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PLANNING COMMISSION
COUNTY OF MAUI
STATE OF HAWAII

REGULAR MEETING

Held at the Planning Department Conference Room, Kalana
Pakui Building, 250 South High Street, Wailuku, Maui,
Hawaii, commencing at 9:00 a.m., May 10, 2011.

REPORTED BY: Rachelle Primeaux CSR No. 370

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A P P E A R A N C E S

CHAIRMAN:

KENT HIRANAGA

COMMISSIONERS:

WARREN SHIBUYA (Vice Chair)
WARD MARDFIN
DONNA DOMINGO
JACK FREITAS
PENNY WAKIDA
IVAN LAY
KEONE BALL

CORPORATION COUNSEL:

JAMES GIROUX

PLANNING DIRECTOR:

WILLIAM SPENCE

PUBLIC WORKS:

ROWENA DAGDAG-ANDAYA

1 MAUI COUNTY PLANNING COMMISSION

2 TRANSCRIPT OF PROCEEDINGS

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4 CHAIR HIRANAGA: Good morning. I would like to
5 call the Maui Planning Commission meeting to order. Today
6 is May 10th, 2011. And we seem to have lost our director.
7 The first agenda item, I would like to open the floor for
8 public testimony. Is there anyone here that wishes to
9 provide testimony regarding any agenda item today?

10 Yes, please come forward and state your name.
11 Please limit your comments to three minutes.

12 MS. SAVAGE: My name is Brianne Savage. I'm the
13 sports entertainment specialist with the Office of Economic
14 Development in the Mayor's Office. And just here in support
15 of the Maui Film Festival and the special permits that you
16 guys have here today. We've been a sponsor of the event for
17 quite a while, and we just want to see it continue. And it
18 does great things for our community. Thank you.

19 CHAIR HIRANAGA: Questions, Commissioners? Seeing
20 none, Bud Pickrone.

21 MR. PICKRONE: Good morning, Chair. Can I defer
22 until the item?

23 CHAIR HIRANAGA: Yes, you may. Charlie Jencks.
24 State your name, and limit your comments to three minutes.

25 MR. JENCKS: Thank you, Mr. Chair. Members of the

1 Commission. My name is Charles Jencks. It's good to see
2 you all here. I'm here today to testify on the proposed
3 zoning designations for the light industrial districts in
4 Maui County, M-1, M-2 and M-3. And my primary focus is on
5 the M-1 district.

6 As proposed before you today, the district deletes
7 apartments as a permitted use in the district. M-1 today is
8 the only true mixed use district in Maui County where you
9 can build housing and retail and businesses and employ
10 people close to where they live. It's the only district
11 that provides for that. M-1 is the only district with land
12 values today that can support that kind of mixed use. If
13 you go into the A-1 or the A-2 apartment district, generally
14 they're in the SMA districts, and you're going to pay 30
15 bucks, 35 bucks a square foot for raw land with utilities.

16 In the light industrial, you're going to pay 12,
17 15 bucks a square foot. So, you can see the differential in
18 terms of acquiring land and having the ability to build
19 apartments. It's quite different. There's a clear,
20 substantiated need for affordable product in Maui County;
21 hence, the Maui County's affordable housing district
22 ordinance that they passed. The light industrial district
23 has historically provided that capacity.

24 Iao Parkside, Kahului Parkside -- Park Terrace,
25 excuse me. And in Lahaina as well, there's an apartment

1 product in the light industrial district. You can't build
2 apartment product in other districts, especially SMA because
3 of the land value issues, because of the regulatory issues
4 associated with getting permits in that district and the
5 demand for entitled land.

6 Just there's a demand for the product and demand
7 for the land that's entitled to build the product. You
8 don't find that in the SMA districts or in the other urban
9 districts in the County. And lastly, but last not least, I
10 have a project that has been conditioned to build affordable
11 housing in -- on a specific parcel in the light industrial
12 district. So, by following the line of logic that's before
13 you today, if you take apartments as a permitted use out of
14 the light industrial district, the County of Maui and I are
15 in direct conflict with each other.

16 Because you've asked me to build housing in a
17 specific location in a specific district, which is zoned
18 light industrial; therefore, we have a gigantic legal
19 conflict. So, I'm going to ask you to reconsider what's
20 before you and say, look, it's worked so far. It serves a
21 function. Include apartments as a permitted use in the
22 light industrial district. And I would also add, you should
23 consider major utilities like substations in the light
24 industrial district, because today if you're Maui Electric
25 and you have a new project, a new light industrial, and you

1 need to build a substation to serve it, you need to get a
2 special use permit and a conditional permit from the County
3 of Maui.

4 Now, I don't know about you. But if I'm a utility
5 and I'm investing significant amounts of dollars in a
6 district, and I've got to reup this permit every five years
7 or ten years, that's not good use of capital money. And it
8 creates conservative use of utilities. I would consider at
9 least at some level including major utilities in the
10 district as well, including light industrial.

11 Last but not least, in the M-2, I think you're
12 right on target with the permitted uses. No comment there.
13 I think in the M-3 district, there aren't any commercial
14 uses allowed. I think you should consider at least some
15 food service maybe on a percentage of the land area. I
16 think you should also consider financial services and retail
17 fuel services for the heavy industrial district. They're
18 not allowed today in the proposed ordinance. I think in the
19 context of energy savings and efficiencies and traffic
20 control, providing some level of retail in that district
21 would be a smart move.

22 So with that, I'll open it up if you have any
23 questions. I would be happy to answer them.

24 CHAIR HIRANAGA: Questions, Commissioners? Seeing
25 none, thank you.

1 MR. JENCKS: Thank you.

2 CHAIR HIRANAGA: The next person is Steve Perkins.

3 MR. PERKINS: Good morning, Chair Hiranaga and
4 Members of the Commission. I also have a few very brief
5 comments related to the proposed M-1 light industrial
6 district zoning ordinance.

7 In general, the proposed provisions to the
8 ordinance seem to be well thought out, and it's a good step
9 in the right direction; however, I'm also hopeful the
10 Commission will also consider leaving apartments in addition
11 to a live-work provision in the ordinance as an allowable
12 use in the M-1 district. Continued standalone apartment use
13 in the M-1 district places employees and business customers
14 in close proximity, and it allows for the potential of
15 development of a vibrant mixed use area throughout the day
16 instead of an area going dark at 5 p.m.

17 And it also opens up the potential walking to work
18 or services for these apartment residents. And as
19 Mr. Jencks mentioned, M-1 land is typically less expensive
20 than land zoned exclusively for apartments. And allowing
21 continued apartment use in these areas will hopefully allow
22 for future development of affordable housing on the island.
23 Thank you for your time.

24 CHAIR HIRANAGA: Questions, Commissioners? Seeing
25 none, thank you. Howard Hanzawa.

1 MR. HANZAWA: Aloha, Chairman and Board Members.
2 My name is Howard Hanzawa, vice-president of Kaanapali Land
3 Management Corp., and I am here to speak about the proposed
4 bills that will amend Title 19, MCC, related to industrial
5 districts. I testified two years ago, along with many
6 others, on a different set of bills affecting the industrial
7 districts that would have eliminated the so-called stacking
8 provisions in the districts.

9 Those provisions allow business and apartment uses
10 in the districts. Elimination of those uses would have
11 affected a wide variety of institutions, small and large, as
12 well as residents who live in the districts. All those
13 businesses in retail, restaurants and offices that provide
14 services located in Kaahumanu Shopping Center, the Lahaina
15 Cannery Mall, Pauwela Cannery, Haiku Cannery, Kahului and
16 Wailuku industrial parks, Wailuku Millyard as well as those
17 located along Dairy Road and Lower Main Street among others
18 would have been nonconforming uses if those bills had
19 passed.

20 Maui Community College would also be
21 nonconforming, and the residents of Iao Parkside would have
22 to worry about the effect on insurance and financing if
23 those measures had passed. It would have been a nightmare
24 for the Department to enforce if the Department indeed
25 recommended that those bills be filed. So now, you have in

1 front of you a draft bill to establish a new zoning district
2 M-3 as well as bills to revise the M-1 and M-2 zoning
3 districts largely in the way -- in the way that those --
4 largely in the way that those chapters are formatted, though
5 there have been some other substantive changes.

6 I'm here before you to urge you to support those
7 bills with some edits, which I can further elaborate on
8 below, as I believe they address the concern that there
9 needs to be properly zoned areas where true industrial uses
10 can be placed. But the bills, also keep in mind, that those
11 residents who live and work in the industrial districts as
12 well as those businesses that drive our economy cannot be
13 negatively impacted. I recommend that the bills be
14 supported, but I also have the following suggested edits.

15 For the M-1 district, continue to allow apartment
16 use. The industrial district is the only true mixed use
17 district that we have in Maui County. We talk about smart
18 growth that allows people to live close to where they work,
19 so let's not go backward on this. For the M-2 and M-3
20 districts, add utility facilities major as a permitted use.
21 Maui Electric Company currently has facilities in the M-2
22 district, and they would need space to expand in the future.

23 COMMISSIONER SECRETARY: Three minutes.

24 MR. HANZAWA: I just have another ten seconds or
25 30 seconds. For the M-2 and M-3, add alternative energy

1 facilities, whether they be solar or biofuel
2 energy-producing systems. This would be consistent with the
3 State of Hawaii's and the County of Maui's goal to fulfill a
4 greater percentage of our power needs through alternative
5 energy.

6 And lastly, for the M-1 and the M-3 districts, add
7 communication towers as a permitted use. Our economy has
8 changed drastically over the last 20 years through
9 innovations in technology and will continue to do so. We
10 should anticipate the needs of the future. Thank you.

11 CHAIR HIRANAGA: Any questions, Commissioners?
12 Commissioner Shibuya.

13 COMMISSIONER SHIBUYA: Mr. Hanzawa, you mentioned
14 you would have communication towers in the M-3 areas. What
15 is the height that you are proposing? Is there a limit
16 or --

17 MR. HANZAWA: Yes.

18 COMMISSIONER SHIBUYA: What limit is that?

19 MR. HANZAWA: That they need to comply with the
20 height limitations as stated in the proposed ordinance.

21 COMMISSIONER SHIBUYA: Okay. Thank you.

22 CHAIR HIRANAGA: Any further questions? Seeing
23 none, thank you. Is there anyone else that wishes to
24 provide testimony on any agenda item at this time?

25 Please state your name.

1 MS. DENAIE: Thank you, Chair Hiranaga, and good
2 morning, Commission Members. My name is Lucienne DeNaie. I
3 just want to thank the Commission. I notice there's an item
4 from the Waipio Bay Benevolent Association, our appeal to
5 hear more information about some SMA decisions in our
6 neighborhood will be heard. I just want to thank you for
7 your time in considering this, and we will, you know, pursue
8 this as it unfolds. Thanks very much.

9 CHAIR HIRANAGA: Any questions, Commissioners?
10 Seeing none, thank you. Anyone else who wishes to provide
11 testimony at this time? Seeing none, this portion of the
12 public testimony is now closed.

13 Director, first agenda item -- the second agenda
14 item.

15 DIRECTOR SPENCE: Thank you, Mr. Chairman and
16 members. The first item we have up on your agenda today are
17 the three proposed bills amending the industrial districts.
18 Joe Alueta will make the presentation.

19 MR. ALUETA: Good morning, Mr. Chair and
20 Commissioners. Again, my name is Joe Alueta. I'm the
21 Administrative Planning Officer. I'll start off with the
22 M-1 district, and I'll just try to -- also try to address
23 some of the concerns that were raised by some of the
24 testifiers. We were fully aware of it. And with some of
25 that, we are making some proposals to address that.

1 And just to give you some logic, as alluded to by
2 both the testifiers, the previous bill a couple of years
3 ago, which would eliminate stacking, would have been kind of
4 a nightmare, one, to administer, but also would have
5 resolved one problem, but would have created more of another
6 problem. And the Department at that time said we would come
7 back with some proposed amendments to the bills as well as
8 try to get a new district, which is M-3. And that's what we
9 have. That's what you're here today to review those
10 modifications in response.

11 If you look at the M-1, and if you ever looked at
12 the original ordinance, it's kind of funny. And if you
13 notice, it's all in alphabetical order. The preamble of the
14 purpose and intent for the M-1 industrial district, you
15 know, pretty much lists out what it says, you know.
16 Residential uses are excluded from this district. When you
17 go down alphabetically, and then it adds apartments. It's
18 kind of odd, but it's just one of those quirky things.
19 Everything is listed alphabetically, and it excludes
20 residential uses, yet it says apartments is allowed, which
21 is typically residential.

22 So, we're trying to clarify and correct this. And
23 the way Maui County has evolved over the years, especially
24 within the M-1 district, we recognize that there has been
25 quite a few apartments built within it as well as some

1 existing nonconforming single family residences. And so,
2 I'm not only trying to resolve what's existing with regards
3 to existing apartments, but I'm also -- we're also trying to
4 be here to resolve some of the existing single family homes
5 that have been built within both the M-1 and M-2 districts
6 as M-2 allowed for them.

7 Our intention was never to exclude apartments. It
8 was always -- in this revision, it was to make what we call
9 very similar to what we did with the B-1, B-2, and B-3
10 district. And that is apartments would be allowed as an
11 accessory use. And it was -- may not have been clear, but
12 we can make it clear today by adding it, and that's our
13 intention is that it would be added as F, I guess, as
14 apartments located above or below the first floor, okay.

15 Now, with regards to addressing the concerns
16 over -- because if you truly wanted to have a mixed use in a
17 mixed use project, you're going to have some type of retail
18 or some type of business activity that supports that
19 apartments and not just freestanding. But we also agree
20 that there are many, many projects that have already been
21 built, Iao Parkside for one, as well as other single family.
22 And so, we added a provision at the very end. On Page 7,
23 Line 31 through 35. And as permitted -- permits issued
24 prior to the enactment of this ordinance, okay.

25 Any dwelling structure that was constructed with

1 the building permit that was approved prior to the enactment
2 of said ordinance would not acquire a County special use
3 permit, conditional permit or variance, and may be
4 reconstructed as permitted by the original building permit,
5 okay.

6 Now, there's still a conditional permit as well as
7 under -- and that should be spelling correction of reserved,
8 R E S E R V E D. Under special use, we left that blank,
9 because we left it open for discussion as to whether or not,
10 again, the Department had proposed at the time, and the
11 intention, if you read the staff report, was to allow for
12 apartments, but only as an accessory use. There was
13 discussion internally at the time when bills were drafted
14 whether or not we should make apartments a County special
15 use permit.

16 And we felt you already have these, why make them
17 go through that. If we make it an accessory use, then it
18 would be allowed. So, it could be one thing -- one idea
19 would be to add freestanding, standalone apartments as a
20 special use in apartment district. Because, again, we don't
21 think apartment should be allowed as an outright right as it
22 is now. The Code was never intended to do that, but somehow
23 -- when you look at the preamble. However, it's been
24 developed that way through the years, so we're trying to
25 correct that.

1 And again, there's also single family residence.
2 I have maps up here. Four maps of -- for the island of
3 Maui. I also have maps for Molokai and Lanai, but I figured
4 we were centered on Maui. These are the four maps to show
5 based on our zoning and interpretation where you have light
6 industrial and heavy industrial throughout the County.
7 Another correction that we're adding, you know, within the
8 industrial area is education specialized. Many times you
9 see that big gyms or warehouses have been converted to
10 Tae Kwon Do studios, yoga studios or whatever is in the
11 industrial.

12 So, education specialized. Utility facility
13 minor, that's pretty typical, so we feel that should be
14 allowed in the M-1 district. And again, energy -- under
15 accessory uses, we're also adding energy systems small
16 scale. So, this would include, you know, as an accessory
17 use allowed, so photovoltaic, biomass, anything like that.
18 So, I think the key things that need to be recognized,
19 especially with this M-1 revision, is that we're continuing
20 to allow for the retail, the stacking of allowing the -- the
21 B-1, B-2, B-3 allowed uses, that the resolution a couple of
22 years ago would not have allowed.

23 It cleans up and standardizes the format in which
24 the Code revisions that we've been doing, which is basically
25 trying to make sure every section is the same. Try to put

1 uses within table format, and also standardize a lot of
2 their development standards within a table format. I know
3 that the ram's ear version is a little difficult to --
4 because we had to cross out a lot.

5 So, as you can see, we have our notes and
6 exceptions. We also are allowing freestanding antennas and
7 with a maximum height of 75 feet. And so, that addresses --
8 so, with regards to telecommunications, excuse me, we're
9 allowing that not only in the M-1, but M-2 as well as M-3,
10 but they would have to meet the setback standards. Let's
11 see, another use that we're allowing would be adding to the
12 thing is production facilities. It's a new definition.
13 Production facility multimedia. And this would a space of
14 outdoor or indoor area, building, part of a building for
15 staging or recording of video or audio productions, such as,
16 but not limited to, music, commercial programs, motion
17 pictures, multimedia or other related activities.

18 That's a new definition that we're going to be
19 adding to Title 19 and would be added to the M-1 district.
20 This is -- I guess there's a movement afoot to try to
21 capture some of the Hollywood types. So, that's pretty much
22 the M-1 district in a nutshell. Are there any questions?

23 CHAIR HIRANAGA: Commissioner Mardfin.

24 COMMISSIONER MARDFIN: This is not directly on
25 M-1, but on M-3. Your maps show M-1 and M-2. I take it,

1 since we don't have M-3, there are no M-3 zoned areas?

2 MR. ALUETA: Correct.

3 COMMISSIONER MARDFIN: Where would you anticipate
4 they might be located if they were created, just in general?
5 Would you be taking -- clearly you're not going to put them
6 in Kaanapali hotel zoning?

7 MR. ALUETA: No.

8 COMMISSIONER MARDFIN: They're probably going to
9 be in what, agriculture somewhere?

10 MR. ALUETA: No. We'll leave it up to the General
11 Plan. The ideal location I guess you could say where M-3
12 would be allowed is probably going to be areas where you
13 have restricted, where you already through the zoning
14 process, the Council as well as the Commission have
15 recognized that retail has been -- retail and nonindustrial
16 uses have been encroaching into the industrial districts.
17 That encroachment starting, you know, with Sam's Clubs, or
18 excuse me, Costco. Used to be Sam's Club. Then it was
19 Costco.

20 And then K-Mart. And they pushed all of the
21 industrial such as Fong Construction, Arisumi, all of those
22 guys out of the airport area, moved over. And their first
23 location they went to was agricultural district and got
24 County special use permits, or went to the Earl Stoner
25 place. Earl Stoner came in, saw the need, came in for a

1 change in zoning. Roger Fong saw the same thing. He had a
2 consolidated baseyard.

3 But the Council and as well as the Planning
4 Commission and Planning Department said this is a very
5 dangerous cycle. Okay. You zone it industrial. Next thing
6 you know, Brigit & Bernard's and some nice restaurant moves
7 in, kicks out the BFI and the stinky guys. You know,
8 everybody wants to be Carmel. You need a place for the ugly
9 people, as I say. And that's where your industrial district
10 goes. And the Commission has established -- the Commission
11 and the Council put conditions on it saying, yeah, you can
12 have your industrial zoning, but you can only do these
13 specific industrial type uses.

14 Earl Stoner has that condition, so does
15 consolidated baseyard. You're most likely going to see M-3
16 either going to be somewhere in the Mokulele Baseyard,
17 excuse me, as well as possibly maybe the MECO power plants,
18 which are currently M-2. And we will add power generated --
19 it was intended to add power generating facilities to that,
20 as well as, you know, where the -- during the next community
21 plan updates, they're going to say, hey, we need to have
22 some type of industrial uses.

23 And so, who knows, HC&S may want to, you know,
24 designate some of their areas. Or like I say, we'll leave
25 it up to the community plan. But off the top of the head

1 and batting it around the department-wise, we just see those
2 areas that have either got a restricted on it, on the
3 industrial, on the type of industrials that can go there
4 already, or your really, really heavy uses such as the MECO
5 power plants and maybe the mill. But the mill is kind of ag
6 related at the same time.

7 CHAIR HIRANAGA: Okay. Before we continue with
8 questions for staff, I would like to open the public
9 hearing. Is there anyone here that wishes to provide
10 testimony on this agenda item?

11 Seeing none, the public hearing is closed. We can
12 now continue with questions. And I believe the Director has
13 a few comments.

14 DIRECTOR SPENCE: Thank you, Mr. Chairman. A
15 couple of things. Just on the one with the addition of
16 production facilities multimedia. You know, this is --
17 there have been something of an emphasis in the State
18 Legislature and with this Administration to try to get
19 production facilities here. Rather than just getting, you
20 know, having people come here, film and leave, actually be
21 able to let them produce movies or different media on
22 island.

23 We see this as potentially a large employment
24 generator. We think this would be a good thing. It's --
25 for light industrial district, of course, you may need a

1 very large enclosed or large enclosed space. This is the
2 kind of thing that we're going to permit it somewhere. It's
3 probably going to be a very large facility. Starting with
4 the light industrial district, this would be a very good
5 place.

6 Just with regards to apartments, I -- I have seen
7 it both ways, and I understand both arguments. You know,
8 you have an industrial district. It's supposed to be for
9 industrial uses, you know, not really for apartments. The
10 other argument is definitely that, you know, you're looking
11 for mixed use. You're looking -- you know, part of the
12 affordability equation is to be able to put people, you
13 know, near their jobs, so they're not spending -- I paid my
14 \$4.99.9 per gallon just last night.

15 You put people nearby. They're not going to be
16 spending all that much on their fuel and other expenses.
17 So, I see it both ways. If it comes to this Commission, and
18 I do understand there are conditions on zoning that are, you
19 know, where there are requirements to build affordable
20 housing, like Mr. Jencks was saying. I believe he is
21 required to build 250 units on a specific parcel that's
22 zoned light industrial. I hate to send anybody back through
23 the process, another year and a half or two years to get
24 back up to Council and get, you know, one condition changed.

25 If this Commission wants to keep apartments as a

1 permitted use, you know, the Department -- that's fine with
2 me. I also don't see -- as just a practical matter, as more
3 people come in, as other land owners come in and request
4 apartment, excuse me, light industrial zoning, I don't see
5 that they're just going to grant outrightly, you know,
6 nonconditional zoning. There's always conditions on zoning
7 when somebody approaches the County Council.

8 It may be at that time, the Council may say
9 apartments, we're going to eliminate apartments for your
10 zoning, or we're going to say you can do all the industrial
11 uses. You know, there's always conditions when you get to
12 Council. And there's always -- quite honestly, there's
13 always conditions when we approach the Planning Commission.
14 So, I don't see in reality that anybody requesting light
15 industrial from this body or from the County Council is ever
16 just going to be plain, straight light industrial. There's
17 going to be some discretion practice between the different
18 approving bodies.

19 So, for the purposes of this bill, you know,
20 leaving apartments there is basically going to cover what's
21 already been constructed.

22 CHAIR HIRANAGA: Open the floor to questions.
23 Commissioner Wakida.

24 COMMISSIONER WAKIDA: This question is for -- this
25 question is for Joe. With apartments in an M-1 area, what

1 does that do to land value of that? Does it push it up?

2 MR. ALUETA: I think -- I'm not going to -- I'll
3 leave it to the realtors. I mean as far as I mean the
4 valuation, but you know, like I say, I think M-1 -- I'm not
5 sure if M-1 is the cheapest land. I kind of would argue
6 that. I think that's -- that M-1 is somehow less valuable
7 than apartment zoning. I have a hard time to believe that,
8 because M-1 is basically a free-for-all. You can do
9 anything. And the more uses you add to any zoning class,
10 the more valuable the land is. That seems to be the typical
11 trend.

12 So, I don't see how purely apartment zoning is
13 somehow less valuable than purely M-1 industrial. I think
14 that the --

15 COMMISSIONER WAKIDA: No, I'm thinking of it being
16 more -- would it drive up the price of the land if it
17 were -- if more residential units were permitted, thereby
18 making it more difficult for industrial use?

19 MR. ALUETA: I think what it does is it creates
20 a -- it can create conflicts of interest. Meaning when you
21 have a purely industrial, such as I lived at Iao Parkside
22 for ten years. And two things had occurred. When we went
23 in, the neighbors complained about us, the residential
24 neighbors and other neighbors who had similar land
25 complained about us, because we drove up the value of the

1 land because all of the sudden there was apartments.

2 The residents of Iao Parkside complained about the
3 industrial uses because we were right in Wailuku Industrial
4 area of all the trucks that backed up at VIP. I mean early
5 morning, you know, loading up. And beep, beep, beep carries
6 a long way. And so, but at the same time, the industrial
7 area owners appreciated us there, because, one, we added
8 extra security, because we walked up and down Iao Stream.
9 We walked up and down the streets at night during the --
10 and, you know, when exercising.

11 So, we were the backyard security for people who
12 would break into the back sides of the industrial area. So,
13 it works -- it can create conflicts depending upon the type
14 of industrial activities going on and the uses, so you just
15 have to be aware of that. I'll leave it to the real
16 property tax people and the real estate as to whether or
17 not -- if the apartment use.

18 COMMISSIONER WAKIDA: Thank you.

19 CHAIR HIRANAGA: Any other questions for Joe?

20 COMMISSIONER BALL: I guess I have a question.

21 CHAIR HIRANAGA: Commissioner Ball.

22 COMMISSIONER BALL: If a property is zoned M-1,
23 and I don't know who wants to answer this, but let's say
24 it's a four-acre parcel, and they are proposing some
25 apartments and part of it and some warehouses and whatever

1 part of it. Now, wouldn't that come back to the Planning
2 Commission to say no, yes, whatever? No?

3 MR. ALUETA: No, unless it's in the SMA, the only
4 time.

5 COMMISSIONER BALL: Okay.

6 MR. ALUETA: Once you have your entitlements of
7 the zoning, you would be able to build any use anywhere as
8 long as you the met the developmental setbacks and
9 developmental standards.

10 DIRECTOR SPENCE: Just as an added note, most of
11 your light industrial, most, not all, is within the special
12 management area. So, there would be some kind of review of
13 it, not all. I see some things outside.

14 MR. ALUETA: It's actually the -- for some reason,
15 we got the dark purple as the light industrial. So, if you
16 look at the Kihei map, all of that is outside. All of that
17 is on the mauka side of Piilani Highway, so that's not
18 subject to any review. Neither is any land in Lahaina where
19 you see all the industrial area that goes up above Safeway.

20 In Kahului, the vast majority of -- you see the
21 purple again is light industrial. A lot of that is outside
22 of the SMA, because the SMA line does not go to Dairy Road.
23 It's actually at Kaahumanu. So, the only areas that would
24 be in the SMA are say the old Y Hata site. I've really got
25 to update my map names. And then Kaahumanu, Queen Kaahumanu

1 Center, but that's actually M-2.

2 CHAIR HIRANAGA: Questions. Commissioner Mardfin.

3 COMMISSIONER MARDFIN: Would you explain to me the
4 difference in impact on the developer as well as
5 requirements if you have the apartments in an accessory use
6 versus some other use? It's currently a special use permit
7 that they need?

8 MR. ALUETA: No. Currently, under the existing
9 M-1 district, apartments are an allowed use. So, you can do
10 it as a freestanding apartment complex. The one proposal as
11 indicated would be --

12 COMMISSIONER MARDFIN: So, that would be under
13 Permitted Uses .020 if you were just taking what we
14 currently have under permitted use?

15 MR. ALUETA: Yes. If you look under Page 3, on
16 the table, it says 32.

17 COMMISSIONER MARDFIN: And you struck it out.

18 MR. ALUETA: We struck it out.

19 COMMISSIONER MARDFIN: Okay.

20 MR. ALUETA: And if you look at Page 1, under
21 uses, we have use of permitted in B-1, B-2, B-3 districts,
22 provided, however, no building structures, da, da, da. But
23 then it says here, except for dwelling units located above
24 or below the first floor, okay. So, that means you could do
25 an apartment above or below or have dwelling units above or

1 below.

2 COMMISSIONER MARDFIN: As a permitted use?

3 MR. ALUETA: As a permitted use, but you would
4 have to do it above or below the first floor.

5 COMMISSIONER MARDFIN: So, this is sort of the
6 stacking argument because --

7 MR. ALUETA: Right. We were adding that, because
8 we did that within the B-1, B-2, B-3 district. We added --
9 again, we were trying to infuse a mixed use type of, or I
10 should say residential uses within the commercial area. And
11 we did it by adding -- but we didn't want -- again, just
12 like we don't want retail overtaking industrial, we don't
13 want residential overtaking your downtown commercial core.
14 So, you want to have it as up or down, below as an
15 accessory.

16 COMMISSIONER MARDFIN: So, those -- currently
17 apartments are a permitted use?

18 MR. ALUETA: That is correct.

19 COMMISSIONER MARDFIN: The proposal is to have as
20 a permitted use apartments as long as it's not on the first
21 floor?

22 MR. ALUETA: Essentially, yes.

23 COMMISSIONER MARDFIN: Because you said above or
24 below?

25 MR. ALUETA: Correct, above or below.

1 COMMISSIONER MARDFIN: So, first floor wouldn't
2 be, but any other floor could still be apartments, so it's
3 only a minor glitch on anybody that wants to build
4 apartments. They would have to reserve the first floor for
5 something else.

6 MR. ALUETA: The idea would be for retail or some
7 type of light manufacturing or industrial.

8 COMMISSIONER MARDFIN: Okay. Now, you -- I think
9 I heard somebody say under -- on Page 5 under accessory
10 uses, somebody was suggesting it be an accessory use.

11 MR. ALUETA: That was me to make it more clear, if
12 they wanted to -- if it wasn't clear with Section A, or if
13 you wanted to have apartments as an accessory use. So, as
14 Commissioner Ball noted, if you had a four-acre site, right,
15 and you had a 20,000 square foot retail space, freestanding
16 retail building, and you wanted to build some freestanding
17 apartments on the property, you could. And therefore --

18 COMMISSIONER MARDFIN: And you wouldn't have to
19 reserve the first floor?

20 MR. ALUETA: And you wouldn't have to reserve the
21 first floor for that. That way it would allow for more
22 developmental flexibility for larger parcels. So, as long
23 as you had -- but again, the whole concept is as long as
24 they create that, again, accessory, meaning the whole
25 primary purpose of that site is say maybe a Safeway or some

1 type of grocery store, and then they add another hundred
2 apartments, you know.

3 And it would be up to the Director to determine is
4 that considered an accessory structure to that.

5 COMMISSIONER MARDFIN: And for an accessory
6 structure --

7 MR. ALUETA: Or accessory uses.

8 COMMISSIONER MARDFIN: Accessory use, do you need
9 to get any special approvals, or it would just -- it
10 wouldn't come to the Commission, it wouldn't go to the
11 Council, it would just be the Director saying, yeah, that's
12 okay?

13 MR. ALUETA: It would be the Department
14 determining. And that could be appealed. Like anything
15 else, if you appeal the Director's decision, you come to the
16 Commission.

17 COMMISSIONER MARDFIN: Thank you very much.

18 CHAIR HIRANAGA: Commissioner Shibuya.

19 COMMISSIONER SHIBUYA: Joe, in your experience as
20 an apartment user, about how many -- what percentage of
21 those in the apartments are actually work forces for the
22 light industrial areas? It's more of a reality check kind
23 of question. In theory, we talked about, yeah, this is a
24 good work force type living dwelling arrangement, mixed use.

25 MR. ALUETA: I will tell you that -- well, the

1 Korean bar maids do prefer right there. They -- no, it's
2 true. They are probably the most work -- you know, they
3 want to live right next to or down the road from where they
4 work. So, that's why Puuone Towers was a primary spot, or
5 like they tried in certain areas.

6 And Iao Parkside, they -- again, you know, not too
7 many in Iao Parkside. But there are a lot of small
8 apartments along Lower Main, as you indicated, that were
9 those who live and work. I mean if you remember the old
10 Patao service station, same thing. They lived in the back
11 or nearby. A lot of those small apartments that you see all
12 along that, maybe like five units are a live-work type
13 situation.

14 In Mill Street you see -- one of the first
15 concepts that I talk about, which is it is the apartments
16 are above. The person -- and then down below is retail.
17 So, you have the gym below. And a lot of those units were
18 actually sold as a townhouse. Meaning you could only buy it
19 if you bought the -- I mean you bought basically a vertical
20 condo. You bought the retail on the bottom, and you bought
21 the apartment on the top. A lot of those are sold that way.
22 But it kind of -- it's a natural progression for where you
23 have a retail in the front or retail on the bottom.

24 Kaohu Stop, same thing down here. You have the
25 retail, retail on the bottom, and the living quarters above

1 or in the back. And so, that's very similar, and that's why
2 I wanted to introduce that into the business district. But
3 we felt the industrial area is the same way. We feel it
4 should be introduced in that way. But there are those. I
5 don't know what percentage. I think as gas gets more
6 expensive, people look at that. But, you know --

7 DIRECTOR SPENCE: And just as a P.S. to that, you
8 need to offer the opportunity. I don't know if there's any
9 surveys or anything, how many people, you know, in Iao
10 Parkside actually work in the Wailuku Industrial area. But,
11 you know, if you don't provide the opportunity, then there
12 is no possibility of doing it.

13 COMMISSIONER SHIBUYA: Understand.

14 CHAIR HIRANAGA: Commissioner Wakida.

15 COMMISSIONER WAKIDA: Unless I'm mistaken,
16 according to the way this first on Page 1, Number 1 is
17 written, it doesn't say what has to happen on the first
18 floor. In other words, an apartment could be built, and the
19 first floor is just open space for parking, or it just -- it
20 says that the dwelling units are located above the first
21 floor, but it doesn't say the first floor has to be retail.

22 MR. ALUETA: That's a good point.

23 COMMISSIONER WAKIDA: So, I've seen -- we've all
24 seen apartment buildings where they're just up on stilts a
25 bit, and the first floor is parking or pass through or that

1 kind of thing. So, was that also your intent?

2 MR. ALUETA: It wasn't -- no, it was not the
3 intent, but I guess the way it was -- except for first
4 floor. Yeah, I guess you could have basically a commercial
5 garage on the first floor.

6 COMMISSIONER WAKIDA: Or just parking for tenants?

7 MR. ALUETA: Parking for tenants, that's true.

8 COMMISSIONER WAKIDA: So, that would be
9 acceptable? I mean was that your intent, or did you want to
10 specify it needed to house retail?

11 MR. ALUETA: We can add that. If that's the
12 intention, then we can -- I mean we can put on the notes and
13 exception.

14 COMMISSIONER WAKIDA: Well, I wasn't sure
15 what your Department's intent was.

16 MR. ALUETA: The intent was to be for it to be
17 used for retail or some type of industrial use.

18 COMMISSIONER WAKIDA: Then it probably should
19 specify that.

20 MR. ALUETA: We can add that, the notes and
21 exceptions in the box next to it. Another location that was
22 sold this way was in the millyard industrial where Nagamine
23 Photo, there's a bunch of retail. There was all retail, and
24 again, it was sold as condominiums where they have an
25 apartment above it with the retail on the ground.

1 CHAIR HIRANAGA: Commissioner Ball.

2 COMMISSIONER BALL: Back to Penny's point, there's
3 an apartment behind the Kahului Safeway that has that
4 similar thing, the parking underneath and then the living
5 area above. So, I would just not want to see them now be in
6 violation of anything because we change the requirement on
7 them. Because I think some of those remedies can't be
8 solved because the land size isn't big enough to fit the
9 parking requirement, right.

10 And that may restrict some development, too, in
11 where they're kind of really just going to build the
12 apartments, because the other side of the property is where
13 their retail is set up. So, they need parking for all of
14 that. So, their intent may be, okay, we're going to put the
15 parking underneath the building for the residents. They get
16 some covered parking and tradeoff, and the other parking
17 would be for the retail.

18 MR. ALUETA: Two points, good points, is that,
19 one, that I believe that's in the -- yeah, that is in the
20 industrial district next to Safeway. I'm familiar with it,
21 but I think that was an affordable housing. They got an
22 exemption, so I think that's why that was a little higher
23 than would normally be allowed in that district. And we
24 have a provision at the very end that allows for any use
25 that was constructed with building permits to be continued

1 and maintained. So, it doesn't fall -- wouldn't fall into
2 that sort of arbitrary, nonconforming use where they could
3 never do anything again with it.

4 And then secondly, the -- I lost my train of
5 thought, sorry.

6 COMMISSIONER BALL: The apartment with the
7 industrial area, the retail.

8 MR. ALUETA: On the parking area, it would be
9 beneficial. Because we do have a provision, again, when we
10 modified the parking ordinance a couple of years ago, we
11 added that mixed use development provision, so that if you
12 did apartments with a retail, you would qualify for a
13 parking waiver or reduction of up to 30 percent. So that
14 would alleviate some of that conflict.

15 CHAIR HIRANAGA: Commissioner Shibuya.

16 COMMISSIONER SHIBUYA: Just housekeeping
17 definition kind of thing. In the business area, you call
18 it, B-1, B-2, B-3. In the light industrial, you call it
19 M-1, M-2, M-3. Why are we not calling it -- M for what,
20 manufacturing? Why are we calling it industrial instead of
21 manufacturing?

22 MR. ALUETA: I have no idea. This predates my
23 existence.

24 COMMISSIONER SHIBUYA: Just a clarification. I
25 just want to have some consistency in how we label things.

1 I can see the breaking up of different categories of
2 fabricating, manufacturing, transforming raw materials into
3 products that are useful. I see that concept, and I like
4 that concept.

5 The mixed use of work forces as well as the actual
6 fabricating and the actual creation of some new products or
7 systems is worthwhile. And so, I see that. But I would
8 like to clean up what M-1 means, not light industrial.
9 Because that -- unless you want to put L-1 or I-1. I don't
10 know how you guys want to do that.

11 MR. ALUETA: Then it would confuse, because LI is
12 the community plan designation for light industrial. And HI
13 is for --

14 COMMISSIONER SHIBUYA: All I want is some
15 consistency.

16 MR. ALUETA: Okay. Well, we're consistent with
17 using M. And it's M-1, light industrial; M-2, heavy
18 industrial; and M-3, restricted industrial.

19 COMMISSIONER SHIBUYA: Paren manufacturing?

20 MR. ALUETA: Pardon me?

21 COMMISSIONER SHIBUYA: Paren manufacturing?

22 MR. ALUETA: Oh, okay. If you want, if that's the
23 will of the Commission, we can add that.

24 COMMISSIONER SHIBUYA: I'm just trying to make
25 some sense out of it.

1 CHAIR HIRANAGA: Just a comment. These zoning
2 codes are designations have been around for a very long
3 time. And to start fiddling around just to make it appear
4 more appropriate, we might have to recodify the entire
5 County Code. I wouldn't suggest it. I think most people
6 involved in real estate development understand what M-1
7 stands for.

8 COMMISSIONER SHIBUYA: I take exception to that,
9 Mr. Chair.

10 CHAIR HIRANAGA: So noted.

11 COMMISSIONER SHIBUYA: I think --

12 CHAIR HIRANAGA: So noted. Commissioner Mardfin.

13 COMMISSIONER MARDFIN: One quick, and then a bunch
14 of more serious ones. I presume when you listed under Page
15 1, you have any use permitted, B-1, B-2, B-3. You didn't
16 put BC-T, because there are no industrial areas in BC-T; is
17 that correct?

18 MR. ALUETA: No, because the uses within the those
19 BC-T districts are covered by the -- by the B-1, B-2, B-3.
20 The only difference is that the components with the BC-T has
21 a more design orientation, has a combination of Euclidian
22 and form-based code, so it kind of like has a restriction of
23 the use, but it also has design restrictions on top of it.
24 So, I didn't feel it was appropriate. So, the use is pretty
25 much the same as B-1, B-2 and B-3.

1 DIRECTOR SPENCE: When we have -- pardon me,
2 Mr. Chairman.

3 CHAIR HIRANAGA: Director.

4 DIRECTOR SPENCE: When we have projects in the
5 rural areas like Pauwela or Haiku, we apply the design
6 guidelines in those areas.

7 COMMISSIONER MARDFIN: Okay.

8 CHAIR HIRANAGA: Commissioner Shibuya.

9 COMMISSIONER SHIBUYA: In some of the rural areas,
10 as Commissioner Mardfin mentioned, we have BC-T, Business
11 Community Town Centers type of construct. In Kula, it's
12 rural. You have agriculture. But people using and stretch
13 that rural definition, and we have to fix farm equipment.
14 And if they do, then they might be in violation, would they
15 not, because they're not light industrial, are they?

16 MR. ALUETA: No. If it's an accessory to a
17 farming activity, like my tractor breaks down like it did,
18 and it cost me -- I'm not going to say how much, but it cost
19 me a lot. And either the guy comes, and depends on where it
20 breaks, the guy is going to come and fix it on my property.
21 If it doesn't, then I normally would -- most repair shops
22 are going to truck it to the repair shop, which I wouldn't
23 say how much that cost. But anyway, that's the kind of
24 thing that most people who have farm equipment are going to
25 do.

1 They're either going to fix it in a field, and
2 basically, it's an accessory to the use, or they're going to
3 truck it out of the site. As you know, you will see, we do
4 have industrial lands that are in the upcountry region.

5 CHAIR HIRANAGA: Any other questions?
6 Commissioner Mardfin.

7 COMMISSIONER MARDFIN: Okay. Now, I would like to
8 start to address some of the comments we got from people.
9 Let's start with Exhibit 5 on wellhead protection from the
10 Board -- Department of Water Supply. And my questions there
11 were, since I didn't have -- they made -- they have a
12 wellhead protection strategy that they're working on. Is
13 there an overlap between these two things? Would any of the
14 things we're proposing in your proposed legislation be in
15 conflict with their proposed policy?

16 MR. ALUETA: No, because we're the land use
17 entitlement. We're not rezoning any land, and we're not
18 giving anybody a new development -- we're not giving anybody
19 a developmental permit. Normally, these wellhead -- Water
20 Department will come into play when you have a development.
21 So, when you come in for a building permit or even a
22 subdivision in the industrial area, the Water Department
23 will tell you you need to create a new type of wastewater
24 system, or EPA also comes into play for industrial areas.
25 When they do the thing, they require -- if you're changing

1 oil or anything, they require a concrete slab down, which is
2 what they did for Fong Construction.

3 And so, a lot of that is regulated under a
4 different type of thing. Wellhead protection primarily
5 deals with wastewater disposal. So, if you are not on the
6 County system and you have a separate individual wastewater
7 treatment facility, then you have to develop -- if you're
8 1,000 feet within the well, you have to build a different
9 type of system. You just can't have a cesspool. You have
10 to have an aerobic system and chlorination system.

11 COMMISSIONER MARDFIN: So, suppose we had a
12 chemical storage facility or chemical processing facility,
13 that would be allowed typically in an M-1 or M-2?

14 MR. ALUETA: Correct. And again, we're not
15 rezoning anybody. Those are the issues that would come up
16 during the zoning process. But I think if there's a
17 chemical manufacturing, the two biggest issues -- I think
18 Water will be there; however, it's going to be Fire and the
19 EPA, who are going to be --

20 COMMISSIONER MARDFIN: But my point being -- I
21 mean they already exist. The conflict already exists,
22 because we allow a lot of these things. What I'm wondering
23 is they took the trouble to tell us about their wellhead
24 protection strategy. And they would overlay, in effect,
25 overlay their regulations on top of whatever regulations we

1 have for zoning or the Department of Planning has for
2 zoning. Is that the way you interpret it?

3 MR. ALUETA: Yes, but they would also during the
4 zoning process and during the community plan process, which
5 is when this map is going to be more critical, so they're
6 going to lay it over and say -- and so, we can see where
7 they have their wellhead protection strategies or areas of
8 concern. And obviously, that's not going to be the area
9 where you want to designate on your new community plan on
10 M-3 or any type of the M-1 or M-2. You're going to say I
11 want to avoid those areas.

12 COMMISSIONER MARDFIN: Under notes and exceptions,
13 in your proposed bill, under those and exceptions, should we
14 put something in there about and note that these have to be
15 consistent with the Board of Water Supply conditions?

16 DIRECTOR SPENCE: No, it's automatically that way.

17 COMMISSIONER MARDFIN: So, we don't need to
18 specify?

19 DIRECTOR SPENCE: Well, when applicants come
20 before this body for a recommendation to the Council on
21 zoning, we already circulate it to the Board of Water
22 Supply, you know, the zoning request. They review it.
23 Specifically, this is one of the things they're going to
24 review it for is where is our wellhead protection areas.

25 They'll make a note of that on, you know, their

1 comments to --

2 COMMISSIONER MARDFIN: But they won't have to come
3 to us necessarily, if it's not an SMA?

4 DIRECTOR SPENCE: No, I'm talking about change in
5 zoning. Right now everything you see exists, you know.

6 COMMISSIONER MARDFIN: Right. I'm not talking
7 about a change in zoning. Somebody goes in and purchases an
8 M-1 zoned lot. According to our regulations, he can put
9 chemical facilities on it.

10 DIRECTOR SPENCE: Uh-huh.

11 COMMISSIONER MARDFIN: Does he need -- if it's not
12 an SMA, it doesn't come before this body necessarily?

13 DIRECTOR SPENCE: Those building permits for those
14 kind of facilities are going to go to the Department of
15 Water Supply. They will check at that time.

16 COMMISSIONER MARDFIN: So, it's at the building
17 process that they would get told if they can't do it?

18 DIRECTOR SPENCE: Yes. There are multiple
19 redundant layers of review within Maui County to make sure
20 that all these kinds of things are taken care of.

21 COMMISSIONER MARDFIN: And that's why it takes
22 forever to get development, but it also protects us.

23 DIRECTOR SPENCE: Yes, it does. Those checks are
24 definitely in place.

25 CHAIR HIRANAGA: So, taking a step back. When

1 someone wants to have property rezoned before a permitted
2 use, this is just like Kahului Business Park, their
3 application is reviewed by all the departments. And the
4 Department will say we have a wellhead in this area. Please
5 note, so these types of uses should not be permitted within
6 a certain distance, radius of this wellhead. So, it would
7 be before the building process.

8 Questions. Commissioner Freitas.

9 COMMISSIONER FREITAS: Yes. I go in the light
10 industrial area all over the place, and I've never seen any
11 problems with these apartments being in the light industrial
12 area. I do work in all of these places. My question to you
13 is is there a problem with these apartments being in the
14 light industrial area that you've seen?

15 MR. ALUETA: Not that I can -- like I say, just
16 it's my experience again with regards to the complaints of
17 the neighbors with regards to, you know, increase in land
18 value, potentially increase in land value, and the tax rate
19 where you have a purely apartment use going in, noise
20 conflicts where you have freestanding, a freestanding
21 apartment in close proximity to an industrial use that they
22 may not be aware of.

23 But like I said, I think, as our Director pointed
24 out, if the Commission doesn't feel there's that much of a
25 concern, we can insert it back into as an allowed use. It's

1 just that you have these oddities of the description of what
2 the district was intended for, right, and it doesn't match
3 up with the concept of having purely apartment or
4 residential type uses.

5 And that's why it was specifically excluded, but
6 then it was added in as a use. So, we were just trying
7 to -- from a department standpoint, we were just trying to
8 clear up this conflict of how to interpret it. And the way
9 we currently interpret it is that, well, you can do an
10 apartment, because it's listed, but you can't do a single
11 family house.

12 COMMISSIONER FREITAS: And maybe you could add
13 single family houses in. Because I don't see any problem
14 with apartments in the light industrial.

15 CHAIR HIRANAGA: Commissioner Shibuya.

16 COMMISSIONER SHIBUYA: I gave you -- I'm just
17 responding to Commissioner Freitas' question in terms of the
18 impact of residences and/or apartments mixed in with the
19 light industrial or manufacturing type of facilities. The
20 problem here comes in like Kaka'ako, when you have
21 residential areas, and all of the sudden, you allow
22 apartments, because you're taking care of the work forces
23 working in that area and because it's also cheaper there,
24 these homes now had been used to lower rents and lower costs
25 for land.

1 And all of the sudden, because of this industrial
2 zoning, these people are forced to move out. That's the
3 long term, down-the-road type problem. My concern, too,
4 it's a double-edged sword. It's nice to have residences
5 within and work forces within this manufacturing area. But
6 they also -- you have protection for the property, but you
7 also have pilfering and vandalism as a possibility, too. It
8 works two ways. So, I think I'm more in favor of having a
9 mixed use, giving people a chance to respect the properties
10 of others and giving this opportunity to be positive and
11 more productive. Thank you.

12 CHAIR HIRANAGA: Commissioner Mardfin.

13 COMMISSIONER MARDFIN: On Exhibit 4, there is a
14 letter from or to the Planning Director from the Public
15 Works Director asking a question. Would a County Highway
16 baseyard containing an auto repair shop, road and
17 construction equipment, traffic signs and marking shop,
18 traffic signal maintenance shop, fuel storage and dispensing
19 tanks, equipment and vehicle storage, office space be
20 appropriate in a light industrial district and/or heavy
21 industrial district? And the answer would be?

22 MR. ALUETA: Residential. It's a government
23 facility, and therefore, it can be in any location. But for
24 that particular use, probably --

25 COMMISSIONER MARDFIN: If it were private.

1 MR. ALUETA: It would work in the light industrial
2 if it was an enclosed building.

3 COMMISSIONER MARDFIN: Would it work in the --

4 MR. ALUETA: It would be allowed in heavy.

5 COMMISSIONER MARDFIN: There was another question.

6 MR. ALUETA: Remember, I'm not the official
7 determining body.

8 COMMISSIONER MARDFIN: I see these questions in
9 here, and I don't see the answers. It bothers me. I like
10 to get answers to things. There was a similar one by
11 aquatic resources of DLNR saying because of County
12 regulation changes, will aquarium collectors or
13 importers/exporters of aquatic life be identified as a
14 permitted use in either M-1 or M-2?

15 MR. ALUETA: Not identified. It's not going to be
16 specific. We can, but it's under general retail. It would
17 be allowed.

18 COMMISSIONER MARDFIN: It would be -- typically
19 would be allowed?

20 MR. ALUETA: Yeah, typically it would be allowed.

21 CHAIR HIRANAGA: Any other questions?

22 COMMISSIONER MARDFIN: Yes.

23 CHAIR HIRANAGA: I have a question.

24 COMMISSIONER MARDFIN: Go ahead.

25 CHAIR HIRANAGA: So, you're proposing making

1 apartment use accessory to either retail or industrial. But
2 I guess when you say accessory, is it still an accessory use
3 say if you have first floors other than apartment use, but
4 then you have -- I don't know what the height limit is --
5 two or three stories of apartment use above it; what is
6 really the accessory use?

7 MR. ALUETA: I mean that's at the discretion of
8 the Director. I think that we were trying to at least
9 trying to insert apartments as an allowed use, but not as
10 the primary or principal -- I mean the dominant use as the
11 whole area.

12 CHAIR HIRANAGA: That would mean that the
13 apartment use shall not exceed by floors or square footage
14 the retail or warehouses?

15 MR. ALUETA: It could be interpreted that way. As
16 long as you have 51 percent of your floor area I guess is
17 being used for retail or industrial, and the other 49 is
18 apartment, then I guess by that logic, yeah, it would be
19 considered an accessory.

20 CHAIR HIRANAGA: One last question. What is a
21 custodian outbuilding?

22 MR. ALUETA: I guess it's old language that was
23 left over for security watchmen. Like you know where they
24 had a separate structure that was used for security for
25 large industrial areas? So, like say HC&S, I mean even

1 though it's ag, it's still an industrial type use. They
2 have a security office where they're, you know, they do the
3 patrols where they have a gate house where someone enters
4 the property. And it's a separate structure, and it's
5 considered an accessory to it.

6 CHAIR HIRANAGA: Commissioner Shibuya.

7 COMMISSIONER SHIBUYA: Taking off of Chairman's
8 questioning, we do have a height limitation, a maximum
9 height 60 feet. So, there is a possibility of having more
10 dwellings within that given parcel, right. And so, it comes
11 back to the primary use I think the Chairman was talking
12 about. Is the primary use for parking and dwelling, or is
13 the primary use in this particular case the function of
14 manufacturing and storing raw materials?

15 If I was to store raw materials, I would probably
16 like to store it on the first floor, ground floor. And
17 manufacturing, because I have my machinery and equipment, I
18 certainly would like to put it in the first floor, too. If
19 I had to store it, then maybe I would consider putting it on
20 the second floor and having a dwelling above because I have
21 60 feet, right. So, these are considerations we can think
22 about.

23 But the primary question is what is the purpose of
24 M-1, what is M-1? And I come back to the same question
25 again. What are we using it for? Light industrial. It

1 doesn't match. Manufacturing, fabrication. I think that's
2 more descriptive of what we're using it for, making
3 mechanical systems, creating robots, things of this nature.

4 MR. ALUETA: Right. And again, I agree with you
5 in your line of thought, and that's why having apartments as
6 a permitted principal use doesn't -- doesn't add up with
7 the -- with the description of what the district is intended
8 for.

9 COMMISSIONER SHIBUYA: That's correct.

10 MR. ALUETA: And that's why, at the same time, you
11 have to recognize that it was inserted, you know, back in
12 1964 or whenever, and it has -- and we have properties that
13 are developed, so we want to recognize, one, the existence
14 of those structures, allow them to continue to be used, to
15 be rehabilitated and rebuilt if it burns down, if they had a
16 building process, and to allow new apartments, but only if
17 they are accessory to or I guess on the second floor or
18 below the first floor area.

19 CHAIR HIRANAGA: Commissioner Mardfin.

20 COMMISSIONER MARDFIN: On Page 6, this is really
21 manini, but you have a table. And on probably the fifth,
22 under notes and exceptions, it says minum. Is that supposed
23 to be minimum?

24 MR. ALUETA: Yeah, I was going to go over the
25 corrections.

1 COMMISSIONER MARDFIN: Let me go on then if that
2 was just a typo.

3 MR. ALUETA: Yeah.

4 COMMISSIONER MARDFIN: On Page 7.

5 MR. ALUETA: Yeah.

6 COMMISSIONER MARDFIN: You have permits issued
7 prior to the enactment of this ordinance. What I'm trying
8 to figure out is slightly a way to reword this, so Charlie
9 Jencks doesn't have to go back through the process again,
10 but he gets grandfathered in. And it says permits issued
11 prior to the enactment of the ordinance. He doesn't have a
12 permit yet I take it?

13 DIRECTOR SPENCE: No.

14 COMMISSIONER MARDFIN: What does he have?

15 DIRECTOR SPENCE: He has an approval. I mean he
16 has a zoning approval.

17 COMMISSIONER MARDFIN: Then could we say permits
18 issued prior to the zoning approval? Zoning approvals
19 issued prior to the enactment of the ordinance as opposed to
20 permits.

21 MR. ALUETA: He has a condition for a zoning for a
22 separate lot. Doesn't he have a condition of zoning for
23 Wailea 670 that makes reference to another parcel off site,
24 or is it on site?

25 DIRECTOR SPENCE: No, it's off site.

1 MR. ALUETA: It's off.

2 COMMISSIONER MARDFIN: You understand what I'm
3 trying to do is change the word permit, so it encompasses
4 what he has, but it doesn't let somebody that comes in
5 tomorrow to get any benefit.

6 DIRECTOR SPENCE: Or either preexisting approvals
7 or preexisting conditions and permits, because then you're
8 trying to cover something.

9 COMMISSIONER MARDFIN: Right. That's what I think
10 we ought to do for that situation so that he doesn't have to
11 go through the door again, but not make it so open-ended
12 that anybody can walk in now and get anything. This is now
13 in the pipeline as far as I'm concerned once we vote.

14 CHAIR HIRANAGA: I have a question. Is there a
15 time limit as to when we need to send a recommendation to
16 Council?

17 MR. ALUETA: No, this is department initiated.

18 DIRECTOR SPENCE: So, we could massage it a little
19 bit if the Commission desired and come back?

20 MR. ALUETA: Yeah. If you wanted to resee it
21 again. Otherwise, normally, like I say, if the intention,
22 if Commissioner Mardfin's potential amendment is the -- if
23 that's your intent, then the Department can work with
24 Corporation Counsel to come up with a better worded language
25 to cover that. I just think it was very dangerous for this

1 one specific person or specific project, and so, I think
2 that's where I have my concerns.

3 I think that as the -- as proposed, right, you can
4 either -- he could still build his apartments. He would
5 just need to have some type of retail. And like I said, if
6 you added it as apartments as an accessory use, then he
7 could do it by -- he could have a retail building and still
8 do his apartments.

9 DIRECTOR SPENCE: I think we should -- you know,
10 it would probably be better if we looked at the conditions
11 of zoning and everything.

12 MR. ALUETA: Okay.

13 COMMISSIONER MARDFIN: I mean what I'm saying is
14 he may not want to do those additional things. And we've --
15 I mean I can feel for him. He said he wanted to do
16 something good. He's doing some work force housing. He
17 wants to do some good things. And yet, we're going to -- if
18 this passes before he gets his permit done, he's in for a
19 world of hurt I think, and I would like to avoid that.

20 CHAIR HIRANAGA: Not necessarily. Correct me if
21 I'm wrong, he can get a variance?

22 MR. ALUETA: Yeah, a variance.

23 CHAIR HIRANAGA: Commissioner Freitas.

24 COMMISSIONER FREITAS: Yeah, what this is adding,
25 it's adding more, what do you call, costs to the developer.

1 Because what would happen on him if he could not get a
2 variance let's say, he has to do 49 percent versus 51
3 apartments?

4 MR. ALUETA: Okay, yeah. Commissioner Freitas, I
5 understand your issue, but it's like -- remember this is
6 the -- this is the light industrial district, and that's why
7 we're just trying to -- it's not the apartment district.

8 COMMISSIONER FREITAS: I understand that.

9 MR. ALUETA: So, if you're trying to do -- the
10 vast majority of the industrial lands, right, the vast
11 majority are used for industrial purposes. It's only if a
12 developer chooses to build a freestanding and sole purpose
13 apartment complex within the industrial district.

14 COMMISSIONER FREITAS: Now, as zoning stands right
15 now, if you look at all of the light industrial, you have
16 relatively a small percentage of apartments on the light
17 industrial. It's primarily used for light industrial. So,
18 that's where why are we even addressing this thing if the
19 majority of it is used for the intended purpose?

20 MR. ALUETA: And that's a good point. If you
21 don't feel the correction that the Department is proposing,
22 we can just insert apartments back into as an allowed use.

23 COMMISSIONER FREITAS: Thank you.

24 CHAIR HIRANAGA: Commissioner Ball.

25 COMMISSIONER BALL: I would like to make a motion

1 then to add the apartments as an allowed use back into the
2 document.

3 COMMISSIONER WAKIDA: Excuse me.

4 CHAIR HIRANAGA: We're not done with the
5 questioning of the staff at this time. Do you have a
6 question, Commissioner Wakida?

7 COMMISSIONER WAKIDA: No. I was going to say
8 doesn't the Department make a recommendation first?

9 CHAIR HIRANAGA: I think he's already made a
10 recommendation.

11 MR. ALUETA: We have a recommendation, but I would
12 also like to --

13 CHAIR HIRANAGA: I have one more question.

14 MR. ALUETA: -- just go over the corrections.

15 CHAIR HIRANAGA: One more question.

16 MR. ALUETA: Yeah.

17 CHAIR HIRANAGA: Your proposal to take apartment
18 use out of M-1, what zoning currently allows apartment use?

19 MR. ALUETA: Apartments.

20 CHAIR HIRANAGA: Only apartment zoning?

21 MR. ALUETA: I think business district also has
22 some.

23 CHAIR HIRANAGA: B-1, B-2, B-3?

24 MR. ALUETA: Yeah, I think you're allowed -- I
25 don't have my Code in front of me. But we did allow for

1 dwelling units. We did allow for dwellings -- in our
2 amendments that you guys passed, we allowed for dwelling
3 units above and below the first floor within the vast
4 majority of the business districts, if not all. So
5 technically, you could do dwelling apartments above in the
6 business district.

7 CHAIR HIRANAGA: Commissioner Shibuya.

8 COMMISSIONER SHIBUYA: This is a question again on
9 Department of Health Maui, notes HAR Chapter 1146 regarding
10 noise levels for stationary equipment and also that holding
11 tanks and portable toilets are not allowed in nonsewered
12 areas. Can you describe or give an explanation of the
13 problems here associated with this?

14 MR. ALUETA: Which one, the noise level or --

15 COMMISSIONER SHIBUYA: Both. First the noise, and
16 then go into the holding tanks and portable toilets.

17 MR. ALUETA: The noise level is pretty standard.
18 You mostly see that within your SMA permits when you have
19 your developmental permits. The Department of Health
20 regulates noise levels for stationary equipment. So, if you
21 have a large compressor for either a central AC or split
22 unit AC system, it kicks on and makes a lot of noise.

23 And therefore, if you're located next to it, you
24 know, you can't have so much noise going beyond the property
25 line. And that's pretty typical.

1 And the storage is the -- I believe what they're
2 referring to is the use of port-a-potties for extended
3 periods of time, or to do a septic system where you have a
4 sewer system. So, if you have a sewer system, if you're
5 able to connect to a sewer system, you are required to
6 connect to a sewer system. You cannot do a septic system or
7 cesspool, septic system or cesspool in that sliver of Kula
8 if you have the ability to go to a wastewater treatment
9 facility.

10 COMMISSIONER SHIBUYA: Thank you.

11 CHAIR HIRANAGA: Questions. If no further
12 questions, I guess we can have the staff's recommendation.

13 MR. ALUETA: I guess at this time, one of the
14 things that we would -- on the corrections on typographical
15 errors, reserved should be correctly spelled, and I went
16 over that really quickly as well as adding the UM on Page 6.

17 On Page 7, subject to debate on whether or not
18 recording should be a hyphen or whatever. I mean the way I
19 got it out of the planner dictionary, it had a hyphen. So,
20 it's up to you guys whether it should be hyphen or a slash
21 or connected. And then the Department -- at this time, we
22 would add as accessory use or building apartment to it.
23 Therefore, it would give developers the opportunity to do a
24 freestanding apartment on a larger lot if they had it -- if
25 they had a retail or industrial type use rather than just

1 doing it above or below the first floor.

2 And the Department would also work out some
3 language to eliminate the potential loophole of just having
4 a garage for apartments on the first floor under notes and
5 exceptions.

6 CHAIR HIRANAGA: I'm wondering if it might be more
7 efficient for Commissioners to provide comments to staff and
8 have them come back with a revised proposal where they can
9 do research on issues presented by the Commission, or we can
10 open the floor to a motion, whereby you make either
11 recommendations to approve or deny to the Council. So, I'll
12 just open the floor for a motion.

13 Commissioner Mardfin.

14 COMMISSIONER MARDFIN: I'll start with the first
15 major motion. I move that we approve the draft ordinance as
16 recommended by the Planning Department.

17 COMMISSIONER SHIBUYA: Second.

18 CHAIR HIRANAGA: Seconded by Commissioner Shibuya.

19 COMMISSIONER MARDFIN: And that we should be open
20 to amendments to this.

21 CHAIR HIRANAGA: How many amendments are you going
22 to be proposing?

23 COMMISSIONER MARDFIN: I'm not going to propose
24 any. But maybe I will, but let somebody else start.

25 CHAIR HIRANAGA: I'm just wondering. Discussion.

1 COMMISSIONER LAY: I would like to include
2 apartment -- apartments back in, amendment.

3 COMMISSIONER MARDFIN: As a permitted use?

4 COMMISSIONER LAY: Yes.

5 COMMISSIONER BALL: I'll second that.

6 CHAIR HIRANAGA: There's a motion to amend the
7 main motion to include apartment use. Motion by
8 Commissioner Lay. Seconded by Commissioner Ball.
9 Discussion. Commissioner Lay.

10 COMMISSIONER LAY: I think we should add it back
11 in, because for work force housing, it's a good thing if we
12 can be close to our work area, and also it might give more
13 availability for affordable housing, affordable apartments.
14 Because there's a lot of people out there who would rather
15 rent than get their house right now, and a lot of people get
16 into -- as affordable apartments become available, they can
17 get into these apartments, save up their money and get their
18 house afterwards. I think it's a good thing.

19 CHAIR HIRANAGA: Commissioner Mardfin.

20 COMMISSIONER MARDFIN: I agree with the premises
21 that Commissioner Lay has; however, I'm going to vote
22 against this. Because we have a problem with apartments
23 squeezing out other industrial uses. We have relatively
24 little industrially-zoned land. And so, I mean that was the
25 whole discussion a few months, maybe a year or two ago, when

1 we first started dealing with this. And it allows,
2 basically it allows for apartments with the first floor
3 being used for some sort of retail or industrial purpose, so
4 I don't see that as a huge limitation.

5 And I think -- but I would entertain a motion to
6 also include it as an accessory use. So, if you wanted to
7 have your industrial building here and your housing nearby,
8 that would be acceptable to me. But as a full-blown
9 permitted use, I don't think it should be apartments, so I'm
10 going to vote against the motion.

11 CHAIR HIRANAGA: I just have a comment. I think
12 there's a danger in making a statement such as what
13 Commissioner Mardfin just made. Because if you look at
14 Kahului Industrial area, I can recall only one apartment.
15 That's Kahului Terrace. If you look at Wailuku Industrial
16 area, I can only recall one apartment use. That's Iao
17 Parkside. As far as, well --

18 MR. ALUETA: All of Lower Main. The vast majority
19 of Lower Main going up from -- there's apartments, I mean.

20 CHAIR HIRANAGA: Those are not B-1 or B-2 or B-3.
21 They're M-1?

22 MR. ALUETA: Yeah, M-1.

23 DIRECTOR SPENCE: But Lower Main is also mixed
24 uses.

25 MR. ALUETA: That's what I'm saying. There are

1 mixed uses where you have the gas station, service station
2 in the front, and you have a small apartment complex in the
3 back. The retail in the front, the one green apartments in
4 the front, and you have like retail on the front and then
5 apartments in the back. Puuone Towers is Puuone commercial
6 projects.

7 You have the -- you know, you have the commercial
8 buildings in the front of Puuone Towers. And then you have
9 the Puuone Tower Apartments. So, you see the mixed use
10 already going on at least in that area.

11 CHAIR HIRANAGA: I guess I would prefer that this
12 gets sent back to the Department with concerns versus
13 calling for votes now. But if that's not the -- what the
14 Commission wants to do, we can continue. Commissioner
15 Freitas.

16 COMMISSIONER FREITAS: Yes. I'm going to support
17 the amendment. Because I -- the M-1 is very little use in
18 apartments. And this ordinance has been in place, and
19 we don't have a problem as far as how it's set up right now
20 with the, what do you call, apartments -- with the
21 apartments and the, what do you call, M-1 working together.

22 I've been through every industrial area with my
23 type of business, and I've never seen any problem.
24 Everybody seems to get along, and I think it's a good thing.

25 CHAIR HIRANAGA: Commissioner Shibuya.

1 COMMISSIONER SHIBUYA: I'm going to support it.
2 The interesting thing here is that I see both sides of it.
3 I see the hazardous and the nuisance type of qualities of
4 living above or near a manufacturing fabricating type of
5 operation. Welding emissions as well as the gases that are
6 emitted, radiation from electrical equipment that can
7 distort or interfere with your television and/or other
8 living conveniences.

9 There are some setbacks to this. And as long as
10 we understand that those residences don't have the primary
11 use, it is the actual manufacturing that is a primary use of
12 this property.

13 CHAIR HIRANAGA: Any further discussion?
14 Commissioner Wakida.

15 COMMISSIONER WAKIDA: I am going to vote -- I'm
16 really on the fence, but I think I'm going to vote against
17 the amendment. Because I have a concern about -- about
18 apartments pushing out light industrial and small businesses
19 not being able to have space that they afford.

20 I would hate to see a property owner decide to
21 demolish a light industrial low-rise building and put up a
22 three- or four-story apartment building because they can get
23 more money for that income. So, at this point, I'm going to
24 vote against the amendment.

25 CHAIR HIRANAGA: Any other discussion? If not,

1 I'll call for the vote on the amendment to include
2 apartment -- or Director, go ahead, state the amendment.

3 DIRECTOR SPENCE: The amendment is to keep
4 apartments as a permitted use in the light industrial area.

5 CHAIR HIRANAGA: All in favor, please so indicate
6 by raising your hand.

7 DIRECTOR SPENCE: That's five aye's.

8 CHAIR HIRANAGA: Opposed.

9 DIRECTOR SPENCE: Two nays.

10 CHAIR HIRANAGA: Motion carries.

11 Amendment, Commissioner Ball.

12 COMMISSIONER BALL: Another amendment. Possibly
13 we're talking about the not allowing parking underneath.
14 And I'll go back to Puuone where they have parking
15 underneath, also retail underneath, and then apartments
16 above.

17 So, would that then be not permitted let's say if
18 somebody wanted to build something similar to that?

19 MR. ALUETA: That amendment just made everything
20 moot. So, you made all of that, that provision on one, we
21 would strike all those. That now becomes moot.

22 COMMISSIONER BALL: All the parking?

23 MR. ALUETA: Yeah. And we would also strike it as
24 and accessory -- our recommendation as adding it as an
25 accessory use, we would strike it as being no longer

1 applicable, because now it's an allowed use. So, yeah, we
2 just make those two quick amendments. And then, let's see,
3 we would also -- we could leave in, as far as issues
4 regarding non -- I mean allowed uses, we wouldn't have to --
5 we can leave that.

6 Because I think one of the things it would do is
7 it would allow for -- it still helps single family
8 residential or existing nonconforming single family homes
9 that were built within the light industrial area out with
10 regards to that.

11 CHAIR HIRANAGA: Back to the main motion.
12 Commissioner Shibuya.

13 COMMISSIONER SHIBUYA: I would like to make a
14 friendly amendment. On Item Number 13, it says machine shop
15 or other metal working shop. I would like to reword that to
16 be machining or metal fabricating systems.

17 MR. ALUETA: Machine shop or other --

18 COMMISSIONER SHIBUYA: Or systems fabricating.
19 Because nowadays, it's not all mechanical. There's
20 integration of electronics, and so, that's why I'm asking
21 systems fabricating.

22 CHAIR HIRANAGA: Is there a second?

23 COMMISSIONER MARDFIN: I'll second it. It was
24 just a friendly amendment. He really doesn't need one. If
25 they accept it as a friendly amendment, we don't have to

1 vote on it.

2 CHAIR HIRANAGA: Who would accept it as a friendly
3 amendment?

4 MR. ALUETA: If the Director wants to accept it as
5 a change in the title. I don't see either one making a
6 difference. I think the current definition machine shop or
7 other metal working shop incorporates your intent, and I
8 don't think -- also, I don't think that changing it doesn't
9 change the intent of what we're trying to say. It all has
10 to be enclosed within the --

11 COMMISSIONER SHIBUYA: Okay.

12 CHAIR HIRANAGA: Actually, wouldn't the maker of
13 the motion have to accept the friendly amendment?

14 COMMISSIONER MARDFIN: I'll accept the friendly
15 amendment.

16 CHAIR HIRANAGA: You did not make the motion.

17 MR. ALUETA: He did. He made the main motion to
18 approve.

19 CHAIR HIRANAGA: He did, okay. So be it.

20 COMMISSIONER SHIBUYA: Secunder accepts it, too.

21 DIRECTOR SPENCE: And just for the Commission's
22 notation, we'll go back to whatever the definition is in
23 19.04 and change that if we have to.

24 COMMISSIONER MARDFIN: Having said that, I'm okay
25 with the change, but I'm also okay with it the way it

1 currently is.

2 DIRECTOR SPENCE: I understand.

3 MR. ALUETA: Can you repeat it again? You want to
4 change machine shop and other metal working shop to what?

5 COMMISSIONER SHIBUYA: Metal and systems
6 fabricating.

7 MR. ALUETA: Okay. Okay.

8 CHAIR HIRANAGA: Commissioner Mardfin.

9 COMMISSIONER MARDFIN: I remember this discussion
10 back when we were doing B-1, B-2, B-3. And Joe really
11 didn't want to change the things that were listed. He
12 didn't want to fight two battles at the same time. And I
13 understand that, and so, I don't care which way it goes. I
14 do want to mention that while I'm sorry that we have
15 apartments as an outright permitted use, I really do think
16 it should be either accessory and/or above or below the
17 first floor. It doesn't so damage the bill that I can -- I
18 don't have to vote against it.

19 CHAIR HIRANAGA: Any other discussion on the main
20 motion? Seeing none, I'll call for the vote. I guess I'll
21 have the Director repeat the motion.

22 DIRECTOR SPENCE: The motion is to recommend
23 approval to the Maui County Council upon staff
24 recommendation as amended by the Commission.

25 CHAIR HIRANAGA: All in favor, indicate so by

1 raising your hand.

2 DIRECTOR SPENCE: That's seven aye's.

3 CHAIR HIRANAGA: Opposed.

4 Motion is carried. We'll have a recess until
5 10:40.

6 (Recess taken 10:32 a.m. to 10:42 a.m.)

7 CHAIR HIRANAGA: I would like to call the meeting
8 back to order. Next agenda item is B(1)(b). Director.

9 DIRECTOR SPENCE: Thank you, Mr. Chairman,
10 Commissioners. Next item on your agenda is to discuss
11 proposed amendments, Chapter 19.26. This is M-2 heavy
12 industrial. Joe.

13 MR. ALUETA: Good morning, Commissioners. Just a
14 couple -- before we get into it, a couple of corrections.
15 On Exhibit 1 is the proposed draft ordinance. It should say
16 M-2 heavy industrial. I apologize for that. And then we
17 wanted to -- on Page 5, Page 5 where you have the tables of
18 development standards, again, the minimum, the "UM" got
19 dropped off there. And we also wanted to add for the M-2, I
20 believe we did add, I just want to confirm because it came
21 up on from a couple of the testifiers, with regards to power
22 generation facilities. It was supposed to have been added
23 in there into the M-2 area.

24 I'm just trying to confirm that. If it's not, the
25 Department is recommending the power generation facilities.

1 And that would include everything from your nuclear power
2 plant to your solar PV system.

3 COMMISSIONER MARDFIN: Under permitted uses?

4 MR. ALUETA: Under permitted uses, it would be
5 power generated facilities.

6 COMMISSIONER MARDFIN: Joe.

7 MR. ALUETA: Yes.

8 CHAIR HIRANAGA: Are you done, Joe?

9 MR. ALUETA: Sorry, just to summarize the changes
10 that are being done, the -- again, this is just part of our
11 update of Title 19. We are just -- so, standardizing, as we
12 have been going through Title 19, with regards to the
13 allowed uses, using single formats as well as creating
14 accessory uses or structure and simplifying that area.
15 Creating a special use table.

16 If you look under the old Code, it was very
17 obscure as to what was going to be special usage. We just
18 added it under permitted uses saying that it needed to get a
19 special use, but then it said it had to be approved by the
20 County Council, okay, which doesn't make any sense. So,
21 what we did was we put it under special uses, and all those
22 uses would actually be approved by the Planning Commission.

23 So, one, it clarifies the type of permit and
24 clarifies who is the approving authority, and we're making
25 it the Planning Commission. And then under -- rather than

1 having all of the development standards kind of pockmarked
2 through the whole Code, we again put in one location and put
3 in a table format for all of the development standards all
4 in one location and hopefully easier to understand. We are
5 again allowing for a freestanding antennas or turbine
6 structures with a maximum height of 90 feet. And that's
7 pretty much it.

8 CHAIR HIRANAGA: Questions. Commissioner Mardfin.

9 COMMISSIONER MARDFIN: Joe, we got a letter today
10 from MECO asking that two amendments, that energy systems
11 substations and utility facilities major be included as
12 permitted uses. Is that what your first comment was about?

13 MR. ALUETA: Yes.

14 COMMISSIONER MARDFIN: So, that's already been
15 taken care of. Their second proposed amendment was that
16 accessory structures in the setback area include utility
17 poles and similar structures. Are you folks accepting that
18 as --

19 DIRECTOR SPENCE: I think we have to. Because I
20 mean you're talking here -- I thought about this a lot. I
21 have a problem with power poles. I think they're not very
22 attractive.

23 COMMISSIONER MARDFIN: I understand.

24 DIRECTOR SPENCE: But we are also talking about
25 M-2 industrial district where you put all of the ugly uses.

1 So, you know, you need electricity to -- and a lot of it to
2 power the heavy industrial uses.

3 COMMISSIONER MARDFIN: So, the recommendation
4 that's going to be come from the Department would include
5 this amendment?

6 MR. ALUETA: I just want to clarify with Will.
7 What the letter is asking for is what we talked about, which
8 is they're allowed. Their accessory uses and structures are
9 allowed, except they want to have it within the setback
10 area. And so, that's the question is do we -- it's an
11 allowed use, power poles, but they are subject to setbacks.
12 So, do we want to have them be not subject to the setback
13 area? And that was the big question. And that's what their
14 letter is referring to.

15 COMMISSIONER MARDFIN: Would it be possible to --

16 CHAIR HIRANAGA: Commissioner Mardfin.

17 COMMISSIONER MARDFIN: Would it be possible to
18 allow them to grandfather in the poles they already have
19 there, but not put new poles in the setback area?

20 MR. ALUETA: Well, they -- currently, okay, the
21 setback and the way we are putting it in the Code right now,
22 currently their setback is zero. Okay. So, they would
23 be -- so, technically they're allowed. It's only when they
24 are adjacent to a nonindustrial use. So, in the case of
25 Maalaea -- sorry, Maalaea, they are -- and I'll just steal

1 this laser pointer. They are adjacent to ag, so they're
2 subject to the -- they have the same one for their
3 buildings. And then in the case of Kahului, again, they're
4 all surrounded by M-2, so in that case, they would be zero.

5 So, it's just that when they -- the problem that
6 we're having with -- not a problem, because is that MECO
7 will create substations, right, in certain areas. And
8 they're addressing it specifically in here, but the concept
9 they're trying the push and discuss with the Planning
10 Department is whether or not their MECO power poles should
11 be subject to the setback requirements. And but, again, in
12 the case of the M-2, they wouldn't be, unless they're
13 adjacent to another property.

14 CHAIR HIRANAGA: Just a followup. Typically,
15 aren't the power poles built in the road right-of-ways?

16 MR. ALUETA: Yes, if the -- if the power pole, if
17 it's within the County or State right-of-way, they have a
18 separate requirement. They're not subject to anything else.
19 It's only if they're within a lot or a zoning lot.

20 CHAIR HIRANAGA: So, if there's a setback area,
21 they would have to obtain an easement from the private
22 property owner in order to build in that section, or are
23 they just talking about their utilities?

24 MR. ALUETA: I think they're talking about all --
25 whether it's power stations or servicing a parcel. So, when

1 you have large parcels, typically sometimes MECO or Hawaiian
2 Tel would want to put a pole within your property. And
3 normally, they would get an easement around it typically.

4 But under the Code, under the existing Code,
5 you're technically subject to the setback. So, either you
6 have to put that pole all the way in within the building
7 setback, or they get, not an easement, but within a road
8 widening lot. And that's what typically happens. When you
9 do your larger development, and you have a road widening lot
10 dedication, and that's where the power pole is. And then
11 they string the lines straight forward and go underground
12 from that, so it's never been an issue. It's when they
13 create a small lot and put the pole there, they're subject
14 to setbacks. But they only created a small lot. That's
15 where we're having issues.

16 CHAIR HIRANAGA: Wouldn't you typically want to
17 route the power poles along boundary lines in the first
18 place?

19 MR. ALUETA: If it's within the right-of-way,
20 we're okay with it. It's when they put them inside, that's
21 when the issue comes into play when it's overhead.

22 CHAIR HIRANAGA: Commissioner Shibuya.

23 COMMISSIONER SHIBUYA: I just have a contradiction
24 here. The problem here is if we allow that type of use for
25 power poles, then we are also allowing for antennas with the

1 same setback requirement of one foot per height that we
2 allow. So, are these on the same consistent type of
3 application and treatment?

4 Because I'm really encouraging burying some of
5 these power lines. Especially if you have adjacent type of
6 properties, it would be cheaper for the utility to place
7 that line within that corner which services four or five
8 different parcels. And it would be more applicable that
9 way. But having the pole at 90 feet or 60 feet, it's very
10 troublesome for me. If you're going to have some
11 requirements for antennae, then you have the same
12 requirements for power poles.

13 MR. ALUETA: And that's how it's proposed right
14 now.

15 COMMISSIONER SHIBUYA: Yes. And so, I say I'm
16 encouraging them to put it underground. Make that initial
17 investment to put it underground.

18 CHAIR HIRANAGA: Any other questions for staff?
19 Commissioner Mardfin.

20 COMMISSIONER MARDFIN: Joe, on Exhibit 7.

21 MR. ALUETA: Yes.

22 COMMISSIONER MARDFIN: And they say in their third
23 paragraph, although the proposed amendment doesn't change
24 the permitted uses within M-2, OHA notes that the formatting
25 revisions necessitated a change in language regarding

1 special uses. And they go on on the top of the next page,
2 OHA notes that a special use proposed in the M-2 district
3 still requires approval of the Maui County Planning
4 Commission and the Council.

5 The ordinance amendment however does away with the
6 need for a special use permit as previously required. OHA
7 recommends the reinsertion of the special use permit
8 requirement, which provides an important mechanism for
9 notification to the public of uses that are hazardous and
10 offensive in nature. Do you want to comment on their
11 comment?

12 MR. ALUETA: It has been. Under special uses, all
13 of the uses that were under that provision was just cut out
14 and moved under a new section called Special Uses.

15 COMMISSIONER MARDFIN: So, their concern has been
16 taken care of?

17 MR. ALUETA: That is correct.

18 COMMISSIONER MARDFIN: Thank you very much.

19 MR. ALUETA: Well, it was always taken care of.
20 They just didn't read it correctly.

21 CHAIR HIRANAGA: Any other questions?

22 DIRECTOR SPENCE: Mr. Chairman.

23 CHAIR HIRANAGA: Director.

24 DIRECTOR SPENCE: One comment. In order to
25 provide a little bit of -- and this is something that came

1 up to me in conversation with the land owner, but also just
2 for clarity for the -- you know, there's such an emphasis on
3 recycling materials and everything. We would like to add as
4 a permitted use for the heavy industrial district material
5 recovery facilities and other recycling processing.

6 That way, you know, there's always a question if
7 there's, you know, where are you going to put the junk cars,
8 how are you going to process them. Material recovery
9 facilities, otherwise known as MRF's. You get all your
10 recycled materials in. You've got to bail them up and
11 separate them out. It's an ugly process. It's perfect for
12 the heavy industrial district.

13 COMMISSIONER MARDFIN: What was the exact wording
14 your department is recommending be in their proposal?

15 DIRECTOR SPENCE: We could call it a MRF, not to
16 be confused with a smurf. The material recovery facilities
17 and other recycling processing.

18 COMMISSIONER SHIBUYA: Would that replace Number
19 12?

20 DIRECTOR SPENCE: I think it would be in addition
21 to. I think Number 12, which refers to junk, establishing
22 use for storing, depositing, keeping junk or similar goods
23 for business purposes, that's a little bit different. I
24 would just as soon leave that in there as well to provide
25 some flexibility.

1 CHAIR HIRANAGA: Commissioner Mardfin.

2 COMMISSIONER MARDFIN: If there are no further
3 questions, I would like to move the adoption of the
4 Department's recommendation regarding M-2 heavy industrial
5 districts.

6 CHAIR HIRANAGA: Actually, I have a question.
7 Joe, so why in M-2 are you proposing, I guess it's Exhibit
8 1, Page 1, down at the bottom, living quarters used by
9 watchmen or custodians of industrially used property? Is
10 that because apartment use is not allowed that you put that
11 language in there?

12 MR. ALUETA: It's always been there. We're just
13 moving it. Under accessory, security watchmen or custodian
14 outbuilding, E, or which section are you referring to?

15 CHAIR HIRANAGA: This is Page 1, Exhibit 1.

16 COMMISSIONER MARDFIN: Under permitted use.

17 MR. ALUETA: Yeah. Because that's the exact same
18 language. It just B is dwelling structures are not allowed
19 period in the M-2 district, except for that provision. And
20 then I added it in also as an accessory use to make it clear
21 so that it can be allowed.

22 CHAIR HIRANAGA: So, going back to M-1. Someone
23 could build a one-unit apartment to house their watchman?

24 MR. ALUETA: Oh, it wouldn't be an apartment. It
25 would just be a watchman quarters. We wouldn't qualify it

1 as that.

2 CHAIR HIRANAGA: It's not addressed specifically
3 in M-1. You have it in M-2, but not in M-1.

4 MR. ALUETA: Correct. I'm not following you as
5 far as it's allowed in the sense that in the apartment
6 district -- I'm sorry, in the M-1 district, you can build an
7 apartment.

8 CHAIR HIRANAGA: So, it could be one one-bedroom
9 apartment?

10 MR. ALUETA: In the M-1, you could do it.
11 Actually, I believe that ZAED interprets it, you have to
12 have like three or more to consider it an apartment. I'll
13 double-check with them, but I believe you can't build a
14 singular apartment. And that's why this one it's allowed.
15 Apartment buildings or any other dwelling structures are not
16 allowed within the industrial area, in the M-2 industrial
17 area, except for that provision for a watchman.

18 CHAIR HIRANAGA: Commissioner Mardfin.

19 COMMISSIONER MARDFIN: Under M-1, we did allow it
20 as an accessory use.

21 MR. ALUETA: And it's being allowed again as an
22 accessory use in the M-2 district.

23 COMMISSIONER MARDFIN: Mr. Chairman, it's on Page
24 5 under accessory uses under E, letter E.

25 CHAIR HIRANAGA: Those are outbuildings, which he

1 defined different from an apartment. Outbuilding is like a
2 little structure that you sat in. That's not where you
3 would have bedding or toilets. That's why I asked him what
4 an outbuilding was. Too late. Any other questions for
5 staff?

6 If not, Commissioner Mardfin, you wanted to make a
7 motion?

8 COMMISSIONER MARDFIN: I will move to accept the
9 recommendations to the Planning Department relating for a
10 proposed ordinance relating to M-2 heavy industrial district
11 with the most recent recommendations for inclusions.

12 CHAIR HIRANAGA: For clarity, can you or staff
13 list those?

14 MR. ALUETA: The inclusions were the corrections.
15 One was to -- it's M-2 heavy industrial, adding the UM on
16 the back side. As far as use inclusions, one as a material
17 -- I guess material recovery. I put material recycling and
18 recovery facility. And then the other one was utility
19 facilities major.

20 CHAIR HIRANAGA: Is there a second?

21 COMMISSIONER SHIBUYA: Second.

22 CHAIR HIRANAGA: Seconded by Commissioner Shibuya.
23 Discussion. Commissioner Shibuya.

24 COMMISSIONER SHIBUYA: I just want to say that
25 this is a larger amount of hazardous emissions and the

1 propensity or the opportunity to have more hazardous
2 material around as well as offensive nuisance type of odors
3 and/or sights does not really lend itself to more
4 residential and/or apartment type structures.

5 CHAIR HIRANAGA: Any other discussion? If not,
6 I'm not going to have the Director repeat the motion. All
7 in favor of the motion, please indicate by raising your
8 hand.

9 DIRECTOR SPENCE: There's seven aye's.

10 CHAIR HIRANAGA: Motion carries. The next agenda
11 item is B(1)(c). Director.

12 DIRECTOR SPENCE: Commissioners, this is a
13 proposed bill to create a new industrial district. This
14 would be M-3. And, Joe, would you like to --

15 MR. ALUETA: Sure. Primarily, this is areas that
16 are free of retail commercial as being a principal use. It
17 just has to be attempted to eliminate apartments from being
18 an allowed use within the M-1 district. We're trying to
19 eliminate the retail aspect or the higher value retail
20 aspect from the industrial districts so that you can have
21 your -- your dead storage or your baseyards and such within
22 it.

23 And that was kind of like what we had proposed
24 about a year and a half ago when the resolution came down
25 from Riki Hokama to eliminate the stacking from the

1 industrial district. So, this has always been in the works.
2 And we kind of pushed it forward. We're not zoning any new
3 lands, again, as we indicated in the beginning. It's just
4 to give a new zoning standard that can be implemented by the
5 Council should they receive any type of new zoning requests.

6 All the uses that were listed in the M-2 district
7 that were considered to require a special use permit are
8 listed as being the outright permitted uses. So, like acid
9 manufacturing and ammonia bleaching and all that kind of
10 good stuff is being moved over to the M-3 district. Let's
11 see, and this says in general those uses that may be
12 obnoxious or offensive for reason of emission of odor, dust,
13 smoke, gas, noise, vibration and the like are not allowed in
14 any other district.

15 And so, basically if you're not allowed in the M-1
16 or M-2 because your use is pretty obnoxious or hazardous, it
17 would be considered to be -- it would be a good candidate
18 for the M-3 district. And I believe that we did -- in the
19 M-3 district, I think we did want to add utility facilities
20 major also just to be on the safe side. Because I think we
21 allow -- oil storage plants and gas manufacturing is
22 allowed.

23 I'm sorry, we did energy systems, power plant
24 substations and utility facility majors was added in there,
25 so in the M-3 district already. The standards, the key

1 issue again with regards to restrictions of retail space, it
2 doesn't prohibit them all the way. It does still allow for
3 office retail or indoor product display area limited to 20
4 percent of the gross floor area, not to exceed 1,000 square
5 feet.

6 So, it still does allow for retail. So, if you do
7 have a manufacturing of something and you need to have
8 office space, that's -- it's not a problem. You would still
9 be allowed. The staff did go over this pretty thoroughly,
10 and we also did talk with some of the other heavy industrial
11 users who might have qualified and asked whether or not
12 these restrictions were too lenient, or whether -- there was
13 talk about whether shouldn't you allow some type of retail
14 for the lunches or anything like, you know, for lunch wagon,
15 restaurants and stuff like that.

16 And they were all -- the reaction we got from all
17 of the people interviewed was, no, we leave. We don't want
18 to -- we go out and eat, or the, you know, the kaukau wagon
19 tin comes over, and we grab it there. We don't have time
20 to -- if we don't have time to run out. But none of them --
21 they seem to say, no, don't need to create a space. And
22 again, some of these M-3 districts may be adjacent to your
23 M-2 areas. They may be. I mean that may be what -- I mean
24 you could possibly see that in the Kahului Harbor area where
25 you have a specific areas that's M-3.

1 And then, you know, you're not that far away from
2 an M-2 area, which would allow for many of the other uses.
3 Ideally, you don't, but you kind of have that, especially if
4 you see the Kahului Harbor area, you know, storage of
5 acetylene tanks, gas products, you don't really want to have
6 it that close to your, you know, mom and pop retail outlets.

7 CHAIR HIRANAGA: Questions for Joe? Ward.
8 Commissioner Mardfin.

9 COMMISSIONER MARDFIN: Do you intend to include
10 MRF's?

11 MR. ALUETA: We've added in like a heavy equipment
12 storage service and sales, and we also still have the
13 junkyard establishments. Use for store and deposit,
14 depositing of keeping junk or similar -- or similar goods
15 for business purposes.

16 COMMISSIONER MARDFIN: May I suggest that you
17 just -- since it seems to be a term of --

18 MR. ALUETA: Well, we have a definition that we
19 added, which is called recycling processing facilities,
20 which is the same thing. And that's added. Those are our
21 MRF's. Sorry. And we added that definition during the B-1,
22 B-2, B-3, because we had to come up with -- as you know, we
23 were getting County special use permits and conditional
24 permits for those recycling redemption facilities in the B-2
25 district.

1 And so, we had to come up with a recycling
2 collection facility, which are the green cans you see, and
3 we want to allow those in all districts, including the
4 residential areas, but also allow for redemption facilities,
5 which is not a recycling facility, but purely redemption.

6 And we added those to the business district, so
7 you can have that, and the recycling processing facility is
8 more of your SOS type of operation.

9 COMMISSIONER MARDFIN: So, the bottom line is we
10 don't need to add anything else, it's already there?

11 MR. ALUETA: No.

12 DIRECTOR SPENCE: And we'll make terminology
13 consistent.

14 CHAIR HIRANAGA: Any other questions or comments?
15 Joe, did you want to include the similar language in M-2
16 that provided regarding living quarters used by watchmen or
17 custodians of industrially used property instead of the
18 language security watchmen or custodian outbuildings?

19 MR. ALUETA: Did I want to add? We added security
20 watchmen or custodian outbuildings.

21 CHAIR HIRANAGA: You want to replace that with
22 language you have in M-2, which is living quarters used by
23 watchmen or custodians of industrially used property? I'm
24 not sure how many people know what an outbuilding is.

25 MR. ALUETA: It is consistent with the M-2

1 district as far as under accessory uses.

2 CHAIR HIRANAGA: But on Exhibit 1 of M-2, you have
3 permitted uses at the bottom of your box.

4 MR. ALUETA: Right. Under the -- correct, we
5 didn't add that to the M-3, because that was a dwelling use.
6 The M-2 district allows for that, except for living quarters
7 for watchmen.

8 CHAIR HIRANAGA: It doesn't allow for living
9 quarters.

10 MR. ALUETA: We did not put that in the -- in the
11 M-3 district -- in M-2 district, we allowed for the
12 outbuilding, which is the security offices. And we did not
13 allow for any living quarters within the M-3 district.

14 CHAIR HIRANAGA: But it's permitted in the M-2
15 district?

16 MR. ALUETA: Correct, and it's permitted in the
17 M-1 district.

18 CHAIR HIRANAGA: So, that's why I'm asking why not
19 permit it in the M-3?

20 MR. ALUETA: One, we didn't think anybody -- we
21 thought it would be -- we allow for security, and you
22 typically have that on a 24-hour basis, so the security
23 outbuildings, which is allowed on M-1 and M-2. So, if you
24 wanted to have security, they would normally be on a 24-hour
25 shift similar to what HC&S does, but they don't have

1 somebody sleeping there on site.

2 CHAIR HIRANAGA: Yeah. But if someone did not
3 want to hire professional security and wanted to have casual
4 security, you know, they could -- a person would be on site.
5 They could have closed circuit cameras in the unit. They
6 have dogs on property. The dogs bark. Goes out and checks
7 it out. So, he doesn't have to incur the cost of having
8 professional security.

9 MR. ALUETA: Right. And they would have that in
10 the M-2 district. But as you get more and more I guess
11 nasty, I'm not sure if you really want to have someone
12 exposed on a 24-hour basis to potential hazardous materials
13 like that. And so, that's why as you get more and more
14 industrial, you tend to get not -- you tend to get -- you
15 don't want to have any dwellings really.

16 And in an M-2, we only made that -- we left that
17 provision in, because that was an existing provision. And
18 so, we have no problem with that. But in the M-3 district,
19 we feel that because we were adding that outbuilding
20 provision for security, that if somebody needed security on
21 a 24-hour basis, then they would either, you know, hire a
22 mobile security that would swing by every now and then that
23 you would hire, or you would have an outbuilding in which
24 people wouldn't necessarily live there, but they would just
25 come and they would be stationed there at the entrance or

1 somewhere.

2 CHAIR HIRANAGA: Commissioner Freitas.

3 COMMISSIONER FREITAS: Not necessarily. I have
4 what do you call, I store, what do you call, vehicles on a
5 couple of acres. And it would be -- the zoning would permit
6 to have a storage vehicle yard, and I would probably choose
7 to have somebody live on property, because you have to
8 release vehicles and stuff. And there's other related
9 businesses that would do that.

10 I have a second question. Will this M-3 replace
11 M-2 when the occasion arises?

12 MR. ALUETA: That would be up to Council and the
13 community plan, mostly the community plan designation. So,
14 during the community plan process, if we identify areas that
15 would be appropriate for the M-3.

16 COMMISSIONER FREITAS: Thank you.

17 CHAIR HIRANAGA: Commissioner Mardfin.

18 COMMISSIONER MARDFIN: I kind of like having M-3
19 without people living on it. I have a real concern if we
20 did allow people living on it because of the health and
21 safety of the people. It's one thing to work in a coal
22 mine. And it's another thing to live in a coal mine. And I
23 think this is noxious and obnoxious, and we shouldn't be
24 encouraging people to live there.

25 CHAIR HIRANAGA: Any other questions or comments?

1 Commissioners? Seeing none, open the floor to a motion.
2 Commissioner Mardfin.

3 COMMISSIONER MARDFIN: I move the adoption of
4 the -- for recommendation of Council of the bill for an
5 ordinance relating to M-3 restricted industrial district as
6 recommended by the Planning Department.

7 COMMISSIONER SHIBUYA: Second.

8 CHAIR HIRANAGA: Seconded by Commissioner Shibuya.
9 Discussion.

10 MR. ALUETA: A question, Mr. Chair. Or corp
11 counsel, do we need a public hearing?

12 CHAIR HIRANAGA: I'm sorry. Thank you.

13 I would like to open the floor now to the public
14 hearing. Is there anyone here that wishes to provide
15 testimony regarding this agenda item? Seeing none, public
16 hearing is closed.

17 COMMISSIONER MARDFIN: Does my motion stand?

18 CHAIR HIRANAGA: Any discussion on the motion on
19 the floor?

20 COMMISSIONER FREITAS: I would like to make a
21 friendly amendment.

22 CHAIR HIRANAGA: Commissioner Freitas.

23 COMMISSIONER FREITAS: I would like to make an
24 amendment that there will be living quarters for a security
25 guard on the premises on M-3 property.

1 CHAIR HIRANAGA: Is there a second?

2 COMMISSIONER LAY: Second.

3 CHAIR HIRANAGA: Discussion. Commissioner
4 Freitas.

5 COMMISSIONER FREITAS: Yes. I run a tow business,
6 and we have somebody living on the property with -- echoing
7 Ken's remarks, we have dogs on the property. And when
8 somebody comes to pilfer from the cars and what have you,
9 that we have somebody there. I can see if you had a
10 chemical plant, it would be up to the owner to choose not to
11 have somebody living on the property. That would be common
12 sense.

13 If you have obnoxious odors or anything that would
14 be hazardous to your employees, I'm sure the property
15 owners, the manufacturer would choose not to have somebody
16 live on. But where you have a lumber yard, I can see
17 somebody having somebody choose to live on. Because
18 security gets very expensive. And in a lot of cases, and
19 I've been in business here 30 years, in a lot of cases, your
20 security is your greatest pilferage.

21 CHAIR HIRANAGA: Commissioner Mardfin.

22 COMMISSIONER MARDFIN: I just would like to say
23 that I'm going to vote against the amendment. If
24 Mr. Freitas has property that he wants somebody to be living
25 on for 24/7, then he should leave it in M-2. He shouldn't

1 move it to M-3. I think that our responsibility to the
2 people of this County is not to allow people to live in
3 seriously hazardous areas.

4 CHAIR HIRANAGA: Joe, you had a comment?

5 MR. ALUETA: I'll wait for the motion and try to
6 get some -- if it passes, then I'll ask to try to get it
7 clarified or some different amendments to it.

8 CHAIR HIRANAGA: Commissioner Shibuya.

9 COMMISSIONER SHIBUYA: I, too, will be voting
10 against this. Because I feel that we're talking about
11 excessive power in terms of telecommunications. We're
12 talking about excessive landfill, waste processing disposal
13 type of situations here. We're talking in terms of
14 crematoriums where I would not want to have or subject
15 anyone to live next to these areas. Processing of lacquer
16 thinner and varnish materials, this is too hazardous and too
17 -- the emissions are too bad.

18 And I feel that these should not be made available
19 to -- for domestic use.

20 CHAIR HIRANAGA: You're allowed two opportunities
21 to speak on the motion. This is your second opportunity.

22 COMMISSIONER MARDFIN: I just want to add that the
23 motion is to make it a permitted use. And, therefore, on
24 any of these things, it would be a permitted use. And I
25 think that's very inappropriate. I think it could be

1 handled with a variance or with some special circumstances
2 if it was a low level noxious industry. But as a permitted
3 use, if this motion passes, I'm going to have to vote
4 against the main motion.

5 CHAIR HIRANAGA: Any other discussion?
6 Commissioner Ball.

7 COMMISSIONER BALL: Was it the Department's intent
8 then to remove this for the concerns that the Commissioners
9 have shown?

10 MR. ALUETA: I think the issue is where do you
11 draw the line, and then how do we enforce it? Because once
12 you -- and if you make it an allowed use, then you have to
13 always constantly check, oh, is he just living there because
14 he wants to live there and it's cheap rent, or is he really
15 the security guard? Is he really providing the security for
16 it?

17 If the intent is to have it and be part of the
18 thing, then it might be more appropriate to add it under F,
19 under accessory uses to be security/watchmen or custodial
20 outbuildings including, you know, living quarters, you know,
21 and then limit the size, you know. Because that way, it's
22 an accessory use. So, I mean but I wanted to see where the
23 motion was going before trying to get it to be down to --

24 COMMISSIONER BALL: Followup.

25 CHAIR HIRANAGA: Commissioner Ball.

1 COMMISSIONER BALL: So, would a use like
2 Mr. Freitas is explaining be affected? I mean this is a
3 land classification, so if the business he describes is in
4 an M-2 area, then no problem.

5 MR. ALUETA: No problem. It's only if he rezones
6 it to a higher intense use.

7 COMMISSIONER BALL: But the use of that he
8 described of a tow yard or whatever would not need a higher
9 classification?

10 MR. ALUETA: I believe it's allowed in the M-2 as
11 well as --

12 COMMISSIONER BALL: M-2.

13 MR. ALUETA: It would be allowed also in the M-3
14 district.

15 COMMISSIONER BALL: But he would probably want to
16 keep it in the M-2, because he can have his guy watching the
17 stuff.

18 MR. ALUETA: Right. Like I say, well, again,
19 typically the type of uses we're talking about here, and I
20 hate to use the mainland comparison, but they're really big,
21 noxious, and, you know, you don't really want to have
22 somebody exposed on a 24-hour basis. And if you do operate,
23 a lot of these large plants operate on a 24 basis. They
24 continually operate for 20 to 24 hours. They do not shut
25 down.

1 Wood mill plants, I mean once a mill plant gets
2 going, once a refinery goes, it doesn't stop. And HC&S is
3 an example. HC&S does not stop. They go 24/7. They shut
4 down like three or four days a year or something like that.
5 So, they don't need to have somebody on site, because
6 somebody is on site all the time. They don't need to have
7 that extra security.

8 Again, if there's some type of value, like I say,
9 your cars or whatever, then again, it would stay within that
10 M-2. Like I say, once you add -- once you put the word
11 dwelling, then it's subject to abuse and enforcement issues,
12 and so, we were trying to avoid that. But if you put it
13 under accessory, it still would be. Because a guy could
14 have a vacant lot, and the guy puts up a house on the vacant
15 M-3. And he's not storing anything. Doesn't have a car or
16 anything.

17 And you ask him, what are you doing here? You're
18 not allowed. And he says, well, I'm protecting my property.
19 I'm the watchman. But it's a vacant lot. Well, I don't
20 want anybody squatting. I don't want anybody dumping stuff
21 on my vacant lot. I don't want to pick up somebody else's
22 trash. So, it's just that when the purpose and intent of
23 the industrial area, of the M-3 industrial area is purely
24 industrial uses, you want to see it being used for that and
25 reserved for that exclusive use.

1 CHAIR HIRANAGA: Commissioner Freitas.

2 COMMISSIONER FREITAS: Where is this M-3 zoning
3 going to be created? Are they going to take some of the M-2
4 and redesignate them? Because Mokulele Central baseyard
5 right now, you have both M-1 and M-2 in there zoned. Are
6 you going to have mixed use? Will M-3 show up in that unit,
7 too?

8 MR. ALUETA: I do not know what the community
9 plan -- I mean what the general consensus of the community
10 will be. I think it's just another tool that we're adding
11 to address, one, the retail or nonindustrial type uses
12 encroaching into an industrial area. And I think that
13 Council and the public general issue was don't touch what's
14 existing now. Don't try to create a whole bunch of
15 nonconformities.

16 If we create a new industrial area, then maybe
17 let's consider this M-3. If they do decide to rezone
18 something; one, it has to be the consent of the owner for
19 the most part; and it would have to be consistent with the
20 community plan. So, again, I would wait to see what happens
21 at the general community plan. This is just a zoning
22 category that can be used as a tool. Just like we have --
23 we currently have open space, OS-1 and OS-2. And we've only
24 had one request to zone themselves to OS open space, so it's
25 kind of that methodology at this point.

1 CHAIR HIRANAGA: Yeah, just a comment. I think
2 the intent of M-3 is to create an affordable industrial
3 area. Because it's not allowing retail use, blah, blah,
4 blah. So, I mean if you've got a boneyard and you want to
5 store heavy equipment, it will typically be out in the
6 boonies.

7 So, I don't really see anyone rezoning M-1 or M-2
8 to M-3. Someone is going to say I want to do an M-3
9 industrial park, and he goes to Council. And Council says,
10 yeah, we need M-3 zoning. We're going to approve it. So,
11 then you're going to want -- the people that are going to go
12 out there want a lower per square foot sales price or lease
13 price. But that does not mean that their uses would be that
14 obnoxious or be occurring 24/7.

15 It could be storage facilities or materials or --
16 and you would want some type of security presence, I would
17 think, and not have to pay for 24/7 professional security.
18 Because you are running a low overhead operation.

19 Commissioner Shibuya.

20 COMMISSIONER SHIBUYA: I'll just give an example
21 of the possible M-3 would be a sewage treatment plant, which
22 is a continuous process. Another one would be quarry
23 operations. Another one would be landfill. I see these as
24 obnoxious and areas where I would not want to have anyone
25 living near or on the premises.

1 CHAIR HIRANAGA: Any other comments? If not, I
2 will --

3 COMMISSIONER MARDFIN: I want to respond to your
4 statement, if I may.

5 CHAIR HIRANAGA: Go ahead.

6 COMMISSIONER MARDFIN: You said your argument for
7 having a dwelling unit on it was you probably won't be
8 rezoning M-1 and M-2 to M-3.

9 CHAIR HIRANAGA: Not really a dwelling unit. It
10 is a living quarters used by a watchman or custodian of
11 industrially used property. So, let's not call it a
12 dwelling.

13 COMMISSIONER MARDFIN: But your basic argument was
14 they're probably not going to change the zoning of M-1 and
15 M-2 to M-3, that they'll probably pick an M-3 further --
16 somewhere else.

17 CHAIR HIRANAGA: Create an M-3 somewhere else.

18 COMMISSIONER MARDFIN: Create an M-3 somewhere
19 else. They could just as easily create an M-2 if they
20 wanted to have an onsite watchman. So, I don't think your
21 argument should necessarily allow for somebody to live on
22 a -- on a -- a permitted use to live on a site that could
23 potentially be very noxious.

24 CHAIR HIRANAGA: You missed my point, but I'm not
25 going to debate.

1 Any other comments regarding this motion? If not,
2 I'll call for the vote. All in favor of the amendment --
3 well, I'll ask the Director to restate the amendment.

4 DIRECTOR SPENCE: Correct me if I don't have this
5 right. Is to make -- similar to the M-2 industrial district
6 language, to make living quarters used by watchmen or
7 custodians of industrial used property a permitted use.

8 CHAIR HIRANAGA: All in favor of the motion,
9 please so indicate by raising your hand.

10 DIRECTOR SPENCE: That's three aye's.

11 CHAIR HIRANAGA: Opposed.

12 DIRECTOR SPENCE: That's four nay's.

13 CHAIR HIRANAGA: The amendment fails.

14 If there's no further discussion on the main
15 motion, or are there any further amendments? If not, I'll
16 call for the vote on the main motion. The main motion is?

17 DIRECTOR SPENCE: The main motion is to adopt,
18 recommend adoption of M-3 industrial district to the County
19 Council.

20 CHAIR HIRANAGA: Those in favor, please so
21 indicate by raising your hand.

22 DIRECTOR SPENCE: That's six aye's.

23 CHAIR HIRANAGA: Opposed.

24 The motion is carried.

25 MR. ALUETA: Thank you very much.

1 CHAIR HIRANAGA: The next agenda item B(2).
2 Director.

3 DIRECTOR SPENCE: Thank you, Mr. Chairman. The
4 next item on your agenda is B(2). State of Hawaii
5 Department of Transportation Highways Division requesting an
6 SMA permit for Hana Highway improvements from Uakea Road to
7 Keawa Place. And our staff planner this morning is Mr. Paul
8 Fasi.

9 MR. FASI: Good morning. This project proposes to
10 widen the roadway at the bridge/box culvert adjacent to the
11 County Highways Baseyard in Hana. On March 15th, 2011, the
12 matter was scheduled before the Hana Advisory Committee, but
13 because we couldn't get a quorum, we did not have the public
14 hearing. And so, we're bringing the matter before the
15 Planning Commission today.

16 The applicant has a small five- to ten-minute
17 Power Point presentation to give you an idea of what we're
18 talking about. So, I would ask that we go right into it.

19 CHAIR HIRANAGA: I have a question for Corporation
20 Counsel. Since the Hana Advisory Committee did not provide
21 official comments, are we still able to proceed?

22 MR. GIROUX: Yeah, you can proceed. The advisory
23 committee was given the opportunity to respond. Without the
24 quorum, they were unable to. It's not going to stop you
25 from proceeding as long as you have the public hearing

1 today.

2 CHAIR HIRANAGA: All right. Thank you. Please
3 proceed.

4 MR. HIRANO: Thank you. And good morning, Chair
5 Hiranaga and Commissioners. My name is Mich Hirano with
6 Munekiyo & Hiraga. And our firm is presenting the SMA
7 application before you today. I'm representing State DOT.
8 We prepared a Power Point for the project, so I would just
9 like to turn your attention to the Power Point. We would
10 like to just introduce the project team.

11 The applicant is the State Department of
12 Transportation. And Charlene Shibuya is the project manager
13 from the State Department of Transportation for the project,
14 and she's in attendance this morning. The civil engineer
15 for the project is Aecom, Inc. And Diana Kodama is the
16 civil engineer/project manager. And she is also in
17 attendance this morning to answer any questions the
18 Commissioners may have.

19 And Munekiyo & Hiraga are the planning and
20 entitlement consultants. And Leilani Pulmano is also with
21 me in attendance this morning and assisting me with the
22 presentation. The project location is on Hana Road, and
23 it's just before you enter Hana. It's a box culvert
24 crossing that will be widened. Right now, the property
25 is -- or the lane configuration is a single lane over the

1 area, so this is the project area. And it's just by -- as
2 you enter Hana, the property on the mauka side is ag land.
3 It's owned by Hana Ranch.

4 And to the -- just on the makai side of the
5 property, you have the County baseyard, the municipal or the
6 County Department of Public Works baseyard as well as the
7 Maui Police Department and the Maui Fire Department fire
8 station. The proposed action is to widen the roadway from
9 one lane to two lanes at the bridge/box culvert over
10 Holoina Wawae Gulch.

11 And I would just like to thank Commissioner
12 Mardfin for identifying the gulch that the box culvert is
13 placed over. In terms of the project need, the real need
14 for this project is due to the safety concerns. Currently,
15 this is the project area right here, and as you can see,
16 there is here -- this is the fire station. On the Hana side
17 of the gulch is the Public Works baseyard parking area.
18 Then on the Kahului side of the gulch is the Public Works
19 baseyard, as well further to the north is the police
20 station.

21 On the other side of or just down the road is Hana
22 Community Health Center. And then further off the screen,
23 but further towards Kahului is Hana Elementary and High
24 School. So, this roadway is a single lane roadway crossing
25 over this gulch, and it really constricts traffic. And

1 because of the high uses and the public uses in around that
2 area, Department of Transportation has determined that it is
3 a real safety issue. And they've proposed to widen the
4 crossing to allow two lanes to cross over.

5 This is the -- a photograph of the roadway and the
6 particular crossing. And this is looking south towards Hana
7 as you enter Hana. And as you can see, it's stop line
8 control. There's another stop line. So, traffic stops
9 here. And there's another single lane passing. And you can
10 realize I guess really the safety issues, because on the
11 other side of the crossing is the Hana fire station. And on
12 this side is the police station.

13 So, often those two facilities are called out at
14 the same time. And it's a single crossing. This is -- as
15 you leave Hana, this is the exit out. And again, it narrows
16 down into a single lane crossing over the gulch. This is on
17 the makai side of the culvert or bridge wall. And the
18 special management area use line or boundary at this
19 particular location is on the mauka side of the highway
20 right-of-way. All the work that is being done is on the
21 makai side of the -- of the bridge crossing.

22 And so, all the work will be within the SMA
23 boundaries. But as well, it will be restricted to within
24 the road right-of-way. This is looking on the makai side of
25 the crossing. And as you can see, the gulch kind of is

1 somewhat defined in this area. It's a drainageway gulch.
2 It's not -- you know, there is no continuous running water.
3 But when it does flood, the water comes down through there
4 pretty fast and sometimes overtops on the mauka side of the
5 roadway.

6 This is again looking on the makai side of the
7 roadway. And as you can see, this is the parapet wall of
8 the bridge crossing culvert. And you can see there's a date
9 stamped on that side, 1915. And that's when the crossing
10 was constructed. The crossing is a historic property. It's
11 part of the Hana Belt Road, which is listed in the National
12 Register of Historic Places. These two crossings or two
13 features of that, it's the crossing as well as the culvert.
14 So, there are two features that are historic.

15 However, during project review, because it was
16 such a safety issue, the State Historic Preservation had
17 permitted some modifications to the historic site or the
18 property, the bridge, because of the overriding safety
19 concerns. Department of Highways, however, is committed to
20 maintaining the character of the existing features, and so
21 this parapet, although it will be removed for the widening
22 of the roadway, it will be replaced with a parapet that will
23 be built similar in character to retain the historic
24 character of the -- of the culvert and bridge.

25 This is looking at it on the mauka side, and as

1 you can see, that the gulch on the mauka side is not as
2 clearly defined as it is on the makai side. So, this is
3 what the project will look like when it is completed. There
4 will be a widening of the culvert crossing to allow another
5 lane so that there will be two lanes. The lanes will be
6 approximately ten feet in width and in two directions.
7 There will also be a four-foot pedestrian walkway on the
8 makai side. And the reason for this is to allow pedestrian
9 traffic, bicycle traffic as well.

10 But there's a lot of movement between the County
11 baseyard where Public Works, because they park on this side
12 of the gulch. And they have the storage facilities for
13 their cars on the other side and the workshop on the other
14 side. There's a lot of pedestrian traffic across that
15 bridge crossing. So, in consultation with the Department of
16 Public Works, Department of Highways has maintained at least
17 a four-foot pedestrian area, a clear zone that will be used
18 for pedestrian access across the culvert.

19 This is just a simple deck section to show you
20 what the project entails in terms of its working drawings.
21 This is the elevation. This is the parapet that will be
22 rebuilt on the makai side of the lane extension. These wing
23 walls will support the new deck that will be placed over the
24 gulch. And then when you look at the deck section, on the
25 left-hand side is the old deck. This is the parapet, which

1 will be removed. It's a safety issue to have that structure
2 in the middle of the roadway. So, it will -- it's -- it
3 necessitates its removal, but it will be reproduced and
4 replicated on the makai side. And this will be the new deck
5 crossing.

6 The project will take approximately eight months
7 to build. During that time, there will be periods when
8 there may be a detour requirement. For the most part,
9 Department of Transportation will maintain that that roadway
10 will be open and allow at least a ten-foot clear traffic
11 zone, so that traffic can pass during construction.
12 However, at certain times, and they estimate maybe 30 days
13 in that eight-month period when the roadway will be closed
14 and a detour route will be established. And this is the
15 detour route.

16 So, it will basically allow -- stop traffic at
17 this point, and through traffic will go onto Uakea Road and
18 then come up Keawa Road back into Hana in the same way. And
19 the Department of Transportation, when they do have these
20 detours, they usually post those in the Maui News. They
21 also will run flyers and signage, though they have the
22 billboards that have the lighted signs on road closures.

23 So, they will give advance notices to the hotels,
24 to the Hana Hotel, to the school, to Public Works, to
25 Department of Transportation Public Works as well as the

1 police station and the fire department. And we'll try to
2 keep the detour routes at a minimum. There were two
3 community meetings that were held on the project. During
4 the environmental assessment, there was a public meeting in
5 Hana on June 10th, 2009. And because we couldn't have the
6 public hearing as scheduled on March 15th, we did have an
7 informational meeting to those who attended the meeting.
8 And we gave an overview of the project.

9 And there was a lot of support for the project.
10 It was felt that it was a needed project for safety issues
11 in and around Hana. Felt it wouldn't detract from the
12 historic character of the highway of Hana Belt Road, and
13 they urged that the project come forward to the Maui
14 Planning Commission.

15 So that's our presentation, so we're here to
16 answer any questions that you may have. Thank you.

17 CHAIR HIRANAGA: Actually, at this time, I would
18 prefer to have the staff provide their analysis, and the
19 Commission can ask questions of either staff or the
20 applicant.

21 MR. FASI: The Department has no concerns
22 regarding this project for the Department of Transportation.
23 The proposed actions to widening existing bridge are
24 consistent with the Hawaii State Land Use law, is consistent
25 with County zoning and is consistent with the Hana Community

1 Plan. Thank you.

2 CHAIR HIRANAGA: Actually, before we open the
3 floor to questions, I would like to open the public hearing.
4 Is there anyone here that wishes to provide testimony
5 regarding this agenda item?

6 Seeing none, the public hearing is closed.

7 I'll open the floor to Commissioners for questions
8 to the applicant or staff. Seeing -- Commissioner Wakida.

9 COMMISSIONER WAKIDA: This question is for Mich,
10 if he would.

11 MR. HIRANO: Yes, Commissioner Wakida.

12 COMMISSIONER WAKIDA: You may have covered this in
13 your presentation, but I wasn't clear. The parapet that's
14 existing on the, I believe it's the mauka side.

15 MR. HIRANO: On the makai side.

16 COMMISSIONER WAKIDA: The one that has the 1915
17 stamped on it.

18 MR. HIRANO: That's on the makai side.

19 COMMISSIONER WAKIDA: Does that portion remain?

20 MR. HIRANO: No, that will be taken out.

21 COMMISSIONER WAKIDA: Okay.

22 MR. HIRANO: Well, the parapet, which is above the
23 roadway, will be taken out. But that portion below the
24 roadway will stay where it has the stamp 1915. That will
25 stay in place. It's the portion above.

1 MS. SHIBUYA: My name is Charlene Shibuya. I'm
2 the applicant for the DOT, Department of Transportation. I
3 would like to clarify for Mich the question. Basically,
4 this parapet actually does have to come down. Because what
5 happens is we extend out this box culvert, and we construct
6 a new parapet. But what we're going to do is have that new
7 parapet mimic this look. And on the mauka side, which has
8 the existing parapet, technically speaking, we cannot put
9 1915 on the newly extended parapet, because that would be a
10 fallacy.

11 So, what we're trying to do is put the 1915 on the
12 existing makai -- you see this makai parapet? Actually, on
13 the inside, we're going to put 1915 on that structure,
14 because it does not have a date right now. But we feel the
15 need to identify the age of that structure. So, especially
16 since we're taking out the 1915 on the other side.

17 COMMISSIONER WAKIDA: I was just -- does this
18 please the -- excuse me, the Historic Hawaii Foundation,
19 because they're the ones that raised that issue?

20 MS. SHIBUYA: Yes, it does. If you look at the
21 environmental assessment document, it talks about that they
22 were satisfied. And then we had to document the structure.
23 And they've also requested that an archeological monitoring
24 plan be in place before the construction takes place in case
25 other things are, you know, discovered.

1 COMMISSIONER WAKIDA: Okay. Thank you.

2 MR. HIRANO: Thank you, Charlene. I'm sorry about
3 that. I stand corrected by Charlene.

4 CHAIR HIRANAGA: Commissioner Shibuya.

5 COMMISSIONER SHIBUYA: On the new parapet, are you
6 planning to put some kind of a date; and if so, what date?

7 MR. HIRANO: I don't know.

8 MS. SHIBUYA: Yes. Actually, we weren't planning
9 to put a new date, because otherwise, we would have to put
10 2011. And that would be totally out of character with the
11 existing structure. So, we basically wanted to just mimic
12 the look, be subtle and identify the old date on the
13 existing structure. Because again, we wanted to be very
14 context sensitive and not kind of raise too many eyebrows,
15 see 2011 on one side and see 1915 on the other side.

16 CHAIR HIRANAGA: Commissioner Ball.

17 COMMISSIONER BALL: I don't know if I missed it,
18 but was there comments from the police department? I saw
19 one from the fire department on a couple of counts. One,
20 being that they're right in the area; and two, when you're
21 rerouting traffic down to, you know, by the harbor there,
22 how is that going to -- if there is any impact.

23 MR. HIRANO: On the harbor?

24 COMMISSIONER BALL: You know, when you're going to
25 close the road for those --

1 MR. HIRANO: Well, Uakea Road does access the
2 harbor. Uakea Road eventually goes down to the harbor.

3 COMMISSIONER BALL: And I think there's
4 a four-way stop there at the bottom of the hill or so,
5 right?

6 MR. HIRANO: Yeah, and that's Keawa. So, they can
7 come up actually at the harbor road Keawa Street.

8 COMMISSIONER BALL: Right, right.

9 MR. HIRANO: That's where the detour will swing
10 around back onto Hana Road. So, the detour -- when this is
11 closed, the detour will be along Uakea Road and then come
12 up.

13 COMMISSIONER BALL: Right. Now the eight-month
14 time period, is that going to be timed with the trying to
15 avoid the events that happen in Hana like Taro Festival,
16 there's a big canoe race this weekend?

17 MR. HIRANO: Construction is anticipated October
18 2011. So, that would take it into -- October, sort of maybe
19 June, July.

20 COMMISSIONER BALL: So, it might affect that?

21 MR. HIRANO: Kind of finishing up at that time.

22 COMMISSIONER BALL: So, hopefully, the closure
23 will be pau by then?

24 MR. HIRANO: Yes.

25 COMMISSIONER BALL: Just have whatever, cosmetics

1 or whatever.

2 MR. HIRANO: I would think so. Commissioner
3 Mardfin.

4 CHAIR HIRANAGA: Commissioner Mardfin.

5 COMMISSIONER MARDFIN: I would just like to make
6 two points. One is in answer to Commissioner Ball's
7 question. They probably won't go down to the stop sign.
8 The detour -- you could go down to the four-way stop, but
9 you probably wouldn't. In all likelihood, you would take
10 Keanini Drive, so if you came by Hana Highway. Suppose you
11 were going north. You would go by Hana Highway. You would
12 probably pass the road down to the bay.

13 You would take Keanini Drive. That's that one.
14 You would go down there. It's kind of a residential
15 neighborhood, but it's two lanes wide. You can go down
16 there. When you hit Uakea, then you turn left and be on
17 your way.

18 COMMISSIONER BALL: Is that the plan for the
19 detouring?

20 COMMISSIONER MARDFIN: You could do it either way.

21 MR. HIRANO: You could do it both ways,
22 Commissioner Ball. The original one was Keanini and Keawa
23 goes down to the harbor.

24 COMMISSIONER BALL: I guess my concern is that
25 tourists are still going to be going along that road. And

1 to divert it into the residential area may be of some
2 concern to people who live on the residential street.

3 MR. HIRANO: I think that's why there were the two
4 options for that, just to split the traffic.

5 CHAIR HIRANAGA: Commissioner Mardfin.

6 COMMISSIONER MARDFIN: Presumably both would be
7 open. If you were going to the bay --

8 CHAIR HIRANAGA: Let's not speak for DOT. You
9 might ask them if it's going to be open.

10 COMMISSIONER MARDFIN: Presumably both Keawa Road
11 and Keanini Drive would be open. If someone were heading to
12 the bay, they would take the first -- coming from the middle
13 of town, you would take the first road down to the bay.

14 MS. SHIBUYA: Right.

15 COMMISSIONER MARDFIN: If you were intending to
16 take Hana Highway all the way along where the bridge
17 construction will occur, you would turn right on -- you
18 would pass Keawa turnoff. You would go up to Keanini and
19 then go down to avoid some of the traffic. There will be
20 more traffic on Uakea, I believe, for the 30 days of
21 construction, but that's not a heavily traveled road.

22 And there might be a couple of inconveniences, but
23 we're not going to have a ten-car backup or anything like
24 that.

25 MS. SHIBUYA: Yes. And I would like to add at the

1 two ends, this end and this end -- where is the light? This
2 end and this other end, that's where we put in those
3 electronic message boards. Actually, those would be mainly
4 just to help the local residents for the first few days or
5 something. They'll figure it out, but for the tourists to
6 actually be able to route around. Because, you know, once
7 the local residents know, you know, they can actually go in,
8 you know, locally to travel to these areas. Come back out.

9 But they'll probably take whichever, you know,
10 Keanini or down Keawa. They'll figure it out. Coming this
11 way, they're going to see that message board, so they're
12 just going to go down Uakea. So, the intent was really to
13 catch the local residents with the flyers and the public
14 announcements for the first -- I guess not all Hana people
15 travel out every day, so maybe for the first few weeks. And
16 then the message boards would be really there for the
17 tourists.

18 And if they also check the DOT web site, we do
19 have our road closures posted on that web site.

20 CHAIR HIRANAGA: Commissioner Shibuya.

21 COMMISSIONER SHIBUYA: I just wanted to ask them
22 for the weight capacity of the old lane and the new lane, is
23 there any difference?

24 MS. SHIBUYA: Yes, there will be. Because the old
25 lane is actually, we have a limit, a ten-ton limit for the

1 entire Hana Highway. And we're trying not to touch the
2 existing structure as much as possible. So, that weight
3 limit will still be in place for actually the entire route.
4 The new structure will be, of course, built to current
5 standards. So, of course, it will have a better structural
6 capability versus the old one.

7 So, it's going to be tightly uneven. Inbound is
8 going to be the old side. Outbound is going to be the new
9 structure.

10 COMMISSIONER SHIBUYA: Okay. Are you planning to
11 strengthen the old side by putting a lament of concrete and
12 mesh?

13 MS. SHIBUYA: Well, actually, what we're going to
14 do is basically remove all the overburdened asphalt, which
15 has built up through the years. And then because that deck
16 condition is, you know, still rough, we're going to overlay
17 it with a thinner layer of asphalt just for the riding
18 surface, actually to match up -- actually, we're going to
19 put an overlay on the new structure just to have it all
20 match.

21 But essentially, we're going to remove -- there's
22 probably about four inches of overburden. We're going to
23 take it off. Because that adds weight, yeah, to the top.

24 COMMISSIONER SHIBUYA: So, if you -- would you
25 advise the fire department that if you had a full fire truck

1 with water and chemicals, that they should use the new side
2 preferred, not the old side?

3 MS. SHIBUYA: Well, yeah, we could do that. But
4 they use the existing structure as is, so they're probably
5 aware that their weight can go over. It's just that they
6 have to maneuver a little bit better because the walls are
7 so close right now.

8 COMMISSIONER SHIBUYA: Okay. Thank you.

9 CHAIR HIRANAGA: Any further questions for staff
10 or the applicant? Seeing none, we'll have the staff
11 recommendation.

12 MR. FASI: Thank you, Mr. Chair. The Condition
13 Number 4 and 9, the wording should be replaced. Hana
14 Advisory Committee should be replaced with Maui Planning
15 Commission.

16 The Planning Department recommends that the Maui
17 Planning Commission adopt the Planning Department's report
18 and recommendation prepared for the May 10th, 2011 meeting
19 after finding of facts, conclusion of law, decision and
20 order and to authorize the Director of Planning to transmit
21 this decision and order on behalf of the Planning
22 Commission. Thank you.

23 DIRECTOR SPENCE: Which ones again would be --

24 MR. FASI: Four and 9.

25 DIRECTOR SPENCE: Four and 9. And the date on 4?

1 MR. FASI: Correct.

2 CHAIR HIRANAGA: The floor is open to a motion.
3 Commissioner Mardfin.

4 COMMISSIONER MARDFIN: I move the adoption of the
5 special management area use permit for the proposed highway
6 improvements Holoina Wawae Bridge on Uakea Road. I'm
7 sorry --

8 COMMISSIONER SHIBUYA: Gulch.

9 COMMISSIONER MARDFIN: It's bridge, but Holoina
10 Wawae Gulch as recommended by the Department of Planning.

11 CHAIR HIRANAGA: Is there a second?

12 COMMISSIONER SHIBUYA: Second.

13 CHAIR HIRANAGA: Seconded by Commissioner Shibuya.
14 Discussion. Commissioner Mardfin.

15 COMMISSIONER MARDFIN: I'll spell for our
16 transcriber the technical name of the gulch is H O L O I N A
17 with a kahako over it, W A with a kahako over it, W A E. I
18 got that from a -- from the Maui Tax Map with a slight
19 misspelling and from "Place Names of Hawaii" and from local
20 experts that confirmed it for me.

21 And I would like to -- I went to the meeting that
22 they held. There were three members of the Hana Advisory
23 Committee that were there. They have a number of seven, so
24 they needed four for the quorum. That's why the public
25 hearing was not able to be held. In general, Hana people do

1 not want bridges widened. There are several bridges between
2 Kahului and Hana that are one-way only, alternate one-ways.
3 And we don't want them widened.

4 This was an exception. Everybody at that meeting
5 was in favor of this, because it's short. It's highly
6 traveled. There's a funny angle into it. I had a friend
7 who crashed a car into it. And this is a good place to have
8 a bridge widening. I think it's a good plan, and I urge
9 support for it.

10 CHAIR HIRANAGA: Any other discussion? Seeing
11 none, Director, if you could restate the motion.

12 DIRECTOR SPENCE: It is to approve the special
13 management area use permit as amended for just the dates and
14 the Planning Commission name.

15 CHAIR HIRANAGA: Call for the vote. All in favor,
16 please so indicate by raising your hand.

17 DIRECTOR SPENCE: That's seven aye's.

18 CHAIR HIRANAGA: Motion is carried. We'll recess
19 for lunch and reconvene at 1:00.

20 MR. FASI: Thank you very much, Commissioners.

21 (Lunch recess taken 12:00 p.m. to 1:02 p.m.)

22 CHAIR HIRANAGA: We would like to call the meeting
23 back to order. The next agenda item is Item D. Director.

24 DIRECTOR SPENCE: Thank you. Mr. Chairman and
25 Members, this is a continuation of the orientation, the next

1 item, Item E, continuation of the orientation that we were
2 supposed to have I forget how many meetings ago. But with
3 us, we have Tara Owens with Sea Grant to discuss the sea
4 level rise as it applies to planning.

5 MS. OWENS: Thank you, Commissioners. Thanks for
6 having me back this afternoon. I got booted because
7 Corporation Counsel talked to you for an hour on April 12th,
8 but it was definitely necessary. And I'm back to fill my
9 role here today. So, some of you have heard some of this
10 before. Some of you have heard from me, and you know me.
11 Hopefully, I won't repeat all of the same things. There's
12 always new data, and there's always new examples from Hawaii
13 and Maui. So, I try to continually update my presentations.

14 And as you probably know, I don't -- I am not a
15 planner. But I'm colocated with the -- the shoreline
16 planners in the Planning Department over in One Main Plaza.
17 I work for the University though, and I'm here to support
18 any kind of planning efforts that relate to shoreline
19 activities. So, I won't be talking about rules and
20 ordinances in the way that some of the other orientation
21 presenters would do. I'm here to talk about a topic that
22 really in the future -- well, it probably pertains to all of
23 the decisions that you're making today that will impact our
24 future.

25 So, it's just something to always keep in mind,

1 and we'll go over some examples on Maui. And while I'm
2 here, I hope to not just always talk at you, so please let
3 me know if you have any questions or any comments or
4 anything that I can do that will support you in your efforts
5 either today or later. I was -- so, I was scheduled to
6 speak on April 12th, and I included this slide because at
7 the time, this was just days before in the "Honolulu
8 Advertiser".

9 This was an article that was published and had a
10 couple of quotes from Dr. Chip Fletcher, who is with the
11 University of Hawaii Manoa Campus. And when I talk about
12 sea level rise, I have to -- inevitably I have to talk about
13 climate change a little bit. But I try very hard to not be
14 polarizing, because it can be a polarizing issue. And I try
15 to stick to just the facts. What are some of the
16 observations that we -- that we see globally and
17 specifically here in Hawaii. But Chip, he's been around for
18 a long time. So, he can be a little bit more opinionated
19 than I can be.

20 And so, a couple of things that I thought might be
21 relevant to this discussion, he said global warming is front
22 and center in Hawaii. It is here, and we are living it. It
23 is absolutely present. And, you know, you've seen examples
24 of it lately. We'll talk a little bit about the winter
25 flooding we had. That definitely relates to the impacts of

1 climate change that we're already observing today. And Chip
2 went on to say, now would be the time for Governor Neil
3 Abercrombie to order all State Departments to assess the
4 impacts that global warming have on their missions and make
5 some plans. The good thing is I think we are moving in that
6 direction.

7 So, I can't get to the sea level part -- the sea
8 level rise part without talking about the big six of climate
9 change. These things I've talked to you about before, but
10 these are the direct observations that we're having here in
11 Hawaii. So, these aren't things that are theories or
12 models. These are actual data that we've been monitoring
13 and observing here over time. We know that air temperature
14 is rising. Because air temperature is rising and the water
15 is getting warmer, sea level is rising globally, and also
16 here, of course, in Hawaii.

17 Rainfall and stream flow are declining. But rain
18 intensity is increasing. So, something like the flood
19 events that we saw that related to all the heavy rains we
20 had upcountry in December and January is something that
21 could very well be something we can expect in the future
22 related to climate change. Sea surface temperatures are
23 rising, and the ocean is becoming more acidic. That's
24 important for coral reefs. The acidity of the ocean
25 directly impacts the ability of a coral reef community to

1 thrive.

2 Okay. So, these are global temperatures since
3 1880. So, you can see a steady acceleration or increase in
4 global temperatures since the 1800's. Again, these are
5 direct observations. And the purpose of these red lines is
6 just to show you that over time in more recent years, we're
7 starting to see an acceleration in the trend of global air
8 temperatures. This is starting to be a few older
9 statistics.

10 But we've had the warmest 12 months in the last
11 130 years. And 2009 at the time that I made this slide was
12 tied for the second warmest year on record. I think now
13 we've broken that record again. Another trend we're seeing
14 is that record highs are occurring twice as often as record
15 lows. So, if you look at this figure and go back to the
16 '50s, the red are the highs and the blues are the record
17 lows. Back then we saw about as many highs as we saw record
18 lows.

19 Now, the ratio of record highs we're seeing
20 compared to record lows is about twice as many. And the
21 percentage increase in very heavy precipitation, which is
22 defined as the heaviest one percent of all -- all
23 precipitation events since the '50s is increasing. So, you
24 can see different regions of the U.S. We've had a 20
25 percent increase in precipitation in the southeast, 67

1 percent in the northeast, about 12 percent in Hawaii.

2 And then another general trend is that out of all
3 the heat that's coming into the earth, most of the warming
4 goes into the oceans. So, this shows you how much heat
5 content is in the oceans compared to the land and the
6 atmosphere. And what that means is because the earth is
7 covered by 71 percent water, and water stores so much heat,
8 that creates the sea level rise that we're starting to
9 observe now, and in theory, we'll see accelerations of in
10 the future.

11 And that's because of two reasons. When the water
12 heats up, glaciers and ice caps melt. And the second reason
13 is that water expands as it heats up, thermal expansion of
14 water, and it creates a rise or increase in the volume that
15 the water occupies. So, this is a -- hopefully it will work
16 this time. Every time I come, it seems like I can't get
17 this movie to work. But this will show you surface
18 temperatures put together by NASA since the 1800's, so this
19 is a combination of land and water surface temperatures.

20 So, you can see the time line is moving forward
21 from the 1800's, and, of course, the reds are the warmer
22 temperatures, and the blues are the cooler temperatures.
23 So, it's a pretty dramatic example of what we're seeing in
24 terms of increase in ocean and air temperatures. And
25 because of all that, now we're getting to the sea level rise

1 specific part of this. We're seeing rising tides around the
2 globe. All the red dots are tide stations around the world.

3 Many of these tide stations have been in place for
4 100 years. So, we have direct observations of water levels
5 for 100 years in some places. And because of that, we have
6 a record of global sea level trends. This chart shows you
7 sea level trends since 1965, and you can see the
8 acceleration in sea level in the past several decades.

9 Sea level was estimated to be increasing about six
10 inches per hundred years in the 20th Century, then up to
11 double that since the 1990's. And then we're seeing even
12 more recent accelerations. And, of course, there are
13 predictions for accelerations, even greater accelerations in
14 the future. This is the Kahului tide gauge. So, we have a
15 record in Kahului since about the '40s. And we see an
16 increase in sea level rise since '40s of about nine inches
17 per 100 years at the Kahului tide gauge.

18 So, this is today what we're observing. This
19 doesn't speak to what we might see in the future with
20 acceleration. Okay. So, I mentioned this already. The two
21 causes of sea level rise are thermal expansion of ocean
22 water and melting of ice. We've been monitoring the
23 Greenland melt record, the melting of the Greenland ice
24 sheet over the last couple of decades since we've had
25 satellite data. And you'll see the by looking at this

1 melting index, we've seen a dramatic increase in melting in
2 the last -- the last decade or two.

3 And Greenland met a new record actually in 2010
4 for melting of the ice sheet. Same with Antarctica. It's
5 continually losing mass, and all regions of Antarctica are
6 warming. And it's said that the overall ice loss in
7 Antarctica has increased by 75 percent in the last decade.

8 There's still some uncertainty as to how much this
9 melting will contribute to future acceleration of sea level
10 rise. It's known that it will, but it's still somewhat
11 uncertain how much it will. And there are lots of
12 predictions, so this is again looking at sea level rise
13 since the 1800's at a rate of less than three inches per
14 century in the 1800's up to six inches per century in the
15 1900's.

16 And then once we started actually having satellite
17 and tide gauge records, we could start to see an
18 acceleration in sea level rise, about one foot per century.
19 And then projections for the future are still relatively
20 wide ranging. But the science is getting better and better
21 every day. And most times when I give this presentation, I
22 say that the acceptable and very conservative estimate of
23 what we might observe in the next 100 years is about a meter
24 in the next -- by 2100. And that's about three feet.

25 But there are a wide range of predictions. So,

1 these are several different studies that have been published
2 in very recent years, 2007 to 2010. And these are the range
3 of estimates that each of these studies predicted, so
4 anywhere from 25 centimeters up to 200 centimeters, which is
5 two meters, which is about six feet. And so, one meter kind
6 of falls right into the middle of all that -- those range
7 predictions, so it seems like a reasonable, and like I said,
8 according to some scientists, probably a pretty conservative
9 planning target.

10 So, probably some of this you've heard me show you
11 before. But this is an example of what another state is
12 doing. Many states have actually been mandated or have
13 taken it upon themselves to try to incorporate sea level
14 rise into their planning for the future. California is one
15 of those. They have maps for every shoreline location in
16 the state, and they've mapped up to 1.4 meters of sea level
17 rise, which is what they decided to use for their planning
18 target. And then they look at what that inundation
19 footprint looks like. And then they've tried to assess what
20 kind of impacts that might have by looking at the people and
21 the critical facilities that fall within those inundation
22 areas.

23 We're doing similar here on Maui. We have a few
24 draft maps for South Maui, Kihei area. These are being
25 provided by Chip Fletcher, who has been contracted by Maui

1 County to produce a series of sea level rise inundation maps
2 for Maui, at least in all the areas that -- mostly in the
3 sandy beach areas. So, all the areas where we have
4 shoreline erosion rates, the shoreline change index, we'll
5 also have sea level rise maps associated with those. So,
6 we're going to have some really good data. The question is
7 at this point, it's unknown how that data might be
8 incorporated into Maui County's policies and plans and rules
9 as we move forward.

10 So, this is something that the planners and
11 yourselves will have to wrestle with here in the next year
12 or so. So, just the general list of some of the impacts of
13 sea level rise. All of the issues related to coastal
14 erosion that we already deal with are going to probably
15 become more severe. We have, for example, an emergency
16 permit that came into the Planning Department just yesterday
17 to put some sand bags in front of the Hyatt in Kaanapali to
18 address an erosion problem that they're having on the beach
19 access walkway there along the resorts. Those kind of
20 scenarios will just become more frequent and maybe even
21 harder to deal with.

22 Water table will rise. Possible contamination of
23 any aquifers. Maybe not as much so here in Hawaii as other
24 places, because a lot of our water comes from high up in the
25 mountains anyway. New wetlands will form even if we don't

1 want them to. Think about Kihei. We had all that flooding
2 in Kihei this winter and what it looked like down there in
3 the low-lying areas. Those are the locations where you
4 would see new wetlands forming. Kihei probably mostly once
5 was wetland. It served as a flood plain for the island at
6 one point in time. Coastal lands will become submerged.
7 Storm drains will back up. Drainage infrastructures will
8 stop working in low-lying areas. That we saw also back in
9 December and January with the big floods. That's probably a
10 pretty big critical issue that is going to have to be
11 planned for.

12 Remember I mentioned at the beginning of this
13 presentation that there will be increased -- possibility of
14 increase in severe precipitation events, so what we saw in
15 December is not unusual -- it may not be unusual anymore.
16 Increased vulnerability to tsunami. As sea level rises, the
17 potential for tsunami inundation to go further inland is
18 there. And infrastructure failure. I think this is maybe
19 one of the places where we have the potential to have the
20 biggest impact. Of course, you can't go relocating
21 infrastructure that already exists, but when opportunities
22 arise to do that, it might be worth evaluating the
23 possibility of doing so.

24 One example I can think of is a few weeks ago at a
25 Commission meeting here, a new revetment was approved in

1 Olowalu to shore up the road along -- along the highway
2 going to Lahaina. And these are really tough decisions,
3 because, of course, that's a critical thoroughfare. But
4 anytime these decisions come up, hopefully you'll be able to
5 just think about -- about what the future may hold. And if
6 there are opportunities to relocate critical infrastructure
7 like roads, this may be the reason for doing so.

8 And as you know, every time -- every time, in most
9 cases, when a seawall revetment is put in place, you're
10 protecting the development and not protecting the beach.
11 And most cases, it leads to permanent beach loss, so it's a
12 choice. It's definitely a choice and a hard choice that has
13 to be made, but just something that needs to be critically
14 analyzed.

15 Shoreline change maps. I mentioned this at a
16 previous meeting. We are receiving new shoreline change
17 maps from the University of Hawaii. And so, this provides a
18 really nice opportunity to look at the erosion rates, look
19 at how the trends have changed, and think about does the
20 current setback policy as it is based on erosion rates, does
21 it -- is it sufficient. Is this what we want to have in
22 place for the future, or is it an opportunity to make some
23 changes?

24 So, there are a lot of options that the Planning
25 Department has been discussing and considering. They will

1 probably continue to have those discussions, but at some
2 point, it will probably be brought in front of this
3 Commission to look at different options and make some
4 decisions. And since coastal erosion will be accelerating,
5 there's a whole range of options when it comes to coastal
6 erosion. From one end of the spectrum, which is do nothing,
7 and potentially let your development fall into the sea as it
8 were, or the other end of the spectrum, which are
9 stabilization, which is permanent erosion control, which is
10 via rock revetment and seawalls.

11 And then there's everything in between. Manage
12 retreat, beach replenishments, temporary erosion control.
13 So, all these are valid options. But certainly, when you're
14 analyzing a specific project, you might just think about how
15 that decision will impact the future and will it eventually
16 have cumulative impacts. Once that seawall is allowed, is
17 that door open now for expanding shoreline hardening across
18 the island, or is it just a necessary option for, you know,
19 one particular place and one particular time.

20 With sea level rise, we will probably see some
21 degradation of coral reefs. The ocean acidification issue,
22 and then there's the sedimentation issue. We saw a lot of
23 the sedimentation issue this winter with the storms and the
24 runoff from upcountry down to the reef. Of course, drainage
25 challenges, I know you guys are familiar with this. You saw

1 a couple of presentations right after the events in December
2 and January. This is the example down in Kihei right there
3 by the whale sanctuary.

4 These are big challenges that, of course, the
5 County and all the stakeholders on this island are going to
6 have to wrestle with. But potentially, sea level rise and
7 climate change are going to make our decisions even harder.
8 This is another area that was damaged right after the storms
9 in January, December and January. In this case, water came
10 down from upcountry and then exited into the road just north
11 of Kamole II lifeguard tower and actually transported down
12 the road and then found the path of least resistance right
13 here by the lifeguard tower and scoured out this large area.

14 So, in this case, the County was able to respond
15 by doing a dune restoration using inland sand to fill in
16 that puka and restore the dune area there and protect the
17 lifeguard tower. This is one of the options we just
18 discussed. This is, you know, beach renourishment, dune
19 restoration. And in this case, we were lucky to be able to
20 buy some inland sand, and inland sand was available to buy.
21 In the future, there may not be any stockpiles of sand
22 available for use in situations like this.

23 There is limited supply, and there are pros and
24 cons of this I won't get into today. But this is what the
25 whale sanctuary looked like in December and January after

1 the flooding. They've been struggling down here with
2 drainage issues and have actually approached the Planning
3 Department and other members of the County to try to help
4 them resolve the flooding problems that they've experienced
5 over and over and over again. Part of this is just because
6 this area used to be undeveloped, and it was -- it served as
7 a wetland or a floodplain area for all of Kihei.

8 And it, of course, has been developed, and there's
9 a lot of impervious surface, so it just happens to be that
10 the whale sanctuary takes the brunt of it. So, we're going
11 to have to come up with some solutions down here. And then
12 this -- these are examples of the really large scale
13 problems. And it's hard to -- it's hard to imagine even
14 being able to do something like move the wastewater
15 treatment facility, but I do like to mention infrastructure,
16 because it's the little places where I think we can make a
17 really big difference like when new sewer mains are going in
18 or when highways need to be protected, maybe there can be
19 considerations for relocating those when the opportunities
20 arise. As they're being replaced, you know, relocate them
21 further mauka. Certainly don't relocate them further makai.

22 So, in terms of risk management, just some things
23 to keep in mind. Today's flood is tomorrow's high tide. As
24 sea level is rising, some of the things that, you know, we
25 see are nuisance flooding might be something that happens on

1 a day-to-day basis in the future as sea level increases.
2 Some people try to promote, and I think this is a smart way
3 to think about it, is take a no-regrets action. We may not
4 know exactly what the impacts of sea level rise are going to
5 be or how much sea level will rise or how much air
6 temperature and water temperature is going to continue to
7 increase. And we don't even have to have that debate, but
8 we know something is going to happen. So, try to think
9 about the no-regrets action.

10 Anywhere we can make a difference, it makes a lot
11 of sense to try to make a difference. Make it easier for
12 the future Planning Commissioners to make decisions. Think
13 about what success will look like, what's acceptable. Maybe
14 some minor flooding on a periodic basis, something we decide
15 is acceptable, or if there are locations where it's not,
16 then we have to think about moving roads or moving
17 infrastructure.

18 What are the first steps? Well, we have the hard
19 decisions to make now, because this is something that we've
20 never had to deal with before. And there's very little
21 precedent. But we can start to think about scenarios and
22 maybe construct some scenario-based decisionmaking based on
23 high, moderate and low possible scenarios. Think about how
24 we want to deal with our engineering, raising roads,
25 relocating roads. Can we -- can we implement new building

1 construction standards along the shoreline, elevating
2 buildings rather than, you know, building slab on grade.
3 And hopefully, we're going to get to a point of having some
4 legal guidance, maybe even at the State level. There are
5 definitely different groups here working on trying to come
6 up with how -- what level, what's our planning target for
7 sea level rise in Hawaii at the State level, things like
8 that.

9 So, probably in the future, we will be getting
10 more and more guidance. And demonstration of low-hanging
11 fruit. I think these are the areas that I was speaking to
12 in terms of when an opportunity comes up to relocate
13 something, and it's easy enough to do, we can use that as an
14 example for what we should be doing. And one thing that we
15 have in the works now is we worked with -- Sea Grant worked
16 with Maui County planners to submit a grant. We got some
17 funding from the National Sea Grant Law Center. And we're
18 just -- we're just going to go through and review the SMA
19 rules and look at any areas, probably the low-hanging fruit
20 areas where maybe a slight revision of the rules could be
21 made that will make us more successful in planning for the
22 future and future conditions like these. So, we'll be
23 working on that throughout the next year.

24 We recently held coastal climate adaptation
25 training. This was just a few weeks ago. The NOAA Pacific

1 Services Center came over to Maui, and it was the first
2 offering of this training in the Hawaiians Islands. It was
3 really successful. We hoped to have more participation from
4 various departments in the County, but we had representation
5 from Planning, and we had representation from Department of
6 Water Supply. It's hard. Everybody's jobs are -- you know,
7 we're all overwhelmed, and it was a three-and-a-half-day
8 training. So, people's ability to participate were limited,
9 but we also had a lot of other stakeholder groups from the
10 community like the Land Trust and people from Maui College.
11 And there was a lot of great discussion on what are the most
12 important issues on Maui and what are maybe some of the
13 adaptation strategies we can take.

14 So, hopefully, some of that will continue to be
15 implemented in everybody's minds and as they think about
16 making decisions for Maui for the future. Thanks. I'm
17 available anytime if you have any questions.

18 CHAIR HIRANAGA: Thank you, Tara. Questions from
19 the Commissioners? Commissioner Mardfin.

20 COMMISSIONER MARDFIN: First of all, thank you
21 very much. I really appreciate this stuff.

22 MS. OWENS: Thank you.

23 COMMISSIONER MARDFIN: I have two questions. The
24 first one is do -- I know this changes from time to time,
25 but I was reading a "Science News" or "Science Journal" the

1 other day. And it said it's going to be -- it's warming up
2 faster. There were things that were offsetting the current
3 situation making it colder than it should have been given
4 the other -- it had to do with sun spots and warmth of the
5 sun. So, if you correct for that, we're going to get hotter
6 faster than we thought; therefore, we're going to have
7 greater sea level rise than we thought. But, of course,
8 next week, there could be another article that could say the
9 opposite. But I presume they try to, as much as possible,
10 keep on top of it.

11 MS. OWENS: Yes, they do, and I do. There are
12 many studies that predict a multi-meter sea level rise in
13 the next 100 years, many studies. But I try not to be the,
14 you know, the sky is falling advocate because we have
15 limited ability in some cases to make decisions. So, we
16 just have to -- we have to decide, you all have to decide
17 what is reasonable.

18 CHAIR HIRANAGA: Commissioner Mardfin.

19 COMMISSIONER MARDFIN: If we plan for one meter,
20 for 100 years and it comes out one meter in 50 years, we're
21 still ahead of the game if we plan for one meter. Could you
22 go back to the slide where you had historic shoreline maps?

23 MS. OWENS: This one?

24 COMMISSIONER MARDFIN: That's the one. And then
25 there was a little thing. Maybe it was the next one,

1 because it was something in the upper left corner. There
2 where it says historic shorelines. I noticed they're all
3 different months. And I think we generally believe that in
4 different months or different seasons at least, the
5 shoreline is different. Was that -- and I had a discussion
6 with you I think the last time you were here that they used
7 to exclude certain data that looked like it was outliers,
8 and now they're trying to include it all. But do they make
9 any adjustments for the month that it was done?

10 MS. OWENS: There is a seasonal uncertainty. Of
11 course, when you collect aerial photos, you're getting a
12 snapshot in time, whatever month that happens to be. It may
13 be a highly eroded beach at that snapshot in time. And in
14 the new data set, all outliers are included. So, if it
15 happens to be one of those times, it's still in the data.
16 So, where that really comes into play is there is an
17 uncertainty factor. So, any erosion rate we have, let's say
18 it's one foot per year, there's a plus or minus.

19 And that plus or minus accounts for many different
20 uncertainties, one of which is the seasonal uncertainty,
21 which is determined on a site specific basis.

22 COMMISSIONER MARDFIN: Okay. Thank you very much.

23 MS. OWENS: The uncertainty -- actually, this is
24 one of the discussions you may have in the future. The
25 uncertainty may be something we can use possibly. It's just

1 one option to possibly implement it within our erosion
2 setbacks. So, maybe you use the uncertainty because it is
3 an uncertainty to change the implementation of the setback.
4 It's a possibility.

5 COMMISSIONER MARDFIN: Thank you very much.

6 CHAIR HIRANAGA: Commissioner Wakida.

7 COMMISSIONER WAKIDA: About halfway through, you
8 had a slide on Kahului Harbor. And I just need a
9 clarification. Did you say that it was a nine-inch rise in
10 the -- in the last 100 years or the next 100 years?

11 MS. OWENS: Well, this is the trend over the last
12 50 or so -- 50 or more, 60 years. And that trend has been
13 about nine inches per 100 years. So, that's the existing
14 rate, which will probably accelerate in the future based on
15 global temperatures rising.

16 COMMISSIONER WAKIDA: So, that really is
17 historical data.

18 MS. OWENS: Exactly.

19 COMMISSIONER WAKIDA: I got you.

20 CHAIR HIRANAGA: Any other questions? Seeing
21 none, thank you very much.

22 MS. OWENS: Thank you.

23 CHAIR HIRANAGA: Next agenda item is Item E,
24 Settlement Agreement E(1). Director.

25 DIRECTOR SPENCE: I'm not sure how we want to

1 proceed. I'm guessing Mimi would speak first and discuss,
2 just introduce the item. And then --

3 MR. TAKAYESU: James Takayesu appearing on behalf
4 of Micah Buzianis.

5 MS. JOHNSTON: Deputy Corporation Counsel Mary
6 Blaine Johnston appearing on behalf of the Director.

7 DIRECTOR SPENCE: Mr. Chairman, I just figure that
8 Mimi would just introduce the item why we're here today, and
9 then Jimmy can talk. And if we need to go into executive
10 session, the Commission can do that.

11 MS. JOHNSTON: Let me just give you a brief
12 description of what you have in front of you. I don't know,
13 some of you I think received at some point in the past the
14 documents when we were set for hearing back in January. But
15 fortunately, we were able to reach a settlement before that
16 hearing. And this is a very brief background.

17 Micah Buzianis and his mother, Charlotte Strong,
18 own the property in the Kai Hale Subdivision, which is down
19 near Spreckelsville, and a special permit was granted with
20 special conditions. One of the conditions for the
21 subdivision was that only one farm dwelling could be built
22 per lot. That was voted on by the Commission back in 1995.
23 One of the problems was that A&B Properties, that was the
24 applicant, never prepared the unilateral agreement and
25 recorded it that contained that restriction on what could be

1 built on the property in addition to a number of other
2 conditions.

3 Shortly after he purchased the property,
4 Mr. Buzianis applied for an extension to build two farm
5 dwellings on his property. For some reason, Mike Foley,
6 maybe because there wasn't a recorded document, approved
7 that. Mr. Buzianis proceeded, built two farm dwellings and
8 an additional structure and was using those -- using the
9 second dwelling as a dwelling, because that's what he was
10 planning to do.

11 He was very candid in his testimony that he knew
12 there was a restriction, but he felt that he could come back
13 later to the Commission and get the restriction lifted. The
14 homeowners association did come back before the Commission
15 in 2008 and they requested to change so each lot could have
16 two farm dwellings, and the Commission turned them down.
17 So, that is just -- that is the background of it.

18 Mr. Buzianis was cited. He was given a notice of
19 violation. He requested a hearing. You have a procedure,
20 it's kind of unusual, a hearing with the Director. A
21 hearings officer, Former Judge Mossman, was appointed to do
22 the Director's hearing. He heard testimony over a couple of
23 days, looked at documents, and rendered his recommendation,
24 not call it a decision, that the NOV be reversed. Then
25 Planning Director Kathleen Aoki did not reverse it, stuck

1 with it. And there was an appeal from her decision not to
2 follow Judge Mossman's recommendation. We were prepared to
3 go for a hearing on that and have the Board, I mean have the
4 Commission hear that directly when we settled.

5 Now, the terms of the settlement that were agreed
6 to and negotiated basically that Mr. Buzianis is going to
7 remove the nonload-bearing walls in the structure. It's
8 called the ag office. And remove the kitchen furniture, as
9 it were, the refrigerator and stove and so forth, and cease
10 using that structure as a dwelling. There was an \$8,000
11 fine, which was the fine that the Director Aoki imposed. He
12 is to pay half of that or \$4,000 within 30 days after the
13 Mayor approves the settlement agreement.

14 The balance is suspended for a period of two
15 years, so if there are no further violations, he won't have
16 to pay the additional \$4,000. There's some -- built into
17 the agreement is ability of the County, if there's a reason
18 to believe that there's a violation, to get back on the
19 property giving 24 hours' notice to go back and see whether
20 there is a violation. That is essentially the guts of the
21 settlement agreement. You've been -- you've been given a
22 copy that's been signed by two owners, Ms. Strong and
23 Mr. Buzianis.

24 It's been approved as to form by the Director and
25 the attorneys. And under your rules, the Mayor has to -- I

1 mean the Commission has to approve a settlement agreement,
2 and then the Mayor will sign off at which point it becomes a
3 binding agreement. And it's prepared to be -- will be
4 recorded at the Bureau of Conveyances, so there will be
5 notice to anybody that might -- if Mr. Buzianis decided to
6 sell the property, they will be aware of this agreement. It
7 will show up as a recorded document.

8 So, I would ask that the -- that the Commission
9 approve the agreement. I know that Mr. Takayesu I believe
10 has a request, which I think I indicated at the last
11 meeting, the County does not agree with, but I'll let him
12 speak for himself.

13 MR. TAKAYESU: Yeah. Basically, we had the
14 settlement agreement draft --

15 CHAIR HIRANAGA: Could you just identify yourself?

16 MR. TAKAYESU: James Takayesu appearing on behalf
17 of Mr. Buzianis. We had drafted up the settlement
18 agreement. We sent it to Micah's mother, who lives in Utah.
19 And she didn't want to sign the agreement. She didn't
20 participate in the administrative proceedings. She is an
21 owner of the property, and her involvement was that her name
22 is on there as an owner, because she helped her son purchase
23 the property. And so, what we did was we revised the
24 settlement agreement. The terms are all the same, except
25 that only Micah was the signatory.

1 In the meantime, because Mimi had set a deadline
2 for it to be executed by the owners, Micah's mother went
3 ahead and signed it, but they still wanted to have the
4 Planning Commission consider having and approving the
5 agreement that's only signed by Micah. I've never talked to
6 Ms. Strong, and I was going to request a continuance because
7 Micah is, he's a professional windsurfer. And he's out of
8 state.

9 I didn't realize he was going to be out of state
10 when this matter was set for today's hearing. He won't be
11 back until the 21st of this month, so I guess I'm requesting
12 a continuance. With respect to the modifications of the --
13 that one structure on his property, it was not removal of
14 nonload-bearing walls. It was removal of certain cabinets
15 that were in that structure. We worked it out with the
16 current Planning Director. It was also for removal of a
17 refrigerator and also a dishwasher.

18 And they could go ahead and have a small
19 refrigerator about the size or smaller than the dishwasher.
20 So, that it would be a -- modifications would basically make
21 it into a bar/sink facility as opposed to what looks like a
22 kitchen. The current configuration had been inspected by
23 planning inspectors over the years. And the position
24 they're taking was as long as you did not have heating,
25 cooking facilities, that they would pass it and determine

1 that it was not a kitchen.

2 I think the Planning Department is looking at
3 their definitions, and I guess their policies relating to
4 what is or is not a kitchen. Because under the current --
5 current rules or policy, it probably has led to a lot of
6 abuse where, you know, if it looks like a duck and walks
7 like a duck, it is a duck. And a lot of these bar/sinks
8 look more like kitchens.

9 Again, I never had a chance to talk to
10 Mr. Buzianis, his mom, and he wanted to be able to address
11 the Planning Commission with respect to consideration of the
12 revised agreement. Again, it's the parties who are involved
13 in the settlement agreement, and it would exclude his
14 mother. Her name as the owner, basically is there like a
15 security interest in the event that it's sold, that she
16 would be repaid the money that she loaned. And she really
17 has no control over the property.

18 Again, my basic request is that it be continued
19 until Mr. Buzianis can be back on Maui and appear before the
20 Commission.

21 CHAIR HIRANAGA: Corporation Counsel, did you wish
22 to comment?

23 MS. JOHNSTON: Yes, just very briefly. First of
24 all, Ms. Strong is a coowner of the property. And whether
25 or not she is here and intends that, she is responsible for

1 the conditions of the property. That's maybe one of the
2 downsides of property ownership. The settlement agreement,
3 if there's a problem, if for some reason Mr. Buzianis is
4 gone for a long period of time or unable to oversee the
5 property and there are violations, then there's nobody to be
6 held responsible if the other coowner is not a party of the
7 settlement agreement.

8 This issue was not raised until the final
9 settlement agreement was prepared and had been sent out for
10 signature. Mr. Takayesu represented -- throughout the
11 proceeding in front of Judge Mossman, he clearly represented
12 both Mr. Buzianis and Ms. Strong. Every paper he put in
13 indicated that he was representing both of their interests.
14 It's a standard to have all the property owners affected be
15 part of the settlement agreement and be bound by it.

16 And perhaps with Ms. Strong's influence and
17 potential being held accountable for any of the violations,
18 she'll encourage her son to, you know, to comply with the
19 agreement as it was structured after lengthy agreement. The
20 first thing when I was in private practice, I told everybody
21 don't own property with anybody, because you're just asking
22 for somebody to give you trouble somewhere along the line.
23 I wasn't there to give them advice, but basically what we
24 agreed to, it was sent out. It was signed. It has been
25 signed by Ms. Strong.

1 I don't -- I think that that was our agreement.
2 And if he wants to undo it, then maybe we should go back and
3 do the hearing. I would hate to inflict that on the
4 Commission, because I think we have a fair agreement and one
5 that will address the problems.

6 MR. TAKAYESU: With respect to Mr. Buzianis and
7 saying because he's a professional windsurfer and sometimes
8 he'll be gone for sometime, he'll go to South Africa and
9 Europe, the agreement, Paragraph 4, specifically requires
10 that the owner designate two individuals who are to be
11 contacted in the event Planning Department wants to go ahead
12 and conduct inspections. I've been advised by Mr. Buzianis
13 that he would designate both myself as one of the people and
14 also his father, Jay, who works for the County.

15 So, in terms of requiring that Charlotte Strong be
16 on here, it would not in any way affect Planning
17 Department's ability to request inspections that would occur
18 within one-day notice. Is that correct?

19 MS. JOHNSTON: It's correct that we have an
20 agreement that two people will be designated. We were not
21 able to agree at the time we negotiated the agreement who
22 those names would be. It's not just inspection. It's
23 responsibility for what happens on the property. Either
24 Mr. Takayesu or Jay Buzianis has that responsibility.

25 CHAIR HIRANAGA: Our Corporation Counsel, would

1 you care to comment?

2 MR. GIROUX: No. You get three lawyers, you get
3 three different opinions, right?

4 No, if you guys want to go into executive session
5 and discuss it, that would be fine. But I mean you've heard
6 the arguments of both parties, I guess.

7 COMMISSIONER BALL: Can we ask questions?

8 CHAIR HIRANAGA: Do you want us to ask questions
9 in executive session or -- why don't you explain to us why
10 we may want to go into executive session.

11 MR. GIROUX: Well, you're being asked to be the
12 judge of this discussion. Basically, because you're in the
13 middle of an adjudicatory case where there's an appeal of a
14 Director's decision, you're the final authority. But this
15 whole case is kind of unique, because it started with a
16 notice of violation of a special management area permit,
17 which you again are the final authority on according to the
18 charter.

19 And then the case went into another phase of kind
20 of, you know, type of litigation where the outcome of that
21 ended in the Director making another decision. And it's
22 that decision that's being brought to you. So, you're kind
23 of being asked at this point to clean all of this up.
24 There's an agreement. And it's whether or not you guys are
25 willing to accept this agreement, which will determine

1 whether all of this litigation ends.

2 Right now, the crux of the disagreement is on
3 whether or not one of the parties should be mentioned in the
4 settlement agreement.

5 COMMISSIONER BALL: As far as the discussion,
6 we're in regular session, questions should be in regular
7 session?

8 MR. GIROUX: Right.

9 COMMISSIONER BALL: And then deliberation should
10 go -- not go into executive now while we're still --

11 MR. GIROUX: No, no, the issue came up of going
12 into executive session, because the Chair wanted me to
13 comment on basically the final analysis, I believe, of what
14 should you guys do. Right now, I think that questions to
15 clarify, you know, positions or to clarify issues, can be
16 made in public, can be made to the attorneys.

17 But, you know, if you want me to then take all of
18 those facts and apply the law and then give you my opinion,
19 I think that shouldn't be out in the public.

20 CHAIR HIRANAGA: Commissioner Mardfin.

21 COMMISSIONER MARDFIN: Is it appropriate to ask
22 questions now of these?

23 CHAIR HIRANAGA: Yes.

24 COMMISSIONER MARDFIN: I'm curious, not curious, I
25 would like to know, do the owners, plural, agree in this

1 document that there is one dwelling unit only on the
2 property?

3 MR. TAKAYESU: Their position is that there is
4 only one dwelling on the project. And again, I don't know
5 if we -- I think we did mention that this settlement is
6 based on a financial -- they spent tens of thousands of
7 dollars to contest the NOV. We had a two-day contested case
8 hearing before Judge Mossman. We were required to submit,
9 prepare pleadings. And at a certain point, the dollar
10 amounts were something that we could agree to.

11 Basically, way early on, it looked like we could
12 settle it for about this amount before we went and incurred
13 all these costs. And we just couldn't get anywhere with the
14 former director. And when the Director Spence came on
15 board, we were able to basically resolve it at the level,
16 financial fine level that we had initially wanted to do.
17 Now, in terms of -- okay. Notice of violation came out that
18 you failed to obtain an assessment for two dwellings. Okay.

19 He, in fact, was granted an assessment by Foley.
20 Whether right or wrong, he gave them, signed off for two
21 dwellings, a swimming pool and something else, and a workout
22 room. The condition that they were proceeding on was a one
23 dwelling per lot. And that because that is not the type of
24 condition that you normally have under SMA law, it was
25 because representations were made by A&B, in order to

1 protect the County's right to enforce that condition, they
2 required A&B to go ahead and file in the Bureau of
3 Conveyance a unilateral agreement, okay.

4 And that was a condition to the granting of
5 subdivision approval. What happened was the County signed
6 off on the subdivision. And then people acquired these lots
7 without a unilateral agreement ever being filed. And,
8 therefore, there's a question as to the validity of that
9 condition. But again, money -- at a certain point, you have
10 to make a financial decision whether you want to keep
11 fighting or --

12 COMMISSIONER MARDFIN: Mr. Takayesu, I understand
13 all this history from previous meetings.

14 MR. TAKAYESU: Okay.

15 COMMISSIONER MARDFIN: I am asking at this point,
16 do both owners agree there is one dwelling on the property
17 only?

18 MR. TAKAYESU: Yes.

19 CHAIR HIRANAGA: Correct me if I'm wrong, Director
20 or Corporation Counsel, again, like Commissioner Mardfin
21 said, we're not here to discuss the merits of the violation.
22 We're here to -- you're making a request to eliminate one of
23 the coowners from being bound by this agreement, because she
24 does not want to sign the agreement; is that your request?

25 MR. TAKAYESU: She did sign eventually, but they

1 still insisted that they wanted this revised settlement
2 agreement to be presented to the Planning Commission. So,
3 they signed both documents, one with two owners, one with
4 one. But they're requesting that the Planning Commission
5 consider approving the settlement agreement with one
6 signature.

7 CHAIR HIRANAGA: That's your request?

8 MR. TAKAYESU: Yeah. But my main request is that
9 it be continued until Mr. Buzianis will have opportunity to
10 appear before the Planning Commission, because I didn't
11 really talk to the mother. I just heard everything from
12 him. And he's not -- he's not in state right now.

13 CHAIR HIRANAGA: So, I guess the questions should
14 be consistent in making a decision as to whether you're
15 going to grant his request for a continuance. Because we're
16 not here to discuss the merits of the settlement agreement
17 or the merits of the notice of violation. It's just whether
18 we're going to allow him to continue this item or we're
19 going to make a decision today whether to accept the
20 agreement. Commissioner Wakida.

21 COMMISSIONER WAKIDA: We have in front of us a
22 settlement agreement with both signatures on it, correct?

23 MR. TAKAYESU: That's correct.

24 COMMISSIONER WAKIDA: So, Ms. Strong, apparently
25 that's the mother, did sign off on this agreement?

1 MR. TAKAYESU: Right.

2 COMMISSIONER WAKIDA: Thank you.

3 CHAIR HIRANAGA: Commissioner Mardfin.

4 COMMISSIONER MARDFIN: I need to inquire as to the
5 -- before I can decide whether or not to go for deferment, I
6 need to understand the conditions thoroughly in my mind that
7 are in here. Yes, that's what I'm trying to understand. In
8 this document, there's Article 14, which talks about
9 successes and assigns. And I'm not an attorney, so I need
10 to ask, should someone buy this place in the future, will
11 the new owner be informed that there is one dwelling per
12 unit, per lot?

13 MR. TAKAYESU: Will they be informed?

14 COMMISSIONER MARDFIN: Informed and basically have
15 to agree that there is one unit on the lot?

16 MR. TAKAYESU: Well, if they do their due
17 diligence, they'll see there was a condition set out in the
18 SMA approval letter, you know. And it's obvious that the
19 Planning Department's position is that that is still an
20 existing condition, you know. In terms of the -- when Micah
21 has placed it on the market, and I think it might still be
22 on the market, they designated only one structure as a
23 dwelling.

24 One is a farm office and another is a workout
25 room/garage, so because he knows he'll get in trouble if he

1 advertises it as having two dwellings. And it could be a
2 basis for somebody to come back and say, you know, you
3 weren't honest when you put it out on the market.

4 CHAIR HIRANAGA: Commissioner Ball.

5 COMMISSIONER BALL: A question, two questions.

6 So, the terms in this settlement agreement are acceptable to
7 Ms. Strong and Micah?

8 MR. TAKAYESU: Yeah, but they would prefer the one
9 dealing with just Micah signing it.

10 COMMISSIONER BALL: But kind of the same thing,
11 just one signature on one, and two on the other?

12 MR. TAKAYESU: Right.

13 COMMISSIONER BALL: So, the terms are acceptable
14 to them, they agree to everything?

15 MR. TAKAYESU: Exactly the same thing, except for
16 the --

17 COMMISSIONER BALL: The signature pages. Now, you
18 asked for a continuance so the applicant can be here. What
19 further information would he bring to this hearing that
20 would convince me to continue it to wait for him?

21 MR. TAKAYESU: Okay. I never -- as I said, I
22 never talked to Charlotte. And I know -- I know initially
23 she didn't want to sign it, and then at some point, and
24 because of that, we went ahead and revised it to meet the
25 deadline. And then some kind of conversation occurred

1 between Micah and the mom. And mom went ahead and signed
2 it. So, as to why they still want a revised one, I don't
3 know.

4 COMMISSIONER BALL: Because she's still on the
5 deed and the --

6 MR. TAKAYESU: She's still on the deed.

7 COMMISSIONER BALL: And the mortgage and all that?

8 MR. TAKAYESU: I don't know if she's on the
9 mortgage. She may have just helped with the down payment.

10 CHAIR HIRANAGA: Commissioner Ward Mardfin.

11 COMMISSIONER MARDFIN: Mimi.

12 MS. JOHNSTON: Yes.

13 COMMISSIONER MARDFIN: What reasons, if any, does
14 the County have for wanting to use the one with two
15 signatures rather than one signature?

16 MS. JOHNSTON: Well, in the event of a default by
17 Mr. Buzianis where he doesn't pay and we still have an
18 outstanding fine, the mother would be responsible. And I
19 will point out on the agreement he's proposing, neither I
20 nor Mr. Spence have approved as to form. I haven't really
21 have a had a chance to talk to him, because it came up
22 really recently. It should say you own the property.
23 You're liable for what goes on on the property. He says he
24 hasn't even talked to Ms. Strong. So, we really don't even
25 know what her feelings are.

1 She helped her son in the first place. I imagine
2 she signed off because she's willing to continue to help
3 him. But we're looking -- we want to be sure that if there
4 are further violations, that we have, you know, as many deep
5 pockets as we can go after. And that's a very standard
6 thing in law. It's a factual and a legal thing.

7 COMMISSIONER MARDFIN: Let me ask one -- I don't
8 know for which of you. Mr. Takayesu, maybe. Does your
9 client, since there's only one dwelling on the lot that
10 would at least imply to me that if you were using it for
11 rentals to someone else, that there would be no more than
12 one family at a time or one occupant at a time in that
13 dwelling unit? There wouldn't be -- you wouldn't have
14 somebody staying in the office building, for instance, or in
15 any other structure?

16 MR. TAKAYESU: I don't know what you're saying.

17 COMMISSIONER MARDFIN: I'm concerned about
18 potential for having multiple stayers on the property at a
19 time, which is against the spirit of this one dwelling unit
20 per lot. You know, you can say it's an office, but if
21 there's a sub kitchen there, and you're renting it out, then
22 to me, that breaks the spirit of what this agreement is.

23 MR. TAKAYESU: Right. I think that's when we sat
24 down with the current Planning Director, the idea was if you
25 could eliminate what looks like a duck and have it, if

1 anything, just a bar/sink and a structure that's has an
2 office, has no bathing facility, then it's not something
3 that people could be staying there on a long-term basis.
4 Because, you know, you can't -- you don't have a place to
5 prepare food. You don't have a place to take a bath.

6 COMMISSIONER MARDFIN: Well, on a long-term basis,
7 that may be true. But on a short-term basis, that may not
8 be a problem.

9 MR. TAKAYESU: If somebody like -- our position
10 during the hearing before Judge Mossman, there's also
11 another structure, which has no kitchen. It really has just
12 a small counter smaller -- smaller than this table and a
13 little sink with one of those little curve things. That's a
14 bar/sink. There's no dispute about that.

15 COMMISSIONER MARDFIN: Has that structure ever had
16 people staying in it?

17 MR. TAKAYESU: Yeah, yeah. But under the SMA
18 definitions, okay, they refer to definitions under Title 19,
19 which is Zoning Code. And that structure with that
20 configuration would be considered a lodging unit, not a
21 dwelling. A dwelling, you need a kitchen. And that's the
22 distinction between a lodging.

23 COMMISSIONER MARDFIN: I know that is.

24 MR. TAKAYESU: So, you know, the testimony was
25 that on occasions when he had house guests --

1 CHAIR HIRANAGA: Let me interject. Again, we're
2 not talking about the merits of the case here. We're
3 talking about whether we're going to grant his request for a
4 continuance.

5 COMMISSIONER MARDFIN: Mr. Chairman, I'm not
6 trying to do the merits, but I'm trying to understand the
7 full intent of the agreement.

8 CHAIR HIRANAGA: Okay. Let's decide on the issue
9 of whether we're going to grant his request of continuance.
10 If it is yes, then we can defer your need to understand the
11 agreement, because the owner will be here to answer your
12 questions. If it's no, then I'll allow you to continue.

13 COMMISSIONER MARDFIN: Then we continue, okay.

14 CHAIR HIRANAGA: Yeah. Commissioner Shibuya.

15 COMMISSIONER SHIBUYA: I'm just having a question
16 in terms of if we do grant this request for continuance,
17 what would be a reasonable time that we can say time's up?

18 MR. TAKAYESU: Set it for -- he's coming back on
19 the 21st, and whatever the next meeting is.

20 COMMISSIONER SHIBUYA: So, when would you like
21 to -- would be the most reasonable time? Probably in July?

22 MR. TAKAYESU: He will be back in May, May 21.
23 So, whenever the next meeting is that the Planning
24 Commission has. May 24th.

25 CHAIR HIRANAGA: Just for clarification, what is

1 corporation counsel's position on the request for a
2 continuance?

3 MS. JOHNSTON: We would oppose it. We had a deal.
4 A deal is a deal. It was written up. It was reviewed
5 several times. Several drafts went back. Mr. Takayesu
6 should have checked with Ms. Strong, and it should have been
7 brought up at that point. We have an agreement signed by
8 everybody, except for the Mayor. And I would ask that the
9 Commission approve the settlement agreement.

10 CHAIR HIRANAGA: But he's not questioning the
11 agreement. He's just -- there's a request to not have one
12 of the owners on the agreement. So, is there some type of
13 impact to the County if this is not concluded today?

14 MS. JOHNSTON: The triggers for removal of various
15 things in the fine trigger from the date the Mayor signs.
16 The Mayor can't sign until the Commission acts, so the
17 longer it takes, the longer, you know, it takes for us to
18 conclude the settlement and get the payment of the fine and
19 get the two years rolling. You know, I mean the request
20 Ms. Strong doesn't want to be on there, according to
21 Mr. Takayesu, who has not talked to her, if you continue it,
22 I would brief it out.

23 I don't know what the Director's position is. As
24 I say, I haven't had a chance to discuss it with him whether
25 he's willing to go with only one owner. If that's the case,

1 perhaps we would change the terms of the agreement and
2 require the full \$8,000 to be deposited in advance, and
3 \$4,000 could be returned down the line.

4 And I will point out Mr. Takayesu has stated that
5 former director Aoki was the one who came up with the \$8,000
6 fine that we're dealing with now. So, I mean it's really up
7 to the Commission. If you want to consider having only one
8 person be on the settlement agreement, I think you will see
9 a change in the settlement agreement other than what -- just
10 taking her name out.

11 CHAIR HIRANAGA: I would like to suggest that we
12 go into executive session if a commissioner would like to
13 make that motion.

14 COMMISSIONER FREITAS: So move.

15 COMMISSIONER DOMINGO: Second.

16 CHAIR HIRANAGA: Moved by Commissioner Freitas,
17 and seconded by Commissioner Domingo that we go into
18 executive session.

19 COMMISSIONER MARDFIN: I believe by our rules, we
20 have to specify why we go into executive session and the
21 scope of what we intend to discuss.

22 CHAIR HIRANAGA: We intend to discuss the request
23 by the applicant to continue or his request to remove one of
24 the property owners from the agreement.

25 Call for the vote. All in favor, say aye.

1 COMMISSIONERS: Aye.

2 CHAIR HIRANAGA: Opposed.

3 Clear the room. Thank you.

4 (Whereupon, the Commission went into Executive
5 Session from 2:12 to 2:41 p.m.)

6

7

MEETING RESUMES

8

9 CHAIR HIRANAGA: Okay. I would like to call the
10 meeting back to order. I guess we'll take -- open the floor
11 to a motion regarding the party's request for a continuance.

12 COMMISSIONER FREITAS: I would like to make a
13 motion to deny the request for continuance.

14 CHAIR HIRANAGA: Is there a second?

15 COMMISSIONER DOMINGO: Second.

16 CHAIR HIRANAGA: Motion by Commissioner Freitas.
17 Second by Commissioner Domingo to deny the request for
18 continuance.

19 Discussion. Commissioner Mardfin.

20 COMMISSIONER MARDFIN: I will vote in favor of the
21 motion to deny. It reminds me of when Kruchev sent Kennedy
22 during the Cuban missile crisis two letters that had
23 different things on them. And Kennedy decided to ignore the
24 first and accept the second. Well, I'm accepting the two --
25 willing to accept the two signatures and ignore the one

1 signature request.

2 CHAIR HIRANAGA: Any other discussion? Seeing
3 none, I'll call for the vote. All in favor of the motion to
4 deny the request for a continuance, so indicate by raising
5 your hand.

6 DIRECTOR SPENCE: That's seven aye's.

7 CHAIR HIRANAGA: Motion carries. I'll open the
8 floor to a motion to approve the settlement agreement.

9 COMMISSIONER BALL: Move to approve the settlement
10 agreement.

11 COMMISSIONER WAKIDA: Second.

12 CHAIR HIRANAGA: Motion by Commissioner Ball.
13 Second by Commissioner Wakida to approve the settlement
14 agreement.

15 Any discussion? Commissioner Mardfin.

16 COMMISSIONER MARDFIN: I just would like to say
17 I'm going to vote in favor of the acceptance of the
18 settlement. I'm not thrilled by one dwelling unit and
19 effectively two lodging units, but I guess that's the best
20 we get at this point.

21 CHAIR HIRANAGA: Any other discussion? Director,
22 would you care to restate the motion?

23 DIRECTOR SPENCE: Is to accept the settlement
24 agreement as signed and presented to the Commission.

25 CHAIR HIRANAGA: All in favor, please so indicate

1 raising your hand.

2 DIRECTOR SPENCE: That's seven aye's.

3 CHAIR HIRANAGA: The motion is carried. Next
4 agenda item is B(3). Director.

5 DIRECTOR SPENCE: Thank you, Commissioners.
6 Mr. Chairman. The next agenda item, public hearing item is
7 Mr. Mike Yamamoto of McDonald's Restaurants of Hawaii. This
8 is an application for an SMA permit for reconstruction and
9 demolition -- demolition and reconstruction of the existing
10 Lahaina McDonald's Restaurant. The staff planner is Kurt
11 Wollenhaupt.

12 MR. WOLLENHAUPT: Good afternoon, Members of the
13 Maui Planning Commission. This is a matter regarding the
14 reconstruction and the development of an existing McDonald's
15 Restaurant located at 885 Wainee Street in Lahaina. Just by
16 way of a brief history, I believe this is the sixth time
17 this project has been looked at by a public body; two times
18 at the Urban Design Review Board in which they recommended
19 the plantation architecture that will be discussed by the
20 architects and by Kim Skog of Munekiyo & Hiraga; twice by
21 this body as it required an environmental assessment, since
22 it was located in the National Historic District in Lahaina.

23 This body did issue a FONSI. A couple of
24 questions that the applicant could look at, additional ways
25 to mitigate drainage. They actually have done this through

1 the incorporation of a porous area for parking. Also, most
2 of this body, with the exception of two Commissioners, had
3 the opportunity to do an onsite visit in order to actually
4 see the parking, to see the McDonald's. And then that
5 brings us to the conclusion of this matter. Since this is
6 in the special management area under 205(a), it's required
7 that we have a special management area major public hearing
8 permit review as this project is over the amount that limits
9 a minor. And so, today's discussion will be reviewing any
10 impacts to the special management area coastal zone. I
11 think that Ms. Skog's Power Point presentation will
12 eliminate any questions and help the two members who haven't
13 seen this previously to come up to speed.

14 MS. SKOG: Good morning, Chair and Commissioners.
15 I'm Kim -- is it working? I'm Kim Skog with Munekiyo &
16 Hiraga. And like Kurt said, we're here on behalf of
17 McDonald's Restaurants of Hawaii for the special management
18 area use permit for the reconstruction of the Lahaina
19 McDonald's Restaurant. And like Kurt said, a lot of you
20 have seen this or a lot of this project before, but for the
21 benefit of the new Commissioners, we'll kind of go through
22 the history of this project.

23 Real quickly, I'll introduce our project team.
24 Representing McDonald's Restaurants of Hawaii, we have
25 Leland Onekea. The architect on the project was Jim Niess

1 from Maui Architectural Group. The civil engineer was
2 Conrad Shiroma from Kim & Shiroma Engineers. Kevin Tanaka
3 was the landscape architect. And Mike Munekiyo and myself
4 were the planning consultants from Munekiyo & Hiraga.

5 So regionally speaking, the project is Lahaina
6 Town, mauka of Front Street and makai of Honoapiilani
7 Highway. This is the property specifically. It's on the
8 corner of Papalaua Street and Wainee Streets. The First
9 Hawaiian Bank is directly or kitty corner from the site.
10 For reference, the Foodland grocery store is right in the
11 area. This is Hilo Hattie, the post office, Hard Rock Cafe.
12 So, this photo is the restaurant as it stands today. This
13 photo is taken from the First Hawaiian Bank corner.

14 This is Wainee Street on this side and Papalaua
15 Street is on this side. This photo is taken looking down
16 Papalaua Street at the existing entrance. This is actually
17 ingress and egress onto Papalaua Street, which will be
18 maintained with the reconstruction. And I'll note that this
19 grass area is going to be replaced with native ground cover.
20 This photo is taken looking north along Wainee Street. This
21 is the exit from the McDonald's Restaurant, and I'll note
22 that it's right turn only, and this pattern will be
23 maintained with the reconstruction.

24 This photo is taken from the same location looking
25 down the drivethrough lane. And for reference, this is

1 where Foodland is, just to give you some orientation. So,
2 the need for this project arises because this restaurant was
3 first built in June of 1983 making it a bit over 25 years
4 old and making it due for facility upgrades to meet current
5 McDonald's design standards. And among these upgrades, I'll
6 note will be a number of energy conservation measures. The
7 new restaurant will embody the new McDonald's theme of
8 forever young, and the exterior has been designed to go
9 along with the historic architecture in Lahaina Town. So,
10 the proposed action involves the demolition of the existing
11 restaurant and the reconstruction of the new restaurant.

12 The footprint of the building will stay
13 approximately in the same place on the site. The -- a new
14 double drivethrough lane will allow the restaurant to
15 process orders at a faster rate, and related improvements
16 include parking, lighting, landscaping and drainage
17 improvements. As Kurt mentioned, the trigger was the -- the
18 trigger for the EA was the use of lands in the National
19 Historic Landmark District, but I'll note that this site is
20 outside of the County Historic District. And as we
21 explained, the property is in the special management area,
22 so we're here for the SMA use permit.

23 So, this is the existing site plan. The
24 restaurant is outlined in bold. There is currently a single
25 drivethrough lane that goes along the back of the site.

1 There's ingress and egress from Papalaua Street, and egress
2 right turn only onto Wainee Street. In the new site plan,
3 you'll see this is the additional double drivethrough lane
4 and going along the back side of the restaurant. The
5 restaurant building itself is in approximately the same
6 location, and the traffic patterns ingress and egress from
7 Papalaua Street, and right turn only onto Wainee Street will
8 be maintained. So, like we mentioned, the exterior of the
9 new restaurant has been designed to be in keeping with the
10 historic architecture of Lahaina Town, so although the site
11 is outside the County Historic District, the architectural
12 design is in keeping with the Historic District design
13 guidelines for the County, and this design was approved by
14 UDRB.

15 This is showing the landscaping plan. And like I
16 mentioned, the grassed areas around the perimeter of the
17 site will be replaced with native ground cover like
18 ilima papa and nehe. And this will pretty significantly
19 reduce the amount of water needed to irrigate the
20 landscaping. There's also Hawaiian kou being planted in the
21 parking area for shade. Loulu palms will go in the
22 driveway. There's also hapuu ferns being planted and other
23 shrubs for landscaping.

24 And as Kurt mentioned before, the drainage plan
25 has come a long way from the time of the draft EA and

1 through the final EA and to where we are today. So, this is
2 a figure of the existing runoff map. The crosshatched area
3 is all hard surface area. And you can see that there's very
4 little landscaped area here on the site as it is today. And
5 in a ten-year, one-hour storm, the site produces about 6,950
6 cubic feet of runoff.

7 So, when we came before this body at the time of
8 the draft and final EA, the comment was given asking the
9 applicant to review the drainage plan to find measures of
10 either eliminating runoff all together or to significantly
11 reduce the amount of runoff flowing off the site. And it
12 was suggested that the applicant or McDonald's investigate
13 pervious concrete surfaces, onsite retention areas or other
14 means of reducing runoff. So, the original drainage plan
15 that was proposed with the draft EA involved increase in
16 landscape area by about 840 square feet, and all other
17 drainage patterns would be maintained.

18 So, alternative measures that were looked at
19 included utilizing landscaped areas for added onsite
20 retention, but this was not suggested by the landscape
21 architect as this would create some pretty substantial
22 maintenance issues for all the landscaping around the
23 parking lot. Another measure that was looked at was the
24 installation of underground water storage chambers.
25 However, the percolation, there was a soils test that was

1 done. And the percolation rate of the soil is relatively
2 slow.

3 And so, these storage chambers had the potential
4 to compromise the foundation of the building, so this was
5 not suggested. And in the end, pervious concrete pavement
6 was looked at as suggested by the Commission. And this has
7 actually been incorporated into the drainage plan. So, the
8 proposed drainage plan that we have now involves a further
9 increase in landscape area to 12 or an additional 1,200
10 square feet of landscaped area, so there's now 5,700 square
11 feet of landscaped area on site. There's a little over
12 3,700 square feet of pervious pavement being installed, and
13 this will be installed in the parking lot area. And we'll
14 show you a figure of this in a little bit.

15 And in addition to these retention measures,
16 McDonald's is also putting in a hydrodynamic separator,
17 which is going to filter all of the runoff from the site.
18 So, this will remove oils, petroleum pollutants and 80
19 percent of suspended solids, so the water quality of the
20 runoff will be increased. So, to summarize the retention
21 for the drainage improvements, existing conditions, the
22 runoff from a ten-year, one-hour storm is about 6,950 cubic
23 feet. What was proposed with the final EA, the increase of
24 about 840 square feet of landscaped area would have reduced
25 the runoff to about a little under 6,700 cubic feet.

1 And now, with the additional landscaped area,
2 1,200 square feet of landscaped area. And the addition of
3 the 3,700 square feet of pervious pavement, the runoff from
4 a ten-year, one-hour storm is just a little over 4,100 cubic
5 feet. So, this is a figure of the proposed runoff map.
6 You'll see again the crossedhatched area is hard surface
7 area, but there's a considerable increase in the amount of
8 landscaped area around the drivethrough area and the
9 perimeters of the site. And as I mentioned, this is the
10 area that is going to be the 3,700 square feet of pervious
11 pavement.

12 And the hydrodynamic separator is being installed
13 in the makai drain inlet, so this will filter all the runoff
14 from the site. As I mentioned before, part of the upgrades
15 to the restaurant involve a number of energy conservation
16 measures. So, in terms of reducing water usage, there's
17 going to be ultra low flow toilets and ultra low urinals
18 will be installed. And in terms of energy consumption,
19 there's going to be a high efficiency heating ventilation
20 and air-conditioning unit. And on the roof, there will be a
21 reflective white coating that will prevent the building from
22 heating up so much during the day, and this will actually
23 cut down on air-conditioning needs.

24 The windows are all double insulated glass. The
25 building signage on the exterior and then the interior

1 lights as well will all be LED lights. The fire in the
2 oven -- in the oven -- in the kitchen will be low oil
3 volume, and there's a high efficiency water heater. And the
4 lamps will be replaced to be more energy efficient. So, to
5 summarize everything together, this is the restaurant as it
6 is today. And this is a rendering of the new restaurant, so
7 if anybody has any questions.

8 CHAIR HIRANAGA: Actually, I'm going to have staff
9 present their analysis first before we present questions.

10 MR. WOLLENHAUPT: During the process of this, the
11 recommendations of the Department and the Planning
12 Commission been incorporated into the environmental
13 assessment, and also, this special management area. With
14 the special management area process, there are ten different
15 parts to the SMA. In looking over, the staff feels that the
16 applicant has met the requirements in order to mitigate
17 impacts to the coastal areas, as this is not directly on the
18 coast, but with especially the -- some of the points are
19 obvious that with regards to coastal access, this really has
20 minimal effect.

21 But I think the main -- the main point would be
22 the point on any runoff to the ocean. And I think with
23 their incorporation of the pervious concrete, the
24 hydrodynamic separator, the increase in landscaping, that
25 really takes care of that point of the SMA. In addition,

1 there is a consideration of cultural issues, and with the
2 incorporation of the native or localized plantings, I
3 believe that addresses that other area.

4 Those are the two areas of the SMA that I think
5 are particularly important; therefore, staff is comfortable
6 and will make its recommendation at the request of the
7 Chair.

8 CHAIR HIRANAGA: At this time, I would like to
9 open the public hearing. Is there anyone here that wishes
10 to provide testimony regarding this agenda item? Seeing
11 none, the public hearing is closed. Questions by the
12 Commission. Commissioner Wakida.

13 COMMISSIONER WAKIDA: This question is for the
14 applicant. If you could put up the site plan again, any one
15 of them. That's fine. I live in Lahaina. And I'm probably
16 on Wainee at least five or six times a week, and one of the
17 ongoing problems that happens at McDonald's is that people
18 decide to go in the exit, which, of course, you know, causes
19 all sorts of problems.

20 Has the architect figured out some other design
21 elements to further discourage people from going in the
22 exit?

23 MS. SKOG: McDonald's is aware that people do all
24 kinds of things at the Wainee street entrance, or not
25 entrance, but exit. And one comment is that sometimes

1 people, yeah, you know, they come in and go out all kinds of
2 ways. That's why they put up -- the pavement is marked with
3 the right-turn only. And there's actually signs also posted
4 that have no left turn into the site and right turn only out
5 of the site. Yeah.

6 COMMISSIONER WAKIDA: Okay. But I mean, so coming
7 down Wainee, what's to discourage people from coming --
8 turning into that exit?

9 MS. SKOG: I believe the street is actually
10 marked. The lanes on the street actually don't allow you,
11 or you're not supposed to -- it's a double yellow line.

12 COMMISSIONER WAKIDA: No, I mean you're on the
13 right-hand side of the street. You're not turning across.
14 You're on the same side of the street heading --

15 MS. SKOG: Oh, I see.

16 COMMISSIONER WAKIDA: Heading towards Olowalu.

17 MS. SKOG: Yeah, got you.

18 COMMISSIONER WAKIDA: So, I all the time see
19 people turning in there.

20 MS. SKOG: Yeah, yeah.

21 COMMISSIONER WAKIDA: So, I was hoping that the --
22 there was some design elements incorporated that would help
23 to discourage that.

24 MS. SKOG: Yeah. The engineer has thought about
25 or they've thought about if you could reconfigure the exit

1 like to make it so it's more conducive to turning out one
2 way, but the thing is -- the catch is the driveway is in the
3 public right-of-way, so McDonald's can't do improvements to
4 this driveway to redirect how traffic comes.

5 The most that they can do is put up signs, which
6 they have done that say right turn only out and no entrance
7 here, yeah.

8 CHAIR HIRANAGA: Commissioner Ball.

9 COMMISSIONER BALL: Maybe the Commissioner can
10 stand there with a sign and say don't turn here. That's not
11 my question.

12 My question is on the drainage things that you
13 did, what was the cost difference between what you had
14 wanted to do and what you ended up doing?

15 MS. SKOG: The cost difference, there was a
16 significant increase in cost for the pervious pavement
17 actually. And I believe it was in the tens of thousands,
18 yeah.

19 COMMISSIONER BALL: Okay. Thank you.

20 CHAIR HIRANAGA: Any other questions?

21 COMMISSIONER FREITAS: Just one comment. I was
22 here the last time you folks were here to present it. And I
23 would like to compliment you folks in addressing the issues
24 that we had, and I can support this project, because you
25 folks came back with what was recommended. You guys did a

1 lot of work.

2 CHAIR HIRANAGA: I have a question. On one of
3 your slides you have regarding the drainage, you have
4 existing condition 6,948 cubic feet. When you say existing
5 condition, is that pre McDonald development, or is that --

6 MS. SKOG: That's with the site as it is right now
7 existing.

8 CHAIR HIRANAGA: I guess a question to staff. So
9 you have an improved property. That's the new baseline when
10 they come in for redevelopment, that they only treat or
11 contain the increase on the -- over the existing developed
12 property, and you don't go back to when the property was
13 undeveloped?

14 Because when you come in for a permit on
15 undeveloped land, you look at the runoff based upon, you
16 know, open field, uncovered ground. I guess that's a
17 question for Public Works.

18 MS. ANDAYA-DAGDAG: I'll need to check our
19 drainage design standards on that.

20 CHAIR HIRANAGA: Okay. You can get back to us
21 later. My last question or another question is what was the
22 minimum number of parking stalls required for this
23 development?

24 MS. SKOG: The minimum, I believe it's 16, yeah
25 16.

1 CHAIR HIRANAGA: And you're proposing?

2 MS. SKOG: Eighteen.

3 CHAIR HIRANAGA: So, why could you not just build
4 16 parking stalls and increase the landscaping area so that
5 you would increase the absorption of rainfall into the
6 ground?

7 MS. SKOG: Part of that is there's always a need
8 for parking. Sixteen is a little bit less than ideal.
9 There's actually -- there's actually more than 18 parking
10 stalls right now, so there's actually parking being taken
11 away. There were -- actually, parking stalls were taken
12 away to add more of the landscaped area.

13 CHAIR HIRANAGA: Do you feel that the double
14 drivethrough might reduce the need for parking that you
15 might be able to surrender two more stalls?

16 MS. SKOG: It's possible, but there's some
17 customers that will still want to park and come inside, and
18 especially with the redesign or the new theme of the
19 restaurant is designed to accommodate customers inside the
20 restaurant or for the restaurant inside to be more inviting
21 for people to come in and eat versus going through the
22 drivethrough.

23 CHAIR HIRANAGA: Commissioner Mardfin.

24 COMMISSIONER MARDFIN: I don't have a question. I
25 would just like to make a comment that I like the cultural

1 impact study. And I think you were the author of that, were
2 you not?

3 MS. SKOG: I was.

4 COMMISSIONER MARDFIN: Good job.

5 MS. SKOG: Thank you.

6 CHAIR HIRANAGA: I'm just giving Public Works a
7 little more time.

8 MS. ANDAYA-DAGDAG: So, Commissioner -- Chair
9 Hiranaga, you are asking if, what the standard is for -- can
10 you repeat your question?

11 CHAIR HIRANAGA: They quoted a number of 6,948
12 cubic feet runoff has as the existing condition, which is
13 the existing condition as it currently stands. And I'm
14 curious why they are not required to go back to before
15 McDonald's was developed, because that was really the
16 existing condition. And so, they only need -- technically,
17 according to County Code, they only need to handle the
18 increase, which is quite minimal, because the entire parcel
19 is hardened right now.

20 So, I was just curious why they weren't required
21 to go back to -- you know, when we talked to -- you know
22 when we're dealing with a lot of hotels, we're talking about
23 existing predevelopment runoff and post development. So,
24 their so-called predevelopment runoff is the runoff that
25 currently exists, but really it's a developed property.

1 It's not predeveloped. It's just they're doing a
2 renovation.

3 MS. ANDAYA-DAGDAG: So, before 1983 when I think
4 it was a Buddhist church initially before.

5 CHAIR HIRANAGA: You're actually reducing the
6 runoff from preexisting, because you have less hardened
7 surface?

8 MR. SHIROMA: Commissioners, Conrad Shiroma, Kim &
9 Shiroma Engineers. We're the civil engineers for the
10 project. Back in 1983 when the lot was developed into
11 McDonald's, there was a drainage study done at that time to
12 address the increase in runoff from that condition to this
13 condition now. And at that time, the drainage improvements
14 were done to comply with the drainage standards at that
15 time.

16 CHAIR HIRANAGA: Were the standards similar to
17 what they are now, which is basically to handle the post
18 development runoff?

19 THE COURT: Yes. That is why they have --
20 currently, on site they have two drain inlets. And from
21 there, it goes out into Papalaua through the 18-inch
22 drainage pipe.

23 CHAIR HIRANAGA: But basically, you're currently
24 just capturing untreated runoff and emptying it into the
25 County drainage system, which empties directly into the

1 ocean one block down?

2 THE COURT: That is correct. That was the basis
3 of the design at that time. There was no I guess what you
4 would call new development in terms of erosion control as it
5 is present. So, in the -- with the development of the new
6 site, we have captured the onsite runoff going through the
7 hydrodynamic separator to treat the sediments and whatever
8 petroleum products will come down to whatever portion of the
9 lot that drains to there.

10 CHAIR HIRANAGA: Okay. Thank you.

11 Any further questions? If not, I'll open the
12 floor to a motion -- I'm sorry, staff recommendation.

13 MR. WOLLENHAUPT: The recommendation of the staff
14 recommends that the Planning Commission adopt the Planning
15 Department's report and the recommendations prepared for
16 today's meeting as the findings of fact, conclusions of law,
17 and decision and order and authorize the Planning Director
18 to transmit the said written decision and order on behalf of
19 the Planning Commission with one typographical modification
20 on Condition 18, that the word previous be struck and
21 pervious be included.

22 And that there be an addendum to Condition Number
23 14. The condition as it currently is stated, that
24 construction and demolition wastes shall be disposed of in
25 the Maui Construction and Demolition Landfill, and then to

1 add the words or other approved waste construction disposal
2 site, because I understand that there's an additional site
3 that is currently available. So, with those two
4 modifications, the Department recommends approval as
5 indicated in the conclusions.

6 CHAIR HIRANAGA: Thank you. I'll open the floor
7 to a motion. Commissioner Shibuya.

8 COMMISSIONER SHIBUYA: So move to accept -- I mean
9 to approve.

10 CHAIR HIRANAGA: Moved by Commissioner Shibuya to
11 approve staff's recommendation. Is there a second?

12 COMMISSIONER WAKIDA: Second.

13 CHAIR HIRANAGA: Second by Commissioner Wakida.
14 Discussion. No discussion. If not, I'll call for the vote.
15 Director, please restate the motion.

16 DIRECTOR SPENCE: Is to approve the SMA permit as
17 recommended by staff.

18 CHAIR HIRANAGA: All in favor, so please indicate
19 by raising your hand.

20 DIRECTOR SPENCE: That's seven aye's.

21 CHAIR HIRANAGA: Motion is carried.

22 The next agenda item is C(1). Director.

23 DIRECTOR SPENCE: This is Mr. Ronald and Karen --
24 you're going to have to pardon me -- Mayuiers requesting
25 amendments to their State Land Use commission special use

1 permit and bed and breakfast permit in order to increase the
2 bedroom operations from three to four bedrooms and receive a
3 five-year time extension.

4 The staff planner is Mr. Kurt Wollenhaupt.

5 MR. WOLLENHAUPT: Good afternoon, Members of the
6 Maui Planning Commission. This is a request by Ronald and
7 Karen Mayuiers to obtain a five-year time extension of the
8 State Land Use Commission special permit to operate their
9 currently operating bed and breakfast and to amend the
10 conditions to permit four bedrooms to be used for the B&B
11 rather than the currently approved three bedrooms in the
12 County's agricultural zoning district and state ag district
13 on approximately 2.024 acres of land located at 212
14 Plantation Club Drive in Lahaina.

15 Just by brief background, it's becoming that time
16 again that the bed and breakfast permits that are located on
17 ag land that were permitted two to three years ago are now
18 coming around to this Commission for renewal. I'll give
19 just a brief Power Point presentation. This is the home
20 that's under review today we discussed. The location is at
21 221 Plantation Club Drive. That's within the gated
22 community of Plantation Estates located in the Maui Land &
23 Pineapple large development of Kapalua.

24 It's shaded in the taupe color there with the ring
25 around it, which is the 500 foot notification area. As

1 indicated, this is on agricultural land; however, it's
2 outside of the SMA. Consequently, since it's located on
3 agricultural land, according to the bed and breakfast
4 provisions of the Code, the bed and breakfast can be
5 approved administratively upon approval of a special Land
6 Use Commission permit.

7 This body did approve two years ago the special
8 Land Use Commission permit for a period, as indicated, of
9 two years. During these two years, the operation of the bed
10 and breakfast has been exemplary. There have been no
11 requests for service. There have been no complaints. And
12 they're current on all of their tax bills that are on
13 record. They're current on their insurance on record, and
14 they've submitted compliance reports both as required for
15 the bed and breakfast operation and for the SUP-2. Ron and
16 Karen are ten-year full-time residents at home in Kapalua.

17 Today they've put in a request for in five-year
18 time extension. Five years is the maximum time extension
19 for the bed and breakfast. And to try to coordinate the bed
20 and breakfast along with the SUP, it makes sense to have
21 both of them running concurrently. Currently, they have a
22 two-year operating license for the B&B and a two-year SUP.
23 Since there have been no problems, no complaints, staff is
24 looking at a five-year time extension both the B&B and the
25 SUP.

1 In the past two years, the Mayuiers did build an
2 accessory farm dwelling. There's the main farm dwelling
3 that has the four bedrooms and the currently fully approved
4 and permitted secondary farm dwelling that has two bedrooms,
5 and they're requesting that four bedrooms be allowed to be
6 used for the B&B, a step up of one bedroom from three
7 bedrooms. Just by way of past history, there's two other
8 approved B&B's in the Kapalua development. One other B&B,
9 Mr. and Mrs. LePeter, they have approval for a four-bedroom
10 B&B. They also have an accessory dwelling.

11 And Mr. Trent Timmons was also given approval for
12 his B&B, which is a six-bedroom B&B. He also has a separate
13 accessory farm dwelling ohana. As indicated, I've gotten
14 records that the ohana is fully approved, permitted. With a
15 high degree of carefulness, the Mayuiers did submit a
16 modification of their farm dwelling to Relon Waikiki in the
17 Zoning and Enforcement Department. She approved their
18 modification, which is actually in addition to their farming
19 operation.

20 It doesn't reflect any diminution of the
21 originally approved farm plan that was approved by ZAED, and
22 they have an excellent prior operation record. The Mayuiers
23 are dedicated to the agriculture nature of their community.
24 They've provided good stewardship. I have noted that
25 Mr. Mayuiers and his wife, it is an owner operated

1 operation. He personally does do the growing and
2 cultivating, the many cuttings of the different plants, the
3 harvesting. As I indicated previously, they have he had no
4 on file County request for service.

5 Those new Commissioners, a request for service is
6 a complaint, during their two-year permit period. This just
7 shows the photographic overview of the main house. Their
8 house located next to the Plantation Club's Estates large
9 clubhouse where the annual SBS tournament is held. And you
10 can see the golf course, and in the distance, Molokai.

11 This was the originally implemented 2009 farm
12 plan, the many different types of cuttings and plantings
13 along the area. And these were the -- these were the
14 different plantings of the plumerias and the guavas and the
15 banana trees that were now, of course, in full bloom. Hard
16 to read here. It's just -- it just details the different
17 types of plants ranging from trees to palms to shrubs to the
18 different types of cuttings.

19 These cuttings are -- some of them are sold to the
20 different grocery stores such at the apple bananas. Many of
21 them are given to the local workers who do work around
22 there. Others are given to people who make lei from the
23 different cuttings of all the plumeria and many flowers.
24 This is the additional farm that was approved. There's
25 different type of plantings. Again, many plumeria, pina

1 plants.

2 This was the new cottage that was built. That was
3 the original house. This entire area has now gone into
4 planting as the enhanced farm plan. This just shows the new
5 cottage as it was built, the additional planting area, which
6 is about 100 feet in length. This is Mr. Mayuiers. He does
7 operate out there. I have been there. While one could say
8 it's a gentleman's farm, Ron actually has a lot of work that
9 he -- he does the work himself. This is not a hired out
10 operation. This just shows some equipment that he uses in
11 his operation. Different cuttings of the bananas here and
12 the different fruit trees and the flowers that are used.

13 Again, this is just photographs of the existing
14 operation, the different types of flowers. The farm
15 implements are stored on site in the garage areas, which he
16 uses. The cutting facilities, the tractors, everything,
17 fertilizing. Again, it's the bed and breakfast is a request
18 -- the name of theirs is the Hale Amakihi Bed and Breakfast,
19 and that concludes the presentation.

20 There are five -- five requirements for a special
21 land use permit. Those are outlined in the report. I know
22 that the timing is running short here, but I think the
23 important things to note were that the farm plan was
24 approved as modified on December 7th, 2010. The new ohana
25 is fully approved by the Building Department. The

1 additional use of the bed and breakfast for one room would
2 not adversely affect surrounding properties or burden public
3 agencies. And the requirements of the past have been met,
4 and the compliance reports are on file.

5 That would conclude the staff's report. And the
6 owners are here in case you have questions.

7 CHAIR HIRANAGA: I would like to open the floor to
8 public testimony. Is there anyone here that wishes to
9 testify regarding this agenda item? Seeing none, public
10 testimony is closed. I'll open the floor to Commissioners
11 for questions to the applicant or staff. Commissioner
12 Mardfin.

13 COMMISSIONER MARDFIN: I have two questions. They
14 have an implemented farm plan?

15 MR. WOLLENHAUPT: They do, yes.

16 COMMISSIONER MARDFIN: And it sounds like they've
17 had some sales of agricultural products?

18 MR. WOLLENHAUPT: They have.

19 COMMISSIONER MARDFIN: And they presumably paid
20 GET on that. What was the value of the revenues that they
21 got from selling the agricultural products?

22 MR. WOLLENHAUPT: I don't know the value. It's
23 very, very minimal. They have on file all of the GET with
24 which is the operations of the bed and breakfast and the
25 transient occupancy taxes. So, I think the sales of the

1 bananas would be very, very modest. Most of it -- the vast
2 majority of it is all given away to different workers, so I
3 don't have a figure if it was \$100 or \$200, but it would be
4 very minimal for the sale of specific products.

5 COMMISSIONER MARDFIN: My second question.
6 They're increasing the number of rooms using for B&B. Where
7 are they located? Can you show us on that map where the
8 new ohana and --

9 MR. WOLLENHAUPT: This is a site map of the
10 operation. This is the main house, which has the four
11 bedrooms. And currently, the application is approved for
12 three as the Mayuiers can live in one of those rooms.
13 That's how -- that's how the plan is approved. They've
14 built this fully approved two-bedroom ohana down here. So,
15 that allows them the four bedrooms up here to be used as
16 part of the B&B. This replicates almost -- well, it is.
17 It's identical to that which was approved for Karen and Al
18 LePeter, who have a four-bedroom home and two-bedroom ohana.

19 CHAIR HIRANAGA: Any other questions?
20 Commissioner Wakida.

21 COMMISSIONER WAKIDA: I have a question about the
22 requirements for a farm on ag land. Is there some kind of
23 requirement that there has to be a certain -- certain amount
24 of income off that land?

25 MR. WOLLENHAUPT: There is no requirement when the

1 lot is under five acres. We've not had any B&B that has
2 come that's been over five acres. We have had questions,
3 and there is then within the B&B Code a minimum amount that
4 you have to get from agricultural operations. I'm not sure
5 what the number is. \$20,000?

6 DIRECTOR SPENCE: If the lot is over five acres.

7 MR. WOLLENHAUPT: Over five acres. However, under
8 five acres, there is no requirement for us to -- people have
9 used, you know, they have horses on their property. There's
10 really no income being derived from it, but yet, it's being
11 used as a farming operation. So, under five acres, no
12 threshold minimum on the amount that you would derive from a
13 vanilla bean or a coffee plantation.

14 COMMISSIONER WAKIDA: Okay. Thank you.

15 CHAIR HIRANAGA: Commissioner Shibuya.

16 COMMISSIONER SHIBUYA: Kurt, can you remind us or
17 at least tell me a little bit more about the CC and R
18 provisions relating to commercial activities or commercial
19 operations within the homeowner's association?

20 MR. WOLLENHAUPT: I can. I'm not sure if the
21 Director has a comment on that. Do you want me to talk
22 about the history, or do you want to talk about it?

23 DIRECTOR SPENCE: I don't think I could speak to
24 the history of it. But our bed and breakfast ordinance
25 specifically says that the Commission shall not -- or in

1 permitting, we shall not consider the CC and R's as a part
2 of the, you know, when it comes to approving a permit. I
3 know this was a topic of discussion with regards to a
4 previous permit.

5 And I was at some point going to ask the
6 Commission -- I was going to draw the Commission's attention
7 to existing Condition 7 that says the applicant shall not
8 rent out the bed and breakfast home for a period of time
9 less than 31 days. That particular condition reflects their
10 CC and R's. We are not supposed to be considering that.
11 The law is very clear. We shall not consider their CC and
12 R's.

13 And as I would ask, you know, when the Planning
14 Commission deliberates on this, I would ask that they
15 consider, that you all would consider removing this
16 condition. We're not supposed to consider this as a part of
17 the permit.

18 CHAIR HIRANAGA: Commissioner Shibuya.

19 COMMISSIONER SHIBUYA: It seems quite odd that you
20 would have to ignore this aspect of a public ordinance or
21 Code, but anyway, you do have a gated community, and then
22 you have commercial operation. It seems like
23 counterproductive. One is to restrict access, public
24 access, and the other one says you want to encourage public
25 access. Can you explain that?

1 MR. WOLLENHAUPT: It's been -- my interpretation
2 that the Department recognizes a B&B as a residential
3 operation. I've been told and asked by numerous management,
4 and I've always been told that this is a residential
5 operation. So, any reflection in the CC and R's that would
6 prohibit said commercial operations does not apply since the
7 B&B is a residential operation.

8 DIRECTOR SPENCE: Mr. Chairman.

9 CHAIR HIRANAGA: Director.

10 DIRECTOR SPENCE: I would also comment, the County
11 has authority to enforce certain aspects of the law that are
12 granted by the Charter and the County Code and state law,
13 et cetera. We cannot, however, get into the enforcement of
14 private covenants and restrictions that are within, you
15 know, the different subdivisions and homeowners associations
16 and those kinds of things. Those are specific to those
17 particular legal entities.

18 We've been directed, it's been a topic of corp
19 counsel opinions and everything, we are not supposed to be
20 involved in that. And that is why that's part of this
21 particular Code. This is -- their CC and R's are their CC
22 and R's. They are charged with however they would want to
23 carry them out. That's not our kuleana.

24 CHAIR HIRANAGA: Commissioner Shibuya.

25 COMMISSIONER SHIBUYA: I just want to draw your

1 attention to Title 19.04.040, definitions. Accessory or
2 building or structure means a structure detached from a
3 principal building on the same zoning lot, which is
4 customarily incidental and subordinate to the principal
5 building or use and not used for human habitation.

6 Can you explain the differences of what you're
7 proposing and this definition?

8 MR. WOLLENHAUPT: Well, every farming lot allows
9 to have -- I believe most every lot allows to have a
10 principal dwelling and accessory dwelling. This would be
11 considered an accessory farm dwelling. I know there's
12 multiple wordings and definitions; however, there's many,
13 many people who have two dwellings on their property and
14 family lives in both. Family lives in one. One might be
15 rented out long term.

16 There's been two B&B's in which the owner is
17 living in one of the dwellings, and they're using the other
18 as a B&B. So, that's how just this has been -- this has
19 fully been -- their two-bedroom ohana is called an accessory
20 farm dwelling, which is a lot which was fully approved by
21 the building department and given a clearance for habitation
22 and occupancy.

23 CHAIR HIRANAGA: Commissioner Shibuya, just for
24 clarity, the definition you just read, is that for
25 agricultural accessory dwelling or an agricultural accessory

1 building?

2 COMMISSIONER SHIBUYA: This one has the
3 definitions of 19.04.040. And it deals with various aspects
4 of County buildings and structures, and it's a comprehensive
5 zoning ordinance definition.

6 CHAIR HIRANAGA: What item were you defining?

7 COMMISSIONER SHIBUYA: It's on page --

8 CHAIR HIRANAGA: No, the definition you were
9 reading, what term was that defining?

10 COMMISSIONER SHIBUYA: The term is accessory
11 building or structure.

12 CHAIR HIRANAGA: Which is different from accessory
13 dwelling.

14 COMMISSIONER SHIBUYA: I can read the dwelling
15 one, too. Accessory dwelling means an attached or detached
16 building, dwelling unit, which is incidental or subordinate
17 to the main or principal dwelling on a lot.

18 CHAIR HIRANAGA: There is a distinction between
19 dwelling and building. A building is a barn, storage shed.

20 COMMISSIONER SHIBUYA: I know. And that's why I
21 want to make the distinction here and as they're making the
22 owner live in the accessory building.

23 MR. WOLLENHAUPT: No, there's -- this is an
24 accessory -- they have two farm dwellings. They have the
25 main farm dwelling that was originally approved as a

1 four-bedroom home. Then they have an accessory farm
2 dwelling, which is currently allowed on farm lots up to
3 1,000 square feet for residential dwellings. So, they have
4 two dwellings.

5 There are no -- there are no barns, buildings,
6 sheds, although I understand there could be a barn or a
7 building or said shed that couldn't be used for any kind of
8 human dwelling, but it could be where they keep hay or grain
9 or horses for that matter on this property, since it's zoned
10 ag. So, they have two dwellings, no buildings under the
11 definition.

12 They only have an accessory farm dwelling and a
13 main farm dwelling.

14 COMMISSIONER SHIBUYA: I see no difference. So,
15 therefore, I take exception. I take exception because the
16 CC and R provisions are there to keep peace in the family
17 and the community. You also have a gated community, which
18 is contradictory to the idea of having public access.
19 You're restricting public access, and yet, you want to have
20 a commercial operation.

21 CHAIR HIRANAGA: Are there any other questions for
22 the staff or applicant? Commissioner Mardfin.

23 COMMISSIONER MARDFIN: I'm going to make a comment
24 and which I would like you to react to when I'm finished
25 with the comment. My comment is this. I think there's much

1 that's admirable about this. I think the agricultural
2 development has been fine. And if -- I have no problem with
3 the extension of time. I'm glad there are no complaints.
4 Everything seems to be fine.

5 And if they were not going for the fourth B&B, I
6 have absolutely no problem in supporting this. But I've got
7 a problem, and here is my problem. The B&B ordinance says
8 in Condition N, the B&B home was constructed and in
9 existence when the B&B home permit application was received
10 by the Department of Planning. Read narrowly, that their --
11 seemed to be fine.

12 They built the second home, and they're staying in
13 that, and so, they're just adding one more B&B to the
14 existing home. But read broadly, I think they've kind of
15 gone beyond what the intention of the B&B Condition N was.
16 I think they have gotten a second -- they're asking for a
17 fourth B&B, because they constructed a B&B -- because they
18 constructed a home after going for the B&B permit. Would
19 you like to respond to that?

20 MR. WOLLENHAUPT: They were required to actually
21 submit another B&B application. And they did have to notify
22 neighbors, which they did, of their request for four
23 bedrooms. So, it wasn't just an add-on from the standpoint
24 that they did it under the radar. They actually notified in
25 writing everyone within 500 feet.

1 COMMISSIONER MARDFIN: When was the second
2 building built?

3 MR. WOLLENHAUPT: It's in the building permit.
4 It's probably in here.

5 COMMISSIONER MARDFIN: It says June, I think. It
6 says June 2010.

7 MR. WOLLENHAUPT: Right, June of 2010.

8 COMMISSIONER MARDFIN: And when did they apply for
9 the -- the fourth B&B, before June or after June? What I'm
10 saying is I think there's a problem in the sense of the law.
11 Maybe the literal interpretation is okay, because their main
12 home was built prior to applying. I've -- I think what
13 we're encouraging by using this interpretation is the
14 expansion of B&B's when I think the intent of the B&B bill
15 was the building had to have already been built, and you're
16 just trying to farm out another unit.

17 I think the essence of this is they built another
18 building so they could have another B&B bedroom, and I find
19 that a problem.

20 MR. WOLLENHAUPT: There is an odd thing. Now,
21 we're going to get back to the CC and R's again. At
22 Kapalua, they have to rent out the entire -- they require
23 renting out the entire building to one family. So, these
24 rooms are not rented out individually. It's not like a
25 typical B&B where you would rent out for a week, and I would

1 rent out a room for three days, and someone -- so, the
2 building as a whole is rented out to one entity.

3 COMMISSIONER MARDFIN: But we're not enforcing
4 that, so there's no assurance that's happening.

5 MR. WOLLENHAUPT: No, but that's part of the
6 CC and R's that was brought up.

7 CHAIR HIRANAGA: Paul, you're part of staff if you
8 wish to comment.

9 MR. FASI: Thank you, Mr. Chair. Getting back to
10 Commissioner Shibuya's concern regarding a second dwelling.
11 In the ag district under 19.30(a).050, Permitted Uses, Item
12 B(1). There are two farm dwellings per lot, one of which
13 shall not exceed 1,000 square feet of developable area. So,
14 the ag district, you can have your main residence, and you
15 can have your accessory dwelling unit. There is no
16 conflict.

17 That is clearly allowed in the ag district.
18 Secondly, I've sat before this Commission, and we have --
19 this Commission has approved far more less harmonious
20 renting situations in the ag district. For example, TVR's
21 in the ag district with a conditional permit, and the owner
22 doesn't even live on the property. At least in this
23 scenario, the owner is a local resident living on the
24 property. And this is way more consistent and harmonious
25 than what was previously approved by this body on a previous

1 occasion.

2 CHAIR HIRANAGA: Just to clarify. This is an
3 existing dwelling that initially had three bedrooms approved
4 for B&B operations; now, they're just asking that the fourth
5 existing bedroom be authorized for B&B use?

6 MR. WOLLENHAUPT: That's correct.

7 CHAIR HIRANAGA: They did not add on to the main
8 dwelling. They built a second farm accessory dwelling,
9 which is allowable, in which they can live. And I think the
10 section of the B&B permit that Commissioner Mardfin referred
11 to was the intent that you not apply for a B&B permit and
12 then build the house.

13 They wanted the house built, so that Planning
14 Department can inspect the house and make sure that it
15 wasn't built out into a 20,000 square feet, you know, hotel
16 that they would call a B&B with six bedrooms. That was the
17 intent, that the house was preexisting before the permit was
18 granted, that you wouldn't construct the house after the
19 fact that you got the permit. That was my interpretation
20 when we made the recommendation to Council on the B&B
21 ordinance.

22 COMMISSIONER MARDFIN: I have a second
23 interpretation. My interpretation was that the ordinance
24 was not to promote B&B's per se in agricultural areas, but
25 to allow existing buildings to be used for B&B's. And

1 that's why I believe Section N was put there, not so they
2 could be inspected beforehand, but so that it wasn't used --
3 it was so that agricultural property could have their income
4 supplemented by B&B's. This seems to be -- to me to be
5 constructing a building, which they're living in, they're
6 not using it for a B&B.

7 But the focus seems to be on the B&B's, not on the
8 agriculture. Now, the rest of what they're doing in the
9 agricultural plan is a very good thing. I have good things
10 to say about this. But this is one thing that seems a
11 little bit off to me.

12 CHAIR HIRANAGA: Okay. We can reserve additional
13 comments when we have a motion on the floor. Is there any
14 other questions for the staff or the applicant? If not,
15 we'll have the staff's recommendation.

16 MR. WOLLENHAUPT: The Planning Department
17 recommends that the Commission adopt the Department's report
18 and recommendations prepared for the May 10th, 2011 meeting
19 and authorize the Director to transmit said findings of
20 fact, conclusions of law, decision and order on behalf of
21 the Planning commission.

22 CHAIR HIRANAGA: I have a question regarding --
23 did you take out the 31-day condition?

24 MR. WOLLENHAUPT: Well, that sort of -- that's
25 currently in there. The Director was going to make -- was

1 going to address that issue I guess at this time.

2 DIRECTOR SPENCE: This is when I really wanted to
3 talk about it. There is a current condition of this Land
4 Use Commission special use permit. That is what is before
5 this Commission. Once this is approved or approved with
6 conditions or whatever, then we can -- then the Planning
7 Director can then go ahead and approve the bed and breakfast
8 permit, the time extension for that. My thought, you know,
9 so because the Commission is the approving authority on
10 special use permits, only you can change the conditions on
11 it. You see that fairly regularly on your agendas, the
12 change in terms and conditions.

13 So, the -- the particular item I'm looking at in
14 the law is 19.64.030, and all the way down to Item Number I.
15 In permitting bed and breakfast homes, the Planning
16 Director, the Planning Commission and the Council shall not
17 consider. We aren't even supposed to consider the CC and
18 R's. We shall not consider, nor be bound by any private
19 conditions, covenants, nor restrictions upon the subject
20 parcel. So, that's pretty clear that I -- this particular
21 condition, in my opinion, doesn't even belong there.

22 CHAIR HIRANAGA: I have a question. This is a
23 request for an extension?

24 MR. WOLLENHAUPT: That's correct.

25 CHAIR HIRANAGA: And so, notice was sent out to

1 the 500-foot radius?

2 MR. WOLLENHAUPT: The B&B application was sent out
3 to the 500 radius.

4 CHAIR HIRANAGA: Not the extension, the SUP
5 extension?

6 MR. WOLLENHAUPT: No, that's not required to be
7 sent out. But because they were increasing it from three to
8 four, out of a high degree of caution, we did send out that
9 notice to all the neighbors that they wish to do that.

10 CHAIR HIRANAGA: Going back a little in history.
11 The first B&B application in Kapalua, there was quite a bit
12 of opposition. Many people were totally opposed to it. And
13 I know there's certain different CC and R's I guess for
14 different HOA's in Kapalua. But this particular
15 application, they had a six-month minimum for rental
16 periods. Did this apply to this particular application, but
17 then the homeowners association was in favor of the
18 application, so they did get it reduced to 31 days, or how
19 did the 31 days come about? Because I remember it was some
20 minimum requirement of six months.

21 MR. WOLLENHAUPT: Well, there's been a long
22 history, so if we start back at the beginning. This
23 Commission looked at this in great detail. You had a -- one
24 of the representatives of Mr. Anai, who now is the owner of
25 the golf course, whose company is called TY Development, was

1 represented by Roy Sakamoto, who had a concern over the
2 whole process of B&B's.

3 You had a neighboring resident, who also expressed
4 concern, Mr. Alvarez, which was bringing up the issue of
5 CC and R's and the use as a commercial enterprise. After
6 considerable debate, it was determined, as had been
7 determined before the meeting, that these are residential
8 uses. Therefore, the complaints being driven off of the
9 CC&R's as a commercial use didn't hold a lot of weight with
10 this Commission.

11 However, as part of perhaps the mollification, if
12 you wish to use that word, to the different people who were
13 upset about this, residences -- residents, it was determined
14 that the CC&R's allowed a 31-day period of rental. So,
15 because that was in the CC and R's, if the body -- if this
16 body would incorporate it, then some of the objections of
17 certain individuals, at least in part, they would be
18 addressed.

19 So, that was the -- that was the reasoning behind
20 the 31 days. The six months, perhaps that comes in that
21 anyone can rent out their home for six months or more,
22 because that's a long term rental. I'm not aware in the
23 CC and R's of anything about six months, but 31 days is in
24 there.

25 CHAIR HIRANAGA: My recollection may have been

1 wrong. I guess my concern is these people who may have
2 opposed the application earlier and then supported it with
3 the 31-day minimum requirement, how are they going to be
4 notified this 31-day minimum would be -- might be
5 eliminated? Because they may want to oppose the
6 application.

7 MR. WOLLENHAUPT: Well, I'm not sure that --
8 again, we're getting back to the -- the private issue of the
9 CC&R's is one that we as staff, I don't know how we could --
10 I don't know how I can enforce that issue. And that's a
11 private issue. We are putting this condition on for this
12 particular group of people, and yet, is there a nexus or a
13 condition other than they're in this organization, but yet,
14 we've never put on a condition like that for any other B&B,
15 which they made subject.

16 So, a notification this would be changing, that
17 wouldn't be part of what we would be doing. I do know that
18 the board of directors has approved -- has now written a
19 letter, which is in here, as having approval, or they're
20 recommending approval first. And they say -- they merely
21 say in their letter, "The minimum rental requirements must
22 comply with the bylaws of the Association, and the owners
23 must apply for and receive proper permits from the County of
24 Maui."

25 So, if we were to strike that out, I wouldn't be

1 sending the Plantation Estates Association a letter
2 indicating that. It would be up to the Plantation Estates
3 to enforce that, because we don't have an ability to know.

4 CHAIR HIRANAGA: Can we ask the applicant if they
5 oppose the 31-day limitation?

6 MR. MAYUIERS: I don't have a problem.

7 MR. WOLLENHAUPT: Come up and say your name.

8 MR. MAYUIERS: Thank you. Ron Mayuiers. I don't
9 have a problem with that.

10 CHAIR HIRANAGA: Okay. Thank you.

11 MR. MAYUIERS: But I would like to say I've been
12 on the board of directors for the past nine years at
13 Plantation Estates. And the board of directors, and I think
14 I can speak for the board of directors, they're very happy
15 to come and meet with the committee anytime there's anyone
16 that wants to apply for a B&B as long as they follow the
17 rules of the County has set up as to B&B's.

18 Our president stated he would be very happy to
19 either send a letter or come down and talk for any of our
20 neighbors that decide that they want to have a B&B. The
21 board of directors is 100 percent for B&B's in Plantation
22 Estates. In fact, they sent a letter to that effect stating
23 they were for it.

24 CHAIR HIRANAGA: All right. Thank you. Any other
25 questions, Commissioners? Commissioner Wakida.

1 COMMISSIONER WAKIDA: Yes. Kurt, what is the
2 square footage of the house, the main dwelling?

3 MR. WOLLENHAUPT: Go back to the old report here.
4 I think it's 6,000 -- oh, no, the main dwelling is 4,700
5 square feet with four bedrooms, four bathrooms.

6 COMMISSIONER WAKIDA: And that was built when did
7 you say?

8 MR. WOLLENHAUPT: Well, they've been on the
9 property since 2000.

10 COMMISSIONER WAKIDA: So, they've occupied that
11 since 2000?

12 MR. WOLLENHAUPT: Oh, yes, that's right. So,
13 that's the existing farm dwelling is four bedrooms.

14 CHAIR HIRANAGA: Commissioner Mardfin.

15 COMMISSIONER MARDFIN: How large is the accessory
16 building?

17 MR. WOLLENHAUPT: It meets the requirements of
18 1,000 square feet allowed under law, yes.

19 CHAIR HIRANAGA: Any other questions,
20 Commissioner? Seeing none, I'll open the floor to a
21 motion -- staff recommendation, sorry.

22 MR. WOLLENHAUPT: I'm not sure if about Condition
23 Number 7. That seems to be an outstanding issue.

24 DIRECTOR SPENCE: Just let's make the
25 recommendation. And then the Commission can --

1 MR. WOLLENHAUPT: The recommendation of the staff
2 would be to adopt the Planning Department's report and
3 recommendation prepared for today's meeting with the
4 deletion of Condition Number 7. That condition stated that
5 the applicant shall not rent out the B&B home for a period
6 of time less than 31 days, and authorize the Director of
7 Planning to transmit said findings of fact, conclusions of
8 law, decision and order on behalf of the Planning
9 Commission.

10 CHAIR HIRANAGA: I'll open the floor to a motion.

11 COMMISSIONER BALL: Motion to approve the
12 recommendation of staff to -- are we going for the five-year
13 extension?

14 CHAIR HIRANAGA: As recommended by staff.

15 COMMISSIONER BALL: As recommended by staff.

16 CHAIR HIRANAGA: The motion by Commissioner Ball
17 to approve staff's recommendation. Is there a second?

18 COMMISSIONER DOMINGO: Second.

19 CHAIR HIRANAGA: Second by Commissioner Domingo.
20 Discussion. Commissioner Mardfin.

21 COMMISSIONER MARDFIN: I'm going to vote against
22 this motion. If it were just an extension, I would be happy
23 to do it. But with the fourth built B&B, I think it
24 violates the spirit of what the law was.

25 CHAIR HIRANAGA: Any other discussion? Seeing --

1 Commissioner Shibuya.

2 COMMISSIONER SHIBUYA: I find this very troubling,
3 because you take it conveniently applying the CC and R
4 provisions when it's convenient and advantageous. You have
5 a gated community, which contradicts and keeps the public
6 out, but yet, you do have a commercial type operation. Then
7 you apply the definition of the accessory dwelling and
8 structure as most advantageous. And this certainly is
9 contradictory.

10 CHAIR HIRANAGA: Any other discussion?
11 Commissioner Wakida.

12 COMMISSIONER WAKIDA: I have an increasing concern
13 or an ongoing concern with ag land that's used predominantly
14 for other things than ag. Although I -- there seems to be a
15 lot of personal farming going on here. It looks like the
16 principal business, and this is an enormous house, is to use
17 the home for commercial purposes, and this concerns me in an
18 ag area.

19 CHAIR HIRANAGA: Any other discussion? Seeing
20 none, Director, if you could restate the motion.

21 DIRECTOR SPENCE: The motion is to approve the
22 Land Use Commission special use permit as recommended by
23 staff. And as recommended by staff, that would include the
24 deletion of Condition 7.

25 CHAIR HIRANAGA: Call for the vote. All in favor,

1 so indicate by raising your hand.

2 DIRECTOR SPENCE: That's two aye's.

3 CHAIR HIRANAGA: Opposed.

4 DIRECTOR SPENCE: That's five nay's.

5 CHAIR HIRANAGA: Motion carries -- motion fails.

6 DIRECTOR SPENCE: I had to make sure I counted

7 Commissioner Mardfin.

8 CHAIR HIRANAGA: Open the floor to additional

9 motions. Commissioner Mardfin.

10 COMMISSIONER MARDFIN: I move we approve the time

11 extension, but without the addition of the fourth B&B.

12 CHAIR HIRANAGA: Is there a second?

13 COMMISSIONER BALL: Second.

14 CHAIR HIRANAGA: Moved by Commissioner Mardfin to

15 reduce the number of rooms from four to three. Second by

16 Commissioner Ball. Any discussion? No discussion. I

17 guess I'm kind of bewildered here. It's an existing

18 dwelling. They're asking for a fourth bedroom that already

19 exists to be included in an existing B&B permit. I just

20 don't understand what's happening, but I'll call for the

21 vote.

22 All in favor of the motion, please so indicate by

23 raising your hand.

24 DIRECTOR SPENCE: That's three aye's.

25 CHAIR HIRANAGA: Opposed.

1 DIRECTOR SPENCE: That's four nay's.

2 CHAIR HIRANAGA: Motion fails.

3 What are our other options?

4 MR. WOLLENHAUPT: The option, perhaps just from
5 staff's point of view, would be a recommendation for the
6 time extension of five years, the three to four years --
7 three to four bedrooms to be used, and to keep in the 31
8 days as it's already a condition of approval.

9 DIRECTOR SPENCE: Yeah.

10 CHAIR HIRANAGA: We're still open for motions.
11 Commissioner Wakida.

12 COMMISSIONER WAKIDA: That would not change my --
13 where my area of concern is.

14 CHAIR HIRANAGA: There's no room for discussion
15 until we have a motion.

16 COMMISSIONER BALL: We have to hear the concern
17 from the other members, so we can formulate a motion, I
18 believe.

19 CHAIR HIRANAGA: Why don't we take a ten-minute
20 recess, and reconvene at 4:05.

21 (Recess taken 3:57 p.m. to 4:08 p.m.)

22 CHAIR HIRANAGA: Okay. I would like to call the
23 meeting back to order. Okay. Prior to the recess, we had
24 the motions. So, if there's someone that wishes to make a
25 motion.

1 COMMISSIONER BALL: Can I restate my motion that
2 failed?

3 CHAIR HIRANAGA: Why don't you do that, and we can
4 discuss the parliamentary issue.

5 COMMISSIONER BALL: Motion to approve the
6 applicant's B&B to a five-year extension and the fourth
7 bedroom and other conditions as it was presented by staff,
8 Number 7.

9 CHAIR HIRANAGA: The 31-day limitation?

10 COMMISSIONER BALL: Yes.

11 CHAIR HIRANAGA: So, motion to approve for staff
12 recommendation. Is there a second?

13 COMMISSIONER DOMINGO: Second.

14 CHAIR HIRANAGA: Second by Commissioner Domingo.
15 And because this is a motion that failed and now the same
16 Commissioner is making the same motion, I just wanted
17 Corporation Counsel to comment as far as parliamentary
18 procedure.

19 MR. GIROUX: I believe under Robert's Rules is
20 that the Chair is going to have to decide, I believe, after
21 discussion whether or not there's been, you know, a
22 substantial change in conditions in order to reconsider that
23 motion, whether there's information, new information that
24 wasn't deliberated or as such in order to receive the motion
25 for entertainment.

1 Otherwise, we could do this all day. And point of
2 order is that we don't want to be here all day.

3 MR. WOLLENHAUPT: There was additional
4 information, if I'm recognized.

5 CHAIR HIRANAGA: There was additional information?

6 MR. WOLLENHAUPT: There was -- apparently, I made
7 use of the word employees, that fruit was given to
8 employees. And apparently, there was a misunderstanding
9 that some of the Commissioners thought that there were farm
10 employees. No, there's no farm employees. These are just
11 people who are used, employed such as the housekeeper or
12 someone who might be on the golf course, employees of the
13 golf course who might be given some fruit.

14 So, there was a concern that I was representing
15 the applicant as a farm manager and on site operator, but
16 that he had employees. There are no employees, so that is a
17 pertinent piece of new information.

18 CHAIR HIRANAGA: Based on that, I will receive the
19 motion. Discussion.

20 COMMISSIONER WAKIDA: A question for Corporation
21 Counsel. If we are reconsidering the same motion, what
22 happens when we are missing one of our commission members
23 who voted on that earlier motion?

24 MR. GIROUX: A member has to be present to vote,
25 so it would -- it just becomes a -- well, unless it becomes

1 a quorum issue that you can't take action because of the
2 lack of quorum.

3 COMMISSIONER WAKIDA: So, however he voted --

4 MR. GIROUX: All members don't have to be present
5 to entertain a motion to reconsider.

6 COMMISSIONER WAKIDA: Okay.

7 CHAIR HIRANAGA: Any further discussion on the
8 motion? No discussion.

9 Director, if you could restate the motion.

10 DIRECTOR SPENCE: The motion is to approve the
11 time extension as recommended by staff, and, well, to
12 approve the recommendation as stated by staff, and that
13 would include the extra bedroom and the removal of Condition
14 Number 7.

15 CHAIR HIRANAGA: All in favor of the motion, so
16 indicate by raising your hand.

17 DIRECTOR SPENCE: That's four aye's.

18 CHAIR HIRANAGA: Opposed.

19 DIRECTOR SPENCE: That's two nay's.

20 CHAIR HIRANAGA: The Commissioner votes in favor
21 of the motion. Motion carries. Chairman votes in favor of
22 the motion.

23 Next agenda item is C(2). Director.

24 DIRECTOR SPENCE: Ms. Anne Takabuki from Wailea
25 Golf Course. This is a request for a special accessory use

1 permit to conduct special events at the Wailea Golf and
2 Emerald Golf Courses. And the staff planer is Ms. Gina
3 Flammer.

4 MS. FLAMMER: Good afternoon, Commission, Chair
5 Hiranaga. You may be wondering why we're reviewing an event
6 that's occurred on Maui for 11 years. But I'll make this
7 quick. I'll try to put some logic behind it. So, when a
8 building process is submitted for temporary structures such
9 as tents or other film projection equipment, as it was done
10 last year or every year for the Maui Film Festival, it's
11 routed out to different agencies.

12 When it came to our zoning division, someone
13 actually pulled out the Code. And they read the Code, and
14 it's very restrictive. So, yeah -- so, actually, it's in
15 your staff report if you want to take a look at what it
16 says. So, it does not include as a permitted use special
17 events or even clubhouses or swimming pools or weight rooms.
18 What it requires is an accessory use permit, and this body,
19 by that clause, is the approving authority for that.

20 So, what our department did when this came in is
21 we did a review of major golf courses, and we saw that
22 almost all of them have special events, and they have other
23 related types of events, clubhouses, things like that. So,
24 we deemed it as an accessory use and asked them to put forth
25 an application for that in which they did.

1 Now, when we update our Planning Code for the PK-4
2 Golf Course, we'll probably take a look at this and realize
3 things have evolved over time. And maybe when it was
4 written, it wasn't clearly understood how golf courses on
5 Maui were going to be used. So, I do have just a couple of
6 pictures I can show you what the events look like. We have
7 the general manager from Wailea Golf, Anne Takabuki, who can
8 answer some questions if you have that. So, what we have at
9 the first slide, it's just a general overview of the entire
10 golf course. It is one TMK.

11 Most of the events will be occurring on the left.
12 You do have in your staff report some smaller pictures that
13 show you exactly where it is. This would be the film
14 festival from last year. So, it would be a corporate event,
15 looks like a dinner. And they have just a wedding there at
16 the end. So, I don't want to overcomplicate it. The
17 Department looked. They deemed it to be an accessory use.
18 I can go ahead and go right into the recommendation, or if
19 you would like, we can go ahead and do -- answer questions.

20 CHAIR HIRANAGA: Did the applicant have anything
21 to say?

22 MS. TAKABUKI: No, I believe the report thoroughly
23 covers our request.

24 CHAIR HIRANAGA: Please identify yourself.

25 MS. TAKABUKI: I'm Anne Takabuki. I'm the general

1 manager at Wailea Golf. Thank you, Gina. I think the
2 report is very well done, and it does cover, I believe, all
3 the aspects of our request, but I would be happy to answer
4 any questions if you have.

5 CHAIR HIRANAGA: Okay. Thank you. Staff
6 analysis.

7 MS. FLAMMER: I do want to point out what we do
8 with all of our applications, they are routed to different
9 agencies for review. There were no significant comments.
10 Department of Public Works looked at it. Our zoning
11 division, as a regular procedure, they like to update all of
12 their parking analysis, so they did ask them for very
13 detailed parking information. And it did take a couple of
14 months to provide all of that. It is a large TMK.

15 Every parking lot on that TMK was asked to be
16 updated. The Department of Health did ask for more
17 information. There is a Leadbetter Academy building that
18 utilizes the septic system. There was a lot of information
19 gathering on that that took some time. They've been happy
20 with that. Everything else was no comment on that, and we
21 did deem it to be an accessory use that was similar to
22 related to golf course functions.

23 CHAIR HIRANAGA: All right. Thank you. At this
24 time, I'm going to open the floor to public testimony. Is
25 there anyone here that wishes to provide testimony? Please

1 step forward, and state your name.

2 MR. PICKRONE: Bud Pickrone. I'm general manager
3 of the Wailea Community Association and the Wailea Resort
4 Association. I just wanted to thank Gina for all the work
5 she did here. And this is a use that or a property that
6 gets used by the resort. As you know, finding some land to
7 have functions mand that is never easy on a lot of
8 properties, but this has been well used, and not just for
9 corporate events, but for County events. And we hope to
10 continue to work with the County to have more events in the
11 area and possibly use the -- continue to use the golf
12 course. Thank you.

13 CHAIR HIRANAGA: Questions for the testifier.
14 Seeing none, thank you. Is there anyone else that wishes to
15 provide testimony? Seeing none, the public testimony is
16 closed. Questions from Commissioners for staff and
17 applicant? Seeing none, call for the staff recommendation.

18 MS. FLAMMER: The Planning Department recommends
19 that the Maui Planning Commission find the proposed use to
20 be an accessory use and consistent with the policies of the
21 Kihei Community Plan and in conformance with Title
22 19.615.050 of the Maui Code. I do have two standard
23 conditions, which you can see in there. I can go into them
24 if anybody has any questions.

25 We recommend that you adopt the Department's

1 report and recommendation prepared for this meeting subject
2 to the conditions of approval as it's findings of fact,
3 conclusions of law and decision and order and authorize the
4 Planning Director to transmit said findings of fact,
5 conclusions of law, decision and order on behalf of the
6 Planning Commission. Thank you.

7 CHAIR HIRANAGA: Well, actually, the floor is open
8 to a motion. Commissioner Shibuya.

9 COMMISSIONER SHIBUYA: I move to approve staff's
10 recommendation.

11 CHAIR HIRANAGA: Is there a second?

12 COMMISSIONER WAKIDA: Second.

13 CHAIR HIRANAGA: Commissioner Wakida. Director,
14 if you could restate the motion.

15 DIRECTOR SPENCE: The motion is to approve per the
16 recommendation by staff.

17 CHAIR HIRANAGA: I'm sorry, is there any
18 discussion? No discussion. Discussion, Commissioner
19 Shibuya.

20 COMMISSIONER SHIBUYA: Contrary to the previous
21 issue, I don't have my grouchy pills, so I should be a
22 little bit more positive on this one. Thank you.

23 CHAIR HIRANAGA: Any other discussion? Seeing
24 none, Director, if you could restate the motion.

25 DIRECTOR SPENCE: The motion is to approve as

1 recommended by staff.

2 CHAIR HIRANAGA: All in favor of the motion, so
3 indicate by raising your hand.

4 DIRECTOR SPENCE: That's six aye's.

5 CHAIR HIRANAGA: Motion carries.

6 MS. FLAMMER: Thank you.

7 CHAIR HIRANAGA: Next agenda Item F(1). Director.

8 DIRECTOR SPENCE: Commissioners, this is Item F(1)
9 for Mr. Douglas Poseley requesting an EA assessment
10 determination. I'm looking for a staff planner. Gina is
11 handling -- I know the applicant's representative,
12 Mr. Frampton, is here.

13 MS. FLAMMER: Okay. I'm just going to read for
14 right now, and then I'll (inaudible.)

15 Good afternoon again. I'm Gina Flammer. I know
16 you had training just a couple of weeks ago, but I did
17 notice, excuse me, there was a lot of questions about an EA
18 and an EIS. So, as we go into this, I wanted to really
19 clarify that, because I know they come in bundles, packages
20 for review, and it can get very confusing. So, in 1974, the
21 Hawaii State Legislature passed the Chapter 343 law that
22 requires EA's and, if needed, an EIS. And the triggers I
23 have up here, which you probably remember from your
24 training, you guys mostly see them for County land.

25 I'll go into why we're doing this in a minute

1 here. So, they require a systemic analysis done to look at
2 the environmental, the social and the economic consequences.
3 So, if you look at the table of contents of that final EA
4 that you have, it kind of lays out what needs to be -- the
5 information that needs to be in there. So, basically, an EA
6 is an informational document. In your job as the Commission
7 is to make sure that there's enough information in that
8 document that you can determine whether or not an EIS is
9 going to be required.

10 It's real cumbersome to go through the -- I took
11 some of the training things. So, what the law has done is
12 it's given you 12 significant criteria that you use to
13 evaluate the document against whether or not you need to do
14 an EIS. The first job is do I have enough information in
15 that document so that I can determine if it's an EIS. Do I
16 see some impacts that maybe could be mitigated so it
17 wouldn't become an EIS.

18 Now, we're at in this process -- well, normally
19 you don't have an EA on your own. You're going to have some
20 other permit that needs to be required for the project. In
21 this case, you're going to have a community plan amendment
22 that you will review after an EA is accepted. You're also
23 going to have -- there is an SMA approval that is needed.
24 There's a flood development permit that would be needed if
25 necessary. There's a change in zoning, community plan

1 amendment. So, this Commission will review the change in
2 zoning and the community plan amendment and make a
3 recommendation to Council.

4 Now, if you accept this final EA, you'll do that
5 in the next couple of months. You can't move to the next
6 step until you make a determination upon this document.

7 Now, at the time you're reviewing those two, you can ask for
8 additional information, and you can put more conditions on
9 that. By accepting this final environmental assessment, you
10 are not giving approval to these other permits. And you are
11 not limiting yourself as to what information you can ask or
12 what kind of conditions you can put on those permits.

13 The parcel -- they also have a lot of state review
14 as well. The landscaping portions of the land require the
15 DLNR. There's going to be a beach path, which I'll talk
16 about in a minute. That's going to require some DLNR
17 approval as well. Again, before any of these can be done,
18 the EA or EIS must be accepted. So, where are we at right
19 now in the whole process? Going back to 2008, the applicant
20 applied for an SMA exemption to build a house. However,
21 because there was an inconsistency with the community plan,
22 it's designated park, they had to come in and apply for a
23 community plan amendment.

24 In this case, that's what triggered the EA
25 document, and that's why you are the accepting body for

1 this. The draft EA was heard by the Commission on August
2 24th of last year. You've asked for 25 additional items in
3 the report, which the consultant, Rory, did provide to you.
4 When that was completed, we asked to place it back on the
5 agenda for November 22nd, but the Commission wanted to do a
6 site visit, which is understandable. They do a lot of site
7 visits. They're very useful. So, our department
8 coordinated a site visit to West Maui where we saw that site
9 as well as 13 other sites all in the same day. There was a
10 request for more information for all the sites, but this
11 particular site, in which the consultant did provide also.

12 The final EA was scheduled for the February 8th
13 meeting, but then it was deferred because you had a very
14 busy schedule. March 8th we got back on the agenda. There
15 was more information that was asked for, and that's been
16 provided in the packet to you for this review. Now, at that
17 March 8th meeting, there was a lot of discussion -- there
18 was a lot of discussion about beach access. So, in the area
19 they've been using a cane haul road -- the public has been
20 using a private road to get beach access, because the area
21 where there should be beach access is crowded with
22 vegetation, and you can't get through.

23 We had Daniel Ornellas, a land agent from the
24 DLNR, and he agreed that the state would like to put that
25 in. They just don't have the money. We had Hinano

1 Rodrigues from the DLNR, the State Preservation Division.
2 And he agreed if you're going to have beach access, it
3 should be right there on the beach. So, the applicant along
4 with Olowalu Elua, the group who owns Camp Olowalu, agreed
5 to go in and put in a beach path. So, they have requested a
6 right of entry from the Department of Land and Natural
7 Resources, and you'll see the letter in there.

8 In order to do that, they need the EA to be
9 accepted. So, in order to move forward on any of this, you
10 guys need to go to what your choices are. So, today you can
11 accept the final EA by issuing a finding of no significant
12 impact. The next step would then be to review the community
13 plan amendment and the change in zoning. You could defer
14 again asking for more information, or you could require the
15 preparation of an EIS. However, you need to use these
16 significant criteria in order to bump it up. You have to
17 meet one of these.

18 So, I've given you a lot of information. I'll let
19 you ask your questions now.

20 CHAIR HIRANAGA: Questions from the Commissioners.
21 Gina, were there additional questions that the Commissioners
22 had regarding the EA at the previous meeting?

23 MS. FLAMMER: At the March 8th meeting?

24 CHAIR HIRANAGA: Yes.

25 MS. FLAMMER: There were. And there's a letter

1 from the consultant in the package that you received.
2 There's also -- he also marked in the final document where
3 additional information was given. Some was at -- I think
4 they wanted more information on open space.

5 CHAIR HIRANAGA: Did you want to go over those
6 items just for clarity? I think there were just a handful.

7 MR. FRAMPTON: Good afternoon, Commissioners.
8 Rory Frampton representing the applicant. Just real
9 briefly, what we did in the updates that were made to the
10 EA, we provided a more detailed description of the project.

11 I think there was some questions about exactly
12 what was being done in terms of the vegetation and the path,
13 the clearing for the path. We provided more detail
14 regarding archeological sites in the area. We provided more
15 detailed discussion regarding the historical research that
16 we did, because there were questions about whether or not
17 this cane road was a historic road that existed, you know,
18 before the plantation. We provided that information in
19 there.

20 And then we added a section in the -- we added
21 some language regarding the community plan analysis in which
22 we provided some additional justification for consistency
23 with the community plan. So, those are the major areas that
24 we added. And if there are any questions, I can certainly
25 dive into those in a little bit more detail.

1 CHAIR HIRANAGA: Questions from Commissioners?

2 COMMISSIONER LAY: I have a question about the
3 access.

4 CHAIR HIRANAGA: Commissioner Lay.

5 COMMISSIONER LAY: How far apart is the public
6 access? You know, from this lateral 8- to 10-foot access
7 point where you can walk to the shoreline, where is the
8 public parking for that area to get to there?

9 MR. FRAMPTON: Sorry, I'm going to jump through
10 these slides here. This is an aerial photo of the -- of the
11 area. And the beach reserve, there's a beach reserve or
12 lateral access along the entire peninsular at Olowalu. The
13 main parking to access along here is either along the
14 highway, or there's parking by the Olowalu Wharf or the
15 Olowalu manager's house, which is right across from the
16 Olowalu Store.

17 So, there are two public access points to get to
18 the shoreline on either end, and then there's lateral access
19 along the entire frontage.

20 COMMISSIONER LAY: But the Camp Olowalu you're
21 talking about where the other parking area is --

22 MR. FRAMPTON: Camp Olowalu is right here, yeah.

23 COMMISSIONER LAY: So, you would park by the road
24 and walk through that road past Camp Olowalu to get to that
25 lateral public access?

1 MR. FRAMPTON: Well, the entire shoreline has a
2 government beach reserve on it. And so, once you're here,
3 you're on the government beach reserve. And basically, the
4 idea is to make it so that you can walk along the entire
5 frontage without having obstructions. Right now -- well,
6 there's a map of the -- there's another map of that that the
7 state put up along the highway where you can park along the
8 highway. And it shows there's a beach reserve all the way
9 over to the wharf.

10 What they do -- what people do right now is they
11 walk along the shoreline until they get to about here. And
12 it's so overgrown in this area that you can't really get
13 along, move along the shoreline in that area. So, that's
14 what we're talking about doing, this proposed lateral access
15 pathway. It's hard to see with the lights on here. It
16 would run -- it would basically go from about here to about
17 here, which would then provide for if you went out there,
18 you could walk along the entire shoreline without being
19 blocked by vegetation.

20 That's what we're trying to achieve. Right now,
21 what they do is when they get to the thick area, they kind
22 of go through this makeshift trail and go along an old ag
23 road that crosses through the parcel. So, you know, the
24 Olowalu Elua, which owns the larger area as well as
25 Mr. Poseley has offered to help the State basically clean up

1 the vegetation so that they could create a pathway along
2 there. So, that's one of the actions that we're proposing
3 as part of the project.

4 CHAIR HIRANAGA: Commissioner Wakida.

5 COMMISSIONER WAKIDA: Mr. Frampton, what about
6 this, I guess it's Easement G or conservation area that's
7 between the proposed property, or is it within the property
8 line?

9 MR. FRAMPTON: Easement G is part of the larger
10 parcel, that Parcel 84. But it wraps -- it wraps around,
11 and there's a little finger, if you will, that goes right
12 along, right in front of the parcel. So, it's -- the State
13 beach reserve is on the ocean. And then there's this finger
14 of the larger Parcel 84 that has -- that's called Easement
15 G. And that Easement G basically allows the owner of this
16 Parcel 47 exclusive use of that easement. Because it just
17 basically -- because it's such a small unusable portion for
18 the larger piece, they basically granted use of that
19 easement to 47.

20 So, essentially, it's an extension of his front
21 yard if you want to think of it in practical terms.

22 COMMISSIONER WAKIDA: I thought it was
23 conservation land.

24 MR. FRAMPTON: It is conservation. That's
25 separate from the ownership. So, he can use it, but it is

1 conservation land. And so, he's proposing to do landscaping
2 in that area, to take out the kiawe trees and the opiuma
3 trees and put in native landscaping. And for that, he'll
4 have to go to the Department of Land and Natural Resources
5 to get approval for the landscape planting in the
6 conservation district, yes. But it's -- it's all
7 conservation in front of his property.

8 Part of it is privately owned. That's Easement G,
9 what I call practically, it's like an extension of his front
10 yard. It's different than the State owned land. Because if
11 it's State owned, obviously, the public all has an interest
12 in it.

13 COMMISSIONER WAKIDA: Well, I'm not -- he has the
14 right to use the land. But does anybody have a right to use
15 the land?

16 MR. FRAMPTON: Not that private land, no.

17 COMMISSIONER WAKIDA: The Easement G?

18 MR. FRAMPTON: Correct.

19 COMMISSIONER WAKIDA: Who owns it?

20 MR. FRAMPTON: The Olowalu Elua, but they
21 basically gave the right to use that property to Parcel 47,
22 so it basically goes along with Parcel 47.

23 COMMISSIONER WAKIDA: Okay. But it is zoned
24 conservation?

25 MR. FRAMPTON: That's correct.

1 CHAIR HIRANAGA: Commissioner Shibuya.

2 COMMISSIONER SHIBUYA: On the site survey, I
3 noticed there were some kiawe trees cut down, and the
4 comment was made that it was done illegally.

5 MR. FRAMPTON: I'm not --

6 COMMISSIONER SHIBUYA: Was that the conservation
7 area?

8 MR. FRAMPTON: Well, I'm not sure what you're
9 referring to. I know on an adjacent parcel, they did get a
10 conservation permit to do a house, and there was some kiawe
11 clearing as part of that. And they did do that as part of
12 the conservation district use permit. Whether or not
13 there's been other illegal cutting of trees, if you are in
14 the conservation district, anything over four inches in
15 diameter, if you want to cut it down, you've got to get some
16 type of approval. I wasn't privy to that discussion.

17 COMMISSIONER SHIBUYA: It was larger than four
18 inches.

19 MR. FRAMPTON: So, if it was in the conservation
20 district, then technically, there would have had to have
21 been an approval to cut those trees down.

22 COMMISSIONER SHIBUYA: Okay. Thank you.

23 CHAIR HIRANAGA: Any other questions,
24 Commissioners? Commissioner Shibuya.

25 COMMISSIONER SHIBUYA: I had mentioned during that

1 previous occasion that we were talking about one of the
2 paragraphs number 12 on Page 53 on this final EA. It says
3 requires substantial energy consumption. And at that point,
4 I had asked that there be some generation of renewable
5 electric power to reduce the power burning on the grid. Is
6 there any feedback?

7 MR. FRAMPTON: Yes, I'm sorry. Well, first of
8 all, that Number 12 is one of the criteria. So, if you find
9 that it requires substantial energy consumption, then you
10 would -- then it's one of the criteria to look at for doing
11 an EIS. And I'm sorry, that looks like that section was not
12 updated. But in our letter to the Commission, we -- which
13 is in the appendix, we clarified that the applicant will be
14 incorporating photovoltaics for energy production.

15 COMMISSIONER SHIBUYA: Okay. Thank you.

16 MR. FRAMPTON: Yes.

17 CHAIR HIRANAGA: Any other questions from the
18 Commission? Commissioner Wakida.

19 COMMISSIONER WAKIDA: Rory, do you have a copy of
20 Lucienne DeNaie's letter to the Commission?

21 MR. FRAMPTON: I believe so, yes.

22 COMMISSIONER WAKIDA: I couldn't -- I was
23 wondering what, if you know what she is referring to in Item
24 4. She says the complete language of the West Maui
25 Community Plan as pertains to the preservation of open space

1 and coastal lands of Olowalu to be included in the EA. Do
2 you know what complete language she's referring to?

3 MR. FRAMPTON: Yes, and I did include that in the
4 language on the community plan. And basically, that's on
5 the new Page 36.

6 COMMISSIONER WAKIDA: Are we looking at the same
7 thing?

8 MR. FRAMPTON: If you're looking at that. And on
9 Page 36 and for the two new Commissioners, I believe it's on
10 Page 36 as well. And it's the third full paragraph down
11 that starts off by, the community plan recommendation goes
12 on to say. So, the first part of the sentence, you know,
13 when it's talking about recommending a ten-acre park in the
14 area, it says the final boundaries in the park shall be
15 determined in consultation with the land owner.

16 And then so, starting with the second paragraph,
17 the community plan recommendation goes on to say that if
18 agriculture in the area is decreased by 50 percent, 20 acres
19 of park land shall be considered for addition for the ten
20 acres of park currently designated in the land use map. So,
21 I included that in there. And I went on to say that the
22 owners of parcel 84, which is the larger parcel in the area,
23 are contemplating a change in use from agriculture to urban.
24 And that's when that issue would be addressed.

25 COMMISSIONER SHIBUYA: All right. Thank you.

1 MR. FRAMPTON: You're welcome.

2 CHAIR HIRANAGA: Any additional questions? Seeing
3 none, I will open the floor to a motion.

4 MS. FLAMMER: Recommendation.

5 CHAIR HIRANAGA: Sure. Go ahead.

6 MS. FLAMMER: The Department is recommending that
7 the Commission accept the final EA and issue a finding of no
8 significant impact determination.

9 CHAIR HIRANAGA: All right. Thank you. I'll open
10 the floor for a motion. Commissioner Shibuya.

11 COMMISSIONER SHIBUYA: Move to accept the finding
12 of FONSI.

13 CHAIR HIRANAGA: Is there a second?

14 COMMISSIONER DOMINGO: Second.

15 CHAIR HIRANAGA: Moved by Commissioner Shibuya.

16 Second by Commissioner Domingo to accept the EA and issue a
17 finding of no significant impact. Discussion. Commissioner
18 Wakida.

19 COMMISSIONER WAKIDA: Yes. Gina, I do have a
20 concern about the conservation district easement area. And
21 the -- I'm not quite sure how this dovetails into the EA.
22 But according to the conservation from the Hawaii Revised
23 Statutes, the conservation -- it says that the conservation
24 district shall have open space areas, whose existing
25 openness, natural condition or present state of use if

1 retained would enhance the present potential value of
2 abutting or surrounding communities and enhance the
3 conservation of natural scenic resources, so on.

4 So, I'm a little concerned at giving the -- the
5 home owner cart blanche to go in there and decide what
6 should be cut down and what should be replanted. I've been
7 in that area, and there's a lot of beautiful growth in there
8 now. So, because it's conservation land, I'm a little
9 concerned about this.

10 MS. FLAMMER: DLNR has the authority to approve a
11 permit that's required to do any removal of vegetation.

12 COMMISSIONER WAKIDA: Okay.

13 MS. FLAMMER: It rests solely with them. Yeah,
14 the home owner will have to get approval in order to do any
15 work in there.

16 COMMISSIONER WAKIDA: I see. Thank you.

17 MS. FLAMMER: Yeah.

18 CHAIR HIRANAGA: Any other discussion?

19 MS. FLAMMER: Did you want to have public
20 testimony? Did you call for it? I wasn't sure.

21 COMMISSIONER SHIBUYA: There was none.

22 CHAIR HIRANAGA: No discussion. I'll have the
23 Director restate the motion.

24 DIRECTOR SPENCE: The motion is to accept the EA
25 and issue a finding of no significant impact.

1 CHAIR HIRANAGA: Call for the vote. All in favor,
2 so indicate by raising your hand.

3 DIRECTOR SPENCE: That's six aye's.

4 CHAIR HIRANAGA: Motion carries.

5 Agenda Item G. Acceptance of action minutes of
6 the April 26th, 2011 meeting -- I'm sorry, I skipped over
7 F(2). This is the SVOP annual report. Previously, I think
8 there was some comment about background information
9 regarding this settlement agreement.

10 Director, did you wish to comment?

11 DIRECTOR SPENCE: Thank you, Mr. Chairman. This
12 was on your last agenda. And the Commissioners seem to have
13 quite a number of questions mostly about the nonprofit
14 rather than about the developer. The SVOP, as required by
15 their SMA permit to report back to the Commission once a
16 year, and that's Condition 44 that an annual report to be
17 filed with the Commission for the information on the
18 disbursement of the funds for Lot 3. Settlement agreement
19 by the applicant to the intervenor in the West Maui
20 Community benefit fund.

21 Okay. So, what we last time was a report by their
22 attorney, Mr. Rapacz, and he disclosed how much had been
23 given to the nonprofit. The Commissioners -- we received
24 some -- we had received some -- some written and oral
25 testimony by a member of the public, Ms. Louise Rocket,

1 questioning the nonprofit and where the money is going. We
2 did seek an answer. We didn't directly ask the nonprofit.
3 She provided -- Ms. Rocket provided some additional written
4 information.

5 We requested information of Mr. Rapacz, if he
6 could disclose the settlement agreement. He said no. His
7 clients don't wish to do that. And if there was -- I asked
8 if there was any other information he could provide, and he
9 basically doesn't have any additional information to
10 provide. He doesn't know where the money goes or anything,
11 that they're basically keeping up with what they agreed with
12 the intervenors.

13 There's really -- I mean the last time the
14 Commission wanted to ask the nonprofit some questions,
15 really there is nothing that the -- the acronym is WMPA --
16 there's nothing that WMPA has before this Commission, so
17 there's nothing really for the Commission to be able to ask
18 that nonprofit. So, I guess I can answer some more
19 questions by the Commission.

20 COMMISSIONER BALL: Well, if they're an agenda
21 item.

22 CHAIR HIRANAGA: Commissioner Ball.

23 COMMISSIONER BALL: If they're on the agenda, and
24 they have business with the Commission, right?

25 DIRECTOR SPENCE: Well, it's the developer. It's

1 SVOP, Inc., that is on the agenda for the Commission. The
2 nonprofit and how they spend their money is not.

3 COMMISSIONER BALL: Another question. Have they
4 submitted the reports that they were supposed to submit?

5 DIRECTOR SPENCE: Yes, they did. Well, the
6 developer is the one required to submit the report, correct.

7 CHAIR HIRANAGA: Is Paul Fasi here?

8 DIRECTOR SPENCE: No, Paul had to take off.

9 CHAIR HIRANAGA: So, there's no action; we just
10 have to acknowledge receipt of the report?

11 DIRECTOR SPENCE: That's correct.

12 CHAIR HIRANAGA: Commissioner Wakida.

13 COMMISSIONER WAKIDA: I don't understand the
14 report.

15 DIRECTOR SPENCE: I didn't bring that with me.
16 Basically Mr. Rapacz is representing the developer, SVOP.
17 They're required by this -- you know, they applied for one
18 of the large towers on North Beach, I believe, to build time
19 shares. And so, they had an intervention on the special
20 management area permit. They went through intervention.
21 One of the conditions was to provide this report every year
22 to the Commission, and that's been done.

23 COMMISSIONER WAKIDA: Have we seen a copy of the
24 report?

25 DIRECTOR SPENCE: Yes, it was on -- that was

1 provided at the last meeting.

2 COMMISSIONER WAKIDA: That was the sum total of
3 his report, there was no documentation or anything to go
4 with it?

5 DIRECTOR SPENCE: No, it was a one-page report.

6 COMMISSIONER WAKIDA: I remember it, but it seems
7 woefully incomplete. I mean he's awarded a grant to who for
8 \$18,000?

9 DIRECTOR SPENCE: Well, no, this was -- what
10 you're referring to here, this is a fax and letter of
11 testimony by Ms. Louise Rocket.

12 COMMISSIONER WAKIDA: I understand that.

13 DIRECTOR SPENCE: She is just an interested
14 citizen.

15 COMMISSIONER WAKIDA: But what I'm getting at is I
16 don't recall that we had much detailed information on the
17 previous -- on the actual report at the last meeting,
18 correct?

19 DIRECTOR SPENCE: That's correct. And so, you
20 know, we asked -- like I said, I asked John, Mr. Rapacz,
21 about a couple of things. He said, you know, we've made our
22 report. My client prefers not to, you know, not to disclose
23 the settlement agreement. And we asked, you know, do we --
24 are we aware of wherever this -- any of the monies were
25 awarded. And he said he's not aware of what WMPA does with

1 the money that they give them.

2 COMMISSIONER WAKIDA: Who authorized the
3 settlement agreement?

4 DIRECTOR SPENCE: It was between the parties.

5 COMMISSIONER WAKIDA: Okay.

6 DIRECTOR SPENCE: And it was -- I should clarify.
7 The Commission's rules when somebody intervenes, an
8 intervention is granted. The first thing they do is go to
9 mediation. Any settlement agreement in mediation or
10 anywhere along the intervention process is reviewed by the
11 Commission. What happened in this case is they -- before
12 intervention was granted, the two parties reached a
13 settlement.

14 Therefore, that settlement fell outside of the
15 jurisdiction of your rules. And so, it was never something
16 that the Commission reviewed.

17 COMMISSIONER WAKIDA: Is there any -- are there
18 any further questions that we can ask about this business?

19 DIRECTOR SPENCE: We can ask, but --

20 COMMISSIONER WAKIDA: It's not in our purview?

21 DIRECTOR SPENCE: There's nothing -- there's no
22 permit. The developer is complying with the conditions of
23 their permit. They're reporting it to you. There's really
24 nothing -- there's no application. There's no conditions.
25 There's nothing under this Commission's purview as far as

1 that nonprofit goes.

2 COMMISSIONER WAKIDA: Okay. Thank you.

3 CHAIR HIRANAGA: Any other questions,
4 Commissioners? Seeing none, we'll just acknowledge receipt
5 of the report. Next agenda item is Item G, acceptance of
6 action minutes of the April 26th, 2011 meeting. Motion to
7 accept?

8 COMMISSIONER FREITAS: So move.

9 COMMISSIONER DOMINGO: Second.

10 CHAIR HIRANAGA: Moved by Commissioner Freitas.
11 Seconded by Commissioner Domingo. Any discussion? If not,
12 all in favor, say aye.

13 COMMISSIONERS: Aye.

14 CHAIR HIRANAGA: Opposed.

15 Motion carries.

16 Item H(1), Director.

17 DIRECTOR SPENCE: Okay. The first one is my
18 notification to the Commission on a couple of time
19 extensions and a transfer, I believe. Our staff planner for
20 this item is Gina Flammer.

21 MS. FLAMMER: So, as you know, the time extension
22 for SMA permits, you received a letter. You received a
23 small packet of information. I have the consultant
24 available here to answer any questions. He can also give
25 you an update on where they are with the project. We have

1 Rory Frampton, land use consultant.

2 MR. FRAMPTON: Good afternoon, Commissioners. I'm
3 Rory Frampton representing Sam and John Garcia, who are also
4 here today. Essentially, this request is to ask for a
5 two-year period to initiate construction on the project.
6 And what happened was right after or right about the time
7 that this project received its SMA approval, the County of
8 Maui enacted the water availability ordinance, or otherwise
9 known as the Show Me the Water Bill. And that bill
10 basically froze the project in its tracks, because the bill
11 basically said that you can't proceed with construction
12 drawings as part of your subdivision process until the water
13 director can guarantee that there's a source of water
14 available.

15 And for the Central Maui system, that's anywhere
16 from Makena to Paia to Waihee. He basically said he
17 couldn't guarantee anymore water. Well, the Council
18 recently has passed some changes to that law, and they
19 allowed for exemptions of projects ten units or less that
20 are infill within the urban district. So, this project
21 would now actually qualify for that exemption. So, we're
22 hoping we can move ahead, and we anticipate that we will be
23 able to initiate construction within this next two-year
24 period.

25 CHAIR HIRANAGA: Questions for -- well, first of

1 all, I'll open this up to public testimony. Is there anyone
2 here that wishes to provide testimony on this agenda item?
3 Seeing none, public testimony is closed. Questions from the
4 Commission for the staff or applicant? Commissioner
5 Shibuya.

6 COMMISSIONER SHIBUYA: Can you advise how many
7 water meters you have and how many subdivided lots you plan
8 to have?

9 MR. FRAMPTON: At present, the property has three
10 meters. There's three existing dwellings on the property.
11 Ultimately, there will be ten new lots, so they will be need
12 seven new meters.

13 COMMISSIONER SHIBUYA: And are you in the process
14 of purchasing those seven?

15 MR. FRAMPTON: Well, because that -- we were
16 stopped from doing so for a number of years, but yes, there
17 was recently a submittal to the Department to pursue that.

18 COMMISSIONER SHIBUYA: And that includes the
19 placement of the main line as well as fire hydrants?

20 MR. FRAMPTON: Well, there are existing fire
21 hydrants and a main line right along Makena Kenoioio Road.
22 So, in terms of the improvements on the road itself, we
23 don't anticipate significant increases in the line.

24 COMMISSIONER SHIBUYA: Okay. Thank you.

25 MR. FRAMPTON: You're welcome.

1 CHAIR HIRANAGA: Other questions? I have a
2 question. So, I noticed that you increased your storm
3 drainage retention capacity to include 50 percent of the
4 predevelopment runoff.

5 MR. FRAMPTON: Yes.

6 CHAIR HIRANAGA: I can't recall, back in '08, was
7 there some type of a physical restraint that prevented you
8 from retaining 100 percent of predevelopment runoff?

9 MR. FRAMPTON: No. At the time, what applicants
10 were doing and what we tried to do was accommodate more than
11 what the law required. And so, we came up with the 50
12 percent of the net increase. The drainage plan calls for a
13 series of low detention -- kind of shallow detention basins
14 on the property situated around existing walls, old
15 historical ranching walls, which can be taken down.

16 But we are really trying to tread lightly on the
17 land and trying to preserve as many of those as possible.
18 So, it was kind of a happy medium, if you will, to go with
19 the 50. At that time, I don't recall the Commission or
20 other applicants going more than that. I know there was a
21 project right before us that had like 30 percent more, but I
22 think we thought by throwing in 50 that we were kind of
23 raising the bar, if you will, at that time.

24 CHAIR HIRANAGA: So, regarding the Show Me the
25 Water Ordinance, you have to show the County you have a

1 long-term source of water. Is there a long-term source?

2 MR. FRAMPTON: Well, sorry, if you're a private --
3 if you're developing a private source, you're required to
4 show that your source is reliable for long term. If you're
5 connecting to the County's water system, which this project
6 is going to do, the County Water Director has to sign off
7 and basically commit to the long-term water availability.

8 CHAIR HIRANAGA: And is that construction plan
9 approval, or at what point does the Director sign off?

10 MR. FRAMPTON: Prior to construction approval.
11 The way the law reads right now, you cannot submit
12 construction drawings as part of the subdivision process
13 until you have the sign-off from the Water Department. So,
14 that's precisely where we were. We had received preliminary
15 approval. And after the SMA approval, we were going to be
16 preparing construction drawings and turning them in for
17 processing. This law got passed, so it stopped us kind of
18 in our tracks, so we couldn't proceed to the next step,
19 which was submittal of construction drawings.

20 So, the law requires that you need that sign-off
21 prior to submittal of construction drawings.

22 CHAIR HIRANAGA: So, what has changed that makes
23 you believe that the Director of the Department of Water
24 Supply will sign off on the project now?

25 MR. FRAMPTON: The fact that the ordinance that

1 the County Council just passed allows for smaller infill
2 projects. And the testimony that occurred during that lends
3 us to believe that the Department is going to be allowing
4 those projects to move forward. But it specifically exempts
5 projects ten units or less that are infill.

6 CHAIR HIRANAGA: Okay. My second question was
7 what was the unit cap, and you answered it ten.

8 MR. FRAMPTON: Ten, yes.

9 CHAIR HIRANAGA: Any further questions? So, I
10 guess the matter on the floor is whether the Commission will
11 waive its review of the time extension or request it be
12 brought back to the Commission for review. I'll open the
13 floor to a motion.

14 COMMISSIONER FREITAS: I move that we waive the
15 time extension review and come back.

16 CHAIR HIRANAGA: Is there a second?

17 COMMISSIONER LAY: Second.

18 CHAIR HIRANAGA: Motion by Commissioner Freitas.

19 Seconded by Commissioner Lay to waive the Commission's
20 review of this SMA time extension. Any discussion? Seeing
21 none, Director, if you could restate the motion.

22 DIRECTOR SPENCE: The motion is for the Commission
23 to waive their review of the time extension.

24 CHAIR HIRANAGA: Call for the vote. All in favor,
25 so indicate by raising your hand.

1 DIRECTOR SPENCE: That's six aye's.

2 CHAIR HIRANAGA: Motion carries. Agenda H(1)(B).
3 Director.

4 DIRECTOR SPENCE: Thank you, Mr. Chairman. The
5 next item is Mr. Glenn Ako, manager of Hawaii National Bank,
6 requesting a two-year time extension on an SMA permit for
7 the Auto Parts Store at 81 Halekuai Street in Kihei. The
8 staff planner is Mr. Paul Mikolay.

9 MR. MIKOLAY: Yes, I'm Paul Mikolay, the staff
10 planner assigned to process this SM-1 permit time extension
11 request. They've asked today to consider waiving review of
12 the request. About the project briefly, the reasons for the
13 delay were economic conditions. Hawaii National Bank
14 acquired the parcel by foreclosure in 2010, and the SM-1
15 permit was transferred to Hawaii National Bank in April of
16 this year. Today Hawaii National Bank is represented by
17 vice-president and district manager Glenn Kunitake, and the
18 project engineer Wayne Arakaki. And the three of us
19 together are here to assist you in making this
20 determination.

21 CHAIR HIRANAGA: I know a lot of the Commissioners
22 were not on the Commission when this SMA was approved, and I
23 believe there's a wetland that neighbors the property.

24 MR. MIKOLAY: Yes, there is a wetland. The
25 portion of the parcel is raised and filled, and this is part

1 of the site on which the building would occur. The wetlands
2 still are in the condition that they were before the
3 filling, and they represent a large portion of the property.

4 CHAIR HIRANAGA: Any questions from the
5 Commission? Commissioner Wakida.

6 COMMISSIONER WAKIDA: We don't hear from the
7 applicant in this case?

8 CHAIR HIRANAGA: You can ask. There's really no
9 presentation. If you wanted a presentation, I think it
10 might be more appropriate to ask for the SMA to be brought
11 back to the Commission. But if you have specific questions,
12 they could probably answer them to preclude that need to
13 bring the permit back to the Commission.

14 COMMISSIONER WAKIDA: Well, I'll ask. Please
15 repeat your name again.

16 MR. MIKOLAY: Paul Mikolay.

17 COMMISSIONER WAKIDA: Paul Mikolay. What, if
18 any -- well, first of all, these wetlands, are they a
19 protected wetland?

20 MR. MIKOLAY: Well, perhaps the engineer could
21 address these concerns. He's well prepared for this.

22 MR. ARAKAKI: Good afternoon, Commissioners.
23 Wayne Arakaki, Engineer. Yes, wetlands are protected. I
24 would say about 55 percent of the property is in wetlands,
25 so it's just -- you know, it's less than 50 percent where

1 the development is going to occur. The land owner is
2 responsible to maintain the wetlands. I guess there was
3 guidelines that has to be done with the Department of Land
4 and Natural Resources, which, you know, I have noted on my
5 report to them if they proceed to build this project.

6 COMMISSIONER WAKIDA: Well, I was interested in
7 the impact of auto waste and so on on the wetlands and
8 how -- can you address that?

9 MR. ARAKAKI: Okay. When you say impact, you
10 know, possibly you're talking more about drainage?

11 COMMISSIONER WAKIDA: Correct.

12 MR. ARAKAKI: If there's any contaminants or
13 whatever that might go into the wetlands area?

14 COMMISSIONER WAKIDA: Right.

15 MR. ARAKAKI: What we did on the drainage report
16 is we have a drainage system. It's like a sedimentation
17 basin on the project site. And that's going to capture some
18 of the preliminary waters from a storm. And anything that
19 goes over that, it would go into the wetlands. Now, runoff
20 from offsite properties is actually a plus. It's not a
21 negative.

22 Because there's a balance between salt water,
23 brackish water and fresh water. And, you know, this is
24 something that, you know, in order to keep the wetlands in
25 balance, what I did was any increase -- not increase, but

1 any waters that's flowing now, it's the same amount of
2 waters that's flowing into this wetlands area. And wetlands
3 is connected to the ocean. So, in other words, when the
4 tide goes up, the wetlands also goes up.

5 I ran some preliminary numbers. The percolation
6 rate is like 1,600 cubic feet of water that can be absorbed
7 when there's a storm. And as far as storage capacity, it's
8 like 18,000 cubic feet of storage space compared to the
9 2,000 that's generated on the vacant land. So, you can see
10 that, you know, there's a tremendous amount of storage space
11 for storm runoff on the property.

12 COMMISSIONER WAKIDA: Well, I wasn't so much
13 concerned about the rain. I was concerned about -- is there
14 auto repair going on on this property?

15 MR. ARAKAKI: No, it's a vacant piece of property.

16 COMMISSIONER WAKIDA: No, no, I mean the proposed.

17 MR. ARAKAKI: It's going to be Auto Parts Store.

18 COMMISSIONER WAKIDA: Solely parts, there's not
19 going to be any repair?

20 MR. ARAKAKI: That's what we were presented when
21 we got the SMA.

22 COMMISSIONER WAKIDA: All right. I was under the
23 impression with this rollup door, there was some kind of bay
24 for auto repair. That's not the case?

25 MR. ARAKAKI: No, it's actually a parts store.

1 COMMISSIONER WAKIDA: Okay. Thank you.

2 CHAIR HIRANAGA: Any other questions?

3 COMMISSIONER BALL: Clarification.

4 CHAIR HIRANAGA: Commissioner Ball.

5 COMMISSIONER BALL: So, what is the action that
6 we're here for today?

7 DIRECTOR SPENCE: The action before the Commission
8 today is either to waive the review of the time extension
9 request or have it at one of your further meetings, at a
10 later meeting.

11 COMMISSIONER BALL: The time extension at a later
12 meeting?

13 DIRECTOR SPENCE: If the Commission decides to
14 waive the time extension request, I can just sign off on it.
15 If you want to have -- if you think conditions have changed
16 over the, you know, substantively over the previous
17 conditions and over what the SMA permit was previously
18 granted, you know, you can review it.

19 I haven't reviewed it, but I'm going to guess that
20 Mr. Mikolay, I know he has, and nothing has really changed
21 in the area; is that correct?

22 MR. MIKOLAY: The site is essentially the same as
23 it was before. No change. During the recent floodings we
24 had, there really wasn't any activity of any type in this
25 area, unlike some of the other areas of Kihei. The project

1 composition, the square footage, everything is identical,
2 except for there is an enlargement of the area used for
3 retention of storm water on site underneath the parking lot.

4 The primary kinds of products that would come and
5 go from this location are packaged parts that would come and
6 be delivered by truck into the large bay that Commissioner
7 Wakida mentioned, and they would back in there and unload
8 and come out that way. But most of the parts are in
9 cardboard boxes, and this is the kind of packaged goods that
10 are primarily delivered.

11 CHAIR HIRANAGA: Commissioner Shibuya.

12 COMMISSIONER SHIBUYA: I'm not familiar with this
13 project. And I just was trying to locate where in Kihei
14 this thing is located. And I would need some help, or at
15 least I wouldn't want to just pass it over to the Director,
16 unless I understand a little bit more on what it is and
17 where it is and have some kind of topo type of review here.
18 I really can't see it. I don't know where Halekuai Street
19 is.

20 MR. MIKOLAY: So, do you know where Lipoa Street
21 is, Commissioner?

22 COMMISSIONER SHIBUYA: No.

23 MR. MIKOLAY: Lipoa, okay.

24 COMMISSIONER FREITAS: Kihei School.

25 COMMISSIONER SHIBUYA: I know where Kihei School

1 is.

2 COMMISSIONER FREITAS: That's Lipoa.

3 COMMISSIONER SHIBUYA: Now, where is that in
4 relation to that?

5 MR. MIKOLAY: What about East Welakahao Road where
6 the Hope Church is along the highway coming from there?

7 COMMISSIONER SHIBUYA: No.

8 MR. MIKOLAY: It's to the south of -- feel free,
9 yes.

10 CHAIR HIRANAGA: Please identify yourself.

11 MR. KUNITAKE: Mr. Commissioner, Commission
12 Members, my name is Glenn Kunitake. I represent Hawaii
13 National Bank. If you know where the Kihei Franks
14 subdivision is, okay, as you come down, you have Star
15 Supermarket on the right-hand side. And you go further
16 down, and there's an industrial subdivision on the left
17 side. There's an Italian restaurant right on the corner,
18 Maui Dive Shop.

19 COMMISSIONER SHIBUYA: Not familiar. I know where
20 Star is.

21 MR. KUNITAKE: And if you go down --

22 COMMISSIONER SHIBUYA: Down which way?

23 MR. KUNITAKE: A city block towards Makena.

24 COMMISSIONER SHIBUYA: Makena.

25 MR. KUNITAKE: There's industrial subdivision

1 called Kihei Franks. Used cars, Kihei Rental Car. You've
2 got Indo Lotus Imports. You've got Eskimo Pie.

3 COMMISSIONER SHIBUYA: That's why I'm kind of
4 asking, because I can't center it in my mind.

5 MR. KUNITAKE: This is part of an industrial
6 subdivision that was built 30 years ago, and it's right in
7 the back of that Italian restaurant. It used to be Marco's,
8 but it has a different name now.

9 DIRECTOR SPENCE: Mr. Chairman, this is a -- like
10 what the testifier is saying, it's light industrial
11 subdivision. That subdivision originally was reviewed for
12 drainage issues. Every building since then has come in for
13 an SMA major permit, and those received review of drainage
14 conditions and in relation to the wetlands. So, this is
15 again one of those projects that's receiving multiple
16 reviews in relation to the wetlands and what takes place on
17 this property, et cetera.

18 CHAIR HIRANAGA: Commissioner Wakida.

19 COMMISSIONER WAKIDA: I think though that in the
20 future, it would be helpful, particularly for those of us
21 who, A, are not real familiar with the EA, and B, weren't
22 around a couple of years ago, which would be me, to have at
23 least one map that showed the neighborhood, so we could plot
24 these things. Thank you.

25 COMMISSIONER SHIBUYA: I would like to have some

1 topo of that area, because you're talking wetlands. So, I
2 suspect there's going to be some runoff. And I just want to
3 understand how it's situated.

4 CHAIR HIRANAGA: I have a question for the -- on
5 the drainage report that was included on Page 7 of 14. So,
6 your total runoff off of the developed area, I guess, which
7 includes pre and post development is .94 cubic feet per
8 second; is that correct?

9 MR. ARAKAKI: .94 CFS.

10 CHAIR HIRANAGA: And your retention capacity is
11 .95 cubic feet or -- you look down a couple of sentences, it
12 says --

13 MR. ARAKAKI: There's two storage capacities. One
14 is the gravel rocks where there's voids in it, and then
15 there's also four 12-inch perforated pipes that comes out to
16 95 cubic feet.

17 CHAIR HIRANAGA: So, are you capturing the entire
18 pre and post development surface runoff on the property?

19 MR. ARAKAKI: As I explained earlier, what I'm
20 doing is capturing the runoff that's the increase on that
21 particular site, on the building site. And then I'm letting
22 the existing waters go into the wetlands areas, so there's
23 no change in the amount of water of flooding that goes into
24 the wetlands areas, and it's because of a balance.

25 CHAIR HIRANAGA: So, you're just meeting the

1 minimum County requirement?

2 MR. ARAKAKI: Yes, but bear in mind the wetlands
3 areas, you know, has a capacity of something like 18,000
4 cubic feet of -- that's on their property of storage space,
5 storage capacity.

6 CHAIR HIRANAGA: Would there be any benefit to
7 water treatment of the water that you're allowing to flow
8 into the wetlands? Because it's coming off of the parking
9 lot, so it may have petroleum products. So, you know,
10 treating the excess runoff that flows into the wetlands
11 versus capturing it.

12 MR. ARAKAKI: We can put an oil separator as part
13 of the catch basin. We can include that on also.

14 CHAIR HIRANAGA: That might be advisable.

15 MR. ARAKAKI: That's fine.

16 MS. SKOG: Commissioners, anymore questions?
17 We're kind of running past 5:00. If not, I would like to
18 make the suggestion that if we decide to waive the review,
19 that you ask the applicant to concur that they will
20 incorporate the water treatment device that was explained by
21 the engineer to at least treat the surface runoff entering
22 the wetlands versus having to capture it.

23 If there's no further questions for the applicant,
24 I'll open the floor to a motion.

25 COMMISSIONER FREITAS: I move that we waive the

1 time extension and add that we install an oil separator to
2 catch the runoff.

3 CHAIR HIRANAGA: As represented by the applicant?

4 COMMISSIONER FREITAS: As represented by the
5 applicant.

6 CHAIR HIRANAGA: Is there a second?

7 COMMISSIONER BALL: Second.

8 CHAIR HIRANAGA: Motion to waive review by
9 Commissioner Freitas. Second by Commissioner Ball as
10 amended. Any discussion? If not, Commissioner Shibuya.

11 COMMISSIONER SHIBUYA: I just don't feel
12 comfortable about not knowing too much about this project,
13 and so therefore, I'm just going to abstain.

14 CHAIR HIRANAGA: Any other discussion? If not,
15 Director.

16 DIRECTOR SPENCE: The motion is to waive the
17 review, Commissioners, to waive review of the time extension
18 request and recommend to the applicant that they install oil
19 water separator.

20 CHAIR HIRANAGA: It wasn't really recommend. That
21 the applicant has represented it will install.

22 DIRECTOR SPENCE: Right, as represented, the
23 applicant will install.

24 CHAIR HIRANAGA: Or incorporate water treatment
25 devices. Call for the motion. All in favor, so indicate by

1 raising your hand.

2 DIRECTOR SPENCE: That's five aye's.

3 CHAIR HIRANAGA: Motion carries.

4 MR. MIKOLAY: Thank you. And we'll do.

5 DIRECTOR SPENCE: Thank you, Paul.

6 CHAIR HIRANAGA: We'll try to whip through these
7 last couple of items. Item H, H(2) is the Director.

8 DIRECTOR SPENCE: Just a notification that
9 Mr. Daniel Grantham and Lucienne DeNaie of the Waipio Bay
10 Benevolent Association are appealing an SMA minor permit for
11 Mr. Bolles in Huelo. This is just for informational
12 purposes, so this is something you'll be seeing again.
13 Number 3 --

14 CHAIR HIRANAGA: If there's no objection, can we
15 just skip over items 3, 4, 5, 6 and 7, 8? Seeing no
16 objection, we'll go on to Number 9.

17 Clayton.

18 MR. YOSHIDA: Yes, Mr. Chairman, Members of the
19 Commission. I have distributed a memo regarding agenda
20 items for your next meeting on May 24th. There are four
21 public hearing items a related special use permit
22 application for the Ala Kukui Spiritual Retreat Center in
23 Hana and the return of the Maui Medical Plaza at Kanaha
24 final EA that was deferred from your last meeting.

25 If the Commission wants to put anything else on

1 the agenda other than what was deferred previously.

2 CHAIR HIRANAGA: Thank you. Next regular meeting
3 is May 24th, 2011. If there's no objection, this meeting is
4 adjourned.

5 (The meeting ended at 5:17 p.m.)

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C E R T I F I C A T I O N

I, RACHELLE PRIMEAUX, Notary Public for the State of Hawaii, certify:

That the proceedings contained herein were taken by me in machine shorthand and were thereafter reduced to print under my supervision by means of computer-aided transcription; that the foregoing represents, to the best of my ability, a true and accurate transcript of the proceedings had in the foregoing matter.

I further certify that I am neither attorney for any of the parties hereto nor in any way concerned with the cause.

Dated this _____ day of _____, 2011.

NOTARY PUBLIC, State of Hawaii

My commission expires 6/14/2012