

**MAUI PLANNING COMMISSION  
REGULAR MINUTES  
JANUARY 24, 2012**

**A. CALL TO ORDER**

The regular meeting of the Maui Planning Commission was called to order by Chairperson Kent Hiranaga at approximately 9:05 a.m., Tuesday, January 24, 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.)

Chair Hiranaga: Good morning. Today is January 24, 2012 and I'd like to call the Maui Planning Commission meeting to order. For the record, all Commissioners are present. At this time, I'd like to open the floor to public testimony on any agenda item. Is there anyone here that wishes to provide testimony at this time, please come forward? Seeing none, we'll move onto the agenda. Director?

Mr. Spence: Good morning, Commissioners, we are on Item B-1. We can take 2 and 3. These are proposed amendments to the Duplex District, the Apartment District and the Hotel District. These are different sections of the Maui County Code in Title 19. We have Joe Alueta here to make a presentation.

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

**1. MR. WILLIAM SPENCE, Planning Director proposing amendments to Chapter 19.10 of the Maui County Code regarding the Two-Family Duplex District. (J. Alueta)**

Mr. Joe Alueta: Good morning, Commissioners. This is part of our continuing update of Title 19 chapter by chapter. We sorta get interrupted every now and then to take care some fires and do some quick amendments to other sections, but we're kind of going in order from the end of the Code book to the other. So today we find ourselves at -- the one you'll be reviewing is the Two-Family Duplex District. As some of you Commissioners know the basic program that the Planning Department is doing with this current update is to put the County Code into a structured outline for every chapter for more usability. We believe that every District should have what are your allowed uses on the basics. What should be considered accessory uses to those allowed uses. And what uses would you allow given special review either by the Commission--and standards and then try to organize the development standards all into one table so that it's easy to understand what you have to do, how big, how wide do you have to build your buildings and so forth.

The first district we're gonna review today is the Two-Family Duplex District. It's kind of an odd, odd district carryover from originally, from the original County Code. And as you can see there's very limited Duplex Districts. Most of those lands that have been, that are zoned Duplex, some of them is in Lahaina in some of your older communities particularly in Lahaina Town there's some as well as there's a few areas in Kihei that have Duplex areas. I apologize, I didn't--I had intention of having some maps here for you to show you that zoning, but hopefully you can take my word on it. It's kind of a limited district. Most of the Two-Family Duplex Districts because it is in sort of a Multi-Family designation on your community plans have all been up zoned you could say to an A-1 and an A-2 District.

Also I believe, part of the--if you read the, if you go through this existing standards of a Duplex District it's sort of more of a Single-Family--a Single-Family lot with two single-family homes on it they're attached or what is considered to be an attached ohana unit now. So I think that's part of the reason this ordinance or this Code came about prior to the ohana or accessory dwelling provisions that came about in the mid-'80's. And so I think that's why some of this became more of a moot zoning. But we still have it on it today so we need to accommodate, account for it within in the current Code.

As you can see where it's generally located so you've probably had it maybe along a major roadway and buffering between a Commercial District. It had very residential characteristics. We did send out for agency--most of the agencies did not have any comment because we're not making any significant changes. You could see the Police Department recommended some environmental design strategies to reduce crime. I'm not sure if they did a presentation on--to the Commission on that but had to do with landscaping as well as lighting that can deter entrance, people from entering into it, but also deters pedestrian movement. I think it's kind of counter intuitive but you've got two different things, is that one is crime prevention but at the same time it creates an impediment to friendly or people commuting from one area to another area in a simplistic way. However, those comments as well as, you know, standard Department of Health needing wastewater systems. All of these zoning classifications of duplex are located pretty much in the urban core-- excuse me, they are in the urban core. So there are a hookup to County wastewater facilities.

So the main bill or what the amendments you're looking at is on Exhibit 1 of the staff report. As you can see, we did some-- all we did was one, removed some confusion from they used to name it like under permitted uses within the A-2 District and that created confusion with the Apartment District. And so it's actually Duplex District. We also had to create your accessory uses to basically what can be allowed. On Page 2 of that Exhibit 1, there's a little typo, it should be mail boxes. Under Special Uses, we haven't created any--there wasn't any listed so I didn't feel like it was my place to be adding special uses. You'll just add it as some time down the line and wanted to have it. Development Standards, they're all over the area. You could see there is in each chapter. So I've consolidated down into the B-1 and B-2 Districts. These are your lots sizes. As you can see they're very similar to a residential. The one note that you should look at I guess is with regards to our standard for small scale energy systems. It says not to exceed 50 feet. So you may wanna see if that's, is that too tall or is that the height that you would wanna see it. Typically we're doing about a 10 to 15 depending on the district. And pretty much, that's it. There's really not much to this District. We're just, I guess like I say reformatting it, updating it to accommodate for today's code, and again, encouraging--allowing for small scale energy systems. Is there any questions at this time?

Chair Hiranaga: Commissioner Shibuya?

Mr. Shibuya: Joe, when you start looking at this your proposed changes to ...(inaudible)... I have no objections to it. I like the way that you're simplifying it and streamlining it. Are there other standards scattered throughout the Code and that's why you're bringing it into this Chapter 19, Title 19?

Mr. Alueta: Every title of Chapter 19, in Chapter 19, so every Duplex, Apartment and every chapter that I'm going through, right, they, some of them were written or a carryover from the '60's. So they just basically changed the number from 7, you know, 8.1 which is the original County Code to 19. And they didn't really, really look at it again and update it. And that's--so what I'm trying to do is I'm going through each chapter one by one and creating a basic foundation which is a basic outline and trying to make sure that uses or standards are not conflicting with other sections of Title 19 or even you know, maybe Title 16. I try not to, you know--but anything that comes under the purview of Planning Department, but for the most part what they do is they scatter the development standards throughout that chapter. I mean, within the existing chapter and it can be very, very cumbersome to read. And when you read it, and my liking to it, I use this example many, many times so excuse the veteran Commissioners is that it's like a written math problem. It's like train A is headed east from Chicago at 35 miles an hour into a 2 mile an hour head wind, then B leaving Boston headed west at 45 miles an hour. You know, where do they--I mean, that's how this County Code was written a lot of times. And so, developers, architects are scratching their heads like, well, just tell me how big it is? I mean, put it in the table format and that's one of the biggest things and I was talking with Commissioner Wakida about is that a lot of times you can't see the problems or what you wanna question because it's so buried into this paragraph of a problem. And once you put in a, in a table simplified format then all of sudden, why are we doing that, why is it that way? And you know, when we're going to these conferences on the mainland, anybody wants to throw the baby out with the bath water, let's just rewrite the whole Code. And many times they're saying no, your Code's fine just organize it and then slowly pick apart at it. And that's the methodology that we've, that we've taken because if I dropped a document that size and said that's gonna be the County Code, how long do you think we'd be here and how many--I mean, I'd be going through three different Commissions by the time I was done. So I just feel that it's easier, it's more understandable, it's digestible. So that's the reason we're doing it.

Mr. Shibuya: No, I'm not objecting to that, Joe. Because I was on the Board of Variance and Appeals. Chapter 16 was our Bible and are those provisions in this or are the provisions in 16?

Mr. Alueta: No, the--16 is--for the most part, 16 is Building Code.

Mr. Shibuya: Yes.

Mr. Alueta: So this Title 19 is zoning. You do not, so I do not tell you whether or not you need to go 12 inches or 16-inch on center and use 2 x 4 for one-story or two-story structure. That's and whether or not you need to use a type of Simpson tie for your connectors.

Mr. Shibuya: Right.

Mr. Alueta: I do not say that. The odd ball situation is that Building Code allows for certain structures such as mail boxes, stuff like -- I need to accommodate for that within the Code. 16.13 and 16.12A is the Sign Code. I need to accommodate for that in Title 19 because in the Commercial District we deal with signs. Sign Code tells you how big it is, what it should look like, and the graphics. Title 19 is going to tell you where can you have it on the property, and can you have it within a setback, and that's what I'm accommodating for. So I'm saying is, yes you can have a ground sign and it can be an allowed use within the setback. I'm saying Building Code allows for

a trash enclosure and doesn't regulate it, I'm saying in our Title 19 you can do a trash enclosure and it can be within the setback. So I'm making it clear that you don't--the setback requirement doesn't apply to everything single thing that you build. Okay, and that's kinda what, you know, we're saying we wanna accommodate for certain things, we wanna say a building is set back, but not necessarily your boundary wall. It's a boundary wall because it supposed to be on the boundary. And before -- or if you an apartment complex, typically you have mailboxes, centralized mailbox system. Well, maybe those should be allowed in the setback area. And so it's just--I'm just trying to make sure that--because these are things that come up when they, when we review it--the plans, they're like, well, can you do this? Is that allowed? And the architect is going, questioning it. So I'm just trying to provide clarity. When they have a question and it's not clear, my job and Mr. Spence's job is let's clarify it. Let's make it easy for people. So that's our goal.

Chair Hiranaga: Commissioner Mardfin?

Mr. Mardfin: Hi, Joe. Was there a reason that the Duplex Bill does not have what is in the other two, mainly establishes rule making provisions?

Mr. Alueta: Could be an oversight? Yes, I would ask that you --

Mr. Mardfin: Include a thing about establishes rule making.

Mr. Alueta: Okay.

Mr. Mardfin: Secondly, Mr. Chairman?

Chair Hiranaga: Proceed.

Mr. Mardfin: On Exhibit 1, Page 3, you have your, for Table D-1, D-2, and under Maximum Building Height in feet, under Notes and Exceptions, you treated that differently than the other two. You said, "except that vent pipes, fans, chimneys, antennae, and equipment used for small scale energy systems on roofs shall not exceed 50 feet." And in the other two you say, "shall not exceed 10 or 15 feet above the building height." It's just a different way of wording it.

Mr. Alueta: Correct.

Mr. Mardfin: It's not consistent between the three.

Mr. Alueta: In talking with the Staff and going over it, right. In the Residential District, right, we did a total height for many of the existing districts. In the Apartment District and Hotel District, the zone is your districts where you have really, really tall buildings on the floor areas and they wanted to have--and also, it's a district where--you'll also notice that we added stairway shafts, that's the reason.

Mr. Mardfin: You added what?

Mr. Alueta: Stairwell shafts. On the Apartment, if you're jumping ahead because you're doing a--

which is good you're comparing it, but two things that we added and I'll go over those when I get to them and that's the reason that they're separate. They're different is that because the question came because you have such a height, a large height, and we're getting rid of stories, okay, and throughout the whole Code, right. In the Apartment and in the Hotel District there's significant height, okay. So the question came up, can I build a 30-foot XYZ whatever, you know, building and then you, a super large antenna on top of it because that's basically what you could do. I'm not saying that that couldn't happen in the Duplex District, but the maximum height--again, that's why I asked you to look at that is 50 feet. So when you look at these when they say maximum height, you can't just say, okay, well, 35 feet, 50 feet. You should assume that they may build just a one-story house but they still may be able to do a chimney or a tower to 50 feet. And we talked about this in some of the other districts. Now the way the Department looked at it was that, chances are you're not going to get that. You're not going to get a 20-foot, single-story duplex with a 40-foot chimney. It's not really that likely. However, in a--you don't know what will happen in the Apartment District, or antenna, you know what I'm saying? And so we need to look at that as -- and we also had to look at where are our Apartment and Hotel Districts, you know. Apartments are here, but also a lot of our Hotel Districts are along the coastline. So would it look appropriate to have a designed structure and then all of a sudden have a super tall antenna on top of it to get around the Code. I mean, it doesn't make much to some sense, but I'm saying is that it could happen and we just from a design aspect we wanted to make sure we limited the design characteristics of those top of either stairwells or roof antennas so that they would not dwarf in scale the building itself meaning they would be proportionate to the scale of the building.

Mr. Mardfin: I understand that. What I'm asking is why not phrase for Duplex--I understand why you have it phrased for Apartments and Hotels the way you do, that makes perfect sense to me. I don't understand why you don't use the same reasoning. Is the only reason you're using a different reasoning for Duplex because that fits in with Residential? Because it seems, first, I think this is a little unclear. It says you can't have antenna to exceed 50 feet. Is that 50 feet above the building which would take it up to 85 feet?

Mr. Alueta: No, total.

Mr. Mardfin: That needs some clarification I think then.

Mr. Alueta: Well, actually it said the other way, and they told me to put in not to exceed 50 feet, that was the amendments.

Mr. Mardfin: In total, in total height. You could interpret that--with a good lawyer you could interpret that as you get 50 feet above the Duplex. So I would make sure it's really super clear.

Mr. Alueta: Okay.

Mr. Mardfin: I'm not objecting to the concept. I'm suggesting that the wording be tightened.

Mr. Alueta: Okay.

Mr. Mardfin: And other things equal, I would have gone with 15--maximum 15 feet above the

building height because as you point out you could have a 20-foot story--a 20-foot building and a 30-foot antenna and that would look kinda--while you think it wouldn't happen, it could happen.

Mr. Alueta: And again, this is that transition, Mr. Mardfin. I appreciate your questions because that's the discussion would be you're gonna have on that is that in all the other districts, right, they're either--you have already reviewed and we talked about this is one, it's in Residential, again really low. There have been the Commercial Districts, well, we don't really--there wasn't that much ...(inaudible)... it's a Commercial District or it's the Industrial District that we talked about. Here we're now talking about, we're getting into the Duplex is kind of--and the Apartment District can be the buffer zone or has been and it -- and you read the Purpose and Intent, it has a residential characteristic and that's why I asked --

Mr. Mardfin: So you wanted to follow Residential?

Mr. Alueta: Yeah, and so we had done the standard Residential. Now again, is 50 feet too tall? That's up to you guys to decide. We're just pointing it out. At the same time, once you get into the Apartment and Hotel Districts, it's not quite Commercial, it's not --You shouldn't look at it the same as a Commercial District. It has a Residential characteristic but it's a high density Residential. It's the intent to be in your high density urban core for the most part, but at the same time it could be on your coastal areas and ...(inaudible)... view planes in those districts. So that's why we've--it's a juggling act, but we're also trying to accommodate some of the memos that we have. We have memos about allowing for stairwells, we have memos, policy memos that allow for certain antennas and so we're trying to incorporate some of those policy memos into today's Codes so we don't have to rely on a policy memo. But, like I say, that's the reason there's a difference. One is the height, the location of some of these Hotel Districts and Apartment Districts as well as the purpose and intent of what these are, you know, as opposed to Duplex has a more of a residential characteristic.

Chair Hiranaga: Commissioner Wakida?

Ms. Wakida: Thank you. First of all, I love the chart. I've struggled with the narrative in previous projects that have come up and so a chart is great. And secondly, I agree with Commissioner Ward Mardfin, the problem is just the language. It's a grammar thing. It says literally that the chimneys shall not exceed 60 feet and that obviously is not what you mean. So it's just a grammar problem there on that to clear that up. My question, I didn't look it up, but is Duplex defined in the, in the Code? In the beginning of the Code? Is there a definition for Duplex?

Mr. Alueta: You know, I didn't, I didn't bother looking it up either. I was looking it up as a --it's a zoning category and it just has it's defined by it's -- of what its allowed uses are.

Ms. Wakida: Because is -- I mean, I assume a Duplex is building with two families, but you made reference and I didn't quite catch it, said something about a dwelling and an ohana. That's not what you mean by Duplex.

Mr. Alueta: No, but it predates because it--by definition, right--you are correct. It's two families in a single structure. By--later on, we defined a ohana and you can have an attached ohana and it's not considered a duplex because by a separate code and entity. And that's why I'm saying is that

this is like predates the whole concept of having accessory dwellings or even having ohanas. And if you follow me, you mean, if you remember the ohana in 19.35, this is the Accessory Dwelling Code.

Ms. Wakida: So--but your intent in this section is to have one building and two families. Is that what you mean by Duplex?

Mr. Alueta: Correct.

Ms. Wakida: And so, I would hope that that would be defined then in the beginning of the Code where the rest of the definitions are.

Mr. Alueta: Okay. I'll make sure, it's a single structure with two separate living quarters.

Ms. Wakida: Thank you.

Mr. Alueta: There would be an apartment.

Mr. Spence: Commissioner Wakida --

Chair Hiranaga: Director?

Mr. Spence: Thank you. If we don't have a definition, would you like us to recommend one to the County Council?

Ms. Wakida: Yes, I would.

Mr. Spence: Okay, I see lots of nodding heads.

Mr. Alueta: Okay.

Chair Hiranaga: Commissioner Shibuya?

Mr. Shibuya: In that definition since we are on that, could you include multi generational families versus two separate families within the same structure? Because you could have one structure, a Residential area, a very large structure and you have three generations in there. They're all related.

Mr. Alueta: Right. By definition of a family. The definition of a family includes up to six unrelated people. So if everybody, if everybody is related, that's one family. So it's still considered a single family. So you could have three generations of a family living together and it's still considered one family.

Mr. Shibuya: Okay, so you have your cousin living on the second floor?

Mr. Alueta: That's still one family.

Mr. Shibuya: One family.

Mr. Spence: Yeah, and that's, that's not so much a matter of the Zoning Code. You know, I mean, it's something that exists and you know, will continue to exist.

Mr. Alueta: So we do not prohibit it. What you're saying--right now that's an allowed use and it would not be prohibited.

Mr. Shibuya: Because I was thinking in the condominium because now you're talking two separate rental units and two separate owned parcels within that same structure like a condominium.

Mr. Spence: At the moment we're just talking about the Duplexes.

Chair Hiranaga: Commissioner Mardfin?

Mr. Mardfin: I think Commissioner -- I have two things. One is, I think Commissioner Shibuya is suggesting that when you write the definition for a Duplex and you say two separate households you don't preclude them, mom and pop living, are living in one and the kids living in the second. That they can be related but they're still two separate. I think that was his point.

Mr. Shibuya: That's right.

Mr. Mardfin: My question is, in point 31, you changed A-2 to Duplex. A-2 didn't disappear though? A-2 continues on in the Apartment Complex. So you've essentially created a separate--a new separate category when you create Duplexes.

Mr. Alueta: That's correct. The history of time can sometimes be confusing and muddy, okay. It's kinda like you have -- someone did an error, it should have been said, it should be the D-2 or Duplex and instead they put A-2 and I do not know why. Now whether the intention was when they did the Apartment District, to fold Duplex into the Apartment District, I do not know. I don't have any record to indicate that. All I know is that there's a Duplex District and then there's an Apartment District. But then when they wrote the Duplex Code for some reason they said within the A-2 District and for me, that's an error, and that has been perpetuated for 40 years. It's kinda like that reversed stamp on the bridge to Hana where the numbers are mixed up and it's like, now it's a historic error, but no one wants to correct it. All right, they tried to correct that error, but I'm not one of those guys. It's a mistake and you either admit you made a mistake and you move on and you correct and that's the way you work on it and I'm not going to perpetuate it, okay. Okay, it supposed to have been Duplex from day 1 on D-2. I'll make a note that, you know, they talk about, you know, Duplex and the whole thing and the setback and I'm not sure if it's when you read it if you can discern whether there is a D-1 and D-2, but on the Zoning Map there's D-1 Duplex and D-2 Duplex. So somewhere there needs to be, whether you want it or not it's out there zoned now. We need to create a category in the Code here. That's what we're doing.

Chair Hiranaga: Commissioner Mardfin?

Mr. Mardfin: That explains my question, okay. I already mentioned that the established rule making



provisions wasn't there but you're gonna add it?

Mr. Alueta: Correct. It's in the section, but somehow it got cut off, for some reason it's cut off.

Mr. Mardfin: The police have made suggestions for all three of these that certain things be done. Those don't appear to me to be directly incorporated into this. Is that the sort of the stuff that the rule making would do when the Director makes rules he'll say, your lighting has to be this, your doors have to face the street, is it there rather than put it into the Code directly?

Mr. Alueta: I think those are, it can be, it can be in the rules the Director administers for as far as design and review of buildings within either the Duplex--he can do that. It can be--these are more or less comments that they send all the time regardless of what we send them. So whether we're sending it to review an ABC Store for SMA, they're gonna send the exact same comments, okay. So it's not particular that they want it incorporated into this Code. It's just that they're making it repeatedly known that hey, there is these standards you should do when you build a building.

Mr. Spence: Mr. Chairman?

Chair Hiranaga: Director?

Mr. Spence: Probably the best way to do it because the Police Department send, you know, like Joe says, they make a lot of the same comments over and over again. That's probably as we develop Administrative Rules for the Department when we do project reviews, you know, we'll incorporate some of those things into the rules so then we can apply them to the projects. Rather than just putting them in the Duplex, you know, we already have five Single-Family, you know, we'll make it applicable to everything. You know, if we do Administrative Rules we'll have an opportunity for the architects and the developers and everybody to have input in on those rules and we'll go from there.

Chair Hiranaga: Commissioner Wakida.

Ms. Wakida: I heard your discussion, of course, about the 50-foot rule here. I just saw those seemed excessive to me. If the building is 35 feet then you can have a 15-foot something or other. I mean, the height of this room is probably 10 feet. I don't see, 15 feet to me just seems excessive. Could you please justify why it needs to be 15 feet above the maximum building height? Apparently that's what it was before and haven't been changed.

Mr. Alueta: You know, I don't think it was, it wasn't there. It's something that was--we've been, we played with when I come to the Commission on different districts. And some feel that 10 feet above the roof has been enough that was--and then some have expanded it to 15 and so, I went with the bigger number. We can always shrink it down to 10 if you feel--I mean, like I say, this is kind of a cusp, in the cusp between what you call your Apartment--or Commercial and Residential. And so in the Residential District, I believe you've allowed for 10 feet, but in the Commercial District you allowed I believe it was 15. So you need to make that -- and then you have the Apartment. And so, I didn't know which way to go so I put 15 in for now and you can always--like I say, if you feel that's too tall then you can say not to exceed 45 feet. That's entirely up to you.

Ms. Wakida: Well, if I were to make a recommendation I would like it to similar to the others, say not 10 feet above the maximum building height, yeah.

Mr. Alueta: Oh, same as the -- oh, so 10 feet above the roof. Okay. That's easy enough to do.

Chair Hiranaga: Commissioner Shibuya?

Mr. Shibuya: I would like to leave it at the 50 feet or 15 above. The reason why is that in the Board of Variance and Appeals we allowed for the 50-foot ham radio antennas and they are in the Residential areas as well as in this other area. So if you're gonna do that, then I think you need to be consistent and this allows for that ham radio antennas. And usually the antennas are elevated. In other words, when they're transmitting or receiving they raise the antenna up to the 50-foot level, and then when they're not in the use they drop it down to probably about the 20, 25-foot level.

Chair Hiranaga: Commissioner Mardfin?

Mr. Mardfin: On a different topic. On Page 2, I mean same subject matter, Exhibit 1, Page 2, Line 13 through at least 16 and maybe a little further, these are lines that are being deleted and it says, "there may be more than one two-family duplex dwelling on any lot provided there is not less than 7,500 square foot of lot area for each family dwelling." There's nothing in your table--there's nothing in your table that seems to indicate you can have more than one duplex on a lot. I don't know if that's necessary or desirable or it was just left out. It just struck me that, I gathered the main thing you're trying to do is codify what already exists and by leaving that out you're, you're--you're missing a ...(inaudible)... that you might or might not want to have in the law or what might or might not already be in the law. And the other thing is, well, let him answer that, then I have another question.

Mr. Alueta: Yeah, that basically says that you can have one, two-family duplex and the lot has to be 7,500 square feet.

Mr. Mardfin: If I had a 15,000 square foot lot, I could have two duplexes, is that correct?

Mr. Alueta: If you had a what?

Mr. Mardfin: Fifteen thousand.

Mr. Alueta: Yes.

Mr. Mardfin: So if I had 15,000 square foot lot I could have two duplexes.

Mr. Alueta: Two duplexes.

Mr. Mardfin: And if I had a 30,000 square foot lot, I could have four duplexes, something like that?

Mr. Alueta: You might have to subdivide at some point.

Mr. Spence: Mr. Chairman?

Chair Hiranaga: Director?

Mr. Spence: I believe Public Works requires subdivision requirements after the third unit. So you have three units, you need to put in curbs, gutters, sidewalks and other improvements that are normally required if you were to subdivide.

Mr. Mardfin: But if I had 22,500 square feet, I could do two duplexes without a problem?

Mr. Alueta: Yeah. That's how it is in the Single-Family Residential District. That's how it is in all districts.

Mr. Spence: Yeah, that's consistent with existing Code.

Mr. Mardfin: And we don't have to have anything in Joe's table to indicate...

Mr. Spence: No, we don't need anything in the table. That's a separate section of this particular proposed change.

Mr. Mardfin: But it's being, this stuff is being deleted about multiple ones.

Mr. Alueta: It says there--on the table it says, 7,500 square feet.

Mr. Mardfin: But that's for one. It doesn't say 7,500 for each duplex, right?

Chair Hiranaga: Let me just interject because something like this gets circulated among the various departments and so just because you have 22,500 square feet, it doesn't mean you can get three duplexes because you still have to meet sideyard setbacks, minimum lot width and so, you know, it goes to the departments, they all put their standards on it, and if you meet all the standards, yeah, then you can, but it's not a ...(inaudible)... that you can get three.

Mr. Mardfin: My concern is there's nothing--with these lines deleted, there's nothing indicating that you can have multiple duplexes on a large enough lot.

Chair Hiranaga: Well...

Mr. Mardfin: It's silent on it which is fine.

Chair Hiranaga: Commissioner Ball wants to say something.

Mr. Ball: I think I'm gonna side with Ward on this. There should be at least a little--under Notes and Exceptions, a little thing mentioning about, mentioning about the multiple structures if your lot's big enough somehow.

Mr. Alueta: Yeah, because that's--all it says is the minimum lot size is 7,500 square feet in the D-2

for everyone that you have. So every duplex. So if you want two duplexes, you need to have another 7,500 square feet to do a multiple. And that's how it is in the Single-Family. In the R-1 District it's 6,000 square feet. So if you have a 12,000 square foot lot in the R-1 Zoning, you can have two single-family dwellings. You can have one on each lot--one on each--

Chair Hiranaga: Potential to have two.

Mr. Alueta: You have a potential to do two. Same thing if you have a--if you have a half-acre and it's R-3 zoning and you don't want to subdivide, you have the potential to do two full single-family homes and one accessory ohana. So it's--that's already in the Code, and so I'm not sure what Ward is asking that's --

Mr. Spence: Mr. Chairman?

Chair Hiranaga: Director?

Mr. Spence: We can put a notation in the--our transmittal to the County Council that this 7,500, you know, per duplex.

Chair Hiranaga: Per structure.

Mr. Spence: Yeah.

Mr. Mardfin: Mr. Chairman?

Chair Hiranaga: And you know, Water Department has their fixture count requirements so just because you have 22,500 square feet, you have a 5/8-inch meter you may not be able to build three duplexes.

Mr. Spence: Right.

Chair Hiranaga: Commissioner Mardfin?

Mr. Mardfin: I think I have an easy solution for this at least in part. Where you--on the line on your table you had minimum lot area square feet, if you said minimum lot area square feet per duplex --

Mr. Spence: That's fine.

Mr. Mardfin: --that would probably solve it and then under Notes, you might or might not wanna put--and if you had, you know, it's D-1 they're gonna need 10,000. You'd have to have a 20,000 square foot lot to get two.

Mr. Alueta: Correct.

Mr. Spence: That's fine, we can, we can make that change.

Mr. Alueta: Is that a -- would that be a--okay, you're gonna have to do it in the Apartment District. To be consistent you'd have to do it in the Apartment District, in the Hotel District and then I'd go back to the Residential and say..., okay.

Chair Hiranaga: Any other discussion? I have a couple comments. The duplex can be separated from first floor and second floor? 'Cause a lot of people have visualize duplexes being say both on the--on the ground floor with a common firewall, but can you have the separation being first floor--second floor?

Mr. Alueta: There's no restrictions as far as--I don't know the Building Code that well, but I would imagine you could, upstairs/downstairs.

Chair Hiranaga: I think my one concern is the 35-foot building height because residential is 30 feet. I would prefer seeing it at 30 feet. I don't know why you would allow a duplex building to be five feet higher because it's -- to me a duplex that I actually rented on the mainland in California, it's very difficult to tell it's a duplex. It looks like a house except it's got basically two garages and two driveways but it looks like a house, and so why allow them to be five feet higher because then they won't look like a house, they'll look like something else. I mean, on the road I lived there were duplexes down the entire road but they all looked like houses 'cause they were supposed to look like houses.

Mr. Alueta: I believe I pulled the 35 feet straight from the existing Code. So I didn't, I didn't--I understand your concerns, but I didn't feel it was in purview to change it without any justification. It's an existing Code.

Chair Hiranaga: Okay.

Mr. Alueta: So if we did it, I didn't want to create any non-conformities also. I believe if you dropped it to 30 then you'd have non-conforming duplex building out there. And I know how you all love non-conforming.

Chair Hiranaga: And personally for me I would prefer a 10-foot height limitation on those chimneys and whatever, 'cause it's supposed to look like a residential area so it should to me meet residential standards. Commissioner Shibuya?

Mr. Shibuya: In terms of the fences, especially in the backside, if you are protecting a swimming pool, and you put up--what's the regulation on swimming pools? I think it was six feet or eight feet? The fences around the swimming pool, I think for safety?

Mr. Alueta: I thought it was like four, three or four.

Mr. Shibuya: Is that all?

Mr. Alueta: Yeah.

Mr. Shibuya: Okay. And this eight feet in height is from ground level or the slope, the natural

ground level?

Mr. Alueta: It's from the point on the ground.

Mr. Shibuya: From the point on the ground. So if you're on a slope and you own the house down below that fence to look like a structure.

Mr. Alueta: It would look like a slope with a tent. I'm sorry, Commissioner Shibuya.

Mr. Shibuya: Yeah, you know, I understand.

Mr. Alueta: It would look like a--and again, a fence--by definition a fence has at least 50 percent light and air am I correct. Yeah, whereas a wall is solid structure.

Mr. Shibuya: Okay. Thank you.

Mr. Ball: Where did the eight feet come with that, directly from the...

Mr. Alueta: No, we added that in just to clarify, it was during the Residential District updates right, we put in a eight-foot boundary wall maximum height in the Code that came through. Remember when walls were a big thing?

Mr. Ball: Right, right, right.

Mr. Alueta: It was a hot topic. Everybody talked about it for about a year and a half. Walls, walls, walls. So it was--we decided when we updated the Residential District, we added eight-foot height in the Residential Districts. We wanted to clarify that you could do that here and it could be in the setback.

Chair Hiranaga: Commissioner Mardfin?

Mr. Mardfin: Mr. Chairman, on the agenda it says, public hearing and action, but I didn't see specifically what kind of action they were, the Department was seeking? ...Input?

Mr. Spence: Any time the Department is proposing a change in the Zoning Code what we're looking for from the Commission is a recommendation to the County Council.

Mr. Mardfin: Would you like a--may I make a motion then?

Chair Hiranaga: I believe I will need to open up the public--open the public hearing first if the discussion is complete. No objection.

**a) Public Hearing**

Chair Hiranaga: We'll open the public hearing. At this time, all who wishes to provide testimony regarding this agenda item please come forward. Seeing none, public hearing is now closed.

**b) Action**

Chair Hiranaga: Open the floor to a motion. Commissioner Mardfin?

Mr. Mardfin: I move that the Planning Commission recommend approval of this to the Council with the suggestions that we have made specifically that rule making authority be added for the Director, that the height of the--maximum building height be 10 feet above the building with the similar wording to the other two. And that with this minimum lot area, it be a minimum lot area for a duplex. I think those were the three major things we focused on.

Mr. Freitas: Second.

Chair Hiranaga: Seconded by Commissioner Freitas. Discussion? Commissioner Shibuya?

Mr. Shibuya: I'd like to make a friendly amendment with an exception for the ham radio antennas that if it's used elevated, that it can be elevated no higher than 50 feet from the ground.

Mr. Mardfin: I will accept it as friendly if my seconder will accept it as friendly.

Mr. Freitas: Accepted.

Mr. Mardfin: That's what friendly amendments are. He makes a suggestion and --

Chair Hiranaga: I know, but that may affect the voting on the full motion, but that's your call. Any other discussion? Commissioner Ball?

Mr. Ball: So the proposal will be that roofs shall not exceed 45 feet then?

Chair Hiranaga: Thirty-five.

Mr. Ball: Or are adding--

Mr. Alueta: No, I think they, I think your intention was to mimic the Apartment and Hotel and just basically say 10 feet above --

Mr. Ball: Ten feet above the --

Mr. Alueta: --the structure. So 10 feet above which is easier.

Mr. Spence: So it would be 45 feet?

Mr. Alueta: Yeah. Or if you're 25 it would be 35.

Mr. Spence: And for ham radios it would be another five feet.

Mr. Alueta: I'm sad that you're prejudice against the CD radio club but's no -- I'm just kidding.

Mr. Shibuya: Ham or CD antennas. So long as it's elevated I have no problem with it. Bring it down after use.

Chair Hiranaga: Just for discussion purposes I would prefer seeing the maximum building height be adjusted to 30 feet and you know, if there is--I mean, non-conformity, I mean we're here to make improvements and so if we create a non-conformity issue so be it. I don't know how many duplexes there actually are on this island, but I can't make a motion so I'm just throwing that out that from my experience duplexes should look like residential housing units and by giving them that extra five feet, they don't look like residential housing units. Commissioner Mardfin?

Mr. Mardfin: Mr. Chairman, I take your point and I understand it. And if you could put a duplex in a Residential area I'd absolutely be for it because it would be a work around a residence. If you wanted a higher residence or it would say well, it's a duplex and you get an extra free five feet. But since these are fairly limited zoning areas for duplexes I'm not--I wouldn't accept it as a friendly amendment because I think if it's already zoned Duplex and it's 35 feet in the Code, I personally wouldn't wanna change it. And you can't--it's not like you can get a--particularly get around it. I mean, you could put a little higher residence, yeah, maybe, but I'm, I'm okay with the way it is.

Chair Hiranaga: Do we have Duplex zoning on this island?

Mr. Alueta: Yes. It's been around for a while.

Chair Hiranaga: Has someone built a duplex?

Mr. Alueta: Yeah, there's some in Lahaina, Lahaina Town and actually --

Mr. Shibuya: Kahului.

Mr. Alueta: Yeah, there might be some in Kahului, but also -- where there's actually D-1 surprisingly we discovered was lots in Pukalani is D-1 Duplex, but it's actually part of a Planned Unit Development, so--but that's only where there's D-1.

Mr. Ball: Question?

Chair Hiranaga: Commissioner Ball?

Mr. Ball: Do you find that most of those D-1 and D-2 zonings are like kinda spot zonings for certain lots. Not like I've--I haven't seen the maps so, I mean, always see these duplexes kinda one here and one there. It's not a like a row of duplexes.

Mr. Alueta: You know, there hasn't been one in a long time. I mean, it's been--Pukalani was probably the newest. Lahaina, in the old--like I say in that old areas, it's primarily where you have a --where the community plan may have said some type of Multi-Family on the community plan, but the property had two single family houses connected or you know, it was operating as a duplex and so they came in and got a -- that's pretty much where you see that. And it's not so much spot zoning, yeah, it is spot zoning. It's not like there's a row of duplex housing, but it's sort of like that



transition between the Single-Family and maybe the Commercial or Apartment District where it's, it's designated as something on the--as Multi-Family on the community plan, but it's been Single-Family, it's zoned Single-Family and they come in and get rather than going to an A-1 or A-2 where everybody would be up in arms, they say, well, how 'bout a Duplex. And so it's kinda like that compromise. That's what I see it as more, is more of a compromise.

Chair Hiranaga: Commissioner Wakida?

Ms. Wakida: I take the point of our Chairperson about the 30-foot rule and I would also like to see that. However, I would like to open it up to a whole quagmire of problems with non-conforming units that already exist, things that already exist should be--should continue and not have to go through some, some additional process, but if they choose to rebuild then they have to be 30 feet. I think it's a good point.

Chair Hiranaga: Yeah, I think non-conformity only comes into play if it's destroyed, you know, by fire or whatever and there's a certain percentage, they have like a 55 percent?

Mr. Spence: Mr. Chairman?

Chair Hiranaga: Director?

Mr. Spence: We do have non-conforming provisions in the Code that if, I think it's, you can replace up to 50 percent. I mean, say a structure is damaged by fire, if you have to replace more than 50 percent of that structure then you have to conform to whatever the new Code is. So there's also, well, that's time limitations on uses, but it could create difficulties. I don't like creating non-conformities and without going out and seeing what has been built with, underneath this existing Code, I would, my preference would be let's leave it at 35 feet.

Chair Hiranaga: Although this is just a recommendation to Council so they could do that --

Mr. Spence: Yes, it is.

Chair Hiranaga: --they could do the checking. But it brings, it brings to light a concern. Commissioner Mardfin?

Mr. Mardfin: I didn't accept the 30 feet as a friendly amendment. So if Commissioner Wakida wants to pursue lowering it to 30, she should propose an amendment and we'd vote on the amendment.

Chair Hiranaga: Understood.

Mr. Freitas: Call for the question.

Mr. Alueta: Can I clarify what the current motion is?

Chair Hiranaga: The motion is the three items plus the fourth regarding the ham radio.

Mr. Alueta: Oh, yeah, four thank you.

Chair Hiranaga: Antenna. Commissioner Shibuya, you don't happen to have a ham radio?

Mr. Shibuya: No, I don't. I was a ham radio operator before, but then I had to go to college and I sold it as my scholarship.

Mr. Mardfin: This was before the internet existed mind you.

Chair Hiranaga: Commissioner Wakida, are you gonna put an amendment to the floor?

Ms. Wakida: No. I take the Director's point also about he doesn't like to create a lot of non-conforming problems. So I think that's a good point. I don't like to make things more complicated than they already are.

Chair Hiranaga: All right, any further discussion? Seeing none, I'll call for the--Director if you could repeat the motion?

Mr. Spence: The motion is to make a vote -- is to make a recommendation to the Council of approval for the revisions including a section for ruling making authority for the Planning Director, for a maximum height of 10 feet above the building, above the roof line and some notation in there about 7,500 square feet per duplex structure, and also 50 feet for ham radios. I think as a practical matter if they're lowering it and raising it, you know, we will make the notation to the Council nonetheless.

Mr. Shibuya: With a condition that it's elevated.

Mr. Spence: Yes.

Mr. Shibuya: Yes. Okay, to a maximum height.

Chair Hiranaga: Commissioner Wakida?

Ms. Wakida: Does there need to be something in here about defining Duplex in this motion?

Mr. Spence: Sure.

Mr. Alueta: We'll make sure.

Mr. Mardfin: I would accept that as a friendly amendment.

Chair Hiranaga: So be it. Any further discussion? Seeing none, I'll call for the vote. All in favor of the motion so indicate by raising your hand.

Mr. Spence: That's eight ayes.

Chair Hiranaga: Motion carries.

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

**VOTED: To Recommend Approval of the Proposed Amendments to Chapter 19.10, as Recommended by the Department with the Additional Revisions by the Commission to the County Council.  
(Assenting - W. Mardfin, J. Freitas, D. Domingo, L. Sablas, I. Lay, K. Ball, P. Wakida, W. Shibuya)**

Chair Hiranaga: Next agenda item B-2. Director?

Mr. Spence: The next proposed amendments to Title 19 on your, on your agenda is to 19.12, the Apartment District. Again, Mr. Alueta will make the presentation.

**2. MR. WILLIAM SPENCE, Planning Director proposing amendments to Chapter 19.12 of the Maui County Code regarding the Apartment District. (J. Alueta)**

Mr. Joe Alueta: Thank you. Good morning, Commissioners. Again, similar to the Duplex you just did, Apartment on the staff report you can see where we've done line by line changes, changing everything from general to Purpose and Intent. Key things you should look at again is removing stories and dealing with the overall heights, total height. We are putting in Administrative Rules. We're also putting in the update for with regards to energy systems and vent pipes. We're also allowing in this district for stairway shafts, and this is again, to deal with several of our existing memos and policy memos that we're dealing with.

In dealing with--in the conversion from stories to height we're using a 15-foot standard for a first story and that's how we've--for these districts that's how it has been. Everything else is like I said converting your word math problems into a table format. The Apartment District is kinda where you start getting into your lot coverage and floor area ratio so that's something new that maybe you haven't seen before. Maybe in the Commercial Districts when we did the Business Districts you had that same thing, but again--Accessory structures, we're again making it clear. You can have certain structures within the setbacks such as mailboxes, trash enclosures, boundary walls and ground signs. This is one of your first where you think you're probably gonna need a ground sign. We put in for--these structures shall not exceed eight feet except for as allowed by Title 16.13. Again, Mr. Shibuya talked about whether or not we actually look at other structures and try to --this is where we're accommodating for the height, the maximum height is the--is 12 feet for ground signs in 16. So for that exception for signs we do wanna make an exception. And that's pretty much it. Agency comments, again, we're not--anything significant that would require amendments to the Code. Again, Police Department--we have Health Department with their standard comments if applicable. Again, this is--we're not talking about developing a project, this is just the Code so a lot of the standards and comments coming from agencies deal trying to mitigate some type of construction or development impact and these are more Code and development standard wise. And that's all I have. Any questions at this time?

Chair Hiranaga: Questions? Commissioner Mardfin?

Mr. Mardfin: Joe, on your table, which as other people have said I really like doing this way. I'm a little confused under the Minimum Yard Setbacks in Feet the way you've structured your table. Under Front and Rear you have it crossing both, but A-1 is a 30-foot height and A-2 is a 60-foot height for the building. So I would have done it, I'd have carried my lines separating the two down and under A-1, I'd just say, 15 feet for front and rear and 10 feet for side because that's the only thing they can qualify for if it's a 30-foot maximum height for the maximum building height.

Mr. Shibuya: Yeah, I see.

Mr. Mardfin: And then on the right-hand side under A-2, that's where you put your statement about 15 feet for building 35 feet or less and 25 for taller than 35. You understand what I'm saying?

Mr. Alueta: Yeah, and I might have gotten dyslexic when I was looking at the width and the height when I was writing that so that's a good catch. And so I'll go back and review that if that's the --and try to restructure that in proportion to maybe just leave it as you --

Mr. Mardfin: I mean, what I would do is just come down here and put 15 and 10 under the A-1.

Mr. Alueta: Right, right, right. No, I see.

Mr. Mardfin: Because you can't be over 35. You can't go over 30.

Mr. Alueta: Correct.

Mr. Mardfin: And then in the right-hand column is where you put all the stuff that you have.

Mr. Alueta: The only, the only --the reason that it's consolidated is that in the A-2 District you may build a 30-foot building.

Mr. Mardfin: And that's why --

Mr. Alueta: And that's where --

Mr. Mardfin: That's why you have to have it under A-2. I agree with you. But that's why you need that whole paragraph squished, squinched under A-2 because in A-2 you could have a --

Mr. Alueta: Oh, I see what you're saying, you're just saying move it over. Okay. I see what you're saying, just create -- okay.

Mr. Mardfin: The second thing is under Floor Area Ratio, I read what you had -- what it took it from and I would just say, "Floor Area Ratio," and then I'd put an explanation, "the gross floor area of all buildings." 'Cause floor area ratio to me doesn't indicate that you're adding a ground floor and second story, you know, but that's what you clearly mean from the way, from context.

Mr. Alueta: So you want me to put the definition of floor area ratio in?

Mr. Mardfin: Somewhere, yeah. I would put it in there. Maybe put it under Notes and Exceptions. Put floor area ratio is the gross floor area of all buildings divided by the area of the lot.

Mr. Alueta: I believe it's currently defined and it's in the Building Code, so I wanna --

Mr. Mardfin: If it is, that's fine. I'm just --

Mr. Alueta: Did you want it in there anyway?

Mr. Mardfin: Well, it doesn't have to be, but I think your tables make things really clear, but it becomes unclear if you have to look somewhere else to find what that definition is. If you stick it there then you'll make it even clearer, and it may be duplicate, duplicative but I think it will lay clarity.

Mr. Alueta: Right. Then I'd have to define lot coverage on the sheet too.

Mr. Mardfin: I would.

Mr. Alueta: Okay.

Chair Hiranaga: Commissioner Wakida?

Ms. Wakida: I have just one question under Purpose and Intent, C, it says, "they shall be occupied on a long-term residential basis." Is long-term residential defined anywhere?

Mr. Alueta: Yes.

Ms. Wakida: And it's defined --

Mr. Alueta: Or I should say short-term is and I think long-term--I'll turn to my Corp. Counsel and see if they got the definition but basically short-term is considered anything less than six months, and long-term is six months and one day.

Ms. Wakida: So it's in --

Mr. Alueta: Our Code, it's Definitions.

Ms. Wakida: Good. Thank you.

Chair Hiranaga: Director?

Mr. Spence: Commissioners if--one thing I'd like to draw to your attention since Commissioner Wakida pointed out Purpose and Intent we were gonna--we sort of ran out of time to come up with alternative language for the Purpose and Intent. If you look at Number A, "Multi-

Family Apartment Districts are generally established outside of the high density core of a central portion of a town," which doesn't make a whole lot of sense to me. It's the high density core of town is precisely where you want, you know, Apartment Districts. You know, we've had numerous discussions about walkability and sustainability and short drives to work, et cetera, et cetera. If you would like perhaps as a part of the motion you can direct the Planning Department to come up with alternative language for the Purpose and Intent, you know, to the County Council. All I can guess is this is a holdover also from the '60's.

Mr. Shibuya: I like that. I like that suggestion.

Mr. Alueta: It's just you have to look at where--I mean history of Maui and look at how it's built up and then you look at where the existing Apartment Districts are relative to your urban core. And you have, you have Kahului, right which is your --say Kahului Town which is primarily made up of your business core, your business/commercial core, the mill or not the mill--the pineapple cannery at the time, Kahului Shopping Center, right, and then your apartment complexes what few they had in Kahului were on the outskirts. And I think that's why this Code is written as how it was and then if you look at Wailuku, Wailuku Town was your market and main street and your commercial core there and you had your shops and stuff like that, dollar store--I mean, National Dollar and what not. The apartment complexes didn't show up until you went down Lower Main that's where the vast majority of your--which is outside of what they considered to be your commercial. And so they considered your downtown. Whereas today as our Director said, you know, we're kinda inserting more apartments in town.

Chair Hiranaga: Commissioner Wakida?

Ms. Wakida: I heartily agree with the Director and I think this language here is very sort of editorial and doesn't really help anybody that's trying to look for some clear definitions. So proceed, good.

Chair Hiranaga: Commissioner Ball?

Mr. Ball: Is there any reason why we don't wanna now change the maximum building height from 30 to 35 and just kinda keep that 35 going all the way around so to make it easier? 'Cause the Duplex gets the 35, I would think the Apartment in here should get 35 also. I see a lot of nodding heads.

Mr. Shibuya: Make a motion.

Mr. Alueta: Then I don't have to change my table.

Chair Hiranaga: Commissioner Mardfin?

Mr. Mardfin: This is just a question. Commissioner Wakida correctly pointed out that it says, "C. Buildings and structures within the Apartment District shall be occupied on a long-residential bases." Then on the next page you say, in A, "Any use permitted in the Residential and Duplex Districts like B&Bs and TVRs." I find that a little paradoxical. I like the idea of it being long-term residential. I don't know how you're gonna enforce it, but somebody ought to give some thought

to that. And if you're letting them have any permitted use in Residential and Duplex, I don't know why B&Bs wouldn't be allowed.

Chair Hiranaga: Director?

Mr. Spence: The Bed and Breakfast Ordinance is specific to a single-family residence. The way that we're writing, I'd have to double check, but the way that we're writing the Short-Term Rental Bill that's in front of Council right now is also for single family residences. So, you can say it's a permitted use but it doesn't meet the definition of a single-family residence. So that would not apply.

Mr. Mardfin: So if I get your interpretation, they couldn't do short-term rental in the Apartment District?

Mr. Spence: No, they could--you couldn't do a short-term rental home or a bed and breakfast home within an apartment within an apartment structure because you can have--we have a number of homes around the County that single-family residences that are on Apartment zoned land, they could do a bed and breakfast or short-term rental but within an apartment structure. Say you have, you know, four units, 20, 30 units, those aren't single-family residences because the bed and breakfast and short-term residence are specific to single-family residences.

Mr. Mardfin: Can I--let me--can I buy--can the apartments be condominimized?

Mr. Spence: Of course.

Mr. Mardfin: So I could buy an apartment in Kihei.

Mr. Spence: Yes.

Mr. Mardfin: You know me well enough to know I'm not gonna live in Kihei.

Mr. Spence: Yes.

Mr. Mardfin: Could I rent it out on a short-term basis?

Mr. Spence: No.

Mr. Mardfin: Because it shall be occupied on a long-term residence under Purpose and Intent.

Mr. Spence: Yes. Also, you could not apply for a Bed and Breakfast Permit, you could not apply for a Short-Term Rental Permit assuming it goes through Council as written. Because that's not a single-family residence.

Mr. Mardfin: How is it gonna be enforced that people don't do exactly what I said? I buy a condominium in an apartment building and I rent it out short-term. As long as I don't advertise on the internet so you can track me down.

Mr. Spence: The same way that--enforcement would be the same by the--

Mr. Mardfin: ...(inaudible)...

Mr. Spence: --we're doing and we are going--and however we're going to improve.

Mr. Mardfin: Okay, thank you.

Chair Hiranaga: Commissioner Mardfin, just to clarify. You cannot legally lease your apartment on a short-term basis. It doesn't mean functionally you can't and it's based upon a complaint driven system if you neighbors turn you in.

Mr. Mardfin: I get it. And I'll be very honest I believe in long-term housing. I think it's badly needed in this town and if I had the apartment and as an investment I would rent it out long-term just 'cause I think we need more of that stuff around.

Chair Hiranaga: Joe?

Mr. Alueta: Thank you, Mr. Chair, I just wanted--just to clarify a couple things in away because Mr. Mardfin does point out a conflict that the Department will have to work on as far as--because the way it's written now, you are correct, buildings and/or structures within the Apartment District, it doesn't say apartment complex--so we can word that so it's limited to apartment buildings, you know, and we have a definition for that, for an apartment buildings built within the district shall be occupied as long-term rentals. So we can just say apartment buildings. What we also--prior to--there are some Apartment Districts where the apartments were built prior to the Code changing and they were existing, non-conforming and they do have some long-term--I mean, sorry, some short-term rentals and those are the only exceptions, but as the Director said, you would not be able to do that now. People have tried it and we've informed them unless they have an existing non-conforming they can. But we can correct that language by just saying apartment buildings within the Apartment District shall be occupied as long-term residential basis that if you have vacant apartment land and you wanted to build single family dwellings on it, you could. And you could do those as short--as whatever they're calling the bill, TVR Short-Term Rental or as a B&B. But you have to have vacant land, build a structure that qualifies as a single-family home. Okay, and that's what Mr. Director is trying to clarify on.

Mr. Mardfin: Okay, so that's sort of a lesser intensity usage?

Mr. Alueta: Yeah.

Mr. Mardfin: Okay, thank you.

Chair Hiranaga: Commissioner Shibuya?

Mr. Shibuya: More of a clarification. This is on C, Permitted Uses, boarding houses, rooming houses, lodging houses, previously we had an issue on dormitories and dormitories the definition is not present in the County Code, but in my definition as well as in the dictionary, it is a group of



rooms where people reside and they share a common bath. Is this the type of situation that we're talking about boarding houses, rooming houses, lodging houses are these similar to dormitories?

Mr. Alueta: Yes.

Mr. Shibuya: But they would have their own bath facilities?

Mr. Alueta: You know I don't--I'm unfamiliar with the drawing the line between a dorm room and a rooming house, you know, or a boarding house because most --those to me a boarding house or rooming house is basically a dorm.

Mr. Shibuya: Right.

Mr. Alueta: I mean, a dorm. So I don't see the definition. I don't--whether or not you have a bathroom in there when does that cross over to being just an apartment house. I think that you have to have a kitchen also to be considered an apartment, who knows.

Mr. Shibuya: I'm leading onto the next part and that is long-term, short-term. If you are having a dormitory or boarding house it implies students or workers seasonal workers and it implies short-term, right?

Mr. Alueta: Well, no, it just means that someone want to stay in that type of a--live in that type of functionality. But it doesn't necessarily imply that. As far as students goes, by definition, as we talked about the short-term rental or if you look at the definition, it excludes government workers and students. This is what people don't realize is that if you're a student, you can enter into a contract for less than six months. If you are a government worker here on a job, you can enter into a contract for less than six months. That's what--you know, when they say, oh, we need short-term rentals because we have all--well, no you can do that now. It has nothing to do--that excuse is not --should not be in the calculation. Just gotta read the definition.

Mr. Shibuya: Okay, so it is long-term and then these are the exceptions in terms of the tenants. Tenants would have that short term?

Mr. Alueta: That is correct.

Mr. Shibuya: Exception, okay, thank you.

Chair Hiranaga: Any other further questions? Seeing one, Commissioner Shibuya?

Mr. Shibuya: Bungalow Courts.

Mr. Alueta: Oh, bungalow, I'm sorry.

Mr. Shibuya: Yeah, what is bungalow courts versus apartment courts?

Mr. Alueta: Just the design. Like I say, these are all carry overs. Actually in the BCT you allowed

for bungalow courts believe it or not.

Mr. Shibuya: What's that?

Mr. Alueta: And this is similar to, I mean, again, these are things that carried over from the old, these are more a design--

Chair Hiranaga: Yeah, I think Vineyard Street, The Bungalow? You know, next to Cabebe Store. Had a open area it was kind of -- they all faced inward, the apartments and there was a like a interior. You don't remember The Bungalow on Vineyard Street?

Mr. Shibuya: Not really, but go ahead. It sounds plantation to me.

Mr. Alueta: Yeah, no it is. It is very plantation, but also just you had--it was low rise either one or two-room structures that faced into your court. That's a very good description of what it was.

Mr. Shibuya: Okay, thank you.

Chair Hiranaga: Any further questions? Seeing none, I'll open the public hearing.

**a) Public Hearing**

Chair Hiranaga: Anyone here wishes to provide testimony regarding this agenda item please come forward. Seeing none, public hearing is now closed.

**b) Action**

Chair Hiranaga: I will open the floor to a motion. Commissioner Mardfin?

Mr. Mardfin: Mr. Chairman, I move we recommend approval of this to the County Council with the following changes as discussed. Under Purpose and Intent we encourage the Department to find alternative language so that they will be allowed in the central portion of a town. That in the table on Page 3, the maximum building height for A-1 be raised to 35 feet. That under Minimum Yard Setback, the table be divided into two rather than stretch across one under A-1 it be 15 feet for the building for front and rear and 10 feet for side. Under A-2 it have the full wording as it currently is 'cause you can see build less than 35 feet. And that somewhere a note of what lot coverage and floor ratio are indicated in the table for convenience.

Mr. Shibuya: Second.

Chair Hiranaga: Seconded by Commissioner Shibuya. Discussion? Seeing none, Director if you could repeat the motion?

Mr. Spence: The motion is to recommend approval to the County Council with changes to the Purpose and Intent. To say that apartments do indeed belong in the urban cores. That the table be changed, that the height be changed to 35 feet for A-1 and then the yard setback, I'm sure Joe

wrote it all down but divided into, into two for A-1 and A-2 for the yard setback.

Mr. Alueta: And then also, I believe you wanted for C, to apartment buildings within the Apartment District shall be occupied as long-term residential basis.

Mr. Mardfin: Yes, that is a friendly amendment.

Mr. Alueta: And 35 feet in height for A-1.

Mr. Shibuya: And definition of lot coverage and floor area.

Mr. Alueta: Yeah.

Chair Hiranaga: Call for the vote. All in favor please indicate by raising your hand.

Mr. Spence: That's eight ayes.

Chair Hiranaga: Motion carries.

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

**VOTED: To Recommend Approval of the Proposed Amendments to Chapter 19.12, as Recommended by the Department with the Additional Revisions by the Commission to the County Council.  
(Assenting - W. Mardfin, W. Shibuya, D. Domingo, L. Sablas, J. Freitas,  
I. Lay, K. Ball, P. Wakida)**

Chair Hiranaga: We'll have a ten-minute recess and reconvene at 10:40 a.m.

A recess was called at 10:26 a.m., and the meeting was reconvened at 10:42 a.m.

Chair Hiranaga: Next agenda item, Director?

Mr. Spence: The next agenda item and before we get into that, Mr. Chairman, I would like to apologize that I did not put it on my calendar that was supposed to bring snack. I will bring something for the next time, Valentines Day, and my apologies, I know we're all--our blood sugar is getting low and that should just speed the agenda along.

Chair Hiranaga: Okay, moving on.

Mr. Spence: Okay, the next agenda item, Mr. Chairman and Members, Number 3, proposed changes to Chapter 19.14 which is the Hotel District. Again, we have Mr. Alueta.

**3. MR. WILLIAM SPENCE, Planning Director proposing amendments to Chapter 19.14 of the Maui County Code regarding the Hotel District. (J. Alueta)**

Mr. Joe Alueta: Thank you. The bill essentially rezones my property to Hotel. No, just kidding. Okay, all we're doing the same thing, reorganizing it into a table format as you saw on the two previous bills. Updating some of the Purpose and Intents. We did catch a few things that we thought should be eliminated. We also, we have cell and radio antennas attached to an existing building. Because of the height requirements within the --allowed within the H, HM and H-2 Districts many of the cell phone companies will attach and we have policy memos that have allowed for it. Therefore, we just allowing it as an allowed use within those districts. We're concerned because of Urban Design but many of these Hotel Districts are located in the SMA. So even if they attach them we would review them under SMA and look at them through design guidelines. Also because of the high value of these properties, many of the hotel operators even if you, it allows for a cell phone to be attached it's gotta look nice and so it's never been an issue before.

Again, I'm working from Exhibit 1 on the, you're looking at under Accessory Uses, we moved everything into its own separate category rather than being listed the way it is. So it's got its own table format. We updated some of the languages to be clarified. Accessory Services to guest and apartment hotels. You know, you see those amendments where they're underlined, those are language being added and then strikeout is being removed. Again, this was the existing language and we just made some quick modifications to them.

We clarified, you know, you could do garages, personal business services. We changed on Accessory Uses which had been pretty consistent, "other accessory business and service establishments which supply commodities," this is L under Accessory Uses, "perform services primarily for the hotel guests. However such uses shall be approved by the," and it should be, "Director" as opposed to the Commission before--if you recall, you were getting a lot of Accessory Use Permits. We feel that can be bumped down to streamline the process, that the Director can make that call. And we added Special Uses and just held that in reservation. We don't have any special uses in mind at this time.

We created a new Development Standards table consolidating again everything into one format under Section 50. Getting rid of stories and using maximum height because that's the thing. Let's see, under Development Standards you will see H-1, excuse me, HM, H-2 and then Hotel. Okay, the reason is this, is that we have back in I wanna say the '70's there used to just be '60's and '70's there was just Hotel. That was the development standards in the Code in H.1 of the Maui County Code. Later on like in '82, they adopted an ordinance, a new Hotel Ordinance and they created your current development standards of H-1, HM and H-2. Only problem is, they forgot Hotel. There's actually properties out there that are zoned Hotel. This is the exact same problem we had when we did the Rural District. When we adopted the RU-0 and RU-1 if you recall, they forgot that oh, no one looked at the Zoning Map and said, hey there's some areas that are zoned Rural or County Rural and so what are the development standards? And so, you --that's why we amended and added Rural to it and that's what we're doing here. We're adding Hotel to the H-2 standards. Now you're saying why are you adding it to the biggest district? Well, many of the properties that have Hotel Zoning, somebody because of their size thought they were H-2 rather than change it. So move of them, most of these properties have all been developed as Hotel--to the Hotel

development standards. There are a few lots that are out there that are not, but they, they're still zoned Hotel and we need to have a zoning category for them or development standards. 'Cause right now if they came in today and said, hey, I'm zoned Hotel, what's my development standards? There are none. So it would make--it would put the County in a very difficult position, I'll just leave it at that. So that's the--that's one thing you should look.

Again, all the development--the other development standards, so we've added the side and rear that's all existing. Again, the only difference on this is going from stories to feet and then accessory uses within the setback, again, similar to the Apartment District, you know we're allowing walls and ground-- allow walls, ground signs, enclosures in the setback area, however, we did wanna have one exception on the height is for 16 for ground signs. And then rule making authority. And that's pretty much it. Are there any questions at this time?

Chair Hiranaga: Questions, Commissioners? Commissioner Wakida?

Ms. Wakida: Joe, I'm a little mystified by the floor area ratio. I didn't get it on the Apartment one either. Please explain to me what you mean by floor area ratio. Is it, that's not footprint right?

Mr. Alueta: No, that's lot coverage. Okay, so if you have 10,000 square foot lot, right. If you have a --you can build if it's 50 percent, right, you can build 5,000 square feet of floor area.

Ms. Wakida: First and second floor totaled?

Mr. Alueta: It doesn't matter.

Ms. Wakida: But it includes that?

Mr. Alueta: Yes.

Ms. Wakida: Okay.

Mr. Alueta: The total square footage of your building, of all your building. So in case of like say, H-2, right Hotel, H-2, is a 150, 150 percent. So if you have 10,000 square foot lot, you can build 15,000 square feet of floor area because you're going upwards.

Ms. Wakida: Okay.

Mr. Alueta: Okay.

Ms. Wakida: Thank you.

Chair Hiranaga: Commissioner Mardfin?

Mr. Mardfin: I am -- you said it and you might have actually answered the question and I kinda missed it. This H-2 in Hotel nonspecific are the properties that are already zoned Hotel not H-2, Hotel are they virtually all on 20,000 square feet or more?

Mr. Alueta: Yes. From what we've identified, yes.

Mr. Mardfin: So putting them in the H-2 makes sense because they're already on large enough things--I mean, H-2 gives them the largest amount of buildable space, but since we're on large lots already that's appropriate for what you're doing?

Mr. Alueta: Yeah. And like again, they--most of these lots are like acres.

Mr. Mardfin: Okay.

Mr. Alueta: Okay, and they're like they're big hotel complexes. The one exception is Harbor Lights has been zoned Hotel, but it's community planned Apartment. So that's why they have an apartment building built there.

Chair Hiranaga: Commissioner Mardfin?

Mr. Mardfin: Let me just make a comment about on Page 2 of your Exhibit 1. I like the fact that you've deleted barber shops, beauty parlors--Lines 4 through at least at the top of the next page, way too specific, but in the table you still have D through K which strike me as very specific. Was that--although a little bit more general than what was deleted. Was that because D through K sort of reflect the kinds of things that are typically found in hotels and haberdasheries are not? So you delete haberdashery, but if you actually had one you wouldn't--you'd count it in a personal and business services or ...?

Mr. Alueta: Well, a men's store might be defined very differently, it depends on your community so I didn't wanna get into that, but that's what a haberdashery is, but it would be personal services, right.

Mr. Mardfin: Okay.

Mr. Alueta: So these are more the--just like you did with the Business District where we kinda consolidated a lot of the uses down to these new definitions that's what we tried to do here. At the same time, we're trying to respect that these are Hotel Districts and you don't want them to be shopping center per se. You want it to be more specifically toward, I mean, geared toward the tourist --

Mr. Mardfin: So D through K is basically stuff that a hotel guest would want as opposed to...

Mr. Alueta: That you typically find right now, but it allows for flexibility. Your personal business services, eating and drinking establishments, right, I mean there was café--I think there was like--it was very specific, you know, sandwich or coffee shops.

Mr. Mardfin: Right, and I hated that.

Mr. Alueta: So you need to have like--but you typically find is restaurants which is an eating and drinking establishment. Personal and business services, today you may have doctors or you may--

small little onsite medical staff. You may have dancing and hula studios. I mean, typically many of these hotels--and again, these are accessory so they have to be pretty large hotels, they have dancing and hula studios because that's part of their program. So they do--so we're just trying--we're trying to narrow it down and keep the narrowness of the uses but at the same time, give some broad--allow some flexibility there at the same time.

Mr. Mardfin: Now does this relate to on Page 1, under the new Purpose and Intent section Line 28 and 29, you deleted, "this district is basically residential in character and as such should not be spotted with commercial enterprises." You deleted that 'cause it's not residential in character.

Mr. Alueta: That is correct. We've never--I mean, we were like--as we pointed out in the Apartment District, I guess we caught in the Hotel District but we were like residential, character, we're talking 9-story building, 12-story building, that's not residential in character. So again, this is like a carryover language from some of our '60's.

Mr. Mardfin: Right. So you're deleting that and I'm glad you're deleting the part about residential in character, but you're also deleting, "should not be spotted with commercial enterprises."

Mr. Alueta: Correct.

Mr. Mardfin: You're allowing visitor related commercial enterprises but not mall-type stuff.

Mr. Alueta: Correct.

Mr. Mardfin: You wouldn't have a pet food store there.

Mr. Alueta: Correct, but also you don't want it to be Hotel zone to be changed into you know, you want it to be a visitor related because you're trying to get room counts for certain areas. You don't want to have every Hotel District to turn into 7-Eleven, okay. If they want to do that--that's why you have the BR District, the Business Resort District, but at the same time you want as an accessory. Again, this is accessory uses you're looking at. So all of those have to be accessory to a hotel function and not necessarily, but when you go back to your Purpose and Intent you don't want to have an empty Hotel-zoned lot all of a sudden turn into a gas station. If they want to do a gas station then they need to go through the community plan. But from a planning aspect, if we say that's what we want there hotel then you better build a hotel there.

Mr. Mardfin: And that's why under criteria or limitations in your table under Accessory Uses for D through K, D through L, you said they have to have more than 20 rooms.

Mr. Alueta: Yes, and that's pretty--that's carryover language. Again, I don't know of many hotels that are only 20 rooms except for, sorry, short-term rentals, but it's basically--I mean, you're pretty much a--most of the hotels on this island are pretty large. There are 50 hotels, but if you're a small hotel, maybe a Motel 6 with only 15 rooms, right, you typically don't have a restaurant. You know, it's normally located across the street from a restaurant, but you normally don't have that as their normal function of their hotel, accessory to the hotel. Once you get to a larger size, it's expected or it would be convenient to the guests to have.

Mr. Mardfin: But an exception to that would be the Kula Lodge which has 15 rooms and has its own restaurant and commercial space. But that has its own special zoning.

Mr. Alueta: But it has its own--and that's the reason that it's zoned the way it is.

Mr. Mardfin: They can do it that way.

Mr. Alueta: You have--has commercial zoning.

Mr. Mardfin: ...(inaudible)...

Mr. Alueta: Correct. And again, like we also debated this because one of the things we looked at is, you have such large hotels here on Maui, resorts, realistically that these accessory uses should also cater not only to the--it's to the occupants, meaning you work there, so it's typical on the accessory uses that there may be a cafeteria for employees, there may be certain facilities that are geared toward the employees not only just --we wanna leave it open so that they--it covers not just the hotel guests but also those who work at the hotel.

Chair Hiranaga: Commissioner Shibuya?

Mr. Shibuya: Under Page 2, on the chart, Accessory Uses and Buildings, A, Energy Systems, small scale. For hotels, generally they don't have small scale energy system especially heating water systems. They're pretty large energy collecting systems there. Even for storing the hot water and even generating electricity. So it's not really small scale.

Mr. Alueta: By our definition, we consider small scale which you are producing it for yourself and 51 percent of the energy being produced, right, is being consumed onsite.

Mr. Shibuya: Oh, okay.

Mr. Alueta: It has to do with the percentages the way we define small scale energy system. So if that answers your question. You can have a really big, you know, one megawatt of PV panels and you may be using two megawatts a day.

Mr. Shibuya: That's correct.

Mr. Alueta: And so, as long as you're not, you're not--the primary purpose is you're exporting any--

Mr. Shibuya: That's correct.

Mr. Alueta: Okay.

Mr. Shibuya: Okay, you're not generating for MECO for profit.

Mr. Alueta: Yeah.



Chair Hiranaga: Commissioner Wakida?

Ms. Wakida: Thank you. Joe, do you wanna make the maximum building height under H-1 35 so it sort of flows with the other previous discussions?

Mr. Alueta: That's entirely up to you guys, if you guys feel that that should be the--if that's your recommendation. If that's your recommendation.

Ms. Wakida: And the second thing was what I pointed out before the meeting was, I'd just like there not to be any loop holes in the language.

Mr. Alueta: Yeah.

Ms. Wakida: And that was the 20 rooms should be 20 units or whatever language you want to use that indicate that those are the rental units not just rooms in the building.

Mr. Alueta: Okay. We can use 20 units or rental units.

Chair Hiranaga: Commissioner Mardfin?

Mr. Mardfin: Since you have an establish a rule making, I presume again that would contain the stuff that--when you make rules that the stuff that the police are recommending be included.

Mr. Alueta: Correct. As well as it gets normally--

Mr. Mardfin: And other things.

Mr. Alueta: --yeah, it normally gets picked up during, like I say, most of these are in the SMA. They normally get picked up during the SMA review as well as the Urban Design review.

Mr. Mardfin: Okay.

Chair Hiranaga: Any further questions?

Mr. Alueta: Mr. Director? Penny was asking whether, Commissioner Wakida was asking about the if we wanted to do maximum height for H-1 to 35 feet to be consistent. Do you have any objections to that?

Mr. Spence: No, that would be fine.

Mr. Alueta: Okay.

Chair Hiranaga: Commissioner Wakida?

Ms. Wakida: And just one more thing, do these floor area ratios do you have to say that that's the maximum or--it's the maximum right?

Mr. Alueta: Did I do a mistake there? Yeah, it's the max--yeah, those are considered maximums.

Ms. Wakida: Does that need to be specified in this and in other--our other documents?

Mr. Alueta: I can put it in just to be clear, but normally that's how we consider it.

Ms. Wakida: Okay.

Mr. Alueta: Yeah, maximum. Okay, I will. Thank you, that's a good call.

Chair Hiranaga: Any other questions? Commissioner Wakida?

Ms. Wakida: And also for lot coverage?

Mr. Alueta: Yeah, I got it. I'm going to correct it all the way through.

Ms. Wakida: Thank you.

Mr. Alueta: Yeah.

**a) Public Hearing**

Chair Hiranaga: Okay, at this time I'll open the public hearing. Is there anyone here wishes to provide testimony regarding this agenda item please come forward? Seeing none, I'll close the public hearing and open the floor to a motion. Commissioner Mardfin?

**b) Action**

Mr. Mardfin: Mr. Chairman, I move we recommend approval of these ordinance changes to the Maui County Council as written with the added suggestions that on Page 2 under Accessory Usage under the criteria, Limitations that it be changed from 20 rooms to 20 rental units. That on Page 3, under Development Standards, the maximum height for H-1 be raised from 30 to 35. And that on Page 4, the lot coverage and floor area ratios you add definitions so that it's the maximum lot coverage, maximum floor ratio and some sort of definition be put in there so that it's clear what's being talked about in a simple area. And I think those were all my suggestions.

Chair Hiranaga: Any discussion? Commissioner Shibuya?

Mr. Shibuya: Second.

Chair Hiranaga: Seconded by Commissioner Shibuya. Sorry, I'm kinda losing my consciousness.

Mr. Spence: I'm not going to survive this day I can tell.

Chair Hiranaga: Any discussion? No discussion. Director, could you repeat the motion?

Mr. Spence: I believe so. Motion is to recommend approval to the County Council to change 20 rooms to 20 rental units. The height limitation for the lowest one from 30 changes to 35 feet. Then add definitions, okay, with regards to the FAR and the lot coverage specify that those are maximums and include a definition for them.

Chair Hiranaga: All in favor of the motion so indicate by raising your hand.

Mr. Spence: That's eight ayes.

Chair Hiranaga: Opposed. Motion carries.

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

**VOTED: To Recommend Approval of the Proposed Amendments to Chapter 19.14, as Recommended by the Department with the Additional Revisions by the Commission to the County Council.  
(Assenting - W. Mardfin, W. Shibuya, D. Domingo, L. Sablas, J. Freitas, I. Lay, K. Ball. P. Wakida)**

Mr. Alueta: Thank you very much.

Ms. Wakida: Good work, Joe.

Mr. Spence: Thanks Joe.

Chair Hiranaga: Director?

Mr. Spence: Commissioners, we are on Item C-1, Pacific Rim Land, Incorporated requesting an Environmental Assessment Determination on the Final Environmental Assessment in support of a Community Plan Amendment, District Boundary Amendment, Change in Zoning and County Special Use Permit for the Kihei Rock Crushing Facility and related improvements at Welakahao Road in Kihei. Our Staff Planner is Mr. Kurt Wollenhaupt.

## **C. NEW BUSINESS**

- 1. PACIFIC RIM LAND, INC. requesting an Environmental Assessment Determination on the Final Environmental Assessment (FEA) prepared in support of the Community Plan Amendment, District Boundary Amendment, Change in Zoning, and County Special Use Permit for the existing Kihei Rock Crushing Facility and related improvements including upgrade of an existing waterline located at 500 East Welakahao Road, TMK: 2-2-002: 078, Kihei, Island of Maui. (EA 2011/0004) (CPA 2011/0001) (DBA 2011/0004) (CIZ 2011/0004) (CUP 2011/0006) (K. Wollenhaupt)**

**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), a State Land Use District Boundary Amendment (DBA), a Change in Zoning (CIZ), and a County Special Use Permit (CUP). The public hearing on the CPA, DBA, CIZ, and CUP applications will be conducted by the Maui Planning Commission after the Chapter 343 process has been completed.**

Mr. Kurt Wollenhaupt: Good morning, Members of the Maui Planning Commission. Today's request is for a review of the Final Environmental Assessment for the rock crushing facility in Kihei that was just explained by Director Spence. The Commission should have received the Final EA at the last meeting for their review and today's request will be to make a determination on three alternatives. One is to accept the Final EA and to issue a Finding of No Significant Impact commonly known as a FONSI, and that the Commission finds any potential impacts have been sufficiently mitigated from the comments that were made by this body on the review of the Draft Environmental Assessment. The second alternative would be to defer today's Final Environmental Assessment and the Commission believes that there's additional information that would be required to make a determination. Or thirdly, the Commission could move to determine the proposed action will have significant impacts and require an Environmental Impact Statement.

We have Munekiyo and Hiraga who is going to update the Commission both on what the project is, so that will familiarize yourself once again with the project and then also to address the two comments that the Commission had. One was on the congruency of this with kind of the proposed growth down there and then the other was a traffic question. They do have a traffic engineer here today to answer questions. So I believe that Mich is going to take it over along with Cheryl to do a Power Point presentation.

Mr. Mich Hirano: Thank you, Kurt and good morning, Chair Hiranaga and Commissioners. My name is Mich Hirano with Munekiyo and Hiraga. We are here today to request a support for the FONSI Determination for the Draft Final Environmental Assessment for the Kihei Rock Crushing Facility. We've submitted to the Commission a redline version of the Draft Final Assessment, Environmental Assessment for your review and I'd like to just highlight some of the information that's provided in that report.

Just to refresh the Commissioner's memory, the Kihei Rock Crushing Facility just bring up some pictures of the facility. This facility is located in South Kihei on the mauka side of Piilani Highway and old Welakahao Road. The entrance to the rock crushing facility is shared with the Kihei Wastewater Reclamation Facility which is just adjacent and to the north of the proposed--of the existing rock crushing site. This is the driveway entrance and this is the office building that is presently occupied. This facility has been at the site for over 30 years and it was located there at the time of the Kihei Wastewater Reclamation Facility and the construction of Piilani Highway. Again, this is the rock crushing conveyor belt and equipment. It is not in operation right now. There's enough material there to supply construction requirements for, you know, the next little while. And when the supply runs down then the rock crushing facility will be assembled and rock crushing will be carried at the site.

Again, the project area is 15 acres, and the entitlements that the applicant is requesting is currently in terms of the State Land Use District, the existing district boundary of the area is Agricultural and the applicant is requesting a change, a District Boundary Amendment from Agricultural to the Urban District. The Kihei-Makena Community Plan, the existing land use designation is Agriculture and the applicant is requesting a change in community plan designation to Heavy Industrial and the Community Plan Amendment is the trigger for the Environmental Assessment. Maui County Zoning is existing Agricultural District and the applicant is requesting a change in zoning to the M-2 Heavy Industrial District.

We were before the Commission in November of 2011, and at that time we reviewed the Draft Environmental Assessment which was published I think it was October 23rd. The comments--during the comment period we had 14 comments from the agencies and we had nine "no comment" responses. We had three standard comment responses. The standard comment responses were from the Department Health, the State Department of Health as well as the District Maui Office, Department of Health and they were the standard comments regarding compliance with the designations and the guidelines that are put up on their website. The other standard comment was from the Office of Environmental Quality Control. We had two substantive comments and those were from the Planning Department and from the Maui Planning Commission.

The Department of Planning comments were to give some indication as to the type of uses that are anticipated with respect to the Heavy Industrial District zoning and as we mentioned during the Draft Environmental Assessment under the Heavy Industrial zoning as the Code now stands it has a number of uses that are permitted, and we indicated that not all those uses are appropriate for the site. And the applicant also noted that comment with respect to the Draft Environmental Assessment that they are not anticipating any change from the existing use. This is a rock crushing facility and they foresee it carrying on in that function for the next foreseeable future. However, because of the zoning, the applicant has indicated that if things should change in the future that they would limit the type of uses to the ones that are specified and we included these uses in the Final Environmental Assessment. The conditional zoning would probably stipulate that uses would be limited to the following: It would be the M-2 permitted uses such as lumber yards, machine shops, concrete/cement products, factories, junk establishments, soap manufacturer. M-2 Special Uses, and again under the M-2 Heavy Industrial District Zoning Code, although you do have the M-2 Special or M-2 zoning, you still need a Special Use Permit from the County Planning Commission, the Maui Planning Commission for these particular activities and the special uses under the M-2 Zoning include the asphalt manufacturing or refueling, an asphaltic concrete plant, rock, sand or gravel or earth excavation crushing or distribution. These are activities that currently are on the site. So under the M-2 Heavy Industrial Use Zoning, these activities, a Special Use Permit will be applied for to carry on these activities. Explosives manufacture or storage and a saw mill. Those are all special uses. And then other permitted uses currently under the M-2 zoning which also include uses under the B-2 and B-1, B-2, and B-3 uses the applicant would seek to have permitted uses as a condition of zoning to be equipment rental or sales, storage buildings or warehouses, storage yards, trucking and truck storage and accessory office uses such as business offices with agencies allowed under B-2. And these other permitted uses are pretty much similar to what is going on, onsite right now. So the applicant felt that there are no additional environmental impacts resulting from these particular uses.

The other comment that came, the other two comments that came were from the Planning Commission and that was at the meeting that was held on November 23rd. And the first comment was the potential long-term effects on possible adjacent urban development and I'd like to just refer the Commission to Figure 10 in the Draft Final EA which set out the Urban Growth Boundary areas and our response to that was that this has happened a historic use at the site for over 30 years so we feel that it is very compatible to the existing uses. There have been no complaints at that time or over that period of time on the existing rock crushing facility. The property is within the proposed Urban Growth Boundaries in the Maui Island Plan or the Draft Maui Island Plan which is under consideration at this point by the Maui Planning Council--or the Maui County Council, excuse me. It is within compatible urban land use uses with the adjacency of the Kihei Wastewater Reclamation Facility, then there are no other proposed urban development around it. The surrounding land uses would remain Agriculture. There's no property, no surrounding planned--new housing development around the site in the foreseeable future. And following the Maui Island Plan and the Urban Growth Boundaries that would not occur adjacent to the proposed site. And the existing housing is across Piilani Highway right now and it's still with the 500-foot boundary, but it's some distance from the site.

The other comment was with respect to the Maui Planning Commission regarding the acceleration and deceleration lane on and into--or from East Welakahao exiting onto Piilani Highway. Again, our response on that was that, you know, coordination will be carried out with the State Department of Highways during the land entitlement application process and that's during the change in zoning, community plan amendment process. However, the current assessment indicates that minimum traffic volumes occur in terms of those particular movements in the a.m. peak period. I think there are approximately 14 movements from East Welakahao onto Piilani Highway in the northbound direction for that acceleration lane. And in the a.m. and p.m. peak periods, the right-turn movement into the facility onto East Welakahao from--or onto old Welakahao Road from Piilani Highway is very minimal. There are about three to four movements of those turns with the a.m. peak hour.

If we look at the configuration right now, there's what they call somewhat of a channelized acceleration lane onto the right-turn movement on Piilani Highway and the left-turn movement is just--or the right in rather into it is not channelized or it's on the two free flowing lanes in the northbound direction on Piilani Highway. However, we'd like to also add that any left-turn movements leaving the facility are directed to use the access road, this agricultural access road that adjoins Kanani Road and Kanani Road is a signalized intersection and the left-turn movements are easily made with that signalized intersection.

We also noted in the Final Environmental Assessment that the applicant is currently doing Traffic Warrant Studies as a condition of the Special Use Permit. Every two years they do a Traffic Warrant Study on the intersection to see if a traffic signal is required at that particular intersection. The last one was done in 2010 and there was--the conclusion of that report was a signal was not warranted at that particular time. And this study will be done every two years under the current Special Use Permit. The applicant, however, undertakes that in the future if the change in zoning is approved and the Community Plan Amendment is approved that they will do a Traffic Warrant Study if the existing baseyard has a change in use, if there was a change in use or if there was subdivision application to that property that they will do a Traffic Warrant Study. Otherwise they would anticipate just continuing the existing operations as is.

Based on the review of the Draft Environmental Assessment, the findings of the Environmental Assessment was a anticipated Finding of No Significant Impact, and we are here today to ask for your concurrence to this determination. Thank you.

Chair Hiranaga: Questions, Commissioners? Commissioner Mardfin?

Mr. Mardfin: Mich, can you go back to the slide where you look at potential future uses or ...

Mr. Hirano: Yes. Yes, Commissioner Mardfin?

Mr. Mardfin: Today, we're looking at determining a FONSI or not. In the future, you'll come back with asking for those three changes in--from Agricultural to different uses.

Mr. Hirano: Yes.

Mr. Mardfin: And I didn't pick up on this last time I saw this and I probably should have. But, much of the Environmental Assessment, I'm sorry, Environmental Assessment is conditioned upon continuing things as they are.

Mr. Hirano: Yes.

Mr. Mardfin: But there are some things in here that are not as they are and the Environmental Assessment didn't deal with what happens if you go to, for instance, asphalt manufacturing of refueling and asphaltic concrete plant and maybe some other things in there. I'm just picking out--and factories and you don't know what kind of factories and explosive manufacture and storage. If those things were proposed, they're not considered in here. They're not addressed in here and yet you're going to be asking today for a FONSI and then in a few weeks or months ask for the land use changes and yet if you--go into at least some of these things I can see where the Environmental Assessment would be incomplete. And I don't know, maybe the Director can answer, would there be a way of--I mean, if we say it's a FONSI now, it might not be a FONSI if they do some of these things and I'm kinda bothered by that and I don't know who should answer, but I'd like to be reassured on some of this stuff.

Mr. Hirano: I'll add these comments to that and perhaps the Director may also add comments. As I mentioned, a lot of the uses that we're requesting be conditioned for the zoning or conditional uses are similar to what is going on now. And under the asphalt manufacturing or the explosives manufacturing that will have to come back to the Council--to the Maui Planning Commission under the Special Use Permit--Special Use Permit requirements. I think at that time, the Commission will have an opportunity to review that and under the requirements, submittal requirements under County Special Use requirements there will be analysis, a more detailed analysis of those particular uses.

The permitted uses under the B-1, B-2 are very similar to what is going on now. There is storage going on right now. Now--there is equipment on the site. There is a baseyard on the site. There's trucking on the site. Trucking and truck hauling on the site. Storage, there's some storage of equipment on the site. There's an office use on the site and these are accessory office uses to the

primary permitted uses under the B-1, B-2 and B-3 that we're requesting. Similarly up on the permitted uses on the M-2, you know, we didn't feel that lumber yards and machine shops were generating any more traffic than what is there now. In terms of Impact, we feel that if there is an impact there would be a traffic impact in terms of noise, in terms of sight, environmental impact those are really reviewed under Building Code with drainage requirements, the grading requirements that are reviewed by the County. So we felt that there was oversight and I guess review of uses and particularly areas that may cause impact. You know, and again, the applicant is not anticipating any change in use. However, if there was a change and this is where we felt that there would perhaps be a potential impact would be traffic, that the triggers for those change would be either a change in use or a subdivision application and the applicant would undertake to do a Traffic Analysis at that time to assess the impacts.

Mr. Mardfin: As a follow-up, I take your point particularly with respect to M-2 special uses because I guess it would have to come back and you might have to do another EA anyway. But I don't know what--factories could mean a whole lot of stuff some of which--I was less concerned about traffic than I was about drainage and the water table and I know it said in here on Page 40 and 41 that it's not going down too much, but --

Mr. Hirano: Well those, Commissioner Mardfin, would be reviewed in terms of any building activity there would be a building permit review for, you know, construction of a factory. The Department of Planning will review that and have comments. Department of Health reviews those, all building permit applications. Engineering, drainage issues are reviewed during building permit. There is a requirement for a full Drainage Report and a Grading Report and plans, so --

Mr. Mardfin: Even for permitted uses?

Mr. Hirano: For permitted uses, yes because as part of the building permit they do look at the drainage and requirements for drainage on site. So I think there's areas for oversight review during the other application procedures and processes.

Mr. Mardfin: Mr. Chairman, may I ask the Director to also comment because I--

Chair Hiranaga: Yes.

Mr. Mardfin: --I mean, I hate for down the road, the applicant come to you and say, well you guys already said it's a FONSI so you don't have to worry about it.

Chair Hiranaga: Director?

Mr. Spence: I have not personally reviewed the EA or what, you know, level of analysis that they've done. I would defer to our Staff Planner, Mr. Wollenhaupt.

Mr. Wollenhaupt: Well, just part of what you're saying is that that was a concern that I had at first because I took a look at all of the different possible uses in M-2. And that would include things, and that was my question, alcohol manufacturing, brick manufacturing, boiler work, fish canneries, chemical manufacturing--if we go down here, oil storage, linoleum, paint, oil, shellac, turpentine,



petroleum, planing mill, plastic manufacturing, and I said, that's why we really went to a list that we thought was similar to what they're doing now so that we took out--we have 27 permitted uses and we took it down to those few and that was the big reason because I said, we're gonna have to do a very different EA if we're gonna be talking about planing mills and plastic manufacturing and ship works, things like that, so...

Mr. Mardfin: And you don't think they could do that and call it a factory?

Mr. Wollenhaupt: Well, they certainly --

Mr. Mardfin: I'm gonna produce paint, it's a factory--

Mr. Wollenhaupt: Well, actually paint is one of these--paint, oil, shellac and turpentine that's specifically was not on this list so I made the decision that they couldn't because paint here is a permitted use but it's gonna be conditioned at the County Council level and that could be a condition that a factory--a factory is not going to be able to include a permitted use here that was--that would be a part of the Conditional Zoning process.

Mr. Mardfin: So the factories could be pineapple canning, but not some of the things that you knocked out?

Mr. Wollenhaupt: That's right. I'm not sure about, let's see pineapple, a fruit canning.

Mr. Mardfin: We're not gonna have pineapple canning on this island.

Mr. Wollenhaupt: Probably not. Well canneries except fish canneries. So canneries would have been a permitted use but they're not specifically mentioned. So pineapple cannery would be a no-no. So we did have this--I did have that debate very early in the process and we tried to hone it down.

Mr. Mardfin: You're comfortable this is protection enough?

Mr. Wollenhaupt: I think at this point in time. And since you're especially--since you're going to see it at--you're going to see it at the change of zoning and that will be the time when you'll be putting conditions on the zoning. So at the Condition Zoning process which will be a recommendation to the County Council for their review, if you had a concern, it could be factories not including, factories including, that could be a--and the condition could be honed down at that point in time.

Mr. Mardfin: Thank you very much.

Mr. Hirano: Thank you.

Chair Hiranaga: Any other questions? Commissioner Freitas?

Mr. Freitas: Yeah, on Exhibit B, you have this layout and 4F you have dust, what is that?

Mr. Hirano: Commissioner Freitas, which one are you looking at?

Mr. Freitas: Exhibit B, right after the--

Mr. Hirano: Appendix B.

Mr. Freitas: Yeah, Appendix B has the exhibit.

Mr. Hirano: And which figure are you looking at on that one?

Mr. Freitas: The last page. You have the whole layout, it says, "GBI Baseyard Landscape." The landscape.

Mr. Hirano: I'll have to ask the person at the baseyard, Ken Gift, to come up. I guess he can --

Mr. Freitas: Yeah, please.

Mr. Ken Gift: I am Ken Gift with Goodfellow Brothers and that pile there that says 4F Dust that is a fine graded aggregate. It's just what we call it a dust because it is very fine. It would be used for bedding and other kinds of applications like that. It's a byproduct of some of other crushing operations.

Chair Hiranaga: Any other questions, Commissioners? Commissioner Shibuya?

Mr. Shibuya: Are you planning to use explosives on the site?

Mr. Hirano: Again, I'll ask Mr. Gift to come.

Mr. Gift: We are, we're not gonna be changing the use. We have used it as a storage area for our electronic detonators and we have a magazine there that's regulated under ATF Regulations. They regularly inspect it. We have, you know, we're in full accord of what they need us to do record keeping and all of that. So we do have a storage magazine onsite, and that's the only use that we have.

Mr. Shibuya: And you have appropriate security for that?

Mr. Gift: Yes, we do. It's inside the fenced area so access through the gates. We have security camera that's on it, 24-hours a day. And our licensed powder man inspects it a minimum of five times a week.

Chair Hiranaga: Commissioner Shibuya?

Mr. Shibuya: I'll just ask, it's a what-if question and I'm sure you've probably met up with this. If a rock or boulder is brought to the facility and it has, and you notice, it has archaeological markings or features, what happens next?

Mr. Hirano: All the material that is brought onto the site is inspected by personnel. If there is an archaeological feature on that--anything that's brought in, I think the protocol would be to, to handle it carefully and to set it aside and to call State Historic Preservation Division to inspect the feature.

Mr. Shibuya: Okay, thank you.

Chair Hiranaga: Commissioner Freitas?

Mr. Freitas: For the applicant, please.

Mr. Hirano: Okay.

Mr. Freitas: On you peak period of hauling material out, how many truckloads would you anticipate in a day, sir?

Mr. Gift: We might have let's say a maximum of ten loads an hour if it was very much peak so that would be 80 loads in a day.

Chair Hiranaga: Commissioner Mardfin?

Mr. Mardfin: Again, I think for the applicant, again. Where do you get the rock that you crush?

Mr. Gift: The rock comes from projects that are in the South Maui area. We use it as sort of a recycling. Like we will extract oversized rock from our project areas, bring them into there and we stockpile them and then when we have sufficient quantity we crush and turn them into products which can be used in the South Maui area projects.

Mr. Mardfin: So you don't really quarry rock or buy from somebody that quarries rock?

Mr. Gift: No. The rock, it's really just our own materials that we recycle is that what you...

Mr. Mardfin: Yeah, that is what I was asking. Thank you very much.

Chair Hiranaga: No further questions. Open the floor to public testimony. Anyone here wishes to provide testimony regarding this agenda item please come forward. Seeing none, public testimony is now closed. Open the floor to a motion from the Commission. Commissioner Shibuya?

Mr. Shibuya: I make a motion to accept the Final Environmental Assessment and issue a Findings of No Significant Impact, it's a FONSI on the Final EA.

Chair Hiranaga: Seconded by Commissioner Wakida. Discussion? Commissioner Mardfin?

Mr. Mardfin: Can I suggest as a friendly amendment, you alter the wording slightly to say, Finding of No Significant Impact for the current uses? I don't think that will make--I don't know whether that will make a difference or not, but I think there's no significant impact as they're currently using it but I still have some concerns. Kurt did a good job of allaying some of them, but I still have some

concerns about if the uses change significantly, I think the EA will be insufficient. And as a practical point it may make no difference, but if it's a friendly amendment, you can accept that wording it will probably get my vote.

Mr. Shibuya: I have no objections.

Chair Hiranaga: Does the Department wish to comment on the suggested language change?

Mr. Spence: Mr. Chairman, I think that kind of change I would prefer that there was some kind of amendment to the motion if that's the wish of the Commission.

Unidentified Speaker: Rather than a friendly amendment.

Chair Hiranaga: Well, I think there's specific language that is provided as far as decision by the Commission and you're straying from that specific language. Commissioner Mardfin?

Mr. Mardfin: Can I ask our Corp. Counsel if I were to propose such an amendment and if it passed, would that--'cause I think this EA was written with the concept of continuing with what they're doing now and not really going into potential further different uses even though they include some additional uses and I do appreciate what Kurt's done in terms of limiting the uses, but would--legally would it change stuff if the motion were to Finding of No Significant Impact under the current uses? Adding the words, "under the current uses." Change the legal status of this thing.

Mr. Giroux: I think that, you know, as far as because this is an informational document that being received by ...(inaudible-changing of tape)...that you know these uses--anticipated uses will not have a significant environmental impact. That's what you're saying when you find no significant impact. So in your acceptance that's the implied what you wanna put in is basically by law what it is. It's an informational document as received it has no significant impact.

Mr. Mardfin: Except that I think that this was written with the argument over and over again that the current use has no significant impact and they didn't go through each and every possibility--and I appreciate that they knocked out some really horrendous uses, but they left some things in there that might change whether there's a significant impact or not.

Mr. Giroux: But I think you also have to look at what the trigger is, right, the Community Plan Amendment and basically the proposed--project is that they're not gonna change anything. So your Community Plan Amendment is going to be allowing them to do exactly what they're doing now.

Mr. Mardfin: But no more.

Mr. Giroux: Well, that's the project as presented. There is no project. The project is they're getting a Community Plan Amendment so they can continue doing what they're doing now. So there's no significant impact it's what they're asking you to find in the document that they've presented.

Mr. Mardfin: But they--in here they are saying we're gonna--we reserve the right to do a limited subset of other things that are allowed in an M-2?

Mr. Giroux: Right, which they've reviewed and shown what those possible impacts are.

Mr. Mardfin: I feel a little uncomfortable with that.

Mr. Giroux: You're either accepting the document or you're not. They've presented a project, they've looked at the possible impacts of the project as presented and --

Mr. Mardfin: But as presented, it's what we're currently doing.

Mr. Giroux: Right.

Mr. Mardfin: It's not what we may do in the future.

Mr. Giroux: And the anticipated uses in the future. Possible--they're saying they're eliminating because they're--what you're confusing is, is that the trigger is for the Community Plan Amendment. Zoning is not the trigger. They've already told you so they can eliminate the arduous process of looking at every possibility is that they would as presented not ask to use those other uses. The anticipated uses are those that were presented. So, those are the impacts that they've looked at and they're asking you to concur with the finding that there's no significant impact.

Mr. Mardfin: Thank you.

Chair Hiranaga: Any other discussion on the motion? Seeing none, I'll call for the vote. All in favor of the motion to accept the--or I'll have the Director repeat the motion.

Mr. Spence: The motion is to--for the Commission to make a FONSI, make a Finding of No Significant Impact for the proposed Community Plan Amendment.

Chair Hiranaga: All in favor raise your hand.

Mr. Spence: That's seven ayes.

Chair Hiranaga: Opposed?

Mr. Spence: That's one nay.

Chair Hiranaga: Motion carries.

**It was moved by Mr. Shibuya, seconded by Ms. Wakida, then**

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

Mr. Hirano: Thank you very much, Commissioners.

Chair Hiranaga: Moving on, Director.

Mr. Spence: Okay, Mr. Chairman, the next item on your agenda is Mr. Kevin and Claudia Ledesma requesting a time extension on the Land Use Commission Special Use Permit for Hale Mauka Makai Bed and Breakfast. I am going to need to recuse myself because they are former clients, however brief that was. The Deputy Director will be here in just a minute. Can we go and do a short a recess?

Chair Hiranaga: Sure.

Mr. Spence: Okay.

Chair Hiranaga: There she is. No recess. Staff Planner, Gina Flammer. It seems like we're moving along so why don't we break for lunch and reconvene at 1 o'clock?

Mr. Ball: 12:45?

Ms. McLean: 12:45 is plenty.

Chair Hiranaga: Okay, 12:50.

A recess was called at 11:47 a.m., and the meeting was reconvened at 12:50 p.m.

Chair Hiranaga: Next agenda item, Deputy Director?

Ms. McLean: Thank you, Chair. The next agenda item is a Communication for a five-year time extension for a bed and breakfast in the State Land Use Ag District. Gina Flammer is the Staff Planner.

#### **D. COMMUNICATIONS**

- 1. KEVIN and CLAUDIA LEDESMA requesting a time extension until March 31, 2017 on the State Land Use Commission Special Use Permit in order to continue to operate the Hale Mauka Makai Bed and Breakfast in the State Agricultural District at 279 Pauwela Road, TMK: 2-7-008: 142, Haiku, Island of Maui. (SUP2 2007/0001) (G. Flammer)**

Ms. Gina Flammer: Good afternoon, Commission. Gonna give you a real short presentation with some photos to give you a better understanding of the property, but first I did want to point out a few things. The first is that the applicant did originally apply for a Conditional Permit for this use in 2007, and an SUP2 with that. That was heard by the Planning Commission prior, just prior to the B&B Ordinance being enacted. Once the B&B Ordinance was enacted, that recommendation was then transferred to the Department. The Department was able to approve the B&B Permit administratively. That's one of the reasons why if you look at the dates, the approval for the B&B

--for the approval for the SUP was January 13, 2009, but then the Department didn't issue the B&B until March 31, 20--March 31, 2009. So what the Department is doing is we're gonna make both permits on the same expiration date. So that's why we're recommending that the SUP expire on March 31, 2017.

So let me go ahead and show you. I know you had some pictures in your report, but it's always good to 'em up on the screen. So here is the front of the property. I wanted to show you an overview. You might also want to note the property is a little over four acres. In Haiku off Pauwela Road. Not a lot of neighbors. That's all fallow pineapple fields you'll see down there on the bottom. I'm sure the applicant's embarrassed but I did put a picture of her family in there. And then briefly, it's three bedrooms. It's the main farm dwelling on the property. It's over four acres of land. It is one of the B&Bs we have that where an Ag business is run right on the property and that's C&K Home and Garden Business. It's run by Mr. Ledesma. It's a plant nursery and field stock and I'll show you some of that.

So this is the original Ag plot plan. And then here's part of the nursery area with some of the smaller plants. I was curious how they move such big plants so she included a photo. I know they do need actually tractors to--once they get that large. Here's some of the field stock. And what field stock is, is they'll actually plant it in the ground and then when they do sell 'em they take big equipment and will dig 'em up and move 'em then.

They do also have a fruit tree area where the fruit is used for the guests. They have a vegetable garden where the vegetables are also--the guests can go out and pick that and that's part of the experience. They do also donate some of the extra vegetables that grow as well as eat themselves.

Here's the back of the property. Some interior photos. And then here's the cottage where the applicants live. I also did wanna update you on the farm income. I have some numbers and because this was put together at the end of the year, it shows 2011 is just a little over 6,700 but the applicant just informed me by the end of the year they had made about \$8,000. And I did mention in the memo that when you're dealing with farm income, a lot of times it does vary year to year. So she told me that as of today they've actually already made \$4,000 off of some of the bigger plants. So they're hoping this year will be a better year. So I'm open to questions if there are any and the applicant is here as well.

Chair Hiranaga: Questions, Commissioners? Commissioner Mardfin?

Mr. Mardfin: I'm going to ask about taxes a little bit. I went on line and with TMK and saw that they have--two years ago they did give up their home tax exemption which is one of the requirements and they're very good on that. I saw that a condition was--Condition 10 on Page 3 of Exhibit B, was that they will provide the Department with evidence of TAT license and verification that it's been paid. Have you verified that they've been up to date on that?

Ms. Flammer: Yes, and that's a requirement in the B&B Law and what we require is that a tax clearance form be filled out and provided by the State to the applicant and then it's sent to us and I do know that if you're on a payment plan and you're not up to date, you don't get the form. So

when I see a signed form, I know that they are current with TAT --

Mr. Mardfin: That would be both GET and TAT?

Ms. Flammer: Yes.

Mr. Mardfin: That was my only question to make sure that the tax stuff is all handled right.

Chair Hiranaga: Any other questions, Commissioners? If not, I'll open the floor to public testimony. Is there anyone here that wishes to provide testimony regarding this agenda item, please come forward? Seeing none, public testimony is closed. Open the floor to a motion.

Ms. Flammer: Department recommendation.

Chair Hiranaga: Staff recommendation, sorry.

Ms. Flammer: Okay, again, I'm gonna note that this State Special Use Permit shall be valid till March 31, 2017, subject to timely filing of an extension, the Planning Director may approve it. The Planning Director may also forward it to the Planning Commission. In consideration of the foregoing, the Department recommends that the Commission adopt the Department's memo and recommendation prepared for this meeting and authorize the Director of Planning to transmit said findings of fact, conclusions of law, decision and order on behalf of the Commission.

Mr. Freitas: So move.

Chair Hiranaga: Motion by Commissioner Freitas to...

Mr. Freitas: To accept as presented.

Mr. Mardfin: Second.

Chair Hiranaga: Seconded by Commissioner Mardfin. Discussion? Commissioner Mardfin?

Mr. Mardfin: I'd just like to say I think Chairman Hiranaga and I were the, probably the only two Commissioners when this first came through and at the time, I went back and checked my notes and at the time I said, this is a model for the way these things should be and I agree, I see that I was absolutely right at the time. I have used this as a model for--I asked a lot of questions at that time, but wrote down a lot of things that is my touchstone for approving these sorts of things and I read pretty carefully the report that was prepared. Neighbors are happy. Doing real agriculture not phony-boloney agriculture and I still think it's a model and so I'm really happy to be able to second the motion.

Chair Hiranaga: Any other discussion? Commissioner Shibuya?

Mr. Shibuya: I normally am not too happy about agricultural production for being put in a bed and breakfasts but this one is a definitely an impressive resume or at least a summary of the activities



that has been done and the care that they have demonstrated. So I'm gonna be supporting this.

Chair Hiranaga: Any other discussion? Seeing none, I'll have the Deputy Director restate the motion.

Ms. McLean: The motion was to approve the time extension as recommended by Staff.

Chair Hiranaga: All in favor so indicate by raising your hand.

Ms. McLean: Eight ayes.

Chair Hiranaga: Opposed? Motion carries.

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

**VOTED: To Approve the Time Extension of the State Land Use Commission Special Use Permit as Recommended by the Department.  
(Assenting - J. Freitas, W. Mardfin, D. Domingo, L. Sablas, I. Lay, K. Ball, P. Wakida, W. Shibuya)**

Chair Hiranaga: Next agenda item. Deputy Director?

Ms. McLean: Thank you, Chair. The next agenda item is also a Communication item requesting --excuse me, Big Island Scrap Metal requesting an amendment to its existing Special Accessory Use Approval to allow for the acceptance of ferrous metals, including white goods and vehicle batteries at its recycling and redemption center in the B-2 District. There was a Petition to Intervene filed on this application. So Mr. Chair, I believe the next step would be for the attorneys representing the parties to be able to make statements to the Commission.

**2. 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)**

Ms. Jane Lovell: Good afternoon. My name is Jane Lovell. I'm a Deputy Corporation Counsel and I am here representing the Department today. Thank you.

Chair Hiranaga: For the petitioner, for the intervention, please introduce yourself?

Mr. Ian Sandison: Good afternoon, my name is Ian Sandison. I'm the attorney for Schnitzer Steel Hawaii operating as Hammerhead Metals on the island of Maui and we're appearing on behalf of Hammerhead Petition to Intervene. Are you ready to receive argument?

Chair Hiranaga: No. Does the applicant have a representative?

Mr. James Nutter: My name is James Nutter. I'm managing partner for Big Island Scrap Metal and what we'd like to do is defer this to the next meeting please so our attorney can review the facts better because this was presented at the last moment.

Chair Hiranaga: Corporation Counsel, you wish to comment?

Mr. Giroux: This Corporation Counsel is gonna try to get just on the record the positions of the attorneys regarding the request for a deferral.

Ms. Sandison: We would request that the Commission move forward at this point with hearing the Petition to Intervene and in the alternative that it denies the request.

Chair Hiranaga: Thank you.

Ms. Lovell: Again, for the record, Jane Lovell. The rules provide that when there is a Petition to Intervene that any opposing parties whether it be the Planning Department or the applicant have five days within which to respond. And because it's the response period is only five days, you don't count intervening Saturdays and Sundays. So I don't know when the applicant got the Petition to Intervene, but the County received the application or the Petition to Intervene last Thursday. I personally got it at about four o'clock on Friday and by calculations it's not due until Thursday. So I am prepared to at least state orally to the Commission what the Planning Department's position is and to bring some legal issues to your attention if that's what the Commission wants to do. But I do think probably that the applicant is within his rights to ask for a little more time to respond and it may be that giving the applicant more time would allow you to have a better record before you when you make this decision. So I would support the applicant's request.

Chair Hiranaga: Okay, so if there's no objection, we're gonna go into executive session to discuss this matter. Seeing none, thank you.

Mr. Giroux: Nodding head in affirmative fashion.

The Commission recessed the regular meeting at 1:04 p.m., and convened the executive session at 1:06 p.m. The executive session was adjourned at 1:19 p.m., and the regular meeting was reconvened at 1:20 p.m.

Chair Hiranaga: All right, we're back in session. Just before we went into executive session, the applicant make a request for a deferral. So is there any discussion or does a Commission wish to address that request? Commissioner Ball?

Mr. Ball: I guess we need to find out if we are going to do a deferral when --

Chair Hiranaga: We could do that for discussion purposes. You can make the motion to defer.

Mr. Ball: Motion to defer.

Ms. Domingo: Second.

Chair Hiranaga: Motion to defer by Commissioner Ball, seconded by Commissioner Domingo. So at this time, taking that into consideration, we'll ask the parties how much time they would request in order to provide a response to the County. We can start with the petitioner for the intervention. Petitioner for the Intervention.

Mr. Sandison: On the record, Craig Nakamura has joined us.

Chair Hiranaga: Go ahead and identify yourself, Craig.

Mr. Craig Nakamura: Good afternoon, Commissioners, Members of the Planning Commission. Craig Nakamura, attorney on behalf of the applicant. I apologize for being a little tardy. We did submit our petition. I'm not sure exactly what else you want us to respond to.

Chair Hiranaga: Okay, so you're ready to proceed?

Mr. Nakamura: On the petition, yes we are.

Chair Hiranaga: Yeah, okay thank you. County?

Ms. Lovell: Thank you. Given some of the very interesting legal issues and particularly issues concerning standing, I would like at least two weeks before I have to put in a written response if that suits your schedule.

Chair Hiranaga: How 'bout the applicant?

Mr. Nutter: We'd like to be in the next board meeting which is I think is in about two and a half weeks?

Chair Hiranaga: Board meeting?

Mr. Nutter: Your meeting, I'm sorry. Commission meeting.

Chair Hiranaga: You'd like to be on the next agenda for this Commission?

Mr. Nutter: Yes, we'd like to get this issue resolved.

Chair Hiranaga: The next Commission meeting. So taking that into consideration, is there any discussion for the Commissioners? Commissioner Mardfin?

Mr. Mardfin: Given that our next Commission meeting is three weeks from now that seems to be sufficient time for the County and I think that's assuming Clayton can allow it to be scheduled for them. I think the next Commission meeting is an appropriate one.

Mr. Nakamura: Excuse me?

Chair Hiranaga: Yes?

Mr. Nakamura: Mr. Chair, just as a matter of procedure, if the County is going to have two weeks to file a response or some kind of a position statement, typically we would be allowed a few days to respond to that prior to the next meeting or when that matter is heard. So if they're gonna take two weeks, I'm not sure exactly when the next meeting is and if there's room on the agenda. I believe we could address that first and then if the County is going to have two weeks, we would like to have possibly five days in addition in order to file a response to that.

Chair Hiranaga: Okay.

Mr. Nakamura: And then the hearing. Thank you.

Mr. Yoshida: Mr. Chairman, Members of the Commission, I've circulated the memo for agenda items for the next meeting which is on February 14, Valentine's Day. We have two public hearing items one is for a Conditional Permit and State Land Use Commission Special Use Permit for the Ameron concrete batching operation at Honokowai and the other is a Council Resolution with respect to the Makawao Congregation of the Jehovah Witness Church for a District Boundary Amendment and a Change in Zoning as well we had arranged for the Department of Education for the Commission to comment on the Draft EIS for the proposed Kihei High School. The accepting authority of the EIS is the Governor. And also, I believe that the Deputy Director had arranged for a 90-minute energy workshop, plus there is the SMA time extension on the State Department of Transportation SMA Permit for construction of their portion of the Kahului Airport Access Road on the makai side of Hana Highway and the parking lot expansion which the Commission approved the SMA about three years ago.

Chair Hiranaga: So it looks like a heavy agenda. So I wouldn't make any plans for this that evening.

Mr. Mardfin: Mr. Chairman? Mr. Chairman?

Chair Hiranaga: Commissioner Mardfin, I'm sorry.

Mr. Mardfin: I had asked the Director and Clayton if there have been any, any of those items have public notices where we really do have to, have to hold it that time and if any of those things can be deferred to a later meeting?

Mr. Spence: Well, certainly the public hearings have already been set. So notices have been given, published in the newspaper, et cetera, so those two public hearings have to be, have to take place. I guess the length of discussion is sort of dependent upon the Commissioners and you know, whatever testimony is received of course, I can't say about the other two items whether they could be put off for two weeks or not, I mean, and we have heard that the, you know, the --if I could take a little bit of liberty, there was some talk about needing two weeks to prepare and then, you know, to file a memo and then a few days to respond which would put us past this two weeks. So we're talking two Commission meetings away.

Mr. Mardfin: I believe the next meeting is in three weeks. There's five Tuesdays this month. So I think there's a fifth Tuesday and then a Tuesday at the beginning of February and then another

Tuesday. So I think we're three weeks away and that would seem to --

Mr. Ball: 31st, 7<sup>th</sup>.

Mr. Mardfin: So that would give the County two weeks, it gives a whole week for the opposing party. It seems to me it could fit in.

Chair Hiranaga: My comments are, you know the public hearings are set. I would be hesitant to defer business that relates to State funds. I think we should move those along which is the DOT and the Department of Education requests. So it looks like a very, very heavy schedule. And if you're gonna put this intervention after we complete these agenda items they're gonna be in the late afternoon if we even get to it.

Mr. Mardfin: Mr. Chairman?

Chair Hiranaga: Commissioner Mardfin?

Mr. Mardfin: I would recommend what we've done in the past which is we give a time certain, we say 1 o'clock in the afternoon we will proceed and give them the whole afternoon.

Chair Hiranaga: Again, I state, I do not want to delay, I personally do not want to delay agenda items that relate to State funding which is the two requests from the Department of Education and the Department of Transportation. If you put it at 1 o'clock we may not reach those two items. Commissioner Ball?

Mr. Ball: I think the motion to defer will have to be on the 28<sup>th</sup> meeting due to the agenda that's already scheduled. It will benefit the present people because they won't be shoved in the back of a--the end of a meeting and the agenda was already set for the 14<sup>th</sup>.

Chair Hiranaga: So Clayton, you haven't set the agenda for the following meeting?

Mr. Yoshida: We do have one public hearing item which is on your proposed Geothermal Rules.

Chair Hiranaga: But you haven't set the time for that?

Mr. Yoshida: We have some items that are pending but they haven't been solidified yet. You know, we have a bunch of these Special Use Permits for bed and breakfast operations because the B&B Ordinance took effect three years ago and we gave them three-- or you gave them three years on their State Special Use Permit. So a lot of them are coming due like the one you did today, the ... Kline one, there's a few others out.

Chair Hiranaga: My preference would be to schedule them for the first agenda item on the 28<sup>th</sup> and then we would specifically earmark the public hearing that was scheduled for it 1:00 p.m.. So if we don't complete the intervention by noon, we would address the public hearing and then reconvene on the intervention. Well we could I guess do the public hearing first.

Mr. Yoshida: I believe our Notice of Public Hearing is gonna be published in Friday's newspaper on the 27<sup>th</sup>.

Chair Hiranaga: Okay, we could, we could start the intervention after the public hearing agenda item.

Mr. Yoshida: So you want the --

Chair Hiranaga: Maybe number 2.

Mr. Shibuya: Second.

Chair Hiranaga: Second item.

Mr. Yoshida: Second item. Okay, that's fine.

Chair Hiranaga: Commissioner Wakida?

Ms. Wakida: So we have a--still have a motion on the floor just to defer, right?

Chair Hiranaga: We'd like to defer it to a date certain, I guess we could that.

Mr. Ball: I'm sorry, my motion was for the 28<sup>th</sup> of February.

Chair Hiranaga: And seconder concurs. Is there any further discussion? No discussion, I'll have the Director repeat the motion.

Mr. Spence: The motion is to defer discussion on this intervention until the 28<sup>th</sup>, until February 28<sup>th</sup>.

Chair Hiranaga: All in favor please raise your hand.

Mr. Spence: That's eight ayes.

Chair Hiranaga: Opposed? Motion carries.

**It was moved by Mr. Ball, seconded by Ms. Domingo,**

**VOTED: To Defer the Matter to the February 28, 2012 Meeting in Order for All Parties to Respond to the Petition to Intervene that was Received Regarding the Subject Application.  
(Assenting - K. Ball, D. Domingo, L. Sablas, J. Freitas, I Lay, P. Wakida, W. Shibuya, W. Mardfin)**

Mr. Craig Nakamura: Mr. Chair, just a couple other items. So we're not gonna take any testimony today regarding the application at all?

Chair Hiranaga: No.

Mr. Nakamura: Okay, thank you. Number two, you know there are, I know the Commission maybe not had the opportunity to fully review the petition and some of the other things we submitted there are violations occurring on the property now. They're already accepting these scrap metals and other goods without obtaining of the proper approval from the Planning Commission or the Planning Department and where we would request that they be ordered to stop doing so at this time until they can obtain the necessary permits.

Chair Hiranaga: Yeah, I guess you can address that comment to the Director and not the Commission because that's really an enforcement issue.

Mr. Nakamura: Thank you.

Chair Hiranaga: Just one more housekeeping item, since it is agenda'd I'm going to provide an opportunity for public testimony from the floor. So if there's anyone here that wishes to provide public testimony regarding this agenda item, please come forward.

Mr. Nakamura: Yeah, I understand that it's a technical requirement that we'd be given the opportunity but I thought maybe it would provide some background material to the Commission by way of some testimony if you feel it's necessary to understand exactly what's going on, give some background and --

Chair Hiranaga: Well, we have your written notice here.

Mr. Nakamura: Okay, and Larry is here. Larry Snodgrass is here from Schnitzer Steel. He came over from Honolulu and he can summarize his testimony a little bit.

Chair Hiranaga: He can provide his testimony, but it's limited to three minutes.

Mr. Nakamura: Thank you.

Chair Hiranaga: So is your intent to read your written testimony or to provide additional --

Mr. Larry Snodgrass: No, I have something else. I'm not reading that written testimony.

Chair Hiranaga: Okay, all right, well, please identify yourself and please limit your testimony to three minutes.

Mr. Snodgrass: Okay, well, my name is Larry Snodgrass. I'm the General Manager at Schnitzer Steel Hawaii Corp. on Oahu with responsibilities on Maui. I have been General Manager since December of 2010. Schnitzer and its predecessors have been on Hawaii operating scrap business since 1949. We are now the largest scrap metal processor in the State of Hawaii. We purchase approximately 120,000 tons of scrap metal per year and we have--at our facility located on Oahu we have a metal shredder which is powered by a 4,000 horsepower motor reduces a full size automobile to fist sized piece in about 30 seconds, fist size pieces.

And our location here on Maui, to have the ability to do all of the collection, all the decanting that's required whether it be refrigeration or automobiles, they're a full process facility. We are permitted to do that. We have invested a lot of, a lot of time and effort into acquiring these permits to process scrap metal correctly and the Maui facility has a contract with the County to pick and remove metals from Central Landfill. It also has a contract with the County to accept derelict vehicles and what we call white goods, refrigerators, appliances, that type of thing. And as a company that's actively involved in many of the State's recycling efforts. Schnitzer opposes this present application. Schnitzer is aware that Big Island Scrap Metal, the applicant here has already been accepting ferrous scrap metal such as car ...(inaudible)... and scrap equipment and white goods at its facility. On November 3<sup>rd</sup>, the DOH cited them for accepting ferrous scrap metal. We've provided a Commission with a copy of that notice. And as late as January 12 of this year, our employees saw the applicant accepting ferrous scrap metal at the facility. We provided this Commission with pictures of those incidents. The scrap metal business is a messy business and it's messy because you have oils, you have gasoline, you have capacitors, you have mercury switches, mercury switches being the little device that when you open your hood it turns the, it turns the light off and on. They are--you know, we've got, we've got coatings on automobile parts.

Chair Hiranaga: Please conclude your comments.

Mr. Snodgrass: Okay, and all of the above make it very messy and to include in that you have storm water control, Fire Department if you have a fire which happens occasionally on scrap business, the Fire Department knows nothing more than to come in and start spraying water on it. They'll dump hundreds of thousands of gallons, tens of thousands of gallons of water and where is that water supposed to go if you do not have the proper --

Chair Hiranaga: Okay, all right thank you. Your three minutes are up. Thank you. Questions from the Commissioners for the testifier? Seeing none, anyone else that wishes to provide public testimony at this time?

Mr. James Nutter: Yeah, I'd like to say something because that was so negative.

Chair Hiranaga: Sure go ahead and identify yourself.

Mr. Nutter: I'm sorry. Once again, I'm James Nutter, I'm the principal owner of Big Island Scrap Metal. I also own Island Recycling on Honolulu. We're the second largest shipper of scrap steel in the islands. We have a very small presence over here. We have a much larger presence on Oahu and on the Big Island. What Mr. Snodgrass says is--has no relevance to what we do over here. We simply buy the small pieces of steel that comes in with the other kind of commodities that we buy. We're a full service recycler. We buy everything from plastic to the HI 5 to stainless steel and copper and a little of everything else. So when the customer comes in over here, we simply take that product and we put it in a bin then we ship it to Oahu. So we don't have to worry about fires or capacitors. We don't take cars. And what we have right here is a large company. Schnitzer made a \$178 million in one quarter. They are also the recipient of a \$2 million freebie from the County of Hawaii, I mean, it's from the County of Honolulu for letting them drop all of their trash into the landfill and the reason that was because ten years ago Schnitzer before that they were HMR, basically told the County that they would stop taking white goods unless they paid that



and so they threatened them and the County caved in and then recently it came up for review and they got it back to a million and a half. So you're dealing with a large, large corporation that's multi--well, it's all the way through the U.S. They make millions and billions of dollars and they're worried about us taking a little bit of steel. It's pathetic. I'm sorry. Thank you.

Chair Hiranaga: Thank you. Questions, Commissioners? Commissioner Freitas? Excuse me, sir, one of the Commissioners has a question for you.

Mr. Freitas: Mr. Nutter, are you presently taking batteries?

Chair Hiranaga: I don't think you should address the agenda item per se 'cause you're gonna -- might cloud what's gonna be discussed in the future.

Mr. Freitas: Okay, okay. I'm not.

Mr. Nutter: If I might mention one other thing?

Chair Hiranaga: No, he withdrew his question.

Mr. Nutter: Oh, okay.

Chair Hiranaga: So thank you.

Mr. Nutter: Sure.

Chair Hiranaga: Anyone else wishes to provide public testimony at this time? Seeing none, public testimony is now closed. I guess that's it. Thank you very much.

Mr. Nakamura: Thank you.

Chair Hiranaga: Next agenda item. Director?

Mr. Spence: Commissioners, it's Item E next agenda item acceptance of the Action Minutes from January 10, 2012.

**E. ACCEPTANCE OF THE ACTION MINUTES OF THE JANUARY 10, 2012 MEETING**

Chair Hiranaga: A motion to accept.

Mr. Ball: So move.

Ms. Wakida: Second.

Chair Hiranaga: Moved by Commissioner Ball, seconded by Commissioner Wakida, any discussion? Seeing none, all in favor say, aye.

Commission Members: Aye.

Chair Hiranaga: Motion carries.

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

**VOTED: To Accept the Action Minutes of the January 10, 2012 meeting.  
(Assenting - K. Ball, P. Wakida, D. Domingo, L. Sablas, J. Freitas, I. Lay,  
W. Shibuya, W. Mardfin)**

Chair Hiranaga: Next agenda item, Director's Report.

**F. DIRECTOR'S REPORT**

- 1. Planning Commission Projects/Issues**
  - a. Revising the SMA Boundaries**
- 2. EA/EIS Report**
- 3. SMA Minor Permit Report**
- 4. SMA Exemptions Report**

Mr. Spence: Commissioners, you have the--let's see, you have the SMA Minor Permit and Exemptions Report. I'm not sure if you have any questions on that.

Mr. Lay: I have a question.

Chair Hiranaga: Commissioner Lay?

Mr. Lay: I had it marked, one second. First of all, on the Grand Wailea, I know we got--we passed them on the Volcano Bar improvement, the cultural performance area improvement, I'm wondering what the state of the intervention going on at the Wailea right now. Intervention that's going?

Mr. Spence: Clayton, can you comment on the state of the intervention for the...

Mr. Yoshida: Mr. Chairman and Members of the Commission, the parties went into mediation in November your selected mediator, Glenn Kosaka. They were able to reach a verbal settlement but I guess they're exchanging the settlement agreements for everybody's signature and that has not been finalized yet. Until we get the written settlement agreement from the parties, we cannot bring the SMA matter before you. And so, that's--we're waiting to receive the written settlement agreement signed by the parties.

Mr. Lay: Is there any deadline on that as far as them being able to get that to us?

Mr. Yoshida: I don't think the Commission--I don't think there was deadline, but I believe the instruction from the Commission when they granted the intervention was that the, I guess they would like to see the process move as quickly as it could because of the time. I mean there was a intervention and SMA heard in 2009, it went on appeal to the court. The court vacated the SMA Use Permit, said you should have granted the intervention to several of the parties. The Commission granted the intervention and selected the hearings officer and the mediator. And I believe their instructions, the instructions of this body was that the Department and the parties try to move the process as quickly as it could.

Mr. Lay: I have one more question. On your SMX 2008/0449, you have the Children and Youth and it's tents, is that date correct? Page 2 of 14, three-quarters of the way down.

Mr. Yoshida: Yeah, we can check on that Commissioner Lay and we can report on that by the time of your next, before your next meeting.

Chair Hiranaga: Any other discussion?

Mr. Ball: Just in general, I don't know if that was the same thing that you were talking about just now, but those Grand Wailea permits why do those not come to the Commission?

Mr. Yoshida: I believe some of them were just for repair and maintenance like for the Alan Wong--well, the Amasia Restaurant, Alan Wong's restaurant is just taking that Kincha Restaurant kinda doing interior remodel basically so a lot of it is exempt or could be exempted. And some of these others did involve a lot of repair and maintenance to existing facilities. So the valuation of the portions deemed to be a development was less than \$500,000. Because now it's a \$500,000 threshold on the minor permits.

Chair Hiranaga: Any other discussion? Commissioner Wakida?

Ms. Wakida: I'm just curious. Actually I'm looking at an older one. But it's a 2008 SMX and it's for an event that took place in 2008 and it's still open. I'm wondering why it's even still on here? It's SMX, I'm sure of the page -- it's 2 of 14 but his was four weeks ago. It's 2008/0449 and it says the event took place on 10/2008. So I'm just wondering how that ends up staying on the list?

Mr. Yoshida: Well, sometimes Commissioner Wakida, the action on the SMA Assessment is dependent on another action like they need to get a change in zoning or they need to get a district boundary amendment and we cannot move forward on taking action on the SMA Assessment until they get that. But I think what we'll do is we'll check on SMXs that are two years or older and see if we can possibly take them off the list if it's done.

Ms. Wakida: Yeah, and particularly in this case since it appears to be for an event that required tents, an event four years ago, it's over. It's not a upcoming event.

Mr. Yoshida: Yeah, and only those SMXs that are still open because they're waiting for some other action like a change in zoning. But we'll take a look at all of the SMXs that are on the list that are two years or older.

Chair Hiranaga: Any other discussion? Commissioner Shibuya?

Mr. Shibuya: I don't know if this is the right time to ask the question, but once upon a time we had the Kula Lodge issue and I've been waiting at the Pukalani Community Center ever since. I was wondering when can I have some kind of meeting on that?

Mr. Spence: We have a meeting set up with the applicants I think it's sometime next week. So we're gonna discuss when to go to--you know, come to the Commission.

Mr. Shibuya: Oh, okay. So are we planning to have some kind of special meeting, session, at the --where the public is gonna be available or have a presentation there or are we gonna have some kind of hearing?

Mr. Spence: Well, at the last meeting we determined that if they're going to modify that Phase 2 Approval they would have to have a public hearing in the community plan district where the project's located. So we would have to set up something for the Commission.

Mr. Shibuya: Okay, thank you.

Mr. Spence: Thank you.

Chair Hiranaga: Any other discussion? Seeing none, F-5, Future Planning Commission Agenda.

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

**a. February 14, 2012 meeting agenda items**

Mr. Yoshida: I've provided my report in the context of the Big Island Scrap Metal ...(inaudible)..

Chair Hiranaga: Thank you very much. If there's no objection, this meeting is adjourned.

**G. NEXT REGULAR MEETING DATE: FEBRUARY 14, 2012**

**H. ADJOURNMENT**

The meeting was adjourned at 1:50 p.m.

Submitted by,

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 (9:00 a.m. - 11:47 a.m. and 1:00 p.m. - 1:50 p.m.)  
Michele McLean, Planning Department (12:50 p.m. - 1:00 p.m.)  
James Giroux, Department of the Corporation Counsel  
Rowena Dagdag-Andaya, Department of Public Works