

**MAUI PLANNING COMMISSION
REGULAR MEETING
FEBRUARY 28, 2012**

ACCEPTED 06-26-2012

A. CALL TO ORDER

The regular meeting of the Maui Planning Commission was called to order by Vice Chairperson Warren Shibuya at approximately 9:03 a.m., Tuesday, February 28, 2012, Planning Conference Room, First Floor, Kalana Pakui Building, 250 South High Street, Wailuku, Maui.

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

Mr. Warren Shibuya: . . . the Maui Planning Commission. I'd just like to start off by introducing several members of the Commission. First we have Commissioner Donna Domingo, Commissioner Lori Sablas, Commissioner Jack Freitas.

Mr. Jack Freitas: Good morning.

Mr. Shibuya: Commissioner Ivan Lay.

Mr. Ivan Lay: Good morning.

Mr. Shibuya: Our esteemed legal counsel is Mr. James Giroux, myself, I'm Warren Shibuya. I'm the Vice Chair. I'm just sitting in temporarily here while our Chairperson is attending to some other business. On my right, and your left, is actually Mr., our Director, Will Spence.

Mr. William Spence: Good morning Chairman.

Mr. Shibuya: Director Keone Ball.

Mr. Keone Ball: Good morning.

Mr. Shibuya: And Commissioner Penny Wakida.

Ms. Penny Wakida: Morning.

Mr. Shibuya: And Commissioner Ward Mardfin. Hi welcome. Welcome all and we'd like to start off with today's agenda. But I'm going to take one matter out of sequence and I'd like to have all of us take a look at the PD, Planning Department's approved SMA Minor Projects and PD approved SMA Exempted Projects for Maui. If you'll take a look and maybe we can highlight some items that you'd be interested in. Let's take a look at that now and let the staff have a chance to do some homework while we're doing our business here and we can get some feedback. Anybody have items that they'd like to have researched for them? If not, I can start off with one. On page 2 of 15 on the open SMA Assessments for Maui is SMX 2009/0124, Smart Start Preschool, and that's in Kihei. The planner is Candace Thackerson. And if we can have some kind of description of the project I'd appreciate that. Anyone else? Any items Commissioners? If not, hearing none, I'll just move on to the next item.

The next item I guess --. At this time I'll open up for public testimony on any items on the agenda that the public would like to provide three minutes of testimony to share some of their manao. You

will not be allowed once you testify when the item comes up. Or you have the option of providing your testimony when the item is introduced. Are there members or any members in the public that would like to provide testimony on any item? Please introduce yourself.

Mr. Fred Ruge: My name is Fred Ruge and I've lived on Pio Drive in Wailuku for a couple of decades, and I'd like to represent myself and some of the other elderly people in the neighborhood. It's mostly elderly people there. And I'm testifying against the re-zoning of 883 Lower Main Street. The reason I'm testifying against this is that I feel it's a health hazard to the elderly residents there. I don't know if you remember a few years ago the Standard Furniture Company had a big fire there, and the flames came all the way up to Pio Drive. Had four or five fire engines there. The police knocked on all the doors and got us awake and out into the streets. And if you start putting refrigerators, batteries with acids and all those items down there on Lower Main Street, you've got all those bars down there, somebody is going to throw a cigarette butt down there or something, we'll have another fire and the flames are going to come up, the fumes from the acid and everything. And I have lung problems. I have to take medication. And me personally I don't think my 82 year old lungs could stand an assault from these acid batteries and the gas in these refrigerators, and I don't think this should be approved. Thank you very much.

Mr. Shibuya: Thank you Mr. Ruge. Mr. Ruge, we have a Commissioner that has a question. Commissioner Mardfin.

Mr. Ward Mardfin: Good morning sir.

Mr. Ruge: Good morning.

Mr. Mardfin: Are you content with the way it currently operates, with what they are currently doing?

Mr. Ruge: Yeah, as long as they don't have those hazardous stuff. The batteries, you know, all the time, you even say don't throw batteries into the garbage, and I just think the acid and everything. I tell you sometimes this could affect people many years later because I'm a Korean War veteran, combat veteran, and I do a lot of volunteer work for the veterans. And I've met a lot of veterans that have the . . . (inaudible) . . . orange and other chemical things. And just getting some of those chemicals on their clothes gave them a serious health problems, and this could happen there. There's a lot of wind over there coming up the bluff and that's a residential neighborhood there. And I just don't think these elderly people should be exposed to this.

Mr. Mardfin: Thank you very much, and thank you for volunteering.

Mr. Shibuya: Commissioners? Having none, thank you very much Mr. Ruge. We have the next person who signed in is Ms. Jeanne Skog. Would you like to speak now? Thank you Jeanne.

Ms. Jeanne Skog: Hi. I'm Jeanne Skog, representing Maui Economic Development Board (MEDB) and I was, I'm testifying in support of, the step of developing rules for geothermal. MEDB is very interested in diversifying the economy, and renewable energy and energy efficiency is a big part of our portfolio right now and for the foreseeable future. Maui is attracting a lot of really great renewable energy activities from very strong companies who has the where with all to really take a project, and you know, develop it to the fullest, and take into account the community's sentiments

on whatever is developed going forward. So we've very please to see the step come up and know it's aligned with the State's goals as well of achieving renewable energy. Geothermal is, as you know, is firm power so it's a really great development to the extent that this can move forward. The only other question, the only question I had was in the rules that it wasn't clear that if some time line were not followed what the remedy was for, for that situation. But I'm sure it can be addressed at some later point. We'd have to get to the rules to come forward.

Mr. Shibuya: Thank you. Commissioner Mardfin.

Mr. Mardfin: Good morning. I know several years ago MEDB and you did a lot of effort on getting community input on desired futures for the island. I don't recall whether energy was part of that or whether geothermal was part, but if it was, what was the community reaction?

Ms. Skog: Actually very strongly in favor of renewable energy for a number of reasons. One, that they saw a lot of tremendous economic benefits from it, certainly on a very personal level. And we're seeing the proliferation now of, you know, PV. I mean, it's astounding how much PV is being installed as an example. So, that means that a very, you know, grass roots homeowner level, there's a lot of interest in it. But, yes, it did come up as an economic development sector that we should pursue.

Mr. Mardfin: Thank you very much.

Mr. Shibuya: I just wanted to tell you that Jeanne sponsored that forum for the people of Maui to identify some of their concerns and interests, and I was one of the group leaders. And I had a mixture of aged seniors as well as middle aged as well as students in both high school and college, and they were a part of that group, and renewable energy did come up and it was probably number three in my group and it was very high. The concerns were there.

Ms. Skog: Yeah, you're right, and we do a lot of work in the schools with renewable energy, and there's tremendous interest at the student level as well, recognizing what impact it can have on our future.

Mr. Shibuya: Thank you Jeanne.

Ms. Skog: You're welcome.

Mr. Shibuya: Any other members who would like to testify at this time? Yes, Mr. Mayer.

Mr. Dick Mayer: Did you get my testimony? I'd like to go through it. It would make it easier for them to follow. Thank you very much. My name is Dick Mayer. I'd like to comment on the rules for geothermal. First, I'd like to mention that the community plan upcountry has a very specific statement with regard to geothermal, and I've highlight it. It's the last phrase there for you:

The policy prohibiting geothermal development that impacts adversely in upcountry communities or culturally sensitive resources has been adopted.

In other words, it's really, there's a need in the community plan that the applicant for geothermal

show that it will not adversely impact particularly in the area where the geothermal is located. There's a Hawaiian community in that area. You know, something to that effect should be in the rules since that's most likely the area that will be developed.

Second item, not just on site facilities need to be shown, but they should be showing some of the offsite facilities like power lines, waterlines, roads that will impact other neighboring communities. Maps with existing residents, there's an unbuilt State and urban areas. If residential areas are to be impacted, they should be shown on their map and that's not asked for in the rules. It's outdated. It should show prevailing wind direction in the area so that we will know where, if there are, release gases, where they will be going. And I note that there's no reference to an EIS in the rules, and I would hope that an EIS would be shown and approved along with the application process.

The next item. It should not only go to the Planning Director. It's not required in the rules, but I list there a number of other agencies that should be referenced so that the Director has the benefit of their insight into the process. Letter to neighboring property owners should go out before the first hearing, not at a later stage. Questions, can there be other industrial activities on the property? For example, if energy is produced on the site, would that then become an industrial zone? And some clarification is needed there. The process is – and this is a major concern of mine – is too fast. It says that within 15 business days the Director has to give an answer. I don't think the Director will be able to get an answer because he will not yet have time to talk with some of these other agencies that will need to give input on the process.

The next item, also within 10 business a receipt of the Director saying newspaper and general circulation. It really should say, general circulation of paper on Maui. I've also often seen the Big Island, Kauai put notices in the Maui Newspaper for events on their island. I would hate to see a general circulation newspaper on Kauai holding this. So, it should reference Maui's newspaper.

Posting of signs within 10 days, again, has to be put on. The problem with that is, the two 10-day things, and then go to the next item. Public gets only 20 days for the posting of newspapers or on road sign to make its comments. In other words the requirement says it has to be done within 30-days, and if the public doesn't even see it till 10 days after the Director, that gives the public only 20 days to make comments, which is far too short for a community association or a group of residents, Hawaiians in Kanaio, Kahikinui areas, to make any logical and useful comments.

Mr. Shibuya: Dr. Mayer, will you please summarize?

Mr. Mayer: Okay, last item. There should be required public notice within the community at the time, and at least 45 days. Again, Maui News. And then finally the last one, criteria for issuing geothermal development activity permits. Who pays for these activities if there are extra things that are needed? I'm generally in favor of geothermal. I just hope the rules are written so that we can do it in the best possible manner.

Mr. Shibuya: Okay. Thank you very much. Commissioners, any questions for the testifier? Seeing none, thank you very much.

Mr. Mayer: Thank you.

Mr. Shibuya: Thank you. Any other public testimony at this time? Please introduce yourself.

Mr. Nick Garofalo: Hello, my name is Nick Garofalo. I'm the general manager of Hammer Head Metal Recycling in the Maui Central Baseyard in Puunene. I'm testifying in support of Schnitzer Steel Hawaii Corp petition to intervene. I want to talk about the environmental impacts of taking ferrous metals and how they're significantly different than the materials accepted at a H15 redemption center. And when I say ferrous metals I'm talking about steel and iron. And in our industry, steel and iron means auto bodies, appliances, machinery equipment. What comes along with those things is fuel, lubricant, PCBs, lead, acid, and all that type of stuff. Given that stuff, you need to be set up properly to handle these materials and make sure they don't go into the community or the environment. Things such as when it rains, the water needs to be retained onsite. It needs to go through an oil water separator. It needs to all be kept inside where the metal is being processed. With that being said, given these impacts, recycling centers that accepts ferrous metals is not appropriate for a B2 Community District Zone. In addition, you need to keep all these things in an enclosure, have a roof, car batteries, all the fluids, different oils like that needs to be kept inside, and other thing that you should not have.

Schnitzer respectfully requests the Planning Commission grants Schnitzer's petition to intervene. If the Commission denies Schnitzer's petition, then it should deny the application as it is inconsistent with the B2 community district and it could result in harm the public health and welfare. Alternatively the Commission denies Schnitzer's petition to intervene and grant the application, the Commission should put strict limitations on the applicant to reduce environmental threat. Thank you.

Mr. Shibuya: Thank you very much. Commissioners, any questions for the testifier? None. Thank you very much. Any other public members that would like to provide their testimony, share their manao? Hearing none, public testimony is closed. First item, Director, please introduce the first item.

B. PUBLIC HEARING (Action to be taken after public hearing.)

- 1. MR. WILLIAM SPENCE, Planning Director, introducing proposed amendments to Chapter 201 of the Maui Planning Commission's Rules of Practice and Procedure including the rules for the Geothermal Development Activities Permit. (J. Alueta)**
 - a. Public Hearing**
 - b. Action**

Mr. Spence: Thank you. Commissioners, we are on Item B1, Public Hearing. We are proposing amendments to Chapter 201 of the Maui Planning Commission Rules of Practice and Procedure to include rules for geothermal development activities permit. Our staff today is Mr. Joe Alueta.

Mr. Joseph Alueta: Good morning Commissioners. Again, I'm Joe Alueta, your Administrative Planning Officer. Most of the time, again, I'm dealing with amendments to Title 19, either introduced by us or introduced by Council. One of my many jobs is also writing the administrative

rules every now and then for the various commissions and boards. So today what we have is some administrative rules for dealing with geothermal. During the last administration it was asked, that we initiate this, so we did initiate it and we're finally getting around to it. Hopefully with the geothermal if many of you have lived here in Hawaii for many years know that it can be controversial. I'm not sure if it will be as controversial as a recycling center on Lower Main, but we will try to be less than that. Again, I'm sure all of you have read the rules thoroughly, did not fall asleep and go down. These are very similar to how we process a Conditional Permit. The challenge with drafting these administrative rules, and me and James have become really good buddies over this, is that we're dealing with two sets –. It's kind of like a rock and a hard place. We're trying to accommodate HRS 205 5.1 which is the State Hawaii Administrative Rules dealing with geothermal. On its face you could theoretically not have any geothermal rules and we would be require, and we could still process theoretically a geothermal permit, okay, just using HRS. However, if you've read the HRS, which is attached in your packet, it's very confusing. And you also need to jive with how we process permits, okay. And you heard some of the testimony from Dick Mayer regarding the time frame that we have to do it. Under normal circumstances, your process of how, your administrative rules, for processing Special Management Area Permits or any other permits would not follow this time line. This time line is condensed and it's because the State law requires it. The State basically has said we want geothermal, we want to make it clear that you cannot throw up artificial roadblocks. This is the process that you're going to follow. And they've said the County, this is the process you're going to follow. It doesn't mean that you can't establish conditions. It doesn't say you can't deny it. You just have to have some good rationale for it. The State, DLNR, as I pointed out in my staff report. Oh, we do have a power point. Again, we're talking about 205. That's where we have most of your, the confines of these rules. We only have one sub zone. They show on the map, it shows two little blobs on Maui. In reality there's only one on Maui that's been designated as a sub zone. The two blobs that are on the map that show on Maui just show where there's been studies where there is a potential. But my understanding is that only one has been designed on Maui.

The authority that's listed in 205 states the Planning Commission is the authority to grant geothermal permits, okay. And it also provides criteria. We're calling it geothermal development activity permit, GDAP, is required for any exploratory wells, or development of geothermal energy. The permit again is similar to how we process a County Special Use Permit or a Conditional Permit. And right now only Hawaii County has it. And it's actually, only, so far, they've only found or designated geothermal resource zones on the Big Island and on Maui.

I'm not going to read all of this. Again, the things that we talk about as far as, you know, noticing, that's pretty standard. All of our permits require some type of posting of a sign. You have it in B&B Permits. We required it for this one. It's something in addition to. It's not in the State law, but it's something we thought we should add in our rules. So we can add stuff to it. And before I dwell into the line by line on the rules, I want to give you a quick overview of how the process is going to go. And this really helped me and James is trying to make sure that we didn't conflict with the State law as well as ours, and that is the flow charts on Exhibit 8. They kind of just show you the process of why. And I've kind of highlighted where we have these. The most important ones are the first two on Exhibit 8, and you can see how someone is going to submit an application. We're really, we're constrained to review it because in reality from the time we deem it complete, right, we must act within six months. And that's HRS law. So given the fact that you got six months from the time an application comes in, we need to work backwards. Like anybody, if you have a plan, a good plan

is to try to work backwards. We've got to time frame what are all the steps that we got to do to get this permit done, either approved or denied. And looking at what State law requires with regards there's no intervention, there's mediation, okay. You don't go through somebody file an intervention and you set it off with a hearings officer for nine months in some dark room and they all negotiate. And all of sudden there's a settlement, and you know, somebody's bank account got a little fatter, someone's bank account got a little skinnier. This is where you got a meeting and everything is open. And regardless of whether you agree or they come to a settlement, your feet is to the fire by the stake. I mean, it's saying you have to act on these permits. So we work backwards, taking into account, whether or not . . . (inaudible) . . .

So, again, starting from the top, you've got an application comes in. The Planning Department has to review it, and tell the applicant what's deficient quickly. We have to send a letter explaining that it's completely and ready for processing. From that point on, right, you folks assign or publish in the paper and that goes out to agencies for review, okay. There's a 30 day window for public which is standard for the County, okay. You have a comment period end. State law require has another time frame, okay. It says – I mean, from the time the comment period ends, we have to meet this certain guideline, and I show that on the side. It says, we have to get the agency –. Well, one, we always get the applicant, agency comments back to the applicant. He needs to address that, okay. Director or hearing date is set. Now, when we talk about applicant addressing comments, okay, if he doesn't adequately address them, right, at some point in time the Planning Commission or Planning Department would say hey, you haven't address this adequately and you're not going to meet. There has to be a mutual agreement by the applicant and the Department to extend any of these time lines.

Mr. Shibuya: Excuse me Joe.

Mr. Alueta: Yes.

Mr. Shibuya: Do you happen to have these flow charts available on your presentation so that the public can watch and you can explain it not only to us but with the public's view here.

Mr. Alueta: Okay.

Mr. Shibuya: Thank you.

Mr. Alueta: So again, I'll use my imaginary laser pointer.

Mr. Shibuya: Take the mic, the portable mic.

Mr. Alueta: What do you want me to talk to you guys or the public? I'm either blocking one or the other. Okay, so again, you've got your application coming in from acceptance, and that's when we need to get, send out the agency comment. We have to post a sign, the County puts on its website, so we're trying to get out as much to the public as possible. So again the State doesn't require a sign, we require the sign. We want to get it on the website so people can know. I mean, modern technology. Notice of acceptance and availability, and that goes in the paper. And then also you get public agency comments so it goes out to agency comments. From the comment period end, we have to get seven days which kind of makes sense, but we normally would send the agency

comments as we receive them so the applicant has full time. Public Works may send their comments in two weeks. We'll get it –. The next day, the applicant will have the comments. They'll know about it. But this type of deadline so that the applicant knows date certain that, you know, seven days after the comment period, I should have all my agency comments from the Department of Planning.

The applicant needs to address it, all of those, and then the Director at some point, can set a date, okay. Notice of public hearing is sent, and then we also do a 30-day public notice process, okay. And then we go to the initial public hearing. Now, this is where State law, if you read 205, gets really kind of goofy because it talks about initial public hearings and the close of the initial public hearing, okay. Unlike most permits where you would have a public hearing, you think, okay, no problem. We have the conditions. We have a recommendation. You move to approve it, or you know, and you make your decision that day. In geothermal permits, you can't go that because the State law requires a five day period after the close of the initial period in which someone can say, hey, I want mediation. So they have up to five days to say I want to request a mediation. So someone in the public who may have shown up, testified. They didn't request mediation at the meeting. They go home, they think about, and say I want to mediate this. I want to get – have some additional concerns. So from that date, okay, we then have to send, have a mediator. The Commission has to appoint the mediator, okay, by HRS 5, within five days of receipt of that request for mediation. Then you have to have a notice of mediation. 10 days you have to initial mediation – within 10 days, you have to initiate the mediation conference, okay. Mediation period shall not go beyond 30 days, okay. This is all in HRS, so this is not something the Planning Department decide, oh, this sounds like a good process. This is what the State is going to be, to the Commission, your process. So we're trying to mend it to of how we normally process permits and how the State is telling us we need to process it. You have to close the mediation, okay, and then within 10 days the service of the mediation report. Because you meet twice a week, because of sunshine law, okay, we either have to schedule – which we may – we're going to have to schedule. When you schedule your initial meeting, we may have to schedule two meetings, but you're going to have to appoint the mediator regardless of whether or not someone asks for mediation. Just because the time frame that we're working with to process this permit doesn't make sense, doesn't, is not going to account the way we normally process. So we're kind of pushed into a box of trying to get it done. So we're going to have a mediator come up.

So back, on the first page, when the person first files for an application, the Department has to go out for contract. You know how we got to get three bids, go out for contract for mediation. We're going to do that from the beginning to get someone online ready to go. Now at this point, hopefully, we'll have a mediator, and hopefully if someone does request, it's not have conflict. If there's a conflict, then we're going to have to force a meeting back into the system in which you're going to have to get another mediator. So we're going to have to have multiple mediators to deal with this.

Again, going back, worse case scenario, right, is that you have a, as far as length wise, is that you have someone filing for mediation. They go through the mediation. If there is no mediation, or no agreement, right, then you have a second public hearing held within 30 days of receipt of the mediator report. That's through HRS 205 again, okay. And then it comes back to action meeting. So again, the only time that we're going to get a application where you're going to have a approval with, you know, a clean project is no one request a mediation, we can then schedule an action meeting. But we can't do it until a five day period ends, okay. So there's going to be two meetings

regardless, maybe even three, okay, just to process an application. And that's how HRS is set up, okay. Let me turn this off and –

Now hopefully visually you can see how the process is going to go through and so let me go back. I mean, I'll take questions, I guess, on this process before I go back into addressing some of the concerns that were raised by, by Mr. Mayer as far as the submittal application, submittal requirements and notification requirements. But, I mean, hopefully the Commission has a general idea how this is going to play out. This is more helpful to the staff because they're going to have to figure this out also, but we want to make sure we stay in compliant with not only our normal Planning Department rules as well as HRS rules.

Mr. Mardfin: Vice-Chairman?

Mr. Shibuya: Commissioner Mardfin.

Mr. Mardfin: Joe, if there's no request for intervention, I can see things going pretty –

Mr. Alueta: Mediation.

Mr. Mardfin: For mediation, I can see things going pretty smoothly.

Mr. Alueta: Correct.

Mr. Mardfin: That there's plenty of time. If there's a request for mediation, I can see things totally breaking down because I know you factored in sort of worst case where you need a second hearing. But going two mediation doesn't mean you have an agreed upon settlement. So, at that point the, when it comes to that action meeting in the oval, the Commission at that point would be faced with either just doing a thumbs down on the whole thing so they act within the six months or they decide to cut the baby in half somehow. Take the mediation report even though there's no agreed settlement and just make a decision.

Mr. Alueta: That is correct. And I think the whole purpose of the HRS was to give certainty to the general public and to the applicant that they're going to get a decision one way or another. And I think this is – I mean, again, using the how geothermal played out on the Big Island, I mean, growing up you saw it in and out of courts for a decade, for decades. And I think that the whole point was that they didn't want to see that process stretched out that long that there should be some type of finality to the, and a decision made either yay, either yay or nay. And I think, again, that's why if you look at the way HRS is set up, even though you have no agreement, right, you then go to a second public hearing, okay. And then you have to have a – before you can actually, you know, go back into an action meeting. So, again, yeah, I know it's truncated or it's compressed, if all, as I say, if it gets a little complicated, okay. And I think that's the case with all of our permits, of whether or not you've got a State Special Use Permit or an SMA, you've seen it where you come in, you go through agency comment for your SMA. If you don't have an intervention, right, it goes relatively smoothly, the Commission attaches conditions to it, and there's a decision. If there is an intervention, you see where it goes into, one, mediation, you force a mediation in your rules on interveners, so it's very similar to that. And then you say, before they grant an intervention. And then the County expends, you know, \$20,000, \$30,000, \$40,000 on an intervention process where

we hire an attorney or the Commission becomes the hearings officer and it's kind of, it's gone into a close session. It's not really an open process.

Mr. Mardfin: It looks to me like there is no opportunity for intervention, the kind of intervention we have in other things.

Mr. Alueta: That is correct.

Mr. Spence: No, that's correct. It's by State law there's no intervention if we go directly to mediation. That's the process.

Mr. Mardfin: But there's no guarantee that mediation will succeed.

Mr. Spence: It – and Joe can explain and perhaps James would want to comment – but it's not a mediation like what we think of in our normal permitting process.

Mr. Shibuya: A solution is forced.

Mr. Spence: Yeah.

Mr. Mardfin: The mediator comes up with a solution which may satisfy neither of the parties, but they come up with a recommendation and then the Commission acts on the recommendation.

Mr. Shibuya: Right, hopefully it's not half a baby.

Mr. Mardfin: And then, and if the Commission doesn't like it, they just say no, and you can start the process all over. But, you know, people appeal, and you can start the process all over again and have another six months on it.

Mr. Shibuya: Understand.

Mr. Alueta: Well, what happens is –

Mr. Mardfin: I just want to be clear as to what's going to happen.

Mr. Alueta: And again just like your SMA – and James can jump in – is that if you, you take action, right, at your action meeting, if they don't like it, then it still doesn't – I believe that State law still says you go to courts. You appeal at Second Circuit Courts.

Mr. James Giroux: Just from the legal side, like Joe said, you're looking at a State law that is unique to anything that we've dealt with in the land use arena. They've determined that this process will not undergo a contested case scenario by statutes, so it's not open to the intervention process at all. They've created a unique mediation process that is truncated. You've got 30 days . . . (inaudible) . . . and the authority is never taken away from the Commission to make the final decision on the processing of the permit. Another level of uniqueness in this law is that this is one of the few cases by statute that an appeal will not go to the Circuit Court. It would go to the ICA. Originally the law actually had it go to the Supreme Court, but they felt that ICA review was

sufficient. So you're dealing with something that you have never seen the State do before. There are very few cases in Hawaii that you can go from a hearings, straight to the ICA or to the Supreme Court. The State has put a huge policy decision forward in passing this law. Everything that I've reviewed about contested cases, I've had to throw out because by the bottom line this is not a contested case by law. And that's, if the, if you look at all of the training I've done for this board as far as how do we look at contested cases? Is this a contested case? Throw it all out because you're starting all over on this law. It's a new law. It's not a, it is not by law a contested case.

Mr. Shibuya: Commissioner Lay.

Mr. Lay: At your second public hearing is there a chance for a separate mediation on a different item that might prolong it even longer? Because we'd make a decision on that, whatever that first mediation is, but because it's a public hearing, is there chance for someone else to step in with a different one?

Mr. Alueta: No, they had to do within five days of the initial public hearing, okay. And then have you noticed that they'll take comment, there's a 10 day comment period? So after that period, and then, so if people can submit, you know, testimony again, or new testimony if they want, or comments before it goes to the action.

Mr. Shibuya: Commissioners, I think the urgency here is that you have a Federal law, the National Energy Act of 1978 which you were briefed earlier at your workshop. We've been – I hate to use the word – dilly dallying around and having controversy about what is acceptable energy and what is not acceptable energy. In the mean time Maui has taken the lead in actually converting much of the renewable energy and implementing it and sharing them with the customers and the businesses and homeowners. Today we are under the gun with the renewable portfolio standards that the State has placed these goals. By 2030 we need to come up with these standards and these goals. And that's not talks goals. These are policies now with actual strength. And now Joe and James have come up, interpreting and trying to fit a process for us to have these renewable energy programs speeded up or implemented on time. And that's all it is. Commissioner Wakida.

Ms. Wakida: Joe, on your time line all the days, five days, seven days, are these calendar days or business days?

Mr. Alueta: I gotta go back to my rules because we went back and forth on it. You remember James?

Mr. Giroux: It can be a little confusing. Some of the –. The general rule is that if, according to your rules, if it's less than 10 days, then we're going to be looking at that as business days. However, if there are some that we have specifically said are less than 10 days but we're using calendar days because we're trying to conform to the State law.

Mr. Alueta: No, some of the –

Mr. Giroux: The reason we're having trouble answering that question is because we have to look at every day and see if it's silent, you go to your rules. If it says calendar days, and it's opposite of your rules, you go with your rules, you new rules. So, again, the State is putting us in this

situation where we're having to run, stop, walk, jump backwards and then go forward again because we have to conform. Your rules, by law, have to conform to State law.

Ms. Wakida: Yeah, as long as it's spelled out.

Mr. Alueta: It is. When you –. Again, I did the flow chart just to help you visualize how this will play out because again it is a new type of permit that's sort of a different animal than anything that you've seen. And hopefully we only get maybe one or two, and the rest of it is –. But in your rules itself, the language in your rules it calls out, like the properly filing application within 15 business days. So in your actual text of the rules it's spelled out which one it is.

Ms. Wakida: Good. Thank you.

Mr. Alueta: If there's no more general questions on the process, I'll try to go down the actual, or your actual rules. And you can stop me. And I'm going to jump in. Me and James make once, a couple small corrections, just clarification languages. But I'm now working from Exhibit 1 of the memo report. So again you have what we consider geothermal development activity. We clarified six months means 180 days for the purposes of this chapter. So again trying to clarify on the languages. Pretty standard and straightforward, purpose and authority is on your thing. Non refundable filing fee and hopefully we'll get, on the next budget, we'll come up with a filing fee for geothermal research permit. It tells you what needs to be submitted. An EA, as indicated by one of the applicant is not a trigger. This is not an action that triggers an EA. However, if you look at the submittal requirements, you're basically submitting everything you need for an EA, so it's not that hard to see all of the things especially when you get down to (k), written description, mitigative measures. You have archaeological and historic resources, soil erosion, drainage pattern. You have all of those things that needs to be addressed in their application that would potentially impact the environment or even impact on public infrastructure and services. So, obviously, they're going to have to address that also.

The one thing that we, me and James caught was that we wanna be consistent on, on Page 201-5, in Section 102 but in small (d), list of owners and lessees as recorded on real property tax. We're requiring, because these properties generally occur on 500 or 1,000-acre properties and you're gonna notice 500 feet from the property boundary, okay, we had this problem come up with another issue so we're trying to change our rules where you not only have to provide us a list of the people within 500 of the property but also potential lessees that are within the property itself. So there may be lessees of a section of a property and they may not be aware that, you know, hey, the landowner is actually leasing out another portion of the property for geothermal. And so we wanna make sure that those people who are lessees on the property get – that we know who they are and that we can make sure that the applicant properly notifies them. So we're gonna, in our – that, that Paragraph (d) is gonna read where it says, list of owners and lessees as recorded on real property tax records of the County's real property tax records of the County's Real Property Tax Division of the parcel or parcels and those properties that fall within 500 feet and the rest will remain the same. And that is to catch basically, basically that is to catch inside as well as outside.

103 is properly file an application. Again, it talks about the 15 days from the application. Notice and acceptance of availability that's on Section 104. Just outline, again, clarifies all of the, what needs to be on there for people to see. We have a standards for posting of a sign. We made a

provision again because we know that a lot of these geothermal properties may be out in the boonies and so, maybe you want to put the sign up. It makes no sense to have it on a 1,000-acre parcel down some dirt that no one ever travels on. Maybe you wanna put it further up on a heavily traveled – so we made provisions in the rules to do that where the thing is, could be visible. Sets up standards, again, 30 calendar days for posting of the application on the Department's Planning website. We also have the public agency and comment period, the duration, again, 30 calendar days there. Response to comments received during public hearing, that's all laid out. Your hearing and notification process is in Section 109, and goes on Page 201-8.

On Page 201-9, the Section (e), Appointment of a Mediator, we came up – this is supposed to be added, at "the initial public hearing a mediator may be appointed by the Commission. If a mediator is not appointed," and we need to insert the language, "at the initial public hearing by the Commission or within five business days after receipt of the appropriate request the Commission shall appoint a qualified mediator."

Mr. Shibuya: At this point, Joe, excuse me, do we have a listing of all the mediators that you've already surveyed as being qualified mediators? Certified as mediators?

Mr. Alueta: The Department puts out a request at the beginning of the calendar year for hearing officers and mediators at that time and that's the list we draw from whenever you go to, when you have an intervention or request for mediation services.

Mr. Shibuya: Okay, good.

Mr. Alueta: So we try to, we will have to generate one, an updated one and we go out.

Mr. Shibuya: Right.

Mr. Alueta: James, do you want to jump in – did I get that language right?

Mr. Giroux: Yeah, it's accurate, Joe. It's just, I don't wanna throw a wrench in here but what, what I do wanna kinda bring to light is that is because Joe is highlighting the difficulty it's gonna be for the Department to administrate this rule right here, and one possible solution is to have the Chair have that responsibility. I didn't wanna draft that in there because that's, that a huge, you know, I mean, this is a draft, again, this is a draft, these are your rules. But if, if the, if you guys are comfortable because you understand what situation you're in as far as the timing, you've got Sunshine Law requirements, posting agendas, six days, you gotta, you gotta get a mediator in there by State law within five days, you guys, I mean, I'm sorry, it puts you guys in a weird spot and the only solution is to get the Chair the authority to appoint that mediator. The State law says the board does it. That means the board has to be comfortable giving the Chair that authority.

Mr. Mardfin: Mr. Vice-Chairman?

Mr. Shibuya: Commissioner Mardfin.

Mr. Mardfin: Mr. Giroux, could the rules be that we appoint the mediator on the day that we deal with this initially? And if you don't need the mediator you don't use them but we could appoint at

that point?

Mr. Giroux: Yeah, the scenario again, it's hard to deal with this in the hypothetical. But the scenario where you, the State again, in their wisdom has allowed people to enter into a trigger after you guys are finished meeting. That, that sucks. The five – you have your initial meeting, you can appoint a mediator. The problem is you don't know who the parties are. Now when somebody comes in and says two days later and says, I want a mediation, and then they inform you that there's a conflict between that mediator and them, now you've got a problem. You've got five days to clear that up. Your clock is ticking and that's where I'm bringing this solution is is that at the initial hearing, you may wanna give the authority to appoint that mediator to the Chair because the staff can call the Chair and say, hey, so and so just intervened, we've received it –

Mr. Alueta: Request mediation.

Mr. Giroux: Yeah, they've requested mediation, sorry. Still old school here. They've requested mediation, they're raising the issue of a conflict, we need to resolve this within five days. We don't, we will not have a meeting until possibly a week and a half later, that's too late.

Mr. Mardfin: Could we appoint at our initial meeting, appoint a standby mediator, standby because we don't if you'll need it or not and an alternate standby mediator?

Mr. Giroux: Yeah, that's a possible solution.

Mr. Mardfin: And then, then you know, if the first one can't do it or there seems to be a conflict then you go to the second?

Mr. Giroux: Yeah, traditionally, I think we've gotten three just to be safe.

Mr. Shibuya: Yeah.

Mr. Mardfin: Then three then.

Mr. Shibuya: Commissioner Ball.

Mr. Ball: No, that was my –

Mr. Shibuya: We'll do it like a BVA, we have three.

Mr. Ball: Yeah.

Mr. Giroux: So at the initial hearing you can appoint three alternative mediators and then allow the Chair to you know, upon notice or, you know, because the thing is that this clock is ticking for five days. On day two, you get a request for mediation. On day four, you get a request for mediation. These issues are gonna arise so fast but you still have five days from the last person who requests mediation to get a mediator appointed. So theoretically on the fourth day, you get that last one, now you've got five days ticking and if you've already got a mediator appointed then you're fine. But if there's a conflict, now that's an issue. So this is gonna be, you know, a challenge for staff

to deal with. You know, again, the legalities and time line we're trying the best we can to make sure that this is not challenged in court as far as did we follow a fair process in determining the mediator? Did we follow State law in getting the mediator on board? You know, we looked at just getting at the initial hearing without a request for mediation of getting it in. But when you look at the law, it says five days from the filing of the request for mediation. So again, we're trying to conform to the State law but we're also looking at the practicalities of can the board meet these deadlines using your normal calendar?

Mr. Shibuya: I think that this is hypothetical, but James and – can you tell us what happens if you have three requests or two requests for mediation, is there going to be one mediator or you have three or four or different numbers of mediators?

Mr. Giroux: You would have one mediator and they would all be required to come, you know, before that mediator in order to – you know, it would be all consolidated. It's just the issues of conflict if there is an actual conflict between a mediator and a party then that's where the situation would have to be resolved.

Mr. Shibuya: Okay, thank you.

Mr. Alueta: So is the, is the Commission comfortable with James drafting it so that it says, appoint three mediators and then we hope that we don't run into three conflicts?

Mr. Shibuya: Yes.

Mr. Alueta: Is that – James is that, does that satisfy?

Mr. Giroux: Yeah, I think that would meet the spirit of the law that at least there's an appointment of a mediator now to deal with the other processes at least the clock has stopped ticking.

Mr. Shibuya: Any objections? Commissioner Ward.

Mr. Mardfin: I generally agree with that. I would ask that James when he's drafting language on this that it be something to the effect that we, we –

Mr. Giroux: Identifying.

Mr. Mardfin: – identify a standby, a primary, standby mediator and two alternates so that the Commission really does have the power to largely select the primary mediator and if that, there turns out to be a conflict then the secondary, and then the tertiary mediator. You know, if it's more than that we ought to come back to a special session anyway and hopefully you won't need any of them, that's why I'd use the term, "standby mediator" in case hopefully you don't need any of them.

Mr. Giroux: Yeah because of after the five days, if there's no request for mediation then there is no need to, I guess, execute the contract.

Mr. Shibuya: Commissioners, how would you like to proceed with this? If you come up a suggestion or a suggested changes as actually discussed, is oral consensus without any verbal

objections can we assume that that is acceptable?

Commissioners concurred.

Mr. Shibuya: Okay. Thank you. Let's proceed with that mode of operandi. Joe.

Mr. Alueta: Moving onto the rest of the – on Page 201-9, you got your qualifications for a mediator and the selection of the mediator as we talked about. Mediator shall be selected by the Commission. Notification of mediator conference. The authority, it lines out the authority, the privacy, confidentiality, and that deals, again, primarily with the mediator. And then you have this whole potential for a second – recommendations of the mediator is on (O), okay. And then this again, has your time frame which we talked about with the potential for a second, going into a second meeting, a second public hearing. It does not resolve the issues. The Commission has the sole discretion to hold a second public hearing and receive additional comments to unresolved mediation issues. And again, it sets out that time frame in which you, you have your 30 days in which to set it up. Let's see, and it talks about, this is, again, this is State law, if a second public hearing is – the Commission shall consider comments raised in the second public hearing in rendering its final decision on whether they should be granted a geothermal development activity permit. It talks about expenses. So again, applicant and any party request a mediation shall bear their respective costs and fees and expenses including the cost of mediation. So it splits the cost. Page 12, and then –

Mr. Shibuya: Commissioner Mardfin.

Mr. Mardfin: I'd like to ask a question. If there is a second public hearing which is at our discretion, can new issues be raised or only the original issues be considered?

Mr. Alueta: The way it's written it says, "to receive additional comments relating to the unresolved mediation issues."

Mr. Mardfin: That would seem to me to imply that new issues can't be raised only the original issues, but I don't know if I'm reading it correctly.

Mr. Giroux: Well, if you look at the original mediation. It says, "mediation shall be confined to the issues raised at the public hearing." So the people requesting mediation have to raise their issues at the public hearing even though they do not have to declare that they want mediation at the public hearing.

Mr. Mardfin: Oh.

Mr. Giroux: So it's –

Mr. Alueta: That was the scope, yeah.

Mr. Giroux: Then you have your second public hearing and it says that, "the board will take comments and must address those comments at the second hearing." So I mean, if there's a – but there's no mediation. So, that answers the question.

Mr. Mardfin: It almost doesn't. 'Cause I don't know – I apologize.

Mr. Giroux: No, and I think the law is purposeful in that, that you don't want a triple, quadruple mediation –

Mr. Mardfin: I understand that. I'm just wondering whether new issues can be raised at that second public hearing?

Mr. Giroux: They can be raised but they're not going to be mediated.

Mr. Mardfin: That's correct.

Mr. Alueta: If you read (Q), if you read (Q) Commissioner Mardfin, "if a second public hearing is held, the Commission shall consider comments raised at the second hearing before rendering its final" and so it sounds like they, somebody could raise them, but it's not necessarily means that it forces a mediation.

Mr. Mardfin: I guess I can see where a Chairman could rule comments out of order, you know, you've been talking about "A" and somebody starts to raise "B" and you say, I'm sorry you can't raise that issue here because that wasn't part of the original mediation. Wasn't raised at the initial hearing. I would hope they wouldn't do that, but I can see where it might be done.

Mr. Giroux: This is the crazy stuff. Ten days after the – it says, "within ten days after the second public hearing, the County authority may receive additional written comment on the issues raised at the second public hearing." I don't know why they keep doing this, but they really – if they wanted to go fast forward, this ten – five days after a meeting stuff really is causing the County, you know, hardship in that to deal with that administrative –. All of our meetings that we have dealing with permits we have a public hearing, we make a decision on the intervention at that hearing and then we make the decision on the case . . . (inaudible). . . at that hearing. You know, for the State in this law has twice opened the door again for further comment after you already finished your hearing so, that's what we're trying to deal with.

Mr. Mardfin: Let me read part of (P) to you and see if that, this will clarify. It says, (P), "second public hearing, if no mediation or if the mediation doesn't resolve all the issues submitted for mediation Commission may, may hold a second public hearing to receive additional comment related to the unsolved mediation issues." That means if you've raised "A" in first mediation, you can't raise "B" at this second public hearing. The second public hearing if held within 30 days, blah, blah, blah, the Commission may receive additional written comments on the unsolved mediation issues. That sounds to me very clearly the way it's written here and whether we want it or not, very clearly – if it isn't raised at the initial public hearing and a request for mediation on those issues, it's done, we can't look at anything else.

Mr. Giroux: Yeah, I think –

Mr. Mardfin: Personally, I think that's dangerous.

Mr. Giroux: It could be read that way. I mean, if you read that whole paragraph in its totality, it's

possible to get to that –

Mr. Mardfin: And I think that's dangerous because I – this gives it a five-day, basically a five-day window for anything and everything to be raised. And if it isn't, it can't be considered further and I think that's a very dangerous precedent. I mean, I'd like it to go smoothly, I'd like there to be no requests for mediation, but if there is, I can, based on things that have happened in my four years on the board, on the Commission here, I can well see that after the fact, some information could come to light that you'd want to explore in a second, if there were a second public hearing held. And so I wouldn't – I would write it so that's not precluded.

Mr. Alueta: James in your reading of that section of HRS, right.

Mr. Giroux: Yeah, you have to look at 205-5.1(e) on how that, that comes down and it does look like it is narrow, it is narrowing that scope there.

Mr. Shibuya: So there's no expansion of the scope or a discussion on various extraneous outside issues?

Mr. Giroux: Yeah, because your rules would be read not to go contrary with 205. I mean, your rules can't be outside of the scope of 205-5.1.

Mr. Shibuya: So Commissioner Mardfin, your concern, though valid, may be overridden by the State law.

Mr. Mardfin: I would like –

Mr. Shibuya: Unless we want to temper it with some sentence change.

Mr. Mardfin: I'm not an attorney as I've said many times before, but perhaps James could look at this in the light of if there is a second hearing, additional issues could be examined beyond the scope of mediation. If that's not possible within the law then it's not possible within the law.

Mr. Giroux: Yeah, if you read (P) and (Q) together as written, it does track exactly what 205-5.1(e) reads. It's just that it's in two separate paragraphs.

Mr. Alueta: On Exhibit 5, I have 205 in there for you. So if you, on the third page of that Exhibit 5, it's under (e) but it's about the last two sentences of –

Mr. Mardfin: Page 3?

Mr. Alueta: Page 3 of Exhibit 5. It says 3 of 5 on it, and it says, "if there is no mediation agreement the County authority may have a second public hearing to receive additional comments relating to the mediation issues." So again, limiting it to mediation issues. Within ten days of the second hearing the County authority may receive additional written comments on the issues raised at the second public hearing from any party. Now, your first paragraph states that the issues to be raised at the second public hearing has to be those that were unresolved or part of the mediation process. And then the next sentence just says that ten days after, you have up to ten days to submit more

written testimony on anything, on anything that was brought up during the mediation process. So to me it is funneling the issues. So you had to raise the issues at the public hearing, during the mediation whatever issues come up and then if you, whatever you talk about at the second hearing has to be only related to mediation issues which were originally brought up during the first public hearing.

Mr. Shibuya: Commissioner Mardfin.

Mr. Mardfin: To me that sounds like a very poor process, but it sounds like we're also, have our hands bound and we can't do anything about it.

Mr. Shibuya: Members? Commissioner Lay.

Mr. Lay: What I'm worried about is someone can bring in something that's correlated with it, with that mediation whatever it going through but still a separate entity. So if it correlates with whatever mediating about, somewhere trickling down to it, but they're still able to bring it up and have a continuing mediation on a separate subject after that ten days after that meeting, they bring it up that they wanna address that issue correlating with the first issue. No because two issues might be together, but separate. But because you're opening the door for the first one, your second issue can come in.

Mr. Alueta: I think that's going to be your mediation report, and –

Mr. Giroux: Again, the dealing with the hypothetical again is difficult. But what you have to see by that is that at the end of the day the Commission is gonna to have to, here's your cut date, within 180-days of this application to be deemed complete. If those issues aren't resolved, the ICA will review them and see whether or not it's going to be remanded for further mediation, further discussion, but by that time it's the ICA's decision. So they understand that. They do understand that. There's going to be these situations where you're going to be put on the spot. These issues have come up, they been mediated, they haven't been resolved, but they want you to pull the trigger. And if they feel that, no, we want that resolved more, or your decision didn't resolve it, the ICA will determine that. It still will have judicial review.

Mr. Alueta: I think – and also in reading the State law and the way our thing is written is that when they come up with mediation, like say, they agreed on say, five, you know, five out of the seven issues, but they still haven't gotten an agreement, okay, but they're kind of close on – they've got five out and that's in the report from the mediator to you, okay. Now they may have agreed at the mediation on, you know, items two and three, but they still have hard rubs on it. So they may send a letter 10 days later, and say, hey, yeah, we agreed to one thru five, and six and seven we still have problems. But in reality, I still have problems with two and three, and they may say that as a last ditch effort to the Commission to say, hey, re-look at these issues that were brought up during mediation. I think that's kind of what that who second hearing is trying to get at. Is that they still can bring it up even though they may mediated part of it. But again, as James said, you know, we've got a State law, and we've got to come up with your rules to administer it and we're kind of in a – have to be consistent. So we've done our best between, in trying to weave a process that's going to be doable for not only the staff, but more importantly for you as far as your time frame is well how often you meet. Is there any other questions on that section before I move on?

Mr. Shibuya: No. Continue Joe.

Mr. Alueta: So I'm going on to page 12, criteria for issuance. It's kind of broad, you know. I mean, you've gotta be, you know, there's a wide opener that says, you know, not have an unusual, reasonable effect on health, environmental, social economic effects on residents of the surrounding properties. Unreasonably burden public agencies to provide road, street, sewer. I mean, these are all pretty standard from your SMA as well as your Special Use Permits. Reasonable measures available to mitigate unreasonable adverse effects or burden affects to the above. So, it talks about your final action.

Mr. Mardfin: May I?

Mr. Shibuya: Commissioner Mardfin.

Mr. Mardfin: This is one I actually gave Joe a call earlier this week or last week about this because, this 12-201-111, it bothers me in this respect, and Joe makes it better in that he says these are very broad. I'm worried that my comment/question was is this all? I mean, we require more of this for, more than this for B&B. And I'm particularly concerned about one, the proposed geothermal development would not have unreasonable adverse health, environmental or social economic effects on residents or, not of, residents or surrounding property. And I don't know how narrowly that's construed. If it were – let's suppose it's where the wind, the Auwahi Wind Farm is going to be. I don't know if that's quite where they're located or not. But suppose it were down there, I can imagine adverse impacts on people that live in Ulupalakua. But they're not directly adjacent to it. They're near, but not directly adjacent. And I don't know whether this would allow us to put constraints on it since the people of Ulupalakua aren't direct neighbors. So, I guess I'm asking our Corp Counsel if that can be, can be read broadly, or has to be read narrowly in terms of what "residence" means?

Mr. Alueta: James, can I take a stab at it first?

Mr. Giroux: . . . (inaudible) . . .

Mr. Alueta: Okay. Just, one, those three criteria are straight out of HRS, so I'm not sure how much of a broad criteria you have if the State law says this is what you're gonna make your criteria based on. And we cite the section. It's right out of HRS and it's in your exhibit also. I read, and James can help me, is the affect on residents. It just talks about residents. And then it talks about or surrounding properties. It doesn't say, surrounding residents.

Mr. Mardfin: That would–

Mr. Alueta: So I, I, I feel it's talking about residents in general.

Mr. Mardfin: If that's the interpretation then that would allow people that live in Ulupalakua to raise issues. It would allow Hawaiians that live in Waiehu to raise issues if they feel it's somehow wrong for Hawaiian reasons. Because it says residents, I would interpret as residents of the island.

Mr. Alueta: Correct, but again, you're – unreasonably adverse to health, the environment or the

social economic effects upon residents.

Mr. Mardfin: And I can read.

Mr. Alueta: So you're gonna to have to find – they're going to have to provide you, the Commission, that evidence that, hey, somehow in Waihee I'm affected. And so you –. They can raise the issue – I'm not saying they can't – I'm just saying they're gonna to have to show that they've been affected.

Mr. Shibuya: Yeah, Commissioners, at this point, technology has been working with these emissions. And, of course, the other emission, noise, they have what is called a closed system where the actual steam is actually directed downward into the earth. The excess power that they have in the turbine area is probably a secondary thing, and they may have to release some of the gases, and it will be steam that is released, not the minerals in the closed system. And so that may have a noise effect. So you could have that released every hour, and you have an alarm clock already built in like the HC&S whistle used to do it. Lunch time and whatever time. I'm just kidding around. But there's opportunities where we can change some problems into something that's useful.

Mr. Giroux: Again these are rules and what we're – we're not looking at the facts of anything right now. We're just looking at rules.

Mr. Mardfin: I totally understand. I don't –. Let me just say, I'm not raising issues because I'm opposed to geothermal. I'm really not, and I thank the Vice-Chairman for that technical information that some of the things that I might have been concerned about I don't need to be as concerned about. But, you know, we're raising, we're approving, being asked to approve rules in isolation to a project, but intensification of a particular project. And I just want to make sure that we have a process in place that will allow us to do what we'll need to do down the road.

Mr. Shibuya: Director.

Mr. Giroux: And I was going to say that is the difficulty and that's why I usually tell you guys when we're talking that I don't do hypothetical. But since we're working with rules, I'm playing hypothetical with you so it is helpful to craft these rules for you.

Mr. Shibuya: Director Spence.

Mr. Spence: And I understand the concern about, you know, these things that we're looking at, the criteria may be overly broad. But I also think about, okay, what are we requiring the applicant to provide first. So, the criteria may be overly broad, but the information provided to the Commission is very detailed. So, if you look –. And we didn't go over section 102 in any kind of depth, but I'll just point out a couple of highlights, you know, written statements describing the scope of the planned activities, written description of the technology, description of the property. And when we're talking about description, we're talking about, you know, it's a lot of information. You know, the application is going to end up looking like one of the EIS that everybody is so fond of, piled right in front of them.

Mr. Mardfin: Thank you very much Mr. Director. I did not put the two together, but you're right. If it's put together that clarifies most of what I was concerned about. Thank you.

Mr. Spence: And if I could just point out a couple of other things, written description is a method of disclosing of well effluent and waste products. Would include air, pre-exploration, meteorological, I mean, air quality and noise level measurements. Written description of the applicable mitigation measures including archaeological and historic, soil erosion and drainage pattern, surface and ground water contamination, damage to fish and wildlife and other natural resources. Air and noise emissions, hazard to public health and safety, social economic impact, et cetera, et cetera. So, we're gonna to have lots of information by which to make a decision on those . . . (inaudible) . . .

Mr. Shibuya: Okay. Continue Joe. Thank you.

Mr. Alueta: I'm pretty much going to shortly wrap it up. It just says requirements for prior to initiation of construction, or your action. It talks about your action, again, because you can't take action within five days because you have to wait for potential mediation requests. It talks about you can grant the permit, maybe modified. You can grant the permit in phases. This is on page 13. And then you can deny permit and state the reasons why.

Mr. Mardfin: Mr. Vice-Chairman?

Mr. Alueta: Yes?

Mr. Shibuya: Yes Commissioner Mardfin.

Mr. Mardfin: This is the second issue I raised to Joe, and I want to make sure I understand, at least understand what the situation is. Normally we hold a public hearing and after that we discuss it, we make motion to accept the recommendation to the Planning Department or to make modifications, and then we vote that same day. This is calling for something very different. This is calling for holding the hearing. I don't know whether or not we'd be allowed to have discussion or not, but there could be no motion to approve, deny or add conditions until our next meeting. Is that everybody's interpretation? Because we have to wait for the five day period to pass.

Mr. Shibuya: Right.

Mr. Mardfin: Is that the correct interpretation?

Mr. Shibuya: That's correct.

Mr. Mardfin: So it will be two weeks. Unless we have special meetings, it will be -. We'll have a public hearing, and two weeks later we'll -

Mr. Shibuya: Decide.

Mr. Mardfin: - decide.

Mr. Alueta: Again, I don't see your discussion at the initial public hearing being truncated or limited.

I think that you can still discuss the items out, talk about potential conditions that you want, and –

Mr. Mardfin: And then two weeks later have board discussion and –

Mr. Alueta: – take action on it.

Mr. Mardfin: – decide what we're going to do. Okay.

Mr. Alueta: Right. I think the key issue is that you've got to close that, have the public hearing and close it. That's always the important part. Again it gives you, it gives the Director just as you do now, you ask the Director to do your final approval letter to send the letter of the Commission's action to the applicant. And then this one go – these rules go into what the applicant needs to do prior to initiation of construction. So there's a follow up in your rules for additional information, and before initiation. Kind of like what we require a preliminary compliance report prior to signing off the SMA or Special Use Permits. It's very similar to that. We have amendments to determination of permit terms and conditions. So you can amend or determine the terms and conditions. So there's a process. And, that's the flow chart. That's for construction, and that's also in your staff report. So it sets up the time frame. And then your – how you're going to amend or determination request. Again, you have that potential where information documenting Director may refer it back to the Commission to decide on. You have time extensions. It's straight forward of your rules, and that's on page 15. You also have enforcement provision in the rules for enforcement and conditions and notice of violations. Enforcement of conditions, representations or commitments, and in order to show cause. And that's on page, bottom, sections 118 and on page 19. You have a sub-chapter 8 with regards to notice of appeals and notice of violations in order to show cause. This is your standard enforcement. So contents and appeals from the notice of violation. You have your record. And again this is dealing with more of the enforcement as well as potentially citing for violation and a sense of process for the Commission to try to enforce their own. It's their permit. They have the ability to enforce the conditions of the permit. And you have the appeal of the violation so here is the process in which – if someone feels that they were cited incorrectly there's a process. And that's pretty much it. James, did I miss anything that you want to highlight in going over this?

Mr. Giroux: I just wanted to go back to the choosing the mediator just to get firm language, just so there's no confusion. I tried to rip it apart a little bit just to get the meat of what we discussed. So again, I'm just going to throw this out to see if it's acceptable. So (E), appointment of the mediator, at the initial public hearing, the board shall identify a standby mediator and two alternative mediators, period. Take out the word "if" and the mediator shall be appointed within five business days after the receipt of an appropriate request, period. The Chair shall appoint the qualified mediator. I think that was the sticky point. Is that –? Should we just leave that, the Commission, and then we'll figure out how to get a meeting together in order to get that done?

Mr. Ball: No, we already had the meeting. You had the meeting, you chose the three. The first one, just voted down . . . (inaudible) . . .

Mr. Giroux: So just go down? Okay.

Mr. Alueta: I think, from the language, was they were going to pick their primary one and two

alternatives. And basically if the first one didn't work out, then we would just go down, and hopefully we'd make it between the two.

Mr. Giroux: So we should, instead of just identify, we should identify and appoint.

Mr. Alueta: Yeah.

Mr. Mardfin: It's – Mr. Vice-Chair?

Mr. Shibuya: Yeah, go ahead Commissioner.

Mr. Mardfin: It's a standby mediator. It's not a – I mean, you might not need the mediation, so I don't know if appoint is the right word.

Mr. Giroux: Yeah, the understanding is that when the trigger happens, that appointment is already made. Is that correct?

Mr. Alueta: Right.

Mr. Mardfin: Yes.

Mr. Alueta: In talking with James, we want to make sure that you've appointed a mediator again so we don't have to rush on this five day thing. So you appointed that mediator and/or the two alternatives, and that's your selection, so that is clear. We'll draw, and if no body intervenes then they're just dismissed. It doesn't hurt to appoint them, let's just put it that way.

Mr. Giroux: Yeah, we don't want them to collect their retainer's fee if they – Joe will lose the contract. And this is all because, again, it's the staff that is going to have to struggle. If you guys have your meeting, you disappear, we can't call all nine of you back into the room. We've gotta get a notice out. We got to, you know, get it agendized, you know, so that's what we're struggling.

Mr. Mardfin: Mr. Vice-Chair?

Mr. Shibuya: Commissioner Mardfin.

Mr. Mardfin: Is it time for one more question?

Mr. Shibuya: Sure, one more, but not too hard now.

Mr. Mardfin: This is – and I don't know whether it is or not – it's on page 201-5. And at the top of, the first half of that page it has paragraph (C) and then paragraph (D). I want to focus on paragraph (D). It says list of owners and lessees – I like that lessees part – as recorded on real property records of the County's Real Property Tax Division for properties within 500 feet of the parcel. Now I suspect 500 feet was chosen because that's what we use for everything going on. And maybe what Commissioner Shibuya has told me, has told us about noise, and fumes and stuff, makes what I'm going to say next, not terribly relevant. But I could, before I heard that, I could well perceive that there could be impacts on lands far greater than 500 feet from this project. Now if there aren't, then

it's not an issue. But if there are, I think anybody that's going to be directly impacted ought to be notified. I don't know how to write that into law. I don't know whether the posting of the sign will take care of that, but I would opt for more, particularly since there's only a five day chance to attempt mediation. I think we ought to favor greater transparency at the beginning. And I don't know whether 500 feet is enough, although I understand it's our standard.

Mr. Alueta: Again, that section is, our recommendation is to amend that section now, not so much for the 500 feet. Right now we're doing, make sure we notify the persons within the parcel. So that was the language I talked about.

Mr. Mardfin: I get that. I like that part. I'm not questioning that. I'm questioning whether 500 feet is a big enough buffer. Maybe a mile would be better.

Mr. Shibuya: Commissioner – I mean Director Spence.

Mr. Spence: This is something that constantly is a comment that we run into. Is 500 feet enough, is it too much, or, you know, all different applications. The –. You know, we're also talking about posting signs et cetera. This isn't going to be a very common application. We're going to get one, maybe two, maybe, you know, who knows. The, I think the thing is that in working with a potential applicant, you know, they've been reaching out to the different community associations, you know, things that this Commission normally expects with any applicant, regardless, regardless of posting in the paper, regardless of posting agendas, regardless of what's required of the rules. Inevitably, there's going to be somebody that says I was never notified. It's just going to happen.

Mr. Mardfin: Mr. Director I can live with that as long as the intent is fulfilled and practiced. That there will be wide publicity and transparency given to any application. Then the formal notification, 500 feet is fine with me. But I hope that there really was a lot of transparency and a lot of public notice beforehand.

Mr. Spence: And if you look at the – that of course is the goal is for the public to be notified and potentially people who could be affected being notified. I think that –. I mean, if you're looking at the area in which the potential growing could take place you're looking at a very large parcels. 500 feet around a 500 acre parcel, you know, that's going to encompass a whole lot of different people and different regions of the island.

Mr. Mardfin: I did notice that there was one potential area right above Hana on the east ridge but that's okay.

Mr. Alueta: It's not Hana.

Mr. Spence: These things are going to be –. The thing is that however notification takes place these are going to be so rare. It's going to be noticed in the paper, et cetera, et cetera, it's going to be big news.

Mr. Mardfin: That takes care of my concern.

Mr. Shibuya: Okay. Joe? Commissioner Freitas you want to say something?

Mr. Freitas: No.

Mr. Shibuya: Okay.

Mr. Alueta: I guess in closing I, we recommend you adopt your administrative rules with the subject, with the two amendments noted in the, that we talked about today.

Mr. Shibuya: Thank you very much. We'd like to, at this time, open the discussion up for public testimony here. Those that want to testify on this specific proposed Chapter 201 rules, Practice and Procedures for the Maui Planning Commission, please come forward. Seeing none. Oh, we've got one. Okay, thank you.

Mr. Doug McLeod: Thanks Commissioners. I won't take much of your time. I know you've spent a lot of time working on this.

Mr. Shibuya: Please identify yourself.

Mr. McLeod: Doug McLeod. Energy Commissioner for the County.

Mr. Shibuya: Thank you.

Mr. McLeod: The Mayor asked me to just come down and clearly state his strong support for doing this. And I just wanted also to pass on we work very closely with the Big Island energy program and they strongly recommended that we go ahead and come up with these rules. You know, it is possible under the State Statutes to do this without a set of rules, but that was their strong recommendation to us based on lessons learned over there, so I wanted to pass that on as well. And then a quick final point, the way these projects actually occur with geothermal, they're different than other types of renewable energy just because we don't know at the beginning if there's going to be a plant or how big it would be. The testing itself is a multi-million dollar effort. They're going to be going down a minimum of 6,000 feet before they can really make that final call. So what's going to come to you initially because of what's required in this rule, you're going to be getting an application for an exploratory phase. In other words, doing the test wells, and that's the only thing that you're going to be seeing in the next year. Thank you.

Mr. Shibuya: Thank you. Any questions Commissioners? Thank you very much. I thought I saw another hand go up in the audience that would like to share their comments, manao. Thank you very much. Please identify yourself.

Mr. Bill Sherman: Good morning Commission members. My name is Bill Sherman. I'm with . . . (inaudible). . . Technologies. We are a geothermal development company and since 2004 have own PGB, the only geothermal facility currently on the Big Island. I have listened carefully with all of your concerns. I appreciate the effort that is being done to in the access rules. We are in support of adoption of the rules and all the hard work that's gone into it, not only for ourselves but for any geothermal developer to allow for potential exploration on Maui County. So I thank you for your hard efforts and support, and we hope you will adopt the rules for Maui County. Thank you.

Mr. Shibuya: Thank you. Just a moment please. We have a question from a Commissioner.

Commissioner Mardfin.

Mr. Mardfin: You operate on the Big Island. That's what you said?

Mr. Sherman: That's correct.

Mr. Mardfin: Have the concerns of –? How have the concerns to kanaka maoli tapping geothermal been addressed?

Mr. Sherman: We have worked very closely with the Hawaiian community and continue to. And we believe that we have adequately addressed their concerns moving forward.

Mr. Mardfin: Do they feel their concerns have been adequately addressed?

Mr. Sherman: Well, I mean, I think the vast majority do. There are always going to be some people that are in opposition. By in large, yes. I think it's about 180 degree from where it was 30 years ago. Long before we got –

Mr. Mardfin: Why do you think that occurred, the change?

Mr. Sherman: I think it's the, we as a company are – reach out to deal with cultural and community issues. We have significant developments we've done for others. For example, New Zealand, they're very mindful of working with the Maori culture. It's something that's built into our company's culture. I think that we continue to actively work those issues. We, as you may be aware, we are certainly looking at the possibility of exploration on Maui. We have been working those issues with the local community for at least the past year. We were trying to address the concerns and be able to address them in the manner that adequately covers the concerns of the community that allows us to move forward with development.

Mr. Mardfin: Thank you.

Mr. Shibuya: Commissioners? Anybody else? Thank you very much Mr. Sherman. Any other public testifiers? Seeing none, then public testimony is closed. Commissioners, what is the pleasure in terms of this issue here with us? Commissioner Wakida?

Ms. Wakida: Are you ready for a motion?

Mr. Shibuya: We could do that.

Ms. Wakida: Yes, I'd like to move to accept the recommendation by the Department.

Mr. Shibuya: With the amendments?

Ms. Wakida: With the amendments.

Mr. Shibuya: Yes. It's been moved by Commissioner Wakida, seconded by Commissioner Ball. Commissioner Mardfin, you have a comment?

Mr. Mardfin: Well, now that it's on the floor. I think Dick Mayer raised some very important issues and I'd like to deal with at least several of them, maybe not all. The most important one is he wanted it added, "that a policy prohibiting geothermal development that impacts adversely on Upcountry communities or culturally sensitive resources has been adopted." Now I don't know where you'd put that quite honestly, but it might be where you had those list of specifics. Somewhere in 12-201-102 that maybe we could have a, I don't know, maybe a paragraph (S) saying that another concern has to be the impact on Upcountry community and culturally sensitive resources within the kanaka maoli community.

Mr. Shibuya: Commissioner – I mean, Director Spence.

Mr. Spence: Item (L) already covers a written assessment of cultural impacts and mitigation measures as applicable. There are other –

Mr. Mardfin: That, that in the past has been satisfied with a Cultural Impact Analysis (CIA) that primarily deals with have there been traditional uses on the land, you know, gathering rights and stuff like that. I think this other concern is much deeper than that than just are you interfering with gathering rights?

Mr. Spence: Oh, no. We're talking about something much more significant than just saying gathering rights here. We're talking about an Archaeological Inventory Survey which is not just gathering rights that identifies in existent archaeological sites, patterns, habitation patterns of the area, identifies any traditional uses from that area.

Mr. Mardfin: None of those...I, I, those are important but none of them touch the issue that I'm concerned about which is how native Hawaiians feel about geothermal production altogether.

Mr. Spence: I think regardless – and I would also point out that, I mean, it still touches on when you call for a Cultural Assessment, we're talking much more than just archaeology. We're talking about interviewing kanaka maoli from the area and their viewpoints are going to be heard. I don't know how else to say what your concern and Mr. Mayer's concern is, it's already covered in the application. We're making it a requirement.

Mr. Shibuya: Also, I think Item Q lists the active land uses, State, County Special Use Permits and County Conditional Permits. That could be interpreted with the – unless you want to add the community plans at this point, I'm not too sure.

Mr. Spence: If that's something the Commissioners want to include we can include consistency with community plans.

Mr. Mardfin: I would like to see consistent with the community plan also.

Mr. Shibuya: Okay, so that we can, you're suggesting that we –

Mr. Mardfin: And since they're gonna be rewritten in the next few years maybe it might be after the fact.

Mr. Spence: And what that would do, would say, it would, it would direct staff and it would direct applicants to say how it's consistent. And it's going to be inherent in the application but if we need to spell it out, that's fine as well.

Mr. Shibuya: Okay, so we going add that in. Commissioner Lay.

Mr. Lay: I have a question on that. Say we come across a prime area that's really good for geothermal or whatever other applications that might be renewable energy and it's not under the community plan, at that point what would happen?

Mr. Spence: Say if it was for a second, let's say it's in the Kihei Community Plan area or in the Hana Community Plan area, what we would do is we would go through the – or the applicant would go through the community plan and see what is, what could be applied, what indicators of, you know, whether it's business, whether it's self-sufficiency, whether it's, you know, supporting local industries or diversified economy, those kinds of things. Alternative energies we would look for other parts of the community plan that would, yeah, would be incorporated in it. The applicant would do the analysis and we would, as a part of, you know, staff review would concur, add, you know, whatever.

Mr. Shibuya: Commissioner Mardfin?

Mr. Mardfin: I guess you've convinced me that if, if we put in a part about consistent with the community plans, that – and I guess you could read the cultural impacts broadly enough that that might take care of that one concern, I know, at least for my satisfaction. His next point was that "we need to look not just at onsite facilities but at related infrastructure, power lines, water lines, et cetera." Is that addressed in the application?

Mr. Shibuya: Item (D).

Mr. Spence: It's also –

Mr. Alueta: You also have – I mean, as part of your, your written description of the impact, part of their, part of the criteria it says unreasonably burden the County to provide roads, sewer, power lines. That's part of the – it's actually it's a criteria in which you have to find –

Mr. Mardfin: I do see it in Section (D).

Mr. Spence: Yes, it is addressed in Section (D).

Mr. Alueta: And then, you also gotta look at (K), (K) covers also archaeological and historic resources, fish, wildlife and other natural resources, air and noise emissions, public health. So the Upcountry Community Plan, the Kula, the Makawao-Pukalani-Kula Community Plan is only, is the only one that has any specific language to geo, geothermal and you know, that was noted by Dick Mayer. But all of that, I mean, because it's such a broad statement, all those impacts that he's talking about or the criteria in which they're talking about is addressed already in these rules.

Mr. Shibuya: Commissioner Mardfin.

Mr. Mardfin: Down a ways on Dick's testimony it says, "can there be other industrial activities on the property after the geothermal project is running?" I would assume the answer to that would be yes, but they'd have to go through separate permitting?

Mr. Spence: Yes. It would be, that would fall back to – if somebody wanted to do geothermal and that's all we're talking about here, if they want to a cogen plant or something like that in addition to, then there would be other laws that would be applicable.

Mr. Mardfin: Or some major battery facility type operation, you know, pumping water up the hill and using that.

Mr. Spence: Whatever other laws are applicable those that already dictate what can or cannot happen on the property.

Mr. Alueta: The thing, whatever they're proposing, would have to be in their permit and their application as far as their site plan. So if – cogen, I would assume that, isn't that what they're doing? I think that, that is geothermal is cogen. I mean, that's pretty much what they're doing and so that is part of the geothermal facility. And so I think if other related industries is, if somebody is coming – if somebody says, well there's all this energy being produced and they want to manufacture widgets as part of it being used the excess energy to, you know, break rock or whatever they want, then that would need a Special Use Permit if it's in Agricultural District they would need to meet. So we would only look at the facilities and the permit would only cover what they're proposing and part of their proposal may be storage, but that would all be part of this geothermal permit.

Mr. Spence: Yeah, and if there was something unrelated like sometimes the Commission sees applications for Community Plan Amendment, Change in Zoning and SMA, so the applicant would combine all those applications into one document so the, so the Commission's looking at everything at one time. So you're not parceling it out, you're looking at, you know, all the different factors at once. So that's, you know, no – automatically nobody could just go do other industrial uses on the property.

Mr. Shibuya: Commissioner Mardfin.

Mr. Mardfin: Dick had a comment in here that publish in a newspaper of general circulation. And he said, but it has to be on Maui and I would agree with him. I assume that's what you mean?

Mr. Mayer: . . .(inaudible). . .

Mr. Spence: I forget,–

Mr. Shibuya: We have five standard ones.

Mr. Mardfin: I mean, you couldn't put this notice in the Kauai newspaper and skip the Maui News?

Mr. Spence: We're required to by State law, right now, to publish around the State.

Mr. Mardfin: Oh, okay.

Mr. Spence: Including on Maui.

Mr. Mardfin: But it would have to be on Maui.

Mr. Spence: Yes.

Mr. Mardfin: Okay. May I ask another?

Mr. Shibuya: Sure, Commissioner Mardfin.

Mr. Mardfin: I skipped over one that I should have gotten to earlier. He says, now going only to the Planning Director, the application should automatically be sent for comments to State Department of Health, DHHL, OHA, DLNR, LUC and the County Department of Public Works, Planning and Civil Defense before the first hearing. Would that be done under this plan or would that not be done under this plan?

Mr. Alueta: Part of your public and agency comment period is before your first hearing. We can't even – they have to address agency comments.

Mr. Mardfin: And how much time would there be before, between when the agencies were notified and the first hearing?

Mr. Alueta: Oh, let's see, they have 30 days. There's a 30-day comment period for them, for the public and for the agency comments.

Mr. Mardfin: Before the first public hearing?

Mr. Alueta: It would be up to the Director and to determine when he's gonna do, close the public hearing and –

Mr. Mardfin: Would, would the document itself be available to the public?

Mr. Spence: Yes.

Mr. Mardfin: Thirty days before the public hearing?

Mr. Alueta: Oh, yeah. It's gonna be on the website. When they submit their application, right, we're gonna determine whether it's complete. Once we determine that's complete, we're then gonna transmit it out to agency comments as well as put it onto the County website and it'll also be available at the Department. So then from that point on, the public can either get the full document or do whatever they want. They can comment at any time.

Mr. Shibuya: Joe, can you put the chart before this?

Mr. Alueta: Oh, yeah, I'm sorry, I thought you wanted –

Mr. Shibuya: Now that shows what the process is.

Mr. Alueta: Yeah, this is where it's at on the first page. So when they get their completed, right, their application, we're gonna publish in the paper. You got that 30-day comment period. When the comment period ends, right?

Mr. Mardfin: Excuse me, show me where – where does it go to the newspaper and publish on the website?

Mr. Alueta: So then you have a 30-day comment period.

Mr. Spence: Joe, could you use the mic, please?

Mr. Alueta: So again, they submit the application. Application is complete and accepted for processing. At that point in time, there's a notice sign that the applicant has to do within 10 days. Okay, meaning that his application is ready for processing. So if anybody's got questions they can come see him or he, she, it, you know, us. Public notice of acceptance and availability. So again, we publish the notice in the paper, it's also on the County website. At that point in time, we will transmit to all the agencies. This is all standard. We do this all the time for almost every application. We then send it off to agencies. They've got 30 days to comment, okay, from that period. We have to then send from the – when the comment period ends, right, they – we have to give seven days, they have address all of these, okay. So between the comment period ending and your first initial public hearing, there can be no more than a maximum of 75 days. So we have a 30-day notice for a public hearing, right. So there's about a 40-day, 45-day window here before we send out this notice of the actual hearing.

Mr. Mardfin: Okay, thank you very much. . . .(inaudible). . . my concerns. I get it. Thank you.

Mr. Shibuya: Okay, thank you very much, Joe. Any other comments, questions, Commissioners? If not, Commissioner Wakida.

Ms. Wakida: There was just one addition so I am happy to include that in my motion.

Mr. Shibuya: Okay. The same with the seconder?

Mr. Ball: Yes.

Mr. Mardfin: This has to do with the community plan.

Mr. Spence: Just the ...(inaudible)...

Ms. Wakida: Yeah.

Mr. Shibuya: Right, consistency. Okay, Director would you please repeat the motion?

Mr. Spence: The motion is to approve the rules as amended and including the amendment for the community plan amendments for choosing the hearing officer and I think there was a couple other

details.

Mr. Shibuya: Mediator.

Mr. Spence: Yes, excuse me, not hearings officer, mediator.

Mr. Alueta: There's the 500-foot one inside.

Mr. Shibuya: 500 foot.

Mr. Spence: Inside.

Mr. Alueta: The consistency with community plan which would be (S) and then the mediator.

Mr. Spence: Yes.

Mr. Shibuya: Okay. Commissioners, what's your pleasure at this point? All in favor of the motion raise your hand. All those opposed raise your hand. It's unanimous. It's unanimous, Carolyn.

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

**VOTED: To Approve the Proposed Amendments and Additional Amendments to Chapter 201 of the Maui Planning Commission's Rules of Practice and Procedure including the Rules for the Geothermal Development Activities Permit.
(Assenting - P. Wakida, K. Ball, D. Domingo, L. Sablas, J. Freitas, I. Lay, K. Hiranaga, W. Mardfin)**

Mr. Alueta: Thank you very much.

Mr. Shibuya: Thank you very much Joe. We appreciate you and James working on this. We'll take a break at this point. 10 minute break.

(The Maui Planning Commission recessed at approximately 11:02 a.m., and reconvened at approximately 11:15 a.m.)

C. UNFINISHED BUSINESS

- 1. MS. KAREN Y. SHINMOTO, Business Manager of BIG ISLAND SCRAP METAL requesting an amendment to the Special Accessory Use Approval to allow for the acceptance of ferrous metals, including white goods, and vehicle batteries at its redemption and recycling center in the B-2 Community Business District located at 883 Lower Main Street, TMK: 3-8-036: 092, Wailuku, Island of Maui. (ACC 2006/0003) (K. Wollenhaupt) (deferred at the January 25, 2012 meeting.)**

- a. **Petition to Intervene filed by Ian Sandison, Arsima Muller, and Craig Nakamura of Carlsmith Ball, attorneys for Schnitzer Steel Hawaii Corp., dated January 19, 2012 on the amendment request.**

Craig Kugisaki, attorney for Big Island Scrap Metal, LLC submitting a Memo in Opposition to the Petition to Intervene dated February 7, 2012.

Patrick Wong and Jane Lovell, attorneys for the County Department of Planning submitting a Memo in Opposition to the Petition to Intervene dated February 7, 2012.

Ian Sandison, Arsima Muller, and Craig Nakamura of Carlsmith Ball, LLP, attorneys for Schnitzer Steel Hawaii Corp. submitting a Reply Memorandum dated February 14, 2012 in support of Schnitzer Steel Hawaii Corp.'s Petition to Intervene.

- 1) **Action on the Petition to Intervene**
- 2) **Selection of a Hearings Officer/Hearings Body and a Mediator**

Mr. Shibuya: . . . back to order. Director, will you introduce the next item?

Mr. Spence: Commissioners, we are on Item C1, Ms. Karen Shinmoto, business manager of Big Island Scrap Metal, requesting an amendment to a Special Accessory Use Permit approval to allow for the acceptance of ferrous metals including white goods, vehicle batteries, at the redemption center at 883 Lower Main Street. Item (a), we have to Petition to Intervene by Ian Sanderson – Sandison – Arsima Muller and Craig Nakamura. Craig Kugisaki, attorney for Big Island Scrap Metal. Patrick Wong and Jane Lovell are here. I think the proper – we were discussing what the proper procedure should be. Perhaps the attorney should come forward, state their, you know, who you're representing, the position statement, and then we can proceed from there.

Mr. Shibuya: I'd like to start off in giving you an overview. I'd like to have representations from each of the parties and for probably about five minutes each to briefly discuss their positions. And then I'll go towards having open it up for public testimony. And then following that, I'd like to have a few words with the Commissioners in Executive Session, and that will lead us towards a lunch break, and we'll reconvene at one o'clock again. So Commissioners, you know, if our Executive Session goes too long, we're going to forfeit our lunch. So we won't, okay. So, to begin with, we'll start off with the petitioner Ian Sandison, Arsima Muller and Craig Nakamura of CarlSmith Ball for Schnitzer Steel Hawaii Corporation. Can you represent your position probably in five minutes or so?

Mr. Craig Nakamura: I'll try.

Mr. Shibuya: Thank you very much.

Mr. Nakamura: Good morning Mr. Chair, members of the Commission. Craig Nakamura, attorney

on behalf of the petitioner. We represent Schnitzer Steel Hawaii Corporation. I'm sure you've seen the materials we submitted. They are really lengthy. I apologize for that. I think we needed to get into some detail regarding the background, the companies and also what's being proposed to you today.

First I want to talk very briefly because we only have a few minutes about the process that we're going through. I know all of you have been on the Commission and are kind of familiar with the process. Really what's happening here is, you know, that as a general matter, all properties are zoned into different categories. We've got business, hotel, residence, residential use, and so forth. In this case – and in each of those categories in the Maui County Code specific uses are designated. What's allowable, what's permitted within those specific districts. In this case, we've got a B2, Community Business District, and Schnitzer – excuse me, Big Island Scrap Metal is operating a, wanted to operate a recycling center. They came to the Commission several years ago and they –. In each of those zoning categories there's a special accessory use, kind of a catch all provision. They applied for that permit under that category and was granted. The – what they're doing now is they're coming to expand that permit that they already have to include ferrous metals, white goods which are like appliances, and lead acid batteries. The provision that they're, that we're using or that we're discussing today is the Special Accessory Use provision in 19.18.020 which allows any other retail businesses or commercial enterprises which, (1), are similar in character of rendering sales of commodities or performance of services to the community, and (2), not detrimental to the welfare of the surrounding area, and (3), conforming to the intent of this article.

I want to address the easiest one first. Yeah, so those are the three things that you have find in order to grant a Special Accessory Use Permit. The easiest one is the last one, conforming to the intent of this article. Where do you find the intent? In that B2, Community Business District, it's in the introductory paragraph. It says, "a Community Business District is intended to provide all types of goods and services for the community with the exception of those uses more generally associated with the Industrial District," okay, but at a lower intensity of use in the Central Business District. Okay, so it's got a specific exception. It allows you to make this exception but not if the uses are more generally associated with an Industrial District. So how do we figure out what uses are generally associated with the Industrial District? Again, you go through the code. You know, there are various different zoning sections. You've got, you know, again, business, M1 Light Industrial, M2 Heavy Industrial. What do you find? Okay, under the M2 Heavy Industrial District, you see a provision that specifically allows as a permitted use, junk establishment used for storing, depositing or keeping junk or similar goods for business purposes, provided such establishment shall not be nearer than eight feet from any property line for the storage of junk or similar goods except in buildings entirely enclosed within walls. Okay, so you've got already a provision in an industrial zoned property that specifically allows for junk, junkyards and junk storage, okay. And that's contrary to the intent of the B2 Business District. So just on that basis alone you don't have the qualifications necessary to grant a Special Accessory Use Permit.

The second category in that rule is use must be similar in character of rendering sales of commodities or performance of services to the community. I think the staff report and trying to justify how it's similar explains that the use for which the applicant seeks is similar to an automobile parking lots and equipment rental or sales yards, okay. Those are permitted uses within the business, the B2 District, automobile parking lots or equipment rental or sales yards. We would

respectfully disagree. A parking lot or an equipment rental area that does not have to deal with solid waste and accumulating items that a scrap dealer faces. And I think if you look at the, one of the items that's attached to your staff report makes that very clear. It's a memo from the Planning Department's Zoning Administration and Enforcement Division dated December 23, 2011.

Mr. Shibuya: Mr. Nakamura, can you be more focused on the petition to intervene rather than some of the nuts and bolts on the issues here?

Mr. Nakamura: Okay. Yeah, I just wanted to make it clear so that the Commission understood why we're here and what we're doing. If that's pretty clear I can move on.

Mr. Shibuya: Okay. I'd like you to address that petition to intervene.

Mr. Nakamura: One of the – I think the next part of my presentation was going to actually deal with one of the reasons that we're here today in a petition to intervene. What Schnitzer Steel is concerned about, you know, it's, there's been some mention to the fact that they're only here because of a commercial situation and the business operation and these people are competitive, competing dealers. I mean that may be the situation, but I think more importantly we need to address the environmental problems that arise when an establishment like this takes in these types of materials, okay. Right now you have a typical, what I would call a typical recycling center. That's something, you know, we're all used to seeing in our neighborhoods for years. Down in Kahului, next to Kahului School there's a redemption center there. It's been in there for, it's got to be 20 years now. They take in cans, they take bottles. It's a County site. They take cardboard, glass, you know, that type of thing. That's the kind of thing that you would typically find in a neighborhood, residential or business district, okay.

What we're talking about here is now ferrous metals which are scrap steel, you know, white goods, appliances. I mentioned lead acid batteries. Things that are much, much more intensive than we talked about plastic bottles or cans or glass. They are, and I think you heard the testimony earlier from Mr. Garfalo about the hazards that are involved in that, with that type of use. And those concerns are the things that should be discussed in a contested case hearing. We need to have that fully, fully addressed, and that has not been done with this type of application. As you know, from our petition, there's no public notice that's required for a Special Accessory Use Permit. And one of the things I was gonna point out is if you go back to the testimony or the minutes from the meeting when this application was initially granted back in 2007 which is attached to the staff report, you'll see some comments that are made. In fact, the Commissioner who was surprised. He said well, I mean, we have to have notice – I'm just paraphrasing – we have to have notice in this type of situation, don't we? And I think Ms. Robyn Loudermilk who was the staff planner at the time said, no. No notice for this type of thing is required, okay. These are our environmental concerns that need to be addressed before this permit is granted. And you know Schnitzer is in a unique position to be able to do that because of its experience, its long standing experience in this area, because of the fact that they operate a facility like this on Maui right now. They're operated for a long time. They've got contracts with the County of Maui to take in these types of materials. Their site is in an industrial area in the Central Maui Baseyard. I had the opportunity to tour that the other day and it's unique in that it is an industrial area, but it's specifically designed to take in this type of material. I mean, there are warehouses when vehicles are brought in, they're stripped to the bone. You know, you'd be surprised how much, how many different types of potentially hazardous things are

associated with a vehicle. I never knew about it before. There was brief testimony about that that there's like switches, you know, the things that turn on and off your lights, to the lead weights that are placed on your tires, not to mention the gas, other types of fuels and fluids, and the batteries themselves. All of those things have to be taken out very carefully and stored before the vehicle itself is crushed which it is done at the . . . (inaudible). . . site.

Mr. Shibuya: Thank you. Thank you Mr. Nakamura. You're gonna to conclude?

Mr. Nakamura: Yeah, real briefly. Okay, let's talk very briefly. There is, and again, in our memo I think we adequately discussed the standard for intervention, what's allowed. I think what's very important for the Commission – I know you're well experienced in this area – what's important to remember is the legal standard is that intervention shall be freely granted. That's within our rules. That's in most of the case authorities and that's because I think from the Judicial standpoint you want to have a very full hearing to obtain all the information possible before the Commission makes a decision.

Mr. Shibuya: Okay. Thank you very much.

Mr. Nakamura: Thank you very much.

Mr. Shibuya: Thank you. Next one is the next person to present the representations for the Big Island Scrap Metal.

Mr. Craig Kugisaki: Good morning Commissioners. My name is Craig Kugisaki and I'm here representing Big Island Scrap Metal. Let me just directly address the questions involved in the intervention. First off this is –

Mr. Shibuya: Excuse me? Can I first – I'm sorry, can I have Jane Lovell from the County because she's in opposition of the intervention?

Mr. Kugisaki: Sure.

Mr. Shibuya: Okay, and then –. So we'll have Jane first and then you'll follow.

Ms. Jane Lovell: Thank you. Good morning Chair and Commissioners. The County Planning Department opposes this petition for intervention because we believe that it does not meet the legal standards for intervention. In order to intervene as a matter of right, the parties seeking to intervene has to prove three things: a property interest in the land that's subject to the action that you're going to take or that the proposed intervener legally resides on the land in issue, or that the proposed intervener will be directly and immediately affected by the matter before the Commission so that their interests are clearly distinguishable from those of the general public.

Now Schnitzer Steel has noted that they don't have the first two of these criteria. They don't have any property interest in the land, and they don't reside on the land. They argue instead that they are directly and immediately affected. And how they argue that is to say that they are a business competitor. However, they have not demonstrated through, I don't know, market surveys or financial data, any thing that would show how they would be affected. How much business this

business in Wailuku would take away from their business in Puunene and so forth. So I believe that they have not met their burden in that area. However, possibly they could have permissive intervention. That's a little bit easier to get. However, we don't believe that they meet those standards either.

One of the things that you have to consider in ruling on a petition to intervene is whether the admission of additional parties would make the proceedings inefficient and unmanageable or whether the intervention would overly broaden the issues. We believe that allowing Schnitzer to intervene would overly broaden the issues to take into account issues such as Big Island's market share as opposed to Schnitzer's market share and the economic impact, if any, on Schnitzer if Big Island is allowed to accept white goods and lead acid batteries at their facility on Lower Main Street. And on that basis, we recommend that you deny the petition.

However, that does not mean that Schnitzer may not have valuable information to share with you. And indeed they already have. You heard oral testimony at your last hearing, you've received written testimony, and you've received information this morning from Mr. Nakamura. Some serious issues have been raised by Schnitzer Steel. And those are issues whether they are environmental or otherwise that you may consider in determining whether or not to commit the additional uses to Big Island. However, in reaching your ultimate decision, your focus should be on whether the proposed additional uses are similar in character to the uses that are already permitted in the B2 Community District, whether the applicant would provide a service to the community, whether the proposed activities would be detrimental to the welfare of the surrounding area, and whether these proposed additional uses would conform to the intent of the B2 Community District. None of these issues require or even allow you to consider competitive impact on business competitors.

Therefore, the Planning Department urges that you deny the petition to intervene, both as a matter of right and permissibly because we don't think we need a big long, expensive, protracted contested case. We don't think we need to hire a hearings officer. We think this is something very well within the expertise of the Commission itself. The issues you're asked here asks to decide on whether they be the issues on the petition to intervene or the issues on the ultimate applications are well within your experience and expertise. However, we also urge you to take close attention to what Schnitzer has to say as a concerned citizen and to take their comments into account when you reach your decision. Thank you.

Mr. Shibuya: Okay. Thank you very much Counsel. I'm sorry Craig Kugisaki. I'm sorry to get you out of sequence here.

Mr. Kugisaki: No problem.

Mr. Shibuya: Thank you for your patience.

Mr. Kugisaki: Thank you. Commissioners, thank you very much for giving us the opportunity to be heard on this. I represent Big Island Scrap Metal and we oppose the petition. Let me start first by mentioning that this a, an open meeting pursuant to State law, the Sunshine Law, and as a result all persons in the community have the right to come and present testimony before you. From that perspective, Schnitzer has the right to come before you as they already have, and provide whatever input they might have on your decision regarding this application. So just on that basis alone,

there's no need for them intervene.

Mr. Shibuya: Excuse me. Can you use the microphone? I'm a little bit hard of hearing.

Mr. Kugisaki: Sure. Let me go next to the legal points regarding what's necessary for a potential intervener to intervene. One part of the test requires that they be directly and immediately affected by the action of the board. And in this situation, I think it's very important to know that even after you were to grant this application, Big Island Scrap Metal would not be allowed to do the collection of scrap, steel and lead acid batteries. And that is because they are also regulated by the State Department of Health. And what they would need to do is have their Solid Waste Management Permit amended by the State Department of Health to allow them to perform the kinds of activities that they propose with this application. That's very important because I think one of the big concerns that Schnitzer raises is the environmental impacts that this kind of work will have in the community. And, you know, although you have a role to play in determining what kinds of uses are engaged in your community, the State Department of Health also has an obligation. And that primary obligation, through their environmental division, is to make sure that the adverse types of impacts that are discussed do not occur. And so the Department of Health will also have to have a review of the proposed uses by Big Island Scrap Metal and they'll need to sign off on it. And they'll impose whatever conditions they want on the permit of Big Island Scrap Metal before they allow the proposed use. So from that perspective, there's no direct and immediate impact caused by your action today.

Also, the second part of that test is that there needs to be a clearly distinguishable interest from that of the general public. And, from that perspective, you know, Big Island Scrap Metal is no longer collecting scrap steel at the site. That question, that was raised as a, as a big point. Well, as a consequence, they're no longer a competitor of Schnitzer Steel. So technically they are in a position now where their position is no different from anyone else in the community. And their interest is no different from that of the Planning Department or the other agencies that have been asked to comment on the application that is before you. And I believe the comments are already before you in the form of the Department's report. Those tests go to what – Schnitzer has a right to intervene, but as Ms. Powell has indicated – Ms. Lovell has indicated, there's also a permissive right to intervene, and your rules provide restrictions on when someone can intervene. If they, intervention will provide for inefficient and unmanageable proceedings, also if the intervention will overly broaden the proceedings. And to that, I think, the fact that Schnitzer has brought before you pages and pages of documents pertaining to Big Island Scrap Metal's relationship with the State Department of Health tells you that you'll be going far and far afield in any sort of contested case hearing pertaining to this particular application because they're going to ask you to revisit all the things that the Department of Health has already addressed and resolved with this company. So no question about it, it would overly broaden the proceedings before you and be, essentially, be a waste of time for any hearing to consider all the things that have already been resolved.

The final point I want to make is that Schnitzer has tried to characterize the application as providing for a recycling facility. They want you to believe that what's happening down on Lower Main Street is a recycling facility use. That is not the case. What is going on down on Lower Main Street is a collection center use. All that they do is they collect recyclable materials and then they ship them off to some other company for recycling itself. What's being proposed here is that additional types of recycling, recyclable materials be collected at the site, not to be recycled there, not to be

processed there, but to be collected there and then shipped out to another site or location or other contractor for the recycling. Case in point is this big discussion about cars, derelict cars and all the things that are found in cars. Well, no one at Big Island Scrap Metal is proposing to do any sort of recycling of cars. That is not a use that's consistent with this particular small lot. It would not be consistent with what the Department of Health currently allows, and it's a red herring. What is being discussed is that appliances such as used washing machines be collected and then put in a container every day, and then shipped out to another location where it would be recycled and processed, and then shipped off further for additional processing or steel. Likewise the same thing would be true of batteries. They would just be collecting them, putting them in a storage container, locked up every night, and then when the container is full they'll be sending them off to another location to be recycled. That's a very big, a very, very big distinction here from the kind of industrial use that we're talking about when we discussed our recycling facilities versus the collection center that's being contemplated by this application, and also that is currently being proposed by the Planning Department for adoption by the City Council in their ordinances. I think Mr. Nutter has provided some written testimony with the proposed bills pertaining to the change with B1, 2, 3 zones districts to allow for recycling collection centers, and this will be no different from that.

There's a tremendous need in the community for this type of service. It's a needed community service. People want to do it but there are just very, very limited opportunities for them to do so when it comes to scrap steel and batteries. So, I'm not going to be testifying during the testimony section. My clients will want to add more information pertaining to their operations for you. But I did want to comment regarding intervention. Thank you.

Mr. Shibuya: Okay. Thank you very much. Thank you very much all Counsels. I just wanted to now open up for public testimony. At this time you'll have three minutes. Please introduce yourself to the Commissioners. Any public testimony? If not, public testimony is closed. Oh one. Excuse me, go ahead.

Mr. Mike Allen: We're with Big Island Scrap Metal. Just a clarification because we've never been through this process before.

Mr. Shibuya: Okay, but –

Mr. Allen: We will have a chance to testify on the Executive Session and on the issues.

Mr. Shibuya: This one is only on the intervention.

Mr. Allen: Okay, thank you.

Mr. Shibuya: Only on the intervention. Okay, not the merits of what is proposed. Okay, hearing none, public testimony is closed, at this point. Commissioner Mardfin.

Mr. Mardfin: When Mr. Nakamura was testifying, he was going to cite something and you asked him to limit his testimony. But I think he was getting something I was very interested in. Can I ask him to explain that please?

Mr. Shibuya: Sure.

Mr. Nakamura: I'd be happy to, but I'm not sure I –

Mr. Mardfin: You were talking about something the Department had said about –

Mr. Nakamura: – the conflicting use?

Mr. Mardfin: Right. I think that was it.

Mr. Nakamura: In your staff report also –. I'm not sure exactly what page it is. It's also attached to our . . . (inaudible). . .

Mr. Mardfin: Oh, this one from Clayton Yoshida?

Mr. Nakamura: Yes. Yeah, this is from the –

Mr. Mardfin: To Clayton Yoshida.

Mr. Nakamura: To Clayton, from Aaron Shinmoto, at the Zoning Administration and Enforcement.

Mr. Mardfin: Okay, that's what you were going to refer to?

Mr. Nakamura: Yes sir.

Mr. Mardfin: Okay. Thank you. That's enough. I have it in front of me.

Mr. Nakamura: Thank you.

Mr. Shibuya: Okay, thank you very much. At this time I'd like to – yes, go ahead.

Mr. Kugisaki: In relation to that particular exhibit and the concerns of the Zoning Department, I think if you read it, you'll see that they address the two issues. One regarding the scrap steel and one regarding the batteries. And in discussion regarding the scrap steel, they were talking about recycling of scrap steel, and that's what their concern was. In relation to the batteries, they said this was a collection use and therefore they had no problem with that. Then the Department came back and clarified for the Zoning people that the scrap steel was only going to be collected not recycled. I think that addresses the question that were raised.

Mr. Shibuya: Thank you very much. Commissioners at this time I'd like to go into Executive Session. There's some matters that I'd like to discuss and have our Counsel explain to us about intervention. And so we'll come back at one o'clock so I do need a motion from the members here, the Commissioners, to make, to go into Executive Session.

Mr. Freitas: So move.

Mr. Shibuya: It's been moved by Commissioner Freitas.

Mr. Mardfin: Second.

Mr. Shibuya: Seconded by Commissioner Mardfin.

Mr. Mardfin: This is a move to go into Executive Session?

Mr. Shibuya: Move to go into executive session.

Mr. Mardfin: For purposes of conferring with our attorney?

Mr. Shibuya: Yes.

Mr. Giroux: Right, duties and liabilities concerning the intervention.

Mr. Mardfin: Thank you.

Mr. Shibuya: All in favor members.

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

VOTED: to enter into Executive Session to discuss their rights, duties and liabilities concerning the intervention.

Mr. Shibuya: Any opposed? Hearing none, we're in Executive Session.

(The Maui Planning Commission entered into Executive Session at approximately 11:46 a.m., and adjourned at approximately 12:00 noon. The Planning Commission reconvened the regular meeting at approximately 12:00 noon., and recessed at approximately 12:01 p.m.)

Mr. Shibuya: Call the Planning Commission meeting back to order. We had just gone through an Executive Session and now we're back into regular session, and members? Commissioner Freitas?

Mr. Freitas: Yes, I'd like to make a disclosure. I own . . . (inaudible) . . . Metal Recycling. I deal with Schnitzer. I do trucking with them. I sell materials to them. I've been in the scrap business for about 12 years and I am just making a disclosure. I will not vote on the issue, but I'd like to be in the discussion.

Mr. Shibuya: Okay thank you very much Commissioner Freitas for disclosing. Members? Commissioner Mardfin.

Mr. Mardfin: Are you looking for a motion?

Mr. Shibuya: Either that or we can start a discussion. But we need a motion before we discuss.

Mr. Mardfin: That's what I thought. I move to deny intervention.

Ms. Wakida: Second.

Mr. Shibuya: Okay. It was moved by Commissioner Mardfin and seconded by Commissioner Wakida, and the issue was to deny intervention. Members, discussion? Commissioner Mardfin.

Mr. Mardfin: Basically there are two parts of denial. There are two –. There's a –. Let me get my head together a minute. There are two kinds of intervention. One is the matter of rights, and I think we ought to take that up first. I'm reading from the Corp Counsel's memorandum and opposition, and on page-4 it has the standards for intervention as a matter of rights. The first one is, they have a property interest in the land subject to Commission action. I believe they do not have that. The second is that they lawfully reside on the land at issue. I believe they do not have that. And then it says "or" and for the third reason, justification, for intervention as a matter of rights, they say it will be so directly and immediately affected by the matter before the Commission that their interest in the proceeding is clearly distinguishable from that of the general public. And I think that's probably what they're hanging their hopes on. I think that they clearly have a competitive interest in this, I believe, but that's not the issue before us. We're suppose to be looking at public interest and I believe that their public interest – I believe that their interest aside from perhaps, and only perhaps, a competitive interest is not distinguishable from that of the general public. So I believe that it's a matter of right they don't have a standing to intervene.

Mr. Shibuya: Okay. Thank you Commissioner Mardfin. Anyone else? Any more discussion?

Mr. Mardfin: Mr. Chairman, I think I need to amend my motion.

Mr. Shibuya: Okay.

Mr. Mardfin: I should've made the motion I move to deny intervention as a matter of right.

Mr. Shibuya: Okay. Does the seconder agree?

Ms. Wakida: Yes. Yes. I agree.

Mr. Shibuya: Okay.

Mr. Mardfin: And my argument was to support the position that they don't have a matter of right to intervene.

Mr. Shibuya: Okay. Any other discussion matters, members? If not, Director would you repeat the motion so we can have a vote?

Mr. Spence: The motion is to deny intervention as a matter of right.

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

Mr. Spence: That's seven ayes. There are no nays.

Mr. Shibuya: No nays.

Mr. Spence: No nays.

Mr. Shibuya: So the intervention has been –. And now there's a issue of permissive intervention. Commissioner Mardfin.

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

**VOTED: To Deny the Petition to Intervene as a Matter of Right.
(Assenting - W. Mardfin, P. Wakida, D. Domingo, L. Sablas, I. Lay, K. Ball,
K. Hiranaga)
(Recused - J. Freitas)**

Mr. Mardfin: I move to deny intervention for permissive intervention.

Mr. Shibuya: Okay, any other, second on this motion?

Ms. Wakida: I second it.

Mr. Shibuya: It's been moved by Commissioner Mardfin and seconded by Commissioner Wakida that the permissive intervention be denied. Discussion members? Commissioner Mardfin.

Mr. Mardfin: On page-7 of the report by the memorandum and opposition by the Department of Planning, again, it brings out the standards for permissive intervention, rule 12-201-41 (c) and (d). We can deny intervention if the Commission determines and then there are three things. One is the potential intervener's interest is substantially the same as a party already admitted to the proceeding. Well, there is no intervention already occurring but –. And the second is the admission of additional parties will render the proceedings – additional parties will render the proceedings inefficient and unmanageable. And I don't think – I think that, that the admission of them will render inefficient and unmanageable because they want to raise issues about competitive effect. Or the intervention will not aide in development of a full record and overly broaden issues. And like the County I thank Schnitzer for providing a lot of valuable information that this Commission can use. I think they've done a public service by providing that information which I believe we can use during the following decision but I don't think they've met the standards for permissive intervention. I think that their interest is substantially the same as the party already being –. Well, there is no intervention, but I think their interest is substantially the same as the public interest. I think that having an intervention on their part alone will render inefficient and I believe that the intervention will not aide in development of a full record. I think we have a full record, so I'm going to support the motion to deny intervention, or permissive intervention.

Mr. Shibuya: Okay, thank you. Commissioners, any other comments? Are you ready for the question? I'm looking for nods. I guess it is. Okay. Director Spence, could you repeat the motion?

Mr. Spence: The motion is to deny permissive intervention.

Mr. Shibuya: Thank you. Members, all in favor of denying the permissive intervention raise your hand.

Mr. Spence: That's seven ayes.

Mr. Shibuya: And all those opposed?

Mr. Spence: And none opposed.

Mr. Shibuya: None opposed. Okay, thank you very much Commissioners. The next issue we have –

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

VOTED: To Deny the Permissive Intervention.
(Assenting - W. Mardfin, P. Wakida, D. Domingo, L. Sablas, I. Lay, K. Ball,
K. Hiranaga)
(Recused - J. Freitas)

Mr. Giroux: Proceed to interject.

Mr. Shibuya: Yes?

Mr. Giroux: We're going to be requesting an order be produced and served on the other parties. Could Craig Kugisaki, could you produce that order and then serve it on the other parties and then it will be forwarded to the Chair for signature?

Mr. Shibuya: Okay, the next issue on this, the same issue. I mean, the same subject, but different issue here.

b. Action on the permit amendment request.

Mr. Spence: Okay Commissioners, the next item would then be action on the permit amendment, and we have with us today our staff planner, Kurt Wollenhaupt.

Mr. Kurt Wollenhaupt: Good afternoon members of the Maui Planning Commission. The item before you which has been previously discussed is indeed a request for an Accessory Use Permit which has been filed by Big Island Scrap Metal in order to expand the current permit from its redemption recycling center which is currently operating – it was approved on June 12th 2007 – to add white goods and appliances, a.k.a., known as ferrous metals as they would have iron or steel in them, and also lead acid batteries. It had been noted that there has been a need on the island for additional locations so that private individuals in particular would have an opportunity especially in this Wailuku-Kahului area to be able to drop off for collection goods such as refrigerators, washing machines, dryers, and then also batteries. It was the thought of the Department after discussion that it's better to have an easily available collection point rather than just having them

dropped off on the side of the road that people are often, would often do.

Consequently this as an Accessory Use Permit was given to different agencies for their review and comment. One of the agencies was indeed the Department of Health. And I think it's important to note that a motion from this body for an expansion to an expansion degree that you have the ability to condition, whether that be white goods only, white goods and batteries, or ferrous metals and batteries, that that would allow the Department then, the Zoning Department, to issue their P5 Form which would then expand the uses which then the applicant would be under requirements, considerably stringent requirements from the Department of Health in order to proceed with their review and their requirements. Some of the safety and health issues that have been raised earlier today would be reviewed within the purview of the Department of Health. I know there's been talk of things like leakage of storage batteries. Well, the Department of Health and EPA have rules and regulations regarding how these things would function. So it's really the mission of today's body to look to see if adding additional items for collection at this venue, within the B2 District would be an appropriate expansion of use.

To give another, just a land use designation, it is located in the Urban area, located at 883 Lower Main Street in Wailuku. It's in the Community Plan known as Business Commercial. It's known, as we've heard before in the B2 Community Business District and it's outside of the SMA. In general the areas around it area commercial, however, there is residential area on the hill side to the south. This item was reviewed in considerable depth in 2007. Just also to give you a review, the Department had noted that the screening didn't appear to have followed the recommendation from the Urban Design Review Board (UDRB). Therefore they, we took that, this item back to the UDRB and they had made recommendations, which is in your report, to re-enhance the bougainvillea hedge through the irrigation system, and also to add a slatting which has been completed onsite in order to screen it. And so that has helped to at least alleviate some of their issues. The UDRB is recommending this body would approve that is part of the, as part of their conditions, and I believe that would be condition five. So they were, they're advisory to this body, and we can get into that in more detail if you wish.

The Department in looking at this under the Accessory Use Permit did consider and it's been noted before whether this expansion would be a continuation of similar services. And it's important to note as it's been mentioned numerous times today the letter from the Zoning and Administration Department in which their original opinion, I believe, was based upon a, more of a processing of materials as opposed to a collection. On the one part the lead acid batteries, there didn't appear to be a considerable issue as is noted in the Department of ZAED that, that would be within this Accessory Use Permit. The other issue regarding the ferrous metals, after discussion that this was more of a collection process then the Zoning Department felt much more comfortable with this use in the district. Again, the conditions of approval which can speak to that after the discussion do indeed speak to that this is a collection process and a storage process. This is not a cutting, baling, manufacturing process.

Consequently after the Department looked at this we came up with the recommendation that will be delivered later on that these uses with appropriate conditions placed upon it would be a reasonable expansion of this operation. I do know that the owners and the representatives of the applicant are here today and they would like to give a short presentation and I'm happy to illuminate any further questions you may have to the best of my abilities.

Mr. Shibuya: Okay, continue.

Mr. Wollenhaupt: Did you want to have the applicant's discussion now or did you have some questions?

Mr. Shibuya: Let's see. Do you have any comments, questions, you'd like to respond to at this time? None. You may continue.

Mr. Wollenhaupt: So the applicant or the Big Island Scrap Metal and their representatives will give their presentation.

Mr. Shibuya: Yes. Following that we'll have the public testimony.

Mr. Jim Nutter: Good afternoon now. Thank you. My name is Jim Nutter. I'm president of Big Island Scrap Metal. I'm here with my partner Mike Allen from the Big Island. I live on Oahu. I'd like to show you a few pictures real quick and then I can pass this around. I don't know if you can see them from here. First one shows the slat on the outside of the fence and we had unintentionally started taking scrap steel to begin with and the sign shows that we had terminated that after our meeting about a month and a half ago to the general public. But the other signs kind of show this is the outside of the location. We put in the green slats to make it look nicer. We tried to make sure that we're doing our job to make that Lower Main Street. I think we actually have the nicest looking location on Lower Main now. And, you know, we're surrounded by auto shops and transmission shops and that type of stuff.

This is, if you were to drive in and drop off the product to us, we take aluminum pans, plastics, the HI5 containers, copper, brass, aluminum, just about anything. And the public drives in and then they can park and unload their materials and they get paid on the spot for the products. So it's showing scales in the parking place. This is the back area. It's showing how we sort some of our material into what is called gaylor boxes. And so we sort the materials by different types of, whether it's ferrous, non ferrous or – in this case not ferrous right now – and then it's loaded into containers and shipped two to three times a week to our processing location on Oahu. So I have to emphasize this material does not stay on the ground and it's shipped weekly by Young Brothers.

And this is looking the other way, where the parking was for the public. You can see some bales of cardboard in there. We do take cardboard also, ship them back, weekly also to Oahu. The containers in the back, the Matson containers belong to a site that takes computers and computer scraps, and that's zoned by you guys there. So you can pass those around.

I want to go into a short history and explain a few things. Big Island Scrap Metal was started nine years ago for a contract on the Big Island to handle all the ferrous metals for the County of Hawaii. We've been in business there for nine years. It's a 10 year contract. When we took it over there was something like 50,000 tons of scrap steel on the ground. And over the last nine years we've almost taken it all out. And it's all being shipped over seas. We ship somewhere between two to three thousand tons a month of scrap steel off the Big Island. We decided, my partner and I decided to try to expand that business and then we saw an opportunity on Maui, and in 2007 we came before this committee and applied for a permit to be able to handle recycling on the Lower Main location. That took almost two years to get permitted. In the mean time or shortly before, the

Fall 2008, there was a crisis in the world caused by the collapse of the financial markets, and at that point we put a hold on trying to do anything over here. I mean, the scrap value of steel for instance went from almost \$500 a ton to \$20 a ton in a matter of two weeks. So we're one of the only companies that actually continues to take steel and actually purchase it during that time. Our competitors decided just stop. Anyways, so in 2011 we decided that it was time to revisit Maui. And we had this lot and had been paying rent on it for four years or three years by that time. And so we had all the things in place, approvals in place, to go ahead. And the only reason we hadn't done it was because of the financial crisis. So we decided, we came in and we started doing business.

But during this time what had occurred was that on Oahu we have a business plan that's fairly similar to this in a sense and that we have five locations that we buy from the public small lots that do the HI5. They do waste paper. They do scrap steel. They do washers and dryers. We do car batteries. We do computers. And it's all zoned in B2 Park B2 for the City and County of Honolulu. So we have five locations. They're up and running that are exactly similar to what we're doing here. And it was my fault that I didn't review the permit that was done for here four years before. And that permit showed that we could take scrap metal, but it didn't differentiate between ferrous and non ferrous. Ferrous meaning steel, non ferrous meaning things like aluminum, copper, brass and stainless steel. So there's always been that distinction in the world.

So we went into business over here thinking – my fault again – thinking that we could take any kind of metal like we did on Oahu. And it wasn't until the Department of Health came in and reviewed our permits and reviewed what we were doing and let us know that we weren't permitted to do steel. At that time, we initiated immediately changes to try to do steel over here. And part of that was to come before your board about a month and a half ago and just change our permit to allow us to do steel. When this board wasn't able to make that decision, then we immediately stopped taking scrap steel and white goods.

So then that brings us to today, and what we're here today is for us to, we want to amend our application to show that we can take not only steel, ferrous steel, but the white goods. And we found that there was a very large need on Maui to do car batteries. That's what you call lead acid batteries. It sound worse if you call it lead acid than a car battery in my mind, but it's basically car batteries. And we take those products. We are licensed by Department of Health to handle that. We EPA approval to handle that, those materials. And we do is we ship, or will be shipping out of here, on like a weekly basis, you know one palette or half a palette or whatever we collect during that week and it would go with our regular shipments back to Oahu. There, we condense it. It all has to be in covered parking. I'm sorry, covered. In this case it's containerized over here. And as part of our permit, it has to be containerized nightly. It has to be shrink wrapped and it has to be numbered. So it all has EPA requirements that we fulfill. So, I mean, as far as fire or something like that, it's never been an issue and it won't be.

So one other thing that I wanted to address is the fact about cars. There's a huge amount of steel that comes from cars in the islands. Something that everybody know. But it's something that we can't take over here. We don't have room. We can't get the equipment in the zoning that's here. You guys will not approve it. But, we do take car parts. We take fenders and we take bumpers and that type of stuff. We take transmissions that are made out of aluminum and steel. We take, you know, all kinds of stuff like that. So, that's part of the service that we provide. And what we have

coming in, and I think other people testify to the fact that we have a lot of customers that come in into this Wailuku area that have a little bit of the HI5 containers. They have some aluminum. They have a little bit of copper. They have a little bit of steel. It gives them one place to be able to drop it off. You know, I saw this one customer that was coming down the street that had a shopping cart with a dryer in it. I mean, the dryer – the shopping cart was bigger than the customer. But they were bringing it in because they could and they can get money from it. And this money goes directly back to supporting the community here. So – yeah, so I just want to make sure that, you know, the main thing is that we are, we are in compliance, and we do have to follow the Department of Health guidelines. They tell us exactly best practices and that stuff that we have to do, and the fact that we are providing a community service. This is a needed service. I mean, we did not expect when we opened up the type of response that we got from the community. And to be honest with you it was very unexpected, but we really do appreciate the community's support.

Mr. Mike Allen: I'm Mike Allen the other general partner for Big Island Scrap Metal. As Jim was saying historically we started our business about nine years ago taking over a contract on the Big Island. And at that particular point in time Jim and I both owned small little recycling centers that took, you know, HI5 materials, cardboard and stuff like that. And we got involved in the scrap metal business because one of the larger scrap dealers in the United States who owned Hawaii Metal Recycling on Oahu, they had the contract for about 10 or 12 years prior to us taking it over. They did nothing with that contract for 10 or 12 years. Now you have a couple of local boys, that, you know, born and raised here, some of us, most of our employees are born and raised here, we decided to go after that contract. And if you talked the County over on the Big Island about the type of performance and job that we've done over there I think they will give you very good recommendations about our track record. Most of this 50,000 tons of scrap that we moved out of that yard was buried, so it was very, very difficult conditions that we had to work under. And we had no experience in the scrap field business prior to taking over that contract. And because Jim and I are very diligent and hard workers, we were able to successfully remove all that steel out of the Big Island. And our goal is next March when our contract ends, both the scrap steel locations on the Big Island will be free of all scrap metal. And at that point in time the County can decide if they want to continue running a scrap steel yard on the Big Island or turn it over to private companies.

As far as this island is concerned, you know, recycling is enhanced by three things basically: mandatory recycling, price and convenience. One location at Central Maui Base yard is not convenience. One scrap steel operator on this island is not going to pay the best prices for the local people here. They're mad about competition, plain and simple. Why would they have a fear of us? We're a small little company. They're the largest scrap steel company in the United States. We're here to provide a service for the community. We have the convenience. There's a lot of people down this area – low income, elderly people – that cannot travel all the way out to Central Maui Base yard to recycle their steel. Some of them don't have enough steel to make that trip. As Jim said we were completely blown away by the amount of people that come in with, you know, small loads of steel, to our facility. It's, it's something that really makes us happy because it's part of what we want to do, and we provide, I believe, a real good service for this community.

One thing I wanted to get out and let you guys know is that when we first opened up and looked at doing steel we went to Schnitzer, and they provided us with bins. And they were more than happy to take our scrap steel out of Wailuku. But when we decided that we didn't want to do business with them anymore because they didn't want to pay us, we decided to send the scrap steel, at our own

expense, back to Oahu to process and ship it out of there. So this is all about competition all of this. And for anybody on this Commission to think that competition isn't a good thing is completely wrong. I think you'll agree with that. The competition that we're going to provide on this island in these communities is going to be good for the people of Maui. It's not going to be detrimental to anybody other than maybe Schnitzer Steel. But there's plenty of steel out there for everybody. And we intend to do a good job. We intend to follow the rules. We intend to have the permitting in place that we need. The Health Department will make sure of that. And we'll do a good job for the people of this community, and we hope for your support that you'll allow us to do that. Thank you.

Mr. Shibuya: Okay. Thank you very much. At this time I'd like to open up the public, let the public provide their testimony for those who are willing to talk about this issue you may testify. Please identify yourself. You have three minutes.

Mr. Akukini: Aloha no ke kakou. My name Akukini. I'm with the Hawaiian Kingdom. As bradda was saying, you know, competition. All this, it's all about the Benjamin's yeah. But to malama the aina and since they've been hea, Central side, been cleaning up. You know a lot of that scrap metals on the side of the road, down at the beaches, in the Mac Nuts, and I was happy for these guys being this close. For some of us, we cannot get down there with that much metal on a small truck or in our cars. But you know, the whole bottom line of this thing, yeah, Hawaii, ha which is connected with the wai, who is connected . . . (inaudible). . . which is God. We need to malama. And what we doing today and what they have done since they short time been hea, they've done a lot of clean up. I was going out there, sharing with the people, to bring it hea because everybody grumbling. You know it's a lot of drive, a lot of old cars cannot make it down there. That's true. Central is alright down there. But hea, it makes it good not only for us in Wailuku, Waihee, Hapuna, Kahakaloa, you know. That's a lot of drive. By the time you go down there, turn in your metal, you don't even have enough money for gas. So if the County really wanna clean up this place, . . . (inaudible) . . . all over this island so the people don't have to travel that far to that all of the steel.

I've been a lot of these things, yeah, a lot of testimonies about companies, corporations. I took myself out of the corporation. But this one stop since they've been hea in Central, I mean, in Wailuku, I've seen what they put out. I mean they yard get so full, next thing you know it's empty. Continuously, people is coming. Cause why? We hea. If we down Kihei, yeah, I can see you go down Central. But over hea, like I said, a lot of us guys, we no more the money to buy this nice new cars, big trucks to, you know, load em up. We load up our cars in the back seat, in front seat, in the trunk, just to get some change. Or, when I went down there, I came back from Big Island and Honolulu, they said they don't take no scrap metal so they need to talk to one . . . (inaudible) . . . Is what they hearing. Is so sad. We stopped a lot of people.

Picking up all these dead batteries, motors on the side of the road, in the bushes. I go through all these places out here. In the Mac Nut, in the bushes, find motors. You go down Naska, go down Paukukalo, all these motors coming out from the ground. The water is going back. Going get some big wash out. Something going happen. The whole process of this, I would like to see you guys . . . (inaudible) . . . because a lot of people who was bringing to them was taking them back home and piling it up in their place. So you know, the whole bottom line is malama, clean up this place. Not only the people make a mess, but the corporate, a lot of the businesses, left them out there in the field, you know. We got a lot of homeless out there. They gotta eat. Hey, bradda gotta pick up scrap metals, pick up bottles and cans. I do that.

Mr. Shibuya: Alright.

Mr. Akukini: But we shutting down one business over hea make it hard for all of us.

Mr. Shibuya: Okay, thank you very much.

Mr. Akukini: Amen.

Mr. Shibuya: Just a minute. We have some questions for you from Commissioner Mardfin.

Mr. Mardfin: Aloha. Do you have any business arrangement with this company?

Mr. Akukini: No, that's where I go recycle.

Mr. Mardfin: So you take your stuff to them to recycle and they pay you, and they pay you for that.? Is that your main business to go around and clean stuff up and –?

Mr. Akukini: Excuse me?

Mr. Mardfin: Is that your main business, your main occupation?

Mr. Akukini: Well, I cannot work, so I go out there. I not going just sit down. But if I need to eat I have to go out there pick up bottles and cans. Yeah, you guys see me all over the road. I'm down Paia side. I'm all . . . (inaudible) . . . down by the airport, on the highways. Like I said, I don't get money like everybody else, but I ain't going sit there and rot. I will receive something to get what I need to survive.

Mr. Mardfin: Thank you very much.

Mr. Shibuya: I've got a question. Maybe you can help me understand this a little bit more. Let's say there's a car that's left in the field.

Mr. Akukini: There's a lot.

Mr. Shibuya: I know. Do you go in and take just the drive shaft or certain parts of the car and then use that as scrap metal, or do you know –

Mr. Akukini: Let me explain this to you. We get a lot of cars get stolen. Been put out there, been stripped. But today, they have cops out there. They have DLNR out there scouting the area. And it's good. But sometimes I go out there, get new cars. Yeah, I make the call in. You even get retirees out there. That's where they go exercise. They use to ride motorcycles in that field . . . (inaudible) . . .

Mr. Shibuya: So let's say you find somebody, a piece of metal, heavy piece.

Mr. Akukini: I pick up whatever metal is out there.

Mr. Shibuya: If it's in somebody's property, is that okay too?

Mr. Akukini: Is that somebody's property? To me, that's our property.

Mr. Shibuya: Do you get permission from the property owner?

Mr. Akukini: . . . (inaudible) . . .

Mr. Shibuya: Okay, that's the question I had because, you know, if it's in somebody's –

Mr. Akukini: . . . (inaudible) . . . But like I said, you going get many tires, you going have metals, you going get all these things, yeah, the kids go up there . . . (inaudible) . . . So by us going up there helping them clean . . . (inaudible) . . . We get what we want. You know, maybe few cents or few dollars, but every cent count. That's the way I look at it.

Mr. Shibuya: Yeah I see permission granted and what you're doing are wonderful things. However, if it's owned by somebody else and you take it from their property, that's stealing.

Mr. Akukini: Exactly.

Mr. Shibuya: But if you're going get their permission to take, then it's alright. But, thank you. Thank you very much. Any other public testimony? Please identify yourself.

Mr. Thomas Dreyer: Good afternoon ladies and gentleman. My name is Thomas Dreyer. I'm the manager for this site. Born and raised here. I'm a journeyman carpenter, and once the economy fell out, for three years, I didn't have work, and then I came across these gentleman and I started working for them. I have four other people that work under me at the site. And since we've stopped taking steel, I have people that come in with mix of HI5's, aluminum, brass, copper. We have to go inside of their vehicles and take out non ferrous and then we end up sending them back home with a truck load of steel or they have to go all the way down to the Central Maui Base yard, and our customers aren't happy. It's inconvenient for them. And, that's all I have to say.

Mr. Shibuya: Okay. Commissioners, any questions? Oh, just a minute, excuse me. Commissioner Mardfin?

Mr. Mardfin: Do you take batteries?

Mr. Dreyer: Not at this point.

Mr. Mardfin: Did you take batteries in the past?

Mr. Dreyer: Yes.

Mr. Mardfin: When did you stop taking them?

Mr. Dreyer: When we were advised that I wasn't supposed to. I didn't know that I wasn't suppose to take batteries.

Mr. Mardfin: Do you take tires?

Mr. Dreyer: No we don't.

Mr. Mardfin: What do you do when people come in with tires?

Mr. Dreyer: They have to take them and get them stripped off their rims. We don't take tires –

Mr. Mardfin: Do you take tires that aren't on the rim?

Mr. Dreyer: No. So if the tire is still on the rim, then we advise them they have to take the tire back and get it off of the rim and we'll take the rim, the metal.

Mr. Mardfin: Isn't the rim made of steel?

Mr. Dreyer: Aluminum rims. There are steel rims, also, but we can't take steel right now.

Mr. Mardfin: Okay, thank you.

Mr. Shibuya: Commissioner Ball.

Mr. Ball: How much steel do you think you're turning away?

Mr. Dreyer: I would say at this point about 10 to 12 vehicles a day. Some of them, just a trunk full. Some of them, guys are cleaning up their grandma's yard and then they gotta take all this steel back to their grandma's yard. So, I would say, average, 10 to 12 vehicles a day just of people from this side of the island. That \$5 and an half an hour makes a lot of difference. You know, \$5 gas, half an hour time.

Mr. Shibuya: If there's no other questions, I –. Commissioner Freitas.

Mr. Freitas: I have a question. You know, Mr. Nutter just showed us a nice pictures of yard. I have exhibits here from four weeks ago, the yard is a mess. There's stuff all over the place. There's materials all over the place. I – there's a car coming out of the yard. When did you folks clean the yard up and get it all put together?

Mr. Dreyer: It's a –

Mr. Freitas: You folks used, what do you call, Maui Disposal, as a comparison, and Maui Disposal's yard is, what do you call, clean. Maui Disposal is a competitor of mine. We're in the refuse business together, and I made the motion to put their yard together. It's – when did you guys clean the yard up?

Mr. Dreyer: Well, cleaning of the yard is a process. Sometimes during the day you're moving things around trying to consolidate it, so at times it may look worse before it gets better. Different types of materials, we have to segregate the aluminum from the copper because that's how we purchase and sell them. But if it's all on a palette then it may look that way. Weekly, we're continuing to ship

things out so on a daily process, you know, if you came by at two or three o'clock in the afternoon and you're taking pictures, it may look, it could be a mess.

Mr. Freitas: You know I've been in your yard.

Mr. Dreyer: I know you have.

Mr. Freitas: What I call, I got a question to you on batteries. You folks ship batteries out. What do you call. . . (inaudible) . . . shrink wrap 'em and number 'em and send them out. How many crates of batteries do you guys ship out a week?

Mr. Dreyer: Currently none.

Mr. Freitas: No, when you were shipping out.

Mr. Dreyer: I may have shipped out two.

Mr. Freitas: Two batteries?

Mr. Dreyer: Two palettes of –

Mr. Freitas: You ship them out with your, in your 40 foot containers?

Mr. Dreyer: Yes.

Mr. Freitas: So you're shipping them out, mixed with non ferrous, so it's not a . . . (inaudible) . . .

Mr. Hiranaga: Mr. Chair?

Mr. Shibuya: Yes.

Mr. Hiranaga: Vice-Chair, this is a testifier who happens to be an employee. Perhaps the Commissioner's questions are more suited for the applicants who are owners of the company. I don't know if it's proper for that type of question.

Mr. Shibuya: Okay. I think –. Yeah.

Mr. Mardfin: Mr. Vice-Chair?

Mr. Shibuya: Yes, go ahead, Mr. Mardfin.

Mr. Mardfin: This is the gentleman that said he's in charge of it, in terms of running it. Are the other two –

Mr. Freitas: Are the owners.

Mr. Mardfin: They live here on Maui?

Mr. Freitas: They're owners.

Mr. Shibuya: Yeah, excuse me, what is your status?

Mr. Dreyer: I'm the manager.

Mr. Shibuya: You're the manager.

Mr. Dreyer: Yes sir.

Mr. Shibuya: And you operate?

Mr. Dreyer: Yes sir.

Mr. Shibuya: And you're responsible for the cleanliness and the appearance of this, as well as collecting the materials?

Mr. Dreyer: Yes sir.

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

Mr. Shibuya: Right. Correct.

Mr. Freitas: My line of question is not that I'm in the business. My line of question is comply with everything that everybody else has to comply with.

Mr. Shibuya: Okay. Commissioner Mardfin.

Mr. Mardfin: The line of testimony in question sort of got abbreviated. I was trying to follow a train of thought where Commissioner Freitas was asking the manager if how the batteries were – when they were doing it without a permit – how the batteries were shipped out. And there seemed to be a line of question that was going to –it's beyond my expertise – but it sounds like there's some sort of procedure that ought to be followed when you're doing that. And I think that got diverted and I would hope my fellow Commissioner would follow up and try to –

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

Mr. Mardfin: I don't know what questions to ask.

Mr. Freitas: Can I clarify? The question is when we ship batteries out it must be in a container and it must . . . (inaudible) . . . You cannot mix it with ferrous or non ferrous to ship it out. That's Board of Health's regulations. I just want to know if things were done properly.

Mr. Mardfin: And were you doing that when you were shipping them out?

Mr. Dreyer: I had done it once.

Mr. Mardfin: Wait, you made one shipment?

Mr. Dreyer: Of two palettes. I was unaware. I'm a journeyman carpenter. This is process for me as well.

Mr. Mardfin: I understand. I understand. But it was shipped out mixed with other things. It wasn't –

Mr. Dreyer: At the back end, by the door. It wasn't mixed with other things. It was in the same container.

Mr. Mardfin: Okay.

Mr. Shibuya: Thank you very much. But I do have a question in terms of how do you process materials that are salvaged or at least turned in for, I guess, compensation, such as ferrous and non ferrous? How do you know whether its integrity is involved that it is not stolen goods? Or you don't assume that? Or is there some signature or –?

Mr. Dreyer: We have our customers sign a receipt for everything that we purchase.

Mr. Allen: There are laws that govern, for instance, a few ago the price of copper –

Mr. Shibuya: Please identify yourself.

Mr. Allen: Mike Allen of Big Island Scrap Metal.

Mr. Hiranaga: Vice-Chairman, are we in order here because this is public testimony?

Mr. Shibuya: No, we'll get to you later on.

Mr. Allen: I was just going to clarify there are laws. We have take pictures of any copper that we buy. We have to get a license. We have to get a notary. Those are all State laws, and there's procedures you have to be followed.

Mr. Shibuya: Okay. Thank you.

Mr. Allen: And he does that. Aluminum and stuff like that you don't have to worry about it.

Mr. Shibuya: Okay. Are there any other public testifiers? Commissioners, do you have any other comments or questions? You public testifier? Yeah, and please identify yourself.

Mr. Ian Sandison: My name is Ian Sandison. I've been Schnitzer, or it's predecessor's lawyer, environmental lawyer, for the last 17 years. I've spent a lot of time with scrap metal. I want to address some of the issues that have been raised today. We're talking about going from the bottles and cans and newspaper type things to ferrous scrap. You've had ample testimony in the last half hour telling you what it is they take, and how they handle, and process . . . (inaudible) . . . But the – what the fundamental issue here is where going from sort of a light use to a much heavier use.

Ferrous scrap is heavy stuff. When you pick it up, you can't really pick it up with your hands. Generally you use a forklift, you need a machine. It doesn't – it comes in odd shapes and sizes. It doesn't actually go into these containers real, real easily. It has to be cut down or repackaged so you can get it into the container. So it's difficult. We're talking about a much different handling process.

The reason that you have 88 pages of violations with the Department of Health in there, in the exhibits – I think it's . . . (inaudible) . . . – it's not because you want to look at every one of them but you have a track record and a history here. So what you're talking about is people push the envelope. You don't always play within the rules. You just heard a bunch of it. Mr. Freitas solicited testimony explaining how they were improperly shipping batteries. So that's something that's there. You're just going to have to deal with that. The – this stuff they were talking about handling now is different than bottled cans, HI5 recycling, newspapers. Steel is what you use to make machinery. That's why cars are made out of steel. It's why –. So is aluminum, so it's just heavier stuff. It necessarily has oils, leads, PCBs. We've heard all this testimony this morning. It's a different handling process. It's not a, it's not a couple of guys pushing stuff around. There's more equipment involved, chop saw, a little bit more noise, and it necessarily produces a risk of fire. Fire is fairly a big issue with the ferrous scrap yard just because they have the lubricants, oils. Just in the last month there have been two fairly serious fires on Oahu in yards that handle ferrous, ferrous metal. So if you go ahead and allow this activity which is already going on, you need as a Planning Commission to prepare for fire at that location because it's sooner or later, it's very, very likely to happen. When you do, there's pollution issues that are driven by that. One is fire suppression water. Scrap fires are notoriously hard to put out. I've dealt with a lot of them. And the fire company comes, they just hose it down, lots of water. Fire doesn't go out. It goes down those crevices and these little places, and it's very, very hard to put out. It's a lot of water. . . .(inaudible) . . . If I could, and if you would indulge for a little bit.

Mr. Shibuya: Can you summerize?

Mr. Sandison: I will. So you're going to have storm water issues. That's why there's oil water separators in the yard. And also you're going to have these pollution that are coming off and going into the street. So, in summary, you're dealing with a much heavier operation. It's more appropriate in an industrial facility. It's better for all of this. If it's allowed there, you're going to introduce more pollutions, more risks, more of all that.

Mr. Shibuya: Okay. Thank you. Thank you very much. Any other? Commissioner Hiranaga.

Mr. Hiranaga: I'm not sure if you're the person that can answer this, but could you define ferrous versus non ferrous? What is the basic difference?

Mr. Sandison: Ferrous responds a magnet, non ferrous doesn't. And so, it's steel basically.

Mr. Hiranaga: Or iron ore?

Mr. Sandison: Iron ore, yeah. Stainless steel doesn't fall into it, so there's some pieces there. But it's basically steel, structural steel, cars. . . (inaudible) . . . buildings, that kind of stuff.

Mr. Shibuya: Okay, you can follow up.

Mr. Hiranaga: What are your concerns regarding white goods?

Mr. Sandison: White good is a segment of ferrous steel. It is, in all honestly, it's easier to handle if you're dealing with pickup a refrigerator. You know we can sort of man handle it. Those are easier to handle. What happens with white good is you have electrical motors with capacitors and things of that nature which are in there. It increasingly is – we have fewer and fewer PCB's and things that are associated with that as we get – as the scrap is younger, it gets . . . (inaudible) . . . Old refrigerators, old stuffs have more contaminants in it. White goods are generally cleaner, but they're also coated with, you know, things that keeps it from rusting. The stuff that keeps them from rusting, when you handle that stuff it necessarily grinds off. If you're handling, you know, a few hundred of them, you're going, you're knocking off paint, you have the stuff that's inside, especially lead and . . . (inaudible) . . . that are in, the corrosion. Those things are getting – they get around, so it's a necessary part of doing this which is a good service. And they're welcome to compete and believe me, I know these guys well, we compete like gnats. And it's good that they're here, but we would like them to do it in way that is a level playing field, so we're all playing on the same playing field. That it's environmental challenged so that our industry – and this is really what our grievances are – our industry has becoming over the years, we're moving from what was the old . . . (inaudible) . . . on Oahu. I don't know if you guys remember that, but we're really moving from the Standford and Son days to a much more technologically advanced and a much, much more sophisticated industry. And that includes much more stringent environmental controls, much more segregation. These markets didn't exist 10-15 years ago. We can separate out all this stuff and sell it. So what I would hope that the people on Maui would want is a sophisticated clean operation, one that is improving and raising the bar, very much what we would like to be at Schnitzer and hope that's what we will have . . . (inaudible) . . .

Mr. Shibuya: Commissioner Mardfin.

Mr. Mardfin: I'm probably way out of date technologically, but do the refrigerators still use freon or chemicals like that?

Mr. Sandison: Generally if you accept the refrigerator, a condenser, it has CFCs – thank you for reminding me – a condenser that has to be drained of its refrigerant that's properly captured in a – so it doesn't escape into the atmosphere. That's a EPA violation. They do come down hard on that. Periodically there has to be hole drilled in the presser and the fluids has to captured and separated. And that these are all sort of the steps that you want to have taken. But actually, we are imposed by law and that it is important that we all adhere to these law and don't just give . . . (inaudible) . . . that actually do that. And that is a prime – I would like to see . . . (inaudible) . . . This is a good thing. But I would like to see one that we are five years from now, we're not looking at a stack of violations, and we're not looking at issues where we're going out there and one moment testifying that there's no cars there and then there's one there –

Mr. Shibuya: Okay.

Mr. Mardfin: I'd like –

Mr. Shibuya: Commissioner Mardfin, go ahead.

Mr. Mardfin: You said that the, you didn't say freon, you said CFCs or something like that. Whatever it is –

Mr. Sandison: Refrigerant.

Mr. Mardfin: The refrigerant have to be treated separately you said. Would that be, if they were just collecting it, putting it into some sort of a container and shipping it out, is that sufficient? Would it be treated at the other end or does it have to be treated here first?

Mr. Sandison: It's a highly regulated process that requires those documentation for handling materials and permitting, and it's an area that, that, and I don't know anything about how they deal with those issues, but it's an area that's been ripe with mischief on Oahu. And generally, in essence you capture the refrigerant, document it, ship it off to an approved recycler who recycles it and also punches a hole in the . . . (inaudible) . . .

Mr. Mardfin: So they couldn't ship it, they couldn't just stick the freezer and the refrigerator and ship it out that way?

Mr. Sandison: I wouldn't say that has never been done.

Mr. Mardfin: They, are they suppose to just stick it in the container and ship it out?

Mr. Sandison: And Mr. Freitas was eluding to –. These issues are –. And the reason you do this stuff is one, it's expensive, and it costs more if you do it, and follow all the rules, and that's very burdensome that cannot be environmental regulations. It's very expensive to comply with it. . . . (inaudible) . . . But it's done for safety and it's done to prevent pollution, and so, yeah, it should be done right basically.

Mr. Mardfin: And it should be done right before it's shipped?

Mr. Sandison: Correct.

Mr. Shibuya: Commissioner Hiranaga.

Mr. Hiranaga: Finally, do you have any comments regarding batteries?

Mr. Sandison: Actually I haven't studied the way in which they're taken because I don't actually represent anybody that, that takes batteries. I actually did, but not for you. They should be palletized, stored, and documented and shipped to an appropriate recycler. And I'll defer to Mr. Freitas, who I know knows more than I do on this issue.

Mr. Shibuya: Okay, Commissioner Mardfin.

Mr. Mardfin: It's my understanding also that some mechanism within appliances have mercury. I don't know if that's correct or not. And if it is, is there –

Mr. Sandison: Generally mercury in the scrap metal industry arises in a mercury switches which when you open your truck there's something that turns the light on, that's a mercury switch. It's a little lever and swings and makes a connection. Those things are –. Automobile recyclers are required by law to take those out, segregate them, and dispose of them in a mercury recycling facility. That is actually, Schnitzer does that, or Hammerhead Recycling does that in Puunene. But generally speaking all the people who collect automobiles and get them in for scrap are suppose to separate this, and there's like . . . (inaudible) . . . program that the EPA has on that.

Mr. Mardfin: Thank you very much.

Mr. Shibuya: Any other questions? Commissioners? Okay, thank you very much.

Mr. Sandison: Thank you.

Mr. Shibuya: Public testimony still going on.

Mr. Nakamura: Thank you. Please Mr. Chair.

Mr. Shibuya: Okay.

Mr. Nakamura: Excuse me. Craig Nakamura one of the attorneys for Schnitzer Steel. I just wanted to ask the Commission to carefully look at the process, again, look at the process that's being done. I don't know of any situation where you have a specifically permitted use in another district. In this case M2 Heavy Industrial –

Mr. Shibuya: Okay, we are aware of it.

Mr. Nakamura: – that you can change by way of a Special Accessory Use Permit.

Mr. Shibuya: Sure. Thank you.

Mr. Nakamura: The process should be followed –

Mr. Shibuya: Yeah, this is not public testimony, is it?

Mr. Nakamura: It is.

Mr. Shibuya: It is. Okay. Continue.

Mr. Nakamura: And that's basically what I have to say. I mean, this is a Change in Zoning process. We're talking about intensification of a use beyond what was allowed. Public, the public should be heard on this and be given ample opportunity to testify which as you know there was no public notice so there was no opportunity to do that. That's all I have. Thank you.

Mr. Shibuya: Okay. Thank you very much. Any other public testifiers? Please identify yourself.

Ms. Karen Shinmoto: Good afternoon. I'm Karen Shinmoto, and I'm business manager and

compliance manager at Island Recycling, and we are the partners in Big Island Scrap Metal. And I just wanted to explain that our site on Lower Main is only 11,000 square feet. It's very small, like a service station size, you know, and we are not going to be able to take cars. People that bring cars in. We don't have a big truck scale to weigh the car. What we want to take is, you know, stuff from like you folks. If you bring your pots and pans, or stores might have old shelving that they want to get rid of. You know, we're not intending to take vehicles there. Mainly what you can carry in your car, like little things, little steel things. And steel is what sticks to a magnet, and I always wear a magnet around my neck so I can check what's steel and what's not. And although copper and non ferrous items are more valuable in the market, steel is much more prevalent. Everybody has steel, like, you know, steel baking dishes and, you know, baking pans, bakeries have baking pans, and that's the kind of things we would probably take most of. We're not concentrating on vehicles. But if somebody brings in an old fender from the fender shop, we can take that because we don't have to crush it. You know, it will fit right into a container. We will put it into the container by the end of the day and we will ship that out. And in the last, the months before, the month or so before we stopped taking steel, we were taking in about – they were shipping to us about two containers a week from Kahului to Honolulu where we processed it in Honolulu. And if we took appliances, we do not have to take out the refrigerant or any mercury switches, but they will be shipped to Honolulu where we have a fully equipment department. And we have an EPA number and we also have an EPA number for Maui in case we have to handle batteries or refrigerant recycling. But right now we will take it out because we have a fully equipped department at our site. We have a seven acre site in Honolulu that we would process these things. And I checked with shipping lines, and we do not have to take out the refrigerant before we ship the appliances, in the, like, freezers and refrigerators. So we can ship them out, put them in whole and ship them to Oahu to be processed. And also we have had inquires from Lowe's and Sears to handle their appliances on Maui. So we have some, you know, potentials to do that. And in some cases we could just bring a container there, they would load it right there and we wouldn't even touch it at our site. But we're talking about like local people bringing in their toaster ovens, or, you know, their old water heater that broke. Okay, so if you have any questions.

Mr. Shibuya: Thank you. Commissioner Wakida.

Ms. Wakida: I want to understand the process a little better. Let's go back to before when you were accepting scrap metals.

Ms. Shinmoto: You mean steel.

Ms. Wakida: Yeah and steel. You collected all of this stuff. Did you have a container onsite?

Ms. Shinmoto: We provided their own – we have 20 foot long, by eight foot wide, open top containers, and we would throw the steel in these containers to be shipped back on Young Brothers. They were not, you know, meant to go to the mainland or to Asia, just to Oahu.

Ms. Wakida: You mean like a big roll off?

Ms. Shinmoto: Yes, sort like a big off size. It's 20 feet long. It was actually like a roll off, but it was made to, you know, be picked up with a roll off container, I mean, a roll off truck, but it was a converted ocean container that we cut the top off so we could throw things in.

Ms. Wakida: And then you, I mean, everything went in there, the cans and bottles and all that stuff?

Ms. Shinmoto: No, not mixed. We would separate it so it would be easier for us on the other end. We would put just steel in. For example if we had one container, we'd fill it with steel, another container with non ferrous with aluminum material.

Ms. Wakida: So how many of these roll offs did you have onsite at a time?

Ms. Shinmoto: About two at a time. And then they'd ship it to us full, then we shipped them back the empty ones, so it would be constant rotation of containers.

Ms. Wakida: And should you get a permit to move forward –

Ms. Shinmoto: We have purchased more containers also to convert into open tops. We'll cut off the tops, and we have enough to be in full circulation. We have about four containers now so we can do –

Ms. Wakida: But if you only get a – for batteries, for example, how are those segregated?

Ms. Shinmoto: We store them in a covered storage container onsite and then when we have enough we would ship it back either to Oahu, or we could ship it off directly. If we get enough to fill an ocean container, we could ship it directly out of Maui, on Matson, to where we normally sell them on the west coast.

Ms. Wakida: Do you combine say palettes of batteries with say white goods?

Ms. Shinmoto: No, not to ship out because they can only purchase it, just a container of batteries. Everything we sell is sold separately to get the best prices. But batteries are especially, you know, a speciality item, so they would just go to a battery recycling place company on the west coast. And then take, dismantle the battery and they recycle the lead in it.

Ms. Wakida: I see. So you have to have enough batteries to fill up an entire container?

Ms. Shinmoto: Well, we have to have – we can ship out as many as we like, but to make it cost effective, you know, we would need to ship out 40,000 pounds which doesn't take too many batteries because they're so heavy. But we try to, you know, be cost efficient, whatever we do because the shipping is so expensive now.

Ms. Wakida: Okay. Alright. Thank you.

Ms. Shinmoto: Okay, you're welcome.

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

Mr. Freitas: Being that you're the manager, did you folks do a traffic study on this –

Ms. Shinmoto: That location? Yes, we tried to, but we couldn't, you know, get enough time to count

and they just dropped it. They asked us for a traffic study, but we never got around to really doing it. But we are still, that's still open, we can still do it.

Mr. Freitas: Yes because – and the reason I'm asking I also own Maui Tow and in December, what do you call, they had a major accident there, and I think in January, they had an accident there. We were involved in the tow, that's the reason why I'm asking.

Ms. Shinmoto: Okay. We haven't had one done recently, but in the request, there was a request I believe after, or before we got the permit, Accessory Permit.

Mr. Freitas: Yeah, because that –

Ms. Shinmoto: Like in 2008 or so, in the process.

Ms. Freitas: The traffic moves pretty fast in there and you have, what do you call, almost a blind spot coming out.

Ms. Shinmoto: Uh-huh.

Mr. Shibuya: Any other questions Commissioners? I just have a question here. Is there a distinction between lithium, nicad and lead acid batteries?

Ms. Shinmoto: Yes.

Mr. Shibuya: How you --

Ms. Shinmoto: But I don't know what it is. Frankly I just know about – we don't take, I don't, we haven't take yet lithium and nicad. We just take the lead acid, the vehicle type batteries. And I think those are – I know they're coming out with that now for cars, right?

Mr. Shibuya: That's correct.

Ms. Shinmoto: Yeah, but I don't think we will be dealing with those.

Mr. Shibuya: Okay.

Ms. Shinmoto: I know the little lithium batteries, but we don't take that right now.

Mr. Shibuya: Okay. Thank you.

Ms. Shinmoto: And another thing I wanted to say is that we do have our EPA number for the Maui location to handle, we're a large quantity handler of universal waste or hazardous waste. The State hasn't quite decided whether to call batteries universal waste yet, but we get an ID number from the EPA so we are prepared to handle it. And I have talked, I have submitted a modification of our Solid Waste Permit to be able to handle steel at this site. And we would be willing to, you know, adhere to, almost any conditions that you would have, you know, like that we would have to load at the end of the day.

Mr. Hiranaga: Point of order.

Mr. Shibuya: Yes.

Mr. Hiranaga: If there are no questions.

Mr. Shibuya: If there are no questions.

Ms. Shinmoto: Okay. Okay, thank you very much.

Mr. Shibuya: Are there any other public members who would like to testify at this point? None. Public testimony is closed. Okay, discussion. Commissioners?

Mr. Ball: I have a question.

Mr. Shibuya: Commissioner Ball.

Mr. Ball: During testimony there was testimony saying that they couldn't ship appliances and there was testimony saying that they could ship appliances. So what is the correct answer?

Mr. Shibuya: Mr. Nutter.

Mr. Nutter: If I can answer that question. We're allowed to ship whole appliances, just like you're allowed to ship whole appliances here to use, and . . . (inaudible). . . in your house, and then we can send them back to Oahu. There's no regulations on that at all.

Mr. Shibuya: Okay. Thank you. You would do the same for automobiles? Is that what it is too? Is that your intent?

Mr. Nutter: No, we don't do automobiles.

Mr. Shibuya: Okay.

Mr. Nutter: And if you want to put that in your hearing, I mean, as far as –

Mr. Shibuya: Condition?

Mr. Nutter: – issues or conditions, you can certainly put that in because we don't intend to do it anyway so it doesn't hurt us.

Mr. Shibuya: Okay. Thank you. Commissioner Freitas.

Mr. Freitas: I have a question for Mr. Nutter. It was stated by your manager and yourself, both, that you folks take car motors. Do you folks have oil containment area or any bunker area in case an engine comes in with oil that . . . (inaudible) . . . ?

Mr. Nutter: We have places that we can put it on. And we have best practices to make sure that

if any oil is spilled, it's immediately picked up. We have kits and that type of stuff, oil kits, to ensure that we don't have a problem with it.

Mr. Freitas: I understand.

Mr. Nutter: You understand that, I mean, there's, there are people out there that, you know, you're never going to have anything 100%.

Mr. Freitas: Understood.

Mr. Nutter: But we are prepared to make sure that –

Mr. Freitas: My question was if you have an oil contained area that is concreted off.

Mr. Nutter: All of our whole lot is concreted, and we have areas that are for that type of materials.

Mr. Freitas: I understand . . . (inaudible) . . .

Mr. Nutter: Yes, it is, 100%.

Mr. Freitas: My question is do you have a containment area?

Mr. Nutter: We don't have a containment area per se, if that's what you're talking about, but it's not required by the State.

Mr. Shibuya: Any other concerns, questions? Commissioner Mardfin.

Mr. Mardfin: Are we going to get a recommendation from the planner?

Mr. Shibuya: Yes.

Mr. Mardfin: Before we do a motion?

Mr. Shibuya: But if we have some questions. I think the Commissioners had some questions they'd like to clear up. If none, then I have one. Oh, Commissioner Lay.

Mr. Lay: Yeah, a couple of things I have questions about. First of all, your managers, are they put through a training program for what they can or cannot do? It seems like a very important issue and it seems that we've got non knowledgeable persons running a very environmental, should be environmental controlled area.

Mr. Nutter: Well, I mean, I think there's two things that you want to talk about. One is testimony by the other side that tried to make this to be a huge environmental issue and it's not. You know, you have white goods, and you have car batteries that people have dealt with for centuries. And, you know, I mean, it's material that comes in all the time. It's material that's handled regularly all the time. You know, I mean, they make kind of like something out of nothing in a sense and they're trying to use that against us. The – we handle things, just like, when they asked our people here,

you know, how they handle certain issues, some of them either probably don't come up with it or they're not sure. So, to answer your question, we send our managers to both of our locations on the Big Island and our locations on Oahu for training, and they spend a month or six weeks doing the training that we do there. We don't handle hazardous materials here, so that's not really an issue. Stuff like white goods, if we do take those again, they are not, we do not plan on taking the freon out here. They're just loaded into containers and shipped. We have a container in hand, a regular size, 40 or 45 foot closed top container that we're loading continuously also on the lot that we put those materials on so they don't sit on the ground.

Mr. Shibuya: Commissioner Lay.

Mr. Lay: I'd like to also say that, you know, we commend you on your efforts in cleaning up the island and getting all this steel out of there and everything, and you know, basically making this place a better place to live. But I'm worried about the scope of work where you're exceeding your scope work for that given area, for your permit, you went ahead and did these things. I mean, they're shipped to Oahu, so knowingly you know these things are going on.

Mr. Nutter: I'm sorry. Which ones are you talking about?

Mr. Lay: Batteries being sent out. White trash, white goods.

Mr. Nutter: As far as batteries are concerned, we're allowed to ship palettes of batteries. They have to be put into the right type of package as testified.

Mr. Lay: At this location?

Mr. Nutter: Yeah. . . (inaudible) . . .

Mr. Lay: You're okay at this location for batteries, car batteries?

Mr. Nutter: Yeah because they can go on Young Brothers as long as they're licensed. I mean, they have an individual tag on them and where they're brought to my location in Honolulu, in which we combine that load with other loads going to the mainland. So that's what we were talking about full container quantity. As far as we're aware that there was – as long as we meet the EPA requirements, which is a Federal requirement, which they have standards of State and County we're fine.

Mr. Shibuya: I just have a question in terms of how you treated the radiators, from automobiles as well as condensers from various refrigeration units. Some of the industrial refrigeration units are, are very large, and they have lots of oil in it, and how do you deal with that? And there's also the refrigerer – I mean, the radiators from automobiles and trucks, they have not only water, but they have anti-freeze and they also include automatic transmission oils.

Mr. Nutter: Right. We require they be drained before they come in.

Mr. Shibuya: Okay. Thank you. You see that's the issue. If they strip it from some property then that property is contaminated. You see? But all you see is the other part where they're just turning

it in for money.

Mr. Nutter: Right. Yeah, and that can be a problem, and I don't know what the answer to that is. I mean, that's education and enforcement and things beyond our control. But, yeah, you're absolutely correct, that would be a very important issue.

Mr. Shibuya: Okay. Thank you. Commissioner Mardfin.

Mr. Mardfin: When, the operation that you currently do here on Maui, when did that begin?

Mr. Nutter: About nine months ago.

Mr. Mardfin: Oh, you just started nine months ago?

Mr. Nutter: Yeah, we just started this year, or last year, I'm sorry.

Mr. Mardfin: And who got the – what kind of permission – did you need something from the Planning Commission to do that?

Mr. Nutter: Yes, we got that seven years ago. We came in front of this Commission and they okay the regular center, but I don't think we made a difference at that time between ferrous and non ferrous, steel, and white goods.

Mr. Mardfin: Who –? So you –. Hang on just a second. I want to follow up with this. And I don't know whether, maybe Kurt should be doing this, but when you came in you needed, you needed a Special Accessory Use Permit, is that correct?

Mr. Nutter: That is correct.

Mr. Mardfin: And who applied for that?

Mr. Nutter: Big Island Scrap Metal.

Mr. Mardfin: You, personally?

Mr. Nutter: No, Karen Shinmoto.

Mr. Mardfin: Karen Shinmoto did. And so she knew what the conditions were?

Mr. Nutter: I'm sorry?

Mr. Mardfin: Did she know what the conditions were?

Mr. Nutter: She worked with Kurt on –

Mr. Mardfin: I don't think Kurt was here.

Mr. Nutter: No, I'm sorry, it wasn't Kurt, it was Robyn.

Mr. Mardfin: Thank you.

Mr. Shibuya: Thank you. Commissioner Lay.

Mr. Lay: Yeah, I'm looking at what's in front of me and it's a Special Accessory Use Permit for existing recycling redemption center to add, add, ferrous materials, white goods and batteries.

Mr. Nutter: That's correct.

Mr. Lay: And previously you've been sending them out already right?

Mr. Nutter: Like I testified earlier it was a mistake on my part. We have, we have a permit, a P5, from Maui County saying scrap metals, and we assumed at that point that it would include ferrous, so, but it didn't.

Mr. Lay: Okay.

Mr. Shibuya: Commissioners, I'd like to go ahead stop and close public testimony and then have the planner because I think some of these issues will be discussed by the planner. Unless you have a question.

Mr. Mardfin: I think you closed public testimony already.

Mr. Shibuya: Yeah, okay. Then this part here is, I'd like to have the planner explain and present the issues to us. But I'd like to take a break before we do that. 10 minute break.

(The Maui Planning Commission recessed at approximately 2:22 p.m. and reconvened at approximately 2:30 p.m.)

Mr. Shibuya: . . . question that you'd like to ask. I don't know, you mentioned, before we took a break.

Mr. Mardfin: Mr. Nutter?

Mr. Shibuya: Mr. Nutter.

Mr. Mardfin: Who was speaking?

Mr. Ball: Pound that gavel there Mr. Chair.

Mr. Mardfin: Somebody was speaking at the end and I wanted to ask a question.

Mr. Shibuya: He just walked in.

Mr. Mardfin: Hello sir. I have one, at least one more question for you. Let's start with, when you

– in 2007, when you got the Special Accessory Use Permit, you said you misunderstood whether or not you had ferrous ability. Did you perceive that you had the ability to take batteries in, lead acid batteries?

Mr. Nutter: In 2007?

Mr. Mardfin: Yes.

Mr. Nutter: No, I don't think we even, I even thought about it in 2007.

Mr. Mardfin: When did you decide to take in lead acid batteries?

Mr. Nutter: As I testified. When we changed all of our locations on Seattle – yeah, I mean, not Seattle, I've got another location in Seattle, sorry – when we changed everything on Oahu, we have five, we actually have six buying locations, and they started out just being the HI5 type of locations, that this one was. And then because of the community need, you know, we increased over there the types of items that we buy. And you know, now we take like computers, we take lead acid batteries, we take scrap steel, we take almost anything that we can make money on and that's a good service to the community. So it was my feeling when we opened up over here three years later that we were under the same permit requirements that we have on Oahu. And so I didn't really think about the fact that we had applied for this almost four years earlier. So, I mean, I guess I have to take the blame by not reviewing the permit, but I didn't do it.

Mr. Mardfin: Thank you.

Mr. Shibuya: Commissioners, it seems like there's an interesting definition problem here. We have our recycling centers where we normally take our newspapers, plastics, and cardboard, things of this nature. And then there is now this issue of collection center which is a little bit more expanded. It seems like you have steel as well as non ferrous, as well as all of the regular recyclables. So these are issues I think we should be aware of. Kurt, if you wouldn't mind helping us with your recommendation.

Mr. Wollenhaupt: In review, the Department of Planning finds that the proposed amendment to add the ferrous metals, the white goods and the lead acid batteries to the list of items currently allowed to be delivered to the current recycling and redemption center does meet the intended uses under the B2 Community Business District and recommends your approval, the amendment, subject to conditions which were outlined in the staff report. I think it's probably important on this one to go through some of those conditions. The ones that are certainly applicable in this case, number five, that the applicant will install the additional screening and comply with the planting, landscape and the irrigation plan as recommended by the UDRB at their meeting and their letter of recommendations that was dated December 9th 2011. That the hours of operation are limited to eight to five p.m., seven days a week. And importantly that we start now on a couple of very important ones. And this discussion was done with the Zoning Department, again, in looking at the impacts in the B2 District. So I just wanted to say the Department did have a lengthy discussion and thought about the difference between taking in a washing machine and taking in an automobile.

Condition seven, that the applicant will only accept, store and ship off site ferrous metals including

white goods and appliances with no additional crushing, baling, or processing other than – and we talked about the refrigerant containment that may be as approved and monitored by the Department of Health and the EPA. Additionally white goods, appliances delivered to the site during the business hours shall be stored in closed container at the end of each business day. This was a condition to ensure that large baling, crushing, cutting machines which have been discussed in great length today not be a part of the process of cutting up the car, or cutting up a washing machine.

Condition number eight was that the applicant will only accept, store and ship off site lead acid batteries as approved and monitored by the Hawaii State Department of Health and the EPA. Again, lead acid batteries delivered to the site during business hours shall be stored in a closed container meeting State Department of Health requirements as applicable at the end of each business day.

Those are the conditions that the Department had recommended. By way of history and looking at the original permit, there didn't seem to be a date certain. On many Accessory Permits there's a condition that would be read something that the Accessory Use Permit shall be valid until date certain subject to an extension and acted by the Planning Director. However, the Director may forward it to the Commission for review. So there would be probably a potential point of discussion when we get to that point in time that an additional condition would be considered if you were to move forward with this, in addition to the conditions already stated that would put this on a date certain for review by the Director or a.k. the Commission at a later date.

With that being said, the recommendation would be that the Planning Commission goes ahead and adopt this report prepared for the January 24th meeting as defined in the Conclusion of Law, Decision and Order and authorize the Director to transmit the Decision and Order on behalf of the Planning Commission.

Mr. Shibuya: Okay, thank you very much. Commissioners? Commissioner Mardfin.

Mr. Mardfin: I have a question. We're talking about several things. We're talking about cars, we're talking about ferrous white goods, and we're talking about lead acid batteries. And condition eight allows them to accept, store and ship off site lead acid batteries. I am unclear as to whether they concurrently do that now or do they need some extra nod from this Commission to be able to do that?

Mr. Wollenhaupt: Well, it would be my interpretation that the – my interpretation is this is the first step. That this would allow the Department to issue the modified P5 that would specifically indicate white goods, ferrous metals as conditioned by this body, and lead acid batteries. The P5 would then be delivered to the State Department of Health which would then, the EPA, would then give final approval. So without having the old P5 in front of me, it does not appear that lead acid batteries would be recyclable at this time, without any further permit. That was not part of the original permit. So the permit in 2007, I wasn't here, but I don't believe that lead acid batteries were a part of that permit. It was a typical –

Mr. Mardfin: So your interpretation would be that would be that they cannot currently do lead acid batteries?

Mr. Wollenhaupt: That would be my interpretation.

Mr. Spence: Excuse me?

Mr. Shibuya: Okay. Director Spence.

Mr. Spence: So Kurt, was the existing permit, it didn't specify steel or lead acid batteries? It just said recycling of metals.

Mr. Wollenhaupt: Well it, it was the traditional permit that said the H15 recycling and then it did go on to say specifically aluminum, brass, copper, non ferrous metals. And so it would be silent on the batteries. So if there is a State law that allows –. You know I looked up this, if I had a car battery, where can I take it? Well, I guess I can take it to Wal-Mart, so I'm not sure –

Mr. Spence: Is Sears taking this?

Mr. Wollenhaupt: So I'm not sure if there's a State ability to recycle batteries that would sort of trump this Commission. That if I take my car in to XYZ auto – if I take my car into the Mercedes's shop and I get a new battery, they're accepting the old battery. So perhaps there's a special codicil that shops can take them.

Mr. Spence: Yeah, I think my point was that lead is a non ferrous metal.

Mr. Wollenhaupt: Yeah.

Mr. Spence: So if the permit wasn't clear on that, then let's make it clear through conditions on this particular permit.

Mr. Wollenhaupt: And the new P5, actually, which is in your report, it states, State redemption and recycling center with approval to accept steel, white goods and batteries in addition to fiber material and non ferrous metals. So the steel issue and the batteries are specifically delineated in that new attachment P5.

Mr. Shibuya: Commissioners?

Mr. Lay: Kurt?

Mr. Shibuya: Commission Lay

Mr. Lay: In looking at this, okay, so if this goes through, following the recommendations before they get their permit, as far as going, you know, for their pickup and whatever they can get out, will we have a government official walk thru to make sure everything is alright as far as the, with the requirements? And also with the Health Department, is there somebody who walks through this project also to make sure everything is in compliance before they actually start the process instead of saying it's ongoing, it should be done soon?

Mr. Wollenhaupt: Well, that would certainly be our intentions, that they could not expand their

operation until –. First off, our Department signs the P5, and the P5 goes to the State, the State Department of Health – I mean, that would be another condition, that could be another condition. I can't imagine the State Department of Health doesn't do an onsite examination, but it would be that we in addition would have to get a notification from the Department of Health that this permit has gone through. So that would be certainly our intention. In addition, I understand that there's been a lot of issues about environmental pollution that they'd have to get an updated national pollution discharge elimination requirement which is quite an onerous process. Again, they would not be able to accept any expansion of goods until that was confirmed and a letter was sent to us. So –

Mr. Lay: That's our assurance?

Mr. Wollenhaupt: Well, we gotta see it, we have to see these permits that this is just, that this operation, in light of the past, would have to show us that all of Department of Health, EPA, NPDES, all these permits were valid and inline. And I do drive past there every day to go to lunch so they're noted I've sometimes just have stopped by casually. And that's sort of what started the whole process, to be honest with you, about getting their UDRB issue and their hedging and gate and that the place needed to be cleaned up. Which I have noted that they have done a much better job on keeping it and maintaining it. This process has begun.

Mr. Shibuya: Okay. Commissioner Hiranaga.

Mr. Hiranaga: Just for clarity. So, are white goods and appliances a subset of ferrous material?

Mr. Wollenhaupt: They would be.

Mr. Hiranaga: They are?

Mr. Wollenhaupt: Yes. Ferrous materials, ferrous materials would be over encompassing anything. I guess they would have plus two oxidation state of ferric metal, iron ore to steel, but not stainless steel. And then a subset out of that would be like washing machines and refrigerators and things you buy are Sears, so, yes, that's a subset.

Mr. Ball: So we'd be allowing –

Mr. Shibuya: Commissioner Ball?

Mr. Ball: – ferrous? Thank you.

Mr. Wollenhaupt: That would be, that actually would be –

Mr. Ball: – right now –

Mr. Wollenhaupt: – right now –

Mr. Ball: – right now as it stands, you're saying someone could bring in an engine block.

Mr. Wollenhaupt: It wouldn't. That would appear to be its case, yes, because that's a ferrous metal.

Mr. Ball: Right.

Mr. Wollenhaupt: Yes. And so that would be a discussion that if you believe that there was a, if there was a distinction between someone bringing in a washing machine or a refrigerator and that of bringing in a used engine, or bringing in pots and pans, then that's something that this Commission has the ability to debate on and to add conditions in order to make the final approval.

Mr. Ball: Well, I would think the Department would have an opinion on that. I mean there's a serious difference between an engine block and pot and pans.

Mr. Wollenhaupt: There is. I think that it was, I think that it was a Department, it was the Department's and I believe it was my impression that when we were talking of things like pots and pans, and perhaps fenders, washing machines, that was my concept of what this was. I have a washing machine at home, I want to get rid of it and I don't want to leave it on the side of the road. I don't believe that it would certainly –. I wasn't my personal idea that you'd be bringing in a big engine, but ferrous metals obviously has more inclusionary term than perhaps I original had thought. But, it might merit discussion by the body if they would wish to limit or to have further conditions on what materials under the ferrous category they believe would be more appropriate for this B2 area if they wish for those.

Mr. Shibuya: Commissioner Lay.

Mr. Lay: Under these regulations, I'm worried about run off, heavy rains and that sort of thing, with all these metals and oils, does this, will this facility be able to contain 100% of its run off in that given area?

Mr. Wollenhaupt: I think that issue is going to be determined with the Department of Health. Their new national pollution discharge elimination act which they've got to have updated. Their old one is in here. If they were to expand – of course, not speaking as an expert here – but I would think that if they were to expand to accept the ferrous metals their threshold, their level of review for their MPDES waste water permit would be considerably expanded.

Mr. Lay: Because I'm worried you're about 300 yards away from our ocean right there, yeah? I mean, right off –

Mr. Wollenhaupt: But they're not in the SMA area.

Mr. Lay: But runoff from rain, you know, any heavy rain and that kind of stuff, would go down in that direction.

Mr. Wollenhaupt: So MPDES, Department of Health, again, this permit sort of looks at, is appropriate in that, it is in the B2 area, and it's like begins the process. And if you had certain concerns on accepting certain kinds of metals, certain kinds of equipment, that's all within your purview to recognize that there might be an issue with runoff and then to recognize that if we would limit acceptance of certain goods then that be fixed, maybe mitigated. Pots and pans probably is

not going to have the run off as, of course, as an engine. But there are a considerable number of other agencies that are going to have to look at this before they would get their go ahead.

Mr. Shibuya: Okay, Commissioner Ball.

Mr. Ball: My concern is, is not so much about the gate, and the fence, and all that kind of stuff because you can lip stick on a pig that it's still a pig, right? I mean, you can hide all this stuff, but it's the stuff inside that concerns me the most, and the violations that have already occurred there that concerns me the most. We didn't even allow this stuff, and yet the stuff was going on with who knows what kind of regulation, what kind of processes to put all this stuff together. At no fault to the manager, I don't think he's trained properly. And at the testimony of the applicant, they said they didn't train him. They trained the guy on the Big Island and the guy on Oahu. That concerns me when you're dealing with this kind of stuff. It's not bottles and cans. It's, we're getting to the next level with approving this. In the testimony, it was not a big environmental issue. I disagree with that. You're dealing with lead batteries. You're dealing with potentially engine blocks, depending on which way we wanted to go with this. I have big concerns on going to the next level with this with the current, with previous, I should say, actions of the applicant in this site. I don't care about the other stuff on the Big Island. It's evidence of continuous conduct, but they did it right here and the excuse to that was I didn't read the thing is not happening. If you're going to start a business, you're going to read the whole thing. You're a businessman. I like to talk to the person, but I can't see him over there. You can't use that excuse. That excuse doesn't fly with me that, oh, I didn't know, it's a different County. Of course, it's a different County, we're going to run things differently over here than every other County. So the attitude of, it's not a big deal and all this kind of stuff is unacceptable to me at that plight and the going to the next level, at this point. It's not been shown that, look, we care about this thing, we've got all these measures in place to make sure that it stays environmental safe and healthy for all the people around it. We have fire protection and plan in place and that sort of thing. That's what I want to hear that worse case scenario is already thought of, is already planned out for this thing.

Mr. Wollenhaupt: Well, I could make some response to that. I think it might give shed some light. I was given this project. I had no idea what was going on there except drove past and wondered was there some issue perhaps with screening because I'm all that. I like screening, and UDRB. So, that caused the Department to look into this matter, recommending that they do go to UDRB. And the photographs that Mr. Freitas is speaking of did show and I did have my own thoughts that it seemed to be, it didn't seem to be as neat and tidy as I would think even a redemption or recycling center should be. And did then instigate communications, mostly with Ms. Shinmoto, that I thought there needed to be some improvements that I could understand that they were a new operation. So that sort of what begun this process of where we are today.

Mr. Ball: Well in that picture I see an axle and axles come with 80/90 weight fluid which are probably some of the most toxic oils you can possibly come across.

Mr. Wollenhaupt: And there was a request for service that was put in which I has lead, I believe, to a better recycling center at this time. It's always a challenging question from something has happened in past and how do you move forward in the future?

Mr. Shibuya: Okay. Commissioner Hiranaga.

Mr. Hiranaga: So as far as recycling ferrous material, there's no refund to the customer, or is there, like HI5?

Mr. Wollenhaupt: That you're gonna to have to ask them. I'm not sure how it works if I bring in a refrigerator if I get money or not.

Mr. Hiranaga: Could the applicant explain please?

Mr. Allen: . . .(inaudible) . . . for the material that comes in?

Mr. Hiranaga: Right.

Mr. Shibuya: Please identify yourself please.

Mr. Allen: Mike Allen of Big Island Scrap Metals.

Mr. Hiranaga: Per pound.

Mr. Allen: Yeah, we're currently paying \$40 a ton, but, and obviously, steel, something made out of steel is a lot of heavier than aluminum can. But our price fluctuates with the price of scrap steel. Just like our price for aluminum cans fluctuates with the price of aluminum cans, our cardboard fluctuates with the price of cardboard. And then of course you have the competitive nature of the business. If your competitor is paying more, obviously, you gotta match his price so that's all the feature of what we do.

Mr. Hiranaga: What's that, two cents a pound?

Mr. Allen: Yeah.

Mr. Hiranaga: Plus or minus, depending on market conditions.

Mr. Allen: And then some people, you know, they look two cents a pound, wow, they're not getting much. Well, I'll tell you what, people are hurting in the community and every little bit that they can make may not seem big to you, but it's awfully big for them. And if you come down there, and you take a look at the kind of customers that we get in, you'll very well understand that. So, yeah, \$40 a ton, currently.

Mr. Hiranaga: How about white good?

Mr. Allen: Same thing. Everything gets put on a scale. And again, I wanted to go back to something else that was asked earlier, you know, we're not taking items that weigh 50,000 pounds. We've got a small scale. What we can fit on that scale is what we take, so, you know, we're not like these gentleman here that have a truck scale and somebody comes by and they've got 20 tons of material in that truck. We're a small operation that's geared towards the local customer in our surrounding area in our community and that's what we want to service.

Mr. Hiranaga: Batteries same thing?

Mr. Allen: Batteries, what are paying for batteries right now? Oh, we're not buying batteries right now. But I anticipate somewhere like \$2 a piece or something like that.

Mr. Hiranaga: Okay. Alright, thank you.

Mr. Allen: It's either going to be a per battery price or per pound price on the batteries.

Mr. Hiranaga: Alright, thank you.

Mr. Shibuya: Commissioners, if not, then I would be entertaining a motion.

Mr. Nutter: Can I reply to one of the, what one of the Commissioner said on my testimony?

Mr. Shibuya: No, no. Hang on. This is where we're discussing matter of whether we're going to come up with a motion here. Thank you. Commissioner Mardfin.

Mr. Mardfin: If I make a – I want to give somebody else the opportunity – if I make a motion it would be to deny this.

Mr. Shibuya: Okay.

Mr. Mardfin: So, if somebody wants to go for it.

Mr. Lay: You're going to second me? I motion to deny.

Mr. Mardfin: You make a motion to deny?

Mr. Lay: Yeah.

Mr. Mardfin: I'll second it.

Mr. Shibuya: Okay. The motion is to deny by Commissioner Lay, and it was seconded by Commissioner Mardfin. Director Spence, can you repeat the motion here?

Mr. Hiranaga: Discussion please?

Mr. Shibuya: Discussion. Alright, members.

Mr. Hiranaga: Can I hear the motion for discussion?

Mr. Shibuya: Make your motion. Okay.

Mr. Lay: I made the motion to deny because of the past history. You know, there was, we got 80 pages of things that have happened in the past, and at what point do we turn around and fix these things that have been happening? When we're brought here and found that we're doing something wrong or do we take care of it before it even happens? To me, we gotta take care of it before it happens. This is a very important thing. We're stuck on an island here. We gotta make sure that

everything is done right and, you know, we don't want any . . . (inaudible) . . . to be ruined. We got the ocean right there. We got our road right there. We gotta keep it beautiful. I mean, pictures say a thousand words and we had about 10,000 words in the photographs that we got and it was just done after the fact and I don't see how giving somebody something that they didn't want –. You have the redemption centers on the Big Island and Oahu – shouldn't Maui's one, even though you weren't suppose to have been following those same criteria in those two areas? It wasn't followed here and it was just taken advantage of so motion to deny.

Mr. Shibuya: Commissioner Mardfin.

Mr. Mardfin: I agree with what Commissioner Lay said. I would have made the motion to deny also. We haven't – it haven't dealt with some serious issues about fire and safety. We had a gentleman at the very beginning this morning testifying that he didn't want for fear of some things happening. I don't think the traffic issues have been seriously dealt with. I think it's a small lot. I think there will be temptations to exceed whatever conditions we put on it if we were to approve it. I think this is the wrong project at this particular location. If they find someplace else, you know, I'd be willing to look at it differently. And let me add, well, just one thing . . . (inaudible) . . . I do believe in competition. I'm an economist. I believe in competition. I don't like creating monopolies, but it's gotta be, the competition has to be done right. And I'm not talking about having . . . (inaudible) . . . or anything. I'm talking about they've got to, I've got to have confidence that it's a good product. And at this location, I don't think it will be.

Mr. Shibuya: Okay. Thank you. Commissioner Wakida.

Ms. Wakida: I too will support the motion. I think it's, I think this island really needs more recycling. We need to get –. And I commend that effort. However, I am not in favor of increasing the industrial use down in the B2 area. I would like to see Lower Main slowly get cleaned up rather than increase its industrial use. And I too like Mr. Lay was dismayed by the pictures that were included, and I was dismayed to learn that this operation has been in business less than a year and managed to look like such a dump there, according to those pictures. And this did not speak well to the history of the organization on this island.

Mr. Shibuya: Commissioner Mardfin.

Mr. Mardfin: Let me add something. I agree with Commissioner Wakida also. They're a fairly new business here. I think they need time to prove that they can be, run what they have as a good business. You know, five years from now they have a good track record, adherence to all the rules, I'd say, try to come back in five years. But they don't have a good track record as far as I'm concerned.

Mr. Shibuya: Okay. Commissioner Hiranaga.

Mr. Hiranaga: I'm going to vote against the motion to deny. I probably would have preferred a limiting of what could be collected there to white goods and batteries, and exclude ferrous materials. But at this point with the motion to deny the entire request I'll be voting against.

Mr. Shibuya: Okay. I just wanted to let you know that sometimes management has a lot to do with

it too in terms of training their employees to handle materials with care and keeping the public safety and concerns in mind. And sometimes when we don't do this then we have a problem as we've experienced. The other aspect is if you take care of it every night and you put it and lock it up, then you eliminate the mischief opportunities for fire happening, and this sort of thing would be helpful too. So there is a possibility that this kind of operation can be managed in a very useful and helpful way for the community. So this is something that we can think of and if you want to put them in the conditions that would be another matter. But, any more discussions members? Commissioner Hiranaga?

Mr. Hiranaga: Accessory Use Permit, there is no expiration date on it typically?

Mr. Wollenhaupt: Only if there's a condition put on to it. So – well, if you were to go down that road, there's an item that's going to be appearing before you later today that we're given a date certain for a similar Accessory Use Permit, and that's condition one, that the project will be allowed to exist until x-date subject to approval by, and then, this Planning Commission.

Mr. Spence: So Kurt, does the existing permit have an expiration date?

Mr. Wollenhaupt: None that I can measure. It was a bit odd how it was put together. I don't see there is a termination date on the existing permit.

Mr. Spence: Okay. That probably answers.

Mr. Shibuya: Commissioner Hiranaga.

Mr. Hiranaga: Then that would be one way to address Commissioners concern about past performance and future performance, to put a fairly short time line like two years on, you know, if a permit was granted. And to me, some of the arguments was it's conveniently located, provides a convenient drop for people in the Wailuku, Waiehu, Waihee area, versus going out to Central Baseyard which is out there going towards Kihei. So it provides the convenience, and to just deny the request I think is a little strong, personally.

Mr. Shibuya: Okay. Members, any other discussions? If not, we ready for the question? Okay, Director Spence will you repeat the motion please?

Mr. Spence: The motion is to deny the amendment to the Special Accessory Use Permit.

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

Mr. Spence: That's five ayes.

Mr. Shibuya: And those that are denying. Opposed.

Mr. Spence: One opposed.

Mr. Shibuya: One.

Mr. Spence: Two abstention.

Mr. Shibuya: Two abstention.

Mr. Mardfin: Jack was a recusal, not abstention I believe.

Mr. Shibuya: Yeah, Jack is recusal.

It was moved by Mr. Lay, seconded by Mr. Mardfin, then

**VOTED: To Deny the Amendment to the Special Accessory Use Permit.
(Assenting - I. Lay, W. Mardfin, L. Sablas, P. Wakida, K. Ball,
D. Domingo-abstained)
(Dissenting - K. Hiranaga)
(Recused - J. Freitas)**

Mr. Shibuya: Okay. Members, we get a – that's a denial. That's it. Okay, members, the next item, New Business, Director, can you introduce the next item please?

D. NEW BUSINESS

- 1. WAILUKU INDUSTRIAL INVESTMENT, LLC requesting comments on the Draft Environmental Assessment written in support of the Community Plan Amendment for the proposed Waiko Baseyard Light Industrial Project on approximately 31.222 acres located at Waiko Road, TMK: 3-8-007: 102, Waikapu, Island of Maui. (EA 2011/0005) (P. Fasi)**

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) from the County and a State Land Use District Boundary amendment from the State Land Use Commission. Hearings on the CPA, DBA, and CIZ will not commence until after the Chapter 343 process has been completed.

The Commission may take action to provide its comments on the Draft EIS.

Mr. Spence: Commissioners, we're on Item D1. This is Wailuku Industrial Investment.

Mr. Freitas: Want to do a quick recess?

Mr. Shibuya: Okay. Yeah, let's take a short recess.

(The Maui Planning Commission recessed at approximately 3:04 p.m., and reconvened at approximate 3:15 p.m.)

Mr. Shibuya: . . . call the Planning Commission meeting to order. Director Spence, please introduce the new item, the next item.

Mr. Spence: Commissioners, we're on Item D1, Wailuku Industrial Investment requesting comments on Draft Environmental Assessment (EA) in support of a Community Plan Amendment and proposed Waiko Baseyard Light Industrial Project, and our staff planner is Mr. Paul Fasi.

Mr. Paul Fasi: Good afternoon. Thank you. The matter before you is the Waiko Industrial Subdivision. We are reviewing the Draft Environmental Assessment before you. It was passed out previously to you and hopefully you're somewhat familiar with the Draft Environmental Assessment. What we're doing today is receiving the input from the Planning Commission on some of your comments and concerns on the Draft EA which will then be incorporated into the Final Environmental Assessment to be brought back before you at a later date.

Let me give you some dates. January 10th and June 6th of 2011, these were the pre-consultation meetings with the Department. On September 29th 2011 the EA was received by the Department. The accepting authority is the Commission. The Environmental Assessment went before the OEQC between December 8th and January 6th. That was a 30-day comment period. There were no comments received and today is the first review by this body on this document. The project summary, the applicant is requesting the necessary land use entitlement documents – the Change in Zoning from Ag to M1, and a Community Plan Amendment from Ag to M1. The Community Plan Amendment is driving Chapter 343 which is the trigger for this. Also, in regards to this a separate DBA, the State District Boundary Amendment will be applied for upon the FONSI declaration when you review the Final Environmental Assessment. That will be submitted directly to the State Land Use Commission. It will not be presented before this Commission.

Current Zoning on all three levels is Ag. State, County and Community Plan is all Ag. As I said before this Draft Environmental Assessment is to review the Change in Zoning and Community Plan from Ag to M1 which is Light-Industrial. The parcel is approximately 31.2 acres. The applicant wants to subdivide into 41 lots. You might be interested to know that directly adjacent to this particular project is a similar project which is already completed. And so this would be a neighboring project that would look almost identical to the one that is presently there now, the Consolidated Baseyard Project. You know, as we know Maui is kind of short on M1 Light-Industrial properties, and this certainly opens up some business opportunities for the businesses that would like to house some of their warehousing and equipment in this type of zone district.

We have, the applicants here. The owner is here and their civil engineer is here to answer any questions you may have. And that will conclude the Department's introduction. Oh, if I may ask, if you do want to incorporate any of your comments to be directly addressed by the applicant can you please be very succinct and clear so that I can take proper notes and make sure that it does get incorporated into the Final EA and it does get addressed. Thank you.

Mr. Shibuya: Okay, members, this is just a draft, and we are soliciting our comments. I'm going to open this up for public testimony. Anyone in the audience that would like to testify? You have three

minutes on this subject. If not, testimony is closed. Members, questions, comments?
Commissioner Mardfin.

Mr. Mardfin: Paul, this is probably for you. My question at the beginning was why do this where they're doing it, but you said that it's right around something very similar so you're just basically expanding the type operation.

Mr. Fasi: Yeah, that is correct.

Mr. Mardfin: But different company. Can you tell me the steps? You said there's a shortage of light-industrial zoned property to this sort of thing. Do we have any evidence of that?

Mr. Fasi: This is, I'm getting this information directly from Joe Alueta who's probably more familiar with the M1 Light-Industrial demand than I am, so I rely on him for his expertise.

Mr. Mardfin: And he basically said we have a shortage of this in the Wailuku, Central Maui area?

Mr. Fasi: Well, that is correct. That's a fair statement to make. I think, you know, in support of that, you know, when you have the Maui Industrial Park Project going on right now, the two sections out there, and I don't think A&B would be doing that if there wasn't sufficient demand for it. And so this is kind of, is kind of piggy backing on that whole concept. And if you go out there and you look at the Consolidated Baseyard's section that's already developed it's really nice, and I believe it's at full capacity.

Mr. Mardfin: Full capacity. Thank you.

Mr. Shibuya: Commissioner Wakida.

Ms. Wakida: I don't know if you can answer this. Maybe it needs to come from the Bagoyo. It's mostly, but I'll address you first Mr. Fasi. In the middle of this document are these government records and data currency tracking, I couldn't understand the relevance of this, this information, why it's in here.

Mr. Fasi: Just to confuse you. I would have to have the applicant address that.

Ms. Wakida: Okay.

Mr. Shibuya: Please introduce yourself.

Mr. Vince Bagoyo: Good afternoon Commissioners. My name is Vince Bagoyo and I represent the applicant. This is not to confuse you by the way. Which questions do you have?

Ms. Wakida: In the middle of the document, let's see, under – I have no idea what the page number is because it's –. Well, it's after the photos where you've got like photos one through I don't know. Oh, appendix B, excuse me.

Mr. Bagoyo: Which exhibit?

Ms. Wakida: It's in appendix B and I, and I'm not sure. It's called regulatory records documentation and then there's a number of pages that have government records search and it's –. I mean, it's got all sorts of interesting things like tribal landfills and underground storage tanks and Washington and Clandestine Meth Lab locations. I just didn't get what the relevance was.

Mr. Bagoyo: This is part of the exhibits of our environmental assessment, the hazardous environmental assessment that was done by a consultant.

Ms. Wakida: But all this information here is some place else in the United States correct?

Mr. Bagoyo: Yes, and also recorded for the EPA, and also recorded to the Department of Health.

Ms. Wakida: And so why was it included in here?

Mr. Bagoyo: It's part of our environmental hazardous assessment done for this property.

Ms. Wakida: Okay, it just comes with the –

Mr. Bagoyo: That's correct.

Ms. Wakida: – territory. Okay.

Mr. Shibuya: Commissioner Mardfin?

Mr. Mardfin: Hi Vince. In the table of contents you have a section six, government agencies and community organizations contacted. At least in my copy this was totally missing. The last page, the last page I have is –

Mr. Bagoyo: I believe I have 10 listed organizations on.

Mr. Mardfin: Yeah, well in ZZ you have a list of people. ZZZ you have notice of applications. And then on the next page you reference governmental agencies – well there's no page number so I guess that's –

Mr. Bagoyo: I apologize for that. Yeah, it's roman numeral six.

Mr. Mardfin: Yeah, and I don't see any. I see it in the table of contents. There was nothing after the ZZZ document in mines.

Mr. Bagoyo: I apologize for that.

Mr. Mardfin: I don't need it. I'm just – it ought to be in your final I would think. Because I was looking for letters of comments from the different agencies and then I didn't I see that. I went to look for them and I couldn't find them.

Mr. Bagoyo: Yes I actually, we actually sent this document to all the different agencies –

Mr. Mardfin: Okay.

Mr. Bagoyo: – as we drafted it. And we have received those comments and I have transmitted those comments to the Planning Department.

Mr. Mardfin: Okay. But that we just didn't get it here.

Mr. Bagoyo: On the final –

Mr. Mardfin: It will be in the final?

Mr. Bagoyo: In the final it will be included. Yes.

Mr. Mardfin: Okay. Thank you.

Mr. Bagoyo: And by the way, just for your information, we did not receive any critical comments from all the agencies that responded. And it will be included in the final document.

Mr. Mardfin: Yeah. I particularly had wanted to see the Maui Planning Department and the OHA, but that's okay.

Mr. Bagoyo: We did receive one from the Department of Planning as well.

Mr. Mardfin: Did OHA respond?

Mr. Bagoyo: They concur with the designation.

Mr. Mardfin: Thank you.

Mr. Shibuya: Commissioners, any other? Commissioner Wakida.

Ms. Wakida: Mr. Bagoyo, the – let's see – the Malama environmental that's in section –. Well anyway it's a letter and they're requesting for a search for pending environmental permits, licenses and citations or leases and other information for the site below. And then I might of missed it, but did you get any, are there any responses to that? Are there any past – I mean, was there any follow up on that?

Mr. Bagoyo: There was – yes, we actually received and did a research on it. There was a findings of some minor environmental concerns but it was a different property.

Ms. Wakida: Different –

Mr. Bagoyo: Different property.

Ms. Wakida: Different property.

Mr. Bagoyo: Yeah, it wasn't this property.

Ms. Wakida: I see.

Mr. Bagoyo: And we noted that in our response to the Department of Health.

Ms. Wakida: Okay. Was that in here?

Mr. Bagoyo: I don't believe so.

Ms. Wakida: Was there a response?

Mr. Bagoyo: I don't believe so. We will include that in the Final EA. Yeah.

Ms. Wakida: Okay. Thank you.

Mr. Shibuya: Commissioner Mardfin.

Mr. Mardfin: I'm looking at project overview, and on page-1, first line it says, request for Waiko Industrial Investment LLC whose mailing address is Kihei. But in an earlier part of this you said it's a Washington State Limited Liability Company.

Mr. Bagoyo: That's correct. The official address is at Kihei, but the partner, one of the principal partner is from Washington.

Mr. Mardfin: Okay.

Mr. Bagoyo: And the other principal partner, of course, is Mr. Roderick Fong, which is Fong Development Partners, and he is one of the principal partners, happen to be on of the minority partners.

Mr. Mardfin: On page-3, reasons for justifying the requests, this is really, what I'm going to say is really nit picky but it's in the same project overview, page three, reasons for justifying. It says the strong demand for a subdivision that addresses the needs for small local businesses that may be in need . . . (inaudible) . . . for properties that are centrally located. Since large portions of the property are now in use. Well it's four acres out of 31. I would hardly justify that as large. I would say since a small portion of the property is now in use.

Mr. Bagoyo: So noted. Thank you.

Mr. Mardfin: Just to be -. I admit it's picky.

Mr. Ball: You're correct.

Mr. Mardfin: I always am.

Mr. Shibuya: Mr. Bagoyo, I just have a simple one here while the other Commissioners are searching through some of their notes. In your executive summary, description of the existing environment, you mentioned about the Waikapu Stream as a perennial stream which originates in

the upper reaches of Waikapu Valley. And in the historical part, it's mentioned as Awai leaving the main stream and the upper reaches on both sides to provide water for the taro patches down below I guess in this area I guess a long time ago. In your, Mr. Doctor Hobney, description of the mammals and animals and grasses and the environment, nothing was mentioned about stream life. But yet the stream life is mentioned here. Why?

Mr. Bagoyo: What I'm referring to the stream is on the upper area where the current taro farming community right now, Mr. Pelligerino, in particular.

Mr. Shibuya: Okay.

Mr. Bagoyo: That's actually below the Waikapu, Waikapu Valley. It's located more of west of Honoapiilani Highway. It's more mauka. The stream on the east side of Honoapiilani Highway it's not a running stream.

Mr. Shibuya: It doesn't come through this property?

Mr. Bagoyo: It doesn't come through. That's right.

Mr. Shibuya: Okay. Thank you.

Mr. Bagoyo: It's more on the Maalaea side of this property.

Mr. Shibuya: Okay. Thank you.

Mr. Bagoyo: Thank you so much.

Mr. Shibuya: I would like to have, if there's no – oh, Commissioner Mardfin.

Mr. Mardfin: Quick one. On page 64, you're talking about how this is consistent with the general plan of the County of Maui and you pick up general plan theme number four to maintain a viable economy and some other things. But, you neglect to mention that we also in the community, in the General Plan, the support for agriculture and you're taking this out of agriculture, granted it's pasture lands. But I think fairness would dictate that you put in a paragraph or two about agriculture and how, you know, however you feel like justifying it. Well, something to the effect, well, the General Plan supports agriculture. It hasn't been used like this since A&B abandoned it expect for pasture land and a feed lot which I think actually could be very good. But, just for even having that.

Mr. Bagoyo: Thank you. I did give some elaborations within the State Agricultural Functional Plan, and I will, I will make that note. Thank you.

Mr. Shibuya: Commissioners? No? I have a question if no one else has, I guess, on water wells. Can you elaborate on them? I believe you show on one diagram here four water wells, within a 500 foot perimeter I guess. And I was just wondering you mentioned throughout, there's only two that you're going to extract water from. Can you elaborate?

Mr. Bagoyo: Sure. I'll try. And we also have our civil engineer here. There's two existing wells

within the Consolidated Baseyard Subdivision, and we are working and negotiating with the current owner to use those two wells. They do have the capacity to supply the needs for this project. The only thing that we're going to be required to do is to increase the pump capacity of those two wells to accommodate us, and that will require approval by the State Water Commission. And before we can extract water from those wells, we have to do some testing. Mr. Tom Nance is our water consultant and he is confident that he will, is gonna to be able to accommodate those two wells for this project.

Mr. Shibuya: Okay. And are you planning to turn this pump and well and water source over to the County or are you gonna retain it for private use?

Mr. Bagoyo: It is currently owned by the association within the Consolidated Baseyard, and I believe it's going to remain as a private system at this point.

Mr. Shibuya: And so this is your means of providing water through this to have your subdivision approved?

Mr. Bagoyo: That's correct. There's no County water system close by within in this property. The closest distribution and transmission lines in terms of the Department of Water Supply is on west of Waiko.

Mr. Shibuya: And all owners of these properties who use the water will be assessed through this private conserve?

Mr. Bagoyo: That's correct.

Mr. Shibuya: Commissioner Ward.

Mr. Mardfin: I don't know if this is for Paul or maybe the Director. This property was included within the urban growth boundary when we were looking at it about a year or two ago. Is urban where you put light-industrial things? I thought light-industrial – I thought urban was more for residential housing and retail businesses.

Mr. Spence: Urban, whether something is in the urban district or not, it speaks to the intensity of the use. So something like light-industrial, industrial, is considered an urban use both by the State Land Use Commission and by the County. We wouldn't go and, I don't think we legally can go and zone a piece of agricultural land, you know, or allow, I should, we can't just legally go allow some kind of light-industrial use out in the middle of the cane field. You'd have to go through the permitting process, et cetera.

Mr. Mardfin: And they're going to go to the State Land Use Commission any way because this is bigger than 15 acres?

Mr. Spence: Yeah. Yes. And as was commented, this is within the proposed growth boundaries for the Maui Island Plan to be within the urban district.

Mr. Mardfin: But you wouldn't, if you had a, if it were State Zoned Rural, you wouldn't allow a light-

industrial there.

Mr. Spence: No, they could still –. I mean, there's conditional permits and stuff, but we would probably recommend you go through the change in zoning process anyway.

Mr. Mardfin: Okay. Thank you.

Mr. Shibuya: Commissioner Wakida.

Ms. Wakida: Thank you. On page 58, you have a couple of statements and you say that the commercial component will reflect a rural sense of Waikapu Village and that's unique to the Community Plan and the historic full setting of the region will be reflected in the proposed projects traditionally based planning and design of the subdivision. I think you need to explain how that's going to happen. I mean, it looks like the light-industrial subdivision. I don't see how you set out to accomplish this historic setting and rural sense and all that sort of thing.

Mr. Bagoyo: One of the things that we've discussed with the Waikapu Community Association when we met with them before drafting the Draft EA is to make sure that the design will reflect, you know, the kind of, the old Waikapu Village. And one of the things that they have suggested is some kind of a walking – they wanted to make sure that they can walk from the existing village into this, to this property, and we told them we were going to try to accommodate that kind of sense of a village. And I had communicated this to the owners that we need to encourage the lot owners to design it in a way that will be sensitive to the natural place of Waikapu.

Ms. Wakida: Good, yeah, I would like to see a little bit of expansion on that, that comment on how this plans to be accomplished.

Mr. Bagoyo: Thank you.

Mr. Shibuya: Commissioners, anything else? I have a concern relating with renewable energy. You don't have anything in there, but I would like to have you consider providing some renewable power to your units because they will now add to the total amount that MECo has to provide. And at the same time we have our RPS, which is the Renewable Portfolio Standards, with goals for the entire State as well as for Maui County. And if we don't contribute minimally to that then we're in deep trouble. I'm talking about all of us are in deep trouble, not just you. So if you can address that and somehow, coming up recommendations or proposals of how you're going to generate renewable power which provides for this additional power to supplement your load, your demand right now.

Mr. Bagoyo: Thank you so much Commissioner Shibuya. It's actually one of the comments made by the Department of Business and Economic Development and we responded to their comments. It will be included in the Final EA.

Mr. Shibuya: Okay. Okay.

Mr. Bagoyo: And that's one of their major comments is to encourage the owner to please consider PV and solar.

Mr. Shibuya: That's correct. Thank you very much.

Mr. Bagoyo: Thank you.

Mr. Shibuya: Commissioners, any others? Water storage is another concern. We know that during the seasons wherever your aquifer, ground water aquifer is, you're extracting that with whatever capacity you're going to describe. The problem comes in when we are in a drought situation, and we have to address your subdivision owners, homeowners. How do we address it when you don't have a storage capacity? You may want to consider some storage capacity and/or alternate way of obtaining water from some place.

Mr. Bagoyo: The existing Consolidated water system is they do have an existing storage. I believe it's 340,000 gallons for that purpose.

Mr. Shibuya: Okay, as long as you can be assured of how many months of storage is it equivalent to because you have storage, but you're giving us 300,000 gallons. What does that mean in a layman's term for all of us? It means that we can exist for one month, or, you know, three months or 10 months. That's what I need to know. But I don't need to know now, but it's just something that you address in your Final EA.

Mr. Bagoyo: If I may. A storage is a function of your fire protection. Normally it's sized according to the required fire protection, having been with the Department of Water Supply years ago, as your Director. For example, for commercial, we are required to provide 4,000 gallons per minute for four hour duration. That is your code, and we will comply that code. In this case, there's more capacity than is required by the code. But we will, we will address that.

Mr. Shibuya: Yeah, and you'll address the energy consumption because you're gonna have to pump it up to that reservoir, probably elevated reservoir, or storage tank so that you have gravity feed pressure, right?

Mr. Bagoyo: That's correct.

Mr. Shibuya: Yeah.

Mr. Bagoyo: Thank you Commissioner Shibuya.

Mr. Shibuya: Anything else members? Nothing. Okay, very good.

Mr. Bagoyo: Just a final note, just on behalf of the applicant and the owners, I just want to thank you for your comments and we'll finalize the EA. And we'll be submitting it back to the Planning Department because Mr. Martin Luna is waiting for him to file the District Boundary for the State Land Use Commission, so we appreciate your comments. Thank you so much.

Mr. Shibuya: Tell Martin to work faster. Is he here?

Mr. Fasi: He left.

Mr. Shibuya: He left. Well, Planner Fasi, would you summarize for us some of the comments that the Commissioners provided? And then so that we at least can see whether we got all of our points recorded.

Mr. Fasi: I have five items here. The first one is the Malama Environmental response. We want that include. That came from Commissioner Wakida. The second item is include a paragraph regarding reducing the ag land to urban classification. That came from Commissioner Mardfin. And on page 58, how will the project reflect the real sense of the Waikapu Village in its design standards? That needs to be addressed. The fourth item is consider renewable energy alternatives. And the fifth item is consider the water storage capacity and put it in layman's terms. How many months or days of storage capacity is it? And the energy consumption used to pump that water to get it to the storage capacity. Those are the five items I have.

Mr. Shibuya: Okay. Any other additions Commissioners? If none, that's it. Welcome Mr. Luna. I told him that I wanted to see you pressing on with your application. Well, what are you doing here? You should be back in your office processing it. Thank you very much. Can we have the Director, please introduce the next item please?

E. COMMUNICATIONS

1. **Further update on the status of the mediation and written settlement agreement between the parties on the Grand Wailea 310-Room Addition Special Management Area Use Permit application: (original update provided at the February 14, 2012 meeting.):**
 - a. **MR. ISAAC HALL, attorney for SHAWN HORWITZ, TERRI ZAGER, CRAIG ZAGER, TIM CONNER, KENNETH HAWKINS, ROBERT LEE, GILA WILLNER, RANDY BOWEN, JOHN SALINAS, JAMES L. PAYNE, JOSE FIGUEROA, JEFFREY MANDELBAUM, NINA S. YOSHPE, ANDRE MAGNINOT, R. TYLER WHANN, DEBORAH CROSS, and MURRAY JAFINE with respect to ROBERT LEE, GILA WILLNER, RANDY BOWEN, JOHN SALINAS, JAMES L. PAYNE, JOSE FIGUEROA, and MURRAY JAFINE submitting a Petition to Intervene dated September 8, 2009 on the applications by MR. WADE FISCHER, Vice-President of Resort Development, PYRAMID PROJECT MANAGEMENT LLC requesting a Step 1 Planned Development Approval, a Step 2 Planned Development Approval, and a Special Management Area Use Permit for the proposed Renovations and Guestroom Expansion at the Grand Wailea Resort and Spa at 3850 Wailea Alanui Drive, TMK: 2-1-008: 109, Wailea, Island of Maui. Improvements include renovations to hotel public areas, cultural garden, and landscape improvements, expansion of pool activity areas, and 310 additional guest rooms housed in eight (8) extended and detached buildings throughout the hotel property. (PD1 2009/0002) (PD2 2009/0001) (SM1 2009/0006) (A. Cua) (Public hearing on SMA Use Permit was conducted on September 22, 2009.)**

The intervention request was granted at the November 23, 2010 Maui Planning Commission meeting and Glenn Kosaka was selected as the Mediator.

- b. MS. DANA NAONE HALL, Intervenor Pro Se submitting a Petition to Intervene on the applications by MR. WADE FISCHER, Vice-President of Resort Development, PYRAMID PROJECT MANAGEMENT LLC requesting a Step 1 Planned Development Approval, a Step 2 Planned Development Approval, and a Special Management Area Use Permit for the proposed Renovations and Guestroom Expansion at the Grand Wailea Resort and Spa at 3850 Wailea Alanui Drive, TMK: 2-1-008: 109, Wailea, Island of Maui. Improvements include renovations to hotel public areas, cultural garden, and landscape improvements, expansion of pool activity areas, and 310 additional guest rooms housed in eight (8) extended and detached buildings throughout the hotel property. (PD1 2009/0002) (PD2 2009/0001) (SM1 2009/0006) (A. Cua) (Public hearing on SMA Use Permit was conducted on September 22, 2009.)**

The intervention request was granted at the November 23, 2010 Maui Planning Commission meeting and Glenn Kosaka was selected as the Mediator.

An action may be taken regarding deadlines for the submittal of written settlement agreements or some other action may be taken.

Mr. Spence: Yes Commissioners we are on Item E1. This is to update the Commission on the status of mediation and written settlements between the parties for the Grand Wailea 310-room addition SMA Permit. So, I'm not sure who you want to go first. Ann Cua.

Mr. Shibuya: Ann Cua, I guess.

Ms. Ann Cua: Good afternoon Chair and members. Very briefly, at your last meeting on February 14th this matter was placed on the agenda. The parties as well as Mr. Kosaka addressed you in terms of the status. You did put it back on today's agenda asking only for the parties to be here, not Mr. Kosaka. To date, the Planning Department still not has, still has not received a signed settlement agreement. Although we do understand that they are, they continue to make progress. And with that, I'd like to turn it over to the parties to address you personally.

Mr. Shibuya: Okay. I guess we can have a brief summary of what you can memorialize, not so much as a discussion –

Mr. Martin Luna: Yes Mr. Chairman.

Mr. Shibuya: – on the other items because that item you can hash it out together. Okay?

Mr. Luna: Okay.

Mr. Shibuya: Thank you.

Mr. Luna: Mr. Chairman, members of the Commission, I'm Martin Luna. Jay Hanlon had been making representations to this Commission previously. But because we've been able to work something out, and I'll report on that in a few minutes, I asked Jay to save our clients some money and not come over and fly from Honolulu, so I've had to step up to make this presentation this afternoon.

After the meeting two weeks ago, the parties got together several times and were able to reach a settlement on the issues that were unresolved two weeks ago. So for the Hoolei settlement agreement, the issues have been resolved. The parties are in the process of reaching a settlement on the Dana Hall intervention. There's one issue unresolved, but both Jay and Isaac have committed to work out that one issue and resolve it this week. So Jay and Isaac have committed to have a final draft of each settlement agreement by this Friday.

Mr. Shibuya: Okay. Thank you very much. Thank you. Mr. Hall?

Mr. Luna: And Mr. Hall is here and he can either confirm or make other comments.

Mr. Shibuya: Well, Mr. Hall, do you pass? Okay, thank you.

Mr. Lay: I have a question.

Mr. Shibuya: Go ahead Commissioner Lay.

Mr. Lay: So does this mean at our next meeting we'll be getting an update whether or what has been resolved?

Mr. Spence: We'll leave this on the agenda, and hopefully it leads from what Mr. Luna is reporting. I think we may have something to act on.

Mr. Shibuya: He seemed optimistic about it. Okay.

Mr. Spence: Mr. Hall, would you please identify yourself?

Mr. Isaac Hall: Isaac Hall. I'm not sure I'll have a signed document by that time. I would have liked to have been back in my office working on this, but now I've had to sit around here and report to you.

Mr. Shibuya: Right. Are you close to memorializing it?

Mr. Hall: I'm working on it. But I've got clients on the mainland.

Mr. Shibuya: Okay.

Mr. Hall: It's not as easy as you think. I've got other things to do. They're in bankruptcy. They can't build anything. There's nothing in it for the unions.

Mr. Shibuya: Oh my. Okay. Well, thank you very much.

Mr. Hall: You're welcome.

Mr. Shibuya: I was going to ask you to do some more magic.

Mr. Hall: Well, we did. I gotta say the meetings we had were very productive.

Mr. Shibuya: Well, thank you very much. Thank you.

Mr. Lay: Who's at bankrupt?

Mr. Hall: Who's in bankruptcy?

Mr. Lay: Yeah.

Mr. Hall: Grand Wailea Hotel is in bankruptcy.

Mr. Luna: I want to respond to that because that's what Mr. Hall has been saying this past year when that was filed in February 1st of 2011. But we've got an order from this Bankruptcy Court to proceed. That was clearly done in September of this year, so there's nothing holding things up with the Bankruptcy Court. With Mr. Hall keeps repeating that, I want to make it clear as to what the situation is. And the Planning Department has a copy of the order from the Bankruptcy Court allowing us to proceed and continue.

Mr. Shibuya: Okay.

Mr. Hall: I'd like to clarify that.

Mr. Shibuya: Thank you.

Mr. Hall: What the Bankruptcy Court did was this to stay and say they could get their permits. But as far as having money to construct, the Bankruptcy Court has not said you have the money, you can go ahead with your project, you can build it. They never authorized them to spend any money. They're still in bankruptcy, which means when they're in bankruptcy you don't have enough money to pay your operating expenses. That's where they are. Bankruptcy Court say yeah go ahead and get your permits. That's all they said.

Mr. Lay: I have a question again too.

Mr. Hall: Yeah.

Mr. Lay: I'm hoping that it's not a burden with you coming in here and letting us know how this is coming along because we want to see this thing move forward. Is there –

Mr. Hall: It is a burden to me. I just spent two hours sitting here when I had spending all morning working on the settlement agreement.

Mr. Lay: Well, you understood that there are people that are waiting for jobs.

Mr. Hall: I know that, but what I'm trying to tell you is there aren't any jobs that are going to be coming no matter how fast you get this.

Mr. Lay: Until this resolved.

Mr. Hall: No. You can issue your permits. They're in bankruptcy. They just got an extension on their reorganization plan for another bunch of months. So, you know, they'll get their permit, but nobody has any authorization to construct what they get a permit for from the Bankruptcy Court.

Mr. Shibuya: Okay. Yeah, it's outside –. We just want –

Mr. Hall: I, I hope nobody is promising unions jobs because you know this, they're in bankruptcy.

Mr. Shibuya: Okay. Commissioner Ball.

Mr. Ball: I'm trying to remember back a few weeks ago – we were kind of pressed to put this on this agenda. What was the purpose for that? Because now it seems like it's just being delayed. But I don't know. Does that mean we could say, look this things got to be resolved by this meeting or was it just, well, let us know what's going to happen in two weeks? I can't –

Mr. Shibuya: We tried to get the mediator to resolve this and we've come to a point where they are working on memorializing some of their agreements. It will probably take, hopefully, less than a week or two, maybe, I don't know. I trust you you're going to do magic.

Mr. Hall: We're working on it.

Mr. Shibuya: Yes sir. I understand.

Mr. Hall: I've never been monitored like this by the Commission –

Mr. Shibuya: Okay.

Mr. Hall: – for a project that's in bankruptcy. You know, I don't get it.

Mr. Shibuya: Okay. Well, thank you very much.

Mr. Hall: Yeah, you're welcome.

Mr. Spence: Do we need to take public?

Mr. Shibuya: Could I –?

Mr. Luna: When he says there's no funds, I mean, he's speculating. It's in bankruptcy, but there's various for bankruptcy and it's not a bankruptcy of Chapter 7 where there's no money at all. We're getting paid as we move along. Now his point is maybe there's not enough money for construction. Well, we won't know that until he finishes the settlement agreement, and we can proceed. Then we can find out for sure whether we've got the money or not, and whether he's right. We're saying we're right, they've got the money to proceed, let's go.

Mr. Shibuya: Alright. Okay, thank you.

Mr. Mardfin: Mr. Chairman?

Mr. Shibuya: Yes?

Mr. Mardfin: I'd like to suggest that we move on to the next topic because getting them –

Mr. Shibuya: Understand.

Mr. Mardfin: – bouncing it back and forth probably is not terribly helpful towards reaching the settlement.

Mr. Shibuya: I was just going to open it up to public testimony at this point. Anyone in the public would like to say anything on this matter? If not, public testimony is closed and we'll get back with you and we'll keep this issue on the agenda. Thank you. Ann?

Ms. Cua: No, just wanted to say that once we do get that settlement agreement, we will be prepared to put it on the next available agenda and we're hoping that's going to be in March.

Mr. Shibuya: Okay. Thank you very much Ann.

Mr. Ball: I have a question. I see here on the bottom there's a last sentence, do we take action regarding the deadline of the submittal of the written settlement agreement?

Mr. Spence: Yeah, I don't think we can take action on an agreement.

Mr. Shibuya: We just wait.

Mr. Ball: That we don't have, right?

Mr. Shibuya: Yeah, that's the only action we can take. Yeah, we don't have it.

Settlement agreements are still in the process of being finalized and will be placed on a future agenda when received by the Department.

- 2. BDG, INC. requesting a County Special Accessory Use Permit for a Farmers Market on approximately 25,123 square feet of land located at 70 Lono Avenue in the B-2 Community District at TMK: 3-7-005: 012,**

Kahului, Island of Maui. (ACC 2011/0001) (K. Wollenhaupt)

The Commission may take action on this request.

Mr. Shibuya: Next item. Director Spence, could you please introduce the next item?

Mr. Spence: Commissioners, we're still in agenda (E), second (E), communications, number two, is BDG Inc requesting a County Special Accessory Use Permit for a Farmers Market on Lono Avenue in Kahului. And once again, we have Mr. Kurt Wollenhaupt.

Mr. Wollenhaupt: Good afternoon members of the Maui Planning Commission. The item before you at the moment is another Special Accessory Use Permit. I believe that you're familiar with the Accessory Use Permit process. This is for a farmers market. Again, it's in the B2 Community Business District, and item 626 of the Maui County Code is amended to any other retail business or commercial enterprise which are similar in character or rendering sales of commodities or performance of services to the community and not detrimental to the welfare of the surrounding area, provided however that such uses shall be approved by the Commission as conforming to the intent of the article. Consequently discretionary review by this Commission is accomplished through the accessory permit process, and making the findings that a farmer's market, in this case being Tings Farmer's Market, Guy Ting applicant, is similar in character to the rendering of sales of commodities to the surrounding community. Mr. Jordan Hart will be presenting a power point presentation which is brief, but will describe the project in general. After which I can answer questions and we can open the testimony part of the review today.

Mr. Jordan Hart: Good afternoon Commissioners. My name is Jordan Hart. This is an extremely brief presentation. I'm here with the applicant, Guy Ting. We're talking about the old, the Treats and Sweets location on Lono Avenue. The purpose is to obtain a County Special Accessory Use Permit in the B2 Zoning District as Kurt said. So this is a location map. The blue at the top is the Kahului Harbor. The project is bounded by Lono Avenue on the east side. On the North side is Vevau Street. You can see the Kahului Shopping Center is across the street from the pink shaded property site. On the west side abutting is the Kahului Library.

The State Land Use classification is Urban. Wailuku-Kahului Community Plan is Commercial. County zoning is B2 Community Business District. Flood zone is X. It's an area of minimal flooding hazard. And the project is in the Special Management Area. The applicant has filed a Special Management, an SMA Assessment application for the temporary structures. These tents will be erected at 6 a.m. every morning, and taken down by 6 p.m. every evening. And the intent will basically be to house four vendors who will be selling fruits and vegetables.

Access is off of Lono Avenue and Vevau Street. The parcel size is 25,000 square feet. There's an existing facility which is Treats and Sweets. Here's the project site plan. The red shaded box on the right side of the property is the existing Treats and Sweets facility. There's a storage area at the back, at the south side of the parcel. And then the tannish colors are four separate blocks of tents. Each tent is 100 square feet. They're going to be put together in groups of four, and four separate vendors will occupy these areas. And so the idea is that you have an existing commercial property and so they're just going to be doing additional commercial activities on the site.

There's 19 stalls existing onsite. The Treats and Sweets only requires 11 stalls total, so there's four stalls for use by the – four stalls are required for the vendors, and there's an additional four stalls remaining as excess parking. Here's some site photographs. This is looking south. Lono Avenue is on your left side. This is the front part of the east side parking lot. Treats and Sweets is there. This is the central portion of the property, and this is the west side of the property. On the right side of the photograph that's the Kahului Library. And then the back of Cupies is straight ahead. And three vendors will be in this area here, and one additional vendor will be kind of where these palms are, on the left side of the photograph up front. This is the site again. But that's basically the presentation. It's just four vendors under tents, operating between 6 a.m. and 6 p.m., selling fruits and vegetables.

Mr. Shibuya: Commissioner Freitas?

Mr. Freitas: I have a question. In the old Fun Factory building, right now, they've got a farmer's market in there. Is that going to move across the street? They're right across the street, facing Kahului, the Old Kahului Shopping Center.

Mr. Hart: I don't think that they'll be coming to this site if that's what you're asking.

Mr. Freitas: Yeah, but there's a functional farmer's market now there.

Mr. Hart: Yeah, basically there is – you need a Special Accessory Use Permit to operate open markets and so the applicant would like to do the same thing, but they need to get a permit. If you want to do it indoors, it's a commercial or retail use, and you wouldn't need a special permit to do that. And so that's what he's doing is he's basically operating indoors so there's no need for additional permitting except for any kind of building permit that you would need to renovate or whatever.

Mr. Freitas: Is that Ting's market too, the one . . . (inaudible) . . .

Mr. Hart: Oh, no, that's a separate person.

Mr. Freitas: Because they just opened recently too, right?

Mr. Hart: That operation? Yeah, I believe that's correct.

Mr. Shibuya: Commissioner Mardfin.

Mr. Mardfin: Just so I'm more in it, is this the Dairy Queen?

Mr. Hart: That's correct, yeah.

Mr. Mardfin: You know, there were some people concerned about –

Mr. Shibuya: Commissioner Ball, go ahead.

Mr. Ball: This says you have to get a building permit, you mentioned something about?

Mr. Hart: No. I'm sorry, I shouldn't –. I was referring to basically if you're doing, if you're doing a market, a farmer's market indoors, you wouldn't need –

Mr. Ball: No, I'm sorry, this says building permit shall be obtained.

Mr. Hart: If necessary. If you're going to do perm, if you're doing permanent tents, you would need a building permit. But if you do tents that you erect and take down in the morning and evening, then you don't need a permit.

Mr. Ball: My follow up question is that how are these fixed to the ground so they don't blow out . . . (inaudible) . . . ?

Mr. Hart: How are you fastening the tents to the ground so they don't blow away? You want to come?

Mr. Guy Ting: Hello, my name is Guy Ting. The farmers will put weights and fix the tents down. I seen them do it before so they're really good at it.

Mr. Shibuya: Okay. Thank you. Commissioner Wakida go ahead.

Ms. Wakida: Commissioner Mardfin is –. I had a question about how many vendors. There's a lot of number thrown around. You said four, but on that picture you show four under each tent so is that four vendors under each?

Mr. Hart: Four total vendors. Just to give a brief background. The Fire Department has a threshold of 500 square feet that you basically need to just stay under otherwise you're triggering additional requirements. So the applicant has 100 square foot tents and he can put four of them together to basically create an area where a vendor can set out their fruits and vegetables. So one vendor would occupy each of these 400 square foot areas.

Ms. Wakida: Would that be four, potentially four different vendors?

Mr. Hart: Four. Well, a maximum of four vendors total on property.

Ms. Wakida: Well, the Police Commission or the Police Department responded by saying there was a project proposes to run up to 44 vendors on this site location.

Mr. Hart: Initially, that was the initial proposal, and it was revised based on comments regarding the Police Department's comments regarding traffic and also regarding parking. And so, basically, the project was significantly scaled back from 44 to four.

Mr. Shibuya: Commissioner Mardfin.

Mr. Mardfin: And this is a follow up on that. I was going to ask the same kind of question. And the reason each of the four vendors has four 100 foot tents is because if you said there were going to be 16 vendors each with one 100 foot tent, you'd need a lot more parking.

Mr. Hart: I believe the Planning Department can reply to that, but I think that the parking stalls are triggered by square footage and not by the number of individual vendors.

Mr. Wollenhaupt: In the original, you're correct the history, we did start with 44, 44 vendors. Even though the Department does look at, they look at it as on a square footage basis, that's why you get the requirements for the relatively low numbers of parking. So the concept of having 44 vendors triggered well that means 44 pickups and 44 different. That was just not going to work. So we got it down then to the four vendors meaning that's four vendors. That doesn't mean 16. That meant four vendors which seemed like that was a reasonable amount of traffic that could be accommodated especially as there's additional vendor parking area in addition to the 19 other spaces that would be used by patrons. And then also looking at, I think, the hours of operation, I believe, are Monday thru Friday, from six to six, and that there could be, the idea that the Treats and Sweets probably would get busier at the end of the day. Although there would be a lunch crowd. But with four vendors that could accommodate a early morning crowd because many farmer's market tend to function early in the morning. So that four seemed reasonable. It did meet the requirements as they're codified for the parking based on square footage which provided a balance to this project. It seemed reasonable. And I understand your point that we don't base it on number of vendors. It based on the square footage.

Mr. Mardfin: But if you came in here and told us that there's going to be 16 vendors, each with a 100 square foot tent.

Mr. Wollenhaupt: The parking would have to be, would be the same from a parking analysis perspective. But realistically we thought, well, that would mean 16 trucks most likely.

Mr. Mardfin: Yeah.

Mr. Wollenhaupt: So that's why –

Mr. Mardfin: It doesn't seem to work.

Mr. Wollenhaupt: That's why the four vendors was a reasonable accommodation that they'll ascribe to and not 16 vendors.

Mr. Mardfin: And I see four excess stalls.

Mr. Wollenhaupt: Right, that believe are our vendor parking on the south side.

Mr. Mardfin: No, well, you have on, you have four for the business – I presume you're talking about these vendors.

Mr. Wollenhaupt: That's right.

Mr. Mardfin: And then an excess parking, so those four are for customers, in effect, unless you don't expect customers to park there.

Mr. Wollenhaupt: That would be for customers coming and going.

Mr. Mardfin: You expect that roughly four customer at any given time.

Mr. Wollenhaupt: I'm not sure how the volume.

Mr. Hart: Yeah, I'm not sure how you want to address the parking regulations.

Mr. Wollenhaupt: But that was an issue that we did go back and forth which caused this project to be down scaled because these questions did come up. 44 was too many. You have to accommodate. There's no parking regulations regarding transient parking coming in and out. So we had to think, okay, how can you reduce the number of vendors, reduce the square footage, which would be reasonably accommodated. Also considering that you do have all the 11 parking spaces for Treats and Sweets which wouldn't have a morning breakfast crowd, so –

Mr. Mardfin: Okay.

Mr. Wollenhaupt: Yeah.

Mr. Shibuya: Commissioners, I just wanna tell you that there's a couple of Commissioners here that need to retrieve their cars. You know their cars will turn into pumpkins pretty soon, and so by 4:15-ish if they need to go they will leave. Also our glorious and legal advisor has to leave because he's going to be converted into a rat by 4:30 so we'll try to speed it up and get as much done as we can. Thank you. Commissioner Mardfin.

Mr. Mardfin: Kurt, you mentioned in the report there was a request for service. . . . (inaudible) . . .

Mr. Wollenhaupt: That is my understanding. Yes, there was.

Mr. Mardfin: Do you happen to know if the person that raised that request for further concern is happy with the way this is working out?

Mr. Wollenhaupt: I'm not sure. I'm not sure if they're happy. I'm not sure their level of happiness now, but – but the request for service did –. It was an operating farmer's market. The request for service did shut them down. They were told that they needed to come for this permit, and that's why we're here today. So the request for service was addressed in the . . . (inaudible) . . . by shutting the operation down.

Mr. Mardfin: And what was the scale of it at the time the request for service was made?

Mr. Wollenhaupt: That's probably best answered by Jordan on number of vendors and hours of operation.

Mr. Hart: Three vendors previously.

Mr. Mardfin: At what area?

Mr. Hart: The same area that's being proposed. Oh, what square footage?

Mr. Mardfin: Right.

Mr. Ting: . . . (inaudible) . . .

Mr. Mardfin: Okay. Thank you.

Mr. Shibuya: Commissioner Wakida. This is quick. Are you limiting this just to food goods to be sold?

Mr. Hart: That's all that's proposed.

Ms. Wakida: And so you won't be selling t-shirt and all that other stuff?

Mr. Hart: We're not proposing to do that right now. This request, this application is for fruits and vegetables.

Ms. Wakida: Okay.

Mr. Shibuya: I just have a quick question. Was this project coordinated with Kahului Library, the Lono businesses close by, neighboring UH dormitories, and the churches?

Mr. Hart: No. Special Accessory Permit has very limited requirements. I mean, I think that you heard some of the comment for the other application that was here before. It's basically that this is a commercial use on a commercial parcel, but there's not a good place for open air sales in our code. And so because of that we're here. So there's not a requirement to do a mail out for 500 foot, to hold a public hearing. There isn't a requirement to make any publication of this, this meeting. This is not a public hearing item. It's just, it's – this is a much smaller permit.

Mr. Shibuya: I'm just concerned because in the community in this area you have limited parking and then you have a whole bunch of parking that's available, very tempting parking across at 74 Lono, you know, a business area there, and there might be some fall out there and then people crossing the street.

Mr. Hart: Okay, well, the way that I can address that is that we have at the bottom of the site plan, on the bottom left, there's an area for all the vendors to park their vehicles, and then we have the four stalls that would be required by code, and then we have four additional that are excess. And so, you know, we're 100% beyond what we're required to provide for parking. And I guess that's –

Mr. Shibuya: And is this a Conditional Permit? No?

Mr. Spence: This is a Special Accessory Use Permit. What it is it's not one of the things listed in the code that is a permitted use, so what we do is we bring it to the Commission to say that, yes, this is compatible with, you know, the other uses. You can consider those things.

Mr. Shibuya: Commissioner Hiranaga.

Mr. Hiranaga: What are the requirements for restrooms?

Mr. Hart: No restrooms are proposed to be provided. The applicant is willing to provide portables on site.

Mr. Hiranaga: So question for staff. So there's no requirements for any type of toilet?

Mr. Wollenhaupt: None that I'm aware of. No, that didn't come up in any agency comments.

Mr. Shibuya: Commissioner Mardfin.

Mr. Mardfin: I wasn't totally thrilled with Jordan's answer to the question about what are we going to be selling there when we don't think about that at this time. That worries me.

Mr. Hart: Wait, I'm sorry. I believe that what I said was what's being proposed is fruits and vegetables.

Mr. Mardfin: Yeah, and you said it in such a way that that could change, and so –

Mr. Hart: I'm not requesting a, we're not requesting a permit for anything more than that. Sorry.

Mr. Shibuya: Okay.

Mr. Mardfin: Mr. Chairman, what I'd like to see is that the one of the conditions be that is restricted to what it says in conclusions of law that this is restricted to operations of a farmer's market that provides, that renders sells of commodities, farm products, fruits and vegetables.

Mr. Shibuya: Okay. Thank you.

Mr. Mardfin: That's what they're proposing, that's what we're giving them.

Mr. Shibuya: Okay.

Mr. Lay: If I may.

Mr. Shibuya: Yes, Commissioner Lay.

Mr. Lay: Thank you. I'm just curious about the look. You said that you're going to have four tents in each, in each given area that you've got highlighted in tan, right? So you're looking at, you said, 100 square foot per tent, right? So you're looking at a 10 by 10 sports tent kind of thing or –?

Mr. Hart: Yes basically.

Mr. Lay: Okay.

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

Mr. Mardfin: Do those tents are fire retardant?

Mr. Hart: No, there's – we have a comment from the Fire Department. Basically once you get up to 500 square feet that's when the fire retardant requirements and things like building permits kick in. So these are temporary tents that don't have those kinds of requirements. They do have separation requirements from the main building which we are complying with. We did – if you look at the comment and a reply to the Fire Department we addressed all of these items. There's some that apply directly and some that don't apply to this scale of temporary structure.

Mr. Shibuya: Commissioners, if you have no comments, I can open it up for public testimony. Public testimony on this issue is open. Any comments from the public? Hearing none, or seeing none, public testimony is closed. Kurt, would you mind giving us a recommendation?

Mr. Wollenhaupt: The Department of Planning, in reviewing this Accessory Use Permit finds that a open farmer's market, such as been noted in the application, with the limitations based on the number of vendors and the square footage of the farmer's market would meet the intended uses of the B2 Community Business District recommending approval of the farmer's market subject to the conditions as noted in your report. While many of these conditions are relatively standard conditions, the first condition would indicate that the use permit shall be valid until March 1, 2013. This would give the farmer's market one year in order to make a determination if the parking is adequate. If such as a location is working or adjacent business operators, the library, the dormitory, and it would give the Department a sufficient amount of time in order to examine if this is working. Now I'm not sure that the conditions that Mr. Mardfin stated will have to be voted on. But just to reiterate what that condition would be that the applicant shall limit sales to products, farm products, fruits and vegetables. But that would be –

Mr. Shibuya: That's part of the motion if they do make it.

Mr. Wollenhaupt: Okay. So that would be the Department's recommendation for this project.

Mr. Shibuya: Okay. Commissioner Mardfin.

Mr. Mardfin: I move approval of the County Special Accessory Use Permit as recommended by the Department with the inclusion of that last condition.

Ms. Wakida: Second.

Mr. Shibuya: Oh, it's moved by Commissioner Mardfin, seconded by Commissioner Wakida. Members, discussion?

Mr. Hiranaga: Could we have that additional language repeated again?

Mr. Shibuya: Okay. Can you repeat the –

Mr. Wollenhaupt: Well, we can wordsmith this, but right now it would be that the applicant shall limit sales to farm products, fruits and vegetables. I wasn't sure, the farm products, I wasn't quite sure what that would encompass.

Mr. Hiranaga: How about ag related products? What constitutes a farm?

Mr. Wollenhaupt: That, that, well, that was the question I –.

Mr. Hiranaga: A barn.

Mr. Wollenhaupt: I guess that could be rabbits. There was – we just want to make sure that it wouldn't be encompassing things like chickens, or live, or rabbits. I don't think that's the intent.

Mr. Hiranaga: Well, if it meets DOH requirements it's fine.

Mr. Wollenhaupt: Yeah. See, the letter from DOH said that, the only comment they had – sales of whole fruits and vegetables are allowed by the Department of Health except sprouts and ready to eat salad greens.

Mr. Shibuya: Okay. Commissioner Hiranaga?

Mr. Hiranaga: So ag related. So you couldn't do like slaughtered organic chickens. You can sell that.

Mr. Shibuya: You could sell probably live chickens, or live pigeons.

Mr. Hiranaga: Or say passion fruit jelly or something. Can you sell that?

Mr. Wollenhaupt: And then it goes on to say fruits and vegetables, or cut or processed in any way, they must meet the requirements of HAR Chapter 11-12, Food Establishments Sanitation, which I'm not up to date on.

Mr. Hiranaga: I just hate being overly restrictive where you then put the nail of death on this project. I mean, you know, we want to give them an opportunity to succeed. So just be careful those limitations you're placing on your operations. So if it needs to be ag related, then so be it. You know, what is farming?

Mr. Shibuya: So the motion, does that include that ag relationship?

Mr. Mardfin: I'll accept the ag relationship as opposed to the word "farm" if you prefer. I think it accomplishes the same thing.

Mr. Shibuya: How about the second on the motion?

Ms. Wakida: Yes.

Mr. Shibuya: Okay. Accepted.

Mr. Wollenhaupt: So the language would be that the applicant shall limit sales to agricultural related products, fruits and vegetables?

Mr. Shibuya: Yes.

Mr. Wollenhaupt: That was another. Well, I guess that might be under the agricultural related products.

Mr. Shibuya: Yes. Okay, members? Clayton, would you mind repeating the motion?

Mr. Clayton Yoshida: The motion, Mr. Chair and members of the Commission, the motion –

Mr. Hiranaga: Commissioner? I mean, Chairman? Vice-Chair?

Mr. Shibuya: Yes?

Mr. Hiranaga: Could I ask the if applicant has any comment to that additional condition or change because they haven't –

Mr. Shibuya: That's a good point.

Mr. Hiranaga: It's the first time for them to hear that?

Mr. Shibuya: Okay. Applicant, do you want to respond?

Mr. Ting: Knowing some of these farmers, they came to me and asked me about this so that's why I tried to pursue this course. They are struggling, so I would ask you folks to keep it as wide as possible as to the things they can sell, you know what I mean? Because it's not like –. The other farmer's market you mentioned across the street, I think was Dragons Farmer's Market – it was an indoor farmer's market – it actually went under. And the reason what I found out was they're trying to charge these farmers too much and they can't afford it. So this is, just that some farmers came and asked, so I said, well, let's go try it. But then I found out I had to take a whole bunch of steps. So I would ask you folks to keep it as wide for them as possible to make their business work.

Mr. Shibuya: Noted. Thank you. Any more discussions? No? Shall we take a vote? Okay, Commissioners, all in favor of the motion, please raise your hand. Is your hand up? Okay.

Mr. Yoshida: Eight votes in favor.

Mr. Shibuya: That's eight in favor. Okay. Any against? None. Okay, eight for, zero against.

Mr. Hart: Thank you Commissioners.

Mr. Shibuya: Thank you very much.

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

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

3. **KUTIRA CLAUDINE DECOSTERD and RAPHAEL SHARPE requesting a time extension until March 31, 2017 on their State Land Use Commission Special Use Permit in order to continue to operate the Kahua O Malio Bed and Breakfast, a four-bedroom bed and breakfast home located on 2.689 acres of land at 610 Huelo Road, TMK: 2-9-007: 036, Haiku, Island of Maui. (SUP2 2007/0005) (G. Flammer)**

The Commission may take an action on this request.

Mr. Shibuya: Next item. Can you introduce the next item, Communication Item?

Mr. Yoshida: We're on Item E2, Kutira Claudine DeCosterd and Raphael Sharpe requesting a time extension until March 31st 2017 on their State Land Use Commission Special Use Permit to continue to operate the Kahua O Malio Bed and Breakfast at 610 Huelo Road, in Haiku. The staff planner is Gina Flammer.

Ms. Gina Flammer: Good afternoon Commission. I recognize it's late in the day. Our applicant does have a 10 minute presentation. I'd be happy to yield my time to let her describe the project to you if that's okay with you.

Mr. Shibuya: Please.

Ms. Kutira DeCosterd: Thank you so much. I have been here three years ago, and some of you probably remember me. And I'll be very honored to tell you what our project is about. If the lights could be brought down. Welcome to the Kahua O` Malio Bamboo Forest Research Facility and Eco-retreat. May I introduce the crew of our land. This is myself, this is my husband which we owned the land since 1988. And also with our office manager and partner, and the young wwoofers, which are called willing workers on organic farm. And so once upon a time, you don't see it so good on here, maybe if you get some more –. It was just a piece of jungle with no roads, no water, no electricity, only hau bushes, Christmas berry and the invasive Ink berry trees. So nothing was on there at all. It was really a place where we had to have a great vision and perseverance and enough sweat and prayers to pursue this dream. And in the past 25 years we developed this land with hard labor to the most sustainable, ecology green place you could ever imagine. We researched alternative energy sources, sustainable lumber and created the research facility for bamboo and sustainable living. This land is also called "Resting Place of Mature Souls" in the Hawaiian – on the map of the Hawaiian text. And we honored this with the Hawaiian traditions by hosting Hula Halau and teaching native Hawaiian traditions such as Lau Hala weaving, growing gourd and Ipus, and dancing on the sacred lands. We also recorded a Hawaiian album and I was member for many years on the Halau, and the hula and chant.

We needed water and we started to creating a 120,000 gallon pond from our rain catchment from the roof, but this was certainly not enough and we needed some constant water supply. So needed a well. We drilled the well, 400 feet deep into the ground. But as you know, if you have well, you need a pump, we needed electricity. In 1980's and 1990's solar systems were not easy to come by and costs was extremely high. Sometimes the skies are cloudy for days on ends, and we did not produce enough power so we had to add a generator. We added the generator. It's biodiesel which fuel is made from vegetable oil. And it's much cleaner and comes from fast growing sources

such as corn, sunflower, and hemp oil. And then came the wwoofers. We needed help, and people from the age, from 18 to 65, who wants to learn the latest scientific discoveries on organic farming, alternative energies and ancient Hawaiian traditions, and creating self-sustaining environment.

We started the first bamboo farm in 1996. And we choose bamboo because it is a viable replacement for wood. It's one of the strongest building materials. Bamboo creates greater yields in raw material for use. Bamboo is a renewable resource for agro-forest reproduction. Bamboo is a critical element in the balance of oxygen and carbon dioxide in the atmosphere and helps reduce global warming. Clearly bamboo is an amazing plant and an answer to restore and preserve the earth for generations. I am definitely very much into bamboo because it's fascinating what bamboo can do.

The Kahua O` Malio Bamboo Forest was the inspiration for Bamboo Technologies. Bamboo Technologies serves economically and ecological housing throughout the world and it's a teaching facility as well. The Maui County Building Department was the first to ICC approve structural bamboo buildings in the United States and this is a really major, a great accomplishment. In 2009 there were about 60 approved bamboo buildings in Maui and Molokai, and now there are even more here and around the entire world. Even in Bhutan, through my connections with the government in Bhutan, I was able to introduce to them the newest advances in bamboo building technology. This was in support of the government's mandate to preserve 70% of Bhutan's hardwood forest. Bamboo is grass and renewable resource. So Bhutan has great bamboo, but they didn't know how to use it. And so the first bamboo house was built last year and I will be in . . . (inaudible) . . . integration of the these bamboo houses. They're very into tradition. The whole house is filled with Bhutanese design and the bamboo.

So the next point I have those flyers for you because I'm not going to read through, but I hope you're going to take it home. Gina is going to give it to you. What's the vision of bamboo, what bamboo can do as a restoration of the . . . (inaudible) . . . And so you can read it at your own leisure, but I think you will find it very interesting. That's the two chapters in my book about sustainability.

And then to fruit trees. So back to the land where I take you into other countries. In 2006, we put in oranges, lemons, avocados trees. I really tried to get those trees going, but in 2009, the wind was too strong, we didn't have enough water supply, and even we use bamboo as wind breaker in front of our papaya garden. It didn't really work with the fruit trees. So in 2011 we started to put fruit trees out and more we decided to grow more fruits and vegetables. We added 20,000 gallon water tank, and we are in the process of putting a micro irrigation water placement in so that our gardens have beets, kale, carrots, salads and some more. And everything looks really good in summer as you can see in those pictures. We were eating from our garden and we were happy till the wild boars attacked. Well, in 2011, we had to hire Len Radago a native of Hawaii and skilled in the art of hunting, and we set up traps on trails and large cages on the property. We caught 13 boars from baby pigs to 260 pounds. In late November, in 2011, we were informed by him that he spotted a new herd of 15 boars even larger than the ones before, 300 to 400 pounds. I can tell you when they come up straight to your house, they're quite scary and we put a big – they destroyed actually all of our garden. They even destroyed our parking lot and it was like wild Africa. Due to the droughts, the boars are coming more and more down to the lower lands and so that's certainly not – I'm not the only one that has that problem but they did really destroy our garden.

So we started to protect the gardens, we started to put big fence around, really seeing that the fence would tried to do it. This bamboo was not strong enough so we now have kiawe poles and big fence. We have to be stronger. We also eight chickens which are very happy and we enjoy their eggs, and we move them around in a portable coop. We have bee keeping which we have three bee hives and . . . (inaudible) . . . we harvest them twice, and we get great organic honey throughout the year. We also have a lot of coconuts, and bananas, and chico trees. And the coconuts we make . . . (inaudible) . . . We have also some organic white pineapples which takes two years before we can eat them as we can see. And one of my really passion is the vermiculture with worms. I love really working with the worms. We have the state of the art worm facility which we really need in order to restore the earth. The earth's soil is very depleted where I live because of . . . (inaudible) . . . winds and so the worms are phenomenal. And we also do composting. We have two compost stations. One for smaller compost and the big mulching station and which we mend our soil out there. We do – I'm talking very fast because I know you're all so . . . (inaudible) . . .

Recycling, we put on – all our guests has to learn about recycling. We wanted a zero garbage and we get everything to the recycling station. So what are we looking for, for travelers who want to contribute to a sustainable living, like to off set their carbon footprint, loves sharing and learning, interested in the social culture of the island and enjoys the fruits of the land. And what do we offer? Certainly the green spot on Maui and we educated them and we – when they leave they always take something home. I would like to end my fast presentation. We just recently helped a conference in Bhutan, February last month – no, we are still in February, this month, on the 13th of this month. And the President, Mr. . . . (inaudible) . . . from the . . . (inaudible) . . . and editor of, and columnist, of National Geographic Traveler's Chairman, World Traveler Tourism Council in . . . (inaudible) . . . delivered the floating address, and I would just read it because I think it sums it up what I believe in it when he says:

“Sustainable tourism may be the most significant transformation in the history of modern travel. As it continues to redefine the global tourism industry as we have known it. It also transforms the way people travel, emphasizing the meaningful experience that both enrich the individual traveler and helps to safeguard the culture and natural heritage in destinations around the world.”

And he added:

“This is not a trend or a fact, but rather a evolution of travel and tourism. We are living in a remarkable time of new and inspirational innovations and sustainable travel that is re-writing the way tourism business operates. It is also sparking a growing awareness among today's travelers about giving back to people and to planet. Those businesses that understand the sustainable tourism in transformation that is on the way and become part of the key business that prospers in the merchant global green economy.”

I can only speak to that because I see so many people really want to contribute to sustainability. And I was just out the other day on the boat and looked back in Lahaina, you know, where we all have sugarcane and a friend of mine who lives there for many years said to me, Kutira do remember the 41 shades of green of the sugarcane? And I said, no, but I remembered everything

green up there. So I would like to leave you with like the 55 shades of bamboo. May we plant the hills of Lahaina with bamboo and if you get to read later on you know why I love bamboo and why I think it's a solution for our sustainability and our situation we are in. Thank you so much for listening to me with my Swiss accent, and I give it back to Gina on this one.

Mr. Shibuya: Commissioners, any questions? No? Commissioner Mardfin?

Mr. Mardfin: Just a quick comment. I saw this three years ago when it came through. I had no problems with it then. I have no problems with it now.

Ms. DeCosterd: Thank you.

Mr. Shibuya: Commissioner Wakida?

Ms. Wakida: Just another quick question. I noticed you had a proposed septic on your site plan. Was that something that you were asked to do, to put in a septic?

Ms. DeCosterd: Oh, I have septic. And actually it just happened that my engineer who put all my septic in is right here too. No, I have everything in there, septic. I have two of them actually. Yeah.

Mr. Shibuya: Okay, thank you. Gina, can you present the recommendation for the Planning Department?

Ms. Flammer: I can.

Mr. Shibuya: Oh, public testimony. Are there any members in the public? If not, public testimony is closed. Recommendation please.

Ms. Flammer: The recommendation of the Department is to amend the former approval to extend the time period till March 31st 2017. The March date is because we want it coincide with the bed and breakfast permit. In consideration of the foregoing the Department recommends that the Commission adopts the Department's memorandum report and recommendation prepared for this February 28th meeting, and authorize the Planning Director to transmit said Findings of Facts, Conclusions of Law, and Decision and Order on behalf of the Commission.

Mr. Shibuya: Thank you very much. Commissioner Mardfin?

Mr. Mardfin: I move we accept the time extension as recommended by the Department.

Mr. Freitas: Second.

Mr. Shibuya: Okay, thank you very much. It's been moved by Commissioner Mardfin, seconded by Commissioner Freitas. Discussion, any members? None? Are you ready for the question? Can you, Clayton, can you repeat the motion please?

Mr. Yoshida: Uh, the motion is to approve the time extension as noted in the staff report.

Mr. Shibuya: Thank you. Members, all in favor raise your hand. Thank you. It's unanimous. Any opposed? None. Eight for, against zero. Thank you very much. Motion pass.

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

VOTED: To Approve State Land Use Commission Special Use Permit Time Extension.
(Assenting - W. Mardfin, J. Freitas, D. Domingo, L. Sablas, I. Lay, K. Ball, P. Wakida, K. Hiranaga)

F. ACCEPTANCE OF THE ACTION MINUTES OF THE FEBRUARY 14, 2012 MEETING AND REGULAR MINUTES OF THE SEPTEMBER 13, 2011 MEETING.

Mr. Yoshida: Mr. Chairman, we're at the acceptance of the action minutes of the February 14th 2012 meeting and the regular minutes of the September 13th 2011 meeting.

Mr. Shibuya: Okay. Can we have a motion to accept?

Mr. Lay: Move to accept.

Mr. Shibuya: The motion has been accepted by, I mean, made by Commissioner Ball. Any second?

Ms. Domingo: Second.

Mr. Shibuya: Second by Commissioner Domingo. All in favor say aye. Any opposed? No opposed. Unanimous Carolyn. Next item.

It was moved by Mr. Ball, seconded by Ms. Domingo, then

VOTED: To Accept the Action Minutes of February 14, 2012 and the Regular Minutes of the September 13, 2012 Meeting.
(Assenting - K. Ball, P. Wakida, D. Domingo, L. Sablas, J. Freitas, I. Lay, K. Hiranaga, W. Mardfin)

G. DIRECTOR'S REPORT

- 1. Planning Director notifying the Maui Planning Commission pursuant to Section 12-202-17(e) of the Maui Planning Commission's SMA Rules of his intent to process the time extension requests administratively on the following:**
 - a. Elleair Hawaii, Inc. requesting two (2)-year time extension on the Special Management Area Use Permit condition to complete**

**construction of the Maui Palms Hotel Redevelopment Project at TMK:
3-7-003: 007, Kahului, Island of Maui. (SM1 2001/0012) (G. Flammer)**

The Commission shall acknowledge receipt of the request. The Commission may decide whether to waive its review or review the time extension request at a future meeting.

Mr. Yoshida: We're under Item G1, the Planning Director notifying the Commission pursuant to your SMA Rules for this intent to process the time extension request administratively. First for Elleair Hawaii, Inc, requesting a two-year time extension on the Special Management Area Use Permit condition to complete construction of the Maui Palms Hotel Redevelopment Project in Kahului. The staff planner is Gina Flammer, and the Commission will decide whether to waive or not waive the extension.

Mr. Shibuya: Can the Commission approve it?

Mr. Yoshida: Uh, well, I guess the agenda says to waive or not waive. If they want to review then that will get a subsequent meeting.

Mr. Shibuya: Oh, subsequent. I see. Okay, Commissioner Hiranaga.

Mr. Hiranaga: Exhibit, exhibit A of the staff report, letter dated August 17th 2009, from former Planning Director Jeff Hunt to Mark Roy, whereby he's striking the requirement for 100 percent retention of post and pre-development runoff for one hour – for 50 year one-hour storms. Can I have the explanation as to why that letter was generated?

Ms. Flammer: I can give that. Unless Clayton, I don't know how well I recall it happened. Okay. What happened that day it was – I was not the planner, but it was at the end of the day and our planner did not make it here. It was – he was running over to do it. The Commission just took it up anyway. I don't know what discussion ensued at that time. It was voted to go ahead and waive review. At that time the Department and the – the Commission was putting requirements on to capture all of the drainage. The planner when he went back went ahead and added that condition on. It's something that we had been doing. I don't think he realized the Commission hadn't given him specific instructions to go ahead and do that. I do recall the Department did discuss it, and we did not have the authority to put that on without being directed by the Planning Commission. So, because of that it was taken off.

Mr. Shibuya: Commissioner Hiranaga?

Mr. Hiranaga: Does the applicant have any objection to us putting that condition back onto the permit?

Mr. Mark Roy: Thank you for the comment. If it's okay with the Commission we've actually –

Mr. Shibuya: Please introduce yourself. Thank you.

Mr. Roy: Oh, sorry. My name is Mark Roy with Munekiyo & Hiraga. I'm here representing Elleair

Hawaii on the SMA time extension request. Given the previous drainage questions that have been raised and, you know, looking at the proposed SMA time extension request we're ultimately requesting another two years. The applicant has gone to some quite extensive value engineering revisions to the plans to really create a product that they believe fits into the market place today and really responds to some of the challenging economic conditions that have been facing the State and beyond over the last three or four years, since 2008. There's been a lot of work ongoing on the planning for this project. I understand that, you know, as you drive past it, it looks like a green site at this point, but there have been a number of project management elements that have been completed and significant milestones that I can certainly summarize for the Commission at today's meeting. But to respond to the question regarding drainage we have Wendy McClain who is the civil engineer from SSFM for this project and maybe what – if it would be okay with the Commission I could invite Wendy to just give an overall summary for the drainage plan for this particular project and ultimately, I think it's really important to just understand the topographic conditions and some of the drainage characteristics, and also the proposed drainage plan for this project.

Mr. Hiranaga: Mr. Chair? Mr. Vice-Chair, from a protocol perspective, if we're going start getting into the meat of the product maybe we should not waive.

Mr. Shibuya: That's correct.

Mr. Hiranaga: At what point do we waive review because she's going to start explaining engineering design schemes, and now actually reviewing the project.

Mr. Shibuya: Sure.

Mr. Hiranaga: So I think previously we had placed this condition. You know it appeared that the applicant had agreed and therefore we waived review thinking that this condition was incorporated. For some reason it was removed and I don't recall being notified of that, so it's kind of your call. If you want us to bring this back for review because at some point we're no longer waiving it, we're reviewing it. So when does that, when do we cross that line?

Mr. Shibuya: That is correct. Commissioner Mardfin?

Mr. Mardfin: Mr. Chair, I tend to agree with our Chairman, but I don't wanna actually not waive review. On the other hand I might be willing to waive review. In light of the shortness today, can I ask that we defer this to the next meeting?

Mr. Roy: Can I just respond to the Commissioner's question with regards to what had occurred at the previous meeting? I think it's very important. We were before the Commission back in 2009 to request a two-year time extension. And at that particular time I believe if anything there may have been a couple of questions that were responded to on the floor. From the applicant's standpoint and I believe, you know, the minutes would like you to reflect this, there was no request from the standpoint of the Commission for us to respond to the condition. It was actually incorporated within the Planning Department's letter. It was unfortunate and it was a unilateral kind of a letter that was issued by the Planning Department. And as noted in the letter what happened subsequent to that meeting because the Commission voted to waive the time extension, and the Director has administratively issued it at that time. But I believe in the letter in references that the

Planning Director reviewed the drainage report for the project and had actually liaised with Department of Public Works at that particular time, and there had been an agreement that they would actually strike that language because it wasn't officially voted upon condition on the floor of the Commission on that day.

Mr. Shibuya: Commissioner Mardfin?

Mr. Mardfin: Again, I think this is going to get very convoluted. I think we're going to wanna check the minutes. I think now is not the time to deal with it. I don't want to refuse to waive review, but I don't want to waive review either.

Mr. Shibuya: That's correct.

Mr. Mardfin: I suggest we defer this to the next meeting.

Mr. Shibuya: Yes. Can you make a motion?

Mr. Mardfin: I have some serious concerns.

Mr. Shibuya: Yes. I think there's other questions too.

Mr. Mardfin: I move we defer this item to the next meeting.

Mr. Shibuya: We'll open to testimony and then we'll come back to this. Any persons? I'm going to open up for public testimony. Anyone in the public would like to testify on this matter? None. Public testimony is closed. Members?

Mr. Mardfin: I move we defer to the next meeting.

Mr. Shibuya: Ah, it's been moved to defer. I don't see a second.

Mr. Hiranaga: Seconded.

Mr. Shibuya: It's moved by Commissioner Mardfin, seconded by Commissioner Hiranaga that we

–

Mr. Hiranaga: Question. My recollection – and I maybe mistaken – but I think Director Hunt, after we talked about 100% post development retention onsite, said he would, based upon representations made at the meeting, incorporate in his letter. Therefore, no actual vote were taken to make this a specific condition. But it was representation made by the applicant at the meeting which a lot of times it's made told to us is adequate, right? So if we need to make a formal condition, then we probably need to bring this back to the table.

Mr. Shibuya: Correct. Okay. Members?

Mr. Mardfin: I just want to state that when I saw this Exhibit-A I was shocked. I'm hoping this is not standard practice to have understandings, and then have the understanding reversed when we're

not around. So I wanna have some discussion about this. Therefore I urge that we defer.

Mr. Shibuya: That's correct. I understand. Commissioner Hiranaga.

Mr. Hiranaga: We have similar situations with Kahului Town Development across from Kaahumanu where A&B said 100% . . . (inaudible) . . . no problem. I don't believe we made a special, added a new condition to that in the permit. We took it upon their recommendation at the meeting. And therefore we waived review of the extension.

Mr. Shibuya: Right. Okay.

Mr. Hiranaga: You know, this is kind of a surprise to me.

Mr. Shibuya: Okay, Commissioners, are you ready for the question? Clayton, can you repeat the motion please?

Mr. Yoshida: The motion is to defer the item to the next meeting.

Mr. Shibuya: Okay, members, all in favor of the motion raise your hand. All opposed raise your hand. It's unanimous. Seven and no opposition.

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

VOTED: To Defer the Matter to the March 13, 2012 Meeting.
(Assenting - W. Mardfin, K. Hiranaga, D. Domingo, L. Sablas,
J. Freitas, I. Lay, P. Wakida)
(Excused - K. Ball)

Ms. Flammer: May I ask a question?

Mr. Shibuya: Yes.

Ms. Flammer: In addition to bringing the minutes, is there any other additional information that you would find useful besides what's in the applicant's request that was sent to you?

Mr. Hiranaga: If we decide not waive, then we would reschedule it again.

Mr. Shibuya: That's right. Then we review.

Ms. Flammer: I will bring –. I will have the minutes, yeah, sent to you.

Mr. Shibuya: Commissioner Mardfin?

Mr. Mardfin: I think that the applicant might well think about whether or not they can meet that kind of requirements. But that's up to them.

Mr. Shibuya: Okay. Thank you.

Ms. Flammer: I also wanna to mention why I passed out the photos. I noticed when I went through the copies that went to you it was very, very faint, so I printed out just a couple color ones. I don't know if you want to save them for when you come back or not. It's a lot of easier to see when you're looking at them in color.

Mr. Shibuya: Thank you. Okay, next item, can you introduce the next item Clayton? Oh, you want to make a comment? Thank you.

Mr. Roy: Certainly we will be prepared. We feel that we were prepared to address some of the drainage questions today, but we will have the civil engineer here at the next meeting because we really want to do a thorough job describing to you the drainage conditions and really what the applicant feels that they can do with regards –

Mr. Shibuya: I didn't think it was a problem that you've created. I think it was more of a Department problem.

Mr. Roy: But we'll be back and we will be –

Mr. Shibuya: Sorry that you have to take the brunt of it, but this is the way –. Yeah, it's an integrity issue between the Commissioners and the Planning Department, not with you.

Mr. Roy: I thank you for your time today. Thank you.

- b. United Parcel Service requesting a two (2)-year time extension on the Special Management Area Use Permit condition to initiate construction of the proposed relocation of the United Parcel Service Facility at Kahului Airport, TMK: 3-8-001: 019 (por.) and 239, Kahului, Island of Maui. (SM1 2008/0023) (L. Callentine)**

The Commission shall acknowledge receipt of the request. The Commission may decide whether to waive its review or review the time extension request at a future meeting.

Mr. Yoshida: Your item, on G1-b is a request from United Parcel Service for a two year time extension on the Special Management Area Use Permit condition to initiate construction of the proposed relocation of the United Parcel Service Facility at Kahului Airport, at Kahului. Gina Flammer is subbing for Livit Callentine.

Ms. Flammer: I did notice today when I was going through the packet that there was an outdated drainage report that was submitted. The most recent updated one was inadvertently left out so we had it printed out at lunch and that's what was left for you on your desk. In 2009 when the applicant came before you, you asked them to capture all drainage and they agreed. The current drainage report, there, does show that they will be capturing all of it. And also their civil engineer is here if you have any questions about that. And I also want to just let you know, it does say right in the letter, but the reason for the delay is because the move for UPS is due to the Airport expansion, the

road, and that's been delayed a little bit, so they've been allowed to stay in their facility a little bit longer. They have submitted building permits, I was informed today, so they are on the path to building. They've just been given a little bit more time.

Mr. Shibuya: Thank you. Commissioner Mardfin.

Mr. Mardfin: I'd just like to ask, I mean, the fact that the Airport isn't forcing them to move yet doesn't stop them from moving tomorrow. And I don't understand why don't want to proceed.

Ms. Flammer: Let's have the applicant address your question if that's okay?

Mr. Shibuya: Please. Thank you.

Ms. Karlynn Fukuda: Good afternoon Commissioners. Karlynn Fukuda of Munekiyo & Hiraga. To answer Commissioner Mardfin's question, as Gina Flammer stated, they have filed their building permit application. They are in building permit review process. However, the other thing that we wanted to point out is that there is infrastructural improvements that are kind of being coordinated between the DOT Airports roadway project and the move for the UPS relocation. And so that's why it makes economical sense to do the infrastructural improvements at one time as opposed to UPS going first and then DOT potentially having to re-do what UPS had already done. So it ties together.

Mr. Shibuya: Commissioner Mardfin?

Mr. Mardfin: I'd just like to comment. I understand that. That sounds very good. I wish that had been in the report because that would have made a big difference on how I approached this.

Ms. Fukuda: I apologize for that.

Mr. Mardfin: Well, you know, that happens. In light of the time, I would suggest we defer this too, but I don't, it's up –. Do you want to deal with it now?

Mr. Shibuya: No. I don't think so. Commissioner Hiranaga?

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

Mr. Shibuya: You were shaking? Communicating? Commissioners?

Mr. Ball: You're looking for a motion?

Mr. Shibuya: Yes. You're good? And you accept?

Mr. Hiranaga: I'll make a motion to waive review.

Ms. Wakida: I second it.

Mr. Shibuya: Okay, it's been moved by Commissioner – we're going to have public testimony first

and then we'll come back to you. We open public testimony. Any public member? None? Public testimony is closed. So we can start again.

Mr. Hiranaga: Motion to waive review.

Ms. Wakida: Second.

Mr. Shibuya: The motion was made by Commissioner Hiranaga, and seconded by Commissioner Wakida to waive the review. Members, any discussion? No. Okay, for the vote. We won't even have to the vote. All in favor of the motion raise your hand. There's six. All opposed? One opposed. Six for, one opposed. Okay, thanks.

Ms. Fukuda: Thank you very much.

Mr. Shibuya: Thank you very much.

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

VOTED: To Acknowledge Receipt of the Request and Waive Its Review of the Time Extension Request.
(Assenting - K. Hiranaga, P. Wakida, D. Domingo, L. Sablas, J. Freitas, I. Lay)
(Dissenting - W. Mardfin)
(Excused - K. Ball)

2. Planning Commission Projects/Issues

a. Revising the SMA Boundaries

No report given.

3. EA/EIS Report

4. SMA Minor Permit Report

5. SMA Exemptions Report

Mr. Yoshida: Under Item-2 we don't have any further report on revising the SMA boundaries. We have circulated copies of our Minor Permits, SMA Minor Permit Exemptions Reports.

Mr. Shibuya: Okay, and I got my response. Thank you.

Mr. Shibuya received the description of SMX 2009/0124 that he requested at the beginning of the meeting.

6. Discussion of Future Maui Planning Commission Agendas

a. March 13, 2012 meeting agenda items

Mr. Yoshida: We have circulated the items for the next, March 13th meeting. We have another Special Accessory Use request, and then we have a time extension on the Special Use Permit, State Special Use Permit for the Star Lookout TVR in Kula, and also the Hoolio House Bed and Breakfast in Launiupoko, and, I guess, the Polynesian Shores AOA scheduling of the contested case hearing, and the Maui Palms Redevelopment matter that was just deferred.

Mr. Shibuya: Right. Okay. Any other comments, inputs from members, Commissioners? None? I will be on vacation so –

Mr. Yoshida went over the items scheduled for the March 13, 2012 meeting.

H. NEXT REGULAR MEETING DATE: MARCH 13, 2012

Mr. Hiranaga: You're not going to be here next meeting?

Mr. Shibuya: Huh?

Mr. Hiranaga: You're not going to be here the next meeting?

Mr. Shibuya: I'm not going to be here. I'm gonna miss it.

Mr. Mardfin: Commissioner Shibuya, will you be here at the following meeting?

Mr. Shibuya: Yes, I'll be here the following meeting. I'll stay on the trail.

Ms. Wakida: Meeting adjourned?

Mr. Shibuya: Meeting adjourned.

I. ADJOURNMENT

The meeting was adjourned at 4:58 p.m.

Submitted by,

LEILANI A. RAMORAN-QUEMADO
Secretary to Boards and Commissions II

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

RECORD OF ATTENDANCE

Present:

Keone Ball
Donna Domingo
Jack Freitas
Kent Hiranaga, Chairperson
Ivan Lay
Ward Mardfin
Lori Sablas
Warren Shibuya, Vice Chairperson
Penny Wakida

Others:

Will Spence, Planning Department (9:10 a.m. - 12:00 p.m.)
Michele McLean, Planning Department (9:03 a.m. - 9:10 a.m. and 1:00 p.m. - 3:42 p.m.)
Clayton Yoshida, Planning Program Administrator
Joseph Alueta, Administrative Planning Officer
Ann Cua, Staff Planner
Paul Fasi, Staff Planner
Gina Flammer, Staff Planner
Kurt Wollenhaupt, Staff Planner
James Giroux, Department of the Corporation Counsel
Rowena Dagdag-Andaya, Department of Public Works