

**CULTURAL RESOURCES COMMISSION
SPECIAL MEETING
JULY 13, 2012**

** All documents, including written testimony, that was submitted for or at this meeting are filed in the minutes file and are available for public viewing at the Maui County Department of Planning, 250 S. High St., Wailuku, Maui, Hawai'i. ***

A. CALL TO ORDER

The special meeting of the Cultural Resources Commission (Commission) was called to order by Chairperson, Raymond Hutaff, at approximately 12:20 p.m., Friday, July 13, 2012, in the Planning Department Conference Room, first floor, Kalana Pakui Building, 250 South High Street, Wailuku, Island of Maui.

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

Chair Raymond Hutaff: The special Maui County Cultural Resources Commission meeting, July 13, is now in session. I would like to commend and thank all Commission Members who are attending this special meeting. Bruce, mahalo. Kahulu, mahalo. Irene, mahalo. And, of course, Gaylord, mahalo. And Rhiannon, mahalo. Okay. I appreciate your extra effort. I know it certainly means a lot to the future and ...(inaudible)... Stan, and Joe, and the Deputy Director, and the counsel have to be here because we said we were going to show up. And of course, Stan, once again. Stan, would you like to bring this up?

Mr. Stanley Solamillo read the following item description into the record:

B. ADVISORY REVIEW

- 1. Consideration of a July 3, 2012, request by Maui County Planning Committee Chair Donald G. Couch requesting that the Cultural Resources Commission provide comments and recommendations related to Item PC-10, a proposed Bill Amending Chapter 2.88, Maui County Code, Relating to the Cultural Resources Commission, and Title 19, Article III, Maui County Code, Relating to Maui County Historic Districts. The CRC may provide comments and recommendations. Public testimony will be accepted. (R. Thomson)**

Mr. Stanley Solamillo: And I wanted to enter into the record that we thank Committee Chair, Don Couch, as well as members of the Planning Committee for providing the opportunity for the CRC to comment on their comments.

Chair Hutaff: And thank you, Joe.

Mr. Joseph Alueta: Thank you, Mr. Chair. Again, the item is just to take another crack, get another opportunity to review the overall comments and -- that were originally transmitted up, and I guess there was another comment that they felt should have been included within the -- from the CRC, I guess, regarding demolitions on -- actually, it's on page 6 of the handout I gave you.

So just to clarify, when the initial bill coming down was more of a housekeeping matter, primarily, to try to do quick amendments to the 19.48, 19.52, as well as 2.88 of Maui County Code and Title 19. Once we started getting into it with various agencies, I mean not agencies, but mostly the different commissions as well as primarily with this board, you had additional comments that you want to incorporate. And when the thing was -- all of those comments were transmitted up to council. Again, it wasn't our bill; it was a council initiated resolution, and again, the initial thought was more of a cleanup, and so I guess there was some concern over that when the bill went up there, it didn't have or the bill wasn't amended to include all of the comments and concerns that you guys had over it. And again, that's a function of whether or not council accepts those or whether they do it on the floor or before, they ask their staff to re-draft the bill in a format that they accept. Again, as far as I know, the bill that is currently is still the original bill. If you look through the -- or the one I gave you, it includes the original proposed bill, and that's all in black, and that's black and it's ramseyered or underlined, and that means it's been added, bracketed means it's being removed. All of the stuff that's in red are all the comments that were gathered and input from the three planning commissions, which is by charter are required, and including the CRC, which the council has chosen to provide comments on. And so all of those were transmitted up to the and again, it's up to them how they -- which comments they accept, and which comments they don't. Most of the time, they will incorporate almost all of the changes. So again, this is an opportunity for you to comment on it. Again, we'll transmit basically this document here to reiterate what all boards and commissions' comments were, and then where council takes it, whether they instruct corporation counsel or their staff to re-draft the bill incorporating all of those changes, again, that's up to them so --

Ms. Rhiannon Chandler: Chair?

Chair Hutaff: Yes, go ahead.

Ms. Chandler: Thank you. So my question then, I understand that the council will do whatever they choose to do with our comments, my question is: When we reviewed this about maybe six months ago now with Chair Fredericksen, we had a lot of comments, are all of those comments that we discussed at that meeting in this document?

Mr. Alueta: Yes.

Ms. Chandler: Okay.

Mr. Alueta: As far -- I mean, again, I don't know if there's a disagreement on that, but as far as I'm concerned, I took copious notes and all of these comments that you had is a good starting point, that's what you had in the first go-around. I guess this second is believed that we missed this section here, C, which is currently up on the board, okay. I'm not sure if the source is this, came from here or not, but this is one of the -- it as discussed, I believe, at some point in time that this was a comment that you do want to include now. At least that's what we're proposing.

Ms. Chandler: Okay.

Mr. Alueta: So -- and I guess that was going to be the primary focus of it. If there's any other comments you guys have on the bill now, as Stan indicated, this is very generous of the council to give you guys another opportunity to comment on it, and we can type it up, and incorporate it as best we can.

Ms. Chandler: Thank you.

Ms. Michele McLean: If I can add on to that. Joe regularly takes revised -- proposed revised bills to our planning commissions, to the CRC, to other boards and commissions, and typically the process is that there's a lot of discussion that aren't necessarily comments that are supposed to go back to council, so if there are things that you're thinking of and you say, oh, I don't see that in the draft, it might be because that was something that was discussed but not something that was intended to be a comment back to council. And what Joe usually does is, he writes down the comments, and then at the end of the discussion, he'll say, okay, these are the comments I have, and he lists them back, and then if anything is left out, then you can add them back then. So it's possible if you're thinking that something was omitted, it was more of a discussion topic rather than a specific change. But now is the opportunity to add those back in if you want to.

Mr. Bruce U'u: Question, Joe. Again, who -- what's the process - CRC, Planning, council?

Mr. Alueta: Technically, it's actually just when it -- when a resolution comes down from council, it's transmitted by charter, by requirement to the three planning commissions. CRC is not involved at all. It was brought to you because, obviously, it's in the historic district, the most logical people to review it and has the greatest impact is the CRC; that's why it was brought to you guys. Our legal requirement and council's legal requirement was only the three planning commissions, but the department felt that the CRC would be a better board to review it and provide those comments, and that's why we felt it was important to take it to you and get your comments. And just to build on some of things that the Deputy Director stated is that you need to setup, from the get-go, at the start, whether

or not your comments from individuals is what you want or is it going to -- or you want to make sure you have consensus among all of the members before it becomes a comment, and that's where it was -- the discussion at the -- with Chair Fredericksen several months ago was that there was a lot of discussion and it was only until there was a signal that is that a consensus, do we all agree, and then that's when I took the comment down. So make sure that -- it's up to you how you want to run it, just give me time, I don't spell very well, so pardon me, but that's why I brought this down today so we can at least -- you know, you can see exactly what is going to be your comments and so there's no confusion on it.

Chair Hutaff: Go ahead.

Mr. U`u: So again, it's CRC, Planning, council?

Mr. Alueta: No. Once it comes out of CRC, we're going to transmit to council.

Mr. U`u: So Planning already had their shot?

Mr. Alueta: We've gone to the three commissions and the department.

Chair Hutaff: Also, as a comment, I attended the Council Planning Committee meeting and they had some questions and wanted a little bit of direction, just on a few minor things on what we were trying to say or do, and most of it came from the view plane. And do you know if JoAnne Johnson actually addressed that?

Mr. Alueta: I don't recall.

Chair Hutaff: Maybe we can --

Mr. Alueta: All three of us were at the meeting so I don't --

Ms. McLean: I thought the only thing that JoAnne Johnson was going to comment back on was the tree types --

Chair Hutaff: Trees. Size of the trees.

Ms. McLean: The size of the tree measured from the ground.

Chair Hutaff: And we had a comment, they wanted direction on the view plane, what we meant. So this is sort of our last opportunity to give things to the Planning Committee, and we have definitely been given a gift, you know, to get it right, to have them fully understand, because from the committee it goes to the full body of council, and the only people, you

know, the majority of the people who will have knowledge of what we discussed in the committee meetings are the committee members. So the council will probably ask the committee members. So the more clear we can make things, okay, then everybody wins out because there's no, like she said, everybody want to know so why did we pick the size of the trees, you know, and so I had a conversation with JoAnne Johnson and if she hasn't addressed, I can relay the conversation that we had ...(inaudible)... so, that all being said, go ahead. You have a question? And thank you, Warren. We only started like two minutes before you came. I saw you running down and we said we're going to start the meeting now make him think he's late. Okay.

Mr. Alueta: Mr. Chair, did you want me to just -- I mean, again, this is on page 6, 'cause this was the only section that people wanted this comment wanted to be added, or do you want me to start from the very beginning again, from the first page?

Chair Hutaff: Well, let me ask the Commission Members, okay. Some weren't here before. Did all of you get the packet and have a chance to go over it? Well, we have -- we have -- he has a question and it's, you know, do we wanna go over it line by line and read it, and then only stop when we have a question, or do we want to -- you guys all understand what's being changed and agree with it and only vote for the item 6 and then work on a draft letter to the council and some other minor things in here about the trees and review view plane?

Mr. U`u: Question.

Chair Hutaff: Go ahead.

Mr. U`u: How the time table we looking at 'cause I gotta leave by four? That's my only question.

Chair Hutaff: Well, if everybody's kinda read it, you probably have questions already. I think that, you know, let me ask that question. How many of you have actually read this last one? Did you get ...(inaudible)...

Mr. U`u: I looked it through. Yes.

Chair Hutaff: Okay.

Mr. Warren Osako: I just got back today so --

Chair Hutaff: Okay. No worries.

Mr. U`u: You're a fast reader.

Chair Hutaff: Then -- go ahead.

Mr. Gaylord Kubota: Which are we dealing with, the one we had last time, which is the actual ordinance, or this, what he handed us today, 'cause they're different?

Ms. Richelle Thomson: I would go by what was transmitted down here from the Planning Committee because that's the latest draft that they're working on.

Mr. Kubota: So it's not --

Ms. Thomson: I think what I understand is that there's just really, basically, one change between the two drafts and that's what's up on the board, item C, under Demolitions.

Chair Hutaff: You know what you're -- I see what you're saying. In doing a --

Mr. U`u: Side-by-side.

Chair Hutaff: Yeah, side-by-side, they don't match. So I would suggest ...(inaudible)...

Mr. Kubota: There were some things, when we were going over this council draft that we got last time, we made some comments, which I don't think were necessarily changed ...(inaudible)... page 3, item K, we wanted to add "and cultural impact statements."

Ms. Thomson: Right. Nothing's been changed yet, so we just kind of discussed it last time, but this is the time that we're going to actually -- Joe will be putting in the actual comments so --

Mr. Kubota: So we should be going over --

Chair Hutaff: Yes.

Mr. Kubota: The one we got last time rather than whatever 'cause that's what we worked on and commented on.

Chair Hutaff: Yeah, I think, anyway, we've kind of answered our question. Joe, if we can go line by line just to read it, and then if any Commission Members has a question or comment, whether it be based upon the last meeting or clarify it, then could we do that? So, in other words, you can just go ahead and read, should only take you about 27 and a half minutes to read the 9 pages.

Mr. Alueta: Well, I'm just going to try get clarity with the attorneys first because the -- 'cause I don't wanna, again, I don't wanna mislead the board or have the board make

comments on one thing and it not be included because I'm looking at I guess what was transmitted down, and so I guess they -- what they transmitted down actually incorporated the changes and recommendations from the various boards and commissions, is that my -- and then so that's why when you look at mine, the one that's on the board, it's in red and they still have it black. I mean that's -- so all the stuff that we put in red, they incorporated already into this bill. That's my understanding. And that the only portion that they did not incorporate was the portion that's on page 6, regarding the demolition. But we can, again, we can go line by line to make sure that everybody's -- that we're all on the same page 'cause I don't have what -- council didn't transmit it to me. I didn't get it. So I don't have a digital copy to put up on the board so you're going to have to work from a physical --

Ms. Thomson: I can send you one if you want. I think I have it in my email, or I can get it.

Mr. Alueta: Yeah. I can't figure out this network here.

Ms. Thomson: Yeah. Well, we can combine ours too.

Mr. Alueta: Okay. Alright.

Chair Hutaff: Well, plus too, my understanding is that if it's already -- they've already gone through this and the only thing they wanted us to -- the committee wanted us to do was help them understand why trees and the view plane, so if we have anything else that's already in red or in black, it would have to be an additional comment. Am I correct? It would be like a comment from us, can we change this or we'd like to see this, is that correct?

Ms. Thomson: My reading of this letter is that you're free to make comments on any part of these changes, you know, whether you wanna make additional comments would be fine.

Chair Hutaff: Stan?

Mr. Solamillo: I just wanted to add that the product that has been sent to you from council is a result of two meetings. Some things that had been originally sent up and recommended were not approved by that committee, so they were taken out, so what you've got is as it has come out of committee back to you.

Mr. Kubota: The one we were handed last time?

Ms. Chandler: Yeah. Chair?

Chair Hutaff: Go ahead.

Ms. Chandler: Okay. So, actually, if we're going to read line by line, it should be the council's bill that they sent down and then I guess, just on the side, we have this that you gave us that we're just kinda looking at to see if we see something missing, then we can maybe reinsert it and try again, or if we have notes from our last meeting, which we do have a couple of different things that we wanted to get definitions of, and there were some Corp. Counsel and, Stan, I know we had some conversations at the last meeting about what we could add, and I think Gaylord has the most copious notes so we're just going to ask him to chime in.

Chair Hutaff: Okay, perfect. Just a matter of housekeeping so we can move on, but I'll open up for public testimony, anybody in the public who'd like to speak? Nobody has moved forward, so we're going to close public testimony so we can go on. So we are in consensus that we should read, you know, just go over it so that we're on the same page and if somebody has a question, just jump in, don't even ask me. Yes?

Mr. U`u: Just for clarify, Chair. So if we're going to make any amendments, do we make a motion and vote so it's clarity that you want to put it down instead of just --

Chair Hutaff: My understanding is we'll have to make a comment, and there would have to be a consensus, so we'll have to make a vote, a motion to implement the comment.

Mr. U`u: Okay.

Ms. Thomson: You can handle them all at the end though, if you'd like. So Joe and Stan, we can take notes, and then Joe will read them back, you know, and if those are your comments, you have anything additional or want to change something, then you could adopt it as one, you know, rather than going to each comment.

Mr. Alueta: And, just to, again, to clarify. Don't work from the one I just printed out, okay. That was what was originally sent.

Mr. U`u: This one?

Mr. Alueta: Yeah. Do not work from that because that does not, as indicated by Stan and rest of you, is that they've added more stuff to it, which I do not have on my notes, so this is the latest and greatest from council. So you may wanna look at the red one just see did they incorporate something that you said, I mean that was in read that was not put in here, but it looks like they've added more to it than --

Mr. U`u: So what one we're going to --

Mr. Alueta: So it's the one that's the bill and it's 20-12 is the date of it.

Mr. U'u: Okay.

Mr. Alueta: And it's in black, basically, black and white. Okay.

Chair Hutaff: Maybe so don't have to worry about reading and writing, okay. If you could read it to us. Could, Stan, could you take the notes if we make a motion so that -- is that okay, Joe?

Mr. Alueta: Yeah, either way. He can double-check and then we'll compare notes back, but if I can, I'll just, like I say, start from the beginning where they're editing Chapter 2.88, okay, and again, they're just taking out a lot of the "Council means" and they're bracketing that part. All the underlined stuff is stuff that's being added. What's different from what you previously saw is that they're adding that last sentence, basically, so where it says, "Cultural resources management plan" means a document that governs the range of activities aimed at understanding, preserving, and providing for the appreciation of cultural resources and perpetuation of related cultural practices." And then they added, "It includes research related to cultural resources, planning for actions affecting cultural resources, and stewardship of cultural resources in the context of overall planning activities." So that line was added in somewhere along the way.

Ms. Chandler: Chair? This is where, at the last meeting, we talked about having a definition for "cultural resources."

Chair Hutaff: Yeah.

Ms. Thomson: This is going back to -- so it's Chapter 2.88, but you don't have this portion in front of you, 2.88.010, Purpose and intent. It goes into quite a long explanation of the purpose of this particular code section and the establishment of the CRC. Let's see. Basically, implementation of Chapter 6E, Historic Preservation, Hawaii Revised Statutes, the Maui County General Plan, and adopted community plans provide a means to perpetuate the value of various cultures of which our community is comprised. So "cultures," in that context, I believe, would refer to the people who have populated Maui County over history and prehistory so --

Ms. Chandler: So, and then in the document that Joe was just reading, it mentioned the preservation of cultural resources, and so I don't know. In order to define that, I just -- that was -- I just remember that's what we talked about last time.

Chair Hutaff: You have a suggestion?

Ms. Chandler: I suggested, I think, that we look at Hawaii Revised Statutes to see if "cultural resources" are defined anywhere under like DLNR or -- I mean but I'm not sure. I mean I didn't look it up and I don't know.

Chair Hutaff: Anybody else want to talk about "cultural resources?"

Ms. Chandler: Because what is -- because this is actually a fundamental issue because what a lot of times it's kind of on the fence whether or not it applies to CRC but depending on how it's defined, then, technically, it could broaden the topic, you know, discussion. It could be are we defining "cultural resources" as buildings here, you know, or are we defining "cultural resources" as elements that make up cultural practices in Maui County, you know, whether that's natural or physical structures?

Ms. Thomson: Part of that, and the Deputy Director can probably help me out with this too, Chapter 343, which is the Environmental Impact State law in Hawaii, also identifies cultural -- cultural impacts, you know, as part of that review process, so they're distinct but related preservation schemes. Historic properties, which is also, you know, in the definitions before you, encompasses quite a broad range. But you're right, it's based more on geographic designations rather than like gathering rights type of thing, which could impact a specific geographic area, but you're talking about the right in general, that would be separate.

Chair Hutaff: Okay.

Mr. Alueta: But is the overall desire of the CRC is to have a definition of "cultural resources?" Is that the bottom line?

Mr. Kubota: It seems like, since we're called the "Cultural Resources Commission," it should be defined somehow.

Mr. Alueta: Okay.

Mr. Kubota: I was hoping it was already defined. I took a stab at something but -- this is what I took a stab at, it says, "The archeological and historic remains of an ethnic culture(s) located in a historic property site or in a historic district to include, when applicable, the fauna and flora in the area historically associated with the site."

Chair Hutaff: With the what?

Mr. Kubota: Historically associated with the site.

Chair Hutaff: Sun?

Ms. Chandler: Site.

Chair Hutaff: Site. Okay. I like site better, actually.

Mr. Kubota: And it incorporates the concern we had, like from Olowalu, we were concerned about the reef out there.

Ms. Chandler: Except that Olowalu isn't in a cultural -- isn't in a historic district, and so that's the only thing I see that maybe if we take out the word "historic district" and leave the rest, otherwise, we're limited to what's in the historic district.

Ms. Thomson: The CRC has review powers though over historic preservation activities countywide.

Ms. Chandler: Oh, okay.

Mr. Kubota: And that's how we got that in the first place because it's not in a historic district but it was referred to us so --

Ms. Chandler: Okay.

Mr. Kubota: ...(inaudible)... some other way.

Ms. Chandler: Maybe inside --

Chair Hutaff: Go ahead, Stan.

Mr. Solamillo: Can Commissioner Gaylord repeat his definition for "cultural resources?"

Mr. Kubota: Just a stab at it. It's kinda hard. "The archeological and historic remains of an ethnic culture(s) located on a historic property site or in a historic district to include, when applicable, the fauna and flora in the area historically associated with the site."

Chair Hutaff: What if we put "not limited to historic districts?"

Ms. Chandler: Yeah, inside and outside historic districts or something, including but not limited to historic districts maybe? Something like that.

Chair Hutaff: It's becoming one of those ambiguous statements --

Ms. Chandler: Yeah.

Chair Hutaff: But it does give some direction.

Mr. Kubota: It's deliberately left ambiguous because you want to be able to define it as you go along.

Chair Hutaff: Well, I meant -- yeah, I mean if we said "not limited to historical districts," but I think that that's, you know, within what we have to do today and that -- I would like to see that as part of the definitions today, and then I can do some research also at the federal level and the state level and on the internet what is considered cultural definitions and, at some point, try to clarify that, not necessarily for this particular bill because it would be too late, but in general, you know, if we can have it placed some place in the state a definition or something like that.

Ms. Chandler: Chair? Stan, did you get that or should we go over it one more time?

Mr. Alueta: It would be just easier if I just borrowed his cheat sheet and then type it, but is that the direction, you wanna adopt something that's --

Chair Hutaff: A definition.

Ms. Chandler: Yeah.

Chair Hutaff: Yeah. Okay, so why don't -- yes, go ahead, Stan.

Mr. Solamillo: The only question I'm going to have is the references to "historic site," "historic property," being that the Hawaiian occupation of the Hawaiian Islands goes back into prehistory or what we regard as prehistory. Hawaiian history, unfortunately, is bracketed by western contact. So my question would be whether we need to use the word "historic." The other thing is that "culture" and "cultural resources" are tied to living culture as an extension of, in this case, Hawaiian culture. So somehow we have to wrap our arms around all of that.

Ms. Chandler: And -- Chair, sorry.

Chair Hutaff: Go ahead.

Ms. Chandler: I think his culture and the "s" in a bracket really does take a stab at that, that we're not only talking about Hawaiian culture, but any elements of cultures in Maui County, and I think once we get it up there and we can just figure out if we leave "historic" in there and say, "historic and prehistoric" or, you know, "historic districts and outside of historic districts," something like where we can make it a little bit more open.

Chair Hutaff: I kinda think that because, you know, in this here, we talked so much about the historic district that the word "historic district" should be identified but we should identify it as not limited to. So we're identifying it being part of this document "historic," at the same time, we're expanding it.

Ms. Chandler: I agree.

Ms. Thomson: You know, I'd like to offer something that might help to. The Cultural Resources Management Plan that's identified, a portion of that plan, it may be that defining "culture" is such a daunting task to boil it down to a definition that can fit into the code that that could be something you could incorporate as an action item in the Cultural Resources Management Plan.

Ms. Chandler: Yeah. I think we couldn't even try to define "culture" in this document, but cultural resources, just being part of a name, I think is important and, to be honest, this was the most important thing to me today was to get this definition in there, and I think the rest of it is pretty much --

Chair Hutaff: I actually agree that, and I also agree on the fact that I think that we couldn't really narrow it down, okay, and even this law, but I think, you know, having it saying exactly what you came up, again, thank you, Gaylord, I think is a perfect thing we can do today, just the one term "not limited to." Go ahead, Stan.

Mr. Solamillo: For those of you who have been on this Commission for a long time, we've gone over the issue of the natural environment having cultural significance to indigenous people and to the Hawaiian people, so my question for the Commission is: Do you wish to embody that part of the definition into this definition?

Ms. Chandler: And I think that our Commissioner Kubota already did when he said the natural -- the flora and fauna associated with the area, so I can't think of -- I mean we could say "natural resources," you know, but I think either way it speaks to the cultural resources because you're identifying the flora and fauna as an element of cultural resources.

Chair Hutaff: What do you think, Warren?

Mr. Osako: Yeah, I like that part about the fauna and flora because if you're talking about culture, you know, it was all part of the culture. For instance, for those of you who were here when we reviewed the Auwahi wind project, I asked about the botanic report, and they said, well, you're only concerned with the cultural resources, but some of the native plants, if they were used by native Hawaiians, then that was part of their culture.

Chair Hutaff: Yeah, I couldn't agree more. I think that's one of the defining things about the Hawaiian culture is that flora and fauna and the water, okay, are so ingrained as a cultural entity or item, whereas in other places, it's just eat, food, we walk in that direction, and so I think we really need to put that in there the way he states it so that it can be addressed that way. We'll get it. It's not just the water from the stream. It's just not the plant. We'll just replant it. No. It's all tied together. So I think he's come up with a probably more perfect than he realizes, or either that and you ...(inaudible)... when you're smarter than I thought ...(inaudible)... to smart. Good. Okay. Go ahead.

Ms. Thomson: This is, you know, just for more information, I wasn't able to find a specific definition of "cultural resources" in Hawaii law. This is New York, which we could add some of things to it that would make sense here, ""Cultural resources" are defined as the collective evidence of past activities and accomplishments of people, buildings, objects, features, locations, and structures with scientific, historic, and cultural value are all examples of cultural resources. Cultural resources are finite and nonrenewable resources that once destroyed cannot be returned to their original state." I don't know if that's helpful or not.

Chair Hutaff: It makes that statement, Gaylord, more important to define. Go ahead, Stan.

Mr. Solamillo: And I wanna thank Commissioner Gaylord for his initial definition. Going to fauna and flora, I'm still grappling with the third component, which is land forms, so land form geography, however we choose, because those are implicit to Hawaiian world view and cultural view. The pu`u, right?

Chair Hutaff: ...(inaudible)... listed there.

Ms. Chandler: Yeah, geological features. Yeah. Dare we say "water?"

Chair Hutaff: Sure.

Ms. Chandler: Okay.

Chair Hutaff: Please.

Ms. Chandler: So flora, fauna, water, and geological features.

Mr. Solamillo: You means the definition that Corporation Counsel read is the western view, we have to include and indigenous view, which is broader.

Ms. Chandler: Yes. Yes, because the definition read by Corporation Counsel did speak very much to the physical elements of scientific, you know, construction, not necessarily

as much of the natural, however, the second part of the definition, about them being nonrenewable resources once lost, I actually want all of that in here because I think it's all -- it actually speaks to natural resources without saying it out loud, but if we have this right here directly talking about it, it just ...(inaudible)... for the last part, so maybe if you could read that part again about nonrenewable resources.

Ms. Thomson: The last sentence was: "Cultural resources are finite and nonrenewable resources that once destroyed cannot be returned to their original state."

Chair Hutaff: You want to use like a word "especially?"

Ms. Chandler: "Cultural resources are finite and nonrenewable resources" --

Ms. Thomson: "that once destroyed cannot be returned to their original state." I would probably suggest instead of "cannot," you know, "may not," or something, as with water. You know, and once, you know, once this is either in the code or, you know, even if it doesn't make it, there's nothing to limit the CRC from suggesting administrative rules that would flush out the definition and give guidance on how you would deal that subject material.

Chair Hutaff: Is it through administrative rule?

Ms. Thomson: Yeah.

Mr. Kubota: One small suggestion. Instead of water, should we say "aquatic" instead? Just a choice of terms. If we use "fauna, flora, aquatic," instead of water.

Mr. Alueta: Harder to spell. Just kidding.

Chair Hutaff: Spell check.

Mr. Osako: And the Hawaiians differentiated between freshwater and saltwater too.

Ms. Chandler: Yes.

Chair Hutaff: Yes.

Mr. Kubota: "Aquatic" would cover both.

Chair Hutaff: That's really good. It also takes the word "water" out of there, which somebody may flag as being, oh-oh, what are they trying to say? What can this lead to, everything they want ...(inaudible)

Ms. Chandler: Undercover.

Chair Hutaff: Yes. Aquatic kinda -- can you read that back, Joe?

Mr. Alueta: Archaeological and architectural remains of an ethnic culture located on a historic property, site, or in a historic district to include the area, when applicable, fauna, flora, aquatic, and geological features in the area associated with the site and are considered finite and are nonrenewable resources, and once destroyed, may not be restored to their original state.

Chair Hutaff: So maybe if it reads a little better if we took, after "features," and where it says, "in the," we kinda repeat "in the," if we put "any," "in any area," and just make it flow a little better as far as the sentence goes, in my opinion, which is --

Mr. Kubota: Right now, we have "archaeological and architectural remains?" Wouldn't archaeological involve prehistory though, so we could still leave "historical?"

Ms. Chandler: Okay.

Mr. Kubota: 'Cause architectural, I don't think that quite fits. We really need historical there.

Ms. Chandler: Okay, "the archeological and architectural remains of the" --

Mr. Alueta: Gaylord -- 'cause remember, I'm trying to read Gaylord's writing and so -- which is just a little bit better than mine, but I wasn't quite sure what that second word was. What word was that?

Chair Hutaff: I think we also wanted to, you know --

Mr. Kubota: Archaeological and historic remains.

Mr. Alueta: Oh, historic

Chair Hutaff: I think we also want to put in there "not limited to historic districts."

Ms. Chandler: Yeah.

Mr. Solamillo: I'm still questioning when we use the word "historic."

Chair Hutaff: Can I give you my personal answer on that? Okay, because your definition of "historic" and my definition of "historic" are probably different, okay. My definition of

"historic" is anything back to the atom, to the explosion. That, to me, is historic. I think that you, who's probably more correct than I am because you define it a little better, is historic is coming. How long is your idea of historic?

Mr. Solamillo: From a threshold that's 50 years backward from today, backward to into prehistory or what we call "prehistory."

Chair Hutaff: That's my reason for saying "not limited to." I don't want to limit it to just 50 years because my personal -- anytime somebody talks about history, it's like where are we at?

Mr. Solamillo: I guess I would even in the question of archaeological and architectural, I would say, "the physical remains."

Chair Hutaff: The what?

Mr. Solamillo: The physical remains of ethnic cultures. I don't limit it. It's not just limited -- that includes objects, it includes anything, pu`u, a village site, a sugar mill.

Chair Hutaff: I like that. Thank you, Stan.

Mr. Osako: I think in the broad view, "historical" means like written record, and then "prehistoric" means without current --

Mr. Solamillo: Yes.

Mr. Osako: Written records.

Ms. Chandler: So how are we going to change this statement just now?

Chair Hutaff: I think he came up with it. Stan?

Mr. Solamillo: Repeat it for me because I've just had a memory lapse.

Chair Hutaff: Okay, instead of the archaeological and ...(inaudible)...

Mr. Solamillo: No. I said instead of archaeological and architectural, just substitute for the physical remains of and ethnic culture.

Chair Hutaff: The physical remains.

Mr. Solamillo: Of an ethnic culture.

Ms. Chandler: Okay. That is interesting. The physical remains of an ethnic culture. And then -- okay.

Mr. Osako: Archaeological is still physical.

Chair Hutaff: Yes.

Ms. Chandler: Okay. And then the next line though says, "located on a historic property," and I just wondered if --

Mr. Solamillo: That's why I was discussing why we should tie ourselves down to --

Ms. Chandler: I think maybe we take that out because the next line says, "or in a historic district," so maybe "located in or including, but not limited to, a historic district," that statement that we were going to do earlier.

Ms. Thomson: You may want to take -- you know, you could consider taking all of that out, "the archaeological and historic remains of an ethnic culture located on a property site," you know, I guess -- I mean you could take historic district reference out if you want to just have a very broad definition.

Ms. Chandler: Okay.

Chair Hutaff: So take out "archaeological and historic" --

Ms. Chandler: So located on a property site to include in the area --

Mr. Alueta: Why don't we start from the beginning because I got two people telling me you have to edit it at the same time and I'm like, okay, so -- no, on the first line, what I am taking out - "archaeological and historic remains?"

Ms. Chandler: Yeah.

Mr. Alueta: Or do you --

Mr. Kubota: The physical remains.

Mr. Alueta: So you just want "the physical remains," no archaeological and no historic? Okay. Did I tell anybody how much I hate Windows and this Word? So just to remind you. Trying to do Mac Smart Moves and I can't -- I'm actually trying to do some moves and I'm like with this thing and --

Chair Hutaff: See I'm at the opposite end of that. I can't do Mac.

Mr. Kubota: If the property in historic site bothers people, we could possibly even delete that and just skip to include in an area, when applicable, and keep the rest of that sentence.

Mr. Alueta: So what am I -- am I taking out "site" or "located on a site?"

Mr. Kubota: I'm just running that by -- see what everybody else thinks. I mean people seem to have a problem with --

Mr. Alueta: You want me to take out "historic district?" Is that the --

Ms. Chandler: Yes.

Mr. Kubota: Take out "property" and "historic district."

Ms. Chandler: "located on a site" maybe just "to include, when applicable."

Mr. Alueta: Included in the area --

Ms. Chandler: Yeah. So maybe -- Commissioner Warren just said that maybe "in the area" should go at the end of the sentence, so it would be "on a site to include, when applicable, the fauna, flora, aquatic, and geological features in the area." Oh, "associated with the" -- wait. What is that next line?

Mr. Osako: "in the area associated with the site."

Ms. Chandler: With the site. Yeah. So there would be "site."

Mr. Kubota: Historically associated with the site.

Ms. Chandler: Features. So after "features" would be "in the area." Or in any area? Associated with the site.

Mr. Kubota: Area historically.

Mr. Alueta: 'Cause you're saying it twice.

Chair Hutaff: Three times actually.

Mr. Alueta: I know. Well, I'm taking out one of them so -- included --

Mr. Osako: In any area.

Mr. Alueta: Yeah.

Ms. Kahulu Maluo: I apologize. Aquatics would cover rain? Rain? Clouds? I hope so.

Chair Hutaff: At the end result, yeah.

Ms. Maluo: Precipitation, right?

Chair Hutaff: Yeah. So you could actually -- you could actually say you can't tear down that forest because it will stop raining and you won't have any water.

Ms. Maluo: Or putting things up in the ...(inaudible)... or in the cloud lines.

Chair Hutaff: You could. I don't know how the attorneys would like it, but I think --

Mr. Alueta: I don't normally like starting a sentence with "and" 'cause that seem -- or should we repeat saying "cultural resources are considered?"

Chair Hutaff: Sure. So actually --

Mr. U`u: That's a good one.

Chair Hutaff: Then you could say "also," "are also considered." Is that good, Stan?

Mr. U`u: I think that's good.

Ms. Chandler: I think it's grand.

Mr. Alueta: Okay, did I use any words -- is there any words in here that actually I misspelled that because we're trying to mean something else?

Chair Hutaff: Just do spell check.

Mr. U`u: Okay lunch. Kidding. Kidding ...(inaudible)...

Chair Hutaff: When you read that, that's so powerful.

Ms. Chandler: This is ...(inaudible)...

Mr. U`u: Okay.

Ms. Chandler: Accomplishment.

Mr. U`u: Motion to accept. Kidding.

Chair Hutaff: Go ahead.

Ms. Chandler: So moved.

Mr. U`u: I thought we was going do it at the end they said? All at once.

Chair Hutaff: Do what now?

Mr. U`u: We was going do them all at the end he said, Joe.

Chair Hutaff: No.

Mr. U`u: No?

Chair Hutaff: No.

Mr. U`u: That's what he said.

Ms. Thomson: Yeah, you can do it either way.

Chair Hutaff: Yeah. Let's don't, you know, leave things to memory.

Mr. U`u: I think Gaylord should make that motion.

Chair Hutaff: I do too.

Mr. U`u: Because you did a fine job.

Mr. Kubota: I move that we accept the -- or recommend the definition as outlined, as worked on over there.

Mr. Osako: I second.

Chair Hutaff: Okay, a motion been made by Gaylord, and seconded by Warren. Any discussion? Okay, let's take a vote.

There being no further discussion, the motion was put to a vote.

It has been moved by Commissioner Kubota, seconded by Commissioner Osako, then unanimously

VOTED: to recommend the definition of "cultural resources" as discussed.

Chair Hutaff: Motion has carried.

Mr. U`u: Moving on.

Ms. Chandler: I'm so excited.

Mr. U`u: We made progress.

Ms. Chandler: This is a happy day.

Chair Hutaff: Okay.

Mr. Alueta: Okay, so we got your definition. So you have your Cultural Resources Management Plan, and again, the last sentence, "It includes research related to cultural resources, planning for actions affecting cultural resources, and stewardship of cultural resources in the context of overall planning activities." That slightly different from -- that last sentence was added.

Let's see, "Historic district" was added to mean -- that was your definition that was added in by staff, it's also in the red.

Removal of "Historic properties." That was deleted.

And then they took out "State means State of Hawaii," but that was in the original draft.

Mr. Kubota: And this definition would go in right after "County" and before "Cultural resources management plan." That would be the place to put it in.

Mr. Alueta: I'm sure that when it goes to Corporation Counsel, they'll alphabetize it.

Chair Hutaff: Yeah. I was going to say it's in alphabetical order.

Mr. Alueta: Again, I'm just going to write down the changes to the bill that was sent down. So I'm just writing -- that's what the notes are. So these are what we're going to add to that thing.

Moving to page 2, let's see, I'm trying to look at what was different from --

Mr. Kubota: This is just a general comment, but we were always taught to capitalize proper nouns and names, and Cultural Resources Commission, it's all in small letters, I mean it just bugs me, personally, to see that, but that's just me, but I don't know if it bothers anybody else because it could be changed all through the document. The Cultural Resources Commission is capitalized, the first letter.

Ms. Thomson: Yeah. It looks like it's a style thing with the county.

Mr. Kubota: Is that what it is? That's what I was wondering.

Ms. Thomson: Yeah. Because, you know, every document is now being changed, like you see, you know, through here the council of Maui County, so "County," for some reason, is uppercase but like "council" is not. So just internal style.

Mr. Kubota: Okay. That's what I was wondering too.

Mr. Alueta: Again, like I say on page 2, some of the changes, taking out special interest and then you added "demonstrated experience." You added "AIA Maui, a chapter of the American Institute of Architects," and that's in Section B. So council did include that. That was your comments. Yeah, "persons with demonstrated experience," again, was added by you and that's also been included in the council's latest draft.

D is just just the same that you saw previously.

Section 2.88.060, Powers and duties. There's a -- you had no recommendations to either of the changes that was proposed by council and so council did not change anything from what you previously saw.

Ms. Thomson: There was -- hang on, Joe, just one second. There was on page 3 --

Mr. Alueta: Yeah.

Ms. Thomson: Item K, at our last meeting, there was some discussion by the Commissioners whether you wanted to add review of environmental assessments or EIS.

Mr. Kubota: Include the cultural impact statements.

Mr. U`u: What section was that?

Ms. Thomson: It's --

Mr. Alueta: Powers and duties.

Ms. Thomson: Yeah, it's in Powers and duties.

Mr. Alueta: 2.88.060

Ms. Thomson: Yeah. The middle of page 3, item K.

Mr. Alueta: On page 3, on K, you again -- the CRC added, let's see, you had made those recommendations that the Commission and you put in -- it was "shall," and then you added, "have the authority to review and comment on archaeological reports submitted as part of development proposals to various county agencies," and this council added -- I mean this board added "as well well as establish review criteria for areas with high concentrations of archaeological sites or burials as identified in the cultural resources management plan." And that was also it looks like it was adopted by or at least accepted in council's draft, so that comment was --

Mr. Kubota: What we talked about at the other meeting was, the last meeting was "review and comment on archeological reports and cultural impact statements." We wanted to add that in, right? That's what we talked about.

Ms. Chandler: Yeah.

Mr. Alueta: Okay. You want to add it in after --

Mr. Kubota: After "archaeological reports" --

Mr. Alueta: Right.

Mr. Kubota: "review and comment on archaeological reports and cultural impact statements."

Mr. Alueta: Cultural impact statements.

Chair Hutaff: Now I kinda see why she said we should wait till the end ...(inaudible)... just the women, gosh. Okay.

Ms. Thomson: Just if you want to do it different from here on out, other than the first part ...(inaudible)...

Chair Hutaff: Okay.

Ms. Thomson: ...(inaudible)... by consensus at the end if you'd like.

Chair Hutaff: Okay. So anybody have any different opinion right now about changing that to something else or is that okay for now, and we'll make a -- we plan to go on and discuss it again and move on it, are we okay? All good? Okay. Cool.

Mr. Alueta: I'm sorry. I missed that. So you are going to add "cultural impact assessments" or cultural -- okay. Is it called "cultural impact assessments?" Okay.

Chair Hutaff: I thought it was statements.

Ms. McLean: Assessments is what's used in 343.

Mr. Osako: Yeah, that's what the cultural impact --

Ms. McLean: Cultural impact assessments is what's used in the EA so --

Mr. Kubota: Yeah, that's what I meant. Yeah, I used the wrong word.

Chair Hutaff: Well, it's big words.

Mr. Osako: That's what they use anyway for the EIS.

Chair Hutaff: Okay. Next line.

Mr. Alueta: They were just changing it to -- "special treatment districts" to mean "historic districts." You didn't have any comments on that.

Chair Hutaff: Actually, we did. Are we still on K?

Mr. Alueta: No. Below K. I thought you were done with K.

Chair Hutaff: There's one thing we wanted to eliminate, "high concentrations of archaeological sites," and just have it say "concentrations" or -- yeah, we didn't want it -- go ahead.

Ms. Thomson: That's something that's probably up to your rule making procedures to define what that means, "high concentrations."

Chair Hutaff: So we should leave it so we can --

Ms. Chandler: Yeah. I agree with Corporation Counsel that we can define what a "concentration" is but I think we should take "high" out of this because then it leaves it up to somebody else to say, oh, it's not high even though maybe we think that it might be. Just maybe just leave the word "concentrations of archaeological."

Chair Hutaff: So eliminate the word "high?" Any other discussion? Now we can go down to L or wherever.

Mr. Alueta: Yeah, you had no changes recommended, at least not on my notes or that was transmitted and council hasn't added anything new.

On Section 4, adding -- this is where you got into your view plane so it looks like they -- you had ahupua`a, and they've taken all of that out, so the comments you guys had about doing an ahupua`a got removed, or was added by staff and I guess they're not going to carry that over.

Chair Hutaff: It's well defined by the --

Mr. Alueta: Okay.

Chair Hutaff: By the state.

Mr. Alueta: Okay. Right. So --

Ms. McLean: And the reason it was taken out is because it's not used anywhere.

Mr. Alueta: Yeah.

Ms. McLean: So there's no need to have a definition for a term that's not used anywhere else in the ordinance.

Mr. Alueta: Definition of "Cultural Resources Commission" was originally proposed and you didn't have any changes on it. "View plane" is where you there was some discussion and so council's "open space of significant vistas, particularly toward the ocean, and mountains, or into the valleys." Your original comments were, ""View planes" means open space and significant vistas, particularly toward the ocean or makai, toward the mountains or mauka, and into the valleys." So that was changed to what is currently proposed, which is probably a little easier to read.

Chair Hutaff: Yeah, because view plane means open space and significant vistas, particularly toward the ocean or makai towards the mountain. We wanted to make sure

that this was viewed as or is written as from the ocean to the land. You follow what I'm saying?

Ms. McLean: There was a change made later on in the historic district relating to the view of Lahaina from the ocean that was pretty specific.

Mr. Kubota: The top of page 5, we -- the subject is taken up and it says, "public view plane including the public view planes from the ocean."

Chair Hutaff: From the ocean.

Mr. Kubota: It's touched upon again, item B, at the top of the page on page 5. So we need to be consistent.

Mr. Alueta: ""View plane" means open space and significant vistas, particularly toward the ocean, the mountains, or into the valleys." So what changes -- alright. Are you guys comfortable with that or do you guys have comments on that?

Chair Hutaff: Yeah, that's the one. Right, that one. 'Cause everybody had C right? Or they're going to redefine B and then -- perfect. Yeah. Including public view planes from the ocean. Perfect.

Mr. U`u: Say that again, Ray.

Chair Hutaff: The adopted, "New buildings constructed with a county historic district and the Lahaina Historic District (National Historic Landmark) shall not substantially impair the public view plane including public view planes from the ocean." All good? Perfect.

Mr. Alueta: Am I changing anything or we're all good?

Ms. Thomson: No. We're okay.

Chair Hutaff: We're all good.

Mr. Alueta: We're good. Okay.

Chair Hutaff: Yeah. Yeah.

Mr. Alueta: Alright. So, let's see, Establishment or modification of districts, there was no comments from the CRC previously so those are -- those changes continue to stay.

Enforcement. You had written or you had changed what they had previously chose to -- It shall be the duty of the department of public works, through the director of public works to enforce the provisions of this article. And then, "It shall be the duty of the director to enforce the provision of this article in accordance with the provision of Maui County Code 19.53." So taken enforcement of this chapter is pursuant to 19 -- basically, it just says, "Enforcement of this chapter shall be pursuant to 19.530.030 of this code," which is appropriate and because it is Title 19, it is the -- it actually will be the Planning Director.

Chair Hutaff: With that being said, can we jump back up one line there to Administration? It's bracketed that "planning" to be removed.

Mr. Alueta: Yes.

Chair Hutaff: I think it should not be.

Mr. U`u: Which one is that, Ray?

Chair Hutaff: Go up to Administration, 19.48.040, Administration, it says, The [planning] director shall provide planning, archaeological - I never read that word right - engineering, secretarial, and other services as may be required by the Cultural Resources Commission, bracketing in planning means it's geared to be taken off, I think we should leave it in there --

Mr. Alueta: Okay.

Chair Hutaff: Otherwise, it's director of what?

Mr. Alueta: No. Because -- huh?

Chair Hutaff: Public Works.

Mr. U`u: Public Works.

Ms. McLean: Because up at the top, director -- because of a lot of what follows, when it relates to the director, it does relate to the Public Works Director when it comes to building permits. And so anytime it just says, "director," that means the Public Works Director. So if we mean the Planning Director, we have to say, "Planning Director."

Chair Hutaff: Right. And we should capitalize "P" and "D."

Ms. McLean: Generally, that's not capitalized, I don't know why, but department and director aren't capitalized in Title 19.

Chair Hutaff: I'll give you guys a rate -- more recognition ...(inaudible)...

Ms. McLean: I'm just the deputy.

Chair Hutaff: Capital "D." Cool.

Mr. Kubota: I have a question about the administrative enforcement. Would that be the Public Works Director or the Planning Director?

Ms. Thomson: That's the Planning Director.

Mr. Kubota: That'll be the Planning Director. Yeah, that makes sense, so I just want to be sure it was the Planning Director.

Mr. Alueta: I'm sorry, for 19.530?

Ms. Thomson: Yes.

Mr. Kubota: In the handout. The second page of the handout, Enforcement, Administrative Enforcement.

Mr. Alueta: Typically, with enforcement, based on what the violation is, it'll most likely be both. I mean we'll catch you on the historic side, and then if it's actually a building or construction and/or electrical work, we'll catch them on the -- Public Works will catch them on the building permit side. So there's normally there'll be enforcement on two sides so --

Let's see, penalties, that was all taken out, Violation--Penalty, because that's all being covered under 19.530.

Section 9 is dealing with Architectural style. And it says the CRC's comments was, "comment and suggested rewording by staff." So the proposal right now is, "The exterior of all new buildings constructed within the historic district shall be constructed to meet the secretary of the interior's standards for infill construction, and shall reflect the architectural styles of the district so as not to impair the value of other buildings, structures, or parks in the immediate vicinity in other that the general character of the district shall not be injured." You guys comfortable with that?

Chair Hutaff: Are we okay?

Mr. Alueta: Okay. Big "B" of that Architectural style, again, same thing, you have -- we have, "Within county historic district no 1 and historic district no 2, the styles of construction, alteration, repair, or modification of any structure shall be in accordance with

the Lahaina design guidelines and shall be defined as follows: 1. Native Hawaiian style characterized by thatched construction; 2. 19th century New England style, tempered by the availability of materials, tools and skills, as exemplified by the Baldwin house; 3. "Plantation vernacular", defined as one or two-story structure with wooden balcony or lanai, or overhanging wooden or corrugated iron roof awning; 4. For single-family dwellings, any architectural style prevalent during the 19th century in Lahaina or which evolved from 1900 to 1960 in Lahaina, being unpretentious in style and painted in muted tones." Any changes you guys added that -- took out "the present" and you put "1960" in there. You added "lanai." You added "Plantation venacular." And that's all been included in the council's latest, so they did incorporate your -- all your comments.

Mr. Kubota: I think "Baldwin house" should be capitalized 'cause you're talking about a specific building, it's not a style matter, it's a proper name, so the "h" should be capitalized.

Mr. Alueta: Oh, the "h" should be capitalized?

Mr. Kubota: Yeah, in item 2.

Mr. Alueta: Okay.

Mr. Kubota: You're talking about a specific house; a museum, as a matter of fact.

Chair Hutaff: Alright, Gaylord, you're going to learn us yet. That's cool.

Mr. U`u: There you go. I slacking through class and now I paying attention this time.

Chair Hutaff: I was surfing so it's all new.

Ms. Thomson: Joe, there's kind of a minor copy edit. Item D, no. 4, I think you could either flip around the "Styles, forms, colors and lighting that is gaudy;" you could say just, "Gaudy styles, forms, colors and lighting."

Mr. U`u: And that is where?

Ms. Thomson: D.4.

Mr. U`u: Okay.

Mr. Alueta: Styles, forms, colors that is gaudy, so you want "Gaudy" --

Ms. Thomson: To be at the front.

Mr. Alueta: Okay. "Gaudy styles?"

Ms. Thomson: Well, unless there's a better way of phrasing that but it's the "is" that bothers me.

Mr. Alueta: Shouldn't it be "that are gaudy?" "Styles, forms, colors and lighting that are gaudy," instead of "is?" I don't know. I don't know. So you want to put "are" and leave "gaudy" at the end and just pluralize it instead of --

Ms. Thomson: Yeah. Or put at the front. It sounds better at the front, I think.

Mr. Alueta: Okay, "Gaudy styles, forms, colors and lighting." Okay. Alright. Let me get the Gaylord's capitalization.

Chair Hutaff: ...(inaudible)... foolish word I've ever heard. Okay.

Ms. Thomson: This is probably something that you may not want to deal with, but, you know, looking at no. 5, "reflective materials such as glass and aluminum," do you have any opinion or exclusion for photovoltaic systems and, you know, or that's something that can also be handled in administrative rules but -- and this is related to new construction, right?

Mr. Alueta: So Corp. Counsel's asking do you want to specifically add an exclusion to that because glass and aluminum is pretty much what a PV panel is made of and so -- so, basically, by that you're excluding it so nobody can have PV in the historic district.

Chair Hutaff: Go ahead, Stan, you have a comment?

Mr. Solamillo: This topic is coming before this Commission for Maria Lanakila School. We should have some discussion. I don't think amending the code to deal with it is going to do it. It's just my opinion. I think we really need to discuss. There's -- the way that it's being broadly applied, the technology, to -- it retrofits throughout Maui County as well as Hawaii is little squares are going up on all these roofs and they create their own geometries, right, so you have that in conflict with, in the case of historic buildings, the historic roof plate, or the roof geometry, and somehow we need to kinda deal with it. I'm going to be discussing the issue with the National Park Service for historic preservation credit application, so I'll bring back what they are recommending or what the agency's recommending, and that might be a good point to begin the discussion.

Ms. Thomson: I think it's a very important discussion, especially for historic properties. This particular code section deals with new buildings, and I didn't know, when I read no. 5, you know, partially I'm not sure what "Large areas," that's very subjective, but then also the code was probably written, you know, at a time when PV wasn't quite -- very prevalent.

Chair Hutaff: That makes a lot of sense.

Mr. U`u: Ray, we did deal with that issue at the Kahului Harbor. Remember that building?

Chair Hutaff: Yes. Well, that's what's kind of making me think now is that, first of all, we're going to go into PV as a world, okay, like it or not, good or bad; it's where we're going to go into that. So to go in here and say, "can't have" is not really probably a good thing, but what if we used it as visual? I mean how would you make sure that we don't go and, all of a sudden, plaster all the front signs with PV so that we get the sunset sunlight for the electricity or take one up on a heiau?

Mr. Alueta: There are other technologies out there that don't rely on glass and aluminum, and so if you left it the way the standard is, you would -- basically, you restrict them to those, to flexible polymer type PV systems.

Mr. U`u: But still it would alter the look though.

Mr. Alueta: Huh?

Mr. U`u: You still would alter the look.

Mr. Alueta: Definitely the color sides, but you could still do a metal roof. You can still do the entire roof, yeah.

Ms. McLean: I think that if -- that the Commission would still have approval authority over the design. So if an exception is made, as Richelle was pointing out, that doesn't mean it would just be outright allowed. The Commission would still review it and say, oh, that array is too big or that it doesn't fit in with the character. So if you include an exception somehow in no. 5, then you would still get to approve it on a case-by-case basis. If an exception isn't made, then it seems like they can't do it no matter what, so it would probably be a good idea.

Mr. Kubota: Exceptions will be made on a case-by-case basis?

Ms. McLean: What's that?

Mr. Kubota: Exceptions will be made on a case-by-case basis?

Ms. McLean: Yeah. You could do a broad exception or an exception if it's a component of an alternative energy system.

Mr. Kubota: Exceptions may be made on a case-by-case basis.

Ms. Chandler: Yeah. Or we could specifically mention photovoltaic and say upon, you know, review and approval by the CRC, or something like that, just so they know that it's allowable but that it definitely has to come to the Commission.

Ms. McLean: And you don't have to propose specific language today. That could be a comment that goes back to council that says some kind of provision should be made to approve these on a case-by-case basis.

Chair Hutaff: Stan, what would you suggest on this because I'm bringing to my mind a picture I saw a week ago, a month ago, a year ago of -- in Alaska where every single building had these panels on them, and believe it or not, it was nicer than the houses, but it really took away the character of the place, from the picture that I saw? What would you suggest we do on -- for the PV, let it go for now and argue the points later, or go one-by-one?

Mr. Solamillo: I'd rather that we deal with it specifically at a CRC meeting where we need to get more detailed information.

Chair Hutaff: So not necessarily today then we should --

Mr. Solamillo: You could include as the Deputy Director had recommended that we provide language at a later --

Chair Hutaff: At a later date?

Mr. Solamillo: At a later date, but I don't have any language to suggest at this point unless Corporation Counsel has something to suggest.

Ms. Thomson: You know, as far as the topic of historic buildings, you know, I think that that's very different than new construction. You know, and you can make -- you don't have to come up with the exact wording if you feel that that's something that you would like to be able to allow on a case-by-case. You know, otherwise, I assume it could be done as a variance, but I'm not sure.

Ms. Chandler: Could we add the language about case-by-case basis or -- so -- yeah, I mean --

Mr. U`u: ...(inaudible)... here.

Ms. Chandler: Yeah. Just --

Chair Hutaff: So you want to add -- do you want to add a line 6?

Mr. U`u: Or incorporate it in 5.

Ms. Chandler: In 5.

Chair Hutaff: Incorporate it in 5 that including -- well, see that's the problem ...(inaudible)... if we say, "Large areas of reflective materials such as glass, and aluminum, and PV panels on a case-by-case basis," we've opened up aluminum glass.

Ms. Chandler: Maybe instead after "at all times," we could say, "except as approved by the CRC on a case-by-case basis."

Mr. Alueta: You can -- yeah. Similar to just say -- 'cause right now, it's not prohibited. It just says, "Large areas of reflective materials such as glass and aluminum, unless completely in the shade at all times." So that language only prohibits it if it's in the sun, so if you're in the shade at all times, you can still do it. So I would just put in, which doesn't work for PV, but you can say, "Large areas of reflective materials such as glass and aluminum, unless approved by the CRC." Because this is a list of prohibited. Okay. It's a list of prohibited, and then they made an exception to allow it.

Mr. U`u: Right.

Mr. Alueta: It's the most -- I love those kinda lists.

Ms. Thomson: Maybe this would work. At the end of that sentence no. 5, "Visible alternative energy systems may be allowed upon review" or something to that effect.

Mr. Alueta: Okay.

Mr. Osako: I like that.

Mr. U`u: I like that one. Okay.

Chair Hutaff: I wished for that word. Perfect.

Mr. Osako: Yeah. For instance, if somebody put PV on top of the old Nagasaki Building on Front Street, you know, you wouldn't see it.

Mr. U`u: Right.

Chair Hutaff: Yeah. Yeah.

Mr. Osako: You know, but some of the others, you would.

Chair Hutaff: Right. And then --

Mr. U`u: On a flat roof with one parapet wall.

Mr. Osako: Yeah.

Mr. U`u: To be hidden. Right.

Chair Hutaff: Yeah. But then if you went up the mountains, you might be able to actually see it.

Mr. Osako: Right.

Mr. U`u: I don't know. Depends what mountain.

Mr. Alueta: Can you repeat ...(inaudible)...

Mr. Osako: When climb Mt. Ball to paint the "L" --

Mr. Alueta: So, "Large areas of reflective materials such as glass and aluminum" --

Ms. Chandler: And the whole sentence.

Ms. Thomson: I guess the whole sentence could stay in, you know, at least this will bring it though to the Planning Committee's attention that, you know, maybe something for them to look at further too, at the end of the sentence, "Visible alternative energy systems may be allowed following review." As the Deputy Director pointed out, you'll still have plan review authority so you'd be seeing these plans.

Mr. Alueta: ...(inaudible)... defined here or you have to put "CRC?"

Chair Hutaff: We need to put in there "case-by-case" though. The way it reads right now is like the people who wants it done.

Ms. Thomson: No. I think you're still going case-by-case.

Chair Hutaff: Is everybody okay with that last line there?

Ms. Chandler: Yes.

Chair Hutaff: Okay. Joe, you want to move on?

Mr. Alueta: You guys changed to the authority, they accepted that part, on section 020, Review of plans. They also accepted comments from staff was the -- they put, "The cultural resources commission may delegate the approval of "minor applications" to the director pursuant to the cultural resources commission's rules of practice and procedures." The council also accepted those changes.

Ms. McLean: Can I jump in ...(inaudible)...

Chair Hutaff: Yeah. Go ahead. I think I know where you're going.

Ms. McLean: We did talk about this in the committee meeting, and the Commission's rules, that term "minor applications" is currently in the rules, it doesn't use the term "minor applications," it's a - what was it? A 25% of the cost, something like that, if it involves 25% --

Chair Hutaff: Or less.

Ms. McLean: Or less of the value of the structure. So because "minor applications" isn't the term that's used in the rules, it might be better to say something like, "may delegate the approval of certain applications to the Planning Director," and then the rules just further define that. Because "minor" suggest that it should be defined.

Ms. Chandler: Yeah. I had a question actually. I thought there was a title called "Minor Applications" or something, so I agree with that. I think we should change it to "certain applications." But then my question is: When do we actually delegate it to the director? Is that something that happens kind of on an administrative level, like the Commission's not actually delegating it, right?

Ms. Thomson: Right. In your administrative rules currently, it says that projects that are under 25% in value as compared to the total value of the property can be handled administratively. There's a catch to it though that if the department feels that it's something that needs to be brought to the CRC regardless of the value, it would be brought, and then the department also lets you know which things have been approved administratively.

Ms. Chandler: We are getting that right now? Does the department lets us know what's been approved administratively? No. Okay. I didn't think so. Okay, back to certain, I think, "minor" changed to "certain applications."

Ms. McLean: And add "Planning Director." Add "Planning."

Mr. Alueta: Okay. Okay, moving on to C. The discussion was that, on D, it looks like they accepted the changes for D with regards to "chair of the cultural resources commission,

or the chair's designee." F, "submittal of a complete application," that was added and that was accepted by council. You had no comments on G.

Going down to 050, Demolition or movement of buildings or structures. Where it says, "The cultural resources commission shall not issue a letter of approval for the demolition or moving of a building," and you added, "or structure of historic significance that is eligible for or is listed individually or as part of a historic district in the Hawaii or national registers of historic places, or as a national historic landmark, except in one or more of the following instances:" and, let's see, pretty much your changes were accepted by council. So guys had anymore?

Ms. Thomson: One of things that, when I'm reading this, that I had trouble with is on no. 3, so, you know, to kind of boil it down to the plain language version, the CRC cannot approve demolition of a structure or building unless it's a health and safety hazard. If the building itself, if its presence is a deterrent to a major historic restoration or preservation program, no. 3, the retention of such a building, well, for one thing, I think that we need to take out the "not," the retention of the structure would be in the interest of the community as a whole. It's that no. 3 that bothers me and I'm not certain that's even necessary.

Chair Hutaff: Yeah. I get it.

Mr. Kubota: It's pretty wide open.

Chair Hutaff: Yeah.

Mr. Kubota: Who decides?

Chair Hutaff: Well, the thing is, what it does is take away our ability to argue that it's important. So I think you're right, we should take it out.

Mr. Kubota: Also, no. 1 we were wondering about. What about demolitions due to deterioration from willful neglect. How do you cover that? Same problem we had dealing with Lana'i.

Mr. Alueta: But you wouldn't be signing off on that. That's what it's saying is you're not signing off on that.

Chair Hutaff: Yeah. It's saying that we shall not issue a letter of approval for the demolition or moving of a building or structure except in one or more. Go ahead, Stan.

Mr. Solamillo: ...(inaudible)... because I think we need to visit the issue of demo by neglect because that seems to be the trend whether for small residential property owners or for large corporate property owners as well as governmental agencies.

Chair Hutaff: Yeah, part of that class I'm taking next week is to go over how to handle demolition by neglect, but shouldn't we put it in there now?

Ms. Thomson: You could make a general comment. If you don't have the exact language that you want right now, you could put that as one of your general comments and recommendations that you would like some kind of enforcement action related to demolition by neglect or a prohibition against it or discouraging, you know.

Mr. Alueta: So going back to 3, are you asking -- you want to strike it, 19.52.050(A)(3), are you comfortable striking it?

Chair Hutaff: Is anybody against striking it? It seems like --

Mr. Alueta: Okay, so delete? Okay.

Chair Hutaff: And then --

Ms. McLean: So that would mean that the only exceptions, the only times you would allow demolition is if it's hazard to public safety or health, or it's a deterrent to a major restoration project.

Chair Hutaff: And these director of the State Department of Health would have to be the one that would decide that the building was unsafe?

Ms. McLean: The Public Works Director or the State Department of Health, either one can say that it was a hazard to public safety or health and repairs are impossible. I'm just thinking about the family that was here a few months ago where you allowed the demolition and they were going to save the windows and try to reuse some of the parts, they wouldn't fall into either of these -- they wouldn't fall into 1 or 2, so if that's something that, in the future, you would not want to approve, then that change is fine, but I don't know if you still want to have that option.

Chair Hutaff: Yeah, for that argument, at that time, it really wasn't a building that was conforming and we did suggest that they get with the Lahaina Restoration because they seemed like they would have rather saved it but they didn't have recourse and so that's kinda why we went in favor of that. It certainly would be nice to tidy up that health and hazard. The way I kinda look at it is it's gotta be such a hazard that the structural engineer

can't safely go in and get within five feet of it. It's hanging like this. It's done. But if it's like this, it's good. My opinion.

Mr. Osako: Yeah, but in those cases that came before us, there was nothing from the Health Department or, you know, the Planning Department saying that the structure was in that state. It was just testimony of the people and their contractor.

Chair Hutaff: Suggestion? Go ahead, Stan. Go ahead.

Mr. Osako: Yeah, so if, you know, if the state or the county inspected and deemed it as such, that's a different story, you know, but we're taking the word of the people and their contractor that it's unsafe and it's not restorable.

Chair Hutaff: Okay, so this actually puts that determination back there into two possible hands. Stan, comment?

Mr. Solamillo: Okay. We've had lots of families come here and, for better or for worse, and we get the similar story, and then the last family that came here they had a child that got sick a lot. It was one of two buildings that are historic that stand on a street, which has completely lost its integrity because everything else that's historic is gone and it had been altered as well. I've been remiss, probably, in requiring that applicants, you know, come forward and provide that material to this Commission.

Chair Hutaff: That material being?

Mr. Solamillo: Being either a, you know, statement, a written statement from the Department of Health or from a structural engineer indicating that it's beyond repair.

Chair Hutaff: Speaking of structural engineer --

Mr. Solamillo: Or the Department of Public Works.

Chair Hutaff: Is it possible to request to have a structural engineer come to us?

Mr. Solamillo: You can get one to come.

Chair Hutaff: Huh?

Mr. Solamillo: You can get one to come and --

Chair Hutaff: Well, like say like the last one we had, he's going to get a structural engineer to say it's no good. He's going to get one, okay. After the meeting I thought: So why didn't we ask that the structure engineer give his report to us so we could ask some questions?

Mr. Solamillo: You can do that too.

Chair Hutaff: We can do that? Okay. That's just for future reference.

Mr. Alueta: My question, Mr. Chair, is, as indicated by Stan was, so do you not want to grant those or do you want to grant those? So as the Deputy Director has indicated, you're going to be set to only these two so someone's going to always have to say that my structure is ready to fall down, therefore, I need a permit to demo it. But in the case of what you previously saw was that the building no longer, as indicated like in no. 3, the preservation of it would not be in the interest of the community as a whole. I mean would -- or do you want to say: The building no longer retains architectural --

Mr. Solamillo: Integrity.

Mr. Alueta: Integrity or the surrounding area no longer -- I mean is that -- would you grant it then?

Ms. Thomson: Is that already covered in -- it has to be eligible to be listed so that means it's a contributing building and these are the circumstances under which a contributing building could be torn down?

Mr. Solamillo: Correct.

Mr. Alueta: Okay.

Ms. McLean: So that preceding language narrows down the pool of buildings --

Mr. Solamillo: Correct.

Mr. Alueta: Alright.

Ms. McLean: That would be prohibited from being demolished.

Mr. Solamillo: But I'm going to backup again. I'm going to backup because of houses, one in particular, because this is how we get it to HABS mitigation, the mitigation of the adverse effect of demolition of a individually eligible or a contributing building to that is eligible for listing in a district. I don't believe that you can say outright that you cannot, but I'm just saying we've had buildings come here where 1 and 2 wouldn't not been satisfied but they

preceded to get a demolition permit because they were dedicated to one idea, which was the demolition of that building, whether it's to provide their child with a house, a new house instead of an old house or whatever, so we always have this community pressure, this pressure of the property owner, who against all our, you know, arguments to the contrary, must tear the building down. So we somehow have to --

Chair Hutaff: So we're moving 3 --

Mr. Solamillo: I'm inclined to leave it and change the wording at the tail end.

Chair Hutaff: To?

Mr. Solamillo: "The retention," let's see, "of the building or structure" -- yeah, I don't have a wording to suggest right now.

Ms. Thomson: You know, one of the things to keep in mind though is that there is a variance procedure, so a property owner could apply for a variance from that part of this code section as, yeah, I know that this code section applies to my property but because of these circumstance, I should be granted a variance to be allowed to tear the thing down.

Mr. Solamillo: I'm going to defer to the Deputy Director.

Ms. McLean: It still needs to come before the Commission, so whether or not you keep no. 3, it would still have to come to the Commission and the Commission could still say no even if it met those criteria, the Commission could still say no, you cannot demolish.

Chair Hutaff: So if somebody argued the point that the building does not serve the best interest of the community as a whole, we wouldn't have to say, okay.

Ms. McLean: You could say we think it does and so we're going to deny your request for a demo permit.

Chair Hutaff: And somebody went out and got a petition? No, I'm just being the devil's advocate there.

Ms. McLean: Yeah. Yeah. Yeah.

Ms. Thomson: They could appeal your decision.

Chair Hutaff: Okay.

Ms. McLean: They could appeal your decision. Another option instead or in addition to that is in no. 1, you have the Public Works Director or the State Department of Health, you could also add a licensed structural engineer.

Chair Hutaff: Well, I think if we used the word "impossible," someone's gotta prove it's impossible and a layman can't do that. I can't do that. I can't say, oh, this job's impossible. I'm not a structural engineer. But I think somebody professional would have to be the one automatic.

Ms. Thomson: One of things from the other point of view is, you know, rather than looking for a reason to be able to grant, you know, demo permits for otherwise eligible buildings, if you deny it, that, to me, would be also grounds for an appeal of your decision is that, you know, the applicant would say this does not contribute to the community as a whole. Well, what does that mean?

Chair Hutaff: That means somebody else can decide it's not contributing. So taking it out seems like the best deal.

Ms. Thomson: Well, to me, it's a very subjective criteria. Unless it was really flushed in the rules, I just -- to me, it's troublesome.

Chair Hutaff: Any comments? Is anybody against taking it out? Okay. Got it?

Mr. Kubota: Take it out a second time.

Chair Hutaff: You wanted to say something?

Ms. McLean: I said what I had to say.

Ms. Chandler: So just to be clear, if we take it out, that means that there is no circumstance under which we could actually approve a demolition unless it met this criteria, the 1 and 2?

Ms. McLean: Correct.

Chair Hutaff: But they have the right to appeal.

Ms. Chandler: But they have the right to appeal.

Chair Hutaff: Right, which is fine.

Ms. Chandler: Okay. Thank you.

Mr. Solamillo: Can I belabor this one still?

Chair Hutaff: Go ahead.

Mr. Solamillo: Okay, so I've got Crystal, and Crystal comes in, and Crystal tells me the line, I gotta get the house down. My recommendation, after I see it, I see that it's eligible for listing in the National Register for adding -- as a contributing building to this district, is I have to recommend no. This is a question to Deputy Director. I am then -- I mean and to Corporation Counsel. I must, as staff, recommend no. Denial.

Ms. McLean: I think you would first tell her if she could get the Public Works Director or the State Department of Health to deem it to be a public safety or health hazard. And if they would make that determination in writing, then you could put it forward. But absent that, then you would have to say, pursuant to our rules, no.

Ms. Thomson: How's it being handled now? From a practical standpoint, how is your department handling demo permits?

Mr. Solamillo: Within the NHL in particular, it depends on what state the building is in. If it's kind of a high, medium, or low priority. If the building's been altered, we don't drag our feet. If it is a significant building, yes. But our last -- you know, in dragging our feet, we can propose that you mitigate the adverse effect through HABS mitigation. We have never recommended denial ever. I don't believe. If you want -- the recommendation would be, if you want to demolish this building, then you have to mitigate the adverse effect of demolition by and then you get A, B, or C. But we have never taken -- and that's a significant change for this Commission, we have never taken that hard a stance. It's merited, given the threatened condition and status of the NHL in particular, but it's never been done by this Commission.

Ms. Chandler: Okay, Stan, I was following you all the way up until you just said it's merited given the state of the NHL because that's why JoAnne Johnson put forward this bill just because of her concern that we're going to lose the NHL if we keep demo'ing the buildings.

Mr. Solamillo: But I don't know because of so much has occurred up to this point, so much material, so many buildings have been lost, you know, it's going to come down to building counts and archeological; literally, Hawaiian history will be the only -- the subsurface history will be what saves the district.

Chair Hutaff: Well, my personal feeling on that is is that we're already in a danger zone of losing "the historic district," okay. Every time we lose one more, we get closer to losing it. If we don't protect all things that are of history, then someone's going to decide it's not important, i.e. a house. Oh, it's not important ...(inaudible)... past the historic side of things,

you know, we can't decide what it is that we protect or that we don't protect that's of value. We need to protect as much as we possibly can 'cause, otherwise, one day someone's going to say we're not important, you know. Our history is not important and our history being no historic. And I think that's already being done in the Hawaiian culture, the Japanese culture, the Tongan culture, the Maori culture is that people are saying it's not important. It's no longer important. And then we lose everything. And so I think we need to establish that everything is important and this is a battle to prove it's important, okay, because it's just the historic district. My opinion: It's just the historic district but it's important because if we don't protect this, how can we protect anything else?

Mr. Osako: I think what we have to look at also is the end result. If you deny, say that last family, a permit to demolish, what are they going to do? They're going to leave it till it falls down. You end up with the same result.

Mr. Alueta: Mr. Chair or Stan, can someone -- on the next line, it says: For the purpose of this article, the building or structure of historic significance shall be deemed to be those within the historic district that are more than 50 years old and request a demolition or move the building or structure is made. So again, you're just talking about historic district, correct?

Chair Hutaff: Right.

Mr. Alueta: So no Kahului? Okay. Just -- and we can -- Kahului Dream City man.

Chair Hutaff: Let me ask you this question first, okay, about demolition by neglect. So we say, sure, you can't tear it down. They go, okay, fine. I'll see you in 20 years. Okay. Hopefully, I mean I don't have an answer for that right now. I don't think any of us here have an answer. But going to this forum, okay, one of the classes I'm taking is just that. How to avoid demolition by neglect. So maybe it's possible, when I come back, we'll have some more ideas on how we can prevent that, okay. I will caution because it said that classes -- they can be time consuming, okay, and very expensive to implement these laws. But I think it's still something for us to look at because you're a hundred percent correct. Just because we say, nah, you can't do that. They go, okay, fine. Okay. So how do we prevent that? The state has also laws against willful neglect. It only pertains to empty lots, I went and looked it up, okay, but it does have a clause in there about other structures, so it's possible we can take on that law and look at that law where we could prevent somebody in advance, like we see happening, like there's a barn, and I see the barn and it looks like it's falling down in Kula, and I went and talked to the guys, that's a really cool barn, and he goes, yeah, we're trying to restore it. They're actually shoring up the inside but the outside looks the same. I'm like, oh, cool. But what if they weren't? You know what I mean? We could go and say you can't do that. Here's the law. That doesn't exist just yet in the county. So we can only address this right now.

Mr. Alueta: One of the way, Mr. Chair, like back in the day prior -- before I had kids, one of the ways I would find properties to restore was by demo permits, mean I would, when the person come in for a demolition, and it was 50 years old, I'd talk to the family and sometimes I'd buy the house and I'd do the restoration on it rather than letting the house get destroyed. So I've done that once. And so I mean -- and for the other times when I had demos I either just salvaged the parts off of it when they came in for a demo. But most of the time, when somebody's coming for demo, if you wanna be proactive in it, they're looking to get out. They're looking to sell. And for me, that's what I did years ago, but you need to somehow look at working with private investors who are looking to do restorations and you give them the inside scoop, just like right now, contractors ...(inaudible)... contractors would call me or call the County Public Works, hey, anybody coming in for building permits that's building single-family homes, maybe they need carpet. Same thing. If you can partner with private money who are into buying and restoring homes, you can maybe partner up with that and give them the inside scoop when somebody comes in for a demo. But that's -- but right now we're taking it out so that --

Chair Hutaff: Yes.

Mr. Alueta: Okay.

Chair Hutaff: And I know that there is somebody can put themselves on a list to invest in historic properties, especially in commercial areas, that's actually how the guy got the Baldwin House. Okay. Anyway, can we take about a 15-minute break to just kinda stretch our legs, the body, okay. Let me rearrange my brain so I can think like a Portagee again. Okay, 15-minutes break, back here at 2:30.

(A recess was called at 2:17 p.m., and the meeting was reconvened at 2:31 p.m.)

Chair Hutaff: Okay, it has been suggested that we go back to that item 3 that we deleted three times for Joe and Corp. Counsel has offered up a suggestion how we should say that no. 3.

Ms. Thomson: This is the language you might consider if you wanted to change no. 3, keep it in, but making it not quite as vague as it currently is. The language that I discussed with Stan during the break: "The building or structure is of low priority and its retention does not materially contribute to the historic district."

Ms. Chandler: I like that.

Ms. Thomson: And so, you know, maybe Stan can help just give you some ideas of what kind of circumstances might be able to be -- or what kind of structures can be demolished under that type of criteria.

Mr. Solamillo: The most recent one that comes to mind, and this is one of those administratively or could be administratively handled case, is where a church in Lahaina wants to take down a shed that's over 50 years old, so it's an outbuilding and, in this case, it's low priority. Does it contribute to the site or the -- which has a church whose edifice is a contributing building? No, it doesn't necessarily. So in that case, that's a low priority building that could be demolished.

Chair Hutaff: Does anybody have any comments on that? I think that that's a --

Ms. Chandler: It's a great compromise.

Chair Hutaff: Yeah. Nobody against that one right now?

Mr. Alueta: Okay.

Chair Hutaff: No more discussion? We're going to leave it. Does --

Mr. Alueta: Do you have "low priority" in there?

Ms. Thomson: Yes.

Mr. Alueta: Okay. Sometimes I make up stuff.

Chair Hutaff: So you got that in there, Joe?

Mr. U`u: Yeah.

Mr. Alueta: Yeah, what she's --

Chair Hutaff: Perfect. Okay.

Mr. Solamillo: Contribute to the integrity of the historic district.

Mr. Alueta: What did you say?

Mr. Solamillo: Integrity - G-R-I-T-Y of the -- okay.

Mr. U`u: ...(inaudible)... after retention.

Mr. Solamillo: Thank you, Bruce.

Mr. U`u: No was me. Believe me.

Chair Hutaff: I'm kinda curious. When was this first adopted? This whole --

Ms. Chandler: '66

Chair Hutaff: '66

Mr. U`u: '66?

Mr. Solamillo: '66 or earlier, I believe. Right, Joe?

Chair Hutaff: So 40-something years later.

Mr. Alueta: No, I think -- yeah. It has it has it on the bottom. I don't have mine. Oh, wait. Here. I think it was like '58.

Chair Hutaff: You guys realize what you're accomplishing?

Ms. Chandler: Big.

Chair Hutaff: Cool.

Ms. Thomson: Think the next thing that, for discussion though, adding a new "C," it was that comment that was -- it's not included in the current draft being considered by the Planning Committee, but it was a previous recommendation by the CRC, it was regarding HABS mitigation.

Mr. U`u: So you'll be adding a "C" you said?

Ms. Thomson: It's on the red copy, at the bottom of page 6: "Any building or structure that is eligible for or is listed individually or as part of a historic district, etcetera, which has been approved for demolition pursuant to this section shall be recorded according to the Secretary of Interior Standards for Mitigation and which shall include Historic American Building Survey or Historic American Engineering Record, whichever is applicable."

Mr. Solamillo: That is not on their copy. That was transmitted and somehow got lost in the transmittals to council.

Mr. Alueta: It is --

Ms. Thomson: At the bottom of page 6, Joe.

Mr. Alueta: Yeah. It is right here.

Mr. Solamillo: That's under C.

Chair Hutaff: So we want to make sure that's included or is that already included?

Mr. Solamillo: No. The recommendation would be that we include it on this transmittal to council committee 'cause this is done in practice right now and probably should be codified. And for everyone who may not remember what HABS mitigation is, there's usually three levels: One is a HABS Level 3, which is there's a floor plan and large scale, which means four-by-five photographs; HABS Level 2 is if you have original drawings of the building, such as the Lahaina Library; HABS Level 1 is to do full measured drawings and include a historic narrative report as well as four-by-five photographs. And the whole purpose of this is to actually flush out our vanishing architectural heritage because it's been vanishing all over Maui County and all three islands, and we've been probably the most proactive county in the state to do an active HABS HAER program to record things that are disappearing from the cultural landscape.

Chair Hutaff: I think it's a good idea. If we can't keep the building, at least we can keep the memory and the visual memory. Great. So anybody have any discussion about that? We all good there? Cool. Okay.

Mr. Alueta: That was the main thing that we wanted to do today was just add that section.

Chair Hutaff: Yeah, I know. It's amazing how we added to our duties here. Perfect.

Mr. Alueta: So moving on from there, going to Section 12.

Ms. Thomson: For Section 12, take a look, if you would, at the -- that other part of the code I passed out earlier, it's the Variances and Appeals section, and specifically take a look at page 4, 19.52.050, for variances. What this change means is that the Board of Variances and Appeals would be hearing both request for variances from Title 19, this portion of Title 19, and also appeals from your decision. The CRC, correct me if I'm wrong, the CRC could retain the power to grant variances.

Mr. Alueta: Does retain?

Mr. U`u: Could.

Mr. Alueta: Oh.

Chair Hutaff: You're saying that, as written now, it could?

Ms. Thomson: No. As it's written now, the Board of Variances and Appeals would hear requests for variance, but what I'm suggesting is that, you know, that could be completely fine with you, but something to consider is that the CRC itself could be the body that hears a variance or a request for a variance. A variance is a request by a landowner to not follow a strict application of a code and the criteria, if you take a look at 19.52.050, down at C: "Exception, unique, or unusual physical or geographic condition, which is not generally prevalent in the neighborhood," etcetera, "and a variance will not alter the essential character of the neighborhood," no. 2, "The strict compliance with the applicable provisions of the title would prevent reasonable use of the property," no. 3, "The conditions creating the hardship were not the result of previous actions by the applicant." So those are, when the BVA is hearing a request for a variance, those are the criteria they apply.

Chair Hutaff: The way you're saying it, if we said no, then you're suggesting they come back to us for the variance?

Mr. U`u: I just curious. I don't wanna step on anyone's toes, and that's why the variance and appeals was created. It's like saying we reject them and then you come back to us, you know. You know, I don't know if it makes any sense really. If we reject the application, and to get a variance, they come back and see us?

Ms. Thomson: What they would do is they would come in with an application for a variance at the get-go. If they were appealing a decision of the CRC, then -- right now, the way the code is current written, they appeal to the County Council, which is pretty unusual for a board and commission decision to be appealed to the County Council. Right now, the way the code is written is that the applicant comes to the CRC for a request for a variance.

Chair Hutaff: The way it's written now they would come to us with the variance?

Ms. Thomson: The way it currently is. I'm saying the code as it's currently written, not the draft proposed changes as written. So it really -- what I'm suggesting, it depends on whether you think it would be a good idea for the CRC to retain the power to hear the variance or whether you want to recommend -- or not change the current draft, which has the variance going to the BVA.

Mr. U`u: Interesting.

Ms. Thomson: Yeah.

Mr. U`u: Did that ever come before the Commission?

Ms. Thomson: I don't know.

Mr. U`u: Ray?

Chair Hutaff: I've never seen it. This is actually kind of a new one to me. Maybe the reason it hasn't come is because it's new to everybody, you know, everybody goes, oh, we didn't know about that. I don't know. How does everybody feel about that? I certainly have my opinion.

Mr. U`u: What she's saying is they would submit one application prior to look at having a variance. Correct?

Ms. Thomson: Right. So say for, you know, a repair permit that, you know, you're reviewing, it's at the level that it comes to you for review, and if the, you know, say with the architectural style or something, somebody wanted to do something different that's, you know, would not -- so say it's a gaudy color, if they want to come to you for a variance to be able to do this gaudy color for some reason.

Mr. Solamillo: Vinyl windows.

Ms. Thomson: Vinyl windows.

Chair Hutaff: That's what I was exactly thinking.

Mr. U`u: I like that.

Ms. Thomson: Yeah.

Mr. U`u: That sounds pretty good to come here.

Chair Hutaff: Come back again?

Mr. U`u: Not come back again. Actually, the initial application will be looked through it by us as a Commission.

Ms. Chandler: Yeah. And actually, I think we would understand the variance more than somebody going straight to another board. So if they come in just as part of their regular coming in here and say already they're asking for a variance, and we don't grant it, then it goes above us to --

Mr. U`u: Council she said.

Ms. Chandler: Council?

Ms. Thomson: That's probably going to change though. I think that appeals -- appeals properly should be heard by the BVA.

Mr. U`u: Variance. Yeah.

Ms. Thomson: Yeah.

Mr. U`u: Okay.

Mr. Alueta: But it'll be changed to variances and appeals would go to BVA the way it's written right now -- I mean the proposal right now.

Mr. U`u: So the proposal, as is, would bypass this Commission and go to the BVA?

Mr. Alueta: Correct.

Mr. U`u: Correct.

Ms. Thomson: I don't know the history or who recommended that change, you know, it could be the department or, you know, maybe the CRC recommended that before, you know.

Mr. U`u: I doubt it.

Ms. Thomson: I don't have a history.

Mr. U`u: Or maybe. Maybe. I don't know. I don't remember that.

Mr. Alueta: To which one? I mean which change - the existing law or the current proposal?

Ms. Thomson: The current proposal.

Mr. U`u: Yeah. Who changed the current proposal? Planning? Council?

Ms. Thomson: I don't know.

Mr. Alueta: No. We have a variance -- the original proposal is from the Council, but most variances we all send them to BVA. We're consolidating everything down to where it's the BVA. It's not unprecedented, as she says, to have you guys retain the variance because you would be more of the expertise. We have the same provision where they're legally --

we do it -- can do it or not. Sign variances, currently, are handled by the Urban Design Review Board.

Mr. U`u: So who staffs that? BVA? I mean I know Planning, but would be the director?

Mr. Alueta: ZAED. Mr. Shinmoto, Administrator.

Ms. McLean: It depends on what it's a variance from. If it's a variance from like subdivision requirements, then the Public Works Department would be on hand to answer the technical questions. So I would think if it was a variance from this, Stanley or maybe Erin would be on hand. But like Joe was saying, also, the MRA, the Maui Redevelopment Agency, that's responsible for the redevelopment are in Wailuku Town, they have similar authority to the CRC in approving design review, and they also hear variances from the Wailuku Redevelopment code. So that would be consistent if you retained your variance authority, you do approvals, but you can also approve variances. The MRA does the same thing.

Mr. U`u: What would be the direction of the Planning Department?

Ms. McLean: I think it would make sense for you to retain --

Mr. U`u: Ok. I agree.

Ms. McLean: Variance authority. I don't think it would be appropriate for you to hear appeals. I think you agree with that too. Whether that's BVA or whether that would actually go straight to court, I think Mike Hopper was going to check on that when we had the council meeting because appeals are typically, like from the Planning Department or Public Works, like an administrative decision, and because you are, you know, not a single appointed official because you're a board, we need to confirm whether appeals to one of your decisions would go to BVA or it might have to go straight to court, but that's not something you need to ...(inaudible)...

Mr. Alueta: And, logically, it doesn't make much sense to have a nine-member board or a seven-member board be overturned by another seven-member board. That doesn't seem --

Mr. U`u: One more. I suggest we keep it so this body looks at it. So keep it as was prior.

Ms. Thomson: Right.

Mr. U`u: Right.

Ms. McLean: What about council? Would that go to council?

Mr. Alueta: With the exception of appeals.

Ms. Thomson: Yeah. With the exception of appeals.

Mr. Alueta: Right. Is the language going to say the criteria that they're setting forth? Going to stay the same for variances?

Ms. Thomson: For practical difficulty or unnecessary hardship?

Mr. Alueta: Correct. We'll just keep all that language?

Ms. Thomson: You know, you could consider -- you could either flush this out in administrative rules but if you wanted to consider adopting similar language to what is in the -- in 19.520.050(C), you could include similar language that the BVA, you know, kind of the standard BVA criteria, and I think that that might be a little bit better than the current language.

The other thing that the Deputy Director was pointing out is that, currently, when you hear a request for a variance that it has to be approved by the County Council, that may or may not be necessary, you know, depending on what you think about that.

Mr. U`u: Say that last one again?

Ms. Thomson: Right now, the way the code is written, it says that the CRC may hear and decide on variances, but that such a variance must be approved by the County Council, so I guess you're recommending approval of a variance that's confirmed by County Council, which is, you know, probably why we don't do it that often.

Ms. McLean: So you would have final approval authority rather than it having to go to council for final approval.

Ms. Thomson: That gives the applicants more certainty too, you know, what their process is and then whether they, you know, go to court if they don't like your decision, or whether they go to the BVA. I guess Mike Hopper is finding that out.

Mr. U`u: Okay.

Ms. Chandler: So is there anything that we need to do with the language as it's written now to --

Mr. U`u: Or what changes is needed?

Ms. Chandler: Yeah.

Chair Hutaff: Yeah.

Ms. Thomson: I can -- I can kind of --

Mr. Alueta: Can we just say that for now? Keep variance part of CRC and use criteria from 19 ...(inaudible)...

Mr. Thomson: Right. Yeah.

Mr. U`u: Very good.

Ms. Chandler: That covers the issue of the County Council approving variances? Okay.

Mr. Alueta: No. It doesn't keep -- you want the variance power, correct?

Ms. Chandler: Yes.

Mr. Alueta: Yeah. So that's what it's going to be.

Ms. Chandler: Okay.

Mr. Alueta: And what I'll do is I'll write it up. This is just more of notes and then when we do the final transmittal letter, I'll write out, I'll take 19.520 and put it in.

Mr. U`u: Sounds good.

Mr. Alueta: And again, appeals is going to go to the - sorry - to the BVA, which is the way it is, and then --

Ms. McLean: We're not sure about that. Corp. Counsel is going to check on that.

Mr. Alueta: Oh, okay. Okay. And then --

Chair Hutaff: And they all have 15 days from the date of the notice of the aggrieved party to make a ruling?

Ms. Thomson: No. That's just --

Mr. Alueta: That's all being deleted.

Ms. Thomson: No. That's just to file their appeal.

Chair Hutaff: Okay.

Ms. Chandler: Chair, and then this separate document that we got from Corporation Counsel about variances and appeals and the lengthy description about that is that automatically like referred to in this document or do we need to refer to it?

Ms. Thomson: No. I think that Joe's going to work on including the language. Yeah.

Chair Hutaff: Refer, and use criteria from 19.520, which incorporates the whole document.

Ms. Chandler: Okay.

Mr. Alueta: Yeah. The language is just going to be, yeah, variances --

Ms. Thomson: Because there's a whole procedure, you know, about public hearing and notification of neighbors and things like that ...(inaudible)...

Mr. Alueta: Oh, is that going to -- I'm sorry. Can you repeat that again? So they're going to keep that -- we're just going to copy criteria that they're going to use, but not the -- from 19.520.

Ms. Thomson: I think that it might be -- well, you could say, "The variance procedure shall be pursuant to 19.520.050" --

Mr. Alueta: Okay.

Ms. Thomson: And then you have the whole procedure included in the criteria.

Mr. Alueta: Including the criteria is there?

Ms. Thomson: Yeah.

Mr. Alueta: Okay.

Chair Hutaff: Okay. We okay? Irene and Kahulu, yes? Alright with all this? Okay. Cool. Next?

Mr. Alueta: You had no real -- you had no comments on Section 14, the planning commission did, and so it was just comments to them. Let's see, again, you had no comments -- CRC, originally, had no comments on the uses. There weren't many changes to it.

Chair Hutaff: No Turkish baths, huh?

Mr. Alueta: Again, nothing on the standards or development standards on the proposals. You guys were fine with that. And, believe it or not, that's it as far as your initial comments.

Ms. McLean: We should talk about the trees.

Chair Hutaff: Yeah.

Mr. U`u: And then we still gotta go back and make motions, correct?

Chair Hutaff: Or you can make a motion on the whole thing if we don't have any changes.

Mr. U`u: Yeah. I know. I agree. Yeah. Yeah, trees.

Mr. Alueta: Trees. Trees. Everywhere are trees. On H.

Chair Hutaff: A little bit of background. I talked with JoAnne on this because the Council Committee, Planning Committee, had a question: What was she talking about? Or what was being talked about when we said "fine trees?" Her very specific answer was on the corner of Lahainaluna Road and Honoapi`ilani Highway, mauka side, all those mango trees.

Mr. U`u: Mango trees. I remember that.

Chair Hutaff: Yeah, they were all tore down, okay, and it brought to her attention, when that happened, about many trees that have slowly been evaporating down in the historic district, so she wanted to try to save what was left because of their, you know, shade, contributing to the ambiance, if you will, of the area, more, you know, country, old style, 'cause mango is really kind of an invasive species so she didn't want to, you know, put down there only certainly kinds of trees or non-invasive species because that, you know, mango is a character of a time zone in Lahaina. You know, so the council had a question as to what that really meant, and then Cochran had how come we only are talking about the trees and not endemic and indigenous plants in the area. So I believe that JoAnne Johnson, in my last conversation with her, is going to address what "fine trees" meant, okay, but we may want to include indigenous plants or trees or anything else like that in there.

Ms. Chandler: Do we know if the Arborist Committee has a distinction for like trees over a certain age that already exist, like over 50 years old or something like that?

Chair Hutaff: If they did, when they cut down the mango trees, it wasn't adhered to.

Ms. Chandler: Yeah.

Chair Hutaff: Because for a mango to get that big, it has to be more than 50 years.

Ms. Chandler: I think that they, the Arborist Committee, only speaks about or refers to trees on county property though, is that correct? Yeah. So, in this case, we're actually referring to trees now off county property but in the historic districts, but it would be interesting just to see what their comments on, you know, trees of certain age are on county property and if that makes sense to include in this.

Ms. Thomson: One of the things that I wanted to point out is that this -- a similar provision is already in Historic District No. 3, but it's not in 1 and 2, and it has the same 60 inches. It doesn't say measured at 42 inches above the ground but it does say 60 inches.

Mr. U`u: It does say where, section?

Ms. Thomson: It's Historic District No. 3, so just that next large section down on the last page, item F, Protection of trees.

Chair Hutaff: So we want to really include that in Historic District 1 and 2 then?

Ms. Thomson: My copy editing change would be to change the word "fine" to "large."

Ms. Chandler: Large, and then have additional information about native trees 'cause they don't always get big but sometimes they're old. Yeah. So large and old, and we'd have to quantify "old," you know, like so that's why I'm interested to know if there's any kind of language that exist already, otherwise, we just treat it like a historic structure, which is over 50 years of age.

Chair Hutaff: What if we just took "fine" out and put "old?"

Mr. U`u: What is "old?"

Chair Hutaff: Huh? Not me.

Ms. Chandler: Yeah. Maybe just over 50 years of age period because it would have to be over 50 years of age probably almost to get 60 inches in diameter, which is what JoAnne Johnson is referring to.

Chair Hutaff: Yeah. Yeah, just starting with the large shade.

Mr. U`u: You know that trees, that mango trees, I remember somebody got hurt picking on it because it was next to the power lines, and so you get someone on the outside picking the mango and, if I'm not mistaken --

Chair Hutaff: Was that the one on Front Street?

Mr. U`u: He got eletrocuted.

Chair Hutaff: Yeah. I read about that.

Mr. U`u: The power lines go right through that tree so, at one point in time, you know, we saying save it, but, you know, they liable again, yeah.

Chair Hutaff: Well, saving and trimming, you know --

Mr. U`u: Fifty years, you going have to trim big time though on those trees.

Chair Hutaff: Yeah, but I mean trimming as far as that because there is already, you know, a law in the books there about who takes care of the trees by power lines. I know because we have two koa that's grown up --

Mr. U`u: It's not who's trimming them but when you get people going up picking them, that's the problem.

Chair Hutaff: Oh, yeah, that's right.

Mr. U`u: We not talking about trimming, it's picking, and the guy got electrocuted, and I think that was the cause for -- I'd do the same thing if that happened on my property.

Chair Hutaff: Actually, it wasn't the cause. That whole area was slated for development on that corner there and it was for sale as an empty lot, and they even had renditions of pictures and stuff on that lot that showed the concept of nothing there while the trees were still there. I remember driving past that, you see the sign.

Mr. U`u: I'm guilty for picking mangoes that's why.

Chair Hutaff: We all are.

Ms. Chandler: Yeah.

Chair Hutaff: We all are. Sometimes --

Mr. U`u: From that trees right there.

Chair Hutaff: No. I haven't picked from that tree.

Ms. Chandler: So if we do say trees over 50 years of age, and when there are exceptions, like the one that Bruce is saying that, you know, it's possibility that when there's a safety concern, just like with buildings, we would see on a case-by-case basis and grant an exception. Is that something that we can add to the language?

Ms. McLean: This just says approval from the CRC shall be required before any trees are removed, so it doesn't outright prohibit them. You have to approve it.

Chair Hutaff: So we could say trim one side, and can we come get the mangoes?

Ms. Chandler: Yeah.

Chair Hutaff: Okay.

Mr. Alueta: So am I removing "large," sorry. You guys had --

Ms. Chandler: Can we just "trees over 50 years of age?"

Mr. Alueta: To any tree - taking that out, right?

Mr. U`u: So who's to approve that?

Ms. Chandler: Us, I guess.

Mr. U`u: I guess so, huh?

Ms. Chandler: Yeah.

Mr. Solamillo: Stan, pictures. Give everybody pictures. Can we prove a tree is over 50 years old?

Mr. U`u: Birth certificate.

Chair Hutaff: County the rings and go oops.

Mr. Solamillo: Yeah. We have to cut it down and count the rings. `Ulu. What's the caliper of `ulu because the councilwoman from Lahaina was talking about an 'ulu having been cut down that was very old so how large do their trunks get at 50 years?

Chair Hutaff: Circumference, six feet, yeah.

Mr. U`u: Not that big.

Ms. Chandler: No. I think five feet in diameter, not ...(inaudible)...

Mr. U`u: `Ulu, not even.

Ms. McLean: It's circumference.

Ms. Chandler: Yeah.

Chair Hutaff: This is five feet right now.

Mr. U`u: I never seen an `ulu tree that big.

Ms. Chandler: Okay. I, yeah, I think we --

Mr. U`u: Tall, yeah, but not thick.

Ms. Chandler: Still, even if we stick to the age thing, then we're not --

Mr. U`u: Dealing with the circumference.

Ms. Chandler: Dealing with the size.

Mr. U`u: Right.

Chair Hutaff: Okay.

Ms. Chandler: I mean --

Mr. U`u: So what part of the tree they going take the circumference from is one other one.

Ms. Chandler: Yeah.

Chair Hutaff: Well, 42 inches above the ground.

Mr. Solamillo: Forty-two inches above the ground.

Ms. Thomson: You could say either/or, you know. It doesn't have to be limited. You could say --

Ms. McLean: Or and ...(inaudible)...

Ms. Chandler: And.

Ms. Thomson: "A fine tree shall be defined in this subsection as any tree with a circumference greater than 60 inches or more than 50 years old," or "and more than 50 years old."

Mr. Solamillo: But a palm, a palm will not have a large circumference even if it's 50 or older.

Ms. Thomson: So then you would want "or." To say, "or."

Ms. Chandler: The "or" would be a better word.

Ms. McLean: So keep the references to "fine trees," and define "fine trees" as either large or 50 years old or older.

Mr. U`u: So no broke your house and keep the trees, basically, yeah?

Mr. Alueta: They have "large," so you want to change that to "fine," right? To require --

Ms. McLean: Yep.

Mr. Alueta: Say "a fine tree," okay. I gotta change what they have because they put in "fine" and then they add "large." So change "A fine tree" --

Chair Hutaff: And they we have to put Historic District 1 and 2 in there?

Ms. Thomson: No.

Chair Hutaff: We don't have to because it's in the --

Ms. McLean: This is within the historic districts.

Chair Hutaff: It's in the historic districts too, right?

Ms. Chandler: So that would be "any fine tree" --

Mr. Alueta: Right.

Ms. McLean: She also added the measured at 42 inches above the ground, and the council was curious where that came from.

Mr. Alueta: It was added by us.

Ms. McLean: We added that?

Mr. Alueta: We added the 42 inches above ground.

Chair Hutaff: Yeah, because the root structure could automatically --

Mr. Alueta: To the trunk, right.

Chair Hutaff: But where did you get the root, below the ground, above the ground, and what distance equals -- I think they came up with 42. Hey, we all knew what we meant. We just --

Ms. McLean: And so do you want to make that same change to Historic District 3?

Chair Hutaff: Yeah.

Mr. U`u: Might as well - consistent.

Chair Hutaff: Consistent. Yeah. And this way too, we don't have to worry about whether it's indigenous or endemic or anything else like that.

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

Chair Hutaff: No. It is definitely not a -- it is definitely an invasive -- I mean I forget where it's at. But there is a banyan tree, the largest banyan tree in the world takes over 4,000 acres, and it goes through a mosque or where the monks stay, and because of their beliefs, they don't do anything about it and it's gotten to a point now where they have no home, so they literally have to move their home and it's outside of the 4,000 acres because that's all that they own and they contribute to - 4,000-acre banyan tree.

Mr. U`u: You gotta be like one Keebler, you gotta in the tree.

Chair Hutaff: You're going to be lost.

Mr. Alueta: Okay.

Ms. McLean: So the same change to 19.510.100(F).

Chair Hutaff: So, how are we doing? Okay. Any questions or comments, or does that sound like good so far?

Mr. U`u: Sounds good.

Ms. Chandler: Just on page 8, the Maui Planning Commission has made a comment about traditional Polynesian protocols ...(inaudible)... something that is allowable I guess in the district, and it didn't make it, I think, from what I can see. I was just wondering if anybody else -- on page 8, on the comments, there's a little red box on the side, it says, "Add "Traditional Polynesian protocols including, but not limited to awa ceremonies." But I don't know if that is just a thing to do and then we would open up the whole list of things we could add or if these are buildings that are supposed to be for that purpose.

Mr. U`u: So what was that for?

Mr. Alueta: Huh?

Mr. U`u: That comment.

Mr. Alueta: That comment?

Mr. U`u: Yeah.

Mr. Alueta: That was a Jonathan Starr comment.

Mr. U`u: Okay. Got it.

Mr. Alueta: Okay.

Chair Hutaff: So he wants to be sure that it's in there as an allowable --

Mr. Alueta: As an allowed use. Correct.

Chair Hutaff: Allowed use?

Mr. Alueta: Yes.

Chair Hutaff: I think that's great.

Ms. Chandler: Is it otherwise implied even if we don't add it or is it important to add these things?

Chair Hutaff: Well, I think by adding it, it's kinda like if someone's going to do that, it's like automatically okay. If it's not in there, it may be subject to so what are they doing? You know, if they got a bunch of intoxicating roots, you know, people think that awa is intoxicating, so that's actually a pretty good idea.

Ms. Chandler: I mean, certainly, there are other things we can add if we add this, so I mean are we opening the door now or what does the department think about this?

Chair Hutaff: Go for it.

Mr. Alueta: The department is going to be doing a comprehensive restructuring of this section in the future, like in the near future, where we will consolidate a lot of the uses down into standards because a lot of these are similar to what we have in -- it's, basically, a commercial district as it is, and so we already have like bars and taverns and so that's where this would come in. And at that time, the commissions will again have an opportunity as well as this board will have an opportunity to see that and if you want to add it specifically in there to ensure that it is, so that's what we're going to -- I mean that's the goal is to restructure because, again, we're not keen on the current format and so we want to make it consistent with the rest of the thing, but for now, the changes that are being proposed, we think are needed as a stopgap measure. We can point it out to council again that the commission added it and they re -- stick it in there. Okay, any --

Ms. Thomson: This isn't before you guys in -- it was being presented by the Policy Committee right now, but, Stan, this is Chapter 19.50, it's regarding Historic District No. 2, and right now there's a sentence in the code that reads, "This district differs from Historic District No. 1 in that there are no historic structures or sites within the district to be preserved or restored." Is that still applicable or is that old news and should we recommend that it's removed?

Mr. Solamillo: About that one, that's gotta go.

Ms. Thomson: You could add that to your comments.

Mr. Solamillo: Okay, Joe, can you give the citation again for location?

Mr. Alueta: Yeah, 90 -- 52.90.

Ms. Thomson: 50

Mr. Alueta: Oh, 50.

Mr. Solamillo: I've been grouching about that one for five or six years.

Mr. U`u: Good job, Corp. Counsel.

Mr. Solamillo: Thank you. There are no historic buildings in this historic district.

Chair Hutaff: Yeah, we could make all this like a permanent commission, like these two and all you guys.

Ms. Chandler: So that's a comment or that needs a motion?

Ms. McLean: I think you can add it to the list of comments and then move to --

Ms. Chandler: Make a motion for everything?

Mr. U`u: 'Cause I gotta leave in less than an hour so --

Mr. Solamillo: Can we revisit, 'cause the Deputy Director went up to look at possible options for definitions, can we let her have an opportunity to comment on what we came up with?

Ms. McLean: There was quite a lack of definitions. I looked in 343. I looked in 171. I looked in 6E. I looked in DLNR administrative rules; SHPD administrative rules; OEQC administrative rules. They all make plenty of reference to it but nobody defines it. So I just did a Google search, and bounced around a lot.

There were two different definitions that I tweaked just the tiniest bit. One came from the California Native American Heritage Commission, and it's, ""Cultural resources" means sites and remains associated with human activities including, but not limited to, native Hawaiian and historic archaeological sites, historic buildings, and elements or areas of the natural landscape that have traditional cultural significance."

The other one came from the Federal Bureau of Land Management, which is ""Cultural resource" means any definite location or object of past human activity, occupation or use, identifiable through inventory, historical documentation, or oral evidence including, but not limited to, archaeological, building, structural, and traditional resources."

Chair Hutaff: Go back to the one we came up with.

Mr. U`u: We can go A, B, and C now.

Chair Hutaff: That's the one we voted on: ""Cultural resources" the physical remains of an ethnic culture(s) located on a site to include, when applicable, the fauna, flora, aquatic, and geological features in any area associated with the site. Cultural resources are considered finite and nonrenewable resources that once destroyed, may not be restored to their original state."

Mr. U`u: And can we read that one, Ray?

Ms. Chandler: The first one.

Chair Hutaff: ...(inaudible)... the second one.

Ms. McLean: The second one?

Ms. Chandler: No. The first one.

Mr. U`u: The first and second.

Chair Hutaff: The first one? The Indian one?

Ms. Chandler: Yeah, the Indian one. Yeah.

Ms. McLean: ""Cultural resources" means sites and remains associated with human activities including, but not limited to, native Hawaiian and historic archaeological sites, historic buildings, and elements or areas of a natural landscape that have traditional cultural significance."

Mr. U`u: And the next one is?

Chair Hutaff: The second one?

Ms. McLean: "Any definite location or object of past human activity, occupation, or use identifiable through inventory, historical documentation, or oral evidence including, but not limited to, archaeological, building and structural, and traditional resources."

Mr. U`u: Comment. Gaylord just went trump Google.

Ms. Chandler: Yep.

Chair Hutaff: Well, you got oral. I mean that's an interesting statement that's in there.

Ms. Chandler: It is, but I think it is a little bit scary because a lack of our ability to prove that it's in a context may, you know, preclude it, so this kind of is a little bit more broad. I think ours is better, personally.

Chair Hutaff: Plus, we get 'em. We did 'em.

Mr. U`u: Better than Google. Google that you tell 'em.

Chair Hutaff: Okay. So that one's already had a motion and been approved, so we're not going to go past that anymore. Thank you.

Mr. U`u: Thank you.

Ms. McLean: I just had a question about cultural resources being considered finite and nonrenewable.

Ms. Chandler: Corporation Counsel found something from New York that defined "cultural resources," and it was a longer statement, and that was the last sentence of their statement.

Ms. McLean: Because I get that in for many, many, many cultural resources, but I'm just thinking of ones that might not be, and I would hate for something to be excluded because it's not finite, like, I don't know, the wind or the ocean. I mean I suppose the ocean is finite in a sense. You know, access to -- or, on one hand marine resources are finite, but on the other, they're not necessarily. I don't know. You are much more the experts on that than I am, but I would just hate for something to not be considered a cultural resource because it's --

Mr. Kubota: That's an interesting point.

Ms. Chandler: Such a good -- yeah, it's a really good point because I think everything on an island is finite, I mean really, so I never thought about that but I can see what you're saying, there could be challenge.

Mr. Kubota: Maybe we should take out that sentence.

Ms. McLean: Or traditions, you know, can be infinite.

Mr. Osako: They did have names for the different kinds of wind and the different kinds of rain, which are not finite.

Ms. Maluo: I think that's why I brought up the rain because when you take away the rain forest or that particular area, you know, the rain is not finite but the action of a particular rain or wind may be forever affected, not renewable action. Does that make sense?

Ms. Chandler: Yeah. Yeah, that's true.

Ms. McLean: I think that could be interpreted to mean, oh, it's a physical thing that you can consume and run out of it, you know, and I don't think that's what's intended. I just don't want it to be misinterpreted that way.

Ms. Chandler: What if we said, "some cultural resources are finite?"

Ms. McLean: Or "cultural resources may be finite."

Ms. Chandler: Yeah, "may be finite."

Chair Hutaff: Do we want to revisit that and change that? All we have to do is make a motion to change that and we can. Do we have to make a motion? Okay. Well, you know, that one we did the -- yeah, that one we did first time. Okay.

Mr. U`u: Yeah. We did.

Chair Hutaff: So we have to --

Mr. U`u: ...(inaudible)... withdraw the motion and ...(inaudible)...

Chair Hutaff: No, you just make a motion to change that.

Mr. U`u: So I like Gaylord do 'em.

Mr. Kubota: Make a motion to revisit it and change it.

Chair Hutaff: Second?

Mr. U`u: Second.

Chair Hutaff: Okay.

There being no further discussion, the motion was put to a vote.

It has been moved by Commissioner Kubota, seconded by Commissioner U`u, then unanimously

VOTED: to revisit and change the definition of "cultural resources."

Chair Hutaff: No one's opposed. Okay, let's go back and revisit that. What do we want to do? What's the motion now? What's the action now?

Ms. Chandler: "Cultural resources may be considered finite."

Chair Hutaff: So we'll change "are" to "may be."

Mr. Alueta: "May be considered?"

Chair Hutaff: You want to put a semicolon after that?

Ms. Chandler: Yeah, "may," space, "be," and then also, later in that same sentence, "and are," so we're going to take "and may be nonrenewable."

Mr. Alueta: Sorry. I cannot chew gum and walk -- what was the next?

Ms. Chandler: "And may be nonrenewable resources."

Chair Hutaff: After "and" "may be" instead of "are."

Ms. Chandler: So, Deputy Director, that means that they do not have to be, so would that be okay?

Ms. McLean: I guess I missed some of the discussion where you created the definition so I absolutely defer to you on that.

Chair Hutaff: Okay, before we go any further, Corp. Counsel, does that sound like what we're trying to say?

Ms. Thomson: I think so. Yeah.

Chair Hutaff: I'm glad you're very defined about that. Okay, you want to discuss it a little more or somebody want to make a motion?

Mr. U`u: Sounds good to me.

Ms. Chandler: No.

Mr. Kubota: I move we approve it as corrected.

Chair Hutaff: Second?

Ms. Chandler: Second.

Chair Hutaff: Okay. Any discussion? None.

There being no further discussion, the motion was put to a vote.

It has been moved by Commission Kubota, seconded by Commissioner Chandler, then unanimously

VOTED: to approve the definition of "cultural resources" as corrected.

Chair Hutaff: Okay. The change is passed. So now we go -- I'm assuming we're at the end of the suggestions. Am I correct there, Joe?

Mr. Alueta: Well, the last suggestion that was -- you didn't make any comment on deleting, although it is not on the -- was not part of the proposed bill to be amended, it was recommended by Corp. Counsel that maybe on 19.50.020, and you don't have a copy 'cause it's not -- you only got the section that was being amended, that they remove that reference.

Chair Hutaff: Everybody pretty much okay with that?

Ms. Chandler: Yeah.

Chair Hutaff: Our next step is to, with the exception of the first one, the "cultural resources," is to discuss the changes; if there's no discussion, then somebody can make a move to approve.

Mr. U`u: Motion to approve.

Chair Hutaff: Any second?

Ms. Chandler: Second.

Chair Hutaff: Okay, motion to approve and then seconded. Discussion? Okay. Put to a vote.

There being no further discussion, the motion was put to a vote.

It has been moved by Commissioner U`u, seconded by Commissioner Chandler, then unanimously

VOTED: to approve the amendments as discussed.

Chair Hutaff: Okay, motion is carried. One last -- go ahead. Okay. So our next thing is:

- 2. Consideration of a Communication to the Planning Committee of the Maui County Council addressing enforcement of Title 19, Article III, Maui County Code, relating to Maui County Historic Districts. The CRC may take action on this item.**

Chair Hutaff: I believe that's in reference to the draft letter I had that was only half -- the one we discussed half of this thing. I don't think anybody's got the draft anymore. Oh, you have it? You have it?

Ms. Chandler: Yeah. It was emailed to us.

Mr. U`u: Say that -- what we doing?

Ms. Chandler: We're taking a look at Ray's letter to --

Mr. U`u: Okay. Okay.

Ms. Chandler: Council about enforcement.

Mr. U`u: I got my memorized.

Chair Hutaff: Yeah, remember we changed all the "we's" -- I mean all the "I's" to "we" and the "we are`s" to the "we sure`s." Okay, this has already been sent to the committee. I just let them know that we would discuss it because I couldn't speak for the Commission at the time, and that if we resubmitted it, it'd be from the Commission as a whole. Anybody want to make any changes or additions to that other than what we've already discussed?

Ms. Chandler: I have a question. I think that we could go through and make, you know, a lot of changes to it or we could say that we maybe appreciate the letter -- I mean would there be a way for us, as a Commission, to say we agree with the content of the letter that you already presented?

Chair Hutaff: Okay. Sure.

Ms. Chandler: Because I agreed with the content. I think we could wordsmith it a lot, you know, but we don't necessarily have to. Well, you kept saying that anyway, but, yeah, I think -- but we don't have to. I think it does express some things that are important to us, and if we could just relay, I would love that.

Chair Hutaff: Okay. So somebody want to make a motion to that effect?

Ms. Chandler: I move that we communicate to the council that the content of the Chair's letter regarding Title - is it really called "Title 19?" Does reflect the sentiments of the Commission as a whole and we appreciate the letter and would like it to be considered by the council.

Chair Hutaff: Anybody want to second that?

Ms. Maluo: Second.

Chair Hutaff: Okay, cool. Okay. Any discussion? None.

There being no further discussion, the motion was put to a vote.

It has been moved by Commissioner Chandler, seconded by Commissioner Maluo, then unanimously

VOTED: to communicate to the council that the content of the Chair's letter regarding Title 19 does reflect the sentiments of the Commission as a whole and we appreciate the letter and would like it to be considered by the council.

Chair Hutaff: No one's opposed. One last comment to that effect. Okay, since it opens that. I believe the next meeting for the committee is on the 30th or -- no, that's our next meeting.

Ms. McLean: Oh, I'm sorry. The Council's Planning Committee.

Chair Hutaff: Yeah.

Ms. McLean: They're next meeting is scheduled for July 30th, but I don't think they will be taking this up.

Chair Hutaff: You don't think they'll be taking this up?

Ms. McLean: Because it will -- where did Joe go? It'll take Joe a little while to put together his transmittal and send it up to them, and then they need to post their agenda and get it out to the Council Members. So I believe they have other items that they're planning to schedule for the 30th.

Chair Hutaff: Okay. You're positive of that?

Ms. McLean: The last word I got from committee staff was that they were going to take up other items.

Chair Hutaff: Okay. Instead of that. Okay, the only reason I brought it up is that I wanted to get your feedback on me, the Chair, being there to answer any questions and representing the Commission. I made a comment to that effect before and that I would never comment on anything that I was not sure that we had already discussed, and so if I could get that permission or not. Even not. Even somebody else can do it.

Ms. Thomson: Can I add something?

Chair Hutaff: Sure.

Ms. Thomson: The Sunshine Law has just recently changed as of the 1st of July to allow less than a quorum to go to other boards and commission meetings to offer information, provide testimony. The caveat is that whoever goes to those meetings has to come back, in this case, to the CRC and report to the board as a whole, and you can't agree to take any action, you know, as a board while you're away. That's generally the gist. So, you know, more than just Ray could go to an upcoming meeting if you so choose, you know, up to four, not five.

Chair Hutaff: And we could comment based upon our knowledge of the Commission. Okay. That means I can do it, but I still would ask for permission, okay, or not.

Mr. U`u: I remember, on the planning commission, we had people saying we, the commission, and it was never with my input, and I never liked that.

Chair Hutaff: Right.

Mr. U`u: 'Cause I always thought my own brain worked in a different way, but so I don't like when people say we, because I can't even speak for my kids, to be honest, so I really don't -- I don't care for it when people say we, as a body, you know, I cannot even say that with my household so, for myself, I don't like it. It's been used many times. And I hear people I speak for Kihei, you know, like you do? I speak for Paia, like are you kidding me? I never

like that generalization. So I don't like it. That's not my style and that's not my culture to say I speak on behalf of everyone here. I don't believe it's true.

Chair Hutaff: If you --

Mr. U`u: That's my personal take and --

Chair Hutaff: No. If you'd like to give me direction and say no, Ray, you can't do that. I'm totally fine.

Mr. U`u: Well, maybe you can speak for other people but I don't like it when you say I'm part of that.

Chair Hutaff: I, you know, based upon me, as a Commission, except for Bruce.

Mr. U`u: Yeah.

Chair Hutaff: No. I don't want to do that.

Mr. U`u: No. But that's my take because only I can speak for myself.

Chair Hutaff: Well, that's why I wouldn't just do unless I had, what I believe, would be an understanding of your comments. If you hadn't made a comment on it, I wouldn't be able to speak on it.

Mr. U`u: For me, it's being used so much. It's gotten out of touch already 'cause I hear it all the time.

Chair Hutaff: Which is why I brought it up because I don't believe in that either. I don't believe anybody can speak for me unless you kind of get permission in this parameter.

Mr. U`u: Especially on the topics that I not sure if, you know --

Ms. Chandler: Yeah. And I --

Mr. U`u: But I respect what you doing. Don't get me wrong.

Ms. Chandler: Yeah.

Chair Hutaff: No worry.

Ms. Chandler: And I think if they ask you if we have discussed certain things, that you can say we have discussed it.

Mr. U`u: Yeah. I'm for that.

Chair Hutaff: There'll be -- there have been sometimes when they've asked a question and I said, well, based upon discussions, is that okay?

Mr. U`u: That's okay. Yes. 'Cause I know ...(inaudible)...

Chair Hutaff: ...(inaudible)...

Ms. McLean: If I can add, I attended the meetings and I think you handled it perfectly where you indicated I am the CRC Chair but I'm not speaking for the Commission, you were careful to say that a couple of times, but then there were occasions where you specified that, oh, the Commission has discussed this, and would give the example, so I think as long as you qualify the statements that you make, that that would be appropriate.

Chair Hutaff: And I don't think we need a motion to that effect. Okay.

Mr. U`u: Sounds good.

Chair Hutaff: But she's the one who made me do it the right way so I look good because of her.

Mr. U`u: Good job.

Chair Hutaff: Okay, any other questions, discussions? We are, as far as our agenda goes, we are pau. Anybody wanna move for an exit.

Mr. U`u: Motion to exit.

Chair Hutaff: Yeah, motion to exit. Somebody second it?

Mr. Osako: Second.

There being no further business brought before the Commission, the motion was put to a vote.

It has been moved by Commission U`u, seconded by Commissioner Osako, then unanimously

VOTED: *to exit the meeting.*

C. NEXT MEETING DATE: August 2, 2012

D. ADJOURNMENT

There being no further business brought before the Commission, the meeting was adjourned at 3:32 p.m.

Respectfully submitted by,

SUZETTE L. ESMERALDA
Secretary to Boards & Commissions

RECORD OF ATTENDANCE

Present

Raymond Hutaff, Chairperson
Warren Osako, Vice-Chairperson
Rhiannon Chandler
Irene Ka`ahanui
Gaylord Kubota
Kahulu Maluo
Bruce U`u

Excused

Makalapua Kanuha
Brandis Sarich

Others

Michele McLean, Deputy Planning Director
Joseph Alueta, Administrative Planning Officer
Stanley Solamillo, Cultural Resources Planner
Richelle Thomson, Deputy Corporation Counsel