

**MAUI PLANNING COMMISSION  
REGULAR MINUTES  
AUGUST 23, 2011**

**A. CALL TO ORDER**

The regular meeting of the Maui Planning Commission was called to order by Vice Chairperson Warren Shibuya at approximately 9:06 a.m., Tuesday, August 23, 2011 Planning Conference Room, First Floor, Kalana Pakui Building, 250 South High Street, Wailuku, Maui.

A quorum of the Commission was present. (See Record of Attendance.)

Vice-Chair Shibuya: I want to call this Maui Planning Commission to order and, but first off I'd like to thank all of you who have showed up and are willing to testify on the issue that we have. But before we begin I'd like to introduce some of the, all of the Commissioners. We start of Donna Domingo, Commissioner Lori Sablas, Commissioner Ivan Lay.

Mr. Lay: Morning Chair.

Vice-Chair Shibuya: Our Corporate Counsel, James Giroux.

Mr. Giroux: Morning, Chair.

Vice-Chair Shibuya: And myself, Warren Shibuya. We have the Planning Director, Will Spence and we have Commissioner Penny Wakida with us. We have the Planning Staff starting off with Gina Flammer and Danny Dias.

Mr. Dias: Good morning, Chair.

Vice-Chair Shibuya: And Clayton Yoshida and Rowena Dagdag. Thank you. Oh, I forgot, right in back of that monitor there, of course, we can't forget, Carolyn Takayama-Corden. Thank you very much. Members, before we begin, I'd like to open up for testimony here and if you do testify for three minutes, you will not be allowed to testify when the issue comes up, but this is an opportunity because of your schedules you can testify at the beginning. At this particular point, are there, there's four persons that have signed up to testify. You may testify at this time or you can wait for the issue to be presented first. Jim Shefte, would you like to?

Mr. Jim Shefte: I'll wait.

Vice-Chair Shibuya: Robert Bisordi.

Mr. Robert Bisordi: Yeah, I'll wait.

Vice-Chair Shibuya: Okay. Tom Luten.

Mr. Tom Luten: I'll wait.

Vice-Chair Shibuya: Okay. Susan Luten.

Ms. Susan Luten: I'll wait.

Vice-Chair Shibuya: Thank you very much. If there's others in the audience here would sign up, I'm not holding this the sign up sheet away from you, but I'll make it available for people to sign up. Can we first introduce the first item Planning Director.

Mr. Spence: Thank you, Mr. Chairman, Commissioners, we are on item B-1, New Business. This is KG Maui Development requesting acceptance of a Final Environmental Assessment prepared in support of Community Plan Amendment for the Pulelehuakua Subdivision in Pukalani. Our staff planner this morning is Mr. Danny Dias.

## **B. NEW BUSINESS**

- 1. KG MAUI DEVELOPMENT, LLC requesting acceptance of the Final Environmental Assessment prepared in support of the Community Plan Amendment for the Pulelehuakea Subdivision, a 13-lot single family residential subdivision in reconfiguring the Single Family and Park-Golf Course community plan designations for property situated along Aina Lani Drive at TMK: 2-3-008: 036 (por.), Pukalani, Island of Maui. (EA 2010/0005) (CPA 2010/0003) (CIZ 2010/0006) (D. Dias) (The Final EA was circulated to the Maui Planning Commission at the August 9, 2011 meeting. The Draft EA was reviewed by the Maui Planning Commission at its January 11, 2011 meeting.)**

**The accepting authority of the Environmental Assessment is the Maui Planning Commission.**

**The EA trigger is the Community Plan Amendment.**

**The project needs a Community Plan Amendment (CPA) and a Change in Zoning (CIZ). The public hearing on the CPA and CIZ applications will be conducted by the Maui Planning Commission after the Chapter 343 process has been completed.**

Mr. Dias: Good morning, Chair Shibuya and Members of the Maui Planning Commission. As stated by Director Spence, the item before you involves the proposed Pulelehuakea Subdivision located within the Pukalani Golf Course. The Final EA for this project was distributed to you at your last meeting. The applicant is requesting that this Commission accept the Final Environmental Assessment and issue a Findings of No Significant Impact. Most of you should be somewhat familiar with this project. The Draft EA was brought to you on January 11<sup>th</sup> of this year. At that meeting, the Commission had a fair amount of comments and asked for additional information on different aspects of the project. The applicant responded to those comments and that comment letter is included in Section 10 of the Final EA. The applicant also incorporated the information sought by this Commission into the document itself. Also, included in the Final EA are comment letters from various agencies. Those letters and responses are also included in the Final EA. Agency comments for this project were basic and fairly standard which was expected since this is a fairly small subdivision. It's just 13 lots and the location in which it's located is, is pretty much residential in nature already. One thing to keep in mind with this project is that it will still come

before this Commission at a later date for a recommendation on the Community Plan Amendment and Change in Zoning. So that sort of summarizes what I have to say and I'll turn it over to the applicant's representative Leilani Pulmano of Munekiyo and Hiraga, Inc. for a more detailed presentation and I think that's going to last about 15 minute or so. Thank you.

Vice-Chair Shibuya: Thank you, Danny. Leilani? Leilani before you start, can you introduce yourself?

Ms. Leilani Pulmano: Sure. My name is Leilani Pulmano with Munekiyo and Hiraga. We're the planning consultants for the proposed Pulelehuakea Residential Subdivision and as Danny had indicated this morning, we're here today for the approval of the Final Environmental Assessment. The proposed project before you is a residential subdivision and to down zone residential lands to Park/Golf Course and it will as Danny had said, a Community Plan Amendment and a Change in Zoning for the project. The Community Plan Amendment triggers the need for an Environmental Assessment. Before I get started on the project itself, I want to introduce you to the project team. We have Elton Wong with KG Development. He's the developer. We also have Ron Fukumoto, he's our engineer on the project and we have Phil Rowell, the traffic engineer on the project here with us today.

So if I could give you a regional context to orient you to the site. We're in Pukalani here. This is Haleakala Highway. The Pukalani Town Center is located here and the Mayor Hannibal Tavares Community Center is here. The project is located within the Pukalani Country Club Golf Course between holes 5, 6, and 7. Just to give you a closer aerial of the project site, the existing Kula Malu Subdivision is located adjacent to the golf course. Within these pine trees is the site itself. The entrance to the site is off Pulelehuakea Street.

So initially KG Maui looked at their current land use designation for this site which allows for 20 duplex homes. They determined that this type of housing is not compatible for the area given the surrounding single-family Kula Malu Subdivision they felt that a more appropriate housing type would be single family housing units. So thus, the applicant is proposing to develop a residential subdivision and related improvements on approximately six acres within Area A here. The residential subdivision will provide for 13 single-family lots ranging from 15,000 square feet to 37,000 square feet.

The applicant held a community meeting early on with the surrounding neighbors to get their feedback and the Kula Malu Homeowners Association requested to establish land use consistency on eight acres of Pukalani Golf Course on lands adjacent to their home. It's part of the existing golf course right now here, along here, and it already has, it has Residential zoning and Residential community plan so they asked that they redown grade that back.

So I just want to spend a little bit of time talking about the land use request that we're doing. It's a little complicated and there's a table on, on Page 6 on the Final EA if you want to follow along. So what we're proposing there is a, in the existing area we have community planned Single-Family in this, it's actually yellow area, in Area A here and we're requesting for a R-3, I'm sorry, Residential community plan in all of Area A. Along the golf course in Area B, we have Residential – Single-Family community plan designation for that same area we're requesting Park/Golf Course. Now

in terms of zoning, a portion of the Residential area is zoned D-1 Family Duplex in this orange area here. For the entire Area A we're requesting for R-3 Residential zoning. Along the golf course, the existing golf course, there is R-1 and R-2 zoning in this area here and we're requesting to down zone all of the Area B to Park/Golf Course. So ultimately this reduces the amount of land use designation that's residential by approximately five acres. So in terms of the project benefits, the project will provide housing opportunities in Upcountry to meet the forecasted growth in this region. As you previously saw, a portion of the site is already zoned for housing and the entire area currently allows for 35 total housing units but the project is proposed for 13 single-family housing units making the project less dense. It will also provide the current homeowners of Kula Malu Subdivision assurances that the lands adjoining their property will be designated to golf course use instead of future housing and the project site is located within the Draft Maui Island Plan urban growth boundary.

And here's some site photos. The photos on the left shows a view looking from above the site towards the ocean and that you can see the pine trees that surrounds the site right now. And this photo, the right photo is actually inside of the site.

When we were before you on the Draft Environmental Assessment in January the Commissioners had 13 comments and I would like to highlight a few of the comments here. In terms of the sustainable features for the project, we will be using construction best management practices to reduce soil erosion, sedimentation and airborne dust. In terms of outdoor lighting guidelines, we'll have some guidelines to minimize light pollution. The homes will be equipped with water efficient fixtures and appliances. The single-family homes will have solar water heaters and Energy Star rated appliances and windows and for energy generation, the client will offer an option for PV system.

Another key comment was water. The current plan is to connect to the Upcountry water system and apply to be included on the Upcountry Water Priority List. We did propose to the Department of Water Supply to provide additional source with a reverse osmosis system that's connected to a current well for Pukalani Golf Course. However, Department of Water Supply said the long-term cost of running that system is above their current operating cost and they asked us to take a look at that once more. So we understand that the project could be waiting for a long time for water, but we're willing to wait. Frankly, this land use entitlement process takes a long time and the corresponding process next to subdivision design will, will take further. Last week Monday, the Water Commission Resources had a meeting about Upcountry water systems and we're very hopeful that administration will be moving forward to providing water sources. In terms of water distribution, the subdivision site already has a stub out for distribution lines and water there.

In regards to workforce housing, we will be complying with the County Code which allows either for providing of onsite lots, purchasing of DHHL credits, partnering with a qualified affordable housing provider or paying an in-lieu fee. And in regards to drainage the increase in runoff will be accommodated by a retention/detention basin onsite.

Another key comment was traffic. In terms of traffic, right at the intersection at Ainalani and Liholani Street the closest intersection to the subdivision site, the existing Level of Service is A and at build out the traffic will continue to operate at a Level of Service A. The Commissioners asked back in January what would be the impacts to traffic from the 13 homes at the intersections entering

Pukalani? But in general, the project will generate 13 inbound and 7 outbound in the A.M. peak hour and 8 inbound and 5 outbound trips in the P.M. peak hour. Existing now, currently existing there are two congestion ...(inaudible)... areas here as you enter Pukalani and one is at Old Haleakala Highway and Pukalani Street and the other is at Iolani Street and Pukalani Street. Again, this is existing congestion traffic that's already happening now. But our traffic study determined that since the homes are, are 13 homes and the traffic is pretty minimum that the mitigation, that they didn't recommend any mitigation measures for this area.

So again, we are here to request the acceptance of the Final Environmental Assessment and determination of a Findings of No Significant Impacts. The Commission is the approving agency for the Environmental Impact and as Danny said, we'll be here before you again for the Community Plan Amendment and Change in Zoning request. This concludes my presentation and, and the project team will be here to answer any questions that you may have. Thank you.

Vice-Chair Shibuya: Thank you very much, Leilani. At this time, I'd like to open it up for public testimony and the first member on the list, I guess is Mr. Jim Shefte?

Mr. Jim Shefte: Thank you, and good morning Commissioners.

Vice-Chair Shibuya: Can you state your name, please?

Mr. Shefte: My name is Jim Shefte. I reside at 2994 Ainalani Drive which is the subdivision which will be adjacent to this new development. I am on the Board of Directors of the Community Association for Kula Malu Owners Association and I raise to speak in favor of the approval of this, of this document and would like to also state that the developer has been let's say a good neighbor in that they have tried to address our concerns and have worked very, very well with us especially in the zoning change that is proposed for the golf course area. And we are very much in favor of this, of this development and hope that it goes forward smoothly and, you know, provide some wonderful homes for some, some wonderful people. Thank you.

Vice-Chair Shibuya: Thank you very much. Any questions, Commissioners? None, thank you very much, Jim. Gina, may I have the list, the sign up list so I can call the next person? Those interested in testifying please sign up. I'll have the list here. Robert Bisordi. Please state your name and if you live in the area.

Mr. Robert Bisordi: Yes, my name is Robert Bisordi. I live at 47 Alapapa which is in the Kula Malu Subdivision. I was on the committee that helped forge the agreement between the HOA and the applicant. I also like to speak in favor of the application. The applicant was very accessible and receptive to our concerns particularly about preserving the open space on the 6<sup>th</sup> and 7<sup>th</sup> holes and they agreed to downgrade the zoning to, to maintain that, to preserve it. They were also very receptive to the bonding issues we had. And the site plain issues specifically for Lots 1 and 2 of the proposal. So again, echoing Mr. Shefte's comments as well, I'm in favor of the application.

Vice-Chair Shibuya: Okay, thank you very much. Commissioners, any questions? Thank you very much, Mr. Bisordi. Next testifier will be Tom Lutten.

Mr. Tom Luten: I'd like to speak to the next agenda item.

Vice-Chair Shibuya: Okay, thank you. And with Susan Luten. Okay, the next – anyone else in the audience would like to testify on this specific issue? None. Just noticed we have a new Commissioner here to join us. He is Ward Mardfin. He's here because he's not driving on two wheels going around the corner from Hana. He's actually from Hana but he drove safely and glad to see you here.

Mr. Mardfin: Thank you very much, and I'm not new, I'm an old Commissioner in both senses of the word and I came in from Hilo and that's why I'm late. I apologize.

Vice-Chair Shibuya: Okay, we'll accept your excuse. Commissioners, at this time we'd like to go ahead and open up the discussion if you have questions? Oh, I'll close the testimony at this time if there's no other testimony? None. Testimony is closed. Commissioners, I'd like to proceed into your questions maybe for clarification of the project and/or concerns? Commissioner Wakida.

Ms. Wakida: Good morning, this question is for Ms. Pulmano. I just want to clarify the developer is only developing the lots not building the houses?

Ms. Pulmano: Well, actually that quite hasn't been determined. I think at this point, we are just looking at building the lots at this point. It could be that if market prevails and we could end up building the homes also. But for right now, it's just the lots.

Ms. Wakida: So the lots would be offered up for sale as just lots. The builders could, I mean, the owners could build their own homes?

Ms. Pulmano: Uh hum.

Ms. Wakida: So my question is, I'm very impressed with your list of sustainable items that you're, that you're recommending for homes and would like to see those carried through. If homeowners build their own, what oversight is there that those sustainable measures will be included?

Ms. Pulmano: We can include as part of those features within the CC&Rs to make sure that it's binding to the homeowners and the design guidelines also.

Ms. Wakida: Okay, but currently that isn't, the CC&Rs or the inclusion of CC&Rs is not part of this package, correct?

Ms. Pulmano: Yeah, correct. That happens normally at the time when you do subdivision.

Ms. Wakida: Right. Okay. Thank you.

Vice-Chair Shibuya: Any other questions, Commissioners? Commissioner Wakida.

Ms. Wakida: I guess, I have, along the same lines about water. I'm not sure maybe this was covered in that list, but there was a recommendation about, about having appropriate landscaping

and on restricting water and to late evening, night hours, I again, I applaud that. I through am just interested in how that can be monitored or enforced. Would that be another CC&R item?

Ms. Pulmano: We could certainly put that in the CC&Rs. If you look at the lot layout, quite honestly there's no much common area space –

Ms. Wakida: Right.

Ms. Pulmano: –for the subdivision itself. A lot of it will be for the homeowners, so we could put something like that within the CC&Rs also.

Ms. Wakida: Thank you. And I continue with one more question?

Vice-Chair Shibuya: Go ahead. Thank you.

Ms. Wakida: And again, along the same line, you said there will be no ohana units, so that would, I assume, be another CC&R inclusion?

Ms. Pulmano: Yeah, that will certainly be a CC&R and also likely in the, in the deed, the transfer of land on the deed itself.

Ms. Wakida: Okay, thank you.

Ms. Pulmano: Thank you.

Vice-Chair Shibuya: Commissioner Mardfin.

Mr. Mardfin: It's actually not a question. It's a comment. When the Department of Planning made its comments, I think you folks responded quite fully and accurately or at least adequately. I can tell for the accuracy because I'm not going out and checking your work. But I thank you for responding to our comments somewhere around January 11<sup>th</sup>.

Ms. Pulmano: Thank you.

Vice-Chair Shibuya: Any other comments, questions? Go ahead, Commissioner Wakida.

Ms. Wakida: I imagine that the traffic people have their formula. I was interested, I was--maybe you clarify a little more--there's 13 house lots and barring, I guess, retired people you assume everybody, somebody in that household is going to get up and go to work every morning and yet they only listed seven outbound trips per day in their traffic study. Do you have any comment on that out of the 13?

Ms. Pulmano: Well, some will be coming into the, into the subdivision and some will be going out. But in general, yeah, I think the maximum in the peak hour was just 13 in and outbound.

Ms. Wakida: In the morning hours?

Ms. Pulmano: It's only 13 homes.

Ms. Wakida: Yeah.

Ms. Pulmano: Yeah, and they do, it's, it's a formula that I can't remember what the acronym is, but it's a, it's a standard that they use as part of their traffic study.

Mr. Shibuya: Commissioners, would it be appropriate for them to describe, summarize the Traffic Impact Study? Would you like to hear it?

Ms. Wakida: As far as I'm concerned, I mean, we're not dealing with a huge amount of traffic here. I was just interested though that they wouldn't think the majority of the people would be getting up and leaving their homes in the morning. But as far as the bulk of, you know, a big impact, I'm not seeing a big impact from this subdivision, so ...

Vice-Chair Shibuya: Leilani, would just summarize just the points that are C or below in the traffic impact intersections?

Ms. Pulmano: We have our traffic engineer here.

Vice-Chair Shibuya: Okay, go ahead.

Ms. Pulmano: And I'll ask him to do that if you don't mind?

Vice-Chair Shibuya: Thank you.

Ms. Pulmano: But in our general, our traffic study doesn't actually show anything that's C or below, it's all Level of Service A.

Vice-Chair Shibuya: Okay, thank you.

Ms. Pulmano: But I'll let the experts speak to that.

Mr. Phillip Rowell: Good morning, my name is Phillip Rowell. I'm the traffic engineer for this project. And I guess let me go back to the Commissioner's question. There's a, The Institute of Transportation Engineers has this three volume set of traffic generation data that relate to the number of--number of trips going to generate per unit and it gives you directional ... And I think in answer to your question that we're showing seven peak hour trips but all the outbound trips occur during the peak hour. Trips may be spread out going out of a residential area may be spread out over two, three hours. Some people go early in the morning, some during the peak hour so that's why you're seeing the number you're seeing. But those are the national standard and are used everywhere in the United State so it's pretty much standard.

Relative to the traffic study, I want to elaborate a little bit on what Leilani said. We were asked to expand the traffic study to look at specifically the intersection of Old Haleakala and Pukalani, Pukalani at Iolani and Haleakala at--Old Haleakala and Makani. And we did identify some existing



problems that are out there right now that are a result of existing conditions that was particularly-- my major problem was that Old--lolani at Pukalani during the morning peak hour during school peak hour. And we recommended that as we have in some previous studies in the area that that be converted from a two-way stop to a four-way stop--improve your levels of service down to acceptable levels of service and therefore, our project did not change the levels of service at all before or after that mitigation. Same thing pretty much applies to Old Haleakala-Pukalani, there was deficiency in the eastbound to southbound right-turns during the morning peak hour and we recommended that this--that's turning into the shopping center--we recommended that the signal be modified to provide a right-turn arrow concurrently with the northbound turn and that mitigated, brought it down to a Level of Service C and again, when we added in our project it didn't change anything.

Vice-Chair Shibuya: Any other questions? I just so happen to visit that area and I know what studies look like but I have actually been into that traffic area turning into go shopping at Foodland early in the morning and you see the line of cars trying to get out and take that left turn onto, from Pukalani onto the Old Haleakala Highway. That backlog is horrendous.

Mr. Rowell: Those mitigations have been recommended on various traffic studies for about three years now and hopefully it will get done someday.

Vice-Chair Shibuya: Yeah, if you could probably have two left turns maybe, I don't know if that will have a greater volume where they can run over each other I guess, I don't know.

Mr. Rowell: Well, if we put in the right turn arrow then it allows us to modify the timing and ... more time to that turn ...(inaudible)...

Vice-Chair Shibuya: Okay, thank you. Any other comments, Commissioners? Thank you very much. Any other comments, questions? Commissioner Wakida.

Ms. Wakida: Just one. I commend the applicant for its due diligence with the surrounding neighbors. It looks like they have really listened to their concerns and take them into consideration when they finalize this project or the EA. Thank you.

Vice-Chair Shibuya: If there's no other questions, I have several concerns. I'll just refer you right back to the January 26 letter that is from the County, Department of Planning and this was William Spence, Planning Director. On this letter it identifies 13 items that this Commission, this body had concerns on, and for those of you it's towards the back end of our, our folder. And there's several items and I'll start off with the Workforce Housing Policy. You're not having ohanas there but you do have workforce housing which is about 50% that has to be provided at a lower rate. The other aspect of it is if this workforce housing is not complied with, then the developer plans to do some financial adjustments is that how you, you're going to do it?

Ms. Pulmano: The Workforce Housing Policy allows for many different ways to meet that requirement and our requirement is for 50 percent which is six homes according to Department of Human Housing and Concerns. And the first way is to provide homes onsite. So we would provide six affordable homes onsite. We could purchase DHHL credits which is allowed by State Law. We

could pay in lieu fee and we could partner with a qualified homeowner, affordable housing provider to provide those affordable homes. So there are multiple ways for us to meet these requirements and these requirements are not say, due until we get to our subdivision stage and that will be within the next two to three years.

Vice-Chair Shibuya: Okay, thank you very much. The other one I have would be No. 9, and this would be the retention of storm waters. And if possible, to provide some information about the effect if this runoff, this retention is not fully retaining all of the runoff what happens to those properties below it?

Ms. Pulmano: First, we are meeting the Code, so we are retaining our 100 percent of our increase of, of the runoff. And if I could just refer you to the aerial, excuse me. The area is surrounded by a, by the golf course. So we're pretty ideally located in terms of storm water runoff. The runoff will move from mauka here to makai. Along these drainage systems into this gulch right here. It's a very big gulch.

Vice-Chair Shibuya: Yes, I'm aware of that. I just want the public to understand that these are concerns and then you are addressing them.

Ms. Pulmano: Sure. Thank you. I appreciate that.

Vice-Chair Shibuya: Yes. The other one that I had was in terms of water, and you mentioned in terms of reverse osmosis. I'm very familiar with reverse osmosis systems and so I know that they're very energy impacting. And if you have, I notice you have plans for it if you do have to implement it that I could just recommend that you have the roof be able to absorb some of that energy that radiant energy and convert that into photovoltaic type systems. I'm not making a recommendation or anything. I'm just, a suggestion, a friendly suggestion at this time. The particular facility does not have to be in a certain location other than have the roof that's exposed is to the south side and it doesn't have to be a pitch type with the middle spine. It could be a flat-type roof that could almost absorb almost 100 percent of your energy at that point. So it's a matter of designing something to maximize your energy production.

Ms. Pulmano: Thank you for that suggestion.

Vice-Chair Shibuya: Any other comments, Members? I want to thank you for the aerial photos that you provided. The Commission did ask for it and so I really appreciate that. Any other comments, Commissioners, if not, be open to recommendations. Okay, Staff, Danny.

Mr. Dias: Thank you, Chair. The Department recommends that this Commission accept the Final Environmental Assessment and issue a FONSI Determination for this project.

Vice-Chair Shibuya: Commissioners?

Ms. Wakida: Are we looking for a motion?

Vice-Chair Shibuya: Yes.

Ms. Wakida: I so move that we accept the Final EA and issue a Finding of No Significant Impact.

Ms. Domingo: Second.

Vice-Chair Shibuya: Second by Commissioner Donna Domingo. It's been moved and seconded and we have Director, can you repeat the motion before we take a vote?

Mr. Spence: The motion is to accept the Final EA and issue a Finding of No Significant Impact.

Vice-Chair Shibuya: Members, all in favor raise your hand. All, thank you. And all opposed. None opposed and that would be?

Mr. Spence: Five ayes, zero nays, six ayes, zero nays.

**It was moved by Ms. Wakida, seconded by Ms. Domingo, then**

**VOTED: To Accept the Final Environmental Assessment and Issue a Findings of No Significant Impact (FONSI).  
(Assenting - P. Wakida, D. Domingo, L. Sablas, J. Freitas, I. Lay, W. Mardfin)  
(Excused - K. Ball, K. Hiranaga)**

Vice-Chair Shibuya: Okay, thank you.

Ms. Pulmano: Thank you.

Vice-Chair Shibuya: Thank you very much. Members would you like to take a break or you would like to continue with the next item on the agenda? Planning Director can we go on the next item?

Mr. Spence: Yes, Commissioners, we're onto Item C. We're onto Item C of your agenda. This is a workshop for the Commission on enforcement with regards to short-term rental homes, and our staff planner this morning is Gina Flammer.

**C. Planning Department conducting a workshop on enforcement against Short-Term Rental Homes (G. Flammer)**

**This is an outgrowth from the Maui Planning Commission's June 14, 2011 discussions on Council Resolution No. 11-24 containing the Short-Term Rental Homes Bill**

Ms. Gina Flammer: Good morning, I have short, couple slides for you. I did send a memo out that has our concerns listed on and I'll go through it in the Power Point so that audience can also see.

Good morning, I'm Gina Flammer. We're here. I'm back to talk to you about the short-term rental draft ordinance. We had gone over this bill in June and we had still, the Department's still been

working on enforcement provisions to recommend to you, so here we are. Before we start I do want to just briefly address the topic of enforcement. We recognize, the Department recognizes that enforcement is a critical component of this bill. We understand that a weak enforcement program does undermine the permitting process, it can create unfair advantages for those who do not have permit and it's not good for the visitor industry in general to have such a large unregulated market. We really understand the need.

So as I mentioned, we discussed the bill for entire meeting back on June 14<sup>th</sup>. At this time, we were working on draft provisions. We did have a couple of meetings in the Department about it specifically the enforcement staff invited me to come talk to everybody, all of the inspectors. It was very useful. Lots of good ideas. They really are the people on the ground that face this issue day to day. And then we, after that we had some policy decisions to make. So we met with Corp. Counsel and the Enforcement Division heads and we discussed some different provisions.

So at today's meeting what we're going to be doing is I'm going to be presenting where we're at with the bill and then we're going to listen to testimony in our community, we're going to answer some questions. I'm going to receive your comments and then as part of the short-term rental review, I'm going to provide that information back to Council. So I'm going to do a summary of the meeting, your comments will be in that summary, the testimony will be in there, the written testimony be sent and then when the minutes are available from the meeting, that will be sent onto Council as well.

Okay, so when I came to you in June, our recommendation was to have the violations come to this Commission. We felt that you review many of the permits, you have a really good understanding of these types of operations. We did a little more research on this and we came to find out that the Charter does spell out very specifically what the Board and Variance and Appeals does. The more we looked at it, the more we felt that we can work with that system that we have. That it does work well. We just need a couple tools to, to enhance that system and that instead of seeking a Charter change which would really take quite a bit that we were going to work with what we have.

So we recognize that the enforcement provisions need to apply to all businesses. We just can't have harsher rules for permitted operations. We need something that's going to address the unpermitted ones. So what we're recommending in the bill is to go and, and amend our Enforcement Section, 19.530.010, and that way it will apply to all businesses. We're recommending an amendment that would allow the Board of Variances and Appeals to consider advertisements of evidence of operation until the applicant proves otherwise.

I'm going to give you the language on the next so you can see it. It's in your memo. This is written by our lawyers. Well, they really need to think of everything. So that's why it's long, it's in there. You know, feel free to comment on that. Council will also refer back to Corp. Counsel and ask them, you know, for more technical information on this language. It does basically say if you're-- have advertising, you know, whether it be on the web, whether it be in the newspaper, magazines, whatever that is, that it, it does show that you are advertising unless you can show for some reason maybe that's out there, it's not under your control, you didn't pay for it, something like that, but the burden would then be on the applicant to show it to us.

So what kind of advertising are we talking about? We're specifically, we're looking at internet advertising that has the picture, that has the per night price, it's got a calendar. This is, this is off of one of our web sites actually. I did kind of combine a couple different ones. I didn't want to target anyone in particular. This is from the ...(inaudible)... It does have a special section, private homes in Maui Meadows, you can click on and find your Maui Meadows home. Now, this is, this is what we're looking for.

I also want to let you know that the Department has been looking at enforcement in general. We can't solve everything with this bill but there is a larger effort that's been going on for quite some time. What the Department would like to do in the future is amend the rules so that there can be larger fines and that will give us the ability to place liens on properties. Now these changes needs some more technical review. I know they're working with some other Counties to see how they're doing it. These will also come back to you as a separate ordinance and you can see that. There may be other things at that time, but I wanted to let you know we're looking at the big picture as well. We're not just looking at short-term rentals, we're looking at our entire enforcement program. So that's what I have for you today. So I have the Staff here to answer any questions you may have.

Vice-Chair Shibuya: Commissioners? Commissioner Lay.

Mr. Lay: I have a question just to recap everything. What is our numbers as far as legal TVRs on Maui right now?

Ms. Flammer: We have 53 permitted B&Bs and I think 12 Conditional Permits. There are also units that were, just a handful of units that were grandfathered in from a Corp. Counsel opinion quite some time ago. And there's also, if you've been operating for 30 years or so and you can show the County you've been doing without a break, that could also be considered legal and that doesn't account condos or hotel units that have underlying zoning that would allow for vacation rentals.

Vice-Chair Shibuya: Okay.

Mr. Lay: Follow up.

Vice-Chair Shibuya: Go ahead.

Mr. Lay: Okay, that's how much legal DVDs [sic] we have.

Ms. Flammer: Yes.

Mr. Lay: How many illegals do we have and how did you come about with this estimate?

Ms. Flammer: We don't have, we don't have a current estimate. I did go to our Long Range Division and say, you know, we've seen estimates in the past, is there anyway we can do another study, take a look at it? And I was told that because the environment has changed it's very difficult to get accurate information. Houses are on different sites, some of them do have addresses, but not all of them do and people have gotten more savvy so they don't necessarily put down an

address. So it's hard to come up with the numbers. So we decided instead of doing a poor job, that we would just let it be.

Vice-Chair Shibuya: At this point, I'd like to open it up for public testimony, if you will, Commissioners and Gina. So the first person to testify on this issue would be Tom Luten followed by Susan Luten. If there's others that are interested in testifying please sign up there or just when we call you, just introduce yourself. Tom Luten, please.

Mr. Tom Luten: Good morning, thank you for spending your time to be here and thank you for spending the time to listen to me. As it happens --

Vice-Chair Shibuya: And your name is?

Mr. Luten: My name is Tom Luten. I live in Maui Meadows. I was the guy, last time you saw me, you said I had as much enthusiasm for vacation rentals as I had for cockroaches. Some things never change.

This morning, I wanted to bring to you a case study of enforcement and the secretary had given you a packet that begins with this page. The words at the top are Reds Maui House History 1973. I'm not going to go through the language here except to point out to you that this came from Reds Maui House's website. And this is a story about how you can identify who's in business and who's not. And as it turns out, this happens to be the same property that Gina Flammer just used. And when we get to the pictures we'll see that. Reds Maui House operates in the southeast corner of Maui Meadows. They have a very extensive, very sophisticated website. It's very easy to find. If you Google Reds Maui House you will get several hundred hits.

Now, on the second page of this packet what we see here is a, the most recent Request for Service against this property and it was filed on the 29<sup>th</sup> of March 2001. And does everyone here know what the RFS system is? So this is the most recent RFS and you notice that the address is plainly identified. By the way, I didn't do this. Some other neighbor did this. And at the bottom of we see the ... requestor claims that the responsible party has website advertising a TVR. Requestor claims the owner does not live there and is claiming primary residence tax exemption for his property which sounds like tax evasion to me but what do I know.

The next page is a map and it's printed in black and white and for that I apologize. It kept the cost of reproduction down to \$15.00 instead of a \$150.00 which is what doing in color would have come to. This is my current estimate of legals and illegals operating in Maui Meadows. There are 32. This claim, I'm ... to say this, I warn you that some of these are uncertain. After all, much of the businesses are illegal and the operators do their best to keep under the radar but diligence and hard work will reveal them in time and I'll be happy to teach the Planning Department what I know. I don't think I'll say here how I do it because some of the illegals may be in this room, I don't know. But it takes some hard work and some detective work but you can find them.

Ms. Takayama-Corden: Three minutes.

Mr. Luten: On the next page, --

Vice-Chair Shibuya: Tom, I'll give you another extra minute to summarize and conclude.

Mr. Luten: On the next page you see a page of the advertising from Reds Maui House, and if you remember the pool that Gina Flammer showed, in her picture you'll recognize this pool as the same pool. So that seem any, any mystery that the Bloedels are in business. The next page is the tax report from the County public database and indeed at the middle right you'll see that this house does claim a \$300,000 exemption. I confess it's not entirely clear where the Bloedels live. You study their website you see that sometimes Mr. Bloedel is in residence and sometimes he's not. There's plainly a pair caretakers who are working with him. Mr. Bloedel owns property in Seattle and he owns property in Sun Valley, Idaho. My guess is that he comes and goes. Where he votes and where he pays his income taxes I don't know, but I do know that running a business out of his house disqualifies him for a \$300,000 property tax exemption. On the next page, you'll find another RFS --

Ms. Takayama-Corden: Four minutes.

Vice-Chair Shibuya: Okay, can you conclude?

Mr. Luten: And this property is operating blazoninly and blatantly. It's illegal. His neighbors have tried to enforce against him for last three years at least and he seems to be utterly unafraid of any action the County may take against him. I applaud the Planning Department for trying to do something about it. And it's long overdue.

Vice-Chair Shibuya: Thank you very much Mr. Luten. Commissioner Mardfin.

Mr. Mardfin: It sounds like you hadn't finished all your major points but if you were given three more minutes what would say, but keep, please, keep it short.

Mr. Luten: Mr. Mardfin, it's a pleasure to see you this morning. I have included in this package the RFSs on this property for the last three years. It's plain that, and by the way, I should say that this investigation is not a boots on the ground investigation. I don't walk around Maui Meadows. I don't watch traffic patterns. I don't count cars parked in front of houses. This is, this is stuff that's on the internet and on the County's own database. However, my wife who walks Maui Meadows most days of the week tells me that if she goes up to 1168 Lauli Place she sees tourists coming and going every day of the week. This is not hard to find. Some of them are hard to find. I had one experience where I called a manager, a property manager and asked the property manager what the address was in anticipation of perhaps staying there and she wouldn't tell me. I was startled because she expected me obviously to make reservation without knowing where the place was. It's also important to note that, illegal vacation rentals run the gamut from Reds Maui House which looks like a hotel frankly all the way down to someone who truly is renting a room from time to time. There's one advertisement on Craig's List right now where it's apparent to me that the renter of an ohana is looking for a two-week sublet because he's going to the mainland, his cottage is going to be empty. He wants someone to help him cover the rent and it's probably a one of deal, it's strictly speaking illegal under Maui County law but it's at the far left-hand end of the spectrum for intensity, at far right-hand end is Reds Maui House and others like it.

The 32 operations that I've identified some of them are hard to identify because they're Craig's List listings. Craig's List posting expire after seven days and if the lister wants to renew it, he does renew it, he gets a brand new listing number and whatever investigatory work you've done, you have to do again. And that's a problem. With the vacation rental ...(inaudible)... stay up permanently. Red's Maui House has its own website, not all of them do. As for flying under the radar there's one operator in Maui Meadows who seeks to get renters for his house one or two months out of the year when he's plainly on the mainland and he has disguised his name in his advertising and it takes again some background work usually in the County's tax database to sort out who it is. But my point is that first place there's a lot of them out there, perhaps 24 in Maui Meadows alone, by the way, remember, Maui Meadows is well under a single... (inaudible)... there's a bunch of them operating in Maui Meadows and they can be found. And by the way, I should point out that this ...(inaudible)... earlier this year, these are print out from the RFS, excuse me, these are print out from RFS system that I did earlier this year maybe in February. And the run up to approving the B&B Ordinance the lobbyist for the B&B Ordinance claimed that there were five requests for service against illegal vacation rentals in the previous five years. In the 14 months from the 1st of 2010 to February of 2011 I count 70 complaints against illegal vacation rentals. This has become apparently a problem for neighborhoods and the neighborhoods are something that that this Commission and the Council have a duty under the County Plan to protect and they're not being protected and complaints are popping up like mad and I think it's the duty of the County Government to protect the neighborhoods from those who scoff at the law. Thank you.

Vice-Chair Shibuya: Thank you very much.

Mr. Mardfin: Thank you for ...(inaudible)...

Vice-Chair Shibuya: Commissioner Freitas.

Mr. Freitas: Yes, on the illegal rentals how many that you know of that has been fined or action been brought against?

Mr. Luten: I know of one by legend and of no others. This particular one was in Waihee area. Apparently the person was operating a, a sex spa. People came to this, this operation to be taught sexual practice. Ultimately, the neighbors complained loudly and the ultimately the County chose to enforce against them because the guests were staying there. So it was both a sex school and a hotel. And rather than go after them on, on any prostitution, whatever, regulations which may not have existed, they went after them on TVR ...(inaudible)... sort of like prosecuting Al Capone on tax evasion. And ultimately they were driven out of business when the fines mounted up to be nearly a million dollars. And so that's the only one that I know of. I know that letters of warning get sent out from time to time but I have reason to believe that the people who operate don't worry about it because it will take six months to get to a hearing and in the intervening six months they stay in business and when they finally get to a hearing frequently the BVA finds no offense and indeed if you look at this, this packet that I've given you, you'll see in the RFS report that on this item, for example, the very first one, it's the second page, there was a complaint in the original RFS that the owner lived off island and claimed a \$300,000 property tax exemption. You'll see at the, near the bottom of this report that there's as FB01RPT which is Fin-Real Property Tax, it says the status is done and the violation is none and the inspection is none. So it sounds to me frankly as if someone



has determined that there's no violation without having gone on the property. So, have I answered your question? There appears, it looks to me like that's evidence. I'm not saying it's positive evidence but it looks to me as if there's evidence that there is a property tax violation taking place here and it looks to me as if the--someone has decided that's not the case.

Vice-Chair Shibuya: Commissioner Wakida.

Ms. Wakida: Well, I defer to Mr. Freitas if he has a follow up.

Mr. Freitas: I just want to make a comment. Our problem is we have a lot of laws on the books but we have no enforcement. The enforcement is posed on the people that are running legitimate businesses. I know we have, I know for a fact on the State, like the Health Department, you have a health permit. They monitor you, they work on you but the illegal gets away and I think we have an enforcement problem and I think we should what do you call, don't make laws if we cannot enforce them.

Mr. Luten: You know, if you can't enforce the laws, you don't need the laws.

Vice-Chair Shibuya: Okay, thank you. Commissioner Wakida.

Ms. Wakida: Good morning, welcome back. This, I assume it's a Google map that you gave us. These are --

Mr. Luten: It's a private Google map that's been edited by me with those flags added.

Ms. Wakida: Okay, so that was my question, so you added the flags?

Mr. Luten: Yes, ma'am.

Ms. Wakida: Of the, of suspected TVRs?

Mr. Luten: That's correct.

Ms. Wakida: Thank you.

Vice-Chair Shibuya: Okay, any other questions, Commissioners? Thank you very much. Oh, Commissioner?

Mr. Mardfin: It's not a question. I'd just like to thank you again for your good research and I thanked you the last time you were here and it's citizens like you that help provide us with information so we can make better decisions. Thank you.

Mr. Luten: Thank you. And thank you for listening to me and again, let me say that I commend the Planning Department for this markedly more aggressive approach to enforcement. What I've heard here in this room is a uniform ...(inaudible)... for enforcement. And people on both sides of the issue. I don't like vacation rentals. I am for enforcement. There are people in this room, however,

are for vacation rentals. They want enforcement too. Everybody wants it. It's time, the time is now. Thank you.

Vice-Chair Shibuya: Thank you. Mr. Luten, less than 30 seconds --

Mr. Luten: Yes?

Vice-Chair Shibuya: Suggestions on enforcement. How do we increase integrity in the system?

Mr. Luten: The problem that the existing ...(inaudible)... is the Planning Department is principally involved in land use policy situation. We're actually talking here about ...(inaudible)... There's a law against operating these mini hotels and the Planning Department is poorly equipped to enforce laws against criminal. One thing you could do is provide the Police Department with the authority to issue tickets. Good hefty, big, fat tickets, juicy ones, a thousand dollars or more. Make them payable within seven days subject to dispute and appeal. And if he wins the appeal he gets his money back maybe even with interest. But if you want to put teeth in the system you gotta make it cost. And as it stands, it doesn't cost anything. In fact, I believe that that if you have a hearing and the guy doesn't show, you probably go home and try to reschedule it, it takes another six months and the whole they operate. So you, you need teeth in any enforcement practice that you undertake and, and the people who are, are institutionally situated to provide those to you are the police not the Planning Department.

Vice-Chair Shibuya: Okay, thank you very much.

Mr. Luten: Thank you very much.

Vice-Chair Shibuya: Next testifier will be Susan Luten. Please introduce yourself, you've got three minutes.

Ms. Susan Luten: Thank you. My name is Susan Luten. I live in Maui Meadows with him. I want to talk about our specific experience trying to enforce the TVR law against our next door neighbor. We first requested enforcement, he'd been in operation illegally for about five years. We requested enforcement in April of 2010. We included about ten pages of documentation including citations to websites where he advertised. He was told to stop. There was an oral warning over the telephone. We then -- he continued to rent to illegal tenants and we requested enforcement in August of 2010, our second request and in that request we also provided the Planning Department with a list of websites that had been added, additional new advertising since he had been told to stop. As far as I know nothing happened. The tenants who were in occupancy at the time said we're here long term even though their children were not school, they had no ties to the community, they had a home in Virginia and they, the, the wife was the treasurer of the PTA and low and behold they left ten days after they told the inspector they were long-term tenants. We asked again for enforcement in October. We provided evidence of additional advertising and nothing happened. We had another request for enforcement in November and we provided evidence of additional advertising and nothing happened. We reported that there were new tenants that arrived in December and nothing happened. We asked again in February for enforcement and nothing happened. We prepared this document which we provided to the Planning Department copies of

advertising, a whole time line of what had happened, who was there, how long they had been there, everything we knew about what was going on, nothing happened. So after that, there was one more request. We have two letters to the Planning Department and nothing happened. We provided the Planning Department with yet more advertising and nothing happened. So, we didn't even get from the Planning Department a letter to the owner of warning, not even a letter. So he's no longer in the TVR business at least not today as far as we know. It appears that for the very first time he has legal tenants. Well, that may be because he has applied for a B&B permit. It may also be because we put up a website in the name of his operation --

Ms. Takayama-Corden: Three minutes.

Ms. Luten: And we told people on that website they are not welcome in our neighborhood.

Vice-Chair Shibuya: I'll give you another minutes to summarize and conclude please.

Ms. Luten: And we believe that the people who are looking for a place to stay found the website in the process of researching that operation and low and behold the vacation advertising started to disappear and the next thing you know we have actual long-term tenants.

Now, what's the problem? The problem is first, we were told we needed a receipt for rent which of course we can't get in order to produce any evidence for the Planning Department to use. However, we had something better. One of the illegal tenants was willing to talk to the Planning Department and say that they had been illegal tenants and they were willing to talk about why they had lied to say they were long term. No one from the Planning Department talked to those tenants. There was no follow up at all. So the problem is, there is, there is some expectation about the amount and quality --

Ms. Takayama-Corden: Four minutes.

Ms. Luten: --of evidence that you need before you send a letter. There's a, there's a problem with how much evidence is needed to follow up and this start that, that's proposed here about this rebuttable presumption on advertising is excellent but there are many more things that you need to do.

Vice-Chair Shibuya: Okay, thank you, Mrs. Luten.

Ms. Luten Thank you.

Vice-Chair Shibuya: Commissioner Mardfin.

Mr. Mardfin: When you say, nothing happened, I want to clarify what that means. Does that mean the Planning Department did nothing or you know, that you know the Planning Department did nothing or that the Planning Department may have done something but you didn't know about it.

Ms. Luten: What I understand, and we've had meeting with both the inspector and with the Planning Director, I've spoken to Mr. Hopper in Corporation Counsel and a number of other people

on staff. At each time, there was someone present on the premises. An inspector went to the premises and interviewed the occupants. And he reported back that there was no violation. When he told me what those people had said to him, like we're going to be here for two months, I pointed out that they had just admitted that their tenancy was illegal but the inspector disagreed with me and said there was insufficient evidence to do anything and that I should mind my own business.

Mr. Mardfin: So when you said, nothing happened, that technically is incorrect, an inspector went out.

Ms. Luten: An inspector went out but it was --

Mr. Mardfin: But there was not consequent --

Ms. Luten: --there was --

Mr. Mardfin: When you said, nothing happened, you mean, there are no consequences for the operator.

Ms. Luten: No consequences and no real explanation. Let me put it this way, the inspector would say, this is what I asked, these were the answers I got, and we would point out both to him and in writing why those answers justify enforcement and he would say, no, that I was mistaken that none of that had anything to do with what he was about. What he said was if there is a signed six-month lease, no matter how preposterous, even if the people told him to his face that they weren't going to be there for six months, he could do nothing.

Mr. Mardfin: So this operator was having his tenants for four days sign six-month leases?

Ms. Luten: He had after the initial oral warning to him by the County, he had the first set of tenants stayed for exactly two months, the next set of tenants stayed for two months and the next set of tenants stayed for ten weeks. And each one of them, the first ones had purported to have a six-month lease. The second ones said that they were, there was a six-month lease and they were actually part of the group that was arriving after they left and so no one in that group was actually going to be there for six months. There was a group that was going to be there for two months and then there was another group that said they were going to be until the end but they only stayed for ten weeks.

Mr. Mardfin: So it was six-month sequential rental to different parties?

Ms. Luten: The rental agreement was in the name of one person who was there for ten weeks.

Mr. Mardfin: Thank you.

Vice-Chair Shibuya: Commissioners, no questions? Commissioner Wakida.

Ms. Wakida: You mentioned other suggestions for enforcement other than what your husband has already suggested as far as making it a criminal offense. Did you have other ideas in mind for

enforcement?

Ms. Luten: Yes, I think the fines ought to be substantially higher because when you're renting out the place at a \$1,000 a day, a fine of a \$1,000 is, you know, trivial cost of business. The other problem I think is that the whole enforcement scheme as to be, as to be reevaluated. As I understand it, as it's been explained to me by several people in the Planning Department. If my neighbor is renting illegally to vacationers. They're there, let's say they're there for two weeks, I have to get that information to the County, they have to get an inspector out there, they have to issue a letter while those people are still there. And then at the end of that 30-day warning period if no one is in the premises then the violation has been cured. And so you just make sure that, you know, you don't have anybody staying there that day and the next day, you start up again. And what I've also been told is that what happens is the, the standard of proof is used by the Board of Variances and Appeals is, is higher than it ought to be and it places a tremendous burden on the Planning Department as to how much evidence they have to come up with. And I've been given several examples from Corporation Counsel of cases where people came in to defend themselves against claims of renting illegally. And they had the most preposterous excuses and explanations that were just beyond -- but the Board of Variances and Appeals felt that they had not, that the County had not adequate evidence to prove otherwise. So I think we have evaluate what it is that's required to prove that you're in the illegal vacation business and you have to evaluate this business of giving people this 30-day notice and then what is actually required of them. I mean, I'd like to see for example, if you have someone who's in this business, I'd like to see an inspector out there giving a notice on Monday, giving a notice on Tuesday, giving a notice on Wednesday and do it every day at a potential \$1,000 a pop that might discourage people.

Vice-Chair Shibuya: Commissioner Wakida.

Ms. Wakida: Just a follow up on this. I'm sure you've read the as we all have the proposed amendment for enforcement that involves advertising?

Ms. Luten: Yes.

Ms. Wakida: Do you have any comments on that?

Ms. Luten: I think it's 95 percent of what it needs to be. I think the issue that I have is that the language talks about a rebuttal presumption. In other words, if you've got the advertising, we assume, it is, it is already a fact that you are in the illegal business, but then it goes on to say, unless you come in with evidence to support an alternative explanation. Support isn't strong enough. I think what you have to say is that at that point, someone has to come in in order to disprove it with what the lawyers would call a clear and convincing level of evidence not just, you know, my dog ate my homework, I was thinking about putting an ad up and my cat walked across my keyboard and low and behold it's on the internet and I don't know how to get it off. It has to be something that is truly believable and, and is a much higher level than just an excuse. So that's what I would do with this, this particular proposed amendment. As to the rest of it, I think you have to look at the whole, the whole process and how, how it really works.

Ms. Wakida: Thank you.

Vice-Chair Shibuya: Thank you very much Mrs. Luten.

Ms. Luten: Thank you.

Vice-Chair Shibuya: Thank you. Next testifier even though you're not signed, anybody, please introduce yourself and later on you can complete this.

Mr. Tom Croly: Aloha. I'm Tom Croly and I'm here speaking on behalf of the Maui Vacation Rental Association. I submitted written testimony that I hope that you've been distributed. Enforcement of any County Code is a necessary component for that Code to be effective. Some Code violations are easily defined and revealed. Others are more difficult to explicitly define and even more difficult to enforce on. I think this is one of those situations. You just heard a description of a six-month, was it a six-month lease was it not? It put the enforcers in a difficult position. So it is necessary as we go forward with the short-term rental ordinance that we define exactly what you can and can't do under that ordinance and what would constitute a violation of that ordinance and what, you know, how the enforcement will work. So I think that this is, this is a good seminar to have and a good discussion for us to have.

In 1989, the ordinance that prohibited short-term rental was kind of hidden under the timeshare part of our Code and I've included it in, in the testimony that I submitted and you can see that it's not really defined. It says that transient vacation rental use shall be prohibited except in these other cases and there's a lot of arguments that somebody can make as to whether their use is transient vacation rental use, whether they fit one of those other cases so I think that it's important that we better define that as we go forward and I think that's what this is about for the short-term rental ordinance that this commission reviewed we want to put in something with respect to enforcement that would be useful.

The Council has that short-term rental ordinance and will soon be discussing it and hopefully these comments will catch up to them. The Maui Vacation Rental Association supports the requirement that in the short-term rental ordinance as well as in bed and breakfast ordinance that advertisements include your permit number. Further, we support the provision that says that if you are advertising there is a presumption that you are offering that that service. However, it needs some refinement because there's advertisements on the internet that people put up ten years ago. They haven't been operating in ten years, yet there's people right here in this room who are alleging that those people are operating because those advertisements, some of them are self-generating on the internet. Once you put one advertisement up a list grabs it, a list grabs it and generates new ones. So I know personally of properties that stopped operating in the year 2002, the property's been sold two more times since. It was never operated since 2002, as a short-term rental yet you can still find advertisements on the internet.

Ms. Takayama-Corden: Three minutes.

Mr. Croly: So we have to be careful about the presumption that that that we have there.

Vice-Chair Shibuya: Could you take --

Mr. Croly: I'll try to wrap it up as quickly as I can.

Vice-Chair Shibuya: Another minute or so please.

Mr. Croly: Yeah. Some would like to see more aggressive steps taken immediately about enforcement. The Maui Vacation Rental Association thinks it would be premature to start an aggressive enforcement campaign until everyone who wants the opportunity to get a permit has that opportunity and we're on the cusp of that right now. We do believe that the County should take immediate efforts to start trolling the internet, if you will, and using it as an educational opportunity to inform advertisers that their advertiser, that their advertising use that is not legal under Maui County Code without a permit and invite those folks in to get a permit or invite those folks in to participate in the process that we're in right now in creating, in creating these ordinances. They could do that via email. It doesn't have to be a formal situation. It's an education campaign --

Ms. Takayama-Corden: Four minutes.

Mr. Croly: --not necessarily an enforcement campaign. Finally, I would ask that those who come forward to get through the process be treated with the utmost respect and and civility as they try to make their way through the process. I especially urge this body that to recognize when an applicant gets to this stage, when they finally gotten through six months or a year or in some cases seven years of working with their planners to finally get to this stage that you recognize that and try to resist from throwing extra conditions on them because what happens is the people in the general public are watching that. They're watching it right here on TV and they see this happen and they say, there's no way, I would rather die than go through this process. So we can, we can make it as punitive as we want to to try to get people to come in the process but what I would like to suggest is --

Ms. Takayama-Corden: Five minutes.

Mr. Croly: --we make the process more user-friendly. Thank you.

Vice-Chair Shibuya: Okay, thank you very much. Commissioner Mardfin.

Mr. Mardfin: Tom, you may have been talking to me a second ago about that because I've taken the position in the past that it's illegal so you shut down until you get your permit. Once you start the process you ought to be shut down. You should not be operating an illegal operation. I made an exception to that last time around when they had been trying for seven years and I reckoned it wasn't totally their fault it was partially the County's fault. You're suggesting that I should eliminate that as a presumption. That they ought to be shut down until they get their -- once they start the process they should shut themselves down until they get the final document?

Mr. Croly: I would prefer that that, that the applicants not be put in that position because they know that if they were operating and they tell the truth that they've potentially lost their ability to get through the process. And it's, it's very, very difficult to start the process and not know how long it's going to take to get through it. A minimum of a year, but, but in many cases, many more years than that and say, well, I'm going to be able to, to be able to pay my mortgage and get my kids through

school while I'm not operating. So, yeah, I would, I would ask that that we're, that that we kind of adopt a don't ask, don't tell. However, once we get, once we give people the opportunity to have come through this process for the first time, and, and we see those who just totally rejected it, I think we can get stronger down the road. But right now as has been pointed out we only have 58 I think is the number of applicants who've made through the Bed and Breakfast Permit and 12 who have gotten through, gotten a Conditional Permit. So we're really at the very infancy of permitting these things and I would hope that at some point we will approach the caps which on bed and breakfasts are 400 and on the short-term rentals are yet to be determined but it will be somewhere 200 or 400 something like that. I would hope that that that we would start to fill those and once we do, you'll hear those who have their permits lining up here saying enforce upon those who don't. You know, you'll get more of that that feeling and and people will be shunned, but right now, it is difficult for some people who have been operating for as long as 20 years to come forward and make it through this process.

Vice-Chair Shibuya: Commissioner Freitas.

Mr. Freitas: Yes, Tom. How many people is in the Maui Vacation Rental Association? How many members?

Mr. Croly: I don't know, I don't know the exact number. It's on the order of 200 plus. I don't know the exact amount...(inaudible)...

Mr. Freitas: This is why I have an objection to what you said about we have to invite them in to get their, their, their permit. You have 200 some odd people belonging to the Association. They should know the law. They should know the rules and they should voluntarily come in and apply for the permit. I don't think we, the Planning Commission or anybody should send them an invitation to come in and get legal. Could you address that?

Mr. Croly: Yeah, yeah. Our members have been fighting the opportunity for a permit for more than ten years now since the start of the Maui Vacation Rental Association. At the beginning, there was no permit. A deal was essentially made in 2002, with the County that said, come in and apply for a Conditional Permit and when we have a transient vacation rental permit we'll convert it over there. In the meantime, if you have an application in, it's okay. And that deal was made back in the early 2000's. That deal was reneged on under the Tavares Administration and those folks were told to shut down. Many of them, most of them who are our members have done that. But they're still waiting for a permit process to come forward for them to be able to apply because keep in mind the only people who can apply for a permit right now are people who live in their property full-time and are renting out rooms or an ohana on that property. So those who don't live in that property full-time right now there is not a permitting process for them. Now I understand what you're saying, they should be shut down and most of our members are. I can't say who is and who isn't. I can't speak for any of the folks who are brazenly operating without, you know, without permit and haven't made the, the attempt, but this is what our goal is it's to bring forward a process that allows people to comply.

Vice-Chair Shibuya: Commissioner Freitas.



Mr. Freitas: Do you have any idea how many people have applied that belong to the association? You know, the rules is there, they belong to Vacation Rental Association and are they going forward or are they waiting for, for an invitation?

Mr. Croly: I believe that all of our members who have the opportunity to apply that is who are bed and breakfast owners have applied or gotten through the process and have been granted their permits. However, we have members who don't live on their properties and have not had the opportunity to apply so, of course, they haven't. We are encouraging them to start collecting the information based on what we know about the Bed and Breakfast Ordinance and try to get their house in order, if you will, to begin the permitting process as soon as one is available.

Mr. Freitas: Thank you.

Vice-Chair Shibuya: Commissioner Wakida.

Ms. Wakida: Good morning, Tom. I know you are aware that just because somebody wants to have a TVR doesn't mean that they will get it?

Mr. Croly: Right.

Ms. Wakida: And that if someone's operating illegally and comes in for a permit, it doesn't mean just because they apply they'll get because there are other reasons why a neighborhood or an area does not grant these. So it's not automatic. You're aware of that, right?

Mr. Croly: Absolutely. And we, and we agreed that that the process is there for a reason and that, and that not everyone who comes forward will make it through the process. I've sat here when this body has denied or deferred, but deferred with prejudice in some cases and I had to agree when, when the neighbors all line up here and say, we don't want this guy and here's a good reason why we don't want him, then I, I, totally concur that you should say shut them down. What I have been disappointed about with respect to enforcement is in a couple of cases like that have come past this body. Those places are still operating and, and they do still have ads up. And I do wonder what message that sends when someone comes forward, says I want to apply, I want to get a permit, they are denied that permit, justly so perhaps and, and then, they continue to operate.

Vice-Chair Shibuya: Thank you very much. Any other -- oh, Commissioner Lay.

Mr. Lay: As a representative, you represent these different people, right?

Mr. Croly: I'm, I'm representing the Board of the Maui Vacation Rental Association.

Mr. Lay: As part of your, your board shouldn't you in some ...(inaudible)... shouldn't it be your criteria that they become, they are legal for your, you to represent them?

Mr. Croly: Eventually -- no, I'll, I'll start out to say no, we can't, we started out under the basis of we're trying to produce a law that allows this to exist. When the Maui Vacation Rentals Association started out in, in the year 2001, there was no way for anyone to get a permit. Okay, it just didn't

exist. So we have to live in the real world, okay. And for those of us in the real world we know that in 2001, in 1989, in 1996, there were vacation rentals throughout Maui. Now we have been trying, when I say "we," the County and, and other folks have been trying since 1996. This goes back 15 years now to come up with an ordinance to properly permit things. What I think the huge mistake was and I wasn't here and didn't participate in it, was in 1989, it took a hardline approach and said, they'll be no more except for those that exist right now and those that existed right now were essentially grandfathered in. Oahu did the same thing. Oahu hasn't come as far as we have. They have not come up with a permitting scheme for anyone else. So for them, only properties that were existing in 1989 and have filed the proper, you know, nonconforming renewal certificates every year are able to, to operate today. Maui has set the lead and has come up with a Bed and Breakfast Ordinance and hopefully soon will come up with a Short-Term Rental Ordinance. Now once everyone has the opportunity to comply, it will be the policy of the Maui Vacation Rental Association that you must either be in the process of getting a permit or you must have your permit in order to be a member of our organization. Right now, we're stilling fighting for that opportunity.

Vice-Chair Shibuya: Thank you. Commissioners, done? Thank you very much, Tom.

Mr. Croly: Thank you.

Vice-Chair Shibuya: Other testifiers? Tom, would you mind signing in, in the form? Please introduce yourself and you got three minutes, but people have been going to four and longer.

Ms. Madge Schaefer: My name is Madge Schaefer and I'm President of the Maui Meadows Neighborhood Association. Hi Lori. I would like to speak first about the official that the Neighborhood Association has taken and then I would appreciate it if you would indulge me as a private, as a resident of Maui Meadows and my personal opinion because they are slightly different. I'd like to suggest so that I get it absolutely correct I'm going to read from the letter that we sent to you when the initial review came up but the portion I'd like to read to you it says, "The board member were unanimous in their position that if there is to be no enforcement of the conditions of the ordinance there should be no TVR permits issued. It is frustrating to see owners who have gone through the B&B Permit process and become legal at great expense, have to compete with others who ignore the law and are not penalized. It is simply unfair." And I think there was a diversity of opinion, we have, on this issue and that was the only unanimous position that, that was taken by the board. In truth, the others were eight to one, but still that was only unanimous position.

I went on yesterday, I looked, just Googled Maui Meadows vacation rentals and I was surprised with the number of rental sites that came up. The problem is, if you live in Maui Meadows, you know that it is a gigantic bowl and sound resonates from the top to the bottom and I can tell you like on Super Bowl Sunday, it sounds like you're in the stadium. So that's part of the problem that neighbors have with these vacation rentals because people come, they're excited to be on Maui. They're in beautiful Maui Meadows and they get going in the pool and the parties and they are having a great time unfortunately that may be during the week when neighbors have to be at work and the parties go on late into the night and there is no noise ordinance so they're no teeth. If the resident calls the police, the police come and they can only ask the people who have paid a lot of money for these houses to shut down. And what usually happens if you speak to people in Maui Meadows they'll tell you, what usually happens is 15 minutes after the police are gone, the music

goes up again and the party is on again. So it is, the sound resonates throughout Maui Meadows and that creates a big problem. And at that I'm going to say that if you have any questions about the Neighborhood Association Board and their perspective, I'll be happy to answer them.

Ms. Takayama-Corden: Three minutes.

Vice-Chair Shibuya: Okay, thank you, Madge. Commissioners? Madge -- Commissioner Mardfin.

Mr. Mardfin: That was the official position?

Ms. Schaefer: Yes.

Mr. Mardfin: Did you want to make a comment, a short comment about the ...(inaudible)... position?

Ms. Schaefer: Well, actually I hoped that my official position was short and that you would let me have three minutes for my personal position because I'd like to talk about enforcement and revenue and here's -- and the board did suggest that increased property taxes that are generated could be used for enforcement. What I see is there's always a problem because enforcement is expensive and, but, but when you think about these illegal operations are not paying sales tax, they're not paying the hotel tax, they're not paying the property tax legal operations are paying, they are costing the County money because of the increased enforcement or attempted enforcement by the police. So allowing them to continue to operate is kind of a license to continue stealing. And I doubt if any of these operations with permits and maybe Tom knows but the enforcement--lost my train of thought--if any of these illegal operations are actually paying the tax or are actually if you look on their, if you can get an address whether they are paying the increased property tax that the legal operations are having to pay. They're in direct competition and they have almost no expenses. And to allow that to continue on whatever basis, short-term while this is pending is wrong. And as a taxpayer I resent it. So that's my personal point of view.

Mr. Mardfin: Thank you.

Vice-Chair Shibuya: Commissioner Wakida.

Ms. Wakida: You have seen the proposed enforcement amendment about using advertising as a tool. Do you have any thoughts or any comments on this?

Ms. Schaefer: Well, I, in, in yesterday when I just quickly perused and one of the sites had this long writeup about how TVRs are illegal now because you need to get a license. It was,--I said wow, I'm really impressed, and then down below it it had the listing of its properties and one of them was a Maui Meadows TVR which is licensed. And I think when, if they don't have the number, the license number that the Planning Department can peruse the internet and on a weekly basis and for instance, I can believe that the ...(inaudible)... would allow advertising for ...(inaudible)... something that is illegal. That their, their customers could lose their money if they came in and what if they shut them down then what do they do?

Ms. Wakida: Yeah, but my question is, we're hoping to use this now as an effective tool to enforce

illegal TVRs so because you've have a strong opinion about this whole issue do you see this tool as being effective, this tool of using advertising?

Ms. Schaefer: Oh, absolutely, absolutely, yes.

Ms. Wakida: Okay.

Ms. Schaefer: I think that's true for a lot of businesses that maybe need permits or licenses and according to what Gina said, this would, this enforcement would have to be across the board or anything that required a license.

Ms. Wakida: Yes, thank you.

Ms. Schaefer: And that's fair. That's fair for those that do go to the trouble to get, to get a permit. Thank you.

Vice-Chair Shibuya: Okay, Commissioner Lay.

Mr. Lay: Okay, so what you're saying is our neighborhoods are being affected. You have an illegal operation operating in a residential area, you have people parking irregularly, traffic is picked up because you do have more people going in and out of those areas, you have people that are not paying taxes that help to fix our roads, help out with our Maui County and they're getting all this money and they're not giving back.

Ms. Schaefer: That's correct. That's my personal opinion. I don't want to put words into the mouth of the board but that is exactly the issue. And with County searching for revenue all the time, to leave this on the table and to allow for instance, someone to claim a Homeowner's Exemption when they're actively running a hotel is an insult to all of us who live here. These are, this is, this was, those benefits were designed to protect us somewhat from the escalating raise, rise in property values. And so they're taking advantage of that plus they don't live here and they are willing to work illegally. These are second homes for many people. Financially it's a hotel for them. And again, that's, I want to make clear, that's my personal, personal opinion but I do have very strong feelings about it. I know what for instance, Rick Pounds just had a legal B&B for I think 20 years or maybe a little less, what he had to go through to get himself legal. And now for him to compete with a TVR down the street who pays nothing just takes the money and runs, I, I think that's, that's patently unfair and for the County to turn their back on the enforcement of that is, is just plain wrong. Plus, they're leaving a lot of revenue on the table and that's a shame because if, if you added up the dollars I would guess it would be considerable, enough to pay for enforcement and probably a good chunk to the General Fund for general improvements if people just did this legally.

Vice-Chair Shibuya: Commissioners? Commissioner Sablas.

Ms. Sablas: Hi Madge, good to see you.

Ms. Schaefer: Good to see you, Lori.

Ms. Sablas: And thank you to all of your neighbors for coming out and, and bringing to light, I mean, this has been going on, as all of you are testifying, you know the thing that's going in my mind is what's happening to the simple island that I grew up in and how Maui is changing. And unfortunately, we have such a beautiful island that people are coming in my opinion and taking advantage of what we have here. And I think it's time that we, Planning Department, really stand up and protect this aina, protect the people who come here and invest for the long term to come and here because they love the place and they want to give back not necessarily make the buck out of it. And, and this is why I'm sad that a lot of what we're discussing in my mind it's because people are taking advantage of a system and it saddens me. We have our work cutout because I think as it's been said, we can have all the regulations but if you don't have enforcement, if you don't really go out penalize them and money, if money talks, maybe that's what it's going to take is fine them a thousand dollars a day for illegal operations. It's not something we want to do. I think I respect both sides. But what are we talking about here is people who are basically trying to beat the system and doing things illegal and that's not right for those of us who work hard to get what we want and live here and I'm, I'm not sure really what the final outcome is going to be because it is very, very perplexing. I mean, you want to be fair to everyone. But I think what is really clear to me is that enforcement, is really, really going to be the key and it's should be immediately--it really saddens me again to know that those we have turned down are still operating illegally and getting away with it and I ask the Planning Department why? Why is this happening? Why are we spending our time here deliberating and denying permits and then they go out and continue the illegal operations and Planning Department, I'm not sure, I mean, are we doing something about it? Something's wrong with what we, what the whole system is all about. We spend a lot of time deliberating this and it's only going to be words if we don't follow it with action and start as someone had stated do excessive fines for those who are operating illegal. So thank you for coming forth.

Ms. Schaefer: Thank you Lori. The question, I have a question too that maybe the Planning Director can, can help with. Once you look at these websites and you go on the --this is alleged proof that there is an operation. The County is now on notice. Those houses haven't been inspected for safety--I'm, I'm just going to do the simplest like fire alarms in every room, every bedroom, this kind of thing. Isn't the County really put on notice of this illegal operation and now the County assumes some legal liability for allowing it to continue if there was God forbid a fire or someone was severely injured? Would the County have some liability? I am not an attorney, but I wondered about that because it's like letting someone live in a building that hasn't had final inspection. There's some liability on the part of the County they're aware, isn't-- wouldn't that be the case, sir?

Mr. Spence: I think, first off, I think it's up to the Commissioners to be asking the Director questions.

Ms. Schaefer: Oh, I'm so sorry, I apologize Mr. Chairman.

Mr. Spence: So I'll entertain that with -- when it comes -- right now we're still trying to finish up public testimony. I will entertain whatever questions by the Commissioners at that time.

Ms. Schaefer: I apologize for the breach in protocol.

Vice-Chair Shibuya: No problem. Commissioners, any other questions? I just have a comment. As Lori mentioned, Commissioner Sablas mentioned that in the early days when we were growing up we did our own policing. Today, we need some external agency and some external body to control our behaviors and it's just unfortunate that we have to degrade ourselves to this kind of a system. We depend on laws so we make more laws so we can control ourselves so we can misbehave more. It's a vicious cycle in which we operate and it's not only TVRs, it's the highways. We want to insure your safety so we put signs up and they actually ignore it and go faster. I don't know what the right answer is but Madge I think we're gonna have to start looking in terms of developing this integrity, this honesty of members among our ohana, our own neighborhoods, our own families that we have this integrity and honesty that we can control ourselves, not have the County Department saying I'm going to bring the hammer down on you. That's not the way it goes and that's not the way it should be. But if we have to make laws and rules, then my God, it's, it's sort of restricting in that respect and it's unfortunate but we have to do something to insure fairness and equity as you have mentioned here. Transparency is very, very apparent here.

Ms. Schaefer: Thank you very much and thank each of you for your public service. I know that sometimes it can be a difficult and thankless job and I appreciate ...(inaudible)... willing to serve.

Vice-Chair Shibuya: Thank you. Are there other testimonies? Ma'am will you please introduce yourself. We're gonna try and keep it three minutes.

Ms. Sandy Simoni: My name is Sandy Simoni and I'm owner of Hana Oceanfront Cottage, Cottages, Permit No. BBHA 2011/0001 issued July 11, 2011. I live in Hana. I am the only permitted B&B in Hana. I probably will be the only permitted B&B in Hana due to the regulations. And I'm sitting here trembling in fear for all my friends and people that I know in Hana. Now Maui Meadows, I don't know anything about Maui Meadows. I don't know anything about the other side of the world of this island. All I know is Hana. My heart's in Hana. My husband and I gave up everything on the mainland to live our dream. We came out to Maui 12 years ago and built our dream home and all we want to do is live a peaceful life in Hana. And I've been treated like a criminal and that's what I'm hearing is that we're criminals. I'm 62 next Tuesday. My husband is gonna be 63. Most of my friends in Hana that run illegal operations are people who live in Hana, have a heart for Hana and all they want to do is make a living. We don't get rich being owners of vacation rentals. All we want to do is provide a service. Tourism is number one on Maui. Small businesses, what happened to small businesses? We're not allowed to operate and Hana is the number one tourist attraction on Maui. Where are people are gonna stay at the hotel? The hotel is vital, we need the hotel, but it starts at \$400 a night to \$1,200 a night. Can you afford to stay there? I can't. I'd love to be able to splurge and stay there. We have one condominium complex. There's 12 or 13 available units and there's me, and I think there's two other people that got grandfathered in but that's all there is in Hana. And what I'm hearing is, I'm not even gonna about the enforcement because I agree there should be. But the biggest issue is finding a way where people can become legal and make it easier. I fit into the perfect little box of what the County wanted. My home's new, it's 11 years old, it's our only home. This is where we wanna live for the rest of life. We built it above Code. It took me a year and a half to get permitted --

Ms. Takayama-Corden: Three minutes.

Ms. Simoni: --and over 100 people involved in the process. There's something wrong that so many people have to get involved in a simple permit process. I have an ohana and I have one separate little area in my home that I rent out and it took a year and a half and everybody in Hana including the Hana Business Council and all the other vacation rental people were saying if the Simonis can't be permitted in Hana with the home the way it is, nobody can get permitted. And I'm asking not that you don't look at rules and regulations, but I'm asking that you look at simplifying the system because nobody will come forward unless they know that there's a way that they can become legal. They want to become legal. I know, I was--I talk to them daily. They said if I could become legal I would do it in a heartbeat. So I just ask that the regulations, the rules to enforce things, I'm not saying that's a bad thing, it's needed, but we need to work on easier regulations. And the biggest problem, and this is just my personal opinion is that if each process along the way is up each person's individual perception of what should be enforced. There's really not a box, a check box. It's more one person gets it, oh I think it's this way and one person reads it and thinks I should give this one. I could give you examples, but I know we're up to, you know, the three minutes. And that's where my heart is. My heart is let's simplify the method.

Vice-Chair Shibuya: Okay, thank you. Commissioner Freitas.

Mr. Freitas: Yes, thank you, Ms. Simoni. I, you say that Hana Hotel charges, starts off at \$400 a night. What does your, what do you call, units starts per day?

Ms. Simoni: 250.

Mr. Freitas: \$250 per day. Thank you.

Vice-Chair Shibuya: Commissioner Mardfin?

Mr. Mardfin: Hi, Sandy.

Ms. Simoni: Hi.

Mr. Mardfin: I want to slightly follow up on Commissioner Freitas comment. How many rooms do you have?

Ms. Simoni: Two.

Mr. Mardfin: Two rooms that you rent out. And how long did it, when did you start the process for getting your ... sorry, excuse me, --

Ms. Simoni: He's going to move the car.

Mr. Mardfin: I thought he was leaving. And how long ago did you start the process?

Ms. Simoni: In January of 2010.

Mr. Mardfin: Okay, so it took you?

Ms. Simoni: Over a year and a half.

Mr. Mardfin: A year and a half, and --

Ms. Simoni: And a lot of people know me just by my name because a lot of people were involved in this a lot.

Mr. Mardfin: Right. And in Hana it's maybe a little difficult because our community plan says what about where these things can be located, you know?

Ms. Simoni: I'm not familiar that much with the community plan. I know there's, I don't know the term, I don't wanna misquote.

Mr. Mardfin: Okay.

Ms. Simoni: All I know is that there's a suggestion of where they prefer.

Mr. Mardfin: But they're supposed to be in Urban. I put that in quotation marks because you wouldn't think of it as Urban, but Urban Hana. Is that generally correct? And you're outside that area, I think.

Ms. Simoni: Right.

Mr. Mardfin: Okay. Thank you.

Vice-Chair Shibuya: Any other questions, Commissioners? Thank you very much, Mrs. Simoni. Any other inputs, testimonies from the audience? I see a lot of good minds out there. I see the gears moving. If not, --

Mr. Mardfin: Mr. Chairman?

Vice-Chair Shibuya: Yes.

Mr. Mardfin: I wanted to ask Tom a question that's why I commented when he started to walk out and I hope he'll come back, but it's not that we're tied for time tonight. I mean, we still have six hours that we can go. I don't think we're gonna take that long. But I gotta a hint when the previous speaker before this spoke that Tom was speaking for his association and I think he would appreciate an opportunity to speak as an individual. And given that we're not really hard up on time I would hope that when he comes back we could ask him to make a short, short, short personal comment?

Vice-Chair Shibuya: Okay, we'll take that under advisement and then we'll just go in recess at this point.

Mr. Mardfin: Okay, thank you.



A recess was called at 11:00 a.m., and the meeting was reconvened at 11:16 a.m.

Mr. Mardfin: May I ask the indulgence of this body to have Tom Croly explain his personal views on this for three minutes?

Vice-Chair Shibuya: Okay, continue Tom. This would be your, expressing your personal views.

Mr. Tom Croly: Okay, aloha. Thank you, thank you, Ward for the opportunity --

Vice-Chair Shibuya: Not to exceed three minutes.

Mr. Croly: --yeah. You hear me come and speak on behalf of the Board of Maui Vacation Rentals Association and the issues that I talk about board expressly has our, you know, our position laid out and I, and I put that out. But I wanted to speak as a resident of Maui Meadows since Maui Meadows seems to be the hot spot today. We seem to be having a lot of comments about Maui Meadows and I am resident of Maui Meadows and I have a permitted bed and breakfast in Maui Meadows. I am aware of some unpermitted places. I can concur with, with the evidence that was given on Red's place there. I don't know all the specifics. My understanding is that that one of the owners does live on the property, but I don't, I don't know if that's the case. I would like to see someone like that come forward and get a bed and breakfast permit that's, that's what I'm working towards and, and, and the goal and I would hope that it doesn't take a \$1,000 a day fines and so forth for that to happen, but I think that we need to make a much effort as we can to bring that person forward. When someone is very close to the issue, when you have situation that's bugging you that's right next door sometimes your perspective gets a little bit swayed on it, you know, on what the bigger issue is and what, and what should be done about it. The biggest issue that we often hear with respect to these operations is that of noise. There's a disturbance, there's noise next door. I'm very pleased that Don Couch has taken up the issue of a noise ordinance because I think that we can deal with some of these things outside of the idea that that this person hasn't gotten the zoning approval for what they're doing. I don't like to to see folks characterized as being scofflaws and not paying their taxes and so forth because I happen to know of many who do pay their TAT and their GAT [sic] taxes, however, they have not received the zoning approval to do what they're doing and I'm, I'm working in an effort to try to help them, them get that and I'm trying to encourage those folks to do that, but I don't like those folks to be thought of as the scofflaws and, and, and the loss of community because they are trying to do the right thing. They've just been put in a position at this point that they can't. And thank you for opportunity to express my personal view on that.

Vice-Chair Shibuya: Okay, thank you very much, Tom. Planning Director?

Unidentified Speaker: ...one more.

Vice-Chair Shibuya: Okay. Will you please state your name please?

Ms. Kristen Kali: Hi, I'm Kristen Kali.

Vice-Chair Shibuya: Ah, we were looking for you?

Ms. Kali: You were?

Vice-Chair Shibuya: Yes.

Ms. Kali: Here I am. So I live Upcountry and I recently was at the farmer's market in Makawao and some of the vendors there were encouraging me to come to a neighborhood, the neighborhood association meeting. I've live on island for about a year now. We plan to retire here. I'm a little bit older than I look but nowhere near retirement so I'm a intended long-term resident raising kids. They're in the schools. So I went to this neighborhood association meeting and aside from the farmer's market issue there was, I was introduced to this issue of what's happening with the short-term rentals. And my concern is as resident, citizen of Upcountry I want to make sure that my community there is vibrant, is thriving. There are no big hotels Upcountry. The tourists who come to Kula, Pukalani, Makawao, Haiku, they're staying in short-term rentals. They're eating at the restaurants, they're shopping at the stores, they're going to the art galleries, the local farmers, anybody who makes local products that are in all the little shops in Makawao give the neighborhood its character and support those places being there. I am a midwife. I specialize in fertility. I moved here from the mainland and I am planning to bring business onto Maui, people who are trying to get pregnant want to come here for some respite, some education and I need them to have housing when they come for my workshops. And so I'm hearing about the way that we're talking about enforcing and I'm glad that we're talking about making permits available and what is really scary to me is the idea that I, I did a little search on my I-Phone on ...(inaudible)... to see okay, how many, how many are actually operating and I looked at the -- I know that the TVR Ordinance is being modeled after the B&B Ordinance and what came up in our neighborhood association meeting was the number of permits that would be available. So I was wondering what was the number of permits available equal to the number of people that are actually operating. So I looked on ...(inaudible)... in the-- it's broken down as Makawao, Pukalani, Kula. There are 32 listings that are not specifically called B&Bs so I assume those are TVRs in that community, 32 of them and the proposal is either 20 or 40 permits will be made available. So my fear is that people will want permits who can't get 'em because that number will be too low or people that are already operating will wanna get permitted and will have to shut down in order to enter the permit process because what I'm hearing in this meeting is people being really cut and dry about, okay this is illegal so we have to shut 'em down. And if people are wanting to get permitted that has to be able to happen. If I plan a workshop, people reserve their place their stay and then all of a sudden those places wanna become legal and then they get shut down because they have to do that in order to go through the permit process so then my business suffers which is my, you know, personal interest but then also my personal interest of having a vibrant community to live in. So I, I don't know about Maui Meadows. From the looks of the places that we've seen on the screen, it's looks like they're upscale, very large homes. Sounds like a wonderful community. A lot of people that I know Upcountry and people that have become a part of my community, they're simple folks and the people that I've met who are running short-term rentals are, are simple folks. It's not big, fancy houses. I just want my community to thrive and, and to exist as it is. I love it how it is and, and I'm glad I went to that community meeting. I'm really glad to become involved in some of the issues that are happening.

Vice-Chair Shibuya: Thank you, Kristen. Any comments, questions? Thank you very much.

Ms. Kali: Tried to keep it concise. If there's anything you didn't understand--

Vice-Chair Shibuya: Thank you, you did. Appreciate it.

Ms. Kali: Thank you.

Vice-Chair Shibuya: One of the testifiers --

Mr. Spence: Are we closing testimony?

Vice-Chair Shibuya: Yes, we're gonna close public testimony if there's no other testimonies. Director, there was one question from the public and it was presented to you inappropriately at the wrong time, but I thought it was a valid question. Would you like to respond to the enforcement issue?

Mr. Spence: Oh, there's a lot.

Vice-Chair Shibuya: Oh, okay go ahead. Go ahead, however you choose.

Mr. Spence: Just briefly. I, I took a lot of notes as people were testifying and I listened, I heard a lot of good suggestions and I have some direction that I can go and that's, that's what public testimony is for. Specifically to the one question from Madge Schaefer, yes, I got it right. If the County denies a permit and they continue to operate does the County have, share some liability? I don't think so because we've already told them no. The problem comes and it's not a problem, the issue comes when, when the County issues a permit, you know, the Commissioners see a standard permit on virtually everything that comes before it that you're gonna name the County as an additional insured. So we, you know we put that condition on permits because we are granting something that's out of the ordinary. So the, you know, because we're granting a permit to do something different then we incur a liability because we're saying, yeah, it's okay if you do this. So if somebody falls down and gets hurt and, you know, the deepest pocket is gonna be the County, the one who granted the permit. So Mr. Chairman, I could go over some other notes.

Vice-Chair Shibuya: Yeah, please.

Mr. Spence: Okay, when Ms. Luten testified, one of the things she, she talked about was the standard of proof is very high. I agree. I, I think it's too high. Because, I mean, one of the things is in becoming director I see the appeals come in and they get appealed and it goes on and there's more and it takes, you know, there are, there are enforcement cases we're working on that we've been working on for a couple of years. Certainly we cannot have an effective enforcement function of government at least of the Planning Department with, you know, if every, if every citation we issue is appealed and it takes two years to resolve. I mean, we just can't do that. So we, along with, you know, I, I think the proposed language to amend 19.530 the presumption -- anyway everybody has seen that, I can't quote it at the moment. It might need some tweaking but I think that's one step. I think another step is, and I'll talk with Scott Teruya of Real Property Tax, you know, one of the big concerns for not just enforcement but when people -- one of the reasons we passed the Bed and Breakfast Ordinance and one of the reasons we're trying to pass the

Short-Term Rental Ordinance is to make sure everybody is paying their taxes. If people are operating, you know, under, under the radar, certainly they're not, I mean, many of them may indeed be paying their TAT and their GET. I know of a number of applicants when I was a consultant, clients already had, you know, were already paying their taxes, already, were already in, you know, removed their homeowners exemption, all those things. So there really are people who may not have a license yet who are legitimately trying to do the right thing. There are also those who are totally flying under the radar and are not paying their property taxes or their GET or TAT and, you know, so that's an issue. So what I can do as I was listening to the testimony, I'm going, okay, well let's get Real Property Tax involved. You know, let's talk to them. I don't know their procedures and I cannot speak for Real Property Tax or there may be complications or I don't know, but at least I can talk to them about so what can their function be in, in an enforcement effort.

When you hear from the, from the owners of the, the rentals and they try to come in and get a permit, -- you've heard some testimony today, it's, it's still very difficult to do. And you know, I'll, I'll be working, you know, within the Department to see how we can smooth out some of the wrinkles. I don't want -- if, if people, we have, we have, two kinds of applicants that come into the Planning Department. People who are coming in trying to do the right thing. They're coming in voluntarily, you know, at the break I was explaining when I was Staff Planner and this is a little bit of an illustration of why the Bed and Breakfast and the Vacation Rental Ordinance have, you know, are being adopted and being worked on, I had a, I had an applicant down in Kipahulu renting one-bedroom and she had been operating for four years just decided, you know what, it's the right thing to do to go in and apply for this permit. One of the first -- on a piece of Ag land, the neighbor next door was incensed that they had been operating for four years and they didn't know and that was like to me, as the Staff Planner, that was my indication of what impact it had on that particular neighborhood, nobody knew. It was that quiet. But it also took them as they went through the permitting process, they went through Hana Advisory Committee, they went to the Planning Commission, they had two readings -- they went to, at that time I think it was Planning Committee maybe Land Use Committee, there was a couple of Committee meetings there, and then you have two readings from the County Council. It took eight years to get that far. This is for one bedroom, about 240 square feet. It took the County Council a special ordinance for 240 square feet within somebody's home that nobody even knew existed. So that, to me, that's like perfect illustration of what we're trying to correct here. So, when, when people come in voluntarily and they're trying to get permitted, I don't want to punish them. I want to invite them in. I want to help them get their permits.

Then you also have the other side of the other kind of applicant with people are applying in order because there was a complaint against them. Okay, I'll finally go in and I'll apply to get my permit. That's a different matter and we take those things on a case by case basis on, you know, was it, you look at the RFS, sometimes you have, I had a former client who in order to get her permit she had to evict a troublesome tenant from long-term and he retaliated and complained against her. Had nothing to do with the bed and breakfast, had nothing to do with getting permits, it was just a retaliation kind of thing and you look at that, versus what the Lutens have experienced, you know, with the constant source of noise, you know, that becomes very difficult. You know, you have to weigh what those, those complaints are. So it's, it's, it's a very difficult, unfortunately it was very difficult. There's a lot of factors to consider. I think more than anything we want people to come in and apply and do it of their own volition rather than having to go out and pursue people. I think

that -- other suggestions, higher fines, that's actually being worked on in the Charter Commission. Charter Commission ...(inaudible)... a \$1,000 a day. So we can, we'll be working on that. I think only in extreme cases could we call somebody a criminal. I can't rule that out entirely. I think overall, enforcement is one of the most difficult things I've inherited and it's constantly on my radar. It's constantly something that I'm thinking about. How can we improve this? The suggestion today, in the memo you saw that one thing, you know, we also brought up the possibly ability to levy fines on somebody's property, you know, to encourage enforcement. There's a number of things, tools that, that we're looking into.

Vice-Chair Shibuya: Okay, thank you very much. Commissioners, your suggestions? Commissioner Sablas.

Ms. Sablas: Well, I had a follow-up question to the Director. There was also a testifier who, who made a statement that permit was denied and this applicant went back and still operated, still continued to operate would you like to address that?

Mr. Spence: I'm not familiar with which one that is. I'm not sure why we would do that without following up and making sure that, you know, something hasn't happened there. I'll check with our enforcement guys.

Vice-Chair Shibuya: Commissioner Lay.

Mr. Lay: I have a question on the process itself, are we looking at a registration of everyone who's going to be doing this short-term rentals and then is there going to be a neutral zone if they are working on this process where they can still continue or is it an absolute stop now until you're finished?

Mr. Spence: I think initially, and this is just a thought, I have not completely sorted this out yet or talked to Council and I'm sure we're gonna get a lot of input on that level as well. One thought has been, it was suggested today, but I've also been kind of thinking about this is, when people are advertising on the ...(inaudible)... once we have, we have a permitting process to go through, inform them through that, through that website. We have independent operators who have, you know, websites up, inform them through that. Hey, you have this, this avenue to go through now. So you know, to the best of our ability, people can't say that, you know, I didn't know. And then follow-up 30 days or 60 days later and, you know, see where that goes, and then start, you know, pursuing warnings or whatever. It's, it's gonna take a lot of thought on how to do this, you know, I'll be conferring with Corporation Counsel and all that. It's, I mean, certainly one of the things you've heard today, you've heard from the people who got their permit saying I'm paying all my taxes and everything, I'd like people enforced on and then you hear from the other side, people operating without, you know, permits saying, I wish you guys would enforce. So both sides are saying, you know, Planning Department please enforce. So you know, we're listening to that.

Vice-Chair Shibuya: Commissioner Mardfin.

Mr. Mardfin: Director, I'd like to comment on a few things. One, I totally agree that we should do something about the standard of proof so that it's more reasonable and this proposed enforcement

language goes to that but there may be other things. I, you mentioned if they apply and they're denied, I think there ought to be severely heavier penalties. Whatever the penalty is for operating illegally it ought to be tripled or quadrupled if they'd come in and been told no. They'd been told no. Then they're it's either criminal fraud or something else. I'm not a lawyer so I don't know where you go on that. I think system -- you mentioned something even earlier, I think systematically, as these things are determined that they're operating both the Real Property Division should be informed so that they cannot claim home exemption and this goes beyond B&Bs. There are a lot of people that have second homes here that are collecting home exemptions that I'd love for Real Property to systematically make sure that's legitimate claim. The second organization though is the State Department of Finance could be notified to make sure that they're paying the GET and TAT. So it's two department -- State Department and the County Department that have to be notified.

I was talking with James over the break and he didn't know whether it was right or not so I'm going to just put it out there. It seems to me that the fines when you get around them might be made differentially based on their real property tax assessment. For instance, if it's properties less, assessed at less than a million, you might have one level of fines. It's 1 to say 5 million it's a different level and more than 5 million it might be still a higher level. This is because what could be a crippling fine to somebody that has a small property could be a mere mosquito bite to somebody that was renting their property out for 15,000 a night. You know a 1,000 fine, 15,000 a night, fine I'll take my 14 and go home. So there ought to be a differential in the scale for fines at least you could think about it. I agree with what was said about the sound problem and that probably is better as a separate bill because it's not just transient vacation rentals and B&Bs that have too loud noise but sometimes neighbors and so that's, I think a different issue. And that was main comments.

Oh, sequential violation. We need to do something about people that, the Lutens testified earlier, if people do it nothing happens. People do it nothing happens. Sequential stuff should be built up. First, double, triple, quadruple, quintuple, the fines with multiple violations but we need to catch them, and I think that's all I have. Somebody ought to talk to Corp. Counsel about what constitutes criminal fraud. There may be something in here where you can go beyond what the Planning Department can do to make it a criminal offense.

Vice-Chair Shibuya: Commissioners, I'd like to wrap this issue up in another five minutes or so.

Unidentified Speaker: ...(inaudible)...

Vice-Chair Shibuya: Sure. Okay, and I just wanted to see if Gina had more to say and then following Corporation Counsel's input.

Mr. Giroux: I normally don't like to butt into your business, but being that Corporation Counsel is constantly being thrown out. I find it imperative to state the following, now, one thing I want to clear up the standard of proof. Okay, under Chapter 91, the standard of proof is defined already. It's preponderance of the evidence. That does not stop the administrative agency from creating presumptions. A presumption is not a reduction of your, your standard of proof. It is just a, basically a baseline that says, if A, then B. So -- and then B is not written stone. Then you can

bring in evidence to rebut that. The standard of proof is the same. It doesn't change. So what they're doing is, what you're doing is you're just changing the burden of proof. You're not changing the standard. You're telling the government, government you're in a position if people are doing this, assume that they're also doing this. Now you can start your prosecution. It starts the game.

And I'm telling you right now the government's losing the game because they're not willing to play the game, okay. It's not, the, the -- there is no legal problem with the system, bottom line, okay. There's no evidence that the system you have now can't work, okay. You have a Maserati, it's sitting in your garage, somebody needs to put oil in it and put gas and change the tires and pump up the air, okay. The government has it. You have what you need. What we're asking for is one tool. One tool in the tool box to change the burden, okay. And we brought this, this language was brought to the Board of Variance about three years ago. The political climate at that time wasn't receptive to it. Today I heard anecdotal evidence from the public that the BVA is dismissing cases because there's not enough evidence. Okay, I want to stop that right now. Right now, we'll go into our archives, we'll dig up the cases and we will show that the BVA has never dismissed a zoning case based on the use of a home as a transient vacation rental for lack of evidence. Okay, the case that was cited there was actually a settlement, a conviction. That's a conviction. You go to, you go to court, you see the Prosecutor, you see the judge and you say how much do I pay, okay? The problem is, is that when you hit the streets and you know there is illegal activity all around you and you have to pick and choose what are you going to do? Who do you cite? How do you go about investigating? How do you take your evidence to the courts to get a prosecution, to get a conviction, okay? That's where we need to look at, okay. And that's an issue of training and resources. All right, that's changing the oil on the car. That's putting more air in the tire. That's actually hiring somebody to drive the car. The system isn't broke. It needs maintenance.

And again, I'm going to go back, we need one tool here people, one tool we're asking, change the burden to proof so we can start the game. You create this preponderance, okay, what I'm hoping is is that, our Director will not take that as a green light to only go and look at TVR advertisements as his form of investigation, okay. There is still a requirement to do a full and fair investigation and there lies the problem. Okay, when you send out one investigator one time to a TVR that's blatantly advertising, he knocks on the door, nobody answers, he goes home and he writes a report no suspicious activity seen, closes the case. We are not doing a full and fair investigation. Okay. Puts some air in the tire, change the oil. Okay, go back again, knock on the door again, all right the advertisement's still on the internet, go again. Get two people to go. Go on a Saturday. This is what we're talking about. This is a issue of investigation, okay. Manpower and training. You don't have to change the law to get that. You don't have to get higher penalties to get that. We're, we're jumping to deterrent and the deterrent is in the consistency and the accuracy of your ability to investigate and prosecute.

Okay, and I'm going to tell you right now the BVA is not the problem. They need to get a case. Somebody has to bring them a case, okay. Go back look at their agenda, see how much TVR, NOV cases have been presented to the BVA in the last five years, okay. This is how you go about solving problems. You find out what the problem is, okay. I'm going to tell you I've advised that agency for six years. I saw one contested case and it was a settled conviction, okay. That is not a loss. That is not a failure, okay. Cutting a deal and getting somebody to pay a fine and ceasing and desisting is not a failure. The problem is is that you got one, and we know by anecdotal

evidence that we've got a hundred out there, okay. So what I really want to do is take the emotion out of this and really look at if we're going to try to solve problems using the law, we need to understand the system well enough to understand what is the problem. The fines not being big enough. A \$1,000 a day over a three-year period, a \$1 million fine but nobody decides to give somebody a Notice of Violation. Okay, you get it? A \$1,000 times zero is zero. Okay. And that's the problem.

We have to look at how, how many times we have an investigation that tells us that there's no problem and yet, it's, it's blatant in the community that it's happening. If we can't start there, you're not going to get to the next level because they get smarter and they've already gotten really smart. They've had ten years to figure out how to ...(inaudible)... the government, okay. They don't want to pay taxes, they don't pay taxes. They want to talk the inspector, they don't talk to the inspector. If they don't want somebody to come into their house and look around, they don't let them come into their house and look around. And let me tell you, right now, you don't have to create a criminal penalty. On the books a zoning violation can be prosecuted as a criminal offense. But that means you have to take your investigation to the higher level, you have to look at your process, how are you investigating it, did you have probable cause, and if you want a conviction, you're gonna have to have enough evidence to go beyond a reasonable doubt, and that's way up here folks, okay. This is your Administrative level of proof, preponderance of the evidence, okay. So if you wanna get here, you can get here tomorrow. You can do it right now, you can leave this room and you can start an investigation and you can start marching your way to the BVA with a Notice of Violation after a warning, but you gotta collect your evidence. You just have to do it. There's no way around it. Making the level of proof lower isn't going to help you if you're not walking out the door, hitting the streets, pounding on the--knocking on the door nicely and doing community service. It's not going to happen. And, and, and by not actually following up, by not actually doing a report, by not actually saying hey, I think we've done enough, to convince an agency that has the burden of a preponderance of the evidence. It's something maybe happening out there and it needs to stop because the neighbors are going crazy and they wouldn't be going crazy over nothing would they? You know, three years, four years, that's not an investigation, that's, you know, I mean, we could actually solve crimes of, of persons, you know, for that long. This is a, this is a business permit. This is a failure to get a business permit. And, and it's a zoning violation, you know, so on top of all of that, all the parts have to work, okay, and the problem is the parts have been sitting there because in the past there's been two modus operandi. An investigator shows up, finds the owner and the owner says, I'll stop. Well, guess what people that ain't happening any more.

So, now we have to figure out actually how to do this. We have to figure out how to get from a warning to collecting evidence, an investigation, and a prosecution and then a conviction in front of the BVA. And then you can start figuring out and collect your fines from that, you know. And when you start figuring out how to collect your fines then you can start figuring out by ordinance how to raise the level of fines. But people we're so far behind the eight ball that we gotta fill up the tank with gas, put air in the tires and we gotta figure out how to drive the Maserati before we go across the racetrack and go crazy, you know. And, and until you see the BVA process 10 to 15 TVRs then you come to the County and say, we're being dismissive as far as our conviction, the ability to convict because that's not where the problem is. It's not where the problem is. The problem is, is we need to get an -- we need to get investigations and prosecutions together and



present it to the BVA. Because we are along the way, we are getting, people are getting fines and they are stopping, they are. It's happening, you know. But then you have the spectrum. You have that spectrum of the people who are absolutely gonna look at the County and say, no, I'm going to do it my way. So, maybe that's where we gotta focus, you know, because the other people are trying to get legal.

Vice-Chair Shibuya: James, thank you for your information here. Also, the type of evidence, you've moved from Administrative to now preponderance of the type of evidence. Where do you suggest this private information can be obtained and used in such cases by your public?

Mr. Giroux: Well, I mean, I think it's the government's job to look at what's at their fingertips. What's the public information? And you know, and, and this is the misnomer is that, somehow, it got into people heads that you can't use TVR advertisements to prove that a TVR is operating. Okay, but that's one piece of evidence. We're asking you to, to have that piece of evidence available to the government so that they can start their full and fair investigation and build a case around it that they can present to the BVA.

Vice-Chair Shibuya: Okay.

Mr. Giroux: But, but as far as I mean, you know, people, you're, you're looking at, you want to look at tax records, you wanna look at, you know, -- you wanna do this high level investigation when you know you can do the, the bare bones that's full and fair. What's open to the public, the public has showed you that they can do it. Now let's get somebody in the County to do that.

Vice-Chair Shibuya: Okay, James, I'm a homeowner and across the street, I'm trying not to snoop on them but I install a surveillance camera on my property and then I see cars parked on my side of the street and I get license plate numbers. Is that admissible type of evidence?

Mr. Giroux: Okay, let me, let me put it this way --

Vice-Chair Shibuya: I'm not snooping for them. I'm just watching my property.

Mr. Giroux: Okay, this is where you're getting at and I'm going to answer it. The law says that in an Administrative hearing, everything that is not irrelevant, redundant or privileged is admissible. It's admissible, okay. I hope I'm not being, you know, it's admissible.

Vice-Chair Shibuya: I'm educating the public.

Mr. Giroux: So as far as what you can do from a public vantage point, from a private vantage point because you're not the government this is, if it's handed over to the government as ...(inaudible)...it becomes admissible. And, and that's, you know, that's really the heart where, where the investigation part is really difficult and I think it was brought up by the public is if you're staying in Hawaii for two weeks and you know, the inspector shows up the last three days of your investigation, your stay, your vacation, you're gone. You know, you're not a witness anymore. But heresay is admissible. If that inspector had a conversation with those people and they told him definitively I'm from Iowa, we were here for two weeks, this is the website we got it from and we

paid this much money. Ladies and gentlemen that is admissible in an Administrative hearing, that's admissible. You don't need those people from Iowa, heresay is admissible in an Administrative hearing. Now I hope the government doesn't just rest its case there. I hope the government then says well, if that happened once, let's put that in our parking lot because now you've got a warning and we have the evidence, but let's go back in a few weeks, let's go back in a few months, they advertisement hasn't come down. You know, and, and, and that's how you, you collect evidence. That's how you do your investigation. That's how you make a prosecution. You know, you don't show up after the people left, knock on the door, write a report, no suspicious activity seen, and then you show up three months later, the advertisement's still up, knock on the door, no suspicious activity seen, that's not an investigation. That's not how you do it. Okay, so we have examples out there, and the thing is, is that not all prosecutions are gonna stick. But if the BVA right now has zero then you're gonna get a 100 percent of zero. Okay. And that's where, if they're gonna start, you can start. You don't need to change the whole system. We're asking for one ordinance to change the preponderance -- to change, to make a presumption so that the investigators don't have to go banging their heads on the wall, they can start, they know where to start and they can start there and they can start building their cases.

Vice-Chair Shibuya: Okay, Commissioner Mardfin following Commissioner Wakida, go ahead.

Mr. Mardfin: It seems to me that then a lot of the weight, weight of this will fall on the Director's shoulders to insure that Zoning and Enforcement follow some sort of standard procedure to make sure that that's working systematically, they know what to collect, how to collect it, how to keep a record of it, and Board of Zoning and Appeals comes under the Planning Director's purview also? So working with the Corp. Counsel to ensure that good, when, when sufficient evidence is acquired that you can go forward and get cases. And using advertising on the web to help so you don't have to totally depend on neighbor complaints that you can go after other, find other ways of locating the illegal ones also. It seems to me that --

Mr. Giroux: You know, people, notoriously we went through this for about five years, notoriously people say why are you picking on me? Okay, well, the Director can say, you know why? We got people complaining and you've got advertisements on the internet that's why we're picking on you. And you know what, it's so funny because you see speeders going up and down this road every day and the one person who gets pulled over goes why are you picking on me? Okay. So the preponderance, you know, this presumption is just that. It's your probably cause, it'll start your investigation and you know, if your whole case falls apart, you can still say, hey we didn't waste our time because we, we started this based on the presumption that they were advertising, therefore, they we were ... and, and a good point was brought up, don't just get one advertisement, collect them all, you know, go crazy, get 'em all, you know, why stop, why, why just get one and then they come and say, well, I didn't have any control over that, you know? Get 'em all, get everything on the internet, it, it takes what, a half an hour to do an internet search. You know, the amount of time it takes to plan a vacation is the amount of time you can investigate the internet to find out who's advertising.

Mr. Mardfin: And simultaneously you could find out whether they had a home exemption or not. I can find that in two minutes on my computer.

Mr. Giroux: Yeah, we're just asking that you, for the things that are available to the government that we can use them.

Vice-Chair Shibuya: Okay, thank you. Commissioner Wakida.

Ms. Wakida: I am certainly in favor of any process that is fair and open. In your explanation to us and I thank you for that, it, it does seem like the investigation regardless becomes so onerous that it, that, that the Planning Department can hardly get through one case let alone dozens that may be thrown at it. And so I'm wondering why, if a business or TVR is advertising on the internet and says we have vacation rentals, they are not permitted, why that alone cannot be sufficient to issue their first warning and if they continue to do so and ignore that why that alone cannot be sufficient to shut them down. I don't know why we have to go on and have, even if the neighbors aren't complaining. That isn't the point. The point is they're operating an illegal business in Maui and that our purview, that's what we're trying to protect. So in listening to your explanation and it's certainly, it makes sense on, on one level about this preponderance of evidence, but it just seems out of control almost. We're making the job for the Planning Department harder not easier.

Mr. Giroux: Like I said at the beginning, the standard has never changed. Once a person gets a Notice of Violation, well, I guess we need to understand the process better. First, an investigator needs a reason why. Why am I gonna go knock on so and so's door. They need a reason, right? So, seeing something on the internet that says, hey, I'm running an illegal business, that's sufficient for the government to get out of its cubicle, get into its car, drive to Kihei, and knock on a door and say, are you the owner of the house? No. Who is? Can I talk to them? Okay? That's sufficient to start an investigation. That's your, your probable cause.

Ms. Wakida: But can they be issued an Notice of Violation at that point for, for advertising on the internet?

Mr. Giroux: Well, they could.

Ms. Wakida: I think they should be.

Mr. Giroux: Well, now, now you can say, hey, we need that advertisement to stop and we feel that you're running an illegal business. Okay, now you have the situation where people are looking at you going, we don't know what you're talking about. We don't know what you're talking about. So just happen to be there when they didn't have any customers, okay? So somehow, someway, the government has to figure out does this B&B actually get customers. So that, that, see that's the problem is that, is that the investigators are put into a situations where they can't readily verify. I mean, to tell somebody I saw your, I saw your advertisement, stop, stop your business and the person says, fine because I don't got any more business until you leave. Get it?

Ms. Wakida: No exactly.

Mr. Giroux: Just telling somebody to stop doesn't make them stop. This is the problem. This is the problem that the ...

Ms. Wakida: But if they have been issued the Notice of Violation then should some customers walk in door then they at that point can be whatever the next big step is.

Mr. Giroux: Well, see, that's the issue. The issue is the investigator has to go home, the investigator has to come back and do more paperwork, the investigator has 13 other inspections to go do, the investigator may not get back to that house in another three months, okay? And in the meantime, nobody knows if that house had a customer. Got it? So telling the person to stop, doesn't do it. So now you gotta go back and be creative and find a customer there.

Ms. Wakida: But does a customer constitute a violation? Isn't the business --

Mr. Giroux: Yeah, it does. It does, the problem is is that violation stops in two weeks. You want somebody to cease and desist they're gonna cease and desist when they go home from vacation. So that's the, that's the conundrum. That's the problem. Okay, are you getting somebody for renting to that person or you're getting somebody for creating a business and running that business over a period of time? Is that person in violation just because the customer is not there, but you have to have a starting point, you have to have an ending point. If the person says I've stopped, you've got to have a way to verify that he's stopped otherwise the clock is ticking a \$1,000 a day, tick, tick, tick, tick, tick, tick, tick, tick, tick.

Ms. Wakida: So what does the advertising, how does that relate to this then?

Mr. Giroux: That's gonna help the government get that case in front, in front of the BVA so that they can say, from this time to this time, not only were they advertising but we saw activity that lead us to believe that they were running a TVR. Now we can put a fine amount on it. If for three months a person was running an illegal TVR based on the evidence presented in front of the BVA, the BVA can say, based on the evidence presented to us, you were running an illegal TVR to said to said date, the fine is a \$1,000 and a \$1,000 a day times 14. And then we write a Findings of Fact, Conclusions of Law and we file it and we send them that notice and we expect them to pay.

Vice-Chair Shibuya: Commissioner Mardfin.

Mr. Mardfin: Mr. Chairman, I don't want to cut off questions if people have more, but if there aren't any more, maybe if we could ask Gina for a recommendation, and I'd be willing to make a motion to --

Vice-Chair Shibuya: Accept.

Mr. Mardfin: Support the comments we've made.

Vice-Chair Shibuya: Okay, sure. Gina, will you continue? How much time would you need?

Ms. Flammer: I don't know. I was going to read back some comments but they're kind of all over the place. If we broke for lunch it would give me some time to try to put them in some kind of --

Vice-Chair Shibuya: Sure go ahead.

Mr. Mardfin: Mr. Chairman, I don't think we're gonna have lunch.

Vice-Chair Shibuya: No, we're not going to have lunch.

Ms. Flammer: Oh, we're gonna go straight through. Oh, okay. So how did you want to transmit today. I mean, I'm going to write a summary of the meeting. One thing we definitely need to do is you need to vote on our recommendation, give us your opinion on that. If you have other comments, do you want me to read back some of the comments or do you just wanna ...

Vice-Chair Shibuya: Yes.

Ms. Flammer: Okay.

Vice-Chair Shibuya: Just summarize.

Ms. Flammer: Yes, yeah, I'll try. Okay.

Vice-Chair Shibuya: Okay.

Ms. Flammer: Okay, I had a number of comments, is we don't have enforcement then the bill will not work. The system needs to work for everybody there's a fairness issue. It's not right for the people that come in for the permits. Enforcement is the key to success of the legislation. There was concern about operations that have been denied that are still apparently operating. We discussed the standard of proof and whether or not that needs to be changed. We did acknowledge that the Department's recommendation is not changing the standard of proof but changing the standard of burden for that proof. There's been a desire to link enforcement with Real Property Tax and ... them into the system. There was an acknowledgment that the B&B permitting process is still, can be time consuming. The Department's still working to smooth out the wrinkles. We would like to work with people that come in voluntarily and one of the things that we've talked about from the beginning which I've heard a little bit here is if you're gonna have a permitting system that works, you need to have -- the system needs to be easy enough for people to comply and you need to have enforcement on the back end for those people that come in. You need those two things and I heard a little bit about today. There was discussion about an educational enforcement, the Department is into looking at how something like that would work where we would inform people on the website through an email. We'll have to do some research on that. There was acknowledgment that both sides have been asking for enforcement. There was support for heavy penalties. There was acknowledgment that sound problems need to be addressed probably through the criminal code and the Council appears to be working on that and that will help the bill. And then there was a great explanation by our Corp. Counsel about how the standard of proof works now and the need for better investigations. We need more training, more manpower. The investigations need to be consistent and accurate. There needs to be many cases before the BVA before you can have a pattern on what the exact proof is that they will be looking at. Were there other comments that you guys would like to have transmitted to the Council?

Vice-Chair Shibuya: Commissioner Freitas.

Mr. Freitas: Yes, the Maui Planning Commission was the first County to impose tax on, on timeshares. I would like to see the same tax imposed on, on the vacation rentals because they are, they are competing the hotels, they competing against the timeshares and I believe that these should be taxed accordingly.

Ms. Flammer: Okay.

Vice-Chair Shibuya: Okay, thank you. Commissioner Mardfin.

Mr. Mardfin: Mr. Chairman, I move that we support the -- approve the proposed amendment that we all had to begin with and that we forward not only Gina's summary comments but the full minutes from this section of our meeting to the appropriate --

Vice-Chair Shibuya: Can you hold that motion because I have one more item?

Mr. Mardfin: I'll hold.

Vice-Chair Shibuya: I mentioned something about surveillance, and I was on the BVA when this particular TVR case came and we actually penalized that person and that person actually contested it and we went back and still fined that individual and it was beyond cease and desist. The issue here was we had cameras, photographs of their rental cars and traced those licenses, registrations to individuals that were staying at that particular location. So this is the kind of information that was available and it was difficult, time consuming, it was a lot of effort both by the inspectors as well as the community. It was just not just only the inspectors but it was, most of the effort was really with the inspectors but hats off, they provided all the evidence and it was continuous advertising, continuous renting and these were proofs that we had from rental vehicles. So if you will add that kind of stuff in as a type of information or evidences brought forward. James said yeah, it's good. So we went ahead and did it. Okay. Commissioner Wakida.

Ms. Wakida: I have one more thing I would like to suggest and it's really something I probably should have run by our Planning Director first but, I'm still a little troubled by this idea of preponderance of evidence. It just seems like the Planning Department's job gets so onerous when they have to keep looking for more and more evidence when things are fairly blatant. I wish, in a perfect world that the Planning Department could create a list of evidences of violation say ten and if four of the ten were spotted then that did it. In other words, they don't have to just keep going for this unlimited number of evidence or if there were three of the six or something like that. So if there was advertising, if there was talk to a person, they can come up with what they would see credible, that would make this, might make this process a little more efficient.

Ms. Flammer: And consistent probably.

Vice-Chair Shibuya: Okay, Commissioner Sablas.

Ms. Sablas: Real short. One of the Commissioners brought up about what do we do with those who are in good faith coming to the process but in the meantime can they still operate legally? Can you address that? I mean, is the way you look at the home exemption because I do agree that

there are people who want to do right and yet they're being penalized because of not through their fault but through the fault of the system. So if that could be addressed as well.

Ms. Flammer: In the bill or do you mean by the Department?

Ms. Sablas: Sorry?

Ms. Flammer: You mean by the Department right now or you mean in just that -- I'll tell you how it works for B&Bs is we are instructed to tell applicants when we find out that they are operating that they should not be operating. If they -- this is the Current Division -- if they choose to continue operating it goes in our staff report so that we provide that information to you. So that, that's kind of compromise where we've from a practical standpoint where we've come. Unless somebody files an RFS then it takes the zoning route. But in terms of us processing B&B applications and then we bring it to you and you guys weigh, weigh that information.

Vice-Chair Shibuya: Commissioner Mardfin.

Mr. Mardfin: At a minimum, Mr. Croly's has convinced me I shouldn't automatically vote no just because they're still operating. But I would vote no if they didn't immediately give up their home tax exemption, pay the TAT, pay the GET. If they weren't doing at least those three, they'd get an automatic no from me.

Ms. Flammer: So how it works with the taxes is that when you go through the B&B process you have to show us your TAT and GET taxes. When you go for renewal, you have to show us that you paid and you cannot renewed without a tax clearance. So even if you're behind on your taxes which we've had some tough times, we can't issue that renewal until the tax -- so we do check the taxes and compliance with that, yeah. And we do notify Real Property Tax when the application comes in and then when we issue a permit, Real Property Tax gets notice of that also. Of denials I don't know about that.

Vice-Chair Shibuya: Okay, thank you. Commissioner Wakida.

Ms. Wakida: Gina, are you asking for any input on the wording or anything in this proposed amendment?

Ms. Flammer: If you have some, yes.

Ms. Wakida: Well, I was wondering if we needed on this to say, let's see, I'm looking at the paper, that you gave us, it would be the bottom line, it says, I'll read the last two lines, "to require the board to assume the existence of the presumed fact unless and until evidence is introduced," should it say, "by the business." It doesn't say by whom by the evidence is introduced or by the alleged TVR or other businesses?

Ms. Flammer: I think it's probably a question for James or Corp. Counsel?

Mr. Giroux: I think that's assumed. The government's not going to introduce evidence to rebut that

presumption. And again, this doesn't put the burden on the government. It takes it off the government.

Ms. Wakida: Right.

Mr. Giroux: This, this creates a situation where the, the person who's saying that's that's no me, I tried to take it off, that, that's the type of evidence they have to bring to the BVA to convince them that they're not running their, their TVR.

Ms. Wakida: Okay, so it doesn't need to state it so specifically in this?

Mr. Giroux: No, I think it would be pretty clear.

Ms. Wakida: Okay.

Vice-Chair Shibuya: Okay, Commissioners if we don't have any more inputs I'd like to ask for the motion.

Mr. Giroux: Just a second, Mr. Chair?

Vice-Chair Shibuya: Go ahead.

Mr. Giroux: Just for clarification, according to the agenda this is to be sent to the Director. I think we had a presumption that this was going to Council, but the, the comments on the presumption language and I guess all other comments will be directed to the Director.

Ms. Flammer: Okay, thank you.

Mr. Spence: And, and I if I can add to that? I understand the Commission wants this sent to Council. If you look at the way your agenda is written this was a, this was a workshop. This was not and, and I'm being overly cautious here. If we just sent this up to Council, somebody could easily say this, you know, it was not advertised as a public hearing item, it was not advertised as an amendment to Title 19. So what we can do as soon as Gina gets the recommendations to me, we'll reagendaize it as a public hearing item and then transmit it up to the Council.

Vice-Chair Shibuya: Sounds good. Thank you. Commissioner Mardfin.

Mr. Mardfin: I move we support this proposed amendment and send it to the Director for appropriate modification in light of all the testimony and comments today and have it sent back to us for formal approval in the future.

Mr. Freitas: Second.

Vice-Chair Shibuya: Seconded by Commissioner Freitas. Commissioners, all in favor raise your hand. Any opposed the same sign. It's unanimous.



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

**VOTED: That the Commission Support the Proposed Amendment and Transmit to the Director for Appropriate Modifications and to be Returned to the Commission for Formal Approval in the Future.  
(Assenting - W. Mardfin, J. Freitas, D. Domingo, L. Sablas, I. Lay,  
P. Wakida)  
(Excused - K. Ball, K. Hiranaga)**

Ms. Flammer: Thank you very much.

Mr. Spence: Thank you, Commissioners. And we will also have to take this to Molokai and Lanai.

Vice-Chair Shibuya: Will, I want to compliment you, Gina on the outstanding presentation and workshop. This has highlighted many of the issues here. Sometimes, we have a myopic view looking through a toilet roll and that's all we see, but we've had a broad view today and thanks to you and the Staff, thank you very much, Director. Next item.

Mr. Spence: Item D., Acceptance of the Action Minutes of August 9, 2011 and Regular Minutes of April 12, 2011.

**D. ACCEPTANCE OF THE ACTION MINUTES OF AUGUST 9, 2011 MEETING AND REGULAR MINUTES OF THE APRIL 12, 2011 MEETING**

Mr. Freitas: So move.

Ms. Domingo: Second.

Vice-Chair Shibuya: It's been moved and second. Take a verbal. All in favor say "aye." Any opposed say, "nay." Hearing none, it's accepted.

**It was moved by Mr. Freitas, seconded by Ms. Domingo, then**

**VOTED: To Accept the Action Minutes of the August 9, 2011 Meeting and the Regular Minutes of the April 12, 2011 Meeting.  
(Assenting - J. Freitas, D. Domingo, L. Sablas, I. Lay, W. Shibuya,  
P. Wakida, W. Mardfin)  
(Excused - K. Ball, K. Hiranaga)**

**E. DIRECTOR'S REPORT**

**1. Planning Commission Projects/Issues**

**a. Revising the SMA Boundaries**

**Presentation of GIS Layer Maps by the Planning Department.**

Mr. Spence: Commissioners, the next agenda item, Item E-1, is one of the Planning Commission's Projects in revising the SMA boundaries. We do have Staff here to, we have a GIS presentation for you in which we're going to explain a possible way to revise the SMA boundaries actually based on the SMA criteria using GIS we have information available to us now that we didn't have, you know, when the SMA boundaries were certainly first done. So Dan, do we need time to set up?

Mr. McNulty-Huffman: About five minutes.

Vice-Chair Shibuya: We can just, you wanna take a recess?

Mr. Spence: Yeah, let's take just a five or ten-minute recess.

Mr. Mardfin: Can we skip this and temporarily and deal with 2 through 7?

Mr. Spence: Yes, we could do that too.

Vice-Chair Shibuya: Yes, let's go to the next item then come back.

- 2. EA/EIS Report**
- 3. SMA Minor Permit Report distributed with the August 9, 2011 agenda**
- 4. SMA Minor Permit Report**
- 5. SMA Exemptions Report distributed with the August 9, 2011 agenda**
- 6. SMA Exemptions Report**

Mr. Spence: Item E-2, EA/EIS Report or SMA Minor Permit Report, Commissioners that was distributed to you with your packet.

Vice-Chair Shibuya: Anybody?

Mr. Mardfin: I had asked about a couple of things, I think there were three things and I asked about one and on my desk this morning I found the answer that I wanted.

Vice-Chair Shibuya: If there's none then I have a couple of them, maybe three. One is SM2 2011/0052, this is Hoomana Solar Energy or Engineering. It's a facility in Haiku and I believe that was approved because it's not appearing on the current sheet. The other one is SMX 2011/0006, Ulumalu Energy, it's a 250kw FIT, feed in tariff, I'm not trying to stop it, I'm just curious to find out. The other one is SMX 2011/0154, it's a Wong Tamashiro Subdivision, it's a three-lot subdivision in Haiku. And that has been listed also on last month's as well as this month's report.

Mr. Spence: So Clayton, we have those or we can find out?

Mr. Yoshida: I believe a SMA Minor Permit was issued for the Ulumalu Energy application, so probably it should have shown up on your SMA Permit Report.

Vice-Chair Shibuya: Say again, I didn't hear that.

Mr. Yoshida: I believe a Minor Permit was issued.

Vice-Chair Shibuya: Oh, it's Minor application. Thank you. Any others? None. Okay, do we need to approve that and now we just move on.

Mr. Spence: Okay, Exemption Report. Okay, Dan are we up and running? Okay, Commissioners, we have a presentation, we have a GIS presentation for you today in discussing the SMA Boundaries and I should let staff talk about it. One of our lead GIS people, Dan McNulty. We gave them direction to let's look at our SMA boundaries, let's base them on the actual criteria in the State law rather than when the original boundaries were adopted I think early '70's or maybe later '70. Anyway, when they were first adopted pretty much all the counties just said the nearest state highway, you know, and then everything makai. So that was the criteria then. We actually have information we can base them on.

## **1. Planning Commission Projects/Issues**

### **a. Revising the SMA Boundaries**

#### **Presentation of GIS Layer Maps by the Planning Department.**

Mr. McNulty-Huffman: Aloha, Commissioners. I'm Dan McNulty-Huffman. I'm the GIS Supervisor for the GIS Section that's in the Long Range Division. GIS stands for Geographic Information Systems and I'm accompanied today by Mike Napier, who is also a GIS Analyst and is the project lead for this assignment and when we...when the Director asked us to look at ways we could revise the SMA maps based on data using the information that's available to us now, we started just looking at the policies and objectives that are identified for the SMA and then looking at layers that we have available, GIS layers and how we might be able to use those to identify really what would be a data driven approach to coming up with an SMA map.

And so what I'd like to do is just walk you through a few examples of some of the type data that we have and then how we might go about overlaying some of that information and filtering some of that information. We're in the very early stages but just wanted to give you an idea of how we might approach things.

So of course, we have a number of basic what you might call background or reference layers and I'm not going to go through all those, and again, I only have a small portion today of the various data sets that we have available to us because I wanted to keep it to something that will hopefully redraw without taking a lot of time because some of this can take quite a bit of time to redraw if we deal with some of the larger data sets and of course, we're just working off the laptop. But we have a number of layers available to us. Things like, some of the layers such as roads, such as roads for instance, probably don't directly, directly relate to the SMAs but they might be the kind of layers

that we might want to essentially snap the boundaries to if they're near the roads, whatever, we may might want to snap them to roads. Another example might be, might be parcels, so we have the parcels layer. It should come up.

Vice-Chair Shibuya: Dan, you probably have streams too, right?

Mr. McNulty-Huffman: Yes, we have a number of layers, right. And those, I think, might be more directly related but these are just some of them and I apologize I don't know offhand what I'm doing wrong, why parcels isn't coming up, oh, I'm sorry, I have got Lanai on, excuse me. Let me switch to the Maui ones. Again, I have some layers, ...(Inaudible)... things will draw faster. So, we may, like the roads, we might wanna use those as guidelines for where we kind of draw the final lines once we know the general area where we are, we may not, but these are some of the layers we have available.

And then, again, this is just a small sampling. The current SMA lines varies. It's not exactly, in some cases coincident with a set distance in from the shoreline, and some cases not, so what you see here now is the yellow cross hatching is the current SMA line and what I've put on is the 500, 700, 1,000 foot contour lines. Those have been thrown out as possibilities, so contour lines I mean elevation, feet of elevation. Those are then ...(inaudible)... as possibilities to consider. We feel like that's probably much too simplistic and kind of arbitrary, however, they may be useful in filtering some of the other layers that may have more relevance.

And similarly I mentioned that the existing SMA is, at least seems to be partially, seems to be partially based on distance and, and you can see in some cases, it does seem to be coincident with or roughly coincident in some cases, like on Lanai it actually is, most cases it's very much coincident with the 500-foot, feet, 100 feet in from the coastline. It seems to be more variable here on Maui. But at any rate, it's a factor, it's been discussed but it probably is well, like the elevation maybe a bit arbitrary to try to go with that ...(inaudible)...

Then we have things like public infrastructure. And that is, you know, when we go back to the SMA and we look down through here, I believe there is direct reference to things like that so those are the kinds of things we need to incorporate. Public and private facilities, so we were just kind of going through and looking at starting to identify the layers that may be of relevance. And I'm not going to show you everything, just a sampling. I can go back and go in more detail if you like at any point.

Shoreline access related to recreational issues, hunting areas, ...(inaudible)... things along this line that we can incorporate. For marine presence, I'm going to switch off this layer so it will show up a little better. The presence of the coral reefs and their health is a factor. For an example of a terrestrial might be looking at areas that we -- the gray indicates where the native ecosystems no longer exists and the others at least still have some native species present, many are heavily degraded as you see in the red, but they are present.

Cultural resources of course are important. And are identified as one of the objectives and policies within the guidelines. And here's information from Cultural Resource Survey that's, this is not completely final but it's nearly finalized, and there are other sources of course as well of information

that might be able to include.

Looking at geology erodible lands is one that jumped out to us as being one of particular significance if you're looking at say, the health of the offshore ecosystems and marine ecosystem, the coral reefs and such in the areas that might be most prone to having sediment runoff and I'll talk a little bit more about an example that includes that kind of thing.

For hazards, of course, things like the tsunami evacuation zones. We also have things like fire risk zones. So we have a variety of things that are available, ...(inaudible)...classes. It's going to take a little longer to draw but I think it will draw on reasonable time. So this is broken out into three classes. And, and these classes are not anything magical about the break at 20 and 30 degrees. We could do the break however we want but those are ones that have been used in the past and seem like they kinda represented a ...(inaudible)... in terms of where we start to get a degree of steepness where it becomes problematic.

Mr. Mardfin: And there's no reason we couldn't have criteria that was logical. The minimum of this and that and that plus anything that had a steepness. In other words, we could, we could have multiple criteria with ands or ors?

Mr. McNulty-Huffman: Absolutely. And I'll show you one example or a couple of examples, we've accomplished so far where we start to get into that kind of thing. And then, Commissioner mentioned the streams and of course, we have those available. And one possibility in a number of cases might be to look at identifying a buffer around the streams where we may wanna give special protection in there for--that should perhaps be included within the SMA.

Some of the reserves that currently have. So we know what, where some of the areas are that are already protected at least to a certain degree, different degree of protection for the different types of reserves we're talking about here. And then we have things like State Land Use that might be a factor that we might want to include. We have our Ag lands. There's couple different classifications for the type of Ag lands. This is one of them. I'm just showing two of the classes, but this is the kind of thing we can incorporate.

So then to actually get into some of the, the factors, we started going through and so we thought, okay, well one approach might be to identify the areas that are State Land Use Conservation. Those are particularly relevant. Again, we can discuss whether, okay it should be Ag or not. Again, these are just examples of the kind of things we can do early in it in terms of trying to go through and actually looking carefully again at these policies and identifying okay, what, how can we best represent the areas that are impacts and it should be, should have an additional of scrutiny that would be appropriate for an SMA.

Another example, of course, like we mentioned, the cultural resources especially for the, the point information, we'd probably want to buffer those, essentially a area around each of those perhaps and that would be somewhat arbitrary but we could also base it probably on some reliable information about how likely other resources are to be in proximity of that point and such. And also, we get in with cultural resources it really gets tricky sometimes because there's a lot that people don't want to see on maps, and so it's tricky. We want to make sure we factor it in, but if people

don't want us to map it, then it's hard to factor it in. So it gets a little tricky. There are ways you can deal with that by trying not to be too site specific and at least identify a broad area, but it does get a little bit tricky ...(inaudible)... some of the cultural resources.

Shoreline access was another one that I showed you that again we might wanna identify those spots and make sure that we maintain an area around those to make sure that whatever happens doesn't affect that. Recreational resources is one, one of the objectives specifically identified for the SMAs.

And then one of the objectives refers to scenic and open space resources. And so thinking about that one we started looking at a couple different ways to approach it. And so the first thing you see here is a map that just shows all of the areas on Maui that are visible from somewhere along the coastline. So it's just simply taking the coastline and running what's called a viewshed analysis. It took this one three days to run. I ran it, started before the holiday weekend last week and it finished up Sunday night. So these are computer intensive but they can go unattended and so we just have to plan them out and do them right, but this is interesting but then we thought well, what might be more interesting is not only just what's visible from the coastline but what are the areas that are visible a number of times. And so for instance, this one, so I just took a small sample area for instance in Kihei and divided up the coastline into approximately 10,000 foot sections and so each color represents a new section here along the coastline and then I just simply ran that same type of analysis for each one of those smaller sections and so, I have these set with transparency, going to add a little bit more, I have these set with transparencies so you can kinda see, so the first one here is identifying everything that was visible from segment five which is the green segment, dark green segment here at the top. Everything's visible from that point along the shoreline. But then when you start adding in the other segments, you can kind of see as the areas that are the darkest red are the areas that are visible from multiple segments and so to me, it seems like that might be the more useful type of analysis to actually identify the areas that are, that are most visible from many places around the islands, around the island. And then also, this is again, just working from the coastline, you could also look at it from offshore perhaps, you know, thinking of all the boating activity and the recreational activities right offshore. We could address it that way if we wanted.

We also have, have identified scenic corridors. And so there's three classification--three levels within this classification system and this rating system, exceptional, high and medium with the darkest green being the exceptional. So I took just as an example just took one area which is this area out here in Hana. And I'll highlight that section. So this light pink area right out here and then ran that same type of viewshed analysis for the roadway which is identified as an exceptional view corridor area. And so then we could do the same kind of thing where we could break this into segments and we can do the various segments that are exceptional. We could do the segments that are high. And work those together to identify the areas that seem to be, that are visible from a lot of different places, and again, might warrant for the scrutiny.

And then one other example that alluded to above was that looking at the marine resources. So we just took the coral reefs for example, and here we've, here we have all of the coral reefs that are, the major-- or at least the major coral reef areas for Maui and we figured okay, that's a factor. We're looking at marine resources to help those systems. We looked at the erodible lands like I

showed you earlier. And here I've filtered it to just the highly and potentially highly erodible lands. Showed you elevation earlier so this is just a different way of representing the area that is in this case below 500 feet or below a 1,000 feet in elevation. Looking at slope and here's the same classes you saw earlier, I won't wait for that one to draw. And then we have watersheds and then we thought okay, what probably is most interesting is the watersheds that are about, upstream from these, the reefs, the best of our reefs. So those are some of the basic inputs and this is not all that we would include. We've thought about others that we might include but this seemed like a good amount for this example. And so then when we get into that, we start looking at some of our intermediate results and so here's the reefs that are just the ones that have 50 percent or greater cover. And then for the watersheds, those are the watersheds that are upstream from those healthy reefs, what we're calling the healthiest of the reefs. Looking at erodible lands, here's where we might start to filter them based on how close they are or how high up they are from the shore and so this is an example where if we looked at 500 feet. So these are the ones that are erodible and are within 500 feet elevation, under 500 feet elevation. Here's the ones that were added in over a 1,000 or excuse me, under a 1,000. And then another intermediate layer might be the slope and if we start, with just the ones that are in the 20 to 30 degree, kind of the moderate slope we might call it, so we can filter based on that. We could also filter then on the ones that are over 30 degrees where for development purposes there's a lot of cautions, precautions need to be taken, need to be addressed.

So then combining those together, if you first take and look and I'm gonna, the map's gonna be kind of small here, but I want you to be able to see the descriptions. It kind of gets wordy but if you're looking at the steepest slope with the highest erosion potential under 500 feet elevation with healthy reefs offshore, there's just a few spots that are showing up here in this case, but then it will start including a little more. Okay, so we go up to a 1,000 feet elevation. And then we can add in the ones where it's moderate slope but we still have high erosion potential within 500 feet going up to a 1,000 feet. As you can see it just keeps building up and then now we're adding in where there's moderate slopes and moderate erosion and so you get this kind of thing where it identifies those areas. Now, this, in this case here on Maui we don't get too much with this and maybe that we need to identify more. Remember we're starting back with kind of one of the key things was the erodible lands layer and that was, we got a fair amount of the highly erodible, potentially highly erodible. So again, these are just one, just some sample points there's some sample approaches. We may decide that these need to be addressed, need to be expanded to include more. Maybe they're just fine.

So that's the basic idea what we're thinking of. We can take these, each one of these as we identify factors, you know, in this case it's marine resources. You know, our results here identify one factor that could be, one factor that could be responsible for helping to protect the health of the marine ecosystems, the coral reefs, in this case in particular. There's others that we can come up with, but it's a matter of using the GIS to help us make smarter decisions about okay, things like highly erodible lands are important but there's also probably a significance as to how close they are to the shoreline, how far are they up, how close they are to streams, all these kinds of things. So that's, that's our general approach at this time. Like I say, just early on, we wanted to give you an idea of the kind of things that we're thinking of to try to make it a more data driven SMA map. I think that's it. Director, do you have additional comments?

Vice-Chair Shibuya: Commissioners? Commissioner Wakida.

Ms. Wakida: I want to clear one, one objective and that is that all of this is intended to control the impact on the coastal waters am I correct?

Mr. McNulty-Huffman: I'm not the best one to talk about the policy and the Code. There's others in this room that are better -- that can address this better than I but these are the objectives and policies that are identified as part of the Code and so what we were looking at is ways that we can specifically address these because these, it's my understanding these are what SMAs should be based on and what should be focused on is the things that are specifically in these, these policies and objectives.

Ms. Wakida: Okay, in your presentation and thank you very much. It's very, very interesting. I love, I love mapping. You looked at erodible areas and streams and so on and I thought it was particularly interesting that you also had a map for view plains and that's why I was wondering if things had gotten more focused regarding coastal impact. Because I like that, that map too.

Mr. McNulty-Huffman: So that one in particular had to do with the scenic and open space resources. And of course, some of these factors that we come up with are gonna, are related to more than one objective. It's not always just a, one for one relationship, but yeah, protect, preserve and where desirable restore and improve the quality of coastal scenic and open space resources. Looking for ways to specifically address that objective.

Mr. Spence: Dan, do we have a coastal hazards layer up there, so we could zoom in on?

Mr. McNulty-Huffman: Yes.

Mr. Spence: Because that's, Commissioners that's one of the things we've, also one of the things we talk about.

Vice-Chair Shibuya: I particularly like the fact that you're aiming your digitized information with the HRS, our CZM responsibilities so we can actually see how this thing translates into a map and it's just beautiful, wonderful.

Mr. McNulty-Huffman: Thank you.

Vice-Chair Shibuya: I love it.

Mr. McNulty-Huffman: So this, here we have the tsunami evacuation zones. I'll just zoom into an area in particular where you can see a little more. So those are some of the kind of things. We have information about tsunami run up from past, I believe this is from past events. Mike knows this data set much better than I. Mike ...(inaudible)... past events.

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

Vice-Chair Shibuya: Because all this has a tremendous amount of manpower looking for the right



type of information to support this type of objective that they have. That responsibility that we have for the CZM. How do we manage the CZM? Commissioner Mardfin.

Mr. Mardfin: I'd like to ask the Director or Dan not basically now but if you could give us a list of what your various levels are, layers are, we could start to think in advance of whatever meeting it is which ones might be most appropriate that we would like to see and then we could either prior to your next meeting give it back to you or I don't know how far in advance we can foresee what things will be but, but if we had a listing, a physical listing of what the layers are then we could start to think about what things we think are important to be in there.

Mr. Spence: If I could suggest, I would like to continue to work on this in-house just within the Department and then come to the Commission with a proposal and say at that time what, maybe what we could do is propose, you know, give you our thoughts on what layers are appropriate or not and then at that time also, we will have these guys available to say, oh these are the other layer. But I mean, so we actually are presenting a staff report to you more like.

Mr. Mardfin: That, that's fine but if I had a list in advance I'd be able to maybe identify things, you could instantly, almost instantly do the things that I might want to see there that you chose.

Mr. Spence: I have a list of the layers. There are hundreds of layers.

Mr. Mardfin: Okay. The second --

Mr. Spence: That's why I'm, I'm suggesting, you know, that staff boil them down into something that makes sense.

Mr. Mardfin: But then I won't know what didn't get in there.

Mr. Spence: Well, as a part of a staff report to this Commission we would certainly provide all that information.

Mr. Mardfin: Okay, if we opt to try to change the SMA, if we extend it to new land that's gonna take a big public hearing isn't it? If we cut it back so less land is included will that also require a public hearing?

Mr. Spence: I think just changing your boundaries requires a public hearing. I'd have to look in your rules, but I believe it requires a public hearing.

Mr. Mardfin: So we, so we'd get a least two more cuts at it, one cut where you're providing the staff report as your recommendations and then another where we're starting to firm it up is that more or less correct, maybe three?

Mr. Spence: Yeah, I mean, we could certainly take... I would think a change in the SMA boundaries either, excuse me, making it wider or making it narrower, you know, closer to the shoreline or further away, it's gonna generate a lot of interest.

Mr. Mardfin: I would think so.

Mr. Spence: You're gonna have several meetings and we may, you know, we'll see how, how it would go. We may take one quad map at a time or something like that.

Mr. Mardfin: Okay, thank you.

Vice-Chair Shibuya: Commissioners, anything else? Go ahead.

Ms. Wakida: I'm just interested on your coastal reef mapping, did you get your information from the UH studies?

Mr. McNulty-Huffman: Is your mic on? You can answer that best.

Mr. Napier: Actually yes, it is from UH research maps and ...(inaudible)... NOAA, it's the benthic habitat data set that was comprised of 27 different habitats, four or five different zones, yeah.

Ms. Wakida: Yeah, we had a workshop I know some months ago and they got amazing data that they've collected. Just amazing. One more question?

Vice-Chair Shibuya: Sure, continue.

Ms. Wakida: These layers, this is all sort of your private stuff in here or is this on line?

Mr. McNulty-Huffman: I'd have to go through and look each one individually, but actually a majority of these are available to the public. Most of them are available on a State website. It's through the, yeah, Statewide -- now I'm drawing a blank on that name of the office, but it's State Planning Office, one of the State Planning Offices.

Mr. Spence: Yeah, I think OSP has some and so does, I know you can get specific maps at the Land Use Commission.

Mr. McNulty-Huffman: So there are a few layers like I mentioned the Cultural Resources Survey right now is not final so that hasn't been released but that was done by the County. So that would not be up there yet, but many of the layers that you see here are available up on that website. You do need a GIS, you do need ...(inaudible)... software in order to, or something comparable in order to view them, although there's getting to be more and more free applications out there that will, that can view the information.

Mr. Spence: There's, and just for clarity, what Dan's talking about, I mean, you could, there are downloadable layers and you need some kind of GIS software in order to view them. I personally found it a little bit difficult to use. There's also the County's online GIS. There's a number of layers, not near like this but you can access this, this is a County website and it's very helpful.

Mr. McNulty-Huffman: And if I may add, also I anticipate that as we move through this process that we're gonna probably be developing some drafts and those we can put up as PDFs on the website

and those are -- you know, and then with the PDFs you have the ability to actually zoom and get quite a bit of detail and you can actually export the PDFs in a way that you can turn layers on and off too. And so as we get farther in the process, I anticipate that we'll be able to provide those kind of things.

Ms. Wakida: Would this be in the Planning Department on the County website?

Mr. Spence: No, well the -- the thing that I just described is if you go to the County website it's on the lefthand side it says, online services and so just fish around there and there'll be an online parcel viewer is what they call it. Okay, then what Dan's talking about with downloadable layers you gonna have to go download RQ or probably other things.

Mr. McNulty-Huffman: There's a free application called ArcExplorer which is made by the same company that makes our GIS which is the software we use but the -- a lot of the data is in a ...(inaudible)... file format and there's a lot of different applications that, that can work with that now. Like I say, you're limited of course in the freeware but there actually is a moderate amount of freeware out there now and some of it can even brought in directly into things like Google Maps and such. So you have a variety of approaches available.

Vice-Chair Shibuya: Commissioners, I wanna thank both Mike Napier and Dan McNulty. Thank you very much for demonstrating and highlighting the graphics portion of our responsibilities especially at CZM. We had to connect the dots per se in our minds and now we can actually see the dots and visually through your GIS. So really appreciate this. Any other comments, Members? Certainly appreciate the Members being so patient and it probably be my last time here because they don't wanna have an extended meeting, but the last two meetings that I chaired actually were very short. So I hope you'll average it out.

Mr. Mardfin: Mr. Vice-Chairman?

Vice-Chair Shibuya: Yes, continue.

Mr. Mardfin: I'd like to thank you for running a wonderful meeting today.

Ms. Wakida: I would too, excellent job.

**7. Discussion of Future Maui Planning Commission Agendas**

**a. September 13, 2011 meeting agenda items**

**F. NEXT REGULAR MEETING DATE: SEPTEMBER 13, 2011**

Vice-Chair Shibuya: Thank you. So next meeting we have is on September 13, Members and then if you can make it we'll look forward to another set of issues I guess, right? And so without any more comments ado, the meeting is adjourned.

**G. ADJOURNMENT**

The meeting was adjourned at 1:00 p.m.

Submitted by,

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

**RECORD OF ATTENDANCE**

**Present**

Donna Domingo  
Jack Freitas (in attendance at 9:41 a.m.)  
Ivan Lay  
Ward Mardfin (in attendance at 9:20 a.m.)  
Lori Sablas  
Warren Shibuya, Vice Chairperson  
Penny Wakida

**Excused**

Keone Ball  
Kent Hiranaga, Chairperson

**Others**

William Spence, Planning Department  
James Giroux, Department of the Corporation Counsel  
Rowena Dagdag-Andaya, Department of Public Works