice on the Hana meeting or are there any logistical issues that the commission should be aware of?

Mr. Yoshida: We just have to check with the Parks Department again to see if it's available on another date besides April 27th, Helene Hall is available.

Mr. Hedani: Commissioner Starr.

Mr. Starr: I feel like we've went back and forth on the Hana thing and wasted so much time. I feel

like we should leave it as it is. I think we have a good setup with that.

Mr. Hedani: Commissioner Mardfin.

Mr. Mardfin: Well formal notice hasn't been sent out. Several people in Hana know about the meeting date that doesn't mean we can't change it but –

Mr. Hedani: Further discussion?

Mr. Starr: Yeah, I don't see why we should move two meetings. I mean, if we want we could do this on an off day meeting, you know, an off day if need to. I don't see a problem with scheduling.

Mr. Hedani: Commissioner Hiranaga.

Mr. Hiranaga: Well, I think there's been an argument that a lot of people are accustomed to meetings occurring on the second and fourth Tuesday of each month and to put this type of a contested case hearing on a nonregular Tuesday I would not be in favor of. Personally, the trip out to Hana is to determine whether the planning commission shall be the hearings body or appoint a hearings officer –

Mr. Starr: No.

Mr. Hiranaga: If I'm wrong then correct me.

Mr. Starr: It was just to see the location. The body decided to be the hearing officer.

Mr. Hiranaga: Is that correct, director?

Mr. Hunt: Clayton, can you enlighten us please?

Mr. Yoshida: Yes, I believe through the various discussions it was ultimately decided that we separate out the contested case hearing from the site inspection and receiving public testimony.

Mr. Starr: Public comments.

Mr. Yoshida: Yeah, public comment, and that would be done on April 27th and that the contested case hearing would be on the done on the afternoon of May 25th starting at 1:00 p.m.

Mr. Hiranaga: So we determined that the commission would be the hearings body is that correct? That was decided.

Mr. Yoshida: Yeah, I believe the commission –

Mr. Hiranaga: Okay, I stand corrected. Then again, you know for a site visit and to receive comments to me that can be done on a nonregular second or forth Tuesday. I really have reservations about having a contested case hearing on an off day.

Mr. Hedani: Any further discussion? Motion on the floor is to schedule the hearing for, the briefing and hearing for April 27th, additional discussion? Ready for the question? I'm not going to be here so it doesn't matter to me. All those in favor of the motion signify by raising your hand. Opposed same sign.

Mr. Schwartz: Can I ask a question?

Mr. Hedani: Jeff. Step to the microphone.

Mr. Schwartz: Jeff Schwartz for the appellants. I just want to understand what the implications of the April 27th date would be for the briefing schedule. In other words, working backward from that when would the first briefs have to be submitted or what would be the earliest date?

Mr. Hedani: Trisha.

Ms. Kapuaala: Thank you. I can answer that. The briefs would be due to the department served upon all parties on April 13th.

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

Mr. Hiranaga: Mr. Chair?

Mr. Hedani: Commissioner Hiranaga.

Mr. Hiranaga: There were three affirmative votes and two abstentions that is approval of the motion.

Mr. Hunt: The director concurs.

Mr. Hiranaga: An abstention is a positive vote.

Mr. Hedani: So the motion is carried.

Mr. Hiranaga: I believe so.

Mr. Hedani: There were two votes in favor –

Mr. Hiranaga: Three votes in favor, two votes –

Mr. Hedani: There were three votes in favor, there were votes opposed and –

Mr. Hiranaga: And two abstentions.

Mr. Hedani: And two abstentions.

Mr. Hiranaga: Abstentions are affirmative.

Mr. Hedani: You abstained, right Bruce.

Mr. U'u: I abstained.

Mr. Hedani: Okay, so the motion is carried. April 27th.

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

**VOTED: To Schedule the Contested Case for the April 27, 2010 Meeting.
(Assenting - K. Hiranaga, W. Shibuya, O. Tagorda, B. U'u, W. Hedani)
(B. U'u & W. Hedani - abstained which is counted as an affirmative vote)
(Dissenting - W. Mardfin, J. Starr)
(Excused - D. Domingo, L. Sablas)**

Ms. Kapuaala: Thank you.

Mr. Mardfin: Mr. Chairman.

Mr. Hedani: Commissioner Mardfin.

Mr. Mardfin: May I ask when we're going to schedule the site visit for Hana?

Ms. Kapuaala: Mr. Chair, we could go ahead and contact Mr. Stice and Carolyn will again have to arrange for –

Mr. Hedani: So we can take that up on the 23rd.

Ms. Kapuaala: Sure, lets do that.

Mr. Hedani: Okay, we'll take it up on the 23rd of March.

Ms. Kapuaala: Just so we know are there better days for the commission? What days other than Tuesdays and regular scheduled meetings?

Mr. Hedani: For the applicant's information the April 27th works for you and your briefings are due on the 13th. Commissioner Mardfin.

Mr. Mardfin: I'd just say that I don't concur with my fellow commissioner. I think it should be on a regular scheduled second or forth Tuesday for the site visit. I don't know which one you want to, you know, some future date, but I wouldn't take our vote on putting this coming meeting on April 27th to mean that we necessarily approve of moving the site visit to some nonregular meeting date.

Mr. Hedani: I think we can resolve the issue of the site visit at our meeting of the 23rd since it's not agendaed for today.

Ms. Kapuaala: Okay, thank you. Director.

Mr. Hedani: Thank you very much to the parties for your presence. Director Hunt.

Mr. Hunt: Your next item since Item 2 has been deferred already, the next item would be approval of action minutes of the February 23, 2010 meeting and regular minutes of the January 12, 2010 and January 26, 2010 meetings.

C. APPROVAL OF ACTION MINUTES OF THE FEBRUARY 23, 2010 MEETING AND REGULAR MINUTES OF THE JANUARY 12, 2010 AND JANUARY 26, 2010 MEETINGS

Mr. U'u: Motion to approve.

Mr. Hedani: Motion to approve by Commissioner U'u.

Mr. Tagorda: Second.

Mr. Hedani: Seconded by Commissioner Tagorda. All those in favor signify by saying aye. Opposed nay.

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

VOTED: To Approve the Action Minutes and Minutes as circulated.

Mr. Hedani: Carried. Thank you.

Mr. Hunt: the next item involves D-1 under the Director's Report designation of the Hana Advisory Committee to the Maui Planning Commission to conduct a public hearing on the follow applications Mark and Haunani Collins requesting the following land use changes for property situated of approximately 0.9 acres at 4950 Uakea Road, TMK 1-4-013: 039 in Hana. Item a, change in zoning from Urban Reserve District to Service Business Residential District and Item b, County Special Use Permit to operate a transient vacation rental in the Service Business Residential District.

D. DIRECTOR'S REPORT

1. **Designation of the Hana Advisory Committee to the Maui Planning Commission to conduct the public hearing on the following applications:**

MARK and HAUNANI COLLINS requesting the following land use changes for property situated of approximately 0.989 acres of land at 4950 Uakea Road, TMK: 1-4-013: 039, Hana, Island of Maui: (P. Fasi)

- a. **Change in Zoning from Urban Reserve District to Service Business Residential (SBR) District (CIZ 2007/0010)**
- b. **County Special Use Permit to operate a transient vacation rental in the Service Business Residential (SBR) District (CUP 2010/0002)**

Mr. Hunt: Essentially we're, Clayton we're asking them to if they want to designate to the Hana Advisory Committee the public hearing?

Mr. Yoshida: That's correct.

Mr. Hedani: Commissioner Mardfin.

Mr. Mardfin: Mr. Chairman, Mark and Haunani were here earlier. I don't see them at this time, would you give me one minute to go outside and see if they're there? They may have wanted to speak about it. Director wants to say something.

Mr. Hedani: Clayton, you want to check if they're present? Jeff.

Mr. Hunt: I talked to them and they asked if they really needed to be here and I said it's really just a –

Mr. Mardfin: Okay, thank you, never mind.

Mr. Hedani: That's okay Clayton. Any discussion? What's your pleasure? Commissioner Mardfin.

Mr. Mardfin: I move that we refer this to the Hana Advisory Committee.

Mr. Starr: Second.

Mr. Hedani: Moved by Commissioner Mardfin, seconded by Commissioner Starr to appoint the Hana Advisory Committee to conduct the public hearing on the application. Discussion? All those in favor signify by saying aye. Opposed nay.

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

VOTED: To Designate the Hana Advisory Committee to Conduct the Public Hearing.
(Assenting - W. Mardfin, J. Starr, K. Hiranaga, B. U'u, O. Tagorda, W. Shibuya)
(Excused - D. Domingo, L. Sablas)

Mr. Hedani: Carried.

Mr. Hunt: You next item involves planning commission projects and issues. This is your opportunity to bring questions, issues, etc., to the department. Quite often we have to research and get back to you.

2. Planning Commission Projects/Issues

Mr. Hedani: Commissioners? Commissioner Starr.

Mr. Starr: Did we ever hear anything about that new culvert and drainage at Olowalu. Asked about that a couple of times?

Mr. Hunt: Clayton, have we gotten a response from staff on that?

Mr. Yoshida: We filed a request for services and I believe the inspector from our Zoning Division went out there. I'm not sure what the outcome was but I can give you a call regarding what happened.

Mr. Starr: Or our next meeting.

Mr. Yoshida: Okay.

Mr. Hedani: I have to guess on that Jonathan on that. It looks like the DOT is doing maintenance on all of the culverts along that entire area so there's like three or four areas that they actually worked on going all the way up to Launiupoko Park.

Mr. Starr: That was the new drainage though for residential.

Mr. Hedani: Yeah. Knowing DOT that's probably what they were doing probably without a permit. Any other items under planning commission projects and issues, D-2? Director.

3. Discussion of Future Maui Planning Commission Agendas

a. March 23, 2010 meeting agenda items

Mr. Hunt: Next item is discussion of future planning commission agendas particularly the March 23rd meeting you have a B&B permit before you because it's located within 500 feet of another B&B. You have a special use permit to allow a non-denominational church and wedding uses in the agricultural district, you have the West Maui Preservation Association Benefit Fund report, you have a time extension for state land use commission special permit and conditional permit to continue a TVR, you have Step 3 Planned Development Approval in Wailea and then there's some staff information or discussion that we're requesting regarding the Palauea Beach lots final environmental assessment.

Mr. Hedani: And we're going to go ahead and add the scheduling of the Hana meeting under I guess you could add it under Planning Commission Issues. Commissioner Starr.

Mr. Starr: Yeah, I just want to spend just one more minute on the Hana visit because I think maybe we should be you know, looking for another day. Commissioner Mardfin should probably be part of this discussion because I don't want to put Mr. Yoshida and staff to more work than we need to. Could we perhaps pick out a couple of days when that would be viable because I'm reluctant to have to move the follow up session that we have for the contested case that's already out in May. So maybe the department could say –

Mr. Hedani: I think he still has to check with Parks.

Mr. Starr: Yeah, but I mean maybe I don't know like the Wednesday between the two meetings and

–

Mr. Yoshida: Yeah, we could possibly look at maybe April 20th or something like that.

Mr. Hedani: What as that Clayton?

Mr. Yoshida: April 20th.

Mr. Hedani: April 20th.

Mr. Yoshida: Which is the Tuesday, the Tuesday between the two regular meetings.

Mr. Hedani: Commissioners? Commissioner Hiranaga.

Mr. Hiranaga: My only comment is that it not be the second or forth Tuesday of any month.

Mr. Starr: Yeah, it's a third Tuesday.

Mr. Hedani: Jeff.

Mr. Hunt: The other consideration is you've got two new members coming on without any input to what their schedule is they'll come on April 13th and we tell them that by the way you got another meeting next week.

Mr. Hedani: You want to go ahead and try to schedule it for the 20th Commissioner Starr?

Mr. Starr: I'd like to give him maybe another date as well so he has a choice then and that way would possibly be maybe May 4th as an alternate.

Mr. Yoshida: Yeah, we could check on that date, that typically is a Urban Design Review Board date but it may it – I don't know if it will involve some of the planners, but we could look at that as an alternate date.

Mr. Hedani: Okay, so you're going to go ahead and check on both April 20th and May 7th then?

Mr. Starr: May 4th.

Mr. Shibuya: May 4th.

Mr. Hedani: I'm sorry, May 4th and then we'll make a decision on the 23rd. I'll definitely mark my calendar. Director Hunt.

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

Mr. Hunt: The next three items I'll lump them together involve the reports on environmental

assessments, SMA Minor Permit Report and SMA Exemption Reports. This is your opportunity to bring questions regarding any of those reports.

Mr. Hedani: Any additional appeals to the exemption report? Commissioner Starr.

Mr. Starr: Just curious one of them just says David Ward three times and I was just wondering what it is, and the other says subdivision into two lots and these are from the exempt. Is that subdivision, you know, I was just curious why you know, you know, maybe it's a roadway lot or something like that.

Mr. Hunt: Do you have the page number and the permit number?

Mr. Starr: Yeah, it's on the exempt project. It's page one of two.

Mr. Hedani: Could you repeat the item?

Mr. Starr: Yeah, the first one just says Ward, David three times. It's SM5 2010/0040 and then the next one is just two, you know, two items below that.

Mr. Hunt: Clayton do you have any information or should we get back to them at the next meeting?

Mr. Starr: I don't need much information, just curious.

Mr. Yoshida: Yeah, I thought I had drafted a memo with the information.

Mr. Hedani: Yeah, Clayton did a memo and was distributed.

Mr. Yoshida: It was distributed today but on the two, four, six, eight SMA assessments or SMA minor permits, SM5s which the commission asked about at the last meeting on February 23rd.

Mr. Hedani: Maybe you can do something similar.

Mr. Starr: Yeah, if it's in there I don't need it. I didn't look at it.

Mr. Hedani: I don't think it's in here but this is from the last meeting.

Mr. Yoshida: We can probably report on that at the next meeting, the Dave Ward one.

Mr. Hunt: So the department will report on the Dave Ward, the SM5 2010/0040.

Mr. Yoshida: I think that's for the West Maui Hospital access. We can verify that and present the information at the next meeting.

Mr. Starr: If that's the case, I don't need to know.

Mr. Hunt: And then what about the Maui Land and Pine Subdivision are we done with that or do we need to come back?

Mr. Yoshida: We can probably report at the next meeting.

Mr. Hunt: Okay, we'll report on those two items at the next meeting.

Mr. Hedani: Clayton this was a very good report that you prepared on the last issues that were discussed. Thank you. Commissioner Starr.

Mr. Starr: Yeah, I just wanted to also thank him and will have a chance to look at it when we have a chance, but thank you for getting back to us so assiduously.

Mr. Hedani: Director.

7. March 17, 2010 Public Hearing on the Following Item at the Kula Community Center beginning at 6:00 p.m.

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)

Mr. Hunt: Next item is just an announcement or a reminder, a warning maybe, on March 17th you have a public hearing at 6:00 p.m. So that is a Wednesday I believe and it's at 6:00 p.m. and this is regarding the Phase 2 Project District approval for the Kula Lodge. It is up in Kula at the Kula Community Center and the reason we schedule these is because the project district law says the public hearing has to be in that district.

Mr. Hedani: Okay, so we're set for March 17th at 6:00 p.m. Any idea how long that will run?

Mr. Yoshida: Well, it's always hard to predict. We are getting letters from the public now.

Mr. Hedani: Okay, thank you very much.

E. NEXT REGULAR MEETING DATE: March 23, 2010

Mr. Hedani: Our next regular meeting date is March 23, 2010, and with that if there's no further items for the good of the order we are adjourned. Thank you very much.

F. ADJOURNMENT

The meeting was adjourned at 11:55 a.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
Kent Hiranaga
Ward Mardfin
Orlando Tagorda
Warren Shibuya
Jonathan Starr

Excused

Donna Domingo
Lori Sablas

Others

Jeff Hunt, Planning Department
Clayton Yoshida, Planning Department
James Giroux, Department of the Corporation Counsel
Mike Miyamoto, Department of Public Works