

**MAUI PLANNING COMMISSION
REGULAR MEETING
APRIL 12, 2011**

A. CALL TO ORDER

The regular meeting of the Maui Planning Commission was called to order by Vice Chairperson Ward Mardfin at approximately 9:05 a.m., Tuesday, April 12, 2011, Planning Conference Room, First Floor, Kalana Pakui Building, 250 South High Street, Wailuku, Maui.

A quorum of the Agency was present (see Record of Attendance.)

Mr. Ward Mardfin: . . . Commission of April 12, 2011 is called to order. Normally at this point we would take public testimony, but because today is the first meeting of this year, we're electing a Chairman. I'm the Vice-Chairman from last year. And we're going to put off the public testimony at the start of the meeting until after the election of the officers for the 2011-2012 meeting. But I would like to welcome people here. We have Commissioner Kent Hiranaga on my left, Commissioner Jack Freitas, a new member who I will do little bit for later on, Commissioner Ivan Lay. We have another new commissioner, Commissioner Keone Ball. Our esteemed Corporation Counsel, he's the lawyer for the Planning Commission, James Giroux. I'm Ward Mardfin, Commissioner. On my right is Director Will Spence, Director of the Maui Planning Department. To his right is Commissioner Donna Domingo – morning – then Commissioner Warren Shibuya, Commissioner Lori Sablas, and Commissioner Penny Wakida. In the corner our invaluable support is Carolyn Takayama-Corden. Then we have our Deputy Director of Public Works who is Rowena Dagdag-Andaya. We then have with the Current Planning Division, Clayton Yoshida. Sitting at one of the tables in front of me is Canadace Thackerson. Then going over we have Erin Wade – I'm sorry – from Long Range Planning Division, Simone Bosco. Bending over by the camera, Kenny is our esteemed videographer, and he's not going to get his face in the picture because he won't jump in front of the camera. Sitting in the back I see Planner Jeffrey Dack and Erin Wade, and we're very fortunate to have Council Member Elle Cochran with us today. Next to her is Planner Livit Callentine. And next to him is – her, excuse me – is Kurt Wollenhaupt. Just getting the pronoun right and stuff. And I see – I can't see her – Ann Cua is out of my sight of view. And I believe we have the Deputy Director of Planning Michele McLean. She was in here a minute ago. Maybe she jumped out. If I missed anybody, please forgive me. That takes care of calling the meeting to order. Item-B is the introduction of new members, and I will give them an opportunity. First I'd like to welcome John Keone Ball and welcome to the Planning to the Commission.

B. INTRODUCTION OF NEW MEMBERS - JOHN "KEONE" BALL and IVAN LAY

Mr. John Keone Ball: Thank you.

Mr. Mardfin: Would you like to take an opportunity to say something?

Mr. Ball: Sure.

Mr. Mardfin: Please speak into the mic.

Mr. Ball: My name is Keone Ball if you didn't hear that the first three times. Clayton reminded me that my grandfather was in this seat 20 years ago as a Planning Commissioner. I've sat on the Police Commission, the Board of Variances and Appeals, and so I'm very interested in the County

and I'm here mainly for the future of my children and maybe even their children. I know growing up here on Maui how, and the things that I did growing up here, and I want to make sure that those are still around for my children and maybe their children too. Anyway, that's kind of who I am and I sat on other boards, not County boards, Boy's and Girl's Club, MEO, BEC. Anyway, I am here to do my best. Thank you.

Mr. Mardfin: Thank you very much Commissioner Ball. Commissioner Ivan Lay, would you like to say something? Welcome to the Commission, and would you like to have something to say?

Mr. Ivan Lay: Sure. Good morning and aloha everyone. My name is Ivan Lay, and I was born and raised here in Hawaii. I was born on Oahu and I moved here in the second grade. I grew up right here in Wailuku. Looking forward to working with everybody and I might say it's an honor to be here and to work with everybody and I can't wait to learn more from you guys. Thank you.

C. ELECTION OF OFFICERS FOR THE 2011-2012 YEAR

a. Chairperson

Mr. Mardfin: Thank you very much. The next item on our agenda is the election officers for the 2011-2012 year. And the first office to be elected is the Chairperson. Commissioner Freitas?

Mr. Jack Freitas: I'd like to nominate Kent Hiranaga for Chair.

Mr. Mardfin: Kent Hiranaga. Commissioner Kent Hiranaga has been nominated. Is there a second?

Ms. Donna Domingo: Second.

Mr. Mardfin: And nominated by Commissioner Freitas, seconded by Commissioner Domingo. Are there any other nominations? Commissioner Sablas?

Ms. Lori Sablas: I'd like to nominate Ward Mardfin.

Mr. Mardfin: Thank you. Is there a second?

Ms. Penny Wakida: I second the motion.

Mr. Mardfin: It's been nominated by Commissioner Sablas, seconded by Commissioner Wakida. Are there any other nominations?

Mr. Freitas: I move that nominations be closed.

Mr. Mardfin: It's been moved that nominations be closed. Seconded by Commissioner Shibuya. Discussion? Commissioner Hiranaga?

Mr. Kent Hiranaga: I'd like to say a few words.

Mr. Mardfin: I was just going to close the nominations. There's a motion to close nominations. All in favor?

Planning Commissioners: "Aye."

Mr. Mardfin: Opposed? Okay, the nominations have been closed. Commissioner Hiranaga, would you like to say something?

Mr. Hiranaga: Yes. Thank you. Thank you very much for the nomination and second. I just want to say a few words. I did serve on the Board of Variances and Appeals for five years of which one year as Chair. I did serve on the Board of Water Supply for five years, one year as Chair. And this is the start of my fifth year on the Planning Commission, and I believe I have the most seniority here on this particular Commission so I would appreciate everyone's support. Thank you.

Mr. Mardfin: Thank you very much. With everybody's indulgence I would also like to say a few things. This is the first Commission I have served on. This past year I've served as the Vice-Chair. This is my final year on the Commission. I won't be here after this. I'd like to just say a couple of things about my philosophy of this sort of thing. If people have watched me in the past, I've been very concerned. I've been concerned about the entire island, but especially concerned about Hana. And one of things that I am committed to do if I'm Chair is to be equally committed to all parts of the island, and to go over everything with as a fine tooth comb as I use for issues that are happening in East Maui. I do believe that as Chair I would try to run the meetings as efficiently as possible, however, make ensuring that all the Commissioners have a full and fair opportunity to express their concerns on all the issues that come before us. I'm a retired college professor. I have absolutely no conflicts of interests or anything else that could interfere with my objectivity. I believe in one of the things that we've started to do more last year than in previous years is to have site visits and opportunities for in service education for the members of the Commission and I think that's a great idea and I'd like to promote that. In the event we have limited funds for people, my belief is that the newer Commissioners should have priority in getting extra education because they'll have more years with which to use it, and have most probably the most to learn. With that, I thank you and I appreciate the support of you all. Thank you. Commissioner Shibuya?

Mr. Warren Shibuya: I'd like to say – ask a question of each of the candidates if it's proper.

Mr. Mardfin: Please continue.

Mr. Shibuya: I'd like to ask both candidates the same question, and I am actually sitting on the fence, and I like and respect both of you. And I think both of you would do an excellent job as being the Chairperson of the Planning Commission. As you know there is a fine line between educating, sharing information and advocating positions and beliefs. Commissioners are informed through public testimonies. Commissioners are informed through prepared documents and presentations by representing consultants, County Directors and staffers. As Chairperson of this Commission, how would you facilitate the effective and efficient presenting and exchanging of information at Commission meetings?

Mr. Mardfin: Commissioner Hiranaga, would you like to start first, or would you prefer that I start first?

Mr. Hiranaga: Could you repeat the question?

Mr. Shibuya: Okay. As Chairperson of this Commission, how would you facilitate the effective and efficient presenting and exchanging of information at Commission meetings?

Mr. Hiranaga: Well, I think it's standard practice with the Commission to adhere to Robert's Rules of Order. I don't claim to be an expert at Robert's Rules of Order, but I will try my best to apply them as they're stated. As far as dissemination of information I think I really don't have much qualms of what's being presented or how it's being organized currently. So all I can say is I will try to be efficient and fair, and try to get the Commission's business done in a timely fashion. Thank you.

Mr. Mardfin: That's an excellent question. I think there are some limitations. One of the things I think that we have time limits for people to speak, and that, I think we should adhere to those. We started a policy of asking the applicants to, at least, estimate how long their time is going to be so that they're loading their own gun and trying to adhere to that. I don't think it should be taken to a fault however. I think sometimes information is important to get in and on the record, and if it takes a few extra minutes, then I think that's worth it so that we make the right decision, not just a fast decision. The second thing that I have to say is that sometimes we come to these meetings and we find – I don't mind of finding a packet of stuff on the orientation that we're going to go over – but I do not like and appreciate getting new material, an inch thick, on the day of a meeting. That is not the way we should be making wise decisions and I would actively discourage that sort of thing.

Mr. Shibuya: Thank you.

Mr. Mardfin: Did you have any other questions?

Mr. Shibuya: No.

Mr. Mardfin: Does anybody else would like to make a statement of any sort? Seeing none, we'll proceed to the vote. All in favor of Commissioner Kent Hiranaga as Chair please raise your hand.

Mr. William Spence: That's six ayes.

Mr. Mardfin: All in favor of Ward, Commissioner Ward Mardfin as Chair please raise your hand.

Mr. Spence: That's three vote for Ward.

Mr. Mardfin: I welcome Commissioner Hiranaga as Chairman Hiranaga.

Mr. James Giroux: As we're doing the ceremony of the switching of the seats, when you're voting for officers, the nominations don't need a second, and then you vote from the first person nominated then you work your way down. So just as a procedural for Kent.

Mr. Kent Hiranaga was nominated by Mr. Freitas and seconded by Ms. Domingo.

Mr. Ward Mardfin was nominated by Ms. Sablas and seconded by Ms. Wakida.

Upon being put to a vote, Mr. Kent Hiranaga was voted as Chairperson of the Commission for the 2011-2012 year with a vote of six votes. Mr. Mardfin received three votes.

b. Vice-Chairperson

Mr. Hiranaga: Thank you very much for your support. I hope to fulfill your expectations. The next agenda item is the election of Vice-Chair, so I'll open the floor for nominations. Ward?

Mr. Mardfin: I nominate Commissioner Warren Shibuya for Vice-Chair.

Mr. Hiranaga: Are there any other nominations for Vice-Chair? Seeing none. Okay, I'll just call for those in favor do so by saying aye.

Planning Commissioners: "Aye."

Mr. Hiranaga: Congratulations Warren. Thank you very much.

**Mr. Warren Shibuya was nominated by Mr. Mardfin.
There were no other nominations and the nominations were closed.**

Upon being put to a vote, Mr. Warren Shibuya was unanimously voted as Vice Chairperson of the Commission for the 2010-2011 year.

Mr. Hiranaga: Our next agenda item is public testimony. Is there anyone here that wishes to speak regarding any of the scheduled agenda items? Good morning. Please state your name.

Ms. Danielle Sears: Danielle Sears. I'm here, I guess, because this afternoon there's Hiro and Julia. There's a subdivision in Haiku. It's the one right above the – not a subdivision – sorry, the permit for – I don't know the tax map key number, but it's right above Haiku School. And I'm here to testify on behalf of that request for the permit and I'm not going to be available here this afternoon. I am a Deputy Public Defender here in town, but I'm mostly testifying as a Haiku community member. I was born and raised there, and went to Haiku School myself, and now my two children are going there and I've been a part of the Haiku Hoolaulea and Flower Festival for the last five years as the event Chair and just stepped down last year, and now I'm the facilities Chair. So I've been in charge of doing parking for a number of years and it's been very difficult every year to find and secure parking for that event. It's an amazing community event. It's a great fundraiser for Haiku School and it provides funds for all of our extra-curricular, like P.E. for instance, and arts program, and water bottles for our classrooms. So, as such, parking is huge because we want our people to get there and be happy with being able to park.

And I actually met Hiro through his wife Julia who I met through a girlfriend. She makes jewelry, and so it was one of those, just, Haiku community friendships that was created. Then I found out they had this property and they had offered to let us use their property several years ago, and then things didn't work out because of various things, and last year they were able to and it worked out great and they had wanted to help us next year. So I wanted to just say that it looks like they're going through all the right avenues of making this happen, and what they're doing is in the correct way by going through this process. But at the same time they're giving back to the Haiku

community and I just wanted to let the board know that, that they are doing, it seems to me, all the right things and also helping out, in a huge way, the Haiku community. And that's pretty much it.

Mr. Hiranaga: Thank you. Questions for the testifier? Yes, Commissioner Sablas?

Ms. Sablas: I have a question. It seems parking is such an issue, should this application be approved, how would that impact parking?

Ms. Sears: Well apparently next year they still wouldn't have it done, and we do – we're not expecting them to provide us parking for the rest of all time for our events. We do also use some A&B properties sometimes and that always influx too because right now what we had used previously is up for sale. We have other possibilities and sometimes we do off-site parking. We have to get a shuttle. But with this parking lot, we do not. It's always a challenge to secure parking. It's been great last year, and hopefully next year, for this property, but we always make it work in one way or the other, we always do.

Mr. Hiranaga: Any other questions for the testifier? Seeing none, thank you. Is there anyone else that wishes to provide testimony at this time? Seeing none, we'll close the public hearing. And the next agenda item is (D), orientation workshop. I'll hand it over to the Director.

D. ORIENTATION WORKSHOP

- 1. Director's Comments**
- 2. County Policy Against Discrimination**
- 3. Powers and Duties**
- 4. Meeting Schedule**
- 5. Rules of Practice and Procedures**
- 6. Land Use Regulatory Framework in Maui County**
- 7. Zoning**
- 8. Special Management Area Rules**
- 9. Shoreline Area Rules**
- 10. Presentation by Sea Grant Agent Tara Miller on Sea Level Rise**
- 11. Country Town Business Design Guidelines - Paia-Haiku, Makawao-Pukalani-Kula, and Hana Community**
- 12. Chapter 343, HRS, The EA/EIS Process**
- 13. Flood Hazard Districts**
- 14. The Sunshine Law**
- 15. Ex parte Communications**
- 16. Discussion of Boards and Commissions Booklet Distributed by the Office of the Corporation Counsel**
- 17. Ethics**
- 18. Recent U.S. Supreme Court decisions on takings issues.**
- 19. Public Access Shoreline Hawaii (PASH) v. Hawaii County Planning Commission**
- 20. Hawaii Supreme Court Decision regarding the Topliss case (SMA)**
- 21. Hawaii Supreme Court Decision in the case of Paulette K. Kaleikini v.**

Laura H. Thielen, in her official capacity as Chairperson of the Board of Land and Natural Resources, Board of Land and Natural Resources, and the Department of Land and Natural Resources.

22. Other Relevant Hawaii Supreme Court Cases

Mr. Spence: Thank you Mr. Chairman, Commissioners. We have an orientation workshop for the new Commissioners in particular, but also, you know, I always learn stuff from staff. So, with us this morning, to start off, is Staff Planner Ann Cua.

Ms. Ann Cua: Good morning Chair, members. Congratulations to both the new Chair and Vice-Chair. I'd like to start today by just going over our agenda so you can kind of see how we've planned it out for you. We are going to be taking a couple of breaks – a morning break and an afternoon break – and we're just going to see how it goes and, you know, work with the Chair in terms of when is the most appropriate time to take a break. So we're going to start today with some opening comments from our Planning Director. And then Allan DeLima, from our Administrative Section of Department, will be covering the County of Maui's sexual harassment policy. And then Kurt Wollenhaupt, from the Current Division, will be handling the planning framework. We have Simone Bosco, from the Long Range Division, handling the – or presenting the update of the General Plan. We have Livit Callentine, from our Current Division, that will be covering zoning for you. And then we have Erin Wade, also from the Current Division, that's going to be going over the Country-Town Business District Design Guidelines. And then Joseph Prutch, also from the Current Division, will be handling Chapter 343, Hawaii Revised Statutes. Danny Dias, from the Current Division, will be covering processing applications requiring County Council approval. And what we added to our training, I guess, a couple of years ago, is taking you through a typical application from when it comes through the door, to when it goes through public hearing, it goes up to County Council and it completes its process at the County Council. So we're going to take you through that process. And then we have our Shoreline section which would be covered by Jim Buika and Anna, the CZM rules and our shoreline setback rules. And then we have Tara Miller, our Sea Grant Extension Agent, that will be covering sea level rise and the future of our shorelines. And then our Zoning Division, Carolyn Cortez, she will be covering the districts for you. And then we will conclude, hopefully today, with your attorney, James Giroux, covering all legal issues that needs to keep you in line. And so with that, I'd like to bring on our first – well, actually we'll introduce Will first. He'll give some opening comments, and then we'll bring Allan up.

Mr. Spence: Welcome Commissioners. I'm looking forward to working with all the Commissioners in the upcoming year. I'm sure there's going to be a lot of good discussion on a lot of very good worthy topics and projects in front of us. I know that –. I'm not sure exactly what the Planning Director normally says as the opening remarks, but Commissioners, feel free to give me a call at the office, you know, if you have questions on whatever and I'm happy to accommodate. Okay, we have Allan DeLima who is one our Administrative Officers, and he'll give you an orientation of the Maui County sexual harassment policy.

Mr. Allan DeLima: Okay, we're already onto the second slide, so let's get this started off again. Okay, as was mentioned, good morning, my name is Allan DeLima. I'm the Administrative Officer for the Planning Department. And I'm here this morning to give you a brief overview of the County's sexual harassment policy. And brief is the operative word here. I caution you. I'm Portuguese and I'm a fast talker so please don't blink or the whole presentation will be over with.

Now this first slide is a copy of what County of Maui's sexual harassment policy looks like. You should all have copies in your binder, and if you don't, please see me at your convenience and I'll make sure that you do have a copy of it. Now the definition of sexual harassment. Sexual harassment means unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct or visual display of a sexual nature directed by an officer or an employee to another officer, employee or a private individual. All personnel must refrain from the following conduct – making unwelcome sexual advances or requests for sexual favors; making remarks of a sexual nature which is why I can't dress this up with too much humor – I'll get myself in trouble; using gender based or sexually abusive language and sexual innuendos; visually displaying materials of a sexual nature; physical contact of a sexual nature; and any other similar actions.

Now the County of Maui has a zero tolerance policy against sexual harassment, and will not condone or tolerate sexual harassment in the work place. This policy is applicable to board and commission members as well as County officers and employees.

The process for filing a complaint. An individual who feels subjected to sexual harassment should immediately make a complaint to his or her supervisor. For board or commission members who feels subjected to sexual harassment should make the complaint to his or her Chairperson. If the Chairperson is the alleged offender, the report should be made to the County's Equal Employment Opportunity Officer, the EEO. And the County's EEO Office is the Director of Personnel Services. You have other options for filing a complaint. The complaint may be filed with the Planning Director, the Planning Deputy Director, Board or Commission Chairperson unless that's the alleged offender, the Director of Personnel Services which is the County's EEO Officer, the Hawaii Civil Rights Commission, the Federal Equal Employment Opportunity Commission. Now you're encouraged to first seek internal remedies before going to outside sources. We do like to keep our own house clean. Now your complain maybe informal, verbal or written, and unsigned allegation, or a formal, written, and signed allegation.

The investigation process. The investigation will be conducted in an unbiased, fair, and discrete manner. There will be all the appropriate safeguards to maintain confidentiality and protection from embarrassment that the law allows. An individual who is found after an investigation to be an offender shall receive the appropriate warning or discipline. Any disciplinary action prior to the implementation will be reviewed by the Director of Personnel Services and approved by the County's EEO Officer. There shall be no retaliation or discrimination against an individual who has made a complaint, conducted an investigation, or acted as a witness. Retaliatory conduct is illegal and it constitutes a separate violation. Well, I promised you a brief presentation, and I gave you one. Are there any questions? If not, thank you very much for your attention.

Mr. Kurt Wollenhaupt: Good afternoon. My name is Kurt and I'm with the Planning Department. And I'll be leading off the Planning Department's discussion of some of the rules, regulations, statutes, the processes by which this Commission will look at discretionary permits over the next year. I'm going to be looking at the planning framework. There's the little man running. He's crossing the finish line. This Commission is really responsible for assisting the applicant, assisting the public, and assisting our Planning Department in making sure that the applicant cross the finish line in an expedient, timely and proper way.

Now some applicants navigate the planning labyrinth by wanting to run right over the rules and

regulations, but that's not really a recommended process. Others would like to take some snipping shears to some of the rules and regulations. Well, that might be a good thing, but they do have to follow the requirements. And so in the long run it really becomes a matter of collaboration with our Planning Department, all of you as Planning Commissioners, the applicants, the Council, and of course, the interest groups on the island. Now the Aloha State has a rather complex process which is actually represented in this slide. If all terms, I guess, the time from which a project is approved through the process to the final construction on average can take almost 10 years. One might wonder why this is the case. A big reason this is the case is that most of the land, in fact, 95% of the land within the State of Hawaii is still under agricultural conservation. Now driving down Waikiki one may think that wouldn't be the right number, but most of the land here is in ag and conservation thus requiring something called a District Boundary Amendment which will be spoken of a little bit later.

However, the planning framework does indicate the State Constitution sets the Revised Statutes for what we like to call the five pillar planning. That would be the Hawaii State Planning Act, and out of the Planning Act, we'll drop the Legislation that requires the County to develop a General Plan and our Community Plans, the rules of the Land Use Commission which I'll explain in just a brief moment here, the zoning code which Ms. Livit Callentine will be explaining in much greater depth, our Coastal Zone Management efforts which will be explained by Mr. Buika this afternoon, and then the process by which the Commission will have disclosure of potential environmental impacts.

This Commission has a number of resources that is available for its disposal. And one of them is our Urban Design Review Board. This a group of people who have an expertise in design. They provide recommendations to this board on the design of potential projects. Now most of these projects are within the Special Management Area. As projects outside the Special Management Area are often subject to just a building permit. So that would be perhaps a discussion for the Commission to look at different projects from the architectural standpoint. This board will provide input on projects throughout the year. And they look at comprehensive signing plans, design guidelines for the Country-Town Business District, and other areas that the Department feels are necessary for input.

We have the Arborist Committee. Their mission is to look at trees and special vegetation with subdivisions, and landscaping for parks and other public places. They can nominate trees for exceptional protection, most notable being the large Banyan Tree in Lahaina. Again, it's an advisory to this board when they have questions regarding special vegetation issues.

We have the Hana Advisory Committee. They can look at particular projects in the Hana Community Plan District, hold a public hearing, and this Commission can defer those projects to them for their input because of the special nature of that area of the island. And those meetings are, of course, held in the Hana region. And their review and recommendations are then sent to the Commission for your discretionary review.

We then have the Cultural Resources Committee, or commonly known as the CRC. Now notably they do have some final decision making authority within the historic zoning districts of one, two and three. Those are the special districts in Lahaina that have been deemed historic. That would include approval of uses and architectural design. One of the more challenging issues in the past

has been the Halloween celebration of which they are an integral part of looking at that issue. They also do provide advisory comments to this body, and recommendations related to cultural resources for the Commissions. They can prepare nominations to the Historic Register and they're composed of nine members with disciplines in archaeology and planning, Hawaiian culture, ethnic history. And this body does have members from the Islands of Moloka`i and Lana`i.

And of course there are many other Federal, State and County agencies. Within each of the reports, the new members especially, will be getting are a series of agencies reviews. For most of the discretionary permits we send them out to Federal, State, County agencies, and their comments are included for your review for each of the applications.

We'll get back to the framework here. Of course the State Constitution sets the overall framework through a series of revised statutes. The first pillar here we'll be looking at will be the Hawaii State Planning Act. That's through HRS. That's Hawaii Revised Statutes number 226. One of the interesting things about Hawaii is it's unique among all 50 states and it converted its State General Plan into a Statute. This was known as Act 100 which was the first state to enact a comprehensive state plan. And the importance of that is that when it was written into the statutory code, it transformed planning policy into actually a set of legal documents. So consequently Hawaii was forward thinking from this perspective. Out of that Hawaii Revised Statute comes a chapter two which talks about our General Plan and Community Plan, and we're fortunate today to have Ms. Simone Bosco of Long Range who is going to be talking in much greater depth about this. But this is the newly adopted Countywide Policy Plan 2010 which sets the overall framework for where we want to be in 20 years from now with broad objectives. From each of these Countywide Policy Plan drops our Community Plans. Those indicated here: Kihei-Makena, Wailuku-Kahului, Paia-Haiku, Makawao-Pukalani-Kula, the West Maui Community and the Hana Community Plan. These will all be up for review. Right now our Maui Island is at the Council, and it's undergoing a rigorous analysis.

The next pillar here would be the work of the Land Use Commission. The State Land Use Commission it looks at State Land Use law. This was adopted in 1961. A very forward thinking at the time, when all lands in Hawaii were moved into four different districts: agriculture, conservation, urban and rural. And within each of those areas there's permissible uses that are allowed. One of the missions of the Land Use Commission is to look at District Boundary Amendments. This is a petition to reclassify some land, mostly commonly from ag to urban, so that some development can be accommodated. This is one of the large missions of the Land Use Commission. The other is what we call a Special Use Permit. In the ag and rural districts are the unusual and reasonable uses that may be permitted. Now there are criteria which are up here. There's five criteria and this Commission will be looking at many of these Special Use Permits. Probably the most common one is going to be a Bed and Breakfast on ag land. Now that bed and breakfast will have a process by which it undergoes review, but then it's also going to need what we call a special permit, a Special Use Permit, that needs to be approved and this body is required to make sure those five criteria are followed when an applicant applies for a bed and breakfast permit.

Now there's a little bit of a complicating factor here and that has to do with the size of the land parcel. When the decision is – when the line parcel is greater than 15 acres, and the applicant wants to make a District Boundary Amendment, then that goes straight to the State Land Use Commission. It essentially bypasses this body. The Land Use Commission will hold its meetings

at various times throughout the year, and will look at these large parcels BVA. If it's a Special Use Permit over 15 acres, then the Maui Planning Commission will be holding a public hearing and will transmit its recommendations to the Land Use Committee. Now in the case where it's less than 15 acres of which these are much more common, a District Boundary Amendment will be reviewed by this body in a public hearing and that decision will be transmitted to the County Council for its review. These are relatively common and this body will be looking at this discretionary permit. Then finally there's the SUP, less than 15 acres, and again the use of a bed and breakfast on ag land is probably the most common, and this body is the final authority for that.

The next pillar is the zoning. It's under Chapter 46 of the Hawaii Revised Statutes, and this allows the County to establish its own zoning rules through Title 19. There's a number of articles, but there's two main articles here. Ms. Callentine will be talking about them at greater depth. However, the first would be interim zoning. That's a relatively short article in the Code which allowed limited uses pending formal adoption of a comprehensive zoning ordinance and maps. So these are lands which are in a bit of limbo if we will, and they're trying to be pushed into one our traditional zoning categories over time. The other is the much more larger article. That's comprehensive zoning. You can see the number of permits that are reviewed in here with large ones such as Change in Zoning and Conditional Permits, and those will be discussed with greater length just in a moment here.

Our next focus would be on our Coastal Zone Management. That was adopted in 1978, and that comprises laws for our Special Management Area. It was deemed that the area along the shoreline needed to have special rules and a higher degree of review. And these rules were adopted by Maui Planning Commission, and they're most frequently reviewed in what we call the SMA Permits. This is one of the most important, important, mission of this Committee is to really look at these, because these do affect our shoreline, our resources, and you'll be looking at them at an in depth level for a Major SM1 – which will be explained this afternoon – and also through SM2 and Exemptions. The Department has the ability to exempt some types of SMA's and that will be spoken about in just a few minutes.

The next area that will be looked at is the Environmental Impact Statement (EIS). This was adopted in 1974. And it's really a method of information disclosure. It really allows this body to keep asking questions about a project. Well, what about this? Well, what about that? It allows you the opportunity to ask questions to really be able to make an informed decision. It starts out as the initial process. And Environmental Impact Statements are required for Community Plans. They're required when there are triggers such as use of the shoreline area, use of County and State lands, certain items in the historic district. And these are important documents that start the discretionary review process. They're published at the OEQC, the Office of Environmental Quality Control in Honolulu. There is a legal challenge period so these are critical documents.

Finally, I guess, to take away point is you really need the collaboration, not conflict, to have Planning assist both here with this Commission and throughout the State of Hawaii. Success or failure in your mission is really a function of a collaboration and teamwork, and the team is the government. It's our Planning Department. It's you as Commissioners. It's the public and it's the applicant. And when we have that teamwork, well, then we can really have a successful Planning Department. Thank you, and I believe the next person is Ms. Livit Callentine who will be talking about the zoning. We have a change. It's going to be Simone Bosco talking about the Long Range

issues.

Ms. Simone Bosco: I'm going to take a minute to switch over. Good morning everyone. Can you hear me? Can you now? Welcome to the new members. We all appreciate your dedication and it does take a lot of dedication. Some of you have been around for quite a while on other boards and commissions. I've worked with you with the General Plan Advisory Committee, and I can attest to the hours that you guys put in because it's a lot, so I'll just go forward. I'm going to handout a little brochure that we've created in our division that explains what the Long Range Division does.

Okay. Thank you. So what I just passed out is kind of a summary of some of the projects within our division. It ranges from the General Plan, and Community Planning efforts, comprehensive planning projects, special projects, master plans, and things of that nature, all to support the comprehensive and community planning efforts in our division.

Okay, we have 15 staff. It's roughly divided into two sections with a single man crew for culture, okay. We have the planning section which is essentially people like me that do a lot of writing, presentations, working with boards and commissions. We focus on drafting the comprehensive plans and the different types of mechanisms that implement the General Plan. And we also have a GIS section which focuses on mapping and using technical data to create graphical depictions of our land and what's going on with it and that's all done with GIS. And then we also have a cultural section. Stanley focuses on cultural resource management and he's a very busy man. He handles everything in County. And then we have a couple of - a clerical staff and a secretary that assists.

Okay, just to keep in mind a couple points. What I'm doing here today is to basically describe our roles and responsibilities to the County, some of the issues and challenges to do with comprehensive planning, and also some of the tools and approaches we use when we actually develop our work and our priorities. Okay, this is our role. This is, actually, our published role. I'll shorten it. Basically we work with the community and stakeholders and decision makers to create a desirable living environment through the use of professional planning techniques and applications. And we also do a lot of coordination with the community, agencies such as yours, boards and commissions, special interest groups, we speak at public quite a bit, Council and so forth to determine if we're heading in the right direction. Okay, so there's a lot of public involvement. There's a lot of work with County officials and so forth before we go forward and actually present our work. And also the GIS section which I already had already mentioned.

Okay our broad function – it's very broadly put – is, are to prepare updates to the County General Plan. We also undertake special projects that implement the plan. This can take the form of different mechanisms that are out there. Things like TDR ordinances, PDR transfer development rights, we have master plan projects that implement some of the goals that we have in these plans, and any number of technical studies that also support the plan. Things like the social-economic forecast, land use forecast – and those documents are intended to support the rationale for the policies that we're setting, so we include a lot of data.

Going back actually, sorry, I wanted to speak a little bit more if I can – I don't think I can I think – yeah, I wanted to speak a little bit more about what we're doing now. Countywide Policy Plan was adopted last year and this, as Kurt mentioned, is a 20 year, very, very broad plan. It was the first

document that our division adopted in support of the entire General Plan. General Plan is 11 separate plans. Countywide is intended to create an overarching vision for the County, and it's the document which essentially supports the development of the other 10 plans. The next plan that we're involved – the one that we're involved with right now actually is the Maui Island Plan, and we have been involved with that for five years. It's currently up before Council. It includes a number of different elements and topical areas, and it is also couched underneath the Countywide Plan in terms of dealing with a very broad number of subjects, but at an island level. So currently we're working with Council to try and get that adopted. This body reviewed both of these documents earlier in 2009, and number of you actually were involved with that I know. And so at this point in time this body will not be working directly with our division until we bring another Community Plan to you because you just basically finished the Maui Island Plan, the work on the Maui Island Plan. And so when we get ready to bring another Community Plan to you, you will be seeing kind of a similar process that we went through before and we will give you a workshop before we do that. We will prepare you for that work so you will know how to act on it. But right now, this is kind of our focus, the Maui Island Plan, and then we also have a special projects that we're engaged in too.

We also – I won't get into too much into this but it really doesn't have too much to do with this body, but we also are engaged with the Moloka'i and Lana'i Community Plans right now, and those documents are the focus of the Commissions on those islands, so you won't be involved with so much of that project.

Some of the key issues and challenges we face basically in a nut shell, change. Population is growing. People have babies. The communities expand. Choices change in the community. And so, our job is to look at that change and to plan for it. It's going to happen, so one of the things that we try and do is anticipate some of the issues that are coming up. When we create a plan, we also look at how it's going to be implemented, so not only are we looking at the future and how we want our communities to grow, but how we actually want to implement some of those policies on the ground level. And one of the ground levels, actually the permit applications that come before this body quite a bit. So if you look at it in terms of the framework, the Long Range Division helps to create the broad guidelines and the framework for what we want the community to look like. And then when the applications come in to you folks and you see them, it's intended that the planners in our division look at some of the broad plans and guidelines, and make sure that those projects fit in. So, this is just to kind of give you a context as far as what our different roles are in the department.

What we do is we look at a lot of how people connect with places, and it's kind of a key aspect of planning. I tried to create a slide that would explain kind of the central role that we play. We also look at the connection of the past to the future and all of that comes into play into how we deal with issues now. Just as a small example, I don't know if you guys have been to Moloka'i. You probably have. You've probably taken a drive to Kaunakakai. Well on your way, about two miles out, you'll past this amazing coconut grove. And I've passed this grove a number of times, and I've always wondered about it. What is this place? Well recently I did a little research on it and I found it was actually planted in the 1860's by King Kamehameha V, and it was planted actually on 10 acres of land. Thousands of coconut trees. And it was intended to shade the scared bathing pools of the royal – the royalty at that time. Maybe the average person doesn't know that, but what we do, here, is we look at things like that, and we connect the people to the place, and the past to the future so that maybe when a project comes in to a place like this we have just that much more

sensitivity to the issues that might have gone on, on that land, and maybe we wouldn't do something so rash. Maybe we might take a building that's being proposed on that land. We might alter or suggest modifications so that maybe the footprint doesn't affect something as significant as this. That's just an example of how we – the philosophy we try and employ in our division, at least, and also in the rest of the department – to protecting what matters to people.

So that brought me to this term that I tried to – I tried to find a term, a Hawaiian term that would describe our philosophy the closest and I came up with Kina Ole. What does Kina Ole mean? Well, Kina means flaw. It means a blotch. It means a blemish, disfigurement, physical defect of any sort. Like sin, wickedness, disfigurement, something that's imperfect. Ole means nothing. And you put those two together and it's without flaw. And it's without flaw the first time, if you can, if you can get it right. It's doing something right. Doing something at the right time, and the right place, to the right person, in the right way, with the right reason, and it's doing it now. So that's what we do everyday. So this grove here, when something comes into our department that might affect something like this, we think about, well, what do people feel? What do people want? What matters? In our division we try and go way up high in the sky, and look at very, very, very broad issues in the same way, keeping what matters to people in mind.

Housing cost. Everybody needs a house. The population is growing. What are the housing costs doing as an example? We look at that. We look at well how do housing projects and other kinds of projects affect the environment as a whole. We look at well okay with growth, we need public facilities. Where should they go? We also look at the economy. We look at a very, very broad number of issues and we realize that a lot of these issues overlap. When we've developing plans for the public, we hear a lot of how these issues compete with each other. And our job is to and make a plan that is best for the County and keeps all of those issues in mind. So what makes a good plan? It's comprehensive. It deals with a lot of these different issues. It's consistent. That means that policies don't compete with each other. You weight different policies out across different issues. But we try and keep the policies consistent through all 11 documents. A good plan has clear and specific policies and implementation measures. That means we know what we're doing. It's not so broad and so aspirational that we don't know how somebody is going to interpret that. It's easily interpretable. It's fiscally responsible. That means we try and do things that can be done, that aren't going to be completely out of whack with what we can do financially. And we also include the public in an open and honest debate so we know how they feel. We also draw from some of the popular philosophies and approaches. One of them is the principles of smart growth which you might be familiar with. You can also research it on your own – smartgrowth.org. I won't go into the 10 principles right now. But they guide – they provide different, kind of a proactive responses to development and growth. We also look at approaches like sustainability. That means a lot of different things. But essentially, as Keone had mentioned, it looks at generations in the future and what the future needs to sustain themselves so that we now don't take too much for future generations. We look at it as a sense of space and I alluded to this earlier. What makes Maui special? How to we keep it special? What do people care about? What's valued here?

And now I'm going to just go a little bit into our work specifically just to switch tasks. Right now we're – these are kind of the top projects in the office - Maui Island Plan, Moloka'i Community Plan, Lana'i Community Plan. We're engaged right now in community outreach efforts on the outer islands for the Community Plan process. And then we have nine other Community Plans – a total

of nine Community Plans actually that we'll be updating over the years. We have a number of technical studies that we're constantly updating. Right now we're looking at the Land Use forecast and the socio-economic plan, and we have special projects such as like the Pali to Puamana Project or the Puunene Master Plan. Things like that. We also have cultural resources management. We're currently updating the cultural resource management plan.

Why do we do this? What gives us our authority? Well there's a section in the Code, 2.80B, and defines the process by which we update the General and Community Plans. It provides how we're going to include the public, the role of the advisory committees, the general advisory committee, community advisory committee, and what our role is, the Planning Director's role, the Planning Commissioners, the Council's roles and so forth. So it basically provides the process by which we update the General Plan.

What is the legal effect? A lot of times this question comes up especially here. Is it a guideline? Is it law? Is the General Plan a guideline or a law? Are the Community Plan policies law? Well it's both. It's both a guideline and law depending upon how that policy is written. If you come across a policy that says something shall happen, that's pretty mandatory. If you see the word require, that's a very strong word. So in that case, in this particular case, if you come across strong language, it's law. There's other kinds of policies that are aspirational. So when you come across those kinds of statement, you know that, well, you can discuss it, how it's implemented, what are the different details around the issue, and that way it guides your decision making. There's a section in 2.80B that requires that all agencies shall comply with the General Plan, and I won't read this either. But essentially, the bottom line is, the agencies have to report on how they are implementing the General Plan every year. So it does keep – there is some accountability to what we do, and we're required to actually look at well, are we implementing these plans the way they're suppose to be?

I won't read this whole thing, but basically what we're doing here is working a bundle of 11 documents and they're all 20 years in time frame, with 10 year updates. And this is kind of the tree of the different plans that were alluded to earlier. Countywide sits on top, Maui Island Plan below it, and then the Community Plans below that. General Plan development includes kind of on the left side. This is kind of where we are now. These are all the different studies intended to look at where we are now, conditions now. The middle section is where we want to go, and then we develop different mechanisms for how we're going to get there. And out of all of that, we have the plan. And this is just to show you that the technical studies we've been working on. There's a number of them, and they are all as well on the website if you want to go an search our page, we have a number of different technical studies posted there and you can take a look at what we do. And these are just some of the components of the General Plan that are required by 2.80B. All of them require a vision statement, goals, objectives and policies. We also have a directed growth element. We have action plans which are specific to do's in the plans. We have an implementation program which is addressing capital improvement projects and different actions that need to be done, and the fiscal ramifications of them. Benchmarks and status report.

Each element in a plan has a background, challenges and opportunities; goals, objectives and policies; action plans and maps. And this is an example of the elements that the Maui Island Plan has – 11 different elements covering a broad number of subjects. I'm having problems getting this to go forward. Alright, there. And then the process – and this is my closing slide actually, one of

my closing slide. I'm very close to finishing. This is the process by which we go through with the Community Plans and General Plan. All the plans we work on go through a very similar process where we start out with a document, then we bring it to the General Plan Advisory Committees or the Community Plan Advisory Committee and they have six months to review it. From there, we take their comments, compile them, and bring them to the Commissions. This would be the body would look at the next stage after the advisory committees do their work. And your – this body has six months to review our plans. And then from there we go back, take your comments, and take all of the comments through the entire process and forward that to the Council. So there's an iterative process by which each body gets to look at the prior bodies work and evaluate which one they want to choose, do they want to change it and so forth. And all of that work goes to the Council for their final decision. And we also include the public in all of that so there's also an opportunity for the public to tell us what they think or to have productive discussions and debate on some of the issues that they see happening.

And that's it. And I just want to close with just remember, Kina Ole. When you're doing your work, remember to try and seek to do things right, consider all the different aspects of what matters to people, and try and do it in the best way you can. It's not always perfect, but we try. Thank you.

Mr. Hiranaga: Okay, Commissioner Sablas.

Ms. Sablas: Well, I just wanted to make a comment that I truly appreciate that you brought in the Hawaiian verbiage through our Long Range Planning because this is the place we live and I'm encouraged that the Long Range Division is really taking this place at heart in your planning. Mahalo.

Ms. Livit Callentine: Good morning Commissioners, and welcome to the new Commissioners, and the new Chairperson. My name is Livit Callentine, and I am a planner from the County as you all well know. And I'm going to talk to you today about zoning in Maui County. So we are – I will go over what zoning is and what zoning is not, and I will talk about some of the applications that this body reviews under Title 19. And zoning is accomplished within the framework of a Long Range Comprehensive General Plan prepared to guide the future of the County as Simone just outlined so ably for you. With a few exceptions, zoning in Maui County is a traditional Euclidian scheme and this term comes out of U.S. Supreme Court decision which gave a municipality the right to enable – which the zoning scheme enables municipalities to divide lands into different uses and to permit and prohibit various uses and classes of uses. Zoning represents the granting to local governments the right to exercise some control over the use of privately owned property. So public control over the use of private property may involve the imposition of uncompensated losses on property owners. And this potential loss to property owners can also be seen as protection of the community against nuisance uses. Zoning differs from taking with compensation under eminent domain which I believe you'll be hearing about later from the Department of Corporation Counsel. The key point is zoning limits the uses to which a land can be put in order to shape land use patterns.

Now zoning is just one of the land use tools that municipalities have at their disposal. Public capital investment creates economic forces that shape patterns of development by providing roads, bridges, utilities and the likes. Zoning as we just learned controls land use. To be effective, these two tools must be used, must be coordinated – public investment, public capital investment affects demand for land and structure while zoning controls shape the way that the demand forces lay

themselves out.

And how effective is traditional zoning? Well the effectiveness of zoning varies by communities. Zoning is most effective in areas that are growing with developing land use patterns where zoning can shape urban development by blocking or limiting growth in some areas. Zoning is least effective in older urban areas with an established land-use pattern without powerful growth forces. Traditional zoning is less likely to address redevelopment needs of a community as controls may prohibit investment. And again, the key to effective zoning is synchronization between land use controls and public capital investment.

So there are some limitations to traditional zoning. It can be limited by both economic and legal forces. And when there is disagreement over issues of individual rights or the extent of government power, the court system is the ultimate authority in these disagreements about zoning. Zoning can limit the freedom of an architect, site designer, or it can lower the quality of urban design. It can create extensive separation of uses, and these can produce potentially dangerous areas with single use streets that are deserted for some part of the day or night.

There are alternatives to traditional zoning. In an effort to make zoning more flexible and responsive to the needs of modern communities, a variety of techniques have arisen in recent years. These are by and large designed to make land use controls more flexible and negotiable. I'll go over a few of these, but you should know that many other techniques are available, and Maui County already employs at least one of these practices, and could adopt other if it was deemed appropriate by the community.

The Transfer of Development Rights (TDRs) system is intended to concentrate development in particular areas and to restrict it in others area. So what happens is there's a designated sending and a designated receiving areas. And they're established. And essentially, property owners within sending areas may sell unused rights to develop to owners in receiving areas. So this tool can be used to preserve open space, protect fragile ecologically areas, or to achieve historic preservation. The key to success with these Transfer of Development Rights is to give property owners salable rights.

With Inclusionary Zoning, the developers who build more than a specified number of units must include a certain percentage of units for low- and moderate-income households. The inclusion is not discretionary, and it has the effect of shifting some of the costs of low- and moderate-income units to the developer who then most likely will pass those costs on to other buyers of the other units.

A Planned Unit Developments (PUDs) have been widely used in the last several decades and is practiced, as you know, in Maui County. The Planned Unit Development is a mechanism that allows reduction of minimum lot areas, greater building densities and mixed land uses in order to encourage desirable design and land use patterns within existing natural environments. And our prime example of this type tool is Puamana on the west side.

And then Exactions are charges to the developer to pay the costs presumed to impose on the community. Preferably the exaction would be for a closely related cost, such as traffic improvements, school or park construction, or possibly drainage improvements. I know we talk

about those in Planning Commission projects that you review.

And finally Form-based Zoning is one the most recently introduced techniques, although the idea has been around since the 1980s. It is more flexible than traditional zoning codes. There are a few ways in which it's less flexible. The general idea behind form-based zoning is that what a community looks like is more important than whether there is a clear separation between uses. Imagine an imaginary line drawn through a community from the rural periphery to the center of the town. And as the line passes from the periphery to the center, it travels through a variety of different types of development, each with a more or less characteristic form.

So this just shows you sort of the difference in conceptual importance. With the conventional, we say that the use is the most important, and then goes – that drops down to design being least important. In form-based zoning, it's the design that's the most important, where as use holds a less important part. And this is an example, this drawing, is just a drawing of a city that was planned to illustrate what form-based zoning would look like with more higher buildings, more concentration of design towards the center and as it goes outward, the form changing slightly.

Now, I'm getting back to Title 19, we find that text of the Title is divided into Articles, Chapters, Sections and Subsections. And there are five (5) Articles in Title 19, and I'll just be talking about two of these – interim and comprehensive.

The interim zoning ordinance was adopted in 1958, and it created for the purpose of providing temporary regulations pending the formal adoption of a comprehensive map and plan. And although created as a temporary measure, we still have interim zoning in place today as you've seen many of them in your review. Property owners can petition for a change of zoning or variance, when strict compliance with the provisions of the district create practical difficulty or unnecessary hardship.

Comprehensive Zoning was adopted then a couple of years later, and it is created to regulate land use in a manner that encourages orderly development in accordance with State Statutes, County Charter, and the General and Community Plans. Comprehensive Zoning includes a number of zoning districts which most of you are familiar with, such as the residential and apartment, commercial and industrial, and public quasi public, et cetera. These different zoning districts list out permitted uses and standards that regulate development, and some of them also go on to specify special uses. Zoning is the tool used to implement the General and Community Plans. There are various mechanisms in place to administer comprehensive zoning. And today I'm going to discuss a few of the application types that come before you and are required by this Article, Comprehensive Zoning Article.

So first up is the Change In Zoning (CIZ), and this process is found Chapter 19.510. And it allows for a change from one zoning district to another, to legally establish a different use, say from Business to Residential. The Planning Commission conducts the public hearing on the application and makes a recommendation to the County Council. The Council is the final authority on changes in zoning. The map that you see in this slide is a typical land zoning map for a property that is being re-zoned. The map contains such information as location, land area, tax map key number and the existing and proposed zoning on the property. And the key point we would like to make is that these are very powerful tools that create a permanent category of land uses and must be

reviewed in the context of surrounding properties and the goals of the Community Plan.

Now the Conditional Permit (CP) process is described in Chapter 19.40 of the Code. And the intent of the Conditional Permit is to provide the opportunity to establish uses that are not specifically permitted within a particular zone but where the proposed use is similar, related or compatible to those permitted uses. The Planning Commission conducts the public hearing, makes a recommendation to the County Council. The Council is the final authority on Conditional Permits. Currently there's a packet of streamlining bills going through, making its way through Council, and one of these proposed bills would allow the Planning Commission to approve certain Conditional Permit amendments and time extensions if it is approved.

The project on this slide – the project on this slide, it illustrates something, a project called the Hale Hookipa Inn which was granted a Conditional Permit to use a single family residence as a transient vacation rental in Makawao, within the single family district. Under current law, the Conditional Permit is the principal approval needed to allow individual transient vacation rentals in districts other than the hotel district. And this Commission, later, will be reviewing a draft bill that would allow short term vacation rental homes other than B&Bs in other districts, in a few months, if it is adopted.

So Conditional Permits must demonstrate that the proposed use is similar, related, or compatible within a given zoning area. And they are conditional, and generally one of the conditions is a time limit on the bill. So it's not a permanent land use reclassification. It's a temporary land use reclassification if you will.

So the next type of permit we're going to cover is the County Special Use Permit (CUP) and this is described in Chapter 19.510. The process is described there. The special uses allowed allows for certain special uses in a particular zoning district. The use proposed must comply with specific criteria established for the permit. A public hearing with the Planning Commission is required, and the Planning Commission is the final authority. A Special Use application requires a higher level of review in order to study impacts to local neighborhoods. And there you go. There's your key point. And this slide illustrates the Nova Luna Residential Treatment Program for eating disorders. It was approved by the Commission this past year as a County Special Use in the Residential District in Wailuku. This is listed as a special use in the residential district as a domiciliary facilities, and that is described in Chapter 19.08 on residential district. So you see the house is the background. This is the side view of the house. This is the kitchen. And this is actually a neighboring property. So it's quite compatible with its environment.

The next application that you will be reviewing from time to time is the Planned Development (PD) process, and this is a three step process. Now step I is a review of the conceptual site plan. And step II involves the review of a sketch plan of the development including drainage, streets utilities, grading, landscaping, open spaces, and other land uses. The third step involves the review of construction plans. All three steps currently require review and approval by the Planning Commission, however right now Council is considering a bill to allow the Director to take final action on the Step III approval. A public hearing is not required for any of the three steps in the Planned Development process. So Planned Developments are overlay districts. They bring incentives such a density and related bonuses to reduce development costs. And our most prominent example as I mentioned earlier was Puamana. This is a partial view of the site plan. And this was approved by the Commission in the early 1970s. The Puamana site is notable in that, in accordance with the

ordinance, it provides more than 20% open space.

The next up is Project Districts (PH). The Project District process is outlined in Chapter 19.45. The intent is to provide a flexible and creative planning approach rather than specific land use. A typical Project District will have multiple land uses within it. And there's a three phase process. Not be confused with the three step process for the Planned Development. It's a three phase process. Phase I establishes land uses and standards for the Project District. The public hearing is conducted by the Planning Commission in the affected community plan region, and a recommendation is made by Commission to Council, with Council being the final authority.

Phase II involves a preliminary approval of a preliminary site plan for the district. It must conform to the standards developed in ordinance creating the district. As with Phase I, the Planning Commission is required to hold a public hearing in the community plan area, and the Commission is the final authority to grant Phase II approval of the preliminary site plan.

The Phase III Project District process involves review of the final site plan for the project. The Planning Department reviews the final site plan for consistency with the preliminary site plan that was approved by the Planning Commission. There is a bill pending right now before Council to allow the Director to approve non-substantive revisions to Phase II preliminary site approvals and Phase III final site plans. And Maui Lani is an example of a Project District that was adopted. And this was adopted as part of the Phase II Project District approval. You see the multiple land uses within the project, including golf course, open space, single and multi-family housing, commercial use, commercial areas, and a school. So our Project District allows for flexible and creative planning.

Next we come to our Bed and Breakfast (B&B) ordinance which is found in Chapter 19.64. This Chapter allows local homeowners the opportunity to provide visitor accommodations in a residential neighborhood provided that the character of the residential neighborhoods is retained. It allows them in both residential, rural, and agricultural districts. And most approvals are administrative, unless a proposed B&B is located within 500 feet of another approved B&B, or if 30% or more of the property owners within 500 feet submit written protests, or if a variance was obtained to meet the requirements for a B&B home. In those cases, the application is reviewed in public hearing by the Planning Commission. And as you can see up to six bedrooms may be allowed, and the owner must live in one of the two dwellings.

Now is in the agriculture district – in a State Ag District, as Kurt explained earlier, a Land Use Commission Special Use Permit (SUP) is required prior to granting the B&B permit. For proposed B&Bs in the County Zoned Agricultural District, at least one of the three standards shall be met. And these standards are listed here that have an income requirements, or that it's on the Historic Register, or that is not subject to a condominium property regime. And then subsequent additional requirements that it be created prior to November 1, 2008, be on five acres or less, and that it must have a fully implemented farm plan. Special Use Permits, the State Land Use Commission Special Use Permits are subject to a public hearing and are approved by the Planning Commission. However, unless one of the conditions I just noted is present, the Commission does not review the B&B application itself. This is an example of a Bed and Breakfast in Makawao called Wild Ginger Falls, and this is in the agricultural district so a Land Use Commission Special Use Permit was granted by the Commission. The owners live out a cottage and they live in the main dwelling on

the property.

Then County Town Business Districts (BCT) are found in Chapter 19.15, and Erin Wade will be discussing those in just a moment.

Finally, we will talk about Off-Site Parking Approvals (OSP) which is approvals of which are still required by the Planning Commission. These are required for projects that – it's required that a project provides parking within 400 feet. And if they do, then they must have an off-site parking approval, although no public hearing is required. You are, at this point, the approving body. As part of ongoing streamlining efforts, a Bill delegating authority to approve these off-site parking to the Planning Director was recently reviewed by the County Council's Planning Committee. The Committee recommended adoption, so hopefully soon we won't have to bringing these types of kind of small kind of projects to you guys.

And then finally the Accessory Use Permits (ACC) may be obtained to allow certain uses in various zoning districts within the County Code. And it's really spelled out clearly. So it's in the Hotel District, Community Business District and Resort Commercial District. An Accessory Use must be for a use which is incidental and subordinate to the principal use of the land or building and is located on the same zoning lot as the principal use. The Commission is the authority on Accessory Use permits, and again, no public hearing is required. Thank you very much. If there are any questions, I'd be happy to answer them or try to answer them. And if not, I'd like to introduce Erin Wade to talk about Country Town Business Districts.

Mr. Hiranaga: Thank you. Is there any questions or comments? Thank you.

Ms. Cua: Excuse me Mr. Chair I think before we move on to Erin Wade, we'd like to propose that you take a break being that we've been going to a while.

Mr. Hiranaga: Commissioners, would you like a recess? We'll reconvene at 10:40 a.m.

(The Maui Planning Commission recessed at approximately 10:35 a.m., and reconvened at approximately 10:43 a.m.)

Mr. Hiranaga: Good morning.

Ms. Erin Wade: Good morning Commissioners. My name is Erin Wade. I work primarily in the small towns, in the historic and in the Wailuku Town Redevelopment Area. Today I'm here to talk to you about the Country Town Business District because this is a primary area where you folks have some review particularly if there's a Special Management Area Permit required. So first I just want to start by saying, you know, we all sort of instinctively know that there's something special about the small towns. And what we tried to do or what the County has tried to do with the Country Business District is protect what is special. Essentially there's something economically that's special about Country Town Business District. They offer an opportunity for independent business owners to own and operate their own business. They also provide an opportunity for residents to meet their daily needs within their own neighborhood. Socially they're special and they're gathering places and they're places for celebration and socialization. And finally with the zoning ordinance and design guidelines, we protect what is physically special about the small towns which is

generally the unique architecture and the historic integrity of the community.

So what the Country Town Business District does is it establishes development standards within the small towns. It preserves and maintains the unique urban design character. And these towns are generally in Makawao Town, Paia Town, Hana Town, Lana`i City and Kaunakakai. Those communities all in what you would refer to as like a traditional business district, have a country town business zoning.

All of these towns also have design guidelines. Most of them actually – most of them have two volumes to the design guidelines. One is a technical report which often does an inventory of what the buildings look like, what the streets look like, that kind of thing. The second one is actually the guidelines themselves which direct property owners and businesses how they can maintain their properties. The majority of the design guidelines, even though they're all a little bit different, these are the areas that are addressed in the architectural standards. Some are about scale and massing, and other are about the architectural ornamentation or the way that the windows, the facades are articulated. Some of the design guidelines includes site specific guidelines, addressing setbacks, where off-street parking can be located, those types of things where fences and building walls may be positioned.

Makawao-Pukalani-Kula Design Guidelines actually have street guidelines that dictate the width of streets, the configuration where sidewalks should be placed and those types of things.

And finally the process for Country Town Business District review is generally the Planning Department receives an application. The application is forwarded to agencies for review. And often times, these are administratively approvable or we will work as staff with the applicant to ensure that they can be administratively approvable. Sometimes they come in, the applicant wasn't aware of the design guidelines. We give them a call, we inform them what the issues are and what the design guidelines say. More times than not they'll work with us to compile with whatever the design guidelines say. Depending on the age of the structure, it may have to be sent to State Historic Preservation for review. And then finally a determination is made once the applicant has decided this is my final design, this is what I would like to build, or this is how I would like to adjust my existing building, we determine whether it's administratively approvable or whether it needs to go to the Urban Design Review Board. So if there's a project in the Country Town Business Districts that does require your review, generally it will also go to the Urban Design Review Board before you see it. So that's the Country Town Business District. Is there any questions about that? I just wanted to add as a quick side note, I do do the Historic Districts. Many of you were on the historic district site visit. Generally those applications will be seen exclusively by the Cultural Resource Commission. Sometimes if there's an SMA associated with that, you will get it too. However, the Historic District Design Guidelines are exclusively dealt with by the Cultural Resource Commission. So generally you're not going to have to have too much worry about that. Okay. So that's why that wasn't included. Alright, thank you very much.

Mr. Hiranaga: Thank you.

Mr. Joseph Prutch: Good morning new Chair and good morning new Commissioners and good morning Commissioners. I didn't want to say old Commissioners, just Commissioners. Okay, today I'm going to go ahead with the Chapter 343, HRS, the Environmental Impact Statements (EIS) and

the Environmental Assessments (EA). I'm going to skip this confusing one and just move on to Environmental Impact. Okay, the overview of Chapter 343, statutory law was adopted back in 1974. It's a process that encourages the conservation of natural resources and the enhancement of quality life. Like I said, it's a statutory bases for developing and processing EA's, Environmental Assessments, and Environmental Impact Statements, EIS's. Many development projects do actually do require preparation of EA's or EIS's. And before these development projects can be approved, we have to review the – we have to give consideration to the environmental, the social and the economic consequences of the project. The EA/EIS process also fosters, it insures the public participation as part of the project. And the agency charged with administrating Chapter 343 is the Office of Environmental Quality Control, or the OEQC, and they're also the ones that actually publish an environmental notice where EA's and EIS's documents are found.

Okay, so how does Chapter 343, HRS, applies to projects? On the drawing on the left there, I mean, the big circle is all projects. From that pool, a portion of them are subject to 343 – not all of them are. And then even further down, even once they're subject to 343, not all of them, but some of them would require an EA, and some are exempted. And further down, you get down to some that will have impacts, significant impacts, and would require an EIS. And as part of this there are nine triggers which requires compliance of Chapter 343, and in a few minutes I'll have a slide that goes over the nine triggers. All these triggers apply to two basic types of projects or actions. One of those is the project can be proposed by an agency – County or State can propose a project – or those proposed by a private applicant like Semptra Wind Farm, the one you had recently. There's also 10 exemption classes that allows the Department essentially to review a project, review to see if meets the criteria of the exemption list. It might be a project that couldn't be exempted. However there are some exceptions to that exemption rule such as when a cumulative impact of a project over time is significant, or when a normally significant action, insignificant action, may impact a particular sensitive area, and in that case the exemption wouldn't work.

Okay, here's the nine triggers I mentioned. I'll go ahead and just read through them. It's either – these are what trigger our review for Chapter 343. It could be the use of State or County lands or funds. It could be used within a shoreline area. It could be used within historic sites such as designated in natural or Hawaii register. It could be a project that's going to propose an amendment to County General Plan. It might be a project that's proposing waste water facilities, waste energy facilities, land fills, oil refinery or power generated facilities. Sometimes use of conservation district lands. Maybe the reclassification of conservation district lands. Not very often, but helicopter facility and of course, this won't apply here, but Waikiki area of Oahu.

Okay, so the process for Chapter 343 starts out with pre-consultation. This is when the applicant or the consultant that is proposing the project meets with the County and the agencies, and let us know that they're going to be applying for a project that's either going to require an EA or an EIS, and they're requesting for comments and recommendations. If we find out there are significant impacts from the pre-consultation or if there are no significant impacts to pre-consultation, then we send them down the Environmental Assessment, the EA, path. They actually draft and Environmental Assessment. That draft Environmental Assessment comes to the Planning Department. We review it. We send it to OEQC for a 30-day review period. Within that 30-day review period, we also send it out to various agencies for comments. We send it to your Commission usually for comments. All those comments are taken in, forwarded to the consultant, or applicant, whoever is processing the EA. And then it's their job to answer all the questions from

Planning Commission, agencies, CRC, the public, whoever comments.

Once that final EA is finished, that final EA is brought back, say, to the Commission. That's your guy's job to review the EA, the final EA, I'm sorry, and if it seems acceptable, they've answered the questions that you guys have asked, then the final EA can be accepted by the Commission, a FONSI, a Finding of No Significant Impact, is issued, and then we forward it on to OEQC for a 30-day challenge period. It sits up at OEQC. If there is no challenge, then the EA is final and we move on to the actual project application permits, SMA or EA, or whatever it happens to be.

Now along the way if they find out there are significant impacts, then we can move on to what's called the Environmental Impact Statement. Similar process. They do the EIS preparation notice. That's published with OEQC for 30-days. Basically warning agencies and everybody that we're going to be preparing the EIS. And the draft EIS actually comes into us. Same process. I send it out to agencies. I send them to you. There's a 45-day comment period on this rather than 30. And same thing, the comments are made by your board, and made by other agencies, forwarded on to the consultant. Same issue, they respond to questions or comments that arise. When they're finish, the final EA comes back. We bring it before you, and if you find it acceptable, your questions are answered, then you guys go ahead and accept it, and it goes on to OEQC once again and this time it goes up there for a 60-day challenge period. And in that time, if no challenges are given, the 60-day passes, the final is accepted and we go on to permit processing. Very similar to what we're doing right now with the Auwahi Wind Farm which most of you are familiar with. The two new Commissioners, you guys will be brought up to speed on that. Same thing, we're in the draft EIS stages now. You guys provided comments last week, two weeks ago. Those comments were forwarded to the consultant. Their job is to compile all of these answer. They'll get a final EIS back to us somewhere down the line and that will come back before you for your acceptance, and then on to OEQC for the 60-day challenge period. And then eventually after all is said and done, then they move on to the actual project application permits.

Mr. Mardfin: Mr. Chairman?

Mr. Hiranaga: Yes?

Mr. Mardfin: Is it appropriate to ask a quick question?

Mr. Prutch: Sure.

Mr. Hiranaga: Yes, Commissioner Mardfin, go ahead.

Mr. Mardfin: It will be quick. Can you go back to the last slide Joe? I'm concerned with the very bottom thing. If it's – the Final EIS is not acceptable, that's on technical grounds that it's not a complete document, not that the results of it aren't – we don't like the results of it. It's whether it's an information document, whether it's complete or not?

Mr. Prutch: As an information document, whether it's complete or not – whether you feel that the applicant has responded adequately to some of the comments and questions that have come up as well. You know, I was just talking to Ann before this and we weren't remembering too many instances where Final EIS is not accepted. But I guess at that point if it wasn't accepted, it would

go up to OEQC for a 60-day appeal period. And then my guess is, my understanding is, the applicant or consultant can then appeal your guy's non acceptance of it. Bring it up to the Courts and decide, let the Courts decide if the documents is acceptable or not.

Mr. Mardfin: But it's just an information document.

Mr. Prutch: Yes, it's an information.

Mr. Mardfin: I mean, the project could have impacts which we thought were totally unacceptable. But as long as informationally they dealt with it, we'd approve the EIS. We just turn the project down at some point.

Mr. Prutch: Could be. Yeah.

Mr. Mardfin: Okay. Thank you.

Mr. Prutch: Okay, so review and –

Mr. Hiranaga: Excuse me, Joe, Commissioner Shibuya has a question.

Mr. Prutch: I'm sorry. Yes?

Mr. Shibuya: Using the same slide, and looking at the top decision block, it says pre-consultation activities and then they list the determination in which you have significant impacts. At this point when the magic word comes up as subdivision and you have determination, you're using the actual nine triggers to determine this, right?

Mr. Prutch: We are using the nine triggers to determine if we're going to even review a project to Chapter 343. So if those triggers aren't met. If there is not a trigger, we don't go down Chapter 343. We don't review it for environmental. We don't go down the process.

Mr. Shibuya: Okay, so some subdivisions would have an EA or EIS impact, and other subdivisions would have nothing. Correct?

Mr. Prutch: I guess it's possible. I'm trying to think of some scenarios. I guess if there's use of State or County lands, then that's an EA trigger. Community plan – I guess if they're doing a community plan update, I mean, an amendment to a community plan, then that triggers. So there are some instances where there's going to be some triggers and they're going to have to go down that EA process. But I would think there are – I'm trying to think of an example – but I'm sure there's some instances where a subdivision doesn't trigger any of that and we wouldn't go through the EA process. So there definitely are some times where you might think a project should have required an EA but if their triggers aren't met, then we don't go down the EA process.

Mr. Shibuya: I see. To be more specific, let's say there is an underground tunnel that distributes fresh water, and it comes through the property, and the subdivision is requesting for houses, and there's no sewage system. Okay? There's a possibility of impact, would it not?

Mr. Prutch: Once again it all starts with those triggers. You know, whether or not it's a great system or not, this is what the law is and we have to go by those nine triggers. So if there are none of those triggers, a project doesn't propose and trigger any of these nine categories, then there's no process of the environmental. We don't go down that route. So in your case, for example, I don't know. I mean, it depends on what it is. But it's not use of State or County land, it's not within shoreline, it's not historic, it's not amending the Community Plan, any of that kind of stuff, then there's no trigger.

Mr. Shibuya: Right. Okay.

Mr. Prutch: So yes, that is true. I mean there may be instances where you may think it's an environmental project and may have some impact, but there are no triggers, then there is no environmental review.

Mr. Shibuya: Okay. Thank you.

Mr. Prutch: Okay. Any other questions or –?

Mr. Giroux: Joe, are you done?

Mr. Prutch: No. Did you want me?

Mr. Hiranaga: I'd like to ask the Commissioners to hold their questions till the presentation is complete. I think it helps the person doing the presentation to maintain his train of thought. Go ahead Joe.

Mr. Prutch: Okay. Thank you. Okay, so now we're up to review and evaluation. This is an EA versus EIS. They're similar in structure. However, the EIS is a document that's a little more detailed, more detailed disclosure. It includes more detailed analysis of the alternatives and the mitigation measures. Both documents must address the impacts on the surrounding environment. Both documents must also consider any mitigation measures which can be used to prevent or lessen or counteract any potential impacts. And both documents must identify alternatives for the proposed action.

Okay so we get down to potential impacts. The environmental documents must consider all phases of the proposed action. The various types of impacts are the primary and secondary impacts; regional sites, specific impacts; short term, long term impacts; and cumulative impacts. I'll discuss these in the next few slides. In order to determine whether a proposed action will have an impact on the environment, potential impacts are evaluated in relation to different significance criteria which I will also go after I go over the impacts.

So let's move on to the actual impacts themselves. These are some potential impacts. There's a primary impacts and secondary impacts. The primary impacts as it says is an affect caused by the proposed action, and it occurs at the same time and place of the impact – kind of a direct impact. The secondary impacts are impacts that are caused by the proposed action and are later in time are further removed in distance, but still feasibly foreseeable. And in the pictures there you'll see one, a subdivision may go ahead and put in forest and land, and it may have a primary impact on

the wildlife in the area. Meaning a direct impact on wildlife. And then on the right, the parking lot, would have an indirect impact in that the oil from cars drips down. That gets washed away in the storms, and it might get to the sea as runoff, and it might affect the shoreline and marine resources. So we've got primary and secondary impacts.

And we also have regional and site specific. Regional is an affect caused by the proposed action on a larger scale, regional basis. And then site specific is, obviously, affects caused by the proposed action, a localized smaller area. And in this case, the picture on the left is – an example is proposed Project District and a Community Plan which actually Livit was talking about earlier. This action would require the review of the regional impacts. Whereas the one on the right would just be an expansion of a house, addition of room, and then that would be, require a review of simply the site specific impacts only.

Then we get into short term impacts and long term impacts. Short term impacts are the affects caused by the proposed action that occur immediately. And the long term impacts are those caused by the proposed action, but they occur over a given period of time. And in this example this slide shows a new golf course, so the primary impact on the golf course could be the impact on water usage. And then the short term impacts is the water uses during construction and development of the site. And then the long term impact is the water usage for the continue maintenance of the property.

And then we get into cumulative impacts. These are impacts on the environment resulting on from the incremental impacts of the action and added to other past, present and reasonably foreseeable future action regardless of what agency first undertakes such other actions. And in this case, of course, a cumulative impact is traffic.

And I'll get on to the significance criteria. I'll go ahead and read these off. We've got significance criteria such as project involves an irrevocable commitment to loss or destruction of any natural and coastal resource. It could curtail the range of beneficial uses on the environment. It might conflict with the State's long term environmental policies or goals and guidelines. It could substantially affect the economic or social welfare of the community or the State. It might substantially affect public health. Involves substantial secondary impacts such population changes or affects on public facilities. It could involve a substantial degradation of the environmental quality. Is individually limited but cumulatively has considerable effect upon the environment of loss of commitment for larger actions. It substantially affects, threaten endangered species or habitat. It detrimentally affects air or water quality or ambient noise levels. It affects or is likely to suffer damage by being located on an environmentally sensitive area. It substantially affects the scenic vistas and view plains identified in County or State plans, or studies, or require substantial energy consumption. So these are all the significant criteria that we use to review a project. Now you'll notice some key words in all those significance criteria such as irrevocable, structure, conflicts, substantial, considerable, detrimental. So the question comes, how do you figure substantial? How do measure detrimental? In some cases, it can be quantified such as air/water quality. We measure it in parts per million. Or traffic can be measured in LOS or A thru F. Or noise could be measured by decibels. In these cases, it's very easy. We can come up, we can calculate a number. Either that number is above a certain threshold or it's below a threshold. Those are the easier ones to review because there's an actual number you can see. Of course, there are a lot of qualitative environmental impacts significance criteria. Some examples of these for scenic vista or aesthetics,

view corridors of our ocean or our mountain vistas. In a situation considering the immediate surrounding or proposed action, may be . . .(inaudible) . . . or relocate a building, or reduce the heights of a multi-story structures so to create or preserve view corridor.

Then we get down to the mitigation measures. These are measures to plan to either prevent, lessen, or counteract any potential impacts. And some methods of doing this are best management practices, the BMPs to reduce erosions. There could be turn lanes or stop signals or anything else that can help to improve the level of service of a certain roadway. Or there could be preservation plans or archaeological monitoring plans when there's ground disturbing activities to help limit an impact or lessen a possible impact. So the mitigative measures can often prevent a potential impact from qualifying as a significant impact. This can be sufficient as to not to require the preparation of an EIS as the proposed mitigation measures can reduce the level of significance. So maybe just an EA can be prepared.

And then I talked about an alternative analysis that EA's and EIS's must contain an alternative analysis. Each alternative shall provide a summary of potential impacts and mitigation measures proposed to lessen the impacts. The alternative analysis is also going to include input from the community because often times community members may be aware of concerns or impacts that make a particular alternative more or less desirable. The beneficial uses they've got to include this as an alternative analysis. For example if they're redesigning a site plan to preserve or lessen impacts on scenic vistas. Those could be a beneficial use of the property. The preferred alternative should also include the least detrimental effect on the environment. And then when identifying and discussing alternatives for proposed action, one needs to consider the site or location. This might include relocating the project to a different offsite on the property or to a different site altogether – maybe density or intensity. For example, a multi-family project, high density might have traffic impacts that can't be mitigated, but could be mitigated by a less intense single-family project with less traffic issues. A redesign of a project – that's also a possibility. Redesigning a site plan so to preserve those areas for endangered plants or habitats are identified. Or maybe in the case where there's cultural or historical resources, redesigning the project to try to avoid those areas is a way. I know with the wind farm project they're continuously doing a lot of that. Moving the wind towers itself around different locations on the site to try to avoid cultural, historical finds that the archaeologist keep finding as they're reviewing the site. And finally the last alternative is to have a no project alternative. This is usually an unpopular alternative, but in an area that is already developed, instead of intensifying the project, an alternative maybe to remodel the buildings and maybe convert existing vacant building to other uses.

And that is the Chapter 343 in a nut shell, and now if you have any questions, I'll be happy to try and answer for you.

Mr. Hiranaga: Commissioner Mardfin?

Mr. Mardfin: Joe, keep that slide up. You said the preferred alternative is the least detrimental effect on the environment, but I've usually seen the preferred alternative be whatever the developer wants, not the way that would have least detrimental effect. Is that your impression that they're trying to minimize the detrimental effect or trying to maximize the project?

Mr. Prutch: I mean, the least alternative is always going to be no project. So then when they are

proposing some kind of project, then the question of, okay, how are we going to make this less of an impact? What can be done to make less of an impact? To me obviously the no project is going to be the least amount of impact.

Mr. Mardfin: Right. So they're balancing the private benefits to them versus public costs in terms of environmental impact?

Mr. Prutch: They're trying to. Yes, that's what the goal is, is to try to limit the impacts that we know are going to happen that we can foresee and either avoid or mitigate or maybe a preservation plan, and a historical relocate buildings and structures for archaeological finds and that kind of stuff.

Mr. Mardfin: Okay. Thank you.

Mr. Giroux: Chair, can I--? Joe, did you go over the exemptions?

Mr. Prutch: I mentioned the exemptions, but I didn't go through the list. I've got-- we've got like 10 pages of exemptions.

Mr. Giroux: Yeah, I was just going to bring that to highlight that you might want to give them a copy of that because a lot of our projects that come through, people are always saying, oh, this didn't get an EIS, and this didn't get an EIS, and they'll show you the nine triggers and then obviously, yeah there's a trigger. But with these exemptions, I think, you have to be aware as a body that the exemption list are created through an agency process also. So the agencies that are doing the project create exemptions. Those exemptions go to the State level and are reviewed. And then they're given the okay to review their project, see if it's in their own exemption, and then move the project forward. And it's very important for you to be aware of that because people from the public come in and say, you know, you need to stop reviewing this project. It didn't get an EIS. Okay, that's true, but it got an exemption. And when you're reading your documents, you need to be very careful and look for that. You know, if the question is did it get an EIS? One, is there a trigger? Your conclusion is yes, there's a trigger. Well, then what's the exemption? Then look through the report, see if it got an exemption and what the exemption was, and with that list you can then match it up and say, oh, I get it. It's a drainage improvement. It's not a new construction. That's why it's an exemption. It is on State land, but they don't need an EIS. So if you do that homework first, I think you can save you guys a lot of trouble when the public comes in and start going you need did not look at this project. It didn't get an environmental review, da, da, da. You need to be very aware of that because it's not fair for you to be wondering can we make a decision today? Can we review this project today? Because your time is valuable. And if you understand the process because the person might be right. Yeah, there was not an EA process, but it did go through the 343 process. Which means that it got an assessment, it fits into an exemption and then it was moved forward. So I just wanted to bring that out, and that's why I wanted to know if Joe had the exemption list with him.

Mr. Prutch: Yeah, I do have the exemption list, and I can get that to you guys so you have a copy of what we would review a project too to see if it fits on this exemption list. And this was last updated by the Environmental Council in, I think, January of 2007, so it's fairly current. But it provide quite a long list of examples of what can be exempted, and if it doesn't fit into this, it's not exempted.

Mr. Hiranaga: Yes Director?

Mr. Spence: And I would add, the exemption list are just like practical matters. For instance the use of County funds is one of the 343 triggers. You know, purchasing office supplies, purchase of a County vehicle – those kinds of things are not going to have an effect on the environment. Mowing of County or State lands, maintaining the County parks are not going to have an effect. There's no reason to go through the 343 process every time we do those kinds of things. So most everything on those list are just a matter of practical applications.

Mr. Hiranga: Commissioner Shibuya?

Mr. Shibuya: Okay. The problem that I was trying to allude to was that I was aware that there was some agency review and that I was concerned that the Board of Health had signed off on this particular case. And one of the requirements is that you would not have septic outfall or a leach field 1,000 feet from that, a well. Well, this one here is, let's say, an aquifer, such as a tunnel that transports drinking water that has been captured in the watershed. And now you have this subdivision and all of sudden they don't have the sewage system, except they're going to have to use a septic type system. Would you apply that 1,000 feet distance to this particular stream?

Mr. Prutch: Yeah, I'm not familiar with the project you're talking about.

Mr. Shibuya: No, no. I'm just –. Yeah, I don't want to be very specific.

Mr. Prutch: Yeah. And once again it comes down to what's the trigger. As far as the environmental review process is concern, it comes down to what is that trigger? And then if there is a trigger, is there something that would exempt that proposed project from further EA/EIS review? So I don't know, you know, in that case if there's not a trigger. There's simply not a trigger for it. And if that's something that needs to be changed, that's more of – I don't know how that process goes – more of a State process.

Mr. Spence: Yeah, the 343 process is only one environmental review process. Special Management Area is suppose to be environmental review. You know, and we do largely the same things with our Land Use Commission Special Use Permits, County Special Use Permits, et cetera, et cetera. But even the State agencies have, you know, their own administrative rules. So like in a case what you're talking about, a subdivision where there is perhaps a tunnel or something like that, you know, it's going to go to the Department of Health. Department of Health knows where the drinking water sources are. They're going to flag those kinds of things. They have administrative rules specifically to protect those kinds of, you know, resources. So there's a lot of other things in place other than 343.

Mr. Shibuya: Thank you. I'm just concerned about the staff doing oops, and then we go ahead and approve it. And then all of sudden there's two people saying oops.

Mr. Spence: Yeah.

Mr. Hiranaga: Alright. Thank you Joe.

Mr. Prutch: Thank you. And we'll move onto Danny Dias.

Mr. Danny Dias: Good morning Chair Hiranaga, members of the Planning Commission. My name is Danny Dias, Planner in the Current Planning Division. The component of –. What I'm going to discuss has to do with applications that the Commission makes recommendations on that eventually go to either the County Council or the State Land Use Commission. Earlier today we covered all the permit process by the Planning Department and which body is the final decision making authority for each of those permits. In my presentation I'll focus on basically the five different types of applications that come before this Commission for a public hearing. The Commission makes a recommendation, and with that, we transmit it either to the County Council – usually the County Council, sometimes the State Land Use Commission – for a final decision. And when the final decision making authority deliberates on the item, they take the Commission's recommendations and comments into consideration during their review.

The five applications that the Commission makes recommendations on are District Boundary Amendments, Community Plan Amendments, Changes in Zoning, Project District Phase One Applications, and Conditional Permits.

So with District Boundary Amendments, the County Council is the final authority on lands that are 15 acres or less in size, and are classified agricultural, rural, or urban. Or lands that are greater than 15 acres in size, the State Land Use Commission becomes the authority. And as I mentioned earlier, the Commission makes a recommendation. Sometimes the Commission will recommend conditions if you feel that it's necessary to prevent adverse effects upon public health, safety, and welfare. And of course the Council can decide whether or not they want to actually adopt those conditions.

Next, we have Community Plan Amendments. For Community Plan Amendment applications are required to follow the procedure set out in Section 19.510 of the Maui County Code. A Community Plan Amendment is a trigger for an Environmental Assessment as Joe stated earlier. It's important to note that with Community Plan Amendments there's no mechanism to place conditions on them, but in general Community Plan Amendments are accompanied by – it's usually Changes in Zoning, and so conditions can be placed on the Change in Zoning. As you folks are aware, the County is undergoing the General Plan update process and through this process the Community Plans will also be updated. Once the new Community Plans are adopted as part of the General Plan update process, the applicants will only be able to apply for Community Plan Amendments in July of each year provided that such amendment shall not be accepted within one year after the enactment the respective Community Plan.

Next we have Changes in Zoning. Those are also processed pursuant to Chapter 19.510 of the Maui County Code. And once again, the Commission can recommend conditions. The difference with Changes in Zoning, if 40% or more of owners or lessees within a 500 foot distance from the boundaries of the subject property have filed written protest against the project, when it goes to the Council, the Council needs a super majority vote, which is seven out of the nine members.

Next we Project District Phase One applications. I think Livit went over that earlier. The purpose of that is to create and provide for a flexible design approach rather than specific land use designation. When a Project District application is received by the Planning Department, an

ordinance is included which outlines the land use and standards for the proposed Project District. The Department reviews the ordinance and normally makes some modifications. The ordinance is then transmitted to the Office of the Corporation Counsel for review prior to the public hearing with the Planning Commission. And after the Commission reviews it, it then makes it way up to the County Council.

And then lastly we have Conditional Permits, and the intent of the Conditional Permit is to provide the opportunity to consider establishing uses not specifically permitted under a given zoning district. An example of this would be like TVRs in the Ag district. The Ag ordinance has nothing about TVRs. It's not a special use, so you would then get a Conditional Permit. And we also do concurrent processing so for example if you had a project that had a District Boundary Amendment, Community Plan Amendment, and a Change in Zoning, those would all come before this Commission in one package, in one report. We don't, you know, come before you with three different reports, or in three different meetings. It comes to you, and you would hold that public hearing for all three items in that one meeting.

Moving along here. Kind of confusing slide, but I'll briefly go over it. Up on the board you have the process in which these permits go through. Once it's received by the Department, once we get it, it's assigned to a planner. The planner reviews the application for content pursuant to applicable laws and determines if the document submitted contains all the necessary information for processing. If all necessary information is provided and the application is deemed acceptable, then we transmit it out to governmental agencies for review and their comments. If the application is not acceptable – for example, documents are missing or required information is not provided – the planner writes a letter to the applicant stating any deficiencies and gives the applicant a deadline to resolve those deficiencies.

If the applicant is able to resolve those deficiencies, the planner accepts the application and then at that point transmits it to various government agencies. We also will bring applications before the boards and commissions such as the Urban Design Review Board, Cultural Resources Commission, or the Arborist Committee before we bring it to the Planning Commission. If the deficiencies are not able to be resolved, the application is either returned to the applicant, or the applicant withdraws their application. And each agency is giving approximately 30 days to comment on a project application. Once we get those comments in, the Department determines whether all agency issues have been addressed and resolved. So normally if the agencies have an issue, we give it to the applicant and say, you know, Department of Health wants this plan or whatever, and they work it out. Once that process is completed, and the application is deemed completed, and the project is scheduled for public hearing. And if they don't resolve any agency concerns, then like I said, we don't bring it before you until the applicant has taken . . . (inaudible)

. . .

Once we schedule a project, the Department prepares a public hearing notice and we give that to the applicant 45 days prior to the public hearing date. The applicant mails out a notice of hearing, along with the location map at least 30 days prior to the hearing to land owners and lessees within a 500 foot radius of the project site. And also a publish is noticed in the newspaper once a week for three consecutive weeks. The planner prepares a report which outlines the facts of the application along with an analysis of the project based on criteria for granting of the permit and the Department also prepares a recommendation on these applications. At that point, the Planning

Commission conducts a public hearing on the application. The Commission then makes a recommendation for the County Council. If the Commission recommends an approval of the application, land use maps are prepared and the Office of the Corporation Counsel prepares the land use ordinances. Once the maps and ordinances are received by the Planning Department, we transmit them to the Council via the Mayor, 90- to 120-days from the date the Planning Department certifies the application to be complete. Transmitted to the Council are the land use ordinances and maps, the Department's report, recommendation, transcripts of the public hearing, and letters received at or after the public hearing that weren't already included in the report. And if the Commission recommends denial of an application, we send it directly up to the County Council for appropriate action.

So lastly, in closing, application requiring a public hearing contain a number of specific matters that must be addressed and those are generally the General Plan, Community Plan, zoning, the land use history of a parcel, archaeological and historic issues, any secondary impacts such as traffic, water source, supply and distribution, sewage and solid waste disposal, environmental issues, development schedule, tradition of beach and mountain access trails, and all of these things are brought into consideration. So with that, that concludes our overview of the process for items that go eventually to the County Council. You folks have any questions?

Mr. Hiranaga: Mr. Shibuya?

Mr. Shibuya: Danny, I don't want to put you on the spot, but later on you can probably tell us, what's the minimum/maximum time for this process. You've shown us two charts and there's several steps from the time that the application is received by the Department and it goes through all of these. What's the minimum, and then the maximum time that it would get for approval, when it gets signed to the Mayor 120-day versus 90-days? How many days does this process take?

Ms. Cua: I can try to take a stab at that.

Mr. Shibuya: I just want to know a ball park figure.

Ms. Cua: Well, it's going to be a huge range.

Mr. Shibuya: Right, I understand because the public is listening.

Ms. Cua: Right.

Mr. Shibuya: Okay.

Ms. Cua: You know, I think a project, assuming there's no issues, you know, could probably get through, could get through that process, maybe four to six months. That's the absolute quickest – more so like six months – but that's assuming when it gets up to Council, it gets scheduled right away and acted on. There's been projects that's taken 10 years.

Mr. Shibuya: Okay.

Ms. Cua: Yeah. I think the Makena Resort project is the one I'm thinking of that I was involved in.

You know, from the time it came through our door, to the time it finally got approved by Council it was 10 years. Some of the factors that go into the time, and you know, you can have a grasp on, you know, how long it can take even to come to you. You know things come into our doors. A lot of times when you see a project, it's not the same project that came through our doors. You know, it's gone through agency comments, changes might have happened as a result of agency comments. As planners, when we look at the application, we might recommend some changes. They've gone out to community meetings, which you require them to do. And through public comments from the community, maybe they've tweaked the project somewhat, so that's all time. And then it comes to you. Sometimes you defer because you feel you need additional information, and so that's additional time. Or sometimes we find that – this happened to me in one project, when it started, when the project started, there wasn't an EA trigger, an environmental assessment trigger. And then through the County process, they found that they had to use pretty significant County lands in terms of infrastructure based on all the agency comments, and so, then enters the EA process. And so there's so many different things that can affect the time, and that's why the range can be, you know, six months to 10 years.

Mr. Shibuya: Yeah, Ann, and I really appreciate what the Planning Department and the Planners are going through as well as the applicant is going through these wickets. When I get the summary or the report, I notice that there's a huge amount of effort in these packets. Some are volumes that probably stack up about four inches thick. And as I go through it, it is an incredible amount of human effort from various specialist – engineers, Board of Health, everyone, the Fire Department – and you start going through this, and you start calculating it in your mind, it sure takes a lot of time just to review. But I think we all are trying to be sure that the impacts, the public safety, the economy, whatever, are minimized and maximized for the gates for those developers as well as for the customers.

Ms. Cua: One of the things we do as a Department when we meet with applicants, if they decide to come with us in advance of filing a formal application, we advise them to do just that, to go and meet with some of our other County agencies. Meet with the Water Department. Find out what the issues are with water for this particular project. Meet with Public Works. Go to the State, meet with the Department of Health. Meet with SHPD, the State Historic Preservation Division. And then, know what your community is. If it's a big project, you know, hold your community meetings. Find out where people are coming from, rather than making an application based on what you feel will be acceptable. And then you come through the Planning Department, we get some agency comments, and then we come to the Commission, and there's 20 people in the room that's going to take this mic and say, you know, I live here, there's huge drainage concerns, yadda, yadda, yadda.. So we've really learned over time, and the Commission through it's experience, has, you know, advised the Department, we want these things to happen. We want there to be some kind of community meeting. Not necessarily with a community association, but with a group that's going to represent that community. The people that live right there. Not necessarily in the whole community, but live in that neighborhood maybe. And you've seen how that process works, so we try and help people even before they get their application in the door so that it doesn't take as much time when it goes through the process. But, you know, there's just a whole gamut of things that's going to add to the time, and we've seen that.

Mr. Shibuya: Thank you.

Mr. Hiranaga: Thank you Ann.

Mr. James Buika: Good morning Chair Hiranaga, Commissioners, Planning Director, Corporation Counsel, my name is Jim Buika. I'm a planner with the Planning Department, and I will focus my training remarks on your roles and responsibilities under the Coastal Zone Management Act, HRS 205A, the Maui Planning Commission roles under the Special Management Area Rules for the Maui Planning Commission, the Shoreline Rules for the Maui Planning Commission, and then I'll conclude with one slide on some concluding remarks.

So to begin with the Coastal Zone Management Act. It is a State law that manages all of the Hawaiian Islands. It's a statute enacted and codified as HRS 205A in 1977, and approved in 1978, so we've had the law in place for over 30 years. And it is the State's resource management policy umbrella. And the CZM law manages all of the Hawaiian Island. And it delegates the authority to the counties to create a Special Management Area in each of the counties, and also a permit system for the Special Management Area and also for projects that are right on the shoreline. It allows of certain shoreline variances to be allowed and to be reviewed by the Planning Commission.

So back to our Planning framework. Under the State Constitution parallel with the Planning Act, Land Use Commission, and Zoning is the Coastal Zone Management Act. And again it authorizes, delegates to the counties Special Management Area Rules and Shoreline Rules which have been developed by this Commission in, the latest, in 2003 revision. And so under those rules, the Maui Planning Commission reviews Special Management Area Permits. I think you'll have one this afternoon, and you'll have a few in the next upcoming meetings. And also we have two, I know for a fact, next Commission meeting, we have two shoreline setback variances before you.

So looking at this area called the special management area, it is a subset of the coastal zone here in yellow/green – whatever color it is. I'm very color blind – but you can see it's just a thin slice of the coastline around Maui. Beginning with Piilani Highway, to the south, through south Maui, through Kealia Pond, Maalaea, very thin along the highway along Olowalu, up through Lahaina, Kaanapali, Kapalua. On the eastern side of Maui, through the harbor area out towards Paia, and along the Hana Highway out towards Hana, all the way around the island. So it is an important area known as the Special Management Area and that is delineated by the County authority which is this body. And again the CZM Act authorizes counties to develop and administer the Special Management Area Rules and the Shoreline Rules, and these are Chapters 202 and 203. And the purpose and goals of these SMA Rules is that it is a management tool and the purpose is to set special controls through a permit process to ensure that allowable developments are designed and carried out in a manner consistent with the State law, the Coastal Zone Management Act, the objective policies in these guidelines that are set in the State law. And so the goal of the SMA Rules is to further the policy of the State through this CZM program, where possible, to preserve, protect, and restore the natural resources of the coastal zone.

And how do we preserve and protect and restore the coastal zone? What we do is we look at these, what I said, in the Coastal Zone Management Act there are 10 objectives that each of these projects that you will review each of these projects against. And these 10 objectives look at specific resources that may be impacted – recreational, historic and cultural, scenic and open space, our coastal eco-systems, economic uses, coastal hazards, managing development, public participation,

beach protection and access, and marine resources. So we want to, again, we want to provide for recreational opportunities accessible to the public. We want to protect, preserve and restore natural and manmade Hawaiian, American and cultural historic resources, protect and preserve coastal views and open space, minimize adverse impacts and protect our coastal eco-systems, co-locate our coastal dependent facilities such as harbors while minimizing their impacts on the coastline, reduce risks to new structures and enhance public safety along the coastline. We want to manage development by streamlining the permit process and also communicating with the public in this process to manage our coastal resources, and minimize our hazards. Involve the public – stimulate public awareness. Enhance public beach access, minimize beach loss due to erosion and site hardening. And also to conserve aquatic natural resources for sustainable development. So it is very much our environmental law, and it's an environmental review of important projects that are in the SMA area.

So looking at the rules, the SMA Rules, for the Maui Planning Commission, Chapter 12-202. Looking at your authorities as well as the Planning Director's authorities, we get about probably, the general ball park about 600 Special Management Area Permits in per year. You probably review 10 to 20 to 30 per year in your meeting, so most of the projects are smaller projects in the SMA area that do go through this, that environmental review, and I'll show you the criteria that we use. But the first thing that the Commissioners do is we want to look at every one of these projects. Any proposed action within the SMA does require an assessment by the authority. The Commission is the authority for the SMA Major Use Permits, and the Director is the authority for what are called SMA Minor Permits, Emergency Permits, and then there's a category of these that are Exempted from the SMA law. They're called Exemptions. So we divide up the work. You look at the larger projects, and we'll see your Planning Commission roles here.

So the first – the first thing to do is we look at whether the proposed project is defined as development in the Coastal Zone Management Act. And most everything is development. Placing any structure in the SMA is a development, but under State law, they understand that having every item come to the Planning Commission be a public hearing, is a owner for the smaller . . . (inaudible) . . . So there's a whole category – various categories of exemption. So those are the ones that you do not see that are exempted by the County. And there are 16 exempted categories that are considered not development. There is a list in there that I'll share with you of some of the common exempted categories. And they're exempted regardless of project value. Some of them can be millions of dollars and they're still exempted.

So if a project is deemed a development and it has a valuation of greater than \$125,000, then the Maui Planning Commission authorizes the project to be a public hearing process. So those are the ones that come to you. If a project is deemed a development with a valuation of less than \$125,000, then the Director can authorize that, minimizing the environmental impacts with no public hearing. So you only see projects that are greater than \$125,000 that are considered development. So how do we assess? Once we have these projects before you, how do we assess these projects? In our rules here, your Maui Planning Commission Rules, there are 12 criteria that are used to evaluate a proposed action. So all 600 of these projects that come through are assessed using these same guidelines, mostly by the Planning Department, in a transparent way, but doesn't come to this body. And with every development, there may be some adverse effects, but our goal, collective goal, is really to minimize the impacts of that development in light of a compelling public interest such as public health and safety, as well as economic development. Okay, now,

development has to go on. So we want to minimize any impacts. And also there are, for every proposed activity, we check it for consistency with these SMA guidelines within the State Law, the Coastal Zone Management Law, and I'll just go quickly two slide to show you what those guidelines are and they're very logical.

We want to ensure adequate access to public owned beaches, recreational areas, wildlife and natural reserves. We want to ensure adequate and properly located public recreation areas. Adequately control, manage and minimize impacts from pollution and runoff. And minimize adverse effects to water resources, scenic resources, and recreational amenities. And also minimize risk to proposed structures from coastal hazards. So you can see I underlined adequate, adequate and minimize and minimize. So we're trying to allow for adequate public use of resources, while minimizing impacts is kind of these guidelines, these SMA guidelines. And the SMA guidelines also seek to minimize dredging, filling, altering of the coastline, reduction in beach size, impediments to public beach access and coastal recreation, loss of coastal views, adverse effects to water quality, fisheries, wildlife and habitat, loss of existing and potential agricultural uses. So really the bottom line again which I just stated, the Coastal Zone Management Act, through the SMA guidelines and our Maui Planning Commission SMA Rules seek to minimize where reasonable adverse impact of the environment.

So these are the 12 criteria. We have our 10 objectives from the Coastal Zone Management Act. And under our rules now that here at Maui County, we have 12 criteria that we judge every project against, and I won't go through all. I'll just highlight a few of them. But we look at a proposed action may have a significant effect on the environment when the proposed action does any one of the 12 assessment criteria. So obviously if we have loss of a natural or cultural resource, curtails beneficial use of the environment, conflicts with environmental policies, has a cumulative environmental effect, substantially effects a rare or threaten endangered species, contrary to our Planning and Zoning has bad air, water quality impacts, effects environmentally sensitive zones, substantially alters land forms, public views, and is contrary again to our Coastal Zone Management Act. So that's kind of our catch all for going back to our objectives and policies of the Coastal Zone Management Act. So these are – we're looking for substantial environmental impacts for the project. So that's kind of the overarching look at how the SMA Rules work, and then I'll just take you quickly through your role again which I've alluded to but looking at the various permits.

The major permit that you see and worry about are the Major Permits that are greater than \$125,000. They require a public hearing. Owners within 500 feet are notified by certified mail of the project when the meeting is here. And then you can, as the Commission can, add conditions to avoid, minimize and mitigate impacts. So that's your role. Minor Permits, again, do not require a public hearing. They're smaller projects, but the Planning Director has the authority to add condition to avoid, minimize and mitigate impacts through conditions on that project. So the staff does a lot of that. And then there are also Emergency Permits where the Planning Director again is the authority on that. And he determines that there's eminent substantial harm to the public welfare. The Director can give a verbal approval, but there still is a – it's a conditional permit that still requires an SMA Permit. It goes through the process, but we can get it going quickly. And I have one at the very end of today's agenda, a new emergency permit, where we will report out to you. We're required to report to the Planning Commission all emergency permits that are authorized. We had a few just recently from the recent tsunami. Just some important repair work and protection of coastal resources.

This is a year ago, the Kahana Sunset up in Napili. You can see what's happening. We have a beach, we have a seawall with the lanai, and this structure, obviously, is threatened here and endanger of eminent collapse. So those people were evacuated. We authorized an emergency permit, and they are going through the variance and the Major Permit process to allow all of this work to go on even though it's been repaired. And we did a site visit on February 3rd out near this property. We didn't discuss this property, but we were looking at couple of others. So that's the type. And unfortunately on the west side we're getting more and more of these types of emergency permits where 40 years ago they built these things on sand. We're losing the ocean. These seawalls are getting undermined, and there are more and more problems that turn into emergencies unfortunately.

And then besides the Major Permit, the Minor Permit, and the Emergency Permit, there are two other permit application actions. One is the Exemption which is defined as not a development, such as the single-family home. It's one of the 16 category of Exemptions. But these Exemptions are only issued by the Planning Director after an SMA Assessment is completed and a proposed action is determined to have no adverse impacts on drainage, view plains, archaeology, historic and natural and coastal resources including cumulative impact. So a project may come in, but we require various mitigation actions to be tied in with that project before we will exempt it. So behind the scenes, not as part of your deliberations, we do work with applicants to minimize impacts before exempting them. And then finally there is one category where both the Planning Commission or the Planning Director can deny a project for inconsistency with State Land Use, General Plan, Community Plan, or Zoning, or due to adverse impacts on coastal resources. And we had at least one of those come to the Commission last year. The Stice property out in Hana because of the adverse impacts, potential adverse impacts, to coastal resources. Rather than exempting it, we bumped it up to a Major Permit so that will probably be before you this year or the next year.

So all Minor Permits and Emergency Permits as well as Exemptions are reported to the Commission at it's next regularly scheduled meeting. I think those are in the back of your agenda. And each of those – . So that's kind of a public statement about what has been done over the last couple of weeks by the Planning Department. And all of those can be contested by the applicant or other parties by filing an appeal with the Commission within 10 business days after the Director . . . (inaudible) . . . so there is the ability for the public to appeal – or the applicant.

So again the Exemption versus the permits. An SMA Exemption cannot have conditions because it is exempted from the SMA Permit application process. There are 16 categories of exemptions. A proposed action maybe exempted if it includes measures to avoid, mitigate and minimize adverse impacts such as approval from the State Historic Preservation Division or archaeological monitoring during all ground altering activities. In contrast an SMA Use Permit may contain formal conditions to avoid, mitigate and minimize adverse impacts on coastal resources. And those are the standard conditions and project specific conditions that the Planning Commission and the Planning Director often puts on these projects.

So there are some common exemptions, and these are listed under the State Law. It's not our opportunity under SMA Rules to create these exemptions. These are at the State level. Such as single-family residence which is not part of a larger action such as a subdivision. A larger action would be a subdivision. Structural and non-structural improvements to single-family residences. These things go on all time and can be exempted. Repair and maintenance of roads and highways.

Routine of dredging of streams as maintenance. Repair and maintenance of underground utilities. Repair and maintenance of existing structures, and demolition of some structures.

Very quickly I'll conclude with going over the Shoreline Rules for the Planning Commission. And for any of the experienced Planning Commissioners, this is a pop quiz for the folks of you have been around. What's wrong with this slide here? Can anyone tell me?

Mr. Freitas: . . . (inaudible) . . .

Mr. Buika: Anyone else here? Who sees? It's in the text – what's wrong? Our Corporation Counsel can chime in. Anyone?

Mr. Giroux: It's the wrong Chapter.

Mr. Buika: Wrong Chapter. Okay, this should be Chapter 203. I apologize. I planted that question to our Corporation Counsel before the session, so good job Corporation Counsel. You're earning your money. Anyway, it's Chapter 203, so please make note of that. So again it's looking at the same objectives of the Coastal Zone Management Act, but it's really focused on the coastal ecosystems, coastal hazards, beach protection and access. So we're talking about the shoreline right here – projects right on the shoreline. So the whole idea is to develop, regulate development so that shoreline are protected, beach resources are conserved, visual and physical access is preserved, and landowners do not incur unnecessary risks or shoreline hardening expenses. And just going back to that slide. So we do have Variances and SMA Major Permits. And if we do do a Variance which would be – a Variance would be allowing such as a seawall on the shoreline. Only minor structures can be allowed right on the shoreline in what's called the shoreline setback area. So sometimes we need to put a seawall to protect the structure. So that would have to go through a variance process which involves an environmental assessment review. And again, I will have one of those next time. I think we have two of those at the next Planning Commission for you. So there is an environmental assessment process that goes along with that.

So the objectives, I just listed generally four of these shoreline setback objectives of our shoreline rules. We want to move out of harms way. We have sea level rise. We have large coastal hazards. We want to minimize risks to our projects. We want to plan for the obsolescence of structures in the shoreline setback. Some of these older homes are now threatened. We want to eventually move them back strategically. We want to ensure shoreline access. Shoreline access becomes a problem when lose our beaches, our coastal resources. People build walls so we can't get on the shoreline, so we want to avoid that. And we want limit the types of structures and activities in the shoreline area, and those are limited in the rules for the types of things that are allowed in the shoreline setback area. So again I had mentioned this. Under the shoreline rules, the Planning Commission deals with shoreline setback variances where we can put on conditions, and it requires an Environmental Assessment, potentially an Environmental Impact Statement. It requires a public hearing, and it requires a State Certified Shoreline.

We do do other types of – we do setback determinations under the Planning Director. If they're small projects in the setback, we can do shoreline setback approvals with conditions to minimize, avoid adverse impacts to the shoreline. And we can also deny projects such as illegal seawalls, hardening of the shoreline that prevents sand transports, blocks public access and also encroaches

on public land. Once we get to the shoreline, we're dealing with County jurisdiction and State jurisdiction. And some applicants are encroaching onto State land.

So permissible types of structures under the shorelines rules, in the shoreline setback, the first 25 to 150 feet of the shoreline. Minor structures or activities that are under a \$125,000 that do not adversely affect beach processes, do not artificially fix the shoreline, do not interfere public views, access, and block public views. Any new structures that are in the setback area must be elevated one foot above base flood elevation on pilings or columns. County is held harmless with no liability. And it does not, the structure, cannot harden the shoreline.

So the Commission's role in approving shoreline setback variance. Various variance can be granted for various structures necessary for ancillary to drainage improvements, maintenance – there's a whole list of them – publically owned boating, water sports facilities, public facilities repairs improvements and utilities, private facilities for improvements that are clearly in the public interest, protection of legally habitable structure or public infrastructure, private facilities or improvements that again do not impact on the coastal processes and that would result in hardship if not approved.

And there are some mandatory variance conditions that if you do grant the shoreline setback variance, there are mandatory conditions. Safe and lateral access for the public; minimize risk and adverse impacts to beach processes; minimize risk to structures from failing – you have to comply with the flood hazard rules; and minimize views to and along the shoreline. And just the shoreline rules provided determination for a shoreline setback area. Again, these were adopted in 2003. They regulate the use and activities of the land within a shoreline setback area in order to protect health, safety and welfare. Provide minimum protection from coastal hazards. Ensure that the public use and enjoyment of the shoreline resources is preserved, and there are two methods. I think Tara Miller will talk about these, but there's an average erosion hazard rate and an average lot depth. So these are just two simple calculations that we do to determine what is called our shoreline setback area. And the erosion rate, we have a shoreline atlas for three parts of coastline – Kihei coast, West Maui, North Shore – where we actually, now we have nine aerial shots of various shorelines through time. So we can average out an erosion rate in various areas where we do beaches. And we take this erosion rate and we add it into a formula assuming that erosion will continue, and we want to place such as a single-family home or larger structure out of harms way. So there are 32 maps. This year, we are updating our Maui coastal atlas. We will bring all of this before you. We're modifying our erosion rates along the coastlines here, so you'll see more of this with time. So there is a calculation for it. Real quickly – these are done. All the erosion rate maps are done very rigorously by U of H Geology Department. The rates are average, not the highest at the site. We add in a 25 foot buffer for storm surge, high wave events, sea level rise. And so the method is we take the setback is equal to 50 years of erosion from today's date. 50 years times the erosion rate – say one foot a year – would be 50 times one plus 25 feet, so that erosion rate would be 75 feet, or our setback would be 75 feet from a shoreline, or any citing of a major project.

And we also have an average lot depth because we do have acute and episodic events that may not be captured in some of these erosion studies. So we take the greater of both of these. This is just an example in three weeks time. On Baldwin beach, how we lost an entire beach within three weeks. That entire beach has come back. Here are the same trees in the photos here. Just an example of how episodic our loss of beach and appreciation of beach can happen. So the average lot depth is a pretty simple formula. If the lot is less than 100 feet, our setback is 25 feet.

If it's between 100 and 160 feet, our setback is 40 feet. Anything greater than that is 25 feet of the parcel. So here we take both edges. Here's the shoreline. An example would be we have lot depth of 250 feet to 225 feet on the side distances, 230 in the middle. We add them up - 705 - so the average lot depth is 235. We take a quarter of that, it's 58.75 feet would be our average lot depth. So the lot depth can average as small as 25 feet and up to 150 feet. And we take the most conservative of both the average lot depth and the annual erosion hazard rate calculation.

So we've had various accomplishments through the years. We do meet Federal performance standards. We do get money from the Federal programs – from NOAA – to manage the Coastal Zone Management Program here. We meet Federal standards. We've created a website with our maps, our shoreline maps. We have a permitting process in place. Various publications for the public. We have developed a multi agency team lead by our Sea Grant Extension Program to assist ocean front properties to respond to erosional crises. We give advice as Ann was saying. We work constantly with people on the shoreline, who haven't even put in permits, on a daily basis. We have people coming. We're advising realtors, people who are buying property, homeowners who want to develop on the shoreline. We've restored several beaches, and we've removed some hardening from several beaches, and we're constantly seeking Federal funds to protect our beaches. Do more of a scientific study, understanding of our shoreline. Because it's not just a simple permitting process. There are coastal hazards and coastal processes that we really need to understand and develop in a knowledgeable way.

Just to conclude, and my last two slides here. In 2003, we did a Maui Island shoreline inventory and we have, our shoreline has 120 linear miles. 56 of those miles are sandy beach. 28% of our coastline is armored. 16 miles of it has some sort of seawall or revetment in front of it. There are five miles we've lost since 1949 – just loss of beach. And three miles of roads are by the shoreline. So we've really lost 40% of our sandy shoreline. It has been impaired since 1949. Most of the shoreline is in an eroding state, rather than accreting state. I think like for South Maui, 87% of the transects in our shoreline map show that it's an erosional state rather than accretion. There is some accretion, but mostly erosional.

So just some concluding remarks, and I'll just read these. Maui shoreline provides for tourism, economy, recreation, fishing and food, cultural practices, and our quality of life. Our shoreline is threatened with coastal erosion that is accelerating. Our shoreline and coastal erosion processes are a system that needs to be studied and fully understood to make sound scientifically based planning decisions. And our Coastal Zone Management Act through the SMA guidelines, and our SMA Rules for the Maui Planning Commission, we seek to minimize where reasonable adverse impact to the environment. So that's your charge for moving forward when you're dealing with projects in the Special Management Area. So I'll conclude there, and if there are any quick questions, I'm willing to take them

Mr. Hiranaga: Commissioner Wakida?

Ms. Wakida: Yeah, quick question. Did you say that this body can revise the Special Management Area?

Mr. Buika: Yes. It is delegated. The Coastal Zone Management Act delegates that responsibility to the authority at the County, which is the Maui Planning Commission.

Ms. Wakida: So if we wanted to say widen the area in some section, we would have the authority to do that?

Mr. Buika: Yes.

Ms. Wakida: Thank you.

Mr. Hiranaga: Commissioner Shibuya?

Mr. Shibuya: Jim, I really appreciate your information. Very good. Some of the matrix that you have on the second to the last slide, it's talking about shoreline. Part of our access to the beaches is not only perpendicular to it, but along the coastline that people have access, like pathways, are we not measuring those?

Mr. Buika: You're saying along, lateral access?

Mr. Shibuya: That's correct. We haven't been measuring I think. At certain places we talk about trails, but –

Mr. Buika: Right. Through a study? You mean, through a study?

Mr. Shibuya: Yes.

Mr. Buika: Through a study? We have looked at – we do have a coastal resources, a heritage corridor study that is being completed through the Maui Coastal Land Trust for some of the coastlines. And, yes, we do have – I think you're correct, we do have an access point study so that would be perpendicular. So if you're driving in your car, you park your car, where are all the accesses to the shoreline.

Mr. Shibuya: That's correct.

Mr. Buika: I know we did have someone. We had an intern study all of the coastline. I'm not sure whether we do have a cumulative look at where all the access points are, or lateral access, and what is impaired laterally. But as these projects come forward, we always look at lateral access to ensure lateral access where feasible. You know, sometimes it's just not because of cliffs.

Mr. Shibuya: Understood.

Mr. Buika: I mean, you know that.

Mr. Shibuya: Right.

Mr. Buika: So you can't access all the coastline, but that is part of your charge and the Planning Department's charge to ensure the lateral access as much as possible.

Mr. Shibuya: Right, and that's what my concern would be, to get that information if it's possible. But also I want to highlight the one that the length of beach loss since 1949 is five miles, that's 10%.

That's quite a bit. And in that five miles we probably lost some lateral type of access too.

Mr. Buika: Most likely we've lost most lateral access when you lose the beach.

Mr. Shibuya: That's right.

Mr. Buika: So, I concur. Yes, it's daunting statistic.

Mr. Shibuya: Yes, erosion and sea level rise and these other factors – can't have any of them.

Mr. Buika: Yes. We have major erosion on the west side, on the north shore, and the south shore.

Mr. Shibuya: Thank you.

Mr. Buika: Thank you.

Mr. Hiranaga: Thank you Jim. I know we ran a little by noon so unless there's any objection? Ann?

Ms. Cua: Before you take a lunch break, I just kind of wanted to recap, when you do get back, whenever that is, we only have three presentations left, and we estimate that should take no longer than 45 minutes for all three combined. So if you go back at 1:15 p.m., you could be done by two.

Mr. Hiranaga: Well, actually I'm going to ask if there's not objection that we reconvene at one o'clock. Okay, so we'll break for lunch and reconvene at one o'clock.

Ms. Cua; Thank you Chair.

(The Maui Planning Commission recessed at approximately 12:15 p.m., and reconvened at approximately 1:05 p.m.)

Mr. Hiranaga: We'd like to welcome everyone back from lunch, and I guess we'll pick up from where we left off.

Ms. Tara Miller: Hi Commissioners, we're having a little technical difficulty here, and the computer won't read my thumb drive, so I don't know if we can switch places on the agenda while I go attend to the issue.

Mr. Hiranaga: Depends if the next presenter is prepared. Yeah, that's fine. There's no objection from the Commission.

Ms. Miller: Thank you very much.

Mr. Hiranaga: The Department revised the agenda prior to the start of the meeting. I guess that's okay. We're suppose to have two-thirds vote, right, to amend the agenda?

Ms. Carolyn Cortez: Good afternoon Commissioners. My name is Carolyn Cortez, and I will be talking about Flood Hazard Districts. Okay, this picture was taken after hurricane in Louisiana in

1995. It is a coastal property subject to coastal flooding with high velocities. My session will cover the Flood Hazard Ordinance, Flood Maps, Community Rating System, and the Planning Commissioner's role.

In 1992, Hurricane Iniki caused \$2.8 billions in damages and affected 90% of the structures on the island of Kauai. In 2005, Hurricane Katrina decimated every mile of Mississippi's inland coastline and caused \$100 billion in losses. Most of this was due to flooding from storm surge, riverine, as well as levy failure. Okay, so the purpose of the National Flood Insurance Program is the protection of life and property and the reduction in public cost for flood control, rescue and relief efforts. Participation in the National Flood Insurance Program makes available Federal Assistance in times of disaster. It also makes available flood insurance in the special flood hazard areas. Whereas private insurance underwritten due companies such as Lloyds of London would be expense and even unavailable. The County of Maui joined the National Flood Insurance Program in 1981, and these paper based maps showed flood way and flood plain boundaries, and they were in effect in 1981.

And as part of FEMA's National Map Modernization project, paper maps are being digitized. Maui County received their new Digital Flood Insurance Rate Maps, or DFIRMs, on September 25th, 2009. This is typical screen shot of a flood insurance rate map, and it shows there are two types of flood zones. There's an A-zone which is the blue, and there's a V-zone which is the red. V is coastal flooding with velocity, and A is riverine and coastal runoff. You can also see this is a light green. This is X which is an area of minimal flooding which is outside the 1% annual chance of flood or the 100 year flood. And then this XS is x-shaded – this green – and this is out of the – this is the 500 year flood plain boundary. And this dark blue is the flood way. This is a FEMA define flood way, the dark blue. This is in fact lao stream. You can see the base flood elevations which is the flood height will be by these squiggle gray lines, and then have feet, like 129, 120, 112, and that is based on means sea level local tidal datum.

Okay, so if you're in a flood way – if you're standing in the flood way and you're looking forward, you'll see what they call cross sections. And these are what cross sections look like. This is how FEMA defines a flood way. There's a stream channel, and this area here is the flood fringe where there can be encroachment up to one foot. The surcharge is one foot. You can raise the level of the water one foot. That is defined by FEMA. And here is our lao stream. So this is the stream channel. This is the flood fringe over here. So theoretically there is a point where you can encroach here in the flood fringe, and once you raise the level of the river one foot, then you have to stop.

Okay, when a project is being reviewed in the flood zone, there are components of the project that may affect the flood plain. The placement of fill, the construction of houses and roads – these types of improvements can raise or lower the base flood elevations. Depending on the grading and construction improvements, areas are leveled creating uniform and hard surfaces which affects the storm flow characteristics and the base flood elevations. Maui County Code requires any changes in the base flood elevation to go through the Letter of Map Revision process. This area, Kalanihakoi gulch, channelized the flooding which caused higher BFE's within the channel, but also contained the flooding within the channel whereby reducing flooding in the outlined areas.

Okay, so you can see what the flood plain looked like here before. Then they did a Letter of Map

Revision because there was a development here, and what it did was it reduced the flood plain, but it caused the flooding in the channel to be higher. So the based flood elevation went higher here, but the flood plains was reduced, so it was compressed. Okay, so flood zone-A which is riverine flooding, standards for development are number one, elevate structures on foot above the base flood elevation. Number two, design structures to withstand flood forces. Number three, protect utilities from damage. And number four, no rises in the BFE is allowed. The County of Maui requires residential dwellings and commercial structures to be elevated at least one foot above the BFE or flood depth. This provides additional protection due to development in the flood plain and water shed. And that was South Kihei Road.

Okay, flood zone-V, coastal flooding. V-zones are coastal flooding with velocity. Typically they are created by tsunamis and hurricane. In some instances they could be caused by a storm system, in combination with unusually high tides. As you can see in the photo on the right – excuse me – okay, that's South Kihei Road. That's Suda's Store right there. You see all water coming up over. This, Suda Store, was being inundated with waves that resulted from unusually high tides accompanied with a storm system that was 100 miles away. So the storm system combined with the high tide went over South Kihei Road. And notice the skies are blue here, so it was nice weather. It wasn't raining or storming.

Okay development standards for flood zone-V. They have higher standards in the riverine. You're required to elevate structures to one foot above the base flood elevation, and this is the lowest horizontal structure member, not the top of floor as in the riverine flooding. Design structures to withstand flood forces from storm and wave surges. Protect utilities from damage. And no rise also in the base flood elevation.

Okay, so this is a typical building section and it's a comparison between A-zone development and V-zone. So in V-zone it has to be elevated post and pier. The bottom of the lowest horizontal structural member has to be one foot above the BFE. Whereas in the A-zone, the top of floor has to be one foot above the BFE. In the V-zone you can only have –. Below the BFE, you can only have access, storage and parking. And in the A-zone, you can have like a cross base but it has to be vented so the flood waters can go in and out to equalize the hydro static pressure. So hopefully if the waters do come up to the BFE's, you still have at least a foot of freeboard or protection.

Okay, the Community Rating System is a National Flood Insurance Program. It requires higher regulatory standards. And in turn, with the higher regulatory standards, they reduce flood premiums. So the County of Maui, right now, is the only County in the State of Hawaii to have a community rating system. We're a class-8 community which provides a 10% discount to all of our flood insurance policy holders. So for each class, you go like 10 – everyone is a class 10. So when you go to nine, it's a 5%. Eight, it's another 5%, so that's 10. So seven is 15%. And we have enough points to be a class seven, but we still have to adopt our UBC, Uniform Building Code.

Okay, Planning Commission's role. As Commissioners, what is your role with regard to the flood plains? How do prevent flood damages, protect life and property and reduce public costs for flood control rescue and relief efforts? Okay, one way is to create open spaces for properties that are subject to flood hazards cause by riverine and coastal flooding. A good example of an open space designation is lao stream. This the Wailuku-Kahului Community Plan map on the left, and this is

the FEMA flood insurance rate map on the right. You'll notice that the area designated open space for Iao stream on the Wailuku-Kahului Community Plan map corresponds to the flood plain areas on the FEMA flood insurance rate map. The open space protects the area for flood purposes by limiting development and exposure to flood losses.

Okay, Special Management Areas, I know Jim covered this, but we'll just really briefly as it relates to flood. The Commission also reviews development within the Special Management Area. This gives you an opportunity to review the project's impacts on flood plains and coastal areas. The SMA Rules for the Planning Commission charge you with requiring an evaluation on the potential adverse impacts on flood plains, shorelines, tsunami areas and erosion prone areas to be done. So when you review an application that is located within or adjacent to a flood hazard area, the applicant's application and the Department's staff report should describe the existing flooding that occurs, and what the impacts of the new development will be on the flood plain. Will there be an increase or decrease in the flood elevations? Will there be filling? How are increases in the base flood elevations mitigated? Is there an analysis that includes the full build out of the development? Does it include all structures including walls or fences, future accessory dwellings, et cetera? These are the things that you should be looking at. Yay, thank you very much. Any questions?

Mr. Hiranaga: Thank you Carolyn.

Ms. Cortez: Thank you.

Ms. Cua: So at this time Mr. Chair. I'm sorry.

Mr. Shibuya: I just go an idea. Carolyn, when you take a picture of Iao stream, can you put some kind of pole there in your picture that says this flood plain, this is okay or this 100 year?

Ms. Cortez: Okay, I would need a surveyor to come out with me to do that level.

Mr. Shibuya: To give some approximate height so that you can compare with the surrounding areas. . . . (inaudible) . . . that picture, see guys, going come this high. Okay, thank you.

Ms. Cortez: Okay. Thank you.

Mr. Hiranaga: Commissioner Mardfin?

Mr. Mardfin: Are the FEMA rates based on the 100 year flood plain? Because you mentioned the 500 year flood. Is there a connection?

Ms. Cortez: Yes, I'm sorry. So in the 500 year flood plain, there's suppose to be no critical facilities located there. So that is fire stations, civil defense, sewer plants, those types of things. So it's a higher level of protection, and they provide it just for the County's information. But the flood rates are based on the 100 year flood event.

Mr. Hiranaga: Thank you.

Ms. Cua: So at this point, let's go a little bit out of order. We'll take Corporation Counsel first to

discuss legal issues, and then we'll finish off with our – with Tara.

Mr. Giroux: Good afternoon. I'm James Giroux. I'm your counsel that's assigned to the Planning Commission with the Corporation Counsel. And I put together – it's actually a copulation of about three power points, but the first one I have to go over is the sunshine law, and the other one is the ethics. And then I put together a couple of case law packages that will highlight some of the matters that you need to look at, some challenges that have come before this board and we've said we'll talk about the legal implications later, so this is the time to talk about those legal implications, what the case law has been, to help you guide what hasn't been clearly delineated within the statute or within your rules, but has gone through litigation and then has given us additional guidance. So I'm going to try to touch up on that even though you've heard a lot about the SMA law from the planners. And then there's other – the other section I'll be touching on is contest case issues. Basically I'll walk you through what a contested case is and what are the legal things that you should know about handling contested cases because you do handle a majority – well all of your SMA cases are technically contested cases so that will be another section within this presentation.

So the first thing we're going to touch is your open meetings, your sunshine law, which is found under your Hawaii Revised Statutes Chapter 92. And I believe you all have a copy of that in your packet. And what is the sunshine law? The sunshine law is Hawaii's open meeting law. It governs the manner in which all State and County boards must conduct their business. What is the general policy and intent of the sunshine law? It's to open up governmental process to public scrutiny, conduct business as openly as possible. Sunshine law is to be liberally construed in favor of open meetings. Exceptions to the sunshine law are to be strictly construed against closed meetings. And absent a specific statutory exception, board business cannot be discussed in secret.

Opening meetings – what is required? Every meeting of the board is open to the public, and all person are permitted to attend. All interested persons shall have an opportunity to submit data, views or arguments in writing on any agenda item. All interested persons shall have the opportunity to present oral testimony on any agenda item. The board may make reasonable time limits of oral testimony, and this board has usually historically given three minutes to public testifiers.

Notice. Written notice, written public notice at least six calendar days before the meeting, and that's done by your staff. List of all items to be considered at the meeting – and you have a copy of that agenda – and the date, time and place of the meeting is on that agenda. No additions, once agenda is filed, unless two-thirds vote of all the members to which the board is entitled. And the issue came up, but switching the order, you can do, in Robert's Rules of Order, as long as it's not used in a way that would exclude the public. No items shall be added if it is of reasonably major importance and action thereon will affect a significant number of persons. So if you have a situation where you do want to add something, and even if you get a two-thirds vote, if that discussion or action would actually affect a large number of people, or a significant number of people, I would probably instruct you to put it on for the next agenda and discuss it at the next meeting. Matters of internal significant – like are you guys going to have lunch, or who's going to be snack guy – that kind of stuff if you want to put it on the agenda, just take two-thirds vote, put it on, and then you guys can, you know, vote on your internal list. That would just be something concerning you guys. It wouldn't be concerning the public.

Minutes are mandatory. You have to have minutes. The minimum is you have to have the date, time and place of the meeting, members of the board recorded as present or absent, substance of all matters proposed, discussed or decided, and a record of any votes taken. Any other information requested to be noted by members. Public record to be made available within 30 days of the meeting. Your minutes are verbatim, so you don't have to worry about that. What you do have to worry about is that you – on your agenda it usually says that you're adopting your minutes or you're accepting your minutes or whatever. If that's not done, if no action is done within 30 days, the public still has a right to have access to those minutes. So, it is an opportunity when it's on your agenda to review it just for accuracy and make sure that, you know, it meets your remembrance of what happened at that meeting.

What is a meeting? A meeting means the convening of a board for which a quorum is required in order to make a decision or to deliberate towards a decision upon a matter over which the board has supervision. More than two members of a board cannot gather to discuss board business, and there's exceptions to that, and we'll go over that later. So in the definition of meeting, there's a lot of parts that you have to put together. And the main thing is that you're not discussing something that maybe on your agenda with more than two people. And that's important because then that becomes to look like an illegal meeting. Okay, so two people can talk. Two people can be in a room, you can talk. You can even be talking about board business, but you cannot be collaborating in order to decide on a decision that you would like to make. So that's kind of . . . (inaudible) . . . there. So two people in a room, you don't have to leave. Two people in a room, you can talk. Two people in a room, you can talk about board business. Two people in a room, you cannot collaborate to vote or commit to a vote on anything that's going to be on your agenda in the future. Okay?

What is board business? Okay, matters over which the board has supervisor, control, jurisdiction, or advisory power and that are before or are responsibility expected to come before the board. And this is sometimes can be a little tricky because you're the Planning Commission and everything seems to come through the Planning Commission. But the question is is that whatever you're discussing is it reasonably foreseeable to come before the board? And, you know, sometimes that's a judgement call. You know, I mean, you could be talking about the weather and then next thing you know we've got the flood control map coming up. So I don't think you have to worry so much about it, but just think about what I just talked about on the last slide is as long as, you know, I mean, if it's only two people, don't worry about. You get three people, start to think about it, you know, that hey, could this possibly come up on the agenda in the future? Maybe we should limit our discussion or maybe this should be on the agenda in order for everybody to be involved in that discussion.

There's exceptions to this. The exceptions are, one of them is your investigative exception, and I don't think this board has ever used it. I know that when I was advising the General Plan Advisory Committee, they did a tortured one of these exceptions, but I'll let you know that it exists. It's two or more, but less than quorum – and your quorum is five – and as long as you're at meeting, and the scope of the investigation and the scope of the authority is defined at the meeting of the board. And that all findings and recommendations presented to the board at a meeting of the board. And that the deliberation and decision making on the matter investigated, if any, occurs only at a duly noticed meeting of the board held subsequent to the meeting at which the findings or recommendations of the investigation were presented to the board. So what happens is is that you

put on the agenda we're going to create an investigative committee. You talk about why you need it, who's going to be on it, you vote. This is the scope of your authority for these certain members – two or less than quorum – two, three, four. That committee now can meet without having to have an agenda, minutes, notice, yadda, yadda, yadda, but they have to come back to the board at a duly noticed meeting and present their findings. You know, we went down to the stream, we looked at the stream, yeah, it looks really dangerous, da, da, da, and then you deliberate and you discuss. Now people think that this methodology would be more efficient. The problem is that the public now has a right to hear that discussion, and you cannot vote or make a decision at that meeting. You have to have another meeting, so a minimum of three meetings, possibly two meetings to bring this whole investigative discussion down. So it's rarely used I think in this forum because if we're going to go investigate, we'll just all go and do a site visit. It's much easier. Next meeting we vote. No need to do a report, no need to do a subsequent meeting, and yadda, yadda.

The other exception that we haven't used in a while, but we have used it, it's the executive meeting. And it's a meeting closed to the public. The vote is taken at the open meeting of two-thirds of the members present that you want to have an executive meeting. And an example is to consult with your attorney on questions and issues pertaining to the boards powers, duties, privileges, immunities and liabilities. So if an issue comes up, a decision is maybe going to be made, or was made, and people are wondering, hey, what's our personal liability? Or are we going to get sued because of this? Or is this going to be a – the applicant just said that they were going to sue us. That would be a red flag for me, and I would say, Chair, can we discuss this is executive meeting? And then the Chair would put it on the floor to vote. If the members wanted to get a motion and a second to go into executive meeting, and then two-thirds of the members have to agree that you want to go. The caveat on this is that what I'll do is I'll put on the record that we were just told that we were going to get sued, so we're going to go into executive session to discuss the duties and liabilities and immunities regarding that. We can only talk about that. If the discussion then starts to stray on other matters or it goes beyond that scope, the applicant or the public can move to make our conversation which is confidential at that point, public. So when we are in executive session, you may hear me say, you know, that's going beyond the scope of our executive meeting. So that would just be some of the key words you would hear your attorney saying in order to clue you in that I'm trying to protect you. I want you to be able to talk candidly with me and me candidly with you, and that conversation is confidential.

Contested cases. Contested cases is another exception and I'll talk more about it later. It's a board exercising its adjudicatory functions governed by HRS Chapter 91-8 and 91-9. Any violation of the sunshine law has several ramifications. One is that your decision could be made void. It's called voidability. That means if somebody believes that you've violated the sunshine law, like we went into executive session, didn't talk about what we said we were going to talk about, we come out and we vote. The person doesn't like it. They can go to Circuit Court, challenge that decision and say that we've violated the sunshine law. The judge would then look at the discussion we had, and say well, you know, you guys, you should had that discussion in public so I'm going void your decision. Now we've got to start all over again and go back.

There can be an injunction. What ever decision you make and this board gives permits. And if those permits are found to be done in violation of the sunshine law, the developer is going to be pretty upset because he got his permit, and now the judge is saying, you can't go forward. The other thing is that the attorney general – if the attorney general finds that this is an egregious

practice, that they can charge you with a misdemeanor, and they would handle the prosecution on that side. And then lastly, you could be removed from the board. Also, if you're found of guilty of a misdemeanor, the Charter also says that you would be removed from the board.

Okay, and lastly, is I'm not the sunshine cop. I will say, hey guys, this looks like –. My job is to inform you, to protect you, to guide you in that I want this board to be able to run efficiently as possible and for its decisions to stand. And that's really my purpose as advising you as Counsel.

The next section here is contested cases. It's a Hawaii Administrative Procedure Act under HRS Chapter 91. What is a contested case? Contested case means a proceeding in which the legal rights, duties, or privileges of specific parties are required by law to be determined after an opportunity for an agency hearing. Required by law means that the hearing is required by statute, agency rule, or constitutional due process. Maui Planning Commission Rules 12-201-39 states all proceeding in which action by the Commission will result in a final determination of the legal rights, duties or privileges of a specific party or parties, and which is appealable pursuant to section 91-14 as amended is a contested case. So most SMA cases are, by law, contested cases even though we don't always follow the formal contest case format as in your rules. Some of the major cases that have highlighted contested case proceedings in the State have been the E & J Lounge versus the Liquor Commission. The outcome of that was that no matter what it looks like, if what I just stated at the previous screen is happening, then all of the procedures and privileges of a contested case have to be followed. And it doesn't matter if we call it a contested case or not. The law will look at it in a vacuum to see who are the players and what are rights and privileges that they're trying to assert.

The Special Management Area Use Permit by law has been seen to be a contested case, and also your State Land Use District Boundary Amendment in front of the Land Use Commission has been seen as to be a contested case by law. The other cases are variances. Let's see, the requirements. Once something is a contested case, there's requirements, and one is notice, that the parties have to know that there's going to be a hearing. They have a right to submit evidence. They have a right to cross examine and rebut evidence. The party initiating the proceeding shall have the burden of proof including the burden of producing evidence, as well as, the burden of persuasion. The degree or quantum of proof shall be a preponderance of the evidence. So you can see that you're using your quasi-judicial powers and that now you have to weigh evidence and make a decision based on the evidence before you. The decision maker shall personally consider the whole record or such portions thereof as may be cited by the parties. Every decision and order adverse to a party must be in writing and accompanied by a separate finding of fact and conclusion of law. That document has to be served on the parties and they have a right to judicial review. So all of the things that are contested cases, you have a separate finding and an order that goes along with that permit. And if you deny a permit, the same thing, and the other party has a right to appeal that, or the applicant would have a right to appeal that.

On judicial review, if a party feels that they aggrieved, an administrative agency's findings of fact are reviewable for clear error while in conclusions of law are freely reviewable. So you'll have a lot of times that you'll be reviewing a land use permit that's a contested case and there will be statement of facts made. In the document you will be adopting those facts or you'll be refuting those facts not finding those facts creditable. The judiciary, when it goes to the Circuit Court, would look at your findings of facts, and then look at the record, the transcript, and see if it correlates.

If you found a fact that wasn't presented in the hearing, they would find that as a clear error. You know, the property is not within the shoreline area, whereas there was a map and the map shows that the property is in the shoreline area. Clear error. Well, conclusions of law or – it's a little trickier because sometimes the facts create the law. So if you made a statement in your conclusions of law that the Special Management Area Rules don't apply to this proceeding. Well, it's an SMA proceeding, they do. The judiciary would look at that and say well you were in error of the law.

An administrative agency's findings of fact will not be set aside on appeal unless they are shown to be clearly erroneous in view of the reliable, probative and substantial evidence on the whole record or the appellant court. Upon a thorough examination of the record, it is left with a definite and firm conviction that a mistake has been made. So the judiciary doesn't replace its discretion with yours. It has to rely on your decision making process. As a general rule and administrative agency's decision within its field of expertise is given a presumption of validity. And one who seeks to overturn the agency's decision bears the heavy burden of making a convincing showing that it is invalid because it is unjust and unreasonable in its consequence. So that's kind of an uphill battle for somebody challenging your decision making process.

Upon review of the record, the Court may affirm the decision of the agency or remand the case with instructions for further proceedings or it may reverse or modify the decision and order if the substantial rights of the petitioners may have been prejudiced because of the administrative findings, conclusions, decisions or orders are, one, in violation of the constitutional or statutory provisions, or in excess of the statutory authority or jurisdiction of the agency, or made upon unlawful procedure, or affected by other error of law, or clearly erroneous in view of the reliable probative and substantial evidence on the whole record, or arbitrary or capricious, or characterized by abuse of discretion, or clearly unwarranted exercise of discretion. So if during a proceeding you hear your attorney speaking on these things, this is kind of where I would be going that, you know, if I'm guiding to a section of the law that we may have overlooked, or that we're making decisions on matters that we didn't get facts on the record, I would probably be asking the Chair to guide the applicant or anybody who's a party to put these facts in the record. Because if we're discussing something that we don't have any record of, no fact and you base your decision on that, the finding would be arbitrary and capricious. So we have to base the decisions on facts.

Things to remember. When dealing with a contested case, you are exercising your adjudicatory function. You must remain impartial and not openly make conclusory remarks until all of the evidence has been received. Your decision must be based on the evidence in the record, avoid any statements that may be mistaken as an attack on someone's race, sex, gender or religion. So it's very important that after you get to your discussion phase is when you start, you know, your candid discussion about your opinion of the project. While you're in your questioning phase, I will warn you about making conclusory remarks about your decision making process if all of the evidence hasn't been discussed yet. If you're talking about drainage and then you're making conclusory remarks based on drainage, and then another portion of the project comes in and you've already made decisions based on other things, it's going to be very difficult during discussion for you to look like you're impartial. And it's not about just look like you're impartial, but it's about your fact finding obligation as to get all the facts first, make your decision later. And you have a packet and you'll have a lot of the information in that packet, but it's the presentation of the application is where the meeting is happening and where you have the ability to ask those hard questions that need to be answered if they're not fully answered in that packet. Is there any

questions about contested cases? I'm going to go into Ethics.

Mr. Mardfin: Chair?

Mr. Hiranaga: Commissioner Mardfin?

Mr. Mardfin: Two quick questions. One you mentioned executive sessions/executive meetings - are minutes taken during them? I remember we've excluded the whole public.

Mr. Giroux: Yeah.

Mr. Mardfin: Do we take minutes?

Mr. Giroux: Yeah, minutes are taken, but they're sealed.

Mr. Mardfin: Are they subpoenaable?

Mr. Giroux: If there's a violation of the sunshine law, they're discoverable. And what that means is that the opposing party would file – first they would file a complaint with Circuit Court. Part of the discovery procedures is that they would file a subpoena duces tecum requiring the Planning Department to submit those minutes to the Court. The Court would review it in . . . (inaudible) . . . and decide whether or not they're discoverable.

Mr. Mardfin: My second question. When you were talking about the MPC Rules 12-201-39, it said all proceedings in which action by the Commission will result in a final determination. What if we're merely recommending to the Council?

Mr. Giroux: Right. And that's an important distinction because remember Danny Dias came forward with matters that would be reviewed by you, you would be giving recommendations, and final action would be taken by Council. In most cases that wouldn't qualify as a contested case. In most cases, your recommendation is not a final action. You're merely transmitting something that is ultimately actually going to be a legislative action, not an agency action, so in most cases if somebody were to appeal that to the Circuit Court, the Circuit Court would say we don't have jurisdiction over this because it's a legislative action. So you have to wait for the legislature to act before you can take this, you know, decision that you don't like to Circuit Court. So it wouldn't fall out under Chapter 91.

Mr. Mardfin: So we wouldn't – if it's an action, where we were just recommending to the Council, it wouldn't be a contested case so much by definition.

Mr. Giroux: Yes, by definition of contested case.

Mr. Mardfin: Thank you.

Mr. Giroux: Anything else? Ethics. This is found – I believe you have something in your packets. The Maui County Charter, Article 10, is referred to as your Code of Ethics. And there's certain prohibitions – accepting gifts, business transaction or activity or have a financial interest in which may tend to impair independence of judgement in the performance of official duty, and failure to

disclose financial interest. So as far as accepting gifts, if anybody – you have to do an analysis on accepting the gift. If something or if somebody gives you a gift, it's not going to ruin your guys Christmas. The idea is that if you receive a gift, the question you should be asking yourself is, is this gift substantial, for one, and is it thought – if somebody were to see me receive this gift or find out about it, would they reasonably think that it was made to impair my judgement or my ability to think independently of executing my job? If you have a question, if somebody does offer you something and we've had hotel invitations, luau invitations, you know, we have to look at everything case by case, and to sometimes use our judgement as to see, you know, what is the purpose of this gift and is it going to be perceived as trying to influence your decision making process? If you do receive a gift or if somebody offers you a gift and you want to talk about it, you can call me. We can talk about it, and if we can't come to some kind of resolution, I would refer you to the Board of Ethics in order to just put that issue aside.

If you are found to be in violation of the Code of Ethics, there could be fine and you could be removed from office. Maui Planning Commission Rules 12-201-25 states wherever a conflict of interest or other ethical question is raised by anyone regarding any member of the Commission, the affected member shall promptly make a full disclosure of the circumstances to the Commission. If the Commission member has a financial interest in any matter that maybe affected by an action of the Commission that member shall be disqualified from voting in all actions relating to such matters. It's been the position of Corporation Counsel that your rules doesn't state that the person cannot participate in the discussion. But it's very important that the disclosure is made before discussion happens. So if you have a feeling or a doubt that, hey, I may have something that can kind of connects me to this project, just disclose it and make everybody aware that that is your position. You know, that your wife is the applicant, or, you know, just throw us a bone, you know. And then, you know, there can be discussion regarding that. And then, you know, I mean, if there's technical issues that arise, I mean, you can still participate in discussion, but you're not going to be allowed to vote.

When in doubt, get an advisory opinion from the Board of Ethics and the reason for that is if any officer obtains an advisory opinion from the board and acts accordingly or acts in accordance with the opinions of the board, the officer shall not be held liable for violating any of the provisions of the article. So that really takes the cloud away, you know. You know your wife is going to be coming forward. She's running a business and she needs to get a permit. That's no fault of anybody, but you just so happened to be on the board that's going to review that permit. Go get an advisory opinion and if they say well it's her business and you're not going to get any gain from it, go ahead and vote. You have that written opinion. And if somebody comes in and says hey that doesn't seem right, why is he voting? He shouldn't vote. Well, you already got the opinion. And if you do vote, you're not going to be held liable for voting. Okay? Any questions?

Case law review. This is just a little something I've put together of some of the major legal issues that have come up within the year. One major thing is takings, and I think you heard Livit talk about how sometimes zoning can look like takings. And sometimes conditions can look like takings so I'm going to go through this. It says the taking clause of the Fifth Amendment of the United States Constitution made applicable to the States through the 14th amendment provide nor shall private property be taken for public use without just compensation. It doesn't say private property can't be taken. It says that it can't be taken without just compensation.

One of the principal purposes of takings clause is to bar government from forcing some people alone to bear the public burdens which in all fairness and justice should be borne by the public as a whole. And this comes out of our reaction to the revolution against the British who seemed to like to just let soldiers stay in civilian homes and then take whatever they want. So that's the protection of your constitution. It says that although the outright taking of an uncompensated permanent public access easement would violate the takings clause. Conditioning appellants rebuilding permit under granting such as easement would be lawful land use regulation if it substantially furthered a government purpose that would justify denial of the permit. And what this seems to be is an exceptions to takings clause. The government's power to forbid particular land uses in order to advance some legitimate police power purpose includes the power to condition such use upon some concession by the owner, even a concession of property rights so long as the condition furthers the same governmental purpose advanced as a justification for prohibiting the use. So what the government could completely take away, they can slowly erode. Anyway, it's a long road guys.

Before you go down that path though, look at the test that needs to be taken. There needs to be analysis, and part of this test is it's – it's called the Nolan Dolan test. The government has to have a legitimate state interest. There has to be a central nexus, and there's got to be a rough proportionality. The rough proportionality in Dolan was stated like this – I'll read it in the record – it says whether the city's findings are constitutionally sufficient to justify the conditions imposed on Dolan's permit, the necessary connection required by the Fifth Amendment is rough proportionality. No precise mathematical calculation is required but the city must make some sort of individualized determination that the required dedication is related both in nature and extent to the proposed development impacts. So you don't have to mathematically or scientifically make that connection, but you have to have that discussion to say what is the development doing, what its impact, and what are we asking the developer to do in order to mitigate that impact. And when you do that analysis it doesn't have to be a one for one. It can be a rough proportionality.

Under your SMA law, your objectives and policies of HRS 205A are examples of a legitimate state interest. It's been codified that Hawaii values its natural resources especially in the coast lined areas. Among the CZMA's stated objectives and policies are the protection, preservation, restoration and improvement of the quality of coastal scenic and open spaced resources, and the designing and locating of new development to minimize the alteration of existing public views to and along the shoreline. Before you deny, outright deny a permit, you have to do an analysis also. And even if a development is shown to have a substantial adverse effect in accordance with the statute, 205, the Commission is required under 205 to determine whether that effect can be practicably minimized, and when minimized is clearly outweighed by the public, health, safety or compelling public interest. The Commission may impose reasonable conditions to achieve that minimization. And this is coming out of the Topliss case and basically what happened on Kauai was that the Commission denied a permit because there was concerns about traffic. They didn't do an analysis. They were just concerned that traffic was horrible in the area, and that this would just cause more traffic. When it went to Supreme Court, the Commission was told that, you know, if it didn't make an analysis as to how this development was not only adding to the traffic, but how the traffic was having an ecological effect on the SMA area that condition would not be seen as – well, the denial would not be seen as a viable denial, and that they would have to go back and make further findings of fact. And that's why when I was talking about contested cases, I was saying it has to be based on fact. Somebody either gets a study, did an observation, made a connection. Okay?

Condition. When you're forming conditions, the Commission can put conditions on the granting of Special Management Area Use Permits as long as the conditions are reasonable and further the policies and objectives of 205A. And those findings should be made during the hearing. The Commission cannot delegate its duties. The Commission must make findings that the development will not violate the policies and objectives of 205A prior to issuance of the SMA permit. And in the Alaloa case what happened was that the Commission basically did not look at the archaeological aspect of the project, instead they granted the permit and told the permittee to further look into the issue, instead of having them look into the issue first, then analyze whether there was an impact on archaeological sites.

The Commission has an affirmative duty to protect cultural resources. The Commission is obligated to protect the reasonable exercise of customarily and traditionally exercised rights of the Hawaiians to the extent feasible. In order to protect cultural resources, developers should be required to retain qualified archaeologist to determine significance of various archaeological sites on lands to be developed and prepare written report regarding preservation or salvage of historical resources and archaeological sites prior to the issue of the SMA permit. In order to protect the reasonable exercise of customarily and traditionally exercised rights of the Hawaiians to the extent feasible, the Commission must make the specific findings and conclusions as to, one, the identity and scope of the valued, culture, historical or natural resources in the area including the extent to which traditional and customary native Hawaiian rights are exercised in the area, to the extent to which those resources including the traditional and customary native Hawaiian right would be affected or impaired by the proposed action, and the feasible action, if any, to be taken by the Commission to reasonably protect native Hawaiian rights if they are found to exist. So that is an analysis that has to happen prior to issuing the permit. Any questions?

Let's see, the other big thing that comes up in front of this Commission is your RLUIPA cases, and that's your Religious Land Use and Institutionalized Persons Act of 2000, codified under Federal Law 42 USCA, Section 2000. RLUIPA prohibits the government from imposing or implementing a land use regulation in a manner that imposes a substantial burden of a religious exercise of a person including a religious assembly or institution, unless the government demonstrates that the imposition of the burden on that person, assembly or institution, (a), is in furtherance of a compelling government interest, and (b), is a least restrictive means of furthering that compelling interest. RLUIPA applies if the substantial burden is imposed in the implementation of the land use regulation or system of land use regulations under which the government makes or is permitted under the law to make individualized assessments of the proposed uses for the property involved. The court determines whether the challenged action involves an individualized land use assessment. And most permits that comes through this board are individualized land use assessment. You're looking at the impacts of each use that's coming in. If it does, the court must then determine whether the action imposes a substantial burden under RLUIPA. A substantial burden, the plaintive in a land use case challenging the denial of a use permit bears the burden of proving that the government's authority denial of the application imposes a substantial burden on its religious practices. A substantial burden must place more than an inconvenience on religious exercise. To impose a substantial burden on a land use regulation must be oppressive to a significantly great extent. That is a substantial burden on religious exercise must impose a significantly great restriction or onus upon such exercise. If the plaintive established that the land use regulation or denial of the use permit imposes a substantial burden, the government authority must then show that the restrictions are narrowly tailored to accomplish a compelling government

interest.

There's several ways that somebody would go forward to complain that you're violating RLUIPA. One is a discrimination. RLUIPA prohibits discrimination. It states no government shall impose or implement a land use regulation in manner that treats a religious assembly or institution on less than equal terms with a non-religious assembly or institution. So if you have a dance class and a church wants to be next to the dance class, both required the same type of permit to do that use in the same area, but you gave the dance class a permit and not the religious assembly, they would say, hey, why the difference? Why are you treating us different?

Exclusion. It says no government shall impose or implement a land use regulation that either totally excludes religious assemblies from a jurisdiction or unreasonably limits religious assemblies, institutions or structure within a jurisdiction. So blatantly saying that you're not going to allow any churches in a jurisdiction would then raise a claim that there's a violation of RLUIPA. Any questions?

Mr. Hiranaga: Commissioner Mardfin?

Mr. Mardfin: One quite quick one, and I should've done this when you asked about questions for SMA because it's under there. Under conditions, you said the Commission can put conditions on the granting of Special Management Area Use Permits as long as the conditions are reasonable and further the policies and objectives of 205A.

Mr. Giroux: Yes.

Mr. Mardfin: In many cases we've dealt with developments, and we're talking about runoff. And I'm not exactly sure, but I think the rule say that you have to mitigate the additional runoff between pre and post development. We've often gone beyond that to ask them to take care of all the runoff, post development. In other words, there was pre runoff and we're often - not always - asking them to take care of that as well as the incremental increase. Are we on shaky grounds on that?

Mr. Giroux: I think what you have to do is you have to individually look at every project because I think that we've gotten, you know, a wide range of scenarios about drainage. And, you know, some of the issues are just, you know, water, fresh water going the ocean. Well, you have to do an analysis on that, in of itself. The other thing is that what is the developer causing? Is he causing additional runoff? So, you got to analyze that. What the developer is doing on his own property, if water is traveling through it, is he degrading the quality of that water? And third, or fourth is if what the developer is doing, is he diverting the water in such a way that is causing harm to the environment. And you have to do a totality of the circumstance analysis because if the water is going somewhere that's not causing an ecological effect, then, you know, have to do that case by case analysis of what is the water doing with the quality of the water, and what's the ecological effect?

Mr. Mardfin: Thank you.

Mr. Hiranaga: Thank you James. Question for Ann. Is Ann here?

Mr. Dack: Ann is not here, but I'll try to answer it.

Mr. Hiranaga: Okay. We have a public hearing scheduled at two o'clock. I'm wondering how much –? I guess you're the last presenter.

Mr. Dack: Actually Tara Miller Owens would be the last presenter on sea level rise. It would take approximately 20 minutes. The Commission could chose to hear that now or you could chose to schedule that some other time. As Commissioners, veterans, are aware there have been a number of presentations being made in the last year or so on SMA sea level, kind of SMA matters. You could also chose to have that presentation as part of a more concentrated session on that kind of subject at some time if you don't want to go 20 minutes into your public hearing period now. You can either continue now or defer hers to some later time.

Mr. Hiranaga: So what you're saying is the last presentation will take 20 minutes.

Mr. Dack: It will 20 minutes, yes.

Mr. Hiranaga: What does the Commission wish to do? Commissioner Wakida?

Ms. Wakida: As he pointed out, there might be other things that come up with this. Perhaps it would be prudent to postpone this if the presenter doesn't mind.

Ms. Owens: I'm flexible. Whatever best fits your agenda.

Mr. Hiranaga: Okay, so if there's no objection, we can defer the balance of the presentation to another meeting. Commissioner Shibuya?

Mr. Shibuya: I was wanting to see if Clayton was around and then we could see if we could defer it to another date. He schedules many of our activities so I'm just concerned that we may be pushing the –

Mr. Hiranaga: Or we could defer this matter to the end of the meeting and bring it back to the floor when Clayton is here if there's no objection.

Mr. Shibuya: Okay. Thank you.

Mr. Hiranaga: Thank you.

Mr. Mardfin: Mr. Chairman I think you need a vote if you're changing the agenda by putting it to the end of the meeting. And I'd be happy to move to do so.

Mr. Hiranaga: Sure.

Mr. Mardfin: I move that we move the rest of the orientation to the end of today's agenda to deal with it if possible.

Mr. Freitas: Second.

Mr. Hiranaga: Any discussion? No discussion. All in favor say aye.

Commission Members: "Aye."

Mr. Hiranaga: Thank you. Motion carried.

It was moved by Mr. Ward Mardfin, seconded by Mr. Jack Freitas, then unanimously

VOTED: to move the rest of the orientation to the end of today's agenda to deal with it if possible.

Planners and Corporation Counsel presented power point presentations on the above items. Due to the time constraints the presentation by Sea Grant Manager, Tara Miller on sea level rise was deferred to the May 10, 2011 agenda at 1:00 p.m.

E. DIRECTOR'S REPORT

- 1. EA/EIS Report**
- 2. SMA Minor Permit Report**
- 3. SMA Exemptions Report**

Mr. Hiranaga: Returning to the agenda, item-E, Director's Report.

Mr. Spence: Okay Commissioners, in your packet with the chartreuse colored paper you have your Minor Projects, SMA Minor Report. If there was any questions on any of those, we'd be happy to provide a little bit more information. I'm sorry, the Commission rules say that the Director will provide the Commission a report on what SMA Minors were granted during, you know, since the last meeting, and a lot of times the Commission will acknowledge receipt of that report. So what we do is we provide the Commissioners with a list. Sometimes there's questions. You know, maybe the description wasn't sufficient, whatever the case may be, and the different Commissioners may have questions on it on the individual permits and we go and try to find that information before the end of the meeting. And then the Commission acknowledges receipt and we're good to go. There's also a lot of other information on this – on exempted projects, assessments, et cetera.

Mr. Ball: This is FYI then basically?

Mr. Spence: Pretty much.

Mr. Ball: . . . (inaudible) . . .

Mr. Spence: Pretty much. And sometimes – yeah, you'll get this with every packet and the Commissions –. When you receive your packet in the mail, Commissioners will a lot of times, they'll call in or e-mail in, to say Clayton, and just say hey what was this permit about. Sometimes, you

know, these are computer generated, and so sometimes it will say Royal Kahana, Royal Kahana, Royal Kahana all the way across without any kind of meaningful description, so you don't even know what it's about. So Commissioners will ask, well, what was this about? Did you replace, you know, the bags, you know, the sand bags in front of the resort or something like that.

Mr. Hiranaga: Commissioner Mardfin?

Mr. Mardfin: I'd just like to add to that, that the urgency of a sort is on the first two pages of SMA Minor approved and SMA Exempted approved because after this meeting you won't see them again, and there's a time limit. If one wants to object to something, we've got to do it right away. So the Open Permits in Shoreline and Open SMA Assessments can drag on there for a long, long time, so there's maybe a little less urgency, but it's useful to check it out.

Mr. Spence: Correct. There's, I believe, a 10 day, 10 business day window. If somebody –. It's hard for the general public to see this list until, you know, the list is published for the Commission, and so someone in the public may go, well, wait a second, this isn't right. You know, they shouldn't have gotten a permit. It should have been a major permit or something like that. So they'll come in and, you know, this list is providing the public notification that there was an SMA Minor Permit or an Exemption granted, and a member of the public would then have 10 days to appeal that, appeal the Director's decision to issue a Minor Permit. And we've seen a few of those, and they're going through the process.

Mr. Hiranaga: Are there any questions from the Commissioners regarding the report? Commissioner Shibuya?

Mr. Shibuya: I just wanted to know the criteria that the agency is taking in terms of placing this on minor. When a specific one included 108 acres of agricultural land in Waihee and it was to be subdivided and it did not have any structures, so therefore it did not have any need for permitting. I was just wondering what the criteria would be in terms of three large subdivision lots, agriculture, and a portion that is part of the State conservation district. How do we get to judge this whether it's minor or major, and whether what criteria that we use maybe?

Mr. Hiranaga: Can I just interject? Do you want a specific answer for this specific SMA application or you want a general comment from the Director?

Mr. Shibuya: At this point, a general comment.

Mr. Spence: When somebody brings an application into the department, staff takes a look at it, and compares it to what is outlined in Chapter 205A of Hawaii Revised Statutes and the definitions of what is or is not a development. If the determination is then if something is a development, is there a major impact? Or is it over \$125,000? And you know, if it is a development, if it's under \$125,000 or there's no substantial environmental effect, you know, we can go ahead and issue an SMA Minor. I mean I don't know the specifics of that particular project, but, you know, when staff takes a look at these things, they really are looking out is there going to be some kind of effect on the environment? And if there is, you know, a possibility of some kind of impact, they will either put conditions on the permit to mitigate those things, or they will, you know, I think you heard Jim Buika say in one or two cases we bumped it up to an SMA Major Permit. So does that answers –?

Mr. Shibuya: Well, it gives me some idea. The specific one that I'm looking at is the SMX 2010/0006 and it's a Betsill Brothers Construction, RDD, LLC, three lot subdivision shoreline Waihee. The interesting part about it is they're not constructing anything, and they're not asking for any permits, they just want to subdivide.

Mr. Spence: That's correct.

Mr. Shibuya: And so it could be minor in this respect, but then later on if they were to turn around and say okay now that we have it subdivided I now want to take one of these subdivisions and I want to subdivide it further. Now it becomes a cumulative type of effect, and to me it becomes a major thing at this point. But anyway.

Mr. Hiranaga: Commissioner Shibuya, did you want to make a formal request for an explanation?

Mr. Shibuya: Yeah, I would like to make a formal request.

Mr. Hiranaga: So noted.

Mr. Shibuya: So maybe it's something that our procedures don't allow for these things. It does allow for the review, but it doesn't have it revealed in more detail to us other than just Betsill Brothers Construction three lot subdivision shoreline – not even shoreline Waihee.

Mr. Spence: Okay, we'll get you additional. I think there are provisions in the law that say you can only do this once – consolidate, re-subdivide – and then if there's further subdivision then it's no longer exempted, so we'll find you details on all that.

Mr. Shibuya: Okay thank you.

Mr. Hiranaga: Any other questions regarding the report? Seeing none, we'll move on to the next agenda item, F, public hearings. Director? And I guess once you've read the agenda item, maybe you could explain for the benefit of the two new Commissioners, what basically this action involves.

Mr. Shibuya wants further information on how the Department arrived at their determination regarding 3-lot subdivisions.

The Commission had no further questions or concerns regarding the SMA Minor and SMA Exemption Reports.

F. PUBLIC HEARINGS (Action to be taken after each public hearing.) (To begin at 2:00 p.m. or soon thereafter.)

- 1. HMC KEA LANI LP requesting a Special Management Area Use Permit for the proposed Ko Restaurant Upgrades at the Fairmont Kea Lani Resort with the installation of a new roof structure and new restaurant furniture, fixtures, and equipment at 4100 Wailea Alanui Drive, TMK: 2-1-023: 003, Wailea, Island of Maui. (SM1 2010/0007) (C. Thackerson)**

The proposed improvements consist of a 4,630 square foot decorative roof structure, four (4) primary and five (5) secondary support columns, and new restaurant furniture, fixtures, and equipment.

Mr. Spence: Thank you Mr. Chairman. We are on Item-F, Public Hearings. We have one public hearing item for the Commission today. Normally what we do with public hearing items, in this case, you know, we were just talking about SMA Exemptions. This is an SMA Major Permit and it's required by your rules and by law to hold a public hearing. And in this case, what this is, they're doing a remodel of an existing – and I'll let Candace explain – so basically they're doing a remodel of an existing restaurant, and because it's – she'll explain why it surpasses the thresholds and tips it over into an SMA Major. We normally we do is first the – we'll have the staff planner present a report, perhaps a powerpoint. We'll have the applicant come forward and maybe do another power point and discuss the item with the Commission. The Chair will open it up to question by the Commission. And then we'll take public testimony. You know, we'll actually conduct the actual public hearing, opening up testimony, then closing it when pau. And we'll go into other questions and then decision making. So that's normally the process. There can be other circumstances in which we vary from that one way or another. So, without further adieu we have Ms. Candace Thackerson to present the project to the Commission.

Ms. Candace Thackerson: Good afternoon Commissioners. Congratulations to Chair Hiranaga and Vice-Chair Shibuya, and a warm welcome to Commissioner Ball and Commissioner Lay. This item is under your review because the Fairmont Kea Lani Resort is located within the Special Management Area requiring a review of the project under HRS 205. Although the parcel is located along the shoreline, the action does not trigger compliance with HRS Chapter 343 since the proposed action takes place over 700 feet from the shoreline which is well outside the 150 foot shoreline setback area. The parcel is State Land Use District Urban, and both the Community Plan designation and County Zoning are Hotel. The proposed action includes renovations and upgrades to the existing Ko Restaurant within the resort. This includes a new decorative roof structure of approximately 4,620 square feet, four primary structural columns, five secondary support columns, along with upgraded restaurant furniture, fixtures, lighting and equipment. The size and seating capacity of the restaurant will not change. I will now introduce project planner Mark Roy from Munekiyo & Hiraga who will better describe the project in detail.

Mr. Mark Roy: Thank you Candace. Good morning members of the Maui Planning Commission. I'd also like to extend a warm welcome to both Commissioner Ball and Commissioner Lay - welcome. And also our congratulations to the newly elected Chair and Vice-Chair. My name is Mark Roy. I'm with Munekiyo & Hiraga. And I'm here before you today representing the owner of the Fairmont Kea Lani Resort in Wailea.

Though the Kea Lani property is about 21 acres in area, the project before the Commission today as Candace noted is limited in scope to some work that is being proposed to upgrade existing Ko Restaurant facility located in the myths of the resort itself. Now joining me today and present in the audience behind me are members of the project team for this particular project. We have Cynthia Gartner who is the project manager from Group Pacific Inc, and we have Roger Gagon who is the project designer with Island Design Center. We have Stacy Otomo, civil engineer, with Otomo Engineering Inc, and Ms. Karen Hagberg who is the restaurant manager over at the Ko Restaurant at the Fairmont Kea Lani.

The Kea Lani, the Fairmont Kea Lani, is one of the top rated resorts on the island of Maui with 450 one-bedroom hotel rooms, and 37 two- and three- bedroom villas. Again, it's a 21 acre property that is located along the shoreline in the Wailea resort just south of the Shops of Wailea and adjacent to Polo Beach. Surrounding land uses – go to the next slide – briefly includes to the north, there's the Wailea Point Luxury Condominiums, to the east is Wailea Old Blue golf course, to the south is Polo Beach Park – Polo Beach Club Condominiums and also various single-family residences towards Palauea Beach. And of course, up to the west is Polo Beach and of course, the Pacific Ocean.

The Ko Restaurant is an outdoor dining establishment located in the heart of the resort. The restaurant itself comprises approximately half a percent of the land area available within the Kea Lani property. The restaurant is surrounded on three sides by the guest room towers of the resort. It is nestled on the ground floor between a cafeteria called Café Ciao, the southern most swimming pool area, and a landscaped courtyard area. Restaurant Ko is located, as staff noted, approximately 700 feet away from the nearest area of coastline, and as such, cannot be viewed from either Polo Beach or the public boardwalk that traverses the shoreline throughout the Wailea area.

I apologize for the appearance of this slide, but I'll do my best just to go through it for the Commission. Restaurant Ko draws inspiration from its name and that it offers cuisine reflective of the many cultures of Hawaii sugarcane plantation era. The menu therefore features dishes from the Hawaiian, Chinese, Filipino, Portuguese, Korean and also Japanese heritages. This plan shows the existing configuration of the outdoor dining space which is previously mentioned, sits on the ground floor of the resort between a covered walkway that runs along the existing guest room tower. Uses located on the inside of the walkway, the top of the slide, includes a fitness center, Café Ciao and a retail space. A staircase and planter area is on the left side of this slide, provide a transition –provide a transition from the pool deck into the restaurant space. There is also a landscaped courtyard area situated on the south side of the Ko Restaurant. This is the right hand side of this slide. So just to briefly summarize the very vague gray footprint that you see here is the existing footprint of the Ko Restaurant. And the main guest room tower building is located at the top of this slide here. And that walkway that I mentioned that separates the outdoor seating area from these other uses within the main guestroom building is located along here. The swimming pool is off to the bottom left hand side of this slide, and the landscaped courtyard area is located off to the bottom right of this slide.

A staircase and planter area provides a transition from the pool deck up into the restaurant space. The existing space consists of an uncovered concrete slab floor interspersed with 16 Hong Kong orchid trees. Guests eating and tables are located throughout the space in between these trees. In addition, there are also bars, a pizza oven, a wine room and a storage area. Food dishes are prepared in a kitchen in the main resort building itself, and is delivered to the guests seated in the outdoor seating area by waiters. I'd like to note at this point the seating capacity of the restaurant will remain the same following completion of this particular upgrade project.

The next few slides are intended just to give a ground level perspective of the existing restaurant space itself. The first is looking at the existing restaurant space, and off to the left hand side is the existing bar area. Here you can see the Hong Kong orchid trees interspersed throughout the area. This is a shot of one of the existing bars, and again, in the background, you can see the walkway

area that I mentioned previously. This is looking from the outdoor seating area back into the walkway. And the double doors that you see here is in the Café Ciao that is a coffee shop area providing cafeteria like services to the guests. This is a shot looking from the walkway into the outdoor seating area space at the Ko Restaurant. Again, of note, of the Hong Kong orchid trees and the existing concrete slab that is provided within this area, and the seating interspersed throughout. This is a shot looking down into the existing swimming pool area from the Ko Restaurant space. And this is from the swimming pool area looking back up that staircase back into the existing Ko Restaurant space.

The resort in the SMA application that's before the Commission today is proposing to upgrade the existing facility to meet expectations of guests and to address a number functional issues currently being experienced during day to day operations at the restaurant. The first is weather. The existing restaurant space is unprotected and is currently exposed to the elements. The current configuration therefore presents a number of operational limitations as the restaurant is subject to closure during adverse weather conditions such as rain and high winds. This affects both guests experiences and the ability for the restaurant to succeed in the highly competitive Wailea restaurant environment. The second issue is one of hygiene. Now the ability to up hold a high standard of food hygiene is fundamental to the sustained performance of any restaurant operation. The Hong Kong orchid trees that I mentioned earlier are interspersed throughout the existing outdoor seating area, and they tend to create a high volume of leaf litter on a regular bases that also attract birds which of course presents some degree of nuisance and sanitation concerns that affect the overall guest experience. A third and final functional issue is summarized on this slide that's being addressed by the project is safety. Insuring the safety of both guests and employees alike at the resort is of course a paramount importance to the day to day management of resort operations. In addition to the present restaurant space being none ADA compliant, there are a number of places where the uplifting of the existing concrete slab floor by tree roots is compromising both the safe movements of guests and the delivery of food and drinks to the various tables throughout the area.

In an effort to meet evolving guest expectations at the resort, and to address the functional issues that I just mentioned, the resort is proposing to enclose the existing space through a construction of a new, approximately 4,600 square foot roof structure which will be constructed using a total of nine support columns. The existing concrete slab floor will be repaired as part of the project which will involve removal of the Hong Kong orchid trees. Every effort will be made by the resort to preserve the root up of these trees so that they can be made available for reuse. Following the completion of the slab repairs, interior flooring will also be installed throughout the restaurant space. A number of interior upgrades will then be undertaken within the existing restaurant which will include the removal and replacement of furniture, fixtures and restaurant equipment. Work will also be undertaken to convert the restaurant into an ADA compliant facility. I think I mentioned earlier there will be no change in the seating capacity of Restaurant Ko with completion of these upgrades, nor will there be any new exterior lighting or landscaping installed as part of the project.

During the design phase, the plans for the project have been presented to the Wailea Community Association and have received approval from this particular entity. The County's Urban Design Review Board has also reviewed and has recommended approval of the project plans. This occurred in December last year and was conducted during or as part of the SMA Permit application process for this project. Copies of both these design approval letters, I believe, have been included

in the staff report, which Commissioners, I think, have a copy of today.

This next slide essentially shows what the floor layouts of the upgraded restaurant space will look like following completion of the project. I'd like to draw the Commission's attention mainly to the repositioning of the restaurant seating around a new central bar feature here, and the shelter that would be provided by the roof structure. The outer edge, of which, is actually delineated on this slide by a red dashed line. And I'll just follow that red dashed line with my laser point so that it is clear to the Commission.

I'd like to conclude with our presentation today with some 3-D perspectives of the new restaurant and roof structure. These have been taken from various angles around the existing restaurant space to give the Commissioners an idea of what the project will ultimately look like when completed. This first slide is a ground level shot of the upgraded restaurant space taken from the swimming pool area. Now the next couple of shots, the first one here, are taken looking down on the proposed roof structure from the resort's grounds. The first one, here, is that you're looking from the courtyard area to the south of the restaurant space. And the next again is kind of hovering above the existing swimming at the resort, looking down on the new roof structure and the renovated restaurant space below. Thank you for allowing us to be before you today. I'd like to close now by saying that we are of course available to answer any questions that the members may have during this afternoon's review of the SMA Permit application for this particular upgrade project. Thank you very much.

Mr. Hiranaga: Thank you. At this time I'd like to open the public hearing. Is there anyone here that wishes to provide testimony? Please come forward. Seeing none, the public hearing is closed. At this time I'd like to open the floor to the Commissioners for questions to the applicant or to staff. Commissioner Mardfin?

Mr. Mardfin: I'll start us off and this is probably to the applicant. Your hydrology report you said that there's zero change in runoff and yet I saw on your photograph where the trees are has some squares that seemed to have land on them, those will now be covered. So I'll grant you it might be very small, but water that is currently hitting there is going into the ground and then being reabsorbed by the trees I would imagine. Is it just that the numbers are too small to make no difference or is something amiss? Because when it hits the roof, it will be there.

Mr. Roy: Just to clarify Commissioner Mardfin's question. I believe you're referring to the holes around the base of each of the Hong Kong orchid trees that are interspersed throughout the existing area?

Mr. Mardfin: Correct. And they look pretty small I'll grant you, but zero change struck me as a little strange.

Mr. Roy: Sure. Well, we have with us today as I mentioned Stacy Otomo who is the civil engineer on the project. He actually put together a preliminary drainage report as part of the SMA application for this project, so if it's okay I'd like to invite Stacy up to the podium to answer that question.

Mr. Mardfin: Please.

Mr. Stacy Otomo: Good afternoon Chair Hiranaga – congratulations – and the Planning Commission. My name is Stacy Otomo. To answer your question Commissioner Mardfin, when we do runoff calculations, you are correct, the area that you see per tree is like a two foot by two foot square. We ultimately convert that into acre so when you look at four square feet in terms of that acre it's very little.

Mr. Mardfin: So it's not zero, but it's negligible.

Mr. Otomo: Negligible.

Mr. Mardfin: Thank you.

Mr. Hiranaga: Commissioner Wakida?

Ms. Wakida: Yes. Hello, Mr. Otomo.

Mr. Otomo: Good afternoon.

Ms. Wakida: I suppose I should disclose that Mr. Otomo is a former student. It never occurred to me, but maybe I don't need to keep revealing my age here. You are looking for remodeling. This might be a little off topic, but I'd like a clarification on the drainage because it said in a couple of places in the document. You say runoff is collected by the onsite drainage system, eventually discharges through a 36 inch drain line and head wall near the westerly makai boundary of the parcel. Could you elaborate on this discharge, where this 36 inch drain line ends up?

Mr. Otomo: Right now what's happening is the project area is right here. There's drainage throughout the property that comes out. The head wall that we're referring to is located right in this area, and that drains basically the whole entire hotel property. And it comes out through a 36 inch pipe and it gets into a GRP line channel with energy dissipater, so it's not a single pipe coming out, you know, with a full force of water. They dissipates the energy and it's in about a 15 foot wide GRP apron where it kinds of spreads the water and mitigates the velocity on the property, then it sheet flows across to the shore.

Ms. Wakida: So then it just empties out into the ocean?

Mr. Otomo: That's correct.

Ms. Wakida: So there aren't any retention or areas or leech fields or anything on the property to take care of some of that runoff?

Mr. Otomo: I tried locating the original drainage report for the hotel. I was not able to find one. But in walking the area, you know, it's fully landscaped grass or landscaped. So in terms of, you know, debris and that kind of things getting out there, even at the outlet area, it looked fairly clean. But I was not able to locate any kind of detention basins or any kind of features such as those.

Ms. Wakida: Okay, thank you.

Mr. Hiranaga: Commissioner Mardfin?

Mr. Mardfin: This won't be for you, Stacy, I don't think. You mentioned on page eight that the Hong Kong orchid trees are going to be removed and it says available for reuse. Is that reuse by the hotel, or reuse by outside groups, or how do you plan to do that?

Ms. Thackerson: Would the applicant like to answer that?

Mr. Hiranaga: Please identify yourself.

Ms. Cynthia Gartner: My name is Cynthia Gartner. I'm with Group Pacific Hawaii. We represent the ownership for the property. And to answer your question, we have every intent to try – we aren't going to reuse it on the property, but we do want to make it available to anybody who has interest. That's why we're making the effort to preserve them when we remove them, but we don't have use for it on the property. So we are going to publicize it, first internally to see if any of the employees might want it. Then if not, then put it out to outside organization or the community.

Mr. Mardfin: And kind of a related – if I may – kind of a related issue, you're not going to have it, with the roof on it, you're not going to have any growing plants at all in the restaurant area, are you?

Ms. Gartner: No there might be some potted plant here and there.

Mr. Mardfin: Okay.

Ms. Gartner: Sorry, Roger's the designer, but they'd be more decorative. There's nothing permanent.

Mr. Mardfin: Thank you.

Ms. Gartner: Sure.

Mr. Hiranaga: Commissioner Shibuya?

Mr. Shibuya: Since we have the hotel representative here, I'm just curious in 1988 employee housing program was implemented and is it operating today and how many employees are participating?

Ms. Karen Hagberg: I'm Karen Hagberg, the restaurant manager. I'm actually not familiar with the housing that you're referring to, but probably I don't think we are utilizing that. I'm not familiar with that. I don't know. I came to the hotel four years ago, so I was not here in 1988.

Mr. Shibuya: I guess it was way back when work force was a concern and that transportation was another concern. But then they would have this housing available for the workers onsite, and I was just curious and if you have information, could you pass it on to Candace please.

Ms. Hagberg: Yeah, currently we do not have an onsite housing.

Mr. Hiranaga: Commissioner Shibuya?

Mr. Shibuya: Another issue would be the gray water. I understand you do laundry onsite and you do recycle or reuse your gray water.

Ms. Hagberg: We do. Yeah, about 70% of the water that we go through is recycled.

Mr. Shibuya: And it's for the landscaping.

Ms. Hagberg: Yes, landscaping just recycled to save the water.

Mr. Shibuya: Yeah, I certainly appreciate that.

Ms. Hagberg: Yeah.

Mr. Shibuya: Thank you.

Ms. Hagberg: Thank you.

Mr. Shibuya: And any renewable energy type of initiatives are you having there? This is conserving water resource. How about electricity?

Ms. Hagberg: We haven't. We've been looking into some solar systems, that's like compact. We've never . . . (inaudible) . . . anything. One of the big projects that we do that we did implement – it's been almost a year now – in the suites, we have our A/C systems hooked up to our reservation systems. Those are motioned sensors. So when guests leave the room, the A/C is turned off, and they will also turn on when they check in. But for renewable energy that's our big one, saving on A/C units.

Mr. Shibuya: Thank you.

Ms. Hagberg: You're welcome.

Mr. Hiranaga: Commissioner Mardfin?

Mr. Mardfin: I think it's probably for you.

Ms. Hagberg: Okay.

Mr. Mardfin: On page 17 of this document it's talking about water and that it says addition copies of the document entitled *A Checklist of Water Conservation Ideas for Restaurants* will be provided to the Food and Beverage Manager. I'm kind of surprised it hasn't already been.

Ms. Hagberg: . . . (inaudible) . . .

Mr. Mardfin: It has already been? Okay. That takes care of my issue there.

Mr. Hiranaga: Any other questions for the applicant? Commissioner Mardfin?

Mr. Mardfin: My biggy is always Hawaiian burials and I see that you've contacted – on page 16 your refer to it and also in exhibit 16. And on page 16 you say SHPD has been recommended archaeological monitoring be conducted as mitigation against potential harm, that the archaeological monitoring plan that was prepared in 1989 be updated with a monitoring plan that follows it, and you've got to have the monitoring plan prior to ground breaking. Is there any reason it hasn't already been done?

Mr. Roy: The archaeological monitoring plan – to answer that question – has been prepared. It has been completed. What State Historic Preservation Division by virtue of this comment letter and you'll see it's dated March 7, 2011, they require that the older archaeological monitoring plan that was formulated during the actual development of the resort be updated to today's current standards. So between March and today's date, the applicant has been working with a private archaeologist to update that archaeological monitoring plan. My understanding is it has been submitted to SHPD and is currently under review. So prior to any construction going forward, any ground alternating activities going forward on this project, that plan will be approved, and during construction, will be implemented.

Mr. Mardfin: Okay because it's clear from the burials you did find that this area is rich in burials.

Ms. Gartner: . . . (inaudible) . . .

Mr. Hiranaga: Ma'am you need to come up to the microphone, and again identify – please identify yourself again. Thank you.

Ms. Gartner: Cynthia Gartner again. Group Pacific. I just wanted to add that was just submitted this past Tuesday so we have a stamped receipt for that and it's excepted to review and approval will be about 30 days.

Mr. Mardfin: Thank you very much.

Ms. Gartner: So we don't plan to start the construction until later in year.

Mr. Mardfin: Thank you very much.

Mr. Hiranaga: Any additional questions from the Commission? Seeing none, we are ready for the staff report – our recommendation.

Ms. Thackerson: The Planning Department recommends approval based upon the 17 conditions as listed in the report. And Commissioner Mardfin, one of the conditions is that the applicant will get review and approval from SHPD prior to any ground altering activities or any building permits. Okay. In consideration of the foregoing the Planning Department recommends that the Maui Planning Commission adopts the Planning Department's report and recommendation prepared for the April 12th, 2011 meeting as its Findings of Fact, Conclusions of Law, Decision and Order, and to authorize the Director of Planning to transmit said written decision and order on behalf of the Planning Commission.

Mr. Hiranaga: Thank you. I'll open the floor to a motion.

Mr. Freitas: I move that –

Mr. Hiranaga: Commissioner Freitas.

Mr. Freitas: I move that we accept the Planning Commission's recommendation to approve.

Mr. Ball: Second.

Mr. Hiranaga: Second by –. Moved by Commissioner Freitas, second by Commissioner Ball. Discussion? Commissioner Shibuya?

Mr. Shibuya: I'd like to make a friendly amendment that we have a project specific condition to include recommending the inclusion of renewable energy power systems or power generating systems. It's just a recommendation.

Mr. Hiranaga: Is there a second?

Mr. Mardfin: Second.

Mr. Hiranaga: Discussion on the amendment? Commissioner Shibuya?

Mr. Shibuya: I would to encourage them to consider some cost avoidance type of investment in which photo voltaic or some means of generating renewable energy would be in their own benefit, but they should consider it.

Mr. Hiranaga: Commissioner Shibuya, could I ask you to restate your amendment please?

Mr. Shibuya: The friendly amendment would be that we recommend that they include a renewable energy generation system.

Ms. Thackerson: The applicant would like to respond to that if that's okay.

Mr. Shibuya: Sure.

Mr. Roy: Thanks Candace. In response to Commissioner Shibuya's proposed amendment, I just wanted to give a response from the standpoint of the applicant. There's been extensive work on this project. Obviously as the Commission has heard the resort is very cognizant of the need to be sustainable in its operations and has implemented a number of initiatives in recent years. And recently actually, in 2010, I think, it was recognized as a State green business and received an award on that basis. They have looked into the possibility of incorporating alternative energy systems on the roof of this particular structure. There are however a couple of limitations and that's the reason why these systems are not currently proposed in the plans that the Commission has before them today. The first is one of shading that is actually cast over the location of the Ko Restaurant. Given that you've got a high guest room building on kind of three of the sides of the existing restaurant space that obviously compromises the efficiency of these kinds of systems.

Second, as I'm sure the Commission can appreciate the Fairmont Kea Lani has to recognize guest's expectations. The building next to the restaurant space is obviously a guest building, and there's also a lobby on the first floor where people can look out towards the ocean. So both from an efficiency standpoint and one from, you know, guests probably not wanting to look at equipment latched on to the roof of the restaurant, the resort has decided not to go forward with incorporating these kinds of systems.

Mr. Shibuya: Understand, and I wasn't making a requirement. I make a recommendation that they could consider putting it on top of the hotel, not on the restaurant roof.

Mr. Hiranaga: Okay. Commissioner Shibuya, might I suggest the word encourage might be a better word than recommend.

Mr. Shibuya: Okay. Encourage. I stand corrected on that. We can replace the word recommend to encourage.

Mr. Hiranaga: Secondary of the amendment agreeable?

Mr. Mardfin: I'm fine with that, and also with the understanding that these wouldn't have to be on the restaurant roof. It could be on the hotel roof at some point.

Mr. Hiranaga: Okay, I'll call for the question. All in favor of the amendment please so indicate by raising your right hand.

Mr. Spence: Four in favor. Motion fails.

Mr. Hiranaga: Motion fails.

Mr. Mardfin: The Chair didn't vote.

Mr. Hiranaga: I'm not voting in favor of it.

Mr. Mardfin: Then it's a vote against it.

Mr. Hiranaga: Is there any other amendments that wish to be offered? If not, I'll call the main motion. All those in favor of the motion to approve as recommended by staff please so indicate by raising your hand.

Mr. Spence: That's seven ayes. Motion is carried.

Mr. Hiranaga: Thank you.

Ms. Thackerson: Thank you.

It was moved by Mr. Freitas, seconded by Mr. Ball, then

VOTED: To Approve the Special Management Area Use Permit, as

Recommended.

**(Assenting - J. Freitas, K. Ball, W. Mardfin, I. Lay, D. Domingo,
W. Shibuya, P. Wakida)**

(Excused - L. Sablas)

G. UNFINISHED BUSINESS

- 1. PAUWELA FARMS, LLC requesting a State Land Use Reclassification from the State Agricultural District to the State Rural District and a Change in Zoning from the Interim District to the RU0.5- Rural District for the proposed Pauwela 4-Lot Subdivision (0.5 acre minimum lot size) on approximately 4.71 acres of land at 125 Pauwela Road, TMK: 2-7-008: 047, Haiku, Island of Maui. (DBA 2009/0003) (CIZ 2009/0005) (D. Dias) (Public hearing conducted on March 22, 2011.)**

Mr. Hiranaga: Next agenda item is item-G, Unfinished Business. Director?

Mr. Spence: Commissioners, this is, as the Chair stated, this is Pauwela Farms LLC requesting State Land Use Reclassification from the State Ag to State Rural and Change in Zoning from the Interim District to Half Acre Rural District. Our staff planner –. We conducted the public hearing last time, but – you know, this is deferred from our last meeting. Danny Dias is the staff planner and take it away.

Mr. Dias: Thank you Director.

Mr. Hiranaga: Before you start Danny, Director, could you just give a brief explanation for the benefit of the two Commissioners what we are addressing at this time?

Mr. Spence: The applicant has requested Change in Zoning, Change in District Boundary Amendment from State Ag to Rural. That they were going to seek a State Ag to State Urban, and R3-Residential, but in the spirit of compromise they have instead requested a State District Boundary Amendment to State Rural, and Rural zoning instead for a lower density. And we never got to decision meeting at the last meeting, so we're just continuing.

Mr. Ball: We received the audio of that meeting.

Mr. Hiranaga: At this time for the benefit of the two new Commissioners, I did disclose previously that I did represent the applicant in the purchase of this property several years ago. So in order to remove any perception of bias, I'm going to yield the Chairmanship to Vice-Chair Shibuya for this particular application. Mr. Vice-Chair, I also would like to state that I made this disclosure, but I do not intend to recuse myself from the proceeding.

Mr. Shibuya: Understand.

Mr. Hiranaga: Thank you.

Mr. Shibuya: Members of the Commission, are there any objections to this change in leadership?

Now we can say something. I'll let somebody else. Thank you. We're going to open. Danny, would you briefly summarize the action and we'll go from there?

Mr. Dias: Okay. Thanks Vice-Chair Shibuya. As Director Spence stated this is basically a continuation from the last meeting. This project has been before the Commission twice already. This would be the third time. And just for the newer members, we did send you a package of the report, testimony that we received along with tapes of what happened at those meetings, so I think you folks are well up to speed. With that, I'll just hand it over to the applicant for their presentation.

Mr. Shibuya: Applicant will you please state your name and your association?

Ms. Jennifer Mayden: Yes, good afternoon. I'm Jennifer Mayden with Chris Hart & Partners. Good afternoon Chair, Commissioners, and new Chairperson. Also here today we have Chris Hart & Partners, Chris Hart, Glenn Tadaki and our civil engineer, Kirk Tanaka, as well as the applicant, Hiro Nakagima, and his wife Julia and their children are outside.

Okay, first I'd like to start with some background information on the project. As Danny mentioned the original request for a District Boundary Amendment from Ag to Urban, and Change in Zoning from Interim to R3-Residential was submitted to the Planning Department on October 2, 2009. This request was largely driven by the single-family residential use that was established in the Paia-Haiku Community Plan for this site. On September 14, 2010, the Maui Planning Commission reviewed the request and deferred the action to allow the applicant to amend the request for District Boundary Amendment from Ag to Rural, and Change in Zoning from Interim to Rural half-acre based on the changes in the subdivision ordinance that allowed for land use consistency rather than strict conformity. When compared to the original request for R3-Zoning the revised request for Rural half-acre reflected a significant decrease in land use density and intensity. On October 11, 2010, the Planning Department asked the agencies who originally reviewed the original request to review the revised request. Also, on February 8, 2011, a community information meeting was held at Haiku School, and about 10 members of the public attended. And on March 22, 2011, due to time constraints the Commission deferred action on the applicant's request. And I'd also like to note that the proposed project has received positive public testimony and letters of support from 21 neighbors within 500 feet of the site.

The subject parcel lies within the State Agricultural District, in the County's Interim Zoning District. The parcel is designated for single-family residential use by the Paia-Haiku Community Plan. In 1992, a 13 member citizen advisory committee met 21 times to update the 1983 community plan and create a planning document to guide the area through 2010. The parcel lies within the directed growth boundary for the Haiku area as set forth in the proposed Maui Island Plan. In determining the boundaries for future growth projections through 2030, the availability of infrastructure and services and environmental constraints, and approximate density and land development were taken into account. The parcel lies in an area of existing development. The Haiku Elementary School, Haiku Community School, and Hale Piliialoha Subdivision lie within the vicinity of the site. Preliminary subdivision approval was granted, for the four lot subdivision, was granted in March 2009. An existing single-family dwelling is located on the site. Various agricultural crops are being cultivated. And on February 25, 2011, Public Works indicated that the proposed subdivision will comply with Section 18.04.03 Maui County Code regarding subdivision consistency if the applicant's amended request is granted, and a unilateral agreement is included with permitted

uses is completed.

This is an aerial of the site. This is Hana Highway, the project site, and basically Paluwela Road right there. Haiku School, Haiku Community Center, Hale Pili'aloa Subdivision, and the project site is about a half mile north of Haiku town. This is another aerial of the project site, again, depicting the character of the general area. The project site, Hana Highway, Pauwela Road, and you can see the existing development in the region. Some site photographs. The top photograph is the subject parcel facing – this is the view facing north. You can see Haiku Elementary School in the background. The picture on the left is Pauwela Road fronting the subject property facing north. And the third picture is the subject property facing east.

A description of the proposed project includes the subdivision of the site into four rural zoned lots ranging in size from about half acre to just over three acres. There also will be a road widening lot. The applicant is requesting a Land Use District Boundary Amendment from Ag to Rural, and Change in Zoning from Interim to Rural half-acre to establish the appropriate State and County land use designations for the project. The project is a lot only subdivision and does not include homes, building pads, driveways, water catchment systems, individual waste water systems, site work, or landscape planting. All of these improvements will be the responsibility of future lot owners. Potable water will be provided by water catchment tanks for each house lot, while fire protection will be provided by two existing fire hydrants along Pauwela Road that are connected to the existing eight-inch water line. Retention basins on each lot will capture onsite runoff to result in no increase in runoff to adjacent lands. The size and location of these retention basins will be determined in the future by – when future lot owners make improvements.

Electrical and telephone service is available and will be provided by connecting to existing overhead utility lines. Vehicle access to the house lots will be provided via individual driveways off Pauwela Road. Adequate driveway site distance will be verified prior to subdivision approval, and when lot owners apply for individual driveway permits. An existing three foot wide strip along the applicant's adjoining half of Pauwela Road will be improved to County's standards for roadways in rural zoned areas, and will be dedicated to the County after completion. Road improvements will significantly improve the existing pedestrian environment along Pauwela Road which is currently a three foot wide cracked sidewalk directly abutting the roadway. The proposed roadway improvements include widening the existing roadway pavement, regrading and grassing the shoulder area, installing a grass drainage swell and building a five foot wide concrete sidewalk along the back of the road widening lot which will provide a buffer between pedestrians using the sidewalk, and traffic on the roadway.

This is the preliminary site plan. Pauwela Road fronting the parcel. Lots one, two, three and the larger flagship lot four. This figure illustrates the proposed roadway improvements, widen roadway, the grass swell, the widen sidewalks as well as street trees. And I'd also like to note that the parcel's boundary along Pauwela Road is 536 feet or about 180 yards which more than adequate to accommodate four driveways.

So concluding, reasons justifying the requests include that the reclassification of the subject parcel will not have an adverse effect on neighboring land uses as a rural character of the surrounding area will be maintained. The proposed use of the subject parcel for rural zoned subdivision will result in a lower density, less intense land use than residential zoned development. The proposed

land use meets the criteria for both District Boundary Amendment to the State Rural District, and Change in Zoning to the Rural half-acre district. The reclassification of the subject parcel will not have an adverse effect upon agriculture, nor will it have a negative effect upon the inventory of agricultural lands that are available for large scale agriculture or diversified agriculture on Maui. The proposed project is not expected to result in any adverse, environmental or socio-economic impact. Public services and infrastructure are either adequate or will be improved to accommodate the project. The subject parcel is designated for single-family residential by the Paia-Haiku Community Plan and lies within the directed growth boundaries for the Paia-Haiku area. The reclassification on the subject parcel for rural land use is consistent with both the Community Plan and the directed growth map. Given the parcel's community plan designation and location next to existing development, reclassification of the subject parcel, the State Rural District and County Rural half-acre, will provide an appropriate low density transitional area and buffer between existing urban development and agricultural lands in the vicinity.

So thank you Chair and Commissioners for hearing our revised project proposal today. We feel that the applicant has been more than fair in his willingness to accommodate his neighbor's concerns. Revising the request has reduced the project's potential density by over 60%, and the proposed roadway improvements will significantly improve the pedestrian safety along Pauwela Road. We kindly ask for your recommendation of approval today. Thank you very much.

Mr. Shibuya: Thank you very much Ms. Mayden. At this time, members, I'll open it up because we do have people signing up for public testimony. I'll allow for that. The first one, for three minutes, would be Kevin. I can't really read your last name, but it's 279 Pauwela Road. If you will tell us your name.

Mr. Kevin Ledesma: Hello, my name is Kevin Ledesma, and my residence is 279 Pauwela Road.

Mr. Shibuya: Thank you. And you have three minutes.

Mr. Ledesma: Thank you very much. I did originally send in a letter for the previous meeting, I believe, on April 22nd. I hope you had a chance to review that. I'm basically going to take some excerpts of that and respond to some of the other issues at hand. But I speak on behalf on myself, my wife, Claudia, and our seven year old daughter, as well as some of – I voice some of the concerns of some of the residents and users of Pauwela Road. These users being Haiku School children, their parents who walk and drive their children to Haiku Elementary School, and the elderly that use Pauwela Road regularly for exercise.

First of all I'd like to address one concern we have, and it's not my major concern and I'll keep this very brief, concerning the lot size and land use existing on Pauwela Road. Pauwela Road currently exists of lots no smaller than two acres above or south of Haiku Elementary School. Nearly all the landowners are either keeping open space or performing agriculture practices to some success. This application if approved will change forever the nature and character of the neighborhood, and the Pauwela Road community. Half-acre lots will not conform with the current use in this one small road community. And I want to let you know that I'm not here to necessarily object to the half-acre site. I just want to let you know that will be in effect.

Most importantly, however, it's a safety issue for this – Pauwela Road safety and infrastructure.

There was some community plan may have the lot suggested slated for higher density than agriculture or open space. We feel these plans fail miserably to take into consideration the substandard infrastructure that exists on Pauwela Road. And thank you Hiro for addressing some of those concerns. Pauwela Road is the only ingress and egress however for the subject property. It does not come out any where else. It's only on Pauwela Road, and that access is directly above or adjacent to Haiku Elementary School. So the four driveways is a real concern to us considering it's at a downhill grade, considering the amount of traffic during school drop off and pick up hours, and all the traffic that comes up and down the road. With the one sidewalk surfacing Pauwela Road, running Haiku Elementary School to Haiku Road, which runs along the property, it's the only access is along that property. The road being narrow and running downhill at a steep grade, the property in question and most importantly requesting or being able to develop four driveways for the four lots. We recommend that there be a single driveway or two driveways at max for the whole subdivision for all the lots to use, thereby diminishing the safety issue to some extent. Four versus two, that's a 50% less danger hazard for the children, the elderly, the people using the road coming downhill on their bicycles or skateboard or whatever. So that's my concern, major concern. And that's it. I want to thank you very much.

Mr. Shibuya: Thank you very much. Any questions from the Commissioners?

Mr. Freitas: I have a question for you.

Mr. Ledesma: Yes sir.

Mr. Freitas: I live in a similar subdivision, and people go to work in the morning, they come back. What makes this subdivision different where there will be cars going back and fourth, in and out, of this driveway? And secondly, you state kids riding their skateboards on the sidewalk. It's against the law for them to ride skateboard on the sidewalk.

Mr. Ledesma: Well, we can't change the reality. It may be against the law, but the reality is kids ride their bicycle and skateboards. So I'm not here to just say anything like that.

Mr. Freitas: No. I understand it. I understand it. I think it's the parent, what do you call, responsibility to keep their children from riding skateboards or riding bicycles on the sidewalk.

Mr. Ledesma: Right, or even in the street. But it is a fact. I live on the road, and I don't know if any one of the 21 letters of support that came in, if any of them live on Pauwela Road. I know I do, and I don't think any of the others do. But I will address that. I see that road every day because I drive my daughter to school or walk her to school every day, and that is on a steep downhill grade. Even though there's a speed limit, electrical speed limit sign, they're asking people to slow down. They do somewhat, but they really don't. We saw, you know, a County car, today, going 32 through there, so it just happens. We try to do it, but it's just on a steep downhill grade, and we think that two driveways would be adequate. We're not trying to prevent Hiro from getting his application through. We just have a real concern with regards to the safety of the people there. That's it.

Mr. Freitas: How many children live in that area would you guess that use that sidewalk daily?

Mr. Ledesma: I would say, on and off, I would say, at least, I would say at least, a dozen daily walk

up and down that sidewalk. I would –. Then of course there's the 10's of cars that come driving down there to drop their kids off at school. There's the elderly, the people just exercising regularly up and down that road. So, you know, the vigilance that's required in that span that's right close to the school on behalf of the people using the public facilities, the public sidewalk, and the vigilance required every time somebody comes out four driveways as opposed to two, I think, it pose as a recommendation sir.

Mr. Freitas: Thank you because I wanted to do a comparison with the driveways where I live. I live off of Piholo Road, and it's about the same amount of people, and they ride bicycles going up the hill and I guess we have not had any accidents.

Mr. Ledesma: Okay. And in my estimation, it just takes one. So if we can mitigate the percentage by half, at least we're doing something for the safety of the public and that's a major concern for us.

Mr. Shibuya: Any other questions Commissioners? Commissioner Ward Mardfin?

Mr. Mardfin: I did read your letter of March 16th, and this is more processing maybe, but I'm concerned –. I'd like to ask you some follow up questions on this.

Mr. Ledesma: Sure.

Mr. Mardfin: You said that, at least at the time you wrote this letter, your attempts at resolving the issue wasn't very good. There's been no input on the development sought from neighbors or owners. Has that changed at all?

Mr. Ledesma: We've had meetings, but basically they were the duplicate of what we just saw in the presentation. We've made calls and we've seen no change substantially in anything per our request. Nothing at all basically, with this meeting.

Mr. Mardfin: So they have the meetings of formality in your perception?

Mr. Ledesma: More of a formality.

Mr. Mardfin: My second question, on your last page you say, "I meant with 100% good intentions of trying to accommodate and support Mr. Nakagima, but not at all costs. Furthermore and most disturbingly Mr. Nakagima has dug or investigated into our and nearly every owner of Pauwela Road's personal business in order to further his plan. He mentioned that he knew that my wife and I own a bed and breakfast and that our application will be up for renewal, and that bed and breakfast is not good as if to imply that if we testify against the proposal as planned, that he and/or his friends will object to our permit renewal application." And you go on – I'm skipping a paragraph here – "so it is with this in my mind weighing the added stress of vindictiveness versus doing the right thing for the community, we respectfully request that this Commission not recommend the subdivision of the subject property as submitted without restrictions to access and egress for safety concerns." Is that still your position?

Mr. Ledesma: Right. And again, I think the most important part of that – a lot of that is personal so

I don't think it should really have much claim here. I just wanted to show that we feel that it's the safety issue is important enough that we put ourselves out there at some potential risk to our livelihood in the future. So again, the major important part of that is the safety issue in the last statement there, so I stand on that. Yes, sir.

Mr. Mardfin: I thank you for being more concerned about the safety than your personal financial situation. Thank you.

Mr. Shibuya: Commissioners, any other questions? Commissioner Hiranaga?

Mr. Hiranaga: Mr. Ledesma, you brought up the question the 22 individuals that, I guess, have supported this project, and I just want to ask you one question.

Mr. Ledesma: Yes sir.

Mr. Hiranaga: Is your property located within 500 foot radius of this project?

Mr. Ledesma: In comparison to the others, no, but we are the only ones that use that road of, I believe the 21 -. We're the only ones that live on that road - I'm sorry - of the 21 that may be supportive.

Mr. Hiranaga: So your answer is no.

Mr. Ledesma: My answer is not exactly, but 500 foot is -.

Mr. Hiranaga: Not exactly.

Mr. Ledesma: No I'm not.

Mr. Shibuya: Any other questions Commissioners? Commissioner Mardfin?

Mr. Mardfin: You just said that you're not within 500 feet. I'm not like Commissioner Freitas, I'm not as familiar with that road. But you say you're the only one on that road that's - that weren't supporters on that road for this project.

Mr. Ledesma: I know the other residents and owners on the road. And as far as I know, none of them have written a letter of support. And again, my concern is the only ingress and egress for the property is Pauwela Road, and is immediately adjacent to Haiku Elementary School on the up hill side. So we are residents of Pauwela Road.

Mr. Mardfin: Have the other residents on Pauwela Road written letters requesting that we not approve this?

Mr. Ledesma: I believe so. Yes.

Mr. Mardfin: There have been others?

Mr. Ledesma: I believe so.

Mr. Mardfin: Thank you.

Mr. Shibuya: Any other questions Commissioners? Thank you very much Mr. Ledesma for your testimony.

Mr. Ledesma: Thank you sir, and thank you all.

Mr. Shibuya: Thanks. Next testifier is Mr. David Sheets, 2120 Kaohu Street.

Mr. David Sheets: My name is David Sheets, and I offered to testify in favor Hiro Nakagima's project, but not a technical, but not from a technical perspective, but on a personal note if it's of any benefit to you in making your decision. I offered that Hiro and he accepted. And so I just wanted to provide some personal information about Hiro. He's been a friend of mine for about 10 years, and so I've gotten to know him pretty well, including his development project here from the beginning. His family and my family are friends. And I wanted the board here to know, the Committee, that Hiro does live full-time here on Maui, and he's worked very hard, sweat equity, you know, himself doing the labor for the development of this project. And I know he's put a lot of money into it also, hiring the appropriate authorities to help him along the way. And that's why I do know that his plans are for him and his family – his wife and his two children – to actually live on this property themselves, also his two young children. And I also know that Hiro is involved in Maui community. I'm on the board of a non-profit organization here. I'm the Vice-President of – it's called the Maui Kite Surfing Community, and we meet with the lifeguards and some of the Council members – Mike White recently – and deal with safety issues regarding the various water sports, and Hiro is our Treasurer and has been active in that for several years. So I just wanted you all to know that, you know, I think Hiro is a community member who is like all of us trying to make it on Maui and provide a nice place for he and his family to live. Thank you.

Mr. Shibuya: Thank you very much Mr. Sheets. Any questions Commissioners?

Mr. Mardfin: I just have two. Do you live Pauwela Road?

Mr. Sheets: I do not.

Mr. Mardfin: Do you live within 500 feet of the property?

Mr. Sheets: I do not.

Mr. Mardfin: Thank you.

Mr. Shibuya: The next testifier is Ron Sandate or Sandate. Sorry if I mispronounced your name.

Mr. Ron Sandate: Everybody does. Sandate.

Mr. Shibuya: Sandate. Sandate, you have three minutes. Thank you.

Mr. Sandate: Okay. I don't live within 500 feet of the property. I don't live on Pauwela Road, but I lived in Haiku for almost 35 years and I know the property very well. I know Hiro very well. I've seen what he's done with the property. You've heard many, many voices speak in support of it, and you've heard some voices speak against it. I'm hear to speak in support of it. It's a good project. It's an opportunity for some other people to own some homes, and it greatly increase the property. Any day you go out there you'll see him out there in his jeans and his straw hat working alone. He's not a big money developer here coming to take charge of this place. He is working out there everyday. You hardly see him at the beach anymore because he's working on the property. So you've already heard so many things about it. I just want to say that I'm just another voice in support of this project, and I know that you'll do the wise thing. Thank you.

Mr. Shibuya: Commissioners? Commissioner Mardfin?

Mr. Mardfin: Would you have any objections to there being two access driveways rather than four?

Mr. Sandate: I don't see why anybody should dictate how he develops his property. If I were going to be one of the property owners and I seriously have given it thought to relocating to that area, I would chose to have my own driveway. I think that's every person's right. It should not be dictated by the whims of somebody else that's got what they want, and now they're trying to structure his actions.

Mr. Mardfin: Thank you very much.

Mr. Sandate: Thank you.

Mr. Shibuya: Questions from Commissioners? None. Thank you very much Mr. Sandate. Next testifier is Steve Saddler.

Mr. Steve Saddler: Hi. My name is Steve Saddler, and no, I don't live within 500 feet. I live in Pukalani and I'm a friend of Hiro's and I'm here to testify in favor of his project. You might notice I was not here when he was trying to get it zoned rural or multiple – more families – more lots in it because I don't believe that would have been proper for that area. But I believe in the half-acre rural lots are a great thing for Maui. They're fantastic. You have enough space to be able to grow your own food and have an ohana to give you a little extra income and make a small family – starting a family, make it easy to live here because it's very expensive as you know. And having more lots on the market makes the market price of these come down to where they are affordable. And unfortunately that's what you have to do to keep the price of lots, you know, within reach of young people. I know there's been a few issues, and I know Kevin has been very patient and tried very hard to work out this details with Hiro. I think the driveway issue is perhaps not the same issue as the safety issue as I believe – because of the great line of site along that road, there's no hidden spots for a car to not be able to see someone coming or someone going down the road and not to be able to see a car waiting to pull out. And therefore, the number of driveways doesn't have as much impact as the number of cars that have to come out. Being a very low density development that the number of cars won't be very many. So, with that, I'd just like to speak in favor of Hiro's project here and I wish everybody on Maui had the opportunity to own a half-acre lot as opposed to rural 6,000 square foot lots that are so common with big developments. And that local family here on Maui would certainly deserve to benefit from any potential profits rather than Spencer and

these huge developers that come in, you know, and take the character out of Maui with those big developments. And with that, I say thank you.

Mr. Shibuya: Commissioners, any questions? None? Thank you very much Mr. Saddler. Are there anyone in the audience that would like to testify and didn't have a chance to sign up? Thank you. Please state your name, and you have three minutes.

Mr. Isaac Hall: Good afternoon Commissioner Shibuya and Maui Planning Commission. My name is Isaac Hall. I represent John Volwieder. I submitted another letter dated April 5th. Mr. Hiranaga needs to recuse himself from this proceedings since he just admitted that he sold this land to Hiro. When the applicant says what's within the vicinity of the project and there's some urban lands within it, they're really mis-characterizing that. The only urban lands are along that black line right there. The rest is all ag. The County Planning Department and Chris Hart & Partners has failed to apply the test that needs to be applied for reclassifying these lands out of ag. There's been no proper analysis of the County ordinance on what it takes to reclassify these lands out of ag. When I was here the last time, we asked for two conditions. One, and now it's being modified from either one or two driveways, four to one or two. And the second was no further subdivision or condominiumization. My client and I think the rest of the people objecting if you impose those two conditions or they agree to them would not oppose this any further. If those conditions don't get imposed then we continue with these objections. This is not consistent with the directive growth plan that's being implemented by the Council. It hasn't been adopted yet. But it is not within the rural district. It is within rural growth boundaries, but not rural residential. It's a different district. They're not acknowledging that. It's a different district that this is in. Not rural residential.

There's this water issue. The County has passed an ordinance that says that this system right by their house does not have sufficient water in it either for potable water or for fire flows. And until that ordinance gets amended, you can't just go hook into a fire hydrant and say it's okay. It's not. It's illegal. So for all of the reasons I've given in the letter. The two letters I've given to you now, we would be satisfied if you attach those two additional conditions. But if you don't, we just oppose this project altogether.

Mr. Shibuya: Commission? Questions from Commissioners Mardfin.

Mr. Mardfin: I've got a couple. One is, the condition was that there be one access. Did I just understand you to say you'd be satisfied if there were two accesses as opposed to four?

Mr. Hall: Well, if that's what –. Yeah, I think I would if that's what the Ledesma's are saying. Yes.

Mr. Mardfin: And presumably you'd get to the – where the big one goes in is where you'd attach the other two, and then the one that's sort of separated would have its own. Is that how you've envisioned?

Mr. Hall: Yeah.

Mr. Mardfin: In your – may I?

Mr. Shibuya: Continue.

Mr. Mardfin: In your letter your were arguing that –

Mr. Hall: Which one? The second one?

Mr. Mardfin: Probably both of them. But let me go on the second one because I read that most recently. I think you were arguing that they needed to do an environmental assessment.

Mr. Hall: That's correct.

Mr. Mardfin: And that the exemption determination does not comport with existing law.

Mr. Hall: That's right.

Mr. Mardfin: I'll later ask the Department about this, but do you want to give us your point of view at this point?

Mr. Hall: I looked at the exemption determination that was made. I'm very familiar with what the law requires for exemption determinations, and that exemption determination is an unlawful exemption determination.

Mr. Mardfin: Why?

Mr. Hall: It doesn't comport with existing law. It doesn't analyze what you're suppose to analyze in entering an exemption determination.

Mr. Shibuya: Continue Commissioner Ward.

Mr. Mardfin: The second thing is you argued that – your main argument is that the water that would be provided by the County is improper because of the water restrictions that exists upcountry. Would you like to elaborate on that?

Mr. Hall: That's right. I think everybody is saying well, you know, it's just a fire hydrant, who cares? It's just a small subdivision, who cares? But if you look at the ordinances that are in effect, there is an ordinance that is in effect that says that the upcountry water system including the Haiku system, including the main that's next to this project, including the fire hydrants next to this project, is inadequate for domestic and fire flow purposes. I totally understand the fact that when they got a denial letter that they appealed it to the Board of Water Supply and then made a deal with the Board of Water Supply that it would be okay to hook into these fire hydrants. That doesn't mean that their deal can violate County law. That's my point.

Mr. Mardfin: Thank you.

Mr. Hall: And the point here is – I know where we're going with Commissioner Freitas.

Mr. Freitas: No you don't.

Mr. Hall: I do. The point is is that if you're just going to say that anybody that lives next to a fire

hydrant can satisfy their fire flow requirements –

Mr. Freitas: I'm not even going there.

Mr. Hall: Okay. I'm sorry.

Mr. Freitas: I'm glad you can read my mind.

Mr. Shibuya: Okay, can I have the order here?

Mr. Hall: But anyway, the point is – what I want to say is that this Commission and the Council can't start saying that anybody that has the good fortune to live next to a fire hydrant and satisfy the fire flow requirements for subdivision by having the Fire Department hook their hose into that fire hydrant.

Mr. Shibuya: Commissioner Freitas?

Mr. Hall: I apologize to you. I can't read your mind. I admit that.

Mr. Freitas: Yeah. Okay. No you can't. That's for sure. Okay, you constantly quote the law. My question to you is four driveway – you don't object to the four lots, but you want to –

Mr. Hall: I didn't say that.

Mr. Freitas: Well, your client.

Mr. Hall: He's not my client.

Mr. Freitas: Okay.

Mr. Hall: No, I'm saying if we can resolve this –. You know, one of the things that happened was that when they were in here last time with urbanization, my understanding was the Commission said go and meet with them and work with them, and try to work with the people in the community and work to some kind of compromise. We met and they refused to do anything.

Mr. Freitas: Okay. Can I finish with my question?

Mr. Hall: Certainly.

Mr. Freitas: Okay. There is – they're within the law for the four lots.

Mr. Hall: I don't agree with that.

Mr. Freitas: Well, I – this is my statement.

Mr. Hall: You want me to assume that for you.

Mr. Freitas: Okay. Now they have – so if you have four lots, they are, what do you call, within the law to have four driveways.

Mr. Hall: I don't agree with that either.

Mr. Shibuya: Mr. Hall, please let the Commissioner Freitas –

Mr. Hall: Well, he's trying –. I just want to let him know I don't agree with that.

Mr. Shibuya: Let him finish.

Mr. Freitas: So how can couple people dictate to somebody that is a property owner what they suppose to do with their lots? That's what I object to.

Mr. Hall: Actually we have a County ordinance that says if you live in an area where the entrances would be dangerous that the Department of Public Works can tell you where your entrance can be and how many of those entrances there can be. We haven't even gotten to this point. This is one of those subdivisions where they're deferring everything till later. Everything is getting deferred till –. You don't have any information on this. There haven't been any site studies for whether – you know this person got up here and testified, oh, it's fine. But it takes more than that. You've done work like this before. When you put in a driveway in you have to do a site study to make sure it's okay. That hasn't happened. Ms. Mayden said that's going to happen later, after they sell the lots. We don't have that information. But our ordinance says that if it happens to be in a dangerous place, the County Public Works can say, no, you can't put it there. We're not even to that point where you can say it's okay not to or it's okay to put it there. It isn't that this neighbor is saying just out of whimsically I want two instead of four. This neighbor has presented evidence to you that's not in their traffic study. Their traffic study did not study the impact of four driveways on Pauwela Road. The traffic study doesn't even look at the slope of the hill, what kind of traffic comes down the hill. The traffic study does admit that everybody exceeds the speed limit. There's a statement to that effect in the traffic study. But for you to say it's just his whimsical statement –

Mr. Freitas: I did not say it his whimsical.

Mr. Hall: At the whim of one resident, you're saying why should they have to have two driveways instead of four. For safety reasons which is what you're suppose to be investigating.

Mr. Freitas: Well, I also, what do you call, believe in property rights, and you know, when somebody invests a lot of money and tries to get something done, and somebody else comes in that don't live within the 500 feet radius which, that's one of the things, one of the criteria's that we look at, is saying, hey, I want, what do call, these conditions put on because kids ride bicycles and skateboards down the road. You know, that's my objection.

Mr. Shibuya: Commissioners, I'd like to remind you that at this point the testifier is answering questions and not having a discussion with you. We'll have a discussion later among us Commissioners.

Mr. Hall: Yeah, but my client owns property within 500 feet and he wants that condition.

Mr. Ball: Question.

Mr. Shibuya: Question Commissioner Ball?

Mr. Ball: Yes. Thank you. I have a question. Are you traffic expert?

Mr. Hall: No.

Mr. Ball: Do you consider the Police Department more of a traffic expert than yourself?

Mr. Hall: No.

Mr. Ball: Well, I do, and they actually have two reports here stating that they don't see issues with –.

Mr. Hall: They're not responsible.

Mr. Ball: I'm asking a question here.

Mr. Hall: They're not responsible for the number of driveways Mr. Ball.

Mr. Ball: Chair?

Mr. Shibuya: Mr. Hall?

Mr. Ball: This is ridiculous.

Mr. Shibuya: Yes. You're not having an argument. You're just asking a question to clarify.

Mr. Ball: Correct.

Mr. Shibuya: And we'll have a discussion amongst the Commissioners later.

Mr. Ball: Yeah.

Mr. Shibuya: Thank you. Do you have anymore questions?

Mr. Ball: I do have another question.

Mr. Shibuya: Go ahead.

Mr. Ball: That's okay.

Mr. Shibuya: Any other questions? Commissioner Hiranaga?

Mr. Hiranaga: Thank you Vice-Chair. Mr. Hall, you just stated that your client, Volwieder, owns property within the 500 foot radius.

Mr. Hall: Correct.

Mr. Hiranaga: And I asked you at an earlier meeting if he lives on Maui, and you answered part-time, not full-time.

Mr. Hall: Did you read the correction I gave in April 5th?

Mr. Hiranaga: No.

Mr. Hall: I corrected that. I went back and – because I was uncertain when I answered. He does not have a house on that property.

Mr. Hiranaga: Actually I did not ask you that. I asked if he lived on Maui, and you said, not full-time, part-time. I didn't say lived on the parcel. I said live on Maui.

Mr. Hall: Okay.

Mr. Hiranaga: But now you say he does not have a dwelling.

Mr. Hall: I went and corrected that, and I corrected that in this April 5th statement.

Mr. Hiranaga: And my last question is do you know how long Mr. Volwieder has owned this property on Pauwela road? Approximately, can you guess?

Mr. Hall: I'm not sure. I can find that out, though, and supply that to you.

Mr. Hiranaga: Actually I do know, if you want to know. Yeah, he purchased the property in May of 2009 from Alexander and Baldwin.

Mr. Hall: I don't think that's relevant to any of this.

Mr. Hiranaga: Thank you.

Mr. Shibuya: Any other questions Commissioners? If not, thank you very much Mr. Hall.

Mr. Hall: Thank you.

Mr. Shibuya: Are there other members in the public that would like to testify that have not testified?
Mr. Hart. Please state your name.

Mr. Chris Hart: My name is Chris Hart of Chris Hart & Partners. I know we made our presentation but I just thought that I could add a little clarity to this particular application. First of all, I'd like to say that when the application was originally proposed by Hiro when he came to our office, we looked at the Paia-Haiku Community Plan of 1995 and the parcel was identified as single-family. So the proposal was to prepare for him an application, a consolidated application, that would propose to change the State Land Use District Boundary from Agriculture to Urban, and to change the zoning from County-Interim to R3-Residential. At that time that would have generated 19 lots.

Mr. Hall and others have said that we haven't listened to the community, we haven't listened to the Planning Department. In Mr. Hall's letter dated September 14, 2010, he basically says, "it would be more appropriate if any change of the agricultural designation is considered to reclassify to the rural district." Now that is what we did, and we also took the advice of the Planning Department because the County Island Plan, the Haiku rural growth boundary designation identified it as a rural service district which means that there are many urban uses in the area. That this would be consistent – it would be definitely less dense than the character of the urban development in the area which is R3-Residential except for the Hale Piliialoha Subdivision which is behind and above the Haiku Community Center. That's R2-Residential. Okay, that's right immediately adjacent. So we're proposing a rural subdivision which is actually 63% less dense than what was proposed. And we had our public meeting and we told the community that that's what we were doing. We were proposing not to do the R3-Residential designation. We were proposing to do RU-0.5 which is half-acre rural.

Now the other issue with regard to driveways. Each one of these lots on Pauwela Road – there are three lots – they're each 22,000 square feet each. If you were to do an R3-Residential project, you would probably, instead of having three lots, you would have six lots, and you would probably want to have six driveways. Now, in this particular case, we're proposing to reduce the driveways to three, with one main entrance to the larger lot in the rear. It's a fair and equitable compromise to the community.

With regards to the water, I'd just like to say that the Department of Water Supply, we went to them. We asked for their consideration given the fact that the fire hydrants exists, the eight-inch water lines exists. We're not proposing to use County potable water. They said there was sufficient fire protection for this project. That's all. We didn't go and twist anybody's arm. We just talked to them.

Mr. Shibuya: Thank you Mr. Hart.

Mr. Hart: So this is a fair project in the community and I believe that it is one that deserves a positive recommendation. Thank you very much.

Mr. Shibuya: Commissioners, do you have questions? Commissioner Mardfin?

Mr. Mardfin: Chris, you said you had a community meeting, and you told them that you were going to do RU-0.5? You didn't ask them what they think about that.

Mr. Hart: Well, we figured from what Mr. Hall wrote that that was sufficient. We responded. We agreed with Mr. Hall, and we also agreed with the Planning Department.

Mr. Mardfin: So it was a one-way communication, not a two-way dialogue.

Mr. Hart: We basically had proposed to the Planning Commission R3-Residential, 19-lots. We decided to change and we went to the community with the proposed rural subdivision.

Mr. Mardfin: Thank you.

Mr. Hall: I'm being misquoted.

Mr. Shibuya: You're out of order Mr. Hall. At this point, no.

Mr. Hall: I can't straighten out . . . (inaudible) . . .

Mr. Shibuya: No. We'll just take a recess here for 10 minutes.

(The Maui Planning Commission recessed at approximately 3:47 p.m., and reconvened at approximately 3:55 p.m.)

Mr. Shibuya: Back to order. I just wanted to announce that we did – Planning Commission has received a written testimony from an Ann Saucier, and so all the Commissioners have received a copy. Thank you very much. And also, are there other public members in this audience that would like to speak and provide testimony? If not, public testimony is closed. Commissioners, discussion on this matter? Commissioner Wakida?

Ms. Wakida: I have a question of the property owner.

Mr. Shibuya: Okay. Please state your name.

Mr. Hiro Nakagima: My name is Hiro Nakagima.

Ms. Wakida: Good afternoon. I know you've been back here many times, and we thank you for your patience on this project. I have a question about the differences. When you came to us before you wanted to be zoned urban, and at that time, you had two lots that were over 30,000 square feet. And on this recent application you downsized those two lots to 22,000 square feet.

Mr. Nakagima: Right.

Ms. Wakida: I'm interested to know why you chose to do that.

Mr. Nakagima: Because we originally proposed change in zoning to R3, and –. It's like – 30,000 square feet might be big enough so that's why we tried, we did, we tried to subdivide three, 30,000 square feet. But since we changed – since we proposed change in zoning to Rural-0.5, 30,000 square feet lot it is a little bit over the minimum size so we reduce amount, reduced the size of the lot to 22,000 square feet.

Ms. Wakida: So the lots were bigger when it was urban, but small when it was rural. Correct?

Mr. Nakagima: Right.

Ms. Wakida: Okay. So the remaining lot is 135,000 square feet. Do you plan to further subdivide that property?

Mr. Nakagima: In the future I would like to subdivide – re-subdivide for my children. So I would like to –. But it's not right now, but –. It's not going to be right now, but maybe 20, 30 years from now

we might going to request to re-subdivide for our family.

Ms. Wakida: So you plan to remain on this property for quite some time?

Mr. Nakagima: Yes.

Ms. Wakida: Thank you.

Mr. Shibuya: Any other questions Commissioners? If not, are you ready for the question? For the motion?

Mr. Mardfin: Mr. Chairman?

Mr. Shibuya: Yes?

Mr. Mardfin: I thought you were asking if we had questions for this person. I have several other questions.

Mr. Shibuya: Okay. Continue, Commissioner Ward Mardfin.

Mr. Mardfin: I'd like to ask the planner a question. We – earlier we had an orientation about EA's and whether EA's were necessary or not. And we were told that there were certain exceptions for an EA and it seems that one of these were given, and Isaac Hall seems to think that it was an improper giving. Can you explain what the rationale was for giving an EA exemption?

Mr. Dias: I'm going to hand it over to Public Works since they're the ones that issued that exemption.

Ms. Rowena Dagdag-Andaya: Commissioner Mardfin, what we did was we took a look at the OEQC exemption list. And because the trigger was work on County land which potentially would involve the relocation of a fire hydrant, we reviewed the OEQC exemption list and discovered that it fell into one of the exemption classes.

Mr. Mardfin: What is the exemption class?

Ms. Dagdag-Andaya: The exemption class – let me just open it up here. Now this was – this is the exemption list for the County of Maui and it was finalized in January of 2007. There are two exemption classes that we took a look at. The first one being exemption class number three, the construction and location of the single new small facilities, or structures and the alterations and modifications of same; and installation of new small equipment and facilities, and the alteration and modification of the same including but not limited to. And in this it includes –

Mr. Mardfin: There's no construction being proposed.

Ms. Dagdag-Andaya: There's no –. Well, it would be the relocation, so there's –

Mr. Mardfin: Of the fire hydrant?

Ms. Dagdag-Andaya: I'm sorry?

Mr. Mardfin: Of the fire hydrant?

Ms. Dagdag-Andaya: Of the fire hydrant.

Mr. Mardfin: Okay.

Ms. Dagdag-Andaya: And then there's also another exemption class that we took a look at – exemption class number six, construction or placement of minor structures accessory to existing facilities. And then there's a number of examples that's given here in these exemption classes.

Mr. Mardfin: So because it was those sorts of things you thought you didn't need an EA.

Ms. Dagdag-Andaya: Right. And then there's another one, exemption class number two, the replacement or reconstruction of existing structures and facilities where the new structure will be located generally on the same site, and will have substantially the same purpose, capacity, density, height and dimensions as the structure replaced.

Mr. Mardfin: Thank you very much.

Mr. Shibuya: Commissioners, any other questions? Commissioner Mardfin?

Mr. Mardfin: Another point raised by Isaac Hall was the use of – he contends that the Board of Water Supply . . . (inaudible) . . . in saying –. That for upcountry there's insufficient, inadequacy of water, and yet they seem to have some sort of a letter saying that they can go along with this as long as they pay some sort of fee. And I believe Mr. Hall's concern was that it is contrary to law, and therefore such an agreement can't be made. And I'd like to ask somebody, maybe Danny, why that isn't improper.

Mr. Dias: We have Herb Chang from the Water Department, so I'll let him handle that.

Mr. Shibuya: And please state your name.

Mr. Herb Chang: Good afternoon. I'm Herb Chang from the Water Department, Engineering Division. To answer your question Commissioner, I'll give you a little bit of a background first. The law that was referenced is, by law, called the water meter issuance provisions for the upcountry water system. The intent of the rule was because of our source capacity deficiencies, there was a problem with the Department issuing new water meters for the upcountry areas. So the rule was basically put into effect to control the issuance of the new meters. That's the bases of the law.

Fire protection is not really a source issue in respect to source capacity. Fire hydrants which are connected to water tanks generally has a tank that usually is sized for fire protection, so source capacity, inadequacy is not really an issue for fire protection. So to reiterate the rule was basically for issuances of a water meter.

And the other question was whether the – why the board changed its mind about what was

adequate?

Mr. Mardfin: Yeah the original position seemed to be, to me, to be that you shouldn't have a split system where they're relying on the County for fire protection, and they're willing to rely on catchment for their domestic water.

Mr. Chang: Okay, Commissioner, I guess I should give maybe the history of what transpired for this project. Initially when the applicant made the subdivision application represented to the Department of Public Works that the project will be a private water system totally. So the Department made its response to the application saying that because it's a private system, the Department has no jurisdiction to make any requirements because it's private. And that they should, the applicant should, provide because of the water meter – excuse me, water availability rule – provide evidence that there's a long term supply of water. So those our basic two comments to the application initially. Subsequent to that the subdivider/applicant made a request to the Department to use the existing fire hydrants for fire protection. I'm not getting the reason but usually it's a cost issue doing water tanks, private water tanks, and fire protection. So the Department's response to that was, no, because you're not a paying customer, you don't have a water meter from us, you're not really helping, you're not buying into the system, so why should the Department provide fire protection even though there's fire hydrants in front of the property? So the Director did send a letter to the applicant denying the request, and as all requests that are denied by the Department Director, the applicant has an ability to go to the Board of Water Supply to make an appeals which they did. Given that, the Department decided that, you know, well, if this goes to the Board of Water Supply, what's the probability of the Department having the Board of Water Supply rule in favor of the Department's decision of not providing fire protection from the public system? Having evaluated that, the Department said, you know what, probably the Board is going to go against what the Department have – go against the Department's denial. So in that respect the Department said why don't we settle. If the subdivider is willing to pay in, to buy into the system we would be okay with it. So as far as using – the subdivision using the existing public system for fire protection but still remain private under domestic irrigation. So we did do a modification of subdivision agreement which was signed in the middle of last year. So that's what basically transpired.

Mr. Mardfin: So your position is that the fire protection water is adequate and the show me the water bill isn't applicable since the domestic water or irrigation water they're going to use will be from a private catchment system?

Mr. Chang: The first, Commissioner, the first part is correct, but they still need to get confirmation from the Department about long term supply of water.

Mr. Mardfin: Thank you very much.

Mr. Shibuya: Commissioners, any other questions? Commissioner Mardfin?

Mr. Mardfin: Is there anybody here that can, from the Police, that can answer the question about the number of driveway accesses to the road, authoritatively?

Mr. Dias: Sorry, we don't have any police officers here.

Mr. Mardfin: Thank you.

Mr. Dias: Commissioners, but we do have an engineer here if that would help. I think he did site distance study.

Mr. Shibuya: Go ahead. Continue.

Mr. Mardfin: I like listening to engineers.

Mr. Shibuya: Please state your name.

Mr. Kirk Tanaka: Good afternoon Mr. Chair. My name is Kirk Tanaka with Tanaka Engineers. We're the civil engineering consultants for this project. We did anticipate this discussion, and so what we did is the owner authorized us to go ahead and do a site distance analysis. So what we did is we did a site distance analysis on the three existing driveways along Pauwela Road, and also along the frontage of the subdivision along Pauwela Road. Knowing that ultimately upon the request for final subdivision approval, the Development Services Administration would require it as a condition of final approval anyway. So we went ahead and we jumped the gun and we did the site distance analysis. It's not usually done this early, generally. What we did find was that there is more than adequate site distance for the existing three driveways, along with the entire frontage along Pauwela Road. We even went as far – the existing speed limit and that's what dictates required site distance for driveway permits is the posted speed limit which is 20 miles an hour in that area. And the available site distance far exceeds the 20 mile an hour requirement for required site distance. So we even went as far as to look at well what would it be if it was 30 miles an hour? And the existing site distance even exceeds the 30 mile an hour. If the posted speed limit was 30 miles an hour, and it's not, it's 20, the existing driver's site distance along the entire frontage of the subdivision would meet that criteria. Just to extrapolate if anybody had any questions about that.

Mr. Mardfin: If you – can you show us with some sort of pointer on that map where the existing driveways are, and where the proposed driveways are?

Mr. Tanaka: Certainly. There's a driveway here. This is the one on the lowest part of the property. That's an existing driveway. There's one here, and there's one here.

Mr. Mardfin: So they're only proposing to add one more?

Mr. Tanaka: Yes.

Mr. Mardfin: And where would that be?

Mr. Tanaka: I guess it would be for lot two, somewhere around here.

Mr. Mardfin: So there were already three, and they're just proposing to add one?

Mr. Tanaka: Yes.

Mr. Mardfin: Thank you very much.

Mr. Tanaka: You're welcome.

Mr. Shibuya: Any other questions for Mr. Tanaka? I have one and this deals with the water easement.

Mr. Tanaka: The irrigation easement?

Mr. Shibuya: Well, I don't know. There's a tunnel there. Give us some of the properties of this easement? Or restrictions or uses or non uses. There is an actual aquifer type of tunnel, is there not?

Mr. Tanaka: I believe what that is – I don't know for sure – but what I believe that is because I've seen these types of easements in other properties in Haiku, it's an A&B – it's an East Maui Irrigation ditch which is buried. That's why you see no evidence of it on the property or along Pauwela Road or any head walls for that matter. And the ones that I've seen on other properties in the Haiku area is it's generally it's a – it's for irrigation water. It's a gravity feed and what it does is it's contained. It's fully contained obviously because it's buried yeah. So what I've seen in other cases is it's kind of like a boxed culvert. I don't know exactly what it is here, but in other cases that's what I've seen. And some of these that I've seen especially along Kapakalua Road, these culverts are buried significantly deep. I mean, they're not three feet below the surface. They're 20 feet below the surface, so they're way down. And obviously it has to be because its gravity flow. They have to maintain the slope from the beginning to the end, yeah. So as far as your question Commissioner Shibuya, regarding the restrictions, I haven't studied the title report or any of the deed, portions of the deed, that pertain to his rights and his restrictions. When I say "he," I'm sorry, I'm talking about Mr. Nakagima. But I do know it's a 30 foot wide easement that basically traverses the property along that dash line here, and it crosses Pauwela Road at this point.

Mr. Shibuya: Yes, and I'm just concerned because you don't have sewage system. The owners of those lots would have to use a septic system, and, you know, leach field.

Mr. Tanaka: You're worried about the infiltration from the leach field into this irrigation ditch?

Mr. Shibuya: That's correct.

Mr. Tanaka: If I'm not mistaken because in other place I guess like I've said I've seen it, it's fully contained. It's like a boxed culvert type situation. Again, I don't know if it's exactly like this in this case, but it has to be contained because otherwise it would cave in, yeah? So there is some structure integrity, I believe, to this irrigation ditch. The roof, sides, bottom.

Mr. Shibuya: You've been to Hana, right?

Mr. Tanaka: Yes.

Mr. Shibuya: On the way, you've seen these ditches.

Mr. Tanaka: Yes, some marvel of engineering.

Mr. Shibuya: I used to go look for opai in them, and you can go for miles in that dark area.

Mr. Tanaka: Yes.

Mr. Shibuya: And had a lot of opai in there.

Mr. Tanaka: Yes.

Mr. Shibuya: These were not lined. These are just rocks. I mean, they just dug out the rocks, and on the bottom is fairly filled today with silt. It's rocky.

Mr. Tanaka: That was an open channel type situation, yeah?

Mr. Shibuya: That's correct.

Mr. Tanaka: Yeah. This is an enclosed.

Mr. Shibuya: No it's enclosed all around – rock – and it's dark inside. It's a tunnel.

Mr. Tanaka: Okay. I believe I'm familiar with what you're talking about.

Mr. Shibuya: Okay. And they're not lined in a sense. It's just blue rocks all around, and it made a puka right through.

Mr. Tanaka: Okay. They tunneled it.

Mr. Shibuya: Yeah. So, my concern is let's say we approve it and now they get into the septic system, now they have the leach field, whoops, what happens?

Mr. Tanaka: I hope I can answer your question on that. Generally the only parcel that is affected directly by the easement is lot four, which is what I believe Mr. Nakagima is going to retain. Lot three – well, lot two is quite a ways away. Lot two and lot three are the only ones that are really adjacent to it that he might – I don't want to speak for him – but generally speaking when you build septic systems, it works on gravity. So generally speaking and I cannot tell you for sure, but the leach fields would tend to be in the lower part of the lots. And so you would think that they would build the leach field some where in this area and probably some where in this area, generally. So, you know, you would have some horizontal clearance, and of course, Mr. Nakagima, he would be in control of, actually, all of the land that the easement is actually on.

Mr. Shibuya: Okay. Commissioner Hiranaga?

Mr. Hiranaga: If you allow me, I do have some experience regarding the East Maui Irrigation ditch tunnel system, and this is an irrigation system. It typically starts off as open ditches. As it nears the urban, urbanized areas, there are sections that go beneath ground to tunnels. At this particular property, even EMI does not know how deep that tunnel is. It is very, very deep, and it is an irrigation system. That means when there's large storms, EMI's maintenance crews go out because well pigs fall into the ditch, dogs, cats. And it's not filtered at any point along this system until a

portion of it may be directed to Kamaole Weir which is the Department of Water Supply's treatment facility near Haliimaile. But this is just irrigation waters.

Mr. Shibuya: Okay. Thank you. Thank you for the clarification. Commissioner Mardfin, I believe you had a question.

Mr. Mardfin: Commissioner Hiranaga explained it. I was going to ask how deep that water tunnel is because if you have the tunnel down here, and the leach field up here, you're in trouble. If the tunnel is up here and the leach field is down here, then you don't worry about it. But he said it's real deep so that means there's a potential contamination. But if there are pigs go into the thing, we're not talking about potable drinking water so.

Mr. Shibuya: Any other questions Commissioners? Thank you very much Mr. Tanaka. Commissioners, any other questions? No? Can we have the staff go ahead and read the recommendation?

Mr. Dias: Thank you Mr. Chair. I'd take the State District Boundary Amendment first. Slight change. Basically I've numbered it wrong. It should be one and two, obviously, versus one and one as far as the conditions are concerned. Having said that, the Department of Planning has determined that the proposed amendment to the State District Boundary Amendment meets the criteria for rural designation. It meets the three criteria. I'm not going to read those. And the Department of Planning recommends that the Maui Planning Commission recommend to the Maui County Council approval of the State District Boundary Amendment subject to two conditions.

Mr. Shibuya: Commissioners?

Mr. Ball: Move to approve.

Mr. Freitas: Second.

Mr. Shibuya: There's a motion to approve by Commissioner Ball, seconded by Commissioner Freitas. Discussion? Commissioner Mardfin?

Mr. Mardfin: I'm not sure whether it's on this motion or the following motion, on Change in Zoning. I'll suggest it now, and if it's the wrong one tell me. I move to amend to restrict this lot four from any further subdivision. I was going to say permanently, but I'll say for 20 years. So that lot four cannot be subdivided for 20 years and that it be recorded.

Mr. Shibuya: There's an amendment. No second? Any second? None. Commissioner Mardfin?

Mr. Mardfin: I would have loved to vote for this project, and had we had that amendment on there I would have felt comfortable doing it. As it is I have a lot of concerns for this and I think that most of my questions have been answered. This can turn from a four lot subdivision into a nine lot subdivision easily, and I'm not comfortable with that. And I would have been happy if it was four lots for 20 years, and then can sub – the applicant said he wanted to subdivide for this children, he could do it at that point. But without that, I'm afraid I'm going to have vote against this project.

Mr. Shibuya: Any other amendments? Commissioner Hiranaga? Discussion?

Mr. Hiranaga: . . . (inaudible) . . .

Mr. Shibuya: Okay. Discussion.

Mr. Hiranaga: Yeah, I would just like to say that several of us, Commissioners, worked on the Maui Island Plan. It was recommended and approved by the GPAC, and the Maui Planning Commission recommended and approved this area for rural growth. The Planning Department agreed and the recommendation to Council. Hopefully they will approve in a timely fashion. This applicant is following the plan. And for this application to be denied, what message does that send to the general public? The plan is not even adopted and now it's not being followed. I think we need to provide consistency to the public. Part of the process . . . (inaudible) . . . reduce their density from single-family to rural. What more do you want? How do you create housing that's affordable for more people? This is actually reducing the supply that the Planning Department took in effect when they did their unit count. They counted that property as single-family. They reduced the unit count. I would hope that other Commissioners will agree and recommend approval.

Mr. Shibuya: Any other comments Commissioners? Commissioner Freitas?

Mr. Freitas: Yeah, I'd like to speak to the motion. I believe that this applicant has done more than was required by law. I believe in, what do you call, property rights, and I also don't believe that we should be able to tell some person, well, that want to hold the property for their children, that they have to hold their property for 20 years before they can subdivide. This young man may have his children, married at 15 years old and need a piece of property. We don't know.

Mr. Mardfin: Thank you. Commissioner Mardfin?

Mr. Mardfin: I just want to say in answer to Commissioner Wakida's question the applicant said that he shrunk the other properties, and I think that a large part of that was so that he could change lot four into six lots. And if he left the other three at the original proposal, then it would have been four lots or something like that. And I don't –. Since the applicant himself said he wasn't going to subdivide for 20 years, I just want to see that memorialized. I think the traffic issues have been dealt with to my satisfaction. I think the fire hydrant issue has been dealt with to my satisfaction. But I do think that there ought to be limits on subdivision of this and I would have made it without his testimony for his children. I would have made a permanent constraint since he said he wanted it – it wouldn't be subdivided for 20 years. I was willing to take him at his word. But without that condition I'm afraid I can't go along with that. Sorry.

Mr. Freitas: Call for the question.

Mr. Shibuya: Okay. The question has been called for. Members, all voting affirmatively for this –

Mr. Mardfin: – doesn't it call for –? Doesn't it call for the question require a vote?

Mr. Shibuya: Those that are in favor of the question being called by referred please vote and raise your right hand.

Mr. Spence: That's unanimous.

Mr. Shibuya: Unanimous. We have a call for the question. Will you read the motion please?

Mr. Spence: I believe that was just the confirmation on the district boundary amendment. We also need to take up the change in zoning.

Mr. Shibuya: Right. We'll take one at a time, right, at this point?

Mr. Dias: Correct.

Mr. Shibuya: Okay. Go ahead Danny. Read that portion.

Mr. Dias: For the change in zoning –

Mr. Mardfin: Excuse me? Mr. Chairman, we just called the question. We haven't voted on the question. Calling the question means you end debate. That's what we just voted on. We ended debate. Now –. See calling the question brings up another vote. It's easier just to say does anybody want to say anything. If nobody does you go on. We have not voted on the first question yet.

Mr. Shibuya: This is the motion. Right. This is a district boundary amendment.

Mr. Mardfin: That's what we're voting on right now is the district boundary amendment.

Mr. Shibuya: Right. Okay? So go ahead read that recommendation here.

Mr. Dias: For the district boundary amendment?

Mr. Shibuya: District boundary amendment.

Mr. Dias: Okay, the Department of Planning recommends that the Maui Planning Commission recommend to the Maui County Council approval of the State District Boundary Amendment subject to two conditions.

Mr. Shibuya: Members, all in favor raise your hand.

Mr. Spence: Seven ayes.

Mr. Shibuya: And one nay.

Mr. Spence: And one nay.

Mr. Shibuya: Okay one opposed.

Mr. Spence: Motion is carried.

Mr. Shibuya: Motion is carried on that. I don't vote.

Mr. Spence: Six ayes.

District Boundary Amendment

It was moved by Mr. Ball, seconded by Mr. Freitas, then

**VOTED: To Approve the District Boundary Amendment, as Recommended.
(Assenting - K. Ball, J. Freitas, I. Lay, D. Domingo, P. Wakida,
K. Hiranaga)
(Dissenting - W. Mardfin)
(Excused - L. Sablas)**

Mr. Shibuya: Danny, the next condition – recommendation.

Mr. Dias: Okay, for the Change in Zoning. The Department of Planning has determined that this project meets the five criteria for a Change in Zoning and recommends that the Commission recommend approval of the Change in Zoning to the Maui County Council subject to four conditions.

Mr. Ball: So move.

Mr. Freitas: Second.

Mr. Shibuya: Okay. It has been moved by Commissioner Ball, seconded by Commissioner Freitas. And the question is any discussion on this? Commissioner Mardfin?

Mr. Mardfin: Not discussion. I wish to move to amend to add the condition that it can't be subdivided for 20 years.

Mr. Shibuya: Okay. There's an amendment. Members, any second? Seeing none, amendment dies. Okay. Thank you. Commissioner Mardfin?

Mr. Mardfin: I will be voting against this motion for the same reason I voted against the last one.

Mr. Shibuya: Thank you. Commissioners, discussion? None? I assume we can get ready for the question. All those in –. Danny, can you read that recommendation on this?

Mr. Dias: The Department of Planning recommends that the Maui Planning Commission recommend to the Maui County Council approval of the Change in Zoning subject to four conditions.

Mr. Shibuya: Okay, all in favor, raise your hand.

Mr. Spence: That's six ayes.

Mr. Shibuya: And all opposed? One opposed.

Mr. Spence: One nay. Motion is carried.

Mr. Shibuya: Motion is carried, six-one. Thank you. Danny, do you have another? That's it. Thank you very much. At this time, I'll pass it over to, back to Commission Chair.

Change in Zoning

It was moved by Mr. Ball, seconded by Mr. Freitas, then

**VOTED: To Approve the Recommendation of the Department to Recommend Approval of the Change in Zoning to the County Council.
(Assenting - K. Ball, J. Freitas, I. Lay, D. Domingo, P. Wakida, K. Hiranaga)
(Dissenting - W. Mardfin)
(Excused - L. Sablas)**

H. COMMUNICATIONS

- 1. MR. DAVID KAWIKA KAINA, Chairperson transmitting the recommendations of the Hana Advisory Committee on the request by CROWN CASTLE and VERIZON WIRELESS for a County Special Use Permit in order to install and operate a 40-ft. monopole with 12 panel antennas at existing commercial mobile radio service site at 99 Mill Place in the County Agriculture District, TMK: 1-4-003: 009, Hana, Island of Maui. (CUP 2010/0004) (P. Fasi)**

Mr. Hiranaga: Thank you Mr. Vice-Chair. Going on to agenda Item-H, Communications. Mr. Director?

Mr. Spence: Commissioners, we have two items from Mr. David Kawika Kaina from –. These were referrals from the Hana Advisory Committee. What this Commission does is when we get applications for Special Uses or Changes in Zoning or any matters that would normally be before this Commission – and these projects are out in Hana – this Commission will authorize the Hana Advisory Committee to hold the public hearing out in Hana. And that does a couple of things. One, it avoids people having to drive into town to appear before this Commission. And, you know, you're just going to get a much larger turnout out in Hana if the public hearing is held there. So therefore you're gathering a lot more information directly from the community. So we have two items here. The first one is, from the Hana Advisory Committee, is the request by Crown Castle and Verizon Wireless for a County Special Use Permit in order to install and operate a 40-foot monopole with 12 antennas in the County Agricultural District. The staff planner is Mr. Paul Fasi.

Mr. Fasi: Good afternoon. This matter arises from an application for a County Special Use Permit filed on April 13, 2010. The application was filed pursuant to Chapter 19.510.070, Special Use Permits of the Maui County Code by Verizon Wireless and Crown Castle. They are the applicant. They do have a representative here. The applicant proposes to replace three 35-foot omni directional antennas with a single 40-foot monopole affixed with 12 panel antennas and one omni

directional antenna that's approximately 50-feet in height that will extend the overall height to 55-feet. This omni directional antenna was a request from the Maui Police Department and the applicant has graciously agreed to let the Maui Police Department to put their omni directional antenna on the new monopole and provide equipment space for their cabinet equipment onsite.

State Land Use, the subject property is in the State Ag District. The proposed use is consistent with the State Ag use. Designation of the property, it is a permissible use within the State Ag District. State Chapter 205, 4.5, number 17, construction and operation of wireless communication antennas is an accepted use. As far as Maui County Code is use, 19.510, County Special Use Permit. There are eight criteria. Their proposed use meets all eight criteria and is compliant with the requirements of the Special Use Permit. The Chapter 19.38 of the Ag District, it is in the County Ag District. The proposed use is consistent with the County Ag designation of the property. Telecommunication and broadcasting antenna are an allowed use with the County Special Use Permit. The Hana Community Plan, it is designated Ag in the Hana Community Plan. The proposed action is compatible with that designation and is also compatible with the objectives and policies of the affected community plan. Therefore, in conclusion, the proposed project is identified as an allowable use in the Special Use in the County Ag District. Following the Special Use Permit process, the County Special Use Permit is appropriate for the 15,000 square foot facility. Furthermore, it's an allowable use in the State Ag District and compatible with the Hana Community Plan. And this concludes the Department's report.

Mr. Hiranaga: I'm sorry, Director, what type of action is the Department asking from the Commission?

Mr. Spence: The Commission can take up – can take action on this application. You can approve, deny, approve with conditions, or defer, I suppose. But the Hana Advisory Committee has recommended approval of this application with conditions.

Mr. Ball: So we have to take an action?

Mr. Spence: Yes.

Mr. Hiranaga: Alright. At this point, I'll just open it up for public testimony. Is there anyone here that wishes to comment on the item before us? Seeing none, I'll open the floor to the Commission for questions. Commissioner Shibuya?

Mr. Shibuya: Thank you. Paul, can you tell us how many poles? It says a 40-foot monopole, but then you later mentioned 55-feet. That 55-feet is in addition to that 40? Or is that a separate pole?

Mr. Fasi: It's 40 plus 15. It's a 40-foot monopole, with a 15-foot omni direction antenna mounted on top of 40-feet, for a total of 55-feet.

Mr. Shibuya: It's a whip antenna type of a thing?

Mr. Fasi: Correct.

Mr. Shibuya: A di-pole.

Mr. Fasi: Correct.

Mr. Shibuya: And in some of the pictures, it seems that it is a camouflage coconut tree or palm tree. No?

Mr. Fasi: No sir, that is not correct.

Mr. Shibuya: Did I look at the wrong thing?

Mr. Fasi: That particular –. It may resemble a coconut tree. After all the panel antennas are on. But that issue did come up with the Hana Advisory Committee, and it was decided that it would be more appropriate and blend in better with the surrounding area if it was just painted kind of a dark color.

Mr. Shibuya: Without the leaves or the palm fronds. Are there height restrictions?

Mr. Fasi: Yes there are height restrictions. The proposed use does meet the height restrictions for this particular use.

Mr. Shibuya: I'm also looking not only for the visual, but a practical operational aspects. Will this replace several existing towers for antennas?

Mr. Fasi: It's going to replace three omni directional antennas.

Mr. Shibuya: And will it have good coverage for the users?

Mr. Fasi: It will improve, or greatly improve the coverage that exists now. There is an exhibit in your report, towards the back, that shows what the expanded coverage would be. And it's, visually, it's quite significant.

Mr. Shibuya: Okay. And the emissions –

Mr. Hiranaga: Mr. Shibuya, I'm going to ask you to yield the floor.

Mr. Shibuya: Okay.

Mr. Hiranaga: I think Commissioner Mardfin has questions.

Mr. Mardfin: No. I would defer to my colleague. You should ask questions. I'll ask after you finish.

Mr. Hiranaga: Okay. Commissioner Shibuya?

Mr. Shibuya: Okay. I was looking in terms of residential areas close this facility. What's the closest lot that's going to be a residential lot to this facility? I'm looking at radiation.

Mr. Fasi: I think the antenna is about a quarter mile from the Hana Highway, so I would guess is between a quarter mile and maybe a half mile to the first residential area. It's basically up on the

hill behind some bluffs on a rolling hills, up in pasture land.

Mr. Shibuya: Thank you.

Mr. Hiranaga: Commissioner Mardfin?

Mr. Mardfin: I was just going to ask a couple quick questions to confirm some of this anyway. If I go by your map, it's something like 6,000. No, that couldn't be right. 6,000 feet in? I could be wrong.

Mr. Fasi: It's a quarter to a half mile in from the highway.

Mr. Mardfin: Okay, I thought it was further than that.

Mr. Fasi: It's quite a distance out.

Mr. Mardfin: It's the middle of a cattle pasture. There's no home anywhere near it. Is that correct?

Mr. Fasi: That is correct.

Mr. Mardfin: The testimony both at the Hana Advisory Committee – at the Hana Advisory Committee level was that this would improve cell phone reception for people?

Mr. Fasi: That is correct.

Mr. Mardfin: And currently we only basically get one cell phone company. It's Verizon or nothing that works here. This will put it higher so this will improve the reception and broadcastability of the Hana Police Department for emergency services?

Mr. Fasi: That is correct.

Mr. Mardfin: Was there any testimony against this in Hana?

Mr. Fasi: Not to my knowledge.

Mr. Mardfin: Thank you very much.

Mr. Hiranaga: Commissioner Wakida?

Ms. Wakida: I just want to clarify. So this is a Verizon installation for Verizon customers only. Correct?

Mr. Fasi: That is correct.

Ms. Wakida: So if AT&T or somebody else came in they have to do their own tower.

Mr. Fasi: I believe they've got towers on this particular vicinity.

Ms. Wakida: Okay. You mean on that footprint?

Mr. Fasi: Correct. Within the fenced in area. There are other carriers located there.

Ms. Wakida: Okay. Thank you.

Mr. Hiranaga: Commissioner Mardfin?

Mr. Mardfin: Would you check with your technician, I was under the impression that Verizon was the only one that served us. Is that not correct?

Mr. Fasi: There is another carrier up there.

Mr. Mardfin: And what is that?

Mr. Fasi: I believe it's AT&T.

Mr. Mardfin: Thank you.

Mr. Hiranaga: Any further questions from the Commission? Seeing none, I will open the floor to a motion.

Mr. Mardfin: Mr. Chairman Hiranaga?

Mr. Hiranaga: Yes?

Mr. Mardfin: Is there going to be a recommendation from the –

Mr. Hiranaga: I'm sorry. Staff recommendation please? Thank you.

Mr. Fasi: There are six standard conditions, and six project specific conditions. I need to make some minor clarifications and amendments to condition number three. And what we're going to do is basically do the same thing we did for the Paia tower there where as in condition number three, page three, and let me see, in about in the first third of this paragraph, line number one, two, three, four, five six, where it starts in parenthesis one million. And we're going to take out the word – we're going to take out the word "named" out. Because basically what this does is requires the applicant to take out another additional insurance policy. So what we did, if we took out the word named in two places in condition number three, and that satisfied the applicant as well as the County Council's questions regarding this particular issue. It's something that we've already done. Project specific condition number eight.

Mr. Giroux: Paul? Paul, can I address that? You're taking out two names?

Mr. Fasi: Two words. The word is named.

Mr. Giroux: Because what I've been advising is that – because you have two names there, it's redundant. Taking out "naming the County is an additional insured," satisfies our Risk Management

Department request that they still have the County's name on that policy.

Mr. Fasi: So is your recommendation to leave the word "named" in?

Mr. Giroux: No, no, just naming, then take out the second "named."

Mr. Fasi: Okay.

Mr. Giroux: And that will get rid of the redundancy.

Mr. Fasi: Thank you. As noted. Project specific conditions – there are six. And condition number eight, we're just going to change the height limit from 44-feet to 55-feet. And therefore in consideration of the foregoing the Planning Department recommends that the Maui Planning Commission adopts the Planning Department's report and recommendation prepared for the April 12, 2011 meeting as its Findings of Fact, Conclusions of Law, Decision and Order, and approve the County Use Special Use Permit as recommended by the Planning Department.

Mr. Hiranaga: Commission Mardfin?

Mr. Mardfin: I was just going to say I move that we accept the Planning Department's recommendations as modified by the Hana Advisory Committee, and that we accept the report and recommendations as Findings of Fact, Conclusions of Law, Decision and Order order the Department of Planning to transmit said recommendation to the Maui – to the, whenever it goes after this.

Ms. Wakida: I second.

Mr. Hiranaga: Commissioner Wakida –. Moved by Commissioner Mardfin, second by Commissioner Wakida to approve as recommended. Any discussion? Seeing none, all in favor of the motion so indicate by raising your hand.

Mr. Spence: That's seven ayes. Motion is carried.

It was moved by Mr. Mardfin, seconded by Ms. Wakida, then

**VOTED: To Approve the County Special Use Permit, as Recommended by the Department with Amendments.
(Assenting - W. Mardfin, P. Wakida, J. Freitas, I. Lay, K. Ball, D. Domingo, W. Shibuya)
(Excused - L. Sablas)**

- 2. MR. DAVID KAWIKA KAINA, Chairperson transmitting the recommendations of the Hana Advisory Committee on the request by MR. JOHN S. ROMAIN for a Change in Zoning from the Urban Reserve District to the Service Business Residential (SBR) District for property situated at 4869 Uakea Road, TMK: 1-4-005: 026, Kawaipapa, Hana, Island of Maui. (CIZ 2010/0001) (D. Dias) (Maui Planning Commission conducted site inspection in May 2010.)**

Mr. Hiranaga: Thank you very much! Next agenda item, Communications H-2, Mr. David Kawika Kaina. Mr. Director?

Mr. Spence: Commissioners, this is a request for a Change in Zoning for the proposed Bamboo Inn Bed and Breakfast at 4869 Uakea Road in Hana, Maui. And also for the new Commissioners, you know, we'll go through the staff report and everything. This Commission because this is a Legislative action, this Commission makes a recommendation to the County Council. So whatever the vote is, whatever proposed conditions, if there are any, they'll go up and, you know, this is just – this is not the decision making body. We're just recommending to the Council. Okay? And the staff planner is Mr. Danny Dias.

Mr. Dias: Thank you Director. Very briefly, as stated this project involves a Change in Zoning for a property located in Hana. The property is approximately 0.622 acres in size, and is currently zoned Urban Reserved. What the applicant wants is to change his zoning to Service Business Residential and that would bring his property in alignment with the Community Plan. As you probably saw in the zoning section of the report, Urban Reserve is pretty restrictive. You're basically limited to a house, accessory dwelling and maybe a shed or a garage. So what the Change in Zoning would do is allow the applicant to operate a bed and breakfast. And keep in mind that this application as Director Spence stated still has to go to the Council for final action and once that's done, the applicant still has to come into the Department for a bed and breakfast permit.

Just some brief background. The Planning Commission, some have been involved with this project. Most of the members here went on a site visit to Hana. It was on May 2nd of last year. I believe this property was the last property that you folks went to or maybe not, second to the last. Also, on November 9th of last year, the Commission voted to delegate the public hearing to the Hana Advisory Committee, and that meeting was held on December 16th of last year. The Hana Advisory Committee voted to recommend approval of the item subject to one condition, and that condition is quote:

“That the uses and structures permitted on the property shall be limited to single-family dwellings, duplex dwellings, and B&B homes, subject to the provisions of Section 19.64.030 of the Maui County Code.”

And the reason why the Hana Advisory Committee recommended this condition is that Service Business Residential zoning allows for service establishments and mixed use establishment which could be an office. It could be a little store and so forth, and the Committee felt that that wouldn't be something the Hana community would support. So that basically sums everything up. We don't have a presentation. This is a pretty straight forward application. And along with myself, the applicant, Mr. John Romain, is here for any questions that the Commission may have.

Mr. Hiranaga: Does the applicant wish to make a statement?

Mr. John Romain: Nothing long. The only thing that I think –

Mr. Hiranaga: Please identify yourself.

Mr. Romain: John Romain. I'm the applicant from Hana. The only thing I'd like to say is that I've been working on this for 12 years since I've had – or 13 years – since I've had the property. It was zoned SBR in our Community Plan with the understanding that would be passed by the Council. And when they re-zoned out of Urban Interim Zoning in 1995, I believe it was, since SBR wasn't there, they took the eight of us that had that and we got, and as one of the members of the Planning Department said the zoning is purgatory in Urban Reserve. And so I've been chasing this thing this whole time to finally get the SBR which you folks, you know, did take care of more than a year ago, and the County Council – actually it was two years ago. So that's the only point I want to make is that this was designated because the property had a history of some small business. It was part of the . . . (inaudible) . . . And that's all, and I appreciate your time. Thank you.

Mr. Hiranaga: Questions for the applicant. Commissioner Wakida?

Ms. Wakida: Thank you for coming all the way from Hana. Will you be living on the property?

Mr. Romain: Yes.

Ms. Wakida: And you have two structures, correct?

Mr. Romain: Yes.

Ms. Wakida: And you'll be living in one of them?

Mr. Romain: I live in one and the other one would will be the B&B.

Ms. Wakida: Thank you.

Mr. Hiranaga: Commissioner Mardfin?

Mr. Mardfin: To refresh the Commissioners that were on it, on the site visit, we visited a couple – two places for potential B&B. Would you want, feel like describing yours?

Mr. Romain: Mine is an ocean front property. There's a bamboo wall courtyard. There's a . . . (inaudible) . . . gazebo, but that unfortunately is going to have to go. Part of my processing in that was not a permitted gazebo and I'm trying to find a substitute roof on that. But those –. Some of you were there, and it was a hot day, and it's a lovely spot, but we're going to have to give that one up. That might be a way. There's a lot of bamboo trim, and it's a very, kind of a tropical looking place.

Mr. Mardfin: And it over looks Hana Bay?

Mr. Romain: It does.

Mr. Mardfin: And there's a heiau near . . . (inaudible) . . .?

Mr. Romain: Yes. There's actually a historic site that runs all the way from the Hana Kai up. I previously owned a property where we restored a fish pond, and there's a fishing heiau. It's a

remarkable complex. They call it . . . (inaudible) . . . complex, and it's fishing – Sam Kaai identified it as a fishing pond. That's on the neighbor's property, but it's visible. It's adjacent. And they're actually, where the Hana Kai is, there's a fresh water spring. And Sam has speculated and there were caves – there are caves, shelter caves – on the other property that I own that has a fish pond. And Sam feels strongly that this is one of the first settlement areas in all of eastern Maui because it had a beach where you could land a canoes. In fact, I have a picture from 1885 of canoes on the shore right out front. It has sheltered caves and fresh water springs. You can get me going all day on that, I could take your time.

Mr. Mardfin: Thank you very much.

Mr. Hiranaga: Any other questions from the Commissioners? Commissioner Wakida?

Ms. Wakida: Yes, no, this would be for Mr. Dias. I want to say I was charmed reading these minutes because they were – it really reflects the community there. Thank you auntie. Thank you uncle was what it said in these minutes here. But at the end they recommended approval allowing only items one, two, and six, and I didn't know what those items – what items they were referring to.

Mr. Dias: Okay. Let me find it. It's in the report. It's basically items that are in the zoning ordinance for Service Business Residential. So if I could –

Mr. Mardfin: 12.

Mr. Dias: Okay. Correct. Page 12. 19.11.020 sort of in the middle, these are the allowed uses – single-family dwellings, duplex dwellings, green houses, truck gardens and nurseries, SBR service establishments and so forth. And so what the Hana Advisory Committee wanted was just one, two, and six for this property.

Ms. Wakida: Okay. So we should be considering that as well.

Mr. Dias: Correct.

Mr. Hiranaga: Any other questions from the Commissioners? Commissioner Mardfin?

Mr. Mardfin: I won't do it as a question. I'll do it as a comment when we're ready to vote.

Mr. Hiranaga: Any other questions from the Commissioners? Commissioner Wakida?

Ms. Wakida: Just one. Did the – was there any objections in Hana to this project?

Mr. Dias: There were two people that testified. The first individual, his testimony, it wasn't necessarily against this project. He just – it was sort of like he wanted the County to do a master inventory or study of the sewage system there, so I don't think he was specifically against this project. And then another lady stood up. I think she sort of objected, right, if I recall.

Mr. Romain: . . . (inaudible) . . .

Ms. Wakida: Wait, we need –

Mr. Hiranaga: If you're going to say something, you need to approach the mic.

Mr. Spence: Yeah, otherwise, it just comes out on the minutes as "inaudible."

Mr. Dias: So she objected, but it wasn't really like a strong objection from what I recall.

Ms. Wakida: Because two of the Commissioners voted against it here, in this, from the Advisory Committee.

Mr. Dias: No, if I recall, there were two that originally were sort of against it, but at the end they both voted for it. Because I know we didn't have quorum so we –

Ms. Wakida: The end you had, well, you had one, but –

Mr. Mardfin: Mr. Chairman?

Mr. Hiranaga: She still has the floor.

Mr. Mardfin: I'm hoping I can clarify it for her.

Ms. Wakida: Go ahead. I yield to Mr. Mardfin.

Mr. Hiranaga: Commissioner Mardfin?

Mr. Mardfin: Yeah, there were initially there were two people that had concerns. One of them was satisfied. The one Commissioner that ultimately voted against the final motion just wanted to have more public hearing about it. And it wasn't she was substantively against it, but she thought the community should have more opportunity for input to discuss it.

Ms. Wakida: I see. Alright.

Mr. Mardfin: And that was her major concern.

Ms. Wakida: Thank you.

Mr. Hiranaga: Any further questions? If not, I'll open up the public testimony portion. Anyone here wishes to provide public testimony? Seeing none, the public testimony is closed. I will open the floor for staff recommendation.

Mr. Dias: Thank you Chair. The Department of Planning recommends that Maui Planning Commission recommend approval of the Change in Zoning to the Maui County Council for a Change in Zoning from Urban Reserve to Service Business Residential subject to one condition.

Mr. Hiranaga: I open the floor for a motion. Commissioner Mardfin?

Mr. Mardfin: I move we recommend the Change in Zoning with a condition that it be for purposes one, two, and six, and this be recommended to the Maui Council.

Mr. Hiranaga: Is there a second?

Ms. Wakida: . . . (Inaudible) . . .

Mr. Hiranaga: Second by –. Moved by Commissioner Mardfin. Second by Commissioner Wakida. Any discussion? Commissioner Mardfin?

Mr. Mardfin: I'll be real quick. I want to explain why they wanted to limit it. When they had posed this for John Romain's property years ago when they did the Community Plan, John was already doing this sort of thing, and they were perfectly happy with what he's been doing. They just didn't want it more intensified. They had recommended at the time of the community meeting, at the Community Plan, that SBR be instituted, but the Council never did anything until this past year or so. So what the Council passed was more expansionary than the community had wanted in their Community Plan. So by limiting it to these three things which was acceptable to the applicant, they got sort of what they wanted in the original Community Plan request for an SBR.

Mr. Hiranaga: Thank you. Any other comments or discussion? If not, I will call for the motion. All in favor please raise your hand.

Mr. Spence: Seven ayes. Motion is carried.

Mr. Hiranaga: Motion is carried. Thank you.

It was moved by Mr. Mardfin, seconded by Ms. Wakida, then

**VOTED: To Approve the Recommendation of the Department to Recommend Approval of the Change in Zoning to the County Council with Conditions.
(Assenting - W. Mardfin, P. Wakida, J. Freitas, I. Lay, K. Ball, D. Domingo, W. Shibuya)
(Excused - L. Sablas)**

I. APPROVAL OF THE ACTION MINUTES OF MARCH 22, 2011 MEETING

Mr. Hiranaga: Okay, we've got five minutes and a couple of more items. Hopefully we can complete this. Item-I, acceptance of action minutes dated March 22nd, 2011.

Mr. Freitas: So move.

Ms. Domingo: Second.

Mr. Hiranaga: Any corrections or comments? Seeing none, all in favor say aye.

Planning Commissioners: "Aye."

Mr. Hiranaga: Opposed?

Mr. Spence: Motion is carried.

It was moved by Mr. Freitas, seconded by Ms. Domingo, then

**VOTED: To Accept the Action Minutes of March 22, 2011.
(Assenting - J. Freitas, D. Domingo, W. Mardfin, I. Lay, K. Ball,
W. Shibuya, P. Wakida)
(Excused - L. Sablas)**

J. DIRECTOR'S REPORT

- 1. Pursuant to the Special Management Area Rules of the Maui Planning Commission, notification of the issuance of the following permit:**
 - a. Special Management Area (SMA) Emergency Permit to PATRICK O'ROURKE of the Board of Directors of the MAKANI SANDS AOA to excavate under the existing seawall four to six feet, place three to five foot diameter boulders under the wall and pressure grout the voids between the boulders, and install No. 5 rebar on top of the boulder floor and pressure grout to stabilize the structure for property situated at 3765 Lower Honoapiilani Road, TMK: 4-3-006: 012, Lahaina, Island of Maui. (SM3 2011/0008) (J. Buika)**

Mr. Hiranaga: Director's Report, number one, Special Management Emergency Permit to Patrick O'Rourke. Director?

Mr. Spence: We have Mr. Jim Buika here to report on those SMA Emergency Permit.

Mr. Buika: Thank you Chair. At about lunch time I handed out two papers. One is a County letter March 24th, to Patrick O'Rourke, from our Director. And then right behind it is a February 25th request for this SMA Emergency Permit that has some photos in there. I'll just refer to the –. The first one is a memo, is a written confirmation of the verbal approval of the emergency permit, and then the second one is exhibit that shows some of the photos. The property is Makani Sands on 3765 Honoapiilani Highway in Lahaina, TMK: 2-4-3-006:12.

And the situation is on February 1st the Board of Directors contacted me that they had an emergency situation. There's a seawall. If you look at the first picture here on the February 25th photo, there's seawall that runs along the front of the – by the ocean, and then there's about an eight to nine foot lanai concrete attached to it. There's about 20-feet of landscaping and then the large AOA behind it. What has happened is the waves have undermined the footing of the seawall and the lanai was built on top a sand sub-straight. All the sand has been sucked out from underneath it, so the seawall is very unstable. The lanai is unstable. Wherever the joints in the concrete of the lanai are, they're, it's not flat anymore. They're starting to collapse because there's nothing underneath it. And I went out two days later – the day we had our site visit, I went early and checked out the property, and it definitely is an emergency situation. I feel, there's up to about 12

feet of loss of sand behind the seawall and the lanai underneath. And there's some photos in here that shows some of the cavities, the voids. So the purpose for the emergency permit is to stabilize the seawall and the lanai to prevent the seawall from collapsing and then creating a very difficult situation where they would be open to the ocean.

Tenants are not allowed to go on the lanai anymore and there is a temporary fix of where they would excavate behind the seawall while the seawall is still stable. There's one diagram in here that shows they would put in boulders, four to six feet below the seawall, to prevent the waves from undermining the seawall, and build a rebar structure tied into the existing seawall for the length of the project. And that's about it. They are bound to get an, eventually, do a shoreline setback variance, come in with an SM1, SMA Major Permit, and an Environmental Assessment for work in the shoreline setback areas. So that they are bound to do that later on, within 180 days, at least come in with an application. Any questions? There's no action on this. It's just a report out from the Planning Department to you, so I can answer any questions.

Mr. Hiranaga: Any questions, Commissioners? Seeing none – Commissioner Wakida?

Ms. Wakida: Just a quick one. This situation isn't going to get any better.

Mr. Buika: No.

Ms. Wakida: I mean, whatever they do regardless of how substantial, it's going to eventually fall apart again.

Mr. Buika: I mean, engineers can do anything these days. And I think this is a good engineering solution. You know, it's just an older structure. It's becoming a common occurrence for a lot of these older seawalls and structures on the west side. The seawall can be stabilized and it can protect the AOA for a long time. I mean, eventually, probably, you are right, it will happen again, but I think that there can be a fix, an engineering fix, to stabilize this situation for a number of years, and for a number of decades.

Ms. Wakida: Yeah, but we've all learned that the seawalls are, what, are causing the erosion problems to being with so it's – you know, as this coast line moves in, it's going to –

Mr. Buika: Right. There's some sand in front of it. Very little. Seawalls to the north. Seawalls to the south. There's no beach resource left to protect at this location unfortunately.

Mr. Hiranaga: Any other questions Commissioners? Commissioner Mardfin?

Mr. Mardfin: Do we need to –? This is just a notification. Do we need to officially defer the rest of the orientation to next week, or next meeting, or is that –?

Mr. Hiranaga: Well there's still some agenda items to cover.

Mr. Mardfin: Sorry.

Mr. Jim Buika gave a brief summary of the matter for the Commission's information.

2. Planning Commission Projects/Issues

Mr. Hiranaga: Just as a housekeeping item regarding Director's Report, I'm going to be moving the SMA Minor Permit report and Exemption reports back in the agenda coming the next meeting. So if you want permits addressed, I strongly urge you to send an email to Carolyn with your questions prior to the meeting so that the responses will be prepared when we addressed them at the end of the meeting.

Next agenda item is Planning – J-2, Planning Commission projects and issues.

Mr. Ball: I'd like to have us put on the agenda and I'm sure we won't finish at one time. It might be a running agenda item. The SMA line, if you will, boundary around Maui that we should start looking at that. It's going to be an effort to look that where it should be shrunk, where it should be increased. So if we could add that to the agenda.

Mr. Hiranaga: We'll forward that to the Director, and hopefully he'll address it and come back to us with some type of a proposed action. Commissioner Wakida?

Ms. Wakida: Yes. Exactly. I heartedly support this too, and particularly I'd like to, at a future time, find out the process by which we make these via public hearing, you know . . . (inaudible) . . .

Mr. Spence: I believe it's a part of your rules already, but we will get back to the Commission with that.

Mr. Hiranaga: I guess maybe you could do a workshop.

Mr. Spence: Sure.

It was asked that the matter of the amending SMA boundaries be placed on a future agenda for discussion.

3. Discussion of Future Maui Planning Commission Agendas

a. April 26, 2011 meeting agenda items

Mr. Hiranaga: Okay, any other Planning Commission projects or issues? Seeing none, Item J-3 discussion of future Maui Planning Commission agendas.

Mr. Clayton Yoshida: Good afternoon Mr. Chair, members of the Commission. I did circulate copies of your upcoming agenda items for the April 26th meeting. We have four public hearings, two shoreline setback variance applications from West Maui. We did the site inspection on, one, the DOT shoreline protection project at Olowalu, and the other the 11 Hale Malia Place shoreline protection project at Napili. We also have the final EA for the Maui Medical Center at Kanaha. And the annual report regarding the dispersement of monies to the Community Benefits Fund – from the Community Benefits Fund out of the TOR lot-3 SMA settlement. So that agenda is fairly full.

Mr. Yoshida went over the items scheduled for the April 26, 2011 meeting.

b. May 10, 2011 public hearing on the following application:

STATE OF HAWAII, DEPARTMENT OF TRANSPORTATION, HIGHWAYS DIVISION requesting a Special Management Area Use Permit for the proposed Hana Highway Improvements from Uakea Road to Keawa Place in order to widen the existing one-lane bridge culvert to two (2) lanes and related improvements at TMK: 1-4-006: 999(por.), Hana, Island of Maui. (SM1 2010/0010) (P. Fasi)

Mr. Yoshida: So on May 10th, again, as we announced at the last meeting, we have scheduled a March 15th Hana Advisory Committee Meeting on Uakea Bridge, SMA DOT project, but the Committee was unable to get a quorum. The DOT is under some time constraints to encumber funding. So we will be having the public hearing – the Commission will be hosting a public hearing on that on May 10th.

Also I believe Tara Miller's presentation on sea level rise, climate change was deferred from today's meeting so we've conferred with her, and we can schedule that for 1:00 on May 10th.

The other item is the, shortly before the Kuhio Day weekend, the Council transmitted Council Resolution No. 11-24. This is relating to a short term rental homes bill, through the three Planning Commissions, and for the 120 days, or the three Planning Commissions have 120 days to get their recommendations back to Council. It's kind of patterned after the bed and breakfast homes bill. So we received it in mid-March. We have until about maybe around July 20th to get your recommendations. So we were thinking of having a public hearing around June 14th. I think Commissioner Hiranaga is the only the Commission who was here in 2007 when the Department introduced its B&B TVR package. And we went through three meetings with three hours of testimony at each meeting. So I think if we – I mean, depending if the Commission – if we could just devote to a June 14th meeting to hearing the bill, having the public hearing and the Commission deliberate because we're up to scheduling for that meeting right now, public hearing, if that's the preference of the Commission.

Mr. Hiranaga: Any comments from the Commissioners?

Ms. Domingo: Clayton, how long do we have to respond?

Mr. Yoshida: You have 120-days from the time that the Council transmitted the Bill. So the Council transmitted the Bill around March 23rd, March 24th, so you have 120-days. Which would take us to around July 23rd. It just that there was a lot of testimony in 2007 from operators, neighbors, community associations, Chamber of Commerce, Board of Realtors, so we just devote one meeting for the public hearing and have the Commission deliberate.

Mr. Hiranaga: We'll defer to your expert opinion.

Mr. Yoshida: Well, I don't know if we have the capacity in the room as far, you know, people who are kind of lined up against the wall, out in the corridor, but I think this is one of the few places that we control and we can reserve for the entire day.

Mr. Hiranaga: Okay, well, if there's no objections.

Mr. Yoshida: So we'll notice it as such.

Mr. Hiranaga: Any objections? Clayton, you may not have been here but we deferred the balance of the orientation workshop to some date. Is there a date that you can assign now so we can defer it to a date specific? About 20 minutes to half an hour.

Mr. Yoshida: Were there other items besides Tara's sea level rise?

Mr. Hiranaga: No, 20 minutes to half an hour.

Mr. Yoshida: Yeah. So at 1:00 p.m. on May 10th.

Mr. Hiranaga: So we need a motion to that effect, a motion to defer to May 10th, 1:00p.m.? Commissioner Mardfin?

Mr. Mardfin: I move we defer till 1:00 p.m. on May whatever it is.

Mr. Ball: Second.

Mr. Yoshida: May 10th.

Mr. Mardfin: May 10th. Thank you.

Mr. Hiranaga: Second by Commission Ball. Any discussion? No discussion. All in favor say aye?

Planning Commissioner: "Aye."

Mr. Hiranaga: Any opposed? Motion is carried. Next meeting is April 26th. Just an informal comment, there's three spots left over because the math doesn't work out, so if anybody wants to sign up, you're welcome to do so. If there's not objection –

Mr. Mardfin: Mr. Chairman?

Mr. Hiranaga: Yes?

Mr. Mardfin: I'd like to thank you for running an excellent meeting. I'm sure we'll have very efficient, effective meetings in the future.

Mr. Hiranaga: Thank you very much Commissioner Mardfin.

Mr. Spence: There's only two spots left on the . . . (inaudible) . . .

Mr. Hiranaga: So if there's no objections, this meeting is adjourned. Thank you.

The matter has been scheduled for the May 10, 2011 meeting due the Hana Advisory

Committee not having a quorum when the matter was scheduled for public hearing and the concern of funding lapsing for the proposed project.

- c. Scheduling of the public hearing on Council Resolution No. 11-24 relating to Short-Term Rental Homes**

This matter has been scheduled for the June 12, 2011 meeting.

K. NEXT REGULAR MEETING DATE: APRIL 26, 2011

L. ADJOURNMENT

The meeting was adjourned at 5:12 p.m.

Submitted by,

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

RECORD OF ATTENDANCE

Present

Kent Hiranaga, Chairperson
Keone Ball
Donna Domingo
Jack Freitas
Ivan Lay
Ward Mardfin
Lori Sablas (excused at 12:15 p.m.)
Warren Shibuya, Vice Chairperson
Orlando Tagorda
Penny Wakida

Others

William Spence, Planning Director
Ann Cua, Staff Planner
Kurt Wollenhaupt, Staff Planner
Livit Callentine, Staff Planner
Erin Wade, Small Town Planner
Joseph Prutch, Staff Planner
Danny Dias, Staff Planner
Jim Buika, Staff Planner
Tara Miller
Carolyn Cortez, Staff Planner
James Giroux, Department of the Corporation Counsel
Rowena Dagdag-Andaya, Department of Public Works