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M I N U T E S
PLANNING COMMITTEE
COUNCIL OF THE COUNTY OF MAUI
WAILUKU, MAUI, HAWAII
MAY 21, 2013

APPROVED:


Committee Chair

ORIGINAL

Transcribed by:
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1 CONVENE: 9:04 a.m

2 PRESENT: VOTING MEMBERS:

3 Councilmember Donald G. Couch, Jr., Chair

4 Councilmember Elle Cochran (in 9:10 a.m.)

5 Councilmember Stacy Crivello,

6 Councilmember Don S. Guzman, (out 10:03

7 a.m., in 10:10 a.m.)

8 Councilmember Mike White

9 EXCUSED: VOTING MEMBERS:

10 Councilmember Michael P. Victorino,

11 Vice-Chair

12 Councilmember Gladys C. Baisa

13 STAFF: Regina Gormley, Legislative Analyst

14 Yvette Bouthillier, Committee Secretary

15 Ella Alcon, Council Aide, Molokai Council

16 Office (via telephone conference bridge)

17 Denise Fernandez, Council Aide, Lanai Council

18 Office (via telephone conference bridge)

19 Dawn Lono, Council Aide, Hana Council Office

20 (via telephone conference bridge)

21 ADMIN: William Spence, Director, Department of

22 Planning

23 Joseph Alueta, Administrative Planning

24 Officer, Department of Planning

25 Ann Cua, Planner VI, Current Planning

 Division, Department of Planning

 Michael J. Hopper, Deputy Corporation

 Counsel, Department of the Corporation

 Counsel

 OTHERS: Mark Hyde (PC-34)

 Irene Bowie, Executive Director, Maui

 Tomorrow (PC-34)

 Sally Kaye (PC-9, PC-11, PC-13), Lanai

 Council Office (via telephone conference

 bridge)

 Lee Altenberg (PC-34)

 Daniel Kanahale (PC-34)

 Gene Weaver (PC-34, PC-14)

 Laura Marie Herrmann (PC-34)

 Charlie Jencks, representing Honuaua

 Partners, LLC (applicant)

 PRESS: Akaku: Maui Community Television, Inc.

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2 CHAIR COUCH: ...(gavel)... Will the Planning
3 Committee meeting of May 21st, 2013, please come to
4 order? It is now about 9:04.

5 I would like to remind everybody in the
6 Chambers to set their cell phones on stun, please. We
7 don't wanna hear -- yeah -- phones go off. So make sure
8 yours is, at least, on vibrate mode.

9 All right. I want to welcome Committee Voting
10 Members. Our Vice-Chair is excused; Mr. Victorino.
11 Just go down the line. Councilmember Guzman, good
12 morning.

13 COUNCILMEMBER GUZMAN: Good morning, Chair.

14 CHAIR COUCH: Councilmember White, good
15 morning.

16 COUNCILMEMBER WHITE: Good morning, Chair.

17 CHAIR COUCH: And, Councilmember Crivello,
18 good morning.

19 COUNCILMEMBER CRIVELLO: Good morning, Chair.

20 CHAIR COUCH: And Councilmember Cochran will
21 be here a little bit later. And excused are Council
22 Chair Baisa and I think -- and Councilmember Victorino.
23 And from the Administration, we have Will Spence, the
24 Planning Director. Good morning.

25 MR. SPENCE: Good morning, Chair.

1 CHAIR COUCH: And Ann Cua who is a Planning
2 person.

3 MS. CUA: Good morning, Chair.

4 CHAIR COUCH: Good morning. And Michael
5 Hopper, Deputy Corporation Counsel. Good morning. And
6 we will have, later, Joe Alueta who is sitting out in
7 the lobby right now.

8 On the Committee side, Legislative Attorney is
9 Gina Gormley. Good morning. And Committee Secretary,
10 Yvette Bouthillier. Good morning.

11 All right. We have seven items on the agenda
12 today and so -- some of them should be rather
13 straightforward, and some of them may take a little bit.
14 So we have some work ahead of us.

15 Assisting us this morning from the Hana
16 District Office is Dawn Lono.

17 MS. LONO: Good morning, Chair. This is Dawn
18 Lono in Hana.

19 CHAIR COUCH: Good morning. And --
20 (inaudible) some tape, if we could get that, please --
21 from the Lanai District Office is Denise Fernandez.

22 MS. FERNANDEZ: Good morning, Chair. This is
23 Denise Fernandez from Lanai.

24 CHAIR COUCH: And from the Molokai District
25 Office is Ella Alcon.

1 MS. ALCON: Good morning, Chair. This is Ella
2 Alcon on Molokai.

3 CHAIR COUCH: Okay. Members, should you have
4 any questions or need clarification from any of the
5 testifiers, please speak directly into your microphone.
6 This will help ensure testifiers -- that the testifiers
7 in the district offices will be able to clearly hear and
8 understand your questions or comments.

9 And we're getting ready to accept public
10 testimony. For anybody who will be testifying in the
11 Chambers here, please sign up at the desk located in the
12 8th Floor lobby, in the back there, just outside the
13 Chamber door. If you will be testifying from the remote
14 testimony locations specified on the meeting agenda,
15 please sign up with Council Staff at that location.

16 Testimony will be limited to the items listed
17 on the agenda today. If you wanna speak on two items,
18 you will be given three minutes for each item, with one
19 minute to conclude, if requested.

20 We're gonna have the lighting system go. When
21 the light turns yellow, that means you got one minute
22 left. And when it turns red, please finish your
23 remarks. It turns red at the four-minute mark. Okay.

24 When testifying, please state your name and
25 the name of any organization you are representing.

1 Members, without objection, I'll now open
2 public testimony.

3 COUNCIL MEMBERS: No objection.

4 CHAIR COUCH: Okay. Right now, we have, looks
5 like, five people signed up to testify. So I will call
6 up the first testifier, Mr. Mark Hyde, followed by Irene
7 Bowie.

8 ...BEGIN PUBLIC TESTIMONY...

9 MR. HYDE: Good morning, Mr. Couch, Members of
10 the Committee. My name is Mark Hyde. I live in Wailea.
11 I'm here to request the Committee to urge the landowner
12 to seek an amendment of the Kihei-Makena Community Plan
13 to allow for the 250 workforce housing units that are
14 proposed to be built in the Kaonoulu Industrial Park.
15 In the alternative, I urge the County to seek an
16 amendment of the Kihei-Makena Community Plan to allow
17 for that housing.

18 Just like the Land Use Commission order that
19 was found to be violated by the Honuaula 250 workforce
20 housing project, the Kihei-Makena Community Plan is
21 likewise violated. And like the Land Use Commission
22 order, the Kihei-Makena Community Plan has the force and
23 effect of law.

24 The plan was the product of at least six years
25 of discussion with members of the community. It was

1 enacted into law by this legislative body. And there is
2 a process provided in the Code for amendment of that
3 plan. That process can be engaged by a landowner, it
4 can be engaged by others, it can be engaged by the
5 County. But failing an amendment of the Makena -- the
6 Kihei-Makena Community Plan, it is violated by the --
7 the present design to put housing there.

8 Two courts of this State have concluded
9 conclusively, and the County of Maui was a party to both
10 of those actions, binding this County by the legal
11 concept of res judicata to follow those precedents. In
12 each of those cases -- one, a Hawaiian Supreme Court
13 case and the other Circuit Court of Appeal case -- they
14 said, without limitation, that -- that the Kihei-Makena
15 Community Plan has the force and effect of law.

16 With respect to our plan, which needs to be
17 honored as the voice of the people and the voice of this
18 Government, it says, without any question whatsoever,
19 that the property involved is to be used for light
20 industrial use. Take a look at the Land Use map
21 attached to the plan. The letters LI appear on this
22 property. And LI is defined very narrowly as
23 warehousing, light industrial and craft type use.

24 It does not use the definition contained in
25 M-1 zoning. M-1 zoning allows for apartments. But like

1 the Land Use Commission said, zoning does not amend the
2 Land Use Commission order and, likewise, zoning does not
3 amend the Kihei-Makena Community Plan.

4 In fact, the zoning given to this piece of
5 property is entirely consistent with the plan, but the
6 use intended by the landowner is completely inconsistent
7 with the governing document which is the Land Use
8 Commission order, the Kihei-Makena Community Plan.

9 So I urge you, on behalf of the people of
10 South Maui, to follow the law and to either seek an
11 amendment or encourage the owner to do the same. Thank
12 you very much.

13 CHAIR COUCH: Thank you. Members, any
14 questions of the testifier? And I wanted to -- hang on,
15 Mr. Hyde, I have a question. I wanted to acknowledge
16 presence of Councilmember Cochran. Good morning.

17 COUNCILMEMBER COCHRAN: Thank you. Thank you,
18 Chair Couch.

19 CHAIR COUCH: So, Members, any questions of
20 the testifier? Mr. Hyde, I just have one question. In
21 your discussion, you talked about -- that the Community
22 Plan essentially has precedence over zoning.

23 MR. HYDE: That's correct, sir.

24 CHAIR COUCH: Okay. Thank you.

25 MR. HYDE: That's in the County Code. Thank

1 you very much.

2 CHAIR COUCH: Thank you. Next testifier is
3 Irene Bowie, followed by Lee Altenberg.

4 MS. BOWIE: Good morning, Chair and -- and
5 Committee Members. I'm Irene Bowie with Maui Tomorrow
6 Foundation. Maui Tomorrow would like to offer comments
7 on Condition 5 of Honuaula Partners' Annual Compliance
8 Report concerning the project's off-site workforce
9 housing.

10 The developers actively supported this
11 condition during the Council's final rezoning and
12 Project District Phase 1 reviews process in 2007 and '8.
13 They assured the Council that 250 units of multifamily
14 housing, meeting 70 to 100 percent HUD guidelines, could
15 be built within two years. And that all zoning in the
16 off-site Kaonoulu location was in place. No mention was
17 made that a third party would be needed to build the
18 housing.

19 Councilmember Johnson, during the 2007 and '8
20 Council hearings, rightly questioned whether the
21 Kaonoulu Light Industrial designated site was actually
22 reviewed and approved for residential development. In
23 fact, Honuaula's projected workforce housing at Kaonoulu
24 was never proposed to the State Land Use Commission, not
25 during the 1995 Ag to Urban zoning decision and never in

1 the years since, despite the LUC's Condition 15, which
2 required the land to be built substantially as
3 represented, and never in any of the annual reports
4 required since then.

5 By avoiding discussion of residential units at
6 Kaonoulu, the environmental impacts associated with
7 residential use, such as access roads, water and sewage,
8 have never been discussed, and no conditions to mitigate
9 such impacts have been developed. Never mentioned to
10 the County Council was required site modifications,
11 including the relocation of the County's main 36-inch
12 Central Maui water transmission line which bisects the
13 site, or that Kaonoulu Gulch may need to be filled in
14 with its drainage rerouted to Kulanihakoi Gulch,
15 bringing it through one of South Maui's most flood prone
16 areas.

17 The Council was led to believe that the
18 Kaonoulu site would require less infrastructure
19 investment, was ready to go, and the workforce housing
20 there would be an ideal fit. This claim no longer
21 appears accurate.

22 The developers commissioned a market study to
23 justify the financial viability of the project for its
24 2010 EIS. That study noted that regardless of the
25 current recession, there continues to be an unmet need

1 for affordably-priced housing in the Kihei-Makena area.
2 If this report is accurate, the developers should be
3 able to commit to fulfilling this condition despite
4 their annual compliance reports which claim that market
5 conditions make it difficult to find anyone to build the
6 125 affordable owner-occupied units at the Kaonoulu
7 site.

8 Please require that Condition 5 be fully
9 implemented after the Kaonoulu residential project is
10 properly reviewed and receives necessary Community Plan
11 and State LUC amendments.

12 Legal challenges involving Kaonoulu were only
13 initiated in 2012, four years after the County rezoning
14 approval. Since the original promise of a quick
15 turnaround for affordable housing has proven
16 unrealistic, there's no reason now not to take the time
17 to do it right.

18 Thank you.

19 CHAIR COUCH: Thank you, Ms. Bowie. Members,
20 any questions of the testifier? Seeing none, thank you.

21 We're gonna check with the outer offices.
22 Molokai, do you have any testifiers for us today?

23 MS. ALCON: There's no one here on Molokai
24 waiting to testify.

25 CHAIR COUCH: Okay. Lanai, any testifiers

1 today?

2 MS. FERNANDEZ: Mr. Chair, we currently have
3 one testifier at the Lanai Office, Sally Kaye, who will
4 be testifying on Item No. PC-9, PC-11 and PC-13.

5 CHAIR COUCH: Thank you. Thank you, Ms. Kaye.

6 MS. KAYE: Oh. Good morning. Thank you for
7 this opportunity to testify long distance. It really
8 makes a difference over here.

9 I wanted to testify both on PC-9 and 11,
10 because they're so related, and let you folks know that,
11 the last couple of years there was a -- this -- just
12 this situation happened on Lanai with a discretionary
13 zoning request from the landowner where conditions were
14 not fulfilled for nine years. And when it came back --
15 clearly, this was an attempt to avoid going through the
16 State Land Use Commission -- they came back for an
17 additional amount of acreage. And, for the first time,
18 had to address why they hadn't (inaudible) the
19 conditions. So I'm really, really pleased to see
20 that -- in PC-9 and PC-11, that the Planning Director
21 will now be responsible for doing the job of reporting
22 to the Council.

23 The only thing that I would like to point out
24 is that PC-9 appears to have a maximum of five years
25 from the date any conditional zoning or ordinance is

1 passed. And PC -- PC-11 appears to only give an
2 applicant three years. And (inaudible) was a poster
3 child for wanting both at the same time, getting both at
4 the same time, and not fulfilling the conditions at all.
5 So I'm -- I'm not sure how that internal inconsistency
6 would work itself out.

7 CHAIR COUCH: Okay. And you were gonna talk
8 about PC-13 as well?

9 MS. KAYE: Yeah. Thank you. I just wanted
10 to, actually, put the question out there that Section
11 2-B-4, it's unclear, if these changes go forward that --
12 I would assume the changes -- if a Change in Zoning is
13 initiated by the Planning Director or Council, first
14 assumption would be that would be County-owned land.
15 But the second provision seems to indicate that there
16 simply is no protest for an adjoining landowner who is
17 not the County to have any kind of say in the matter.
18 And I just wanted to ask that that be clarified.

19 CHAIR COUCH: Okay. Members, any questions of
20 the testifier? Seeing -- seeing none, thank you,
21 Ms. Kaye.

22 MS. KAYE: Thank you.

23 CHAIR COUCH: Okay. And I believe, Hana, do
24 you have any testifiers?

25 MS. LONO: The Hana office has no one waiting

1 to testify, Chair.

2 CHAIR COUCH: Okay. And Hana, Lanai and
3 Molokai, if you have any further testifiers, please give
4 us a -- an email. We'll come back to you at the end of
5 the testimony, anyway, but seeing that there's nobody
6 else left to testify in the -- in the offices, we won't
7 keep coming back to you.

8 All right. Next up in the Chambers is Lee
9 Altenberg, followed by Daniel Kanahele.

10 MR. ALTENBERG: Good morning, Chair and
11 Committee Members. I'm Dr. Lee Altenberg. And I'm
12 addressing PC-34, Condition 27, which establishes a
13 native plant preservation area for the Honuauula
14 development.

15 So the language of Condition 27 is unusual.
16 And I notice that the Members of the Committee are new
17 since the -- the ordinance was enacted. So let me say
18 something about how it came about.

19 So I reported to the Land Use Committee that
20 the southern quarter of the property held one of only
21 seven large areas of wiliwili habitat left in existence
22 on Maui. Lowland dry forest is among the most
23 endangered ecosystems in the United States.

24 In response, Mr. Jencks wrote the Committee
25 that Lee Altenberg's claims regarding remnant dryland

1 forest preservation and the presence of unique plant
2 species cannot be validated by the academic professional
3 community.

4 Subsequently, Professor Creighton Litton,
5 Professor Robert Cabin, Dr. Angela Kepler, and Professor
6 Jonathan Price all testified to the Committee that the
7 habitat was endangered and should be protected,
8 affirming my report to the Committee.

9 What the Committee decided to do in Condition
10 27 was to put the southern 130 acres into a conservation
11 easement, and I quote, excluding any portions that the
12 State Department of Land and Natural Resources, the
13 United States Fish and Wildlife Service, and the United
14 States Corps of Engineers find do not merit
15 preservation.

16 So what portions of the 130 acres do the --
17 these agencies find do not merit preservation? None.

18 On July 2nd, 2010, the U.S. Fish and Wildlife
19 Service sent a letter to Mr. Jencks stating, we believe
20 the entire 130-acre area at the southern end of the
21 project merits preservation. To minimize these adverse
22 impacts to ecosystem integrity, we recommend that the
23 conservation easement or native plant preservation area
24 include the roughly 130 acres within the aa flow, aa
25 lava flow, which supports a somewhat degraded, yet

1 functioning, native dryland forest/shrubland ecosystem.

2 Reiterating this finding, on July 3rd, 2012,
3 U.S. Fish and Wildlife wrote to Director Spence. The
4 130-acre area is composed of an old growth remnant
5 wiliwili dominated dry forest and associated shrub land
6 that is somewhat degraded as a result of a lack of
7 active management. The lowland dry forest ecosystem was
8 once widespread in the Hawaiian Islands and has been
9 severely impacted by human activities. This type of
10 ecosystem is now very rare and, therefore, remaining
11 areas merit protection.

12 In addition, on June 11, 2012, the Service
13 proposed a proportion of the project area as critical
14 habitat, Lowland Dry Unit 03. That's 170 acres, more
15 than the area listed for the conservation easement --
16 has been proposed to be critical habitat for the
17 recovery of 19 endangered Hawaiian species of plants.
18 Therefore, the language of Condition 27 mandates that
19 the Preservation Plan contain a 130-acre conservation
20 easement, but the Habitat Conservation Plan submitted by
21 the developer proposes only a 40-acre easement. This
22 plan, therefore, does not conform with Condition 27.

23 I believe that the public deserves to get a
24 legal opinion on this nonconformance from Corporation
25 Counsel. I petition that this Committee request such an

1 opinion from Corp. Counsel.

2 Now, none of this is mentioned in the
3 Compliance Report.

4 Do I have another minute? 30 seconds?

5 CHAIR COUCH: About 20 seconds.

6 MR. ALTENBERG: Okay. So the developer states
7 in their Environmental Impact Statement that the
8 conditions of zoning placed by the County Council are,
9 actually, self-contradictory, and, therefore, that they
10 don't have to comply with Condition 27. In their final
11 EIS, they state that the 130-acre native plant
12 preservation area would conflict with Chapter 19.90A,
13 conflict with the Ordinance 3554, impact the ability to
14 use the golf course's drainage.

15 CHAIR COUCH: Mr. --

16 MR. ALTENBERG: Okay.

17 CHAIR COUCH: Dr. Altenberg --

18 MR. ALTENBERG: So --

19 CHAIR COUCH: -- you need to wrap up, please.

20 MR. ALTENBERG: So the question is, why didn't
21 the developer claim these conflicts when the Council was
22 debating Condition 27? And --

23 CHAIR COUCH: Okay. Thank --

24 MR. ALTENBERG: Okay.

25 CHAIR COUCH: Thank you, Dr. Altenberg.

1 MR. ALTENBERG: Thank you very much for your
2 attention.

3 CHAIR COUCH: Members, any question of the
4 testifier? Seeing none, thank you, Dr. Altenberg.

5 MR. ALTENBERG: Thank you very much.

6 CHAIR COUCH: Next testifier is Daniel
7 Kanahele, followed by Gene Weaver.

8 MR. KANAHELE: Aloha kakou, Chair Couch and
9 Committee Members. My name is Daniel Kanahele. I am
10 testifying on behalf of Maui Cultural Lands. I've
11 submitted written testimony.

12 I realize this is a pro forma hearing, but the
13 -- the work that has gone into these testimonies has
14 covered many, many years and involve many, many
15 organizations and individuals. So it's very important
16 to our community.

17 I'm testifying on PC-34. In 2008, the Maui
18 County Council approved the Honuaula/Wailea 670 project
19 with 30 conditions. And I'm speaking to Conditions 13
20 and 26, which pertain to the Historic Preservation
21 Review Process. In Honuaula Partners' -- I'll call 'em
22 HP -- Status Report, for Conditions 13, they state that
23 the CRPP, the Cultural Resource Preservation Plan, has
24 been completed, transmitted to reference agencies,
25 meaning OHA and SHPD, and a final review of this

1 document is pending finalization of the project
2 Archeological Inventory Survey submitted to SHPD, which
3 is the AIS.

4 The question I have is, has Honuaula Partners,
5 HP, fairly and fully informed you folks and the public
6 that the CRPP is a draft, and that will require much
7 rewriting once a preservation mitigation plan is put in
8 place and accepted by SHPD. And has HP fully and fairly
9 informed you and the public that there is currently no
10 archeological inventory survey being reviewed by SHPD
11 for this project.

12 SHPD has informed me that they will not review
13 or comment on the CRPP until there has been a
14 preservation mitigation plan accepted by them. And it's
15 very unlikely that OHA will do the same. And a
16 prerequisite for a CRPP is an accepted archeological
17 inventory survey.

18 And, currently, there is no accepted
19 archeological inventory survey, which brings us to
20 Condition 26, which pertains to Honuaula providing a
21 preservation mitigation plan that has been approved by
22 SHPD. And as I stated, there is no archeological
23 inventory survey being reviewed by SHPD at present.

24 In the past, HP has often blamed the long
25 delays and review of the acceptance of their

1 archeological inventory survey on SHPD. But, in truth,
2 most of the blame falls squarely on their shoulder
3 because HP has failed to reply to requests by SHPD for
4 additional information and for revisions that go back as
5 far as 10 years.

6 And this has been illustrated in a letter,
7 which I attached to my -- my comments that I sent to you
8 folks from State -- the State Archaeologist, Chief
9 Archaeologist, Theresa Donham, in response to our site
10 visit they did to the project area in December of last
11 year, and to their review of the March 2012 AIS by
12 Honuauia. And they pointed out some very key concerns
13 which include failure of the AIS to document
14 archeological historic properties that are plainly
15 visible, failure of the AIS to adequately survey 100
16 percent of the entire surface area of the project area,
17 failure of the AIS to respond to requests for revisions
18 and additional information. And the list goes on and
19 on.

20 So the point that I hope to make here is that
21 there is no AIS right now being looked at. We have --
22 we have brought this to the attention to you folks over
23 the years. And we hope that you will encourage this
24 project to complete the AIS. Thank you very much.

25 CHAIR COUCH: Thank you, Mr. Kanahale.

1 Members, questions for the testifier? Seeing none,
2 thank you, Mr. Kanahele.

3 MR. KANAHELE: Thank you.

4 CHAIR COUCH: Gene Weaver, followed by Laura
5 Marie Herrmann.

6 MR. WEAVER: Excuse me. Aloha, Council Chair,
7 Council Members. Thanks for hearing from us today. I
8 am commenting on two different areas, as you know.

9 The first one is on the Wailea 670 Condition
10 21, that all exterior lighting shall be shielded from
11 adjacent residential properties and nearshore waters,
12 lighting requirements in force at the time of building
13 permit application shall be applied. And my comments
14 are the intention of this condition is to minimize
15 lighting impacts to the existing adjacent neighborhood,
16 Maui Meadows, and the nearshore waters.

17 While Maui Meadows is -- my name's Gene
18 Weaver, and I am a resident of Maui Meadows, just to get
19 that part in. We're a rural neighborhood with a minimal
20 street lighting, half-acre lots, non-urban feel. And
21 the residents recently have enjoyed even a neighborhood
22 star watch because the skies are dark enough to enjoy --
23 to enjoy the night stars.

24 Maui Meadows residents have asked that a wider
25 buffer zone be created between the two projects, and

1 that lower density, more rural standard lots in Wailea
2 670 adjoin that border. You will be told that all is
3 being done in the Wailea 670 plan, and that -- that the
4 Maui Meadows Neighborhood Association supports the
5 master plan. Like many other things you may be told,
6 this is partly accurate, but there is more to the story.

7 Condition 21 hopes to achieve its goal by
8 requiring that lighting be shielded by -- County
9 lighting requirements be followed.

10 The reality is that the lighting from the new
11 Wailea Gateway Center probably have the same standard
12 conditions to be shielded following the -- the County
13 standards. This -- there is a noticeable impact from
14 this development. And -- and this development has gone
15 beyond the minimum requirements. So, unfortunately, it
16 seems that things are headed down the opposite direction
17 and that our night skies will be impacted.

18 Maui Meadows residents have asked for a wider
19 buffer. And since -- and without a wider buffer, the
20 light intensity is just gonna be there. There -- it's
21 gonna be difficult for them to mitigate that. And
22 unfortunately, it seems, over the four years since the
23 project approval in 2008, Wailea 670 Master Plan has --
24 map has changed to shift more and more multifamily
25 housing and commercial use closer and closer to the Maui

1 Meadows/Wailea 670 border. This means that two and
2 three-story condos with lighted hallways, parking areas,
3 et cetera, commercial centers, are going to occupy the
4 lands in closest view of Maui Meadows.

5 If you compare the maps, you will see that
6 this is true. I don't have them for you today, but I'd
7 be happy to get them for you.

8 The Council has approved the Master Plan with
9 a 50 -- 50-foot wide buffer, 33 acres of Single Family,
10 and two natural gulches between the existing Maui
11 Meadows homes and the first higher density family,
12 Multifamily or Village.

13 The 2010 to 2012 Wailea 670 map has a 50-foot
14 planted buffer. There's about 12 acres of Multifamily
15 immediately next to the buffer and another 20 acres of
16 Multifamily just beyond that. The Commercial designated
17 areas near Maui Meadows now appear to be around 36
18 acres, nearly three times that of the 2008 plan.

19 The public does -- has been told that a
20 greater density in the north of the project was a result
21 of the additional preserve for the -- the plants there.

22 CHAIR COUCH: Mr. Weaver, if you could --

23 MR. WEAVER: Yes.

24 CHAIR COUCH: -- wrap 'em up.

25 MR. WEAVER: Okay. Well, I think you're

1 getting the point that we really need help in making
2 this a really good plan. And following all the changes
3 that happen, the mitigations need to change, too.

4 CHAIR COUCH: Okay. And you wanted to testify
5 on PC-14 as well?

6 MR. WEAVER: Yes, I do.

7 CHAIR COUCH: Okay.

8 MR. WEAVER: First of all, I wanna to thank
9 Elle for -- for -- for working so hard on this -- on
10 getting something new for the farmers. I know -- on the
11 farmers of -- of Maui County and the State of Hawaii.
12 It's been a big problem in -- in (inaudible) that -- for
13 instance, I'm a farmer, and I have two farms, I have one
14 on each side of the island. And I can't sell produce
15 from one -- from one of my farms at the other farm. And
16 Elle is -- is -- and I wanna urge the County Council to
17 go ahead and update your laws to match, as Elle is -- as
18 Elle is suggesting, to match the State's new laws so
19 that the farmers here can sell their goods in many
20 neighborhoods, and support the people of Maui with good
21 organic variety of produce grown here locally, which is
22 so important to Maui County and all of us here.

23 Thank you. So please support Elle's bill.

24 And let's get this thing through as soon as we can.

25 CHAIR COUCH: Thank you, Mr. Weaver. Members,

1 any questions for the testifier? Seeing none, thank
2 you, Mr. Weaver.

3 MR. WEAVER: You're welcome. Thank you.

4 CHAIR COUCH: Laura Marie Herrmann is the last
5 person signed up to testify. If anybody else in the
6 chamber would like to testify, please sign up in the
7 back.

8 MS. HERRMANN: Hello. My name's Laura Marie
9 Herrmann. I'm from Haiku. And I'm speaking about
10 Condition 37 for Honuaula's approved rezoning for the
11 Wailea 670 project.

12 And my concern has to do with their compliance
13 regarding the conservation of the dryland forest in the
14 area. And it has come to my attention that this is a
15 very precious cultural resource for the entire island,
16 all of the island's residents. And, really, it has to
17 do with how rare and unique this dryland forest is.

18 It contains 2,500 wiliwili trees which exist
19 nowhere else in the archipelago, as I understand. And
20 that is simply because of a set of circumstances that
21 came about beginning 10,000 years ago when there was a
22 lava flow in the area that created the kind of soil that
23 these wiliwili trees are now growing in that happens to
24 protect them from their predators, the buffel grass that
25 tends to grow and the kiawe that tends to grow around

1 the wiliwili and often results in fires that destroy the
2 -- the habitat.

3 So this is very special treasure that we have
4 on Maui. There's ample opportunity for research that
5 could be done that could bring dollars into the State
6 and help to promote the Hawaiian culture. And because
7 of that, I think it's very important that the developer,
8 Honuauula, comply with State and Federal regulations that
9 this area be protected.

10 And it is in the language of the Council, it
11 is required that this area be protected if the United
12 States Fish and Wildlife Service and the Department of
13 Land and Natural Resources also find that this
14 continuous amount of habitat is necessary to the
15 preservation of the wiliwili trees. And they have found
16 so. Their letters of 2010 testify to that.

17 So I am here just as a member of the community
18 speaking out on behalf of this area of dryland forest.
19 I think it's quite important that we preserve it. And
20 in order to do so, we need to require Honuauula to comply
21 with Condition 27 of the conditions that were set forth
22 for the -- in 2008, when the Council approved rezoning
23 for the Wailea 670 project. And until they do that,
24 they are not complying with Condition 29 of this city's
25 [sic] three thousand -- 3554 ordinance.

1 Council Chair Gladys C. Baisa, transmitting
2 correspondence dated April 11th, 2013, from Charles
3 Jencks, Honuaula Partners, LLC, transmitting an Annual
4 Compliance Report pursuant to Condition 29 of the same
5 ordinance.

6 We have comments from the Planning Department
7 and Corporation Counsel coming up in a second on the
8 compliance report. Actually, let's bring it up right
9 now. Mr. Spence, any comments on the report?

10 MS. CUA: No comments, Chair. We -- we just
11 acknowledged receipt of the report and also acknowledged
12 that -- pursuant to Condition No. 29, that the report --
13 the applicant would also be transmitting the report to
14 the County Council. But we are here for questions if --
15 if any arise.

16 CHAIR COUCH: Okay. Members, any questions
17 for the Planning Department or Corporation Counsel?
18 None. I have a couple. Oh, Ms. Cochran.

19 COUNCILMEMBER COCHRAN: Thank you, Chair.
20 And, Department, the comment by one of the testifiers in
21 regards to our Community Plan overrides zoning, is that
22 accurate?

23 MS. CUA: I'm gonna let the Director address
24 that.

25 COUNCILMEMBER COCHRAN: Thank you. Or

1 Corporation -- whoever you feel is appropriate to
2 answer. Thank you.

3 MR. SPENCE: Mr. Chairman, I think --

4 CHAIR COUCH: Uh-huh.

5 MR. SPENCE: -- partially a legal question,
6 partially a planning question.

7 CHAIR COUCH: Okay.

8 MR. SPENCE: I might have some comments after
9 Deputy Corp. Counsel addresses that.

10 COUNCILMEMBER COCHRAN: Thank you --

11 CHAIR COUCH: Okay.

12 COUNCILMEMBER COCHRAN: -- Mr. Spence.

13 MR. HOPPER: Well, it is correct that changes
14 in zoning do have to comply with the Community Plan.

15 I would note that in this case with the Light
16 Industrial -- and this is a little -- a little odd
17 because the -- the compliance report is on Wailea 670,
18 which has a Condition 5 requiring affordable housing to
19 be built on another project, on another project site,
20 which was referenced in the testimony earlier today.
21 The Community Plan designation for that site is Light
22 Industrial. And throughout the County, there are
23 apartments in Light Industrial Community Planned areas.
24 Iao Parkside, for example, is entirely within a Light
25 Industrial Community Planned area. So the issue of

1 whether or not building apartments in that area is
2 permitted by the Community Plan, it certainly has been
3 permitted across the County for -- for that -- that type
4 of use.

5 But for this particular area, the -- the
6 Community Plan -- the Change in Zoning is required to
7 conform to the Community Plan. But I would note that
8 the Land Use Commission decision, which involved the --
9 the -- this particular site found that the landowners
10 were not in compliance with the conditions of their
11 State Land Use Commission approval, which was a change
12 from Ag to Urban.

13 Now, that decision hasn't been reduced to
14 writing. There's no written decision and order, so
15 there's not a lot of specifics as far as what the
16 Commission ordered. But it -- it was the County's
17 position in that case that the Land Use Commission does
18 not have the authority to interpret or enforce the
19 Community Plan itself. And so that shouldn't have been
20 the basis for the Commission's decision.

21 Now, again, we don't know what the
22 Commission's -- the basis for the Commission's decision
23 was because it was not reduced to writing in -- in that
24 case. But to say that apartments aren't allowed in the
25 Light Industrial Community Plan designation, I don't

1 believe that's necessarily an accurate statement because
2 they are in -- in many areas across the County, there
3 are apartments in Light Industrial Community Planned
4 areas. So I don't necessarily agree with -- with that
5 particular assumption that was made this morning.

6 COUNCILMEMBER COCHRAN: Thank you, Mr. Hopper.
7 And you had more comments, Mr. Spence, or Chair?

8 MR. SPENCE: Thank you, Mr. Chairman. Just a
9 little bit on the -- the nature of plans and what they
10 mean. Comprehensive plans are used across the country,
11 stemming from -- actually, from legislation in the
12 1920s, when Herbert Hoover were -- was president.

13 The -- the nature of the plans is just that,
14 it's a plan. It's where do we wanna go from here, what
15 do we expect the County, in this case the County, or the
16 municipality or the region to look like in whatever the
17 timing horizon is for that. It could be 10 years, it
18 could be 20 years.

19 In our plans, we have both projects that are
20 -- at least on our Land Use maps, we have -- we identify
21 what uses are already there on the ground. But, also,
22 what things we want them to be or things that could be.
23 And, you know, there's -- having come out of the Maui
24 Island Plan and having staffed a lot of meetings for the
25 Community Plans, it's also -- there's a lot of

1 discussion whether things -- some of the things that get
2 put into the plans actually should be there or not.

3 If -- if we take the view that the -- instead
4 of taking the view the plans are a guide to
5 decision-making, which we've always done -- for
6 instance, in -- in the case of the area there where
7 Piilani Promenade wanted to go and everything, in the
8 wisdom of the Council at that time, when they rezoned
9 it, you know, the Planning Department had requested that
10 there be restrictions on the kinds of uses that there be
11 there, limiting the amount of Commercial that could go
12 there. At that time that County Council, in
13 implementing the Community Plan, said that, no, the --
14 you know, we are not gonna put these restrictions on the
15 amount of Commercial, and, in other cases, they did. So
16 the Council, on a case-by-case basis, has gone ahead, as
17 things get rezoned, you know, has chosen whether there
18 would be conditions on it or -- or -- or whatever.

19 But one of the requirements of -- of Council
20 rezoning a property is that they have to find
21 consistency with the Community Plan. So that kinda
22 reinforces a plan as a guide.

23 If you take the position that these plans
24 supersede zoning, and that you must go strictly by what
25 the Community Plan designations say, in this particular

1 case, it's the Light Industrial, it's for warehouse,
2 light assembly, service and crafts type industrial
3 operations. Okay. If -- if that's the desired outcome
4 by some people, that's fine. But then you take that
5 further, look at the implications of taking what is
6 meant to be a guide, that is supposed to be implemented
7 through zoning or through other means, and look at the
8 implications of that.

9 If you take Single-Family Residential, the
10 definition of Single-Family Residential says this
11 includes single-family and duplex dwellings. That's it.

12 One of the hallmarks of some of our community
13 groups is we include pocket parks in each one of our
14 single-family subdivisions, giving some -- giving a
15 gathering place, trying to create a sense of place,
16 sense of community for those subdivisions. If we go by
17 this, that wouldn't be allowed.

18 You wouldn't, also, allow all the other things
19 allowed by zoning. You wouldn't allow day care. You --
20 it's questionable if you could allow other accessory
21 uses provided in Single-Family zoning, schools,
22 government buildings, other accessory buildings,
23 greenhouses. Those are all permitted uses in the
24 Single-Family Residential District. If we go by just
25 the definition of the Community Plan, you couldn't do

1 those things.

2 You also -- the definition of Hotel -- this --
3 the -- the Community Plan designation, this applies to
4 transient accommodations which do not contain kitchens
5 within individual units. I would wonder how many -- and
6 that's pretty universal across, you know, the island.
7 That some of the -- you know, I mean, this definition is
8 universal in the Community Plans. So I wonder how many
9 thousands of units within the west side, within South
10 Maui. I'm not sure of Central, I -- I don't think
11 there's any. Anyway, we're saying all these hotels will
12 be nonconforming. That creates zoning problems. Well,
13 you're saying this is zoning. You're saying all those
14 units, those thousands of units would be nonconforming.
15 That creates all kinds of administrative problems for
16 them and for County Government.

17 So these are supposed to be a guide. They're
18 not supposed to be the application. These are --
19 Community Plans are just that. I hope we can appreciate
20 the issues that would come up if we -- if we take these
21 designations as zoning.

22 CHAIR COUCH: Are you --

23 COUNCILMEMBER COCHRAN: Do you --

24 CHAIR COUCH: On the same line, I have a
25 follow-up question to that, probably to Corp. Counsel.

1 COUNCILMEMBER COCHRAN: Go ahead, Chair.

2 CHAIR COUCH: Okay. Thank you.

3 Mr. Hopper, it was stated in testimony that a
4 Supreme Court case unequivocally said the Community Plan
5 supersedes zoning. I think that's what -- oh, he says
6 that the Community Plan has force of law without
7 limitation, is what was said. Can you respond to that
8 for me?

9 MR. HOPPER: Yes, Mr. Chair. The GATRI case,
10 which was decided a while ago, and the Leoni case, which
11 was decided recently, both involve properties that were
12 located in the Special Management Area. There's
13 actually a State law, HRS 205A, that specifically states
14 that no development is able to get a Special Management
15 Area permit unless it -- it essentially conforms to the
16 Community Plan. That's a State law. And in both of
17 those cases, including the Palauea beach lots in the
18 Leoni case, and the -- the property in the GATRI case
19 involved property in the SMA where you had a State law
20 that stated, for that particular type of discretionary
21 decision-making, the Community Plan had the force and
22 effect of law.

23 There were Corporation Counsel written
24 opinions issued years ago, well before my time, and that
25 have been followed to date, that -- that -- that, after

1 a review of those decisions and a review of other court
2 cases also involving community plans, it was determined
3 -- or advised by Corporation Counsel that the Community
4 Plans had the force and effect of law in certain
5 specific circumstances which included when dealing with
6 zoning ordinances, subdivision ordinances, Special
7 Management Area, and, in addition, the preparation of
8 County budgets and capital improvement programs.

9 Discretionary -- discretionary permitting
10 would, in general, have to conform to the Community
11 Plan; however, nondiscretionary permits, such as
12 ministerial permits, building permits, are not required
13 to comply with the Community Plan based on the plan as
14 having the force and effect of law. And that has been
15 followed by the County since -- probably for over a
16 decade. It's -- it's why not every single building
17 permit that comes in gets reviewed for full Community
18 Plan compliance.

19 And this has been advised both in writing and
20 orally to the Council for years. So this is really
21 nothing new at this point. So -- so I wouldn't say the
22 Community Plan automatically trumps zoning, but it does
23 state in the Code that zoning ordinances are required to
24 conform to the Community Plan. And that's something
25 that's -- that's one of the specific areas where the

1 Community Plans do apply with the force and effect of
2 law.

3 We can provide those opinions. And, of
4 course, this is something that the County Council has
5 control over. So if the Council would like all building
6 permits or all ministerial permits to -- need to go
7 through the Community Plan and now the Maui Island Plan
8 and Countywide Policy Plan reviews before being issued,
9 that's certainly something the Council has the power to
10 do. But based on the Corporation Counsel's legal
11 opinions from, again, years ago, that's not something
12 that is required for a ministerial permit review. And
13 that has not been the process for -- for a substantial
14 amount of time.

15 And the case law -- those legal opinions were
16 subsequent to GATRI. So that case was available at the
17 time. In fact, the -- the question to Corporation
18 Counsel at that point was specifically related to the
19 GATRI case.

20 The Leoni case, which just came out, did
21 involve the Community Plan, but, again, was in the
22 Special Management Area context, where you have a
23 specific State law that says that you can't grant a
24 permit for a development that's within the Special
25 Management Area unless it conforms to the Community

1 Plan. And I would note, in that case, the Community
2 Plan designation was Park. It wasn't something like a
3 Light Industrial designation where the zoning would also
4 allow for apartments. It was Park in that case. So it
5 was pretty clear in that case that building a house
6 would be inconsistent with the plan since the Park
7 designation did not allow for houses to be built.

8 CHAIR COUCH: Okay. That sort of clears it
9 up, but what if you have a situation where the zoning is
10 in conflict with the Community Plan, potential conflict
11 with the Community Plan, which one would have
12 precedence, outside of the SMA?

13 MR. HOPPER: Well, I mean, outside of the SMA,
14 the Community Plan -- it depends on what permit you
15 need. I mean, if you don't need -- if you don't need a
16 discretionary permit, then you would go to the zoning to
17 determine what -- what your permitted uses on that
18 property are. Because the zoning implements the
19 Community Plan. You would also have your State District
20 Boundary Amendment, if that was applicable, and any
21 conditions that were imposed on the property.

22 So, I mean, it would depend on specifically
23 what permit you were -- you were seeking. But, in
24 general, the -- the Community Plan and the -- and the
25 zoning, if you were in an area where the Community Plan

1 would apply with the force and effect of law with a
2 Change in Zoning or Community Plan Amendment, you would
3 need to comply with both. I mean, they're both parts of
4 the County Code.

5 CHAIR COUCH: Okay. Members, any other
6 questions on this subject, or any -- the -- the
7 Compliance Report?

8 COUNCILMEMBER COCHRAN: Chair?

9 CHAIR COUCH: Ms. Cochran.

10 COUNCILMEMBER COCHRAN: In relation to Number
11 5 that we're talking about right now, there was also a
12 comment that -- I guess it was the initial discussion of
13 this project, to begin with, in reference to this
14 particular -- the residential workforce housing, and it
15 was gonna be built off-site, and all that. And now
16 they're having all these -- I don't know if I wanna call
17 'em excuses, but they're saying that it's being -- it's
18 a prohibited thing, they -- they only got three -- three
19 people who -- who apply to do this, and they can't do
20 the ownership units, and this, this and that. But,
21 initially, I guess, when it was presented to this body,
22 they -- you know, that helped urge this project to move
23 forward and be accepted by this body.

24 So how do we go back on such a condition that
25 now, you know, years later, is sorta being kinda not

1 complied with, I guess, in a sense? They're --
2 they're -- they are saying they're trying, they're
3 saying due to market, they're saying due to whatever, on
4 and on the list goes, as to why this particular thing
5 cannot be accomplished. How do we address that? I
6 mean, I guess that falls on our shoulders at this point
7 as the Council who created the conditions to begin with.
8 But does Planning or -- I don't know -- Corporation
9 Counsel have any type of say in where this gets guided
10 to in trying to, you know, make sure these conditions
11 that were set forth back in the day are gonna be
12 complied with in a timely manner?

13 MS. CUA: Well, I mean, that's one of the
14 reasons why annual reports are submitted. With regard
15 to the affordable housing for Honuaula on the Kaonoulu
16 site, you know, they -- our -- the Department's
17 understanding is they had fully -- fully intended to
18 develop that Multifamily on the Light Industrial zoned
19 property. And, however, there was a challenge to the
20 compliance with conditions of the District Boundary
21 Amendment. And you kinda know what happened there. It
22 pretty much got stalled there. But, you know, the --
23 the use -- the -- the Planning Department has always
24 maintained that the Apartment use on M-1 Light
25 Industrial is permitted. And it's not in the SMA, so

1 they, basically, could get building permits to build.

2 I know that's been challenged, but if you look
3 at our -- the M-1 Light Industrial District in the Maui
4 County Code, it's very clear that apartments are
5 permitted. Iao Parkside is a -- is a clear example of
6 apartments that are permitted and it's -- it's within
7 the Light Industrial District.

8 So while the Planning Department accepts
9 annual reports every year for projects, you know, if
10 they're going through Land Use entitlement process or
11 development permit process, or if they have challenges
12 along the way, you know, that gets reported in the
13 annual report. But as far as the Planning Department is
14 -- is aware of, with this project, that there is full --
15 it's our understanding that there's every intention to
16 build that apartment project.

17 COUNCILMEMBER COCHRAN: Okay. Mr. -- I guess,
18 Mr. Hopper has something --

19 CHAIR COUCH: Go ahead.

20 COUNCILMEMBER COCHRAN: -- to say, Chair.

21 Thank you.

22 CHAIR COUCH: Go ahead.

23 MR. HOPPER: Yeah. Just I would certainly ask
24 the developer what their current status is of -- of the
25 housing. At this point, the Land Use Commission has

1 determined that -- the Land Use Commission's decision
2 and order, which is separate from the -- the County
3 zoning or Community Plan, but the Land Use Commission's
4 own decision and order, that the -- that the landowners
5 are not in compliance with that decision and order. So
6 the -- the landowner may need additional entitlements in
7 the form of a -- an amended approval which I believe
8 they've requested from the Land Use, to -- to have the
9 ability to eventually file for that in front of the Land
10 Use Commission to deal with the issue of the -- of the
11 Land Use Commission's decision and order. Again, that
12 is on a -- on a separate property that's -- that's
13 related to this project because the housing's required
14 to be built on that property.

15 I think the condition reads, basically, they
16 cannot build any of the market units until they've built
17 the affordables. So if they need additional
18 entitlements to build those affordable units, that's
19 something that they would need to pursue.

20 As -- as far as enforcing the conditions, the
21 -- the Council does have the ability to look to either
22 amend -- amend conditions by taking -- has to go through
23 the same process, so you would still need to initiate an
24 ordinance that goes through Planning Commission, or
25 to -- if there's a finding of a breach of a condition,

1 the Council does have the option to essentially downzone
2 the project. Again, through the same method, though.
3 That would have to be through Council-enacted ordinance.
4 So those are the -- generally, the enforcement actions
5 for -- for zoning issues.

6 Again, though, the State Land Use Commission
7 has found the project's not in compliance -- not
8 necessarily that the landowner's not in compliance, but
9 we don't necessarily know, because there's no written
10 decision and order, what aspects they exactly had a
11 problem with and why. But I believe the landowner has
12 -- has looked to amend that approval before the Land Use
13 Commission, which will involve another permit that -- or
14 another entitlement that would have to get in front of
15 the Commission.

16 So as far as that status, I'm familiar with it
17 from the -- from that order to show cause case, but as
18 far as what the landowner's specific plans are going
19 forward with this, I wouldn't be able to answer that.

20 COUNCILMEMBER COCHRAN: Thank you for your
21 comments, Mr. Hopper. Thank you, Chair.

22 CHAIR COUCH: Thank you. Members, any further
23 questions? I still have a couple. To either the
24 Planning Department or Corporation Counsel, there's been
25 some testimony about Condition 27 in certain letters.

1 Any comments on that?

2 MS. CUA: I can comment on that.

3 The -- the applicant -- or -- or the project,
4 actually, went through -- well, they got zoning. And
5 they are in the process of trying to obtain Project
6 District Phase 2 approval. In advance of doing that,
7 they filed an EIS. And the EIS was accepted by the
8 Planning Commission on July 24th, 2012. And so the next
9 step for this project is to be able to go to the
10 Planning Commission to get their Project District Phase
11 2 application reviewed and approved.

12 But even before that, when you look at these
13 30 conditions of zoning, it's very interesting to note
14 that when the Council approved it and -- and tied it to
15 the Project District Phase 2 approval, there's a number
16 of conditions that have to be satisfied prior to Project
17 District Phase 2 approval. So this project is going to
18 have to go before the Planning Commission to try and
19 seek compliance with a couple of conditions before they
20 can even get a Project District Phase 2 application
21 approved.

22 And one of those conditions is Condition No.
23 27. So if you look at the last sentence of the first
24 paragraph of Condition 27 -- and it's referencing the
25 Preservation Mitigation Plan, it says -- the last

1 sentence says, "The Maui Planning Commission shall
2 consider adoption of the plan prior to Project District
3 Phase 2 approval."So where that is at, as I understand
4 -- and you can ask the applicant to confirm -- is
5 there's a number of governmental agencies that have to
6 be consulted.

7 And the second paragraph of Condition 27, the
8 last sentence, where it talks about the actual
9 preservation easement, it says, "The easement shall
10 comprise the portion of the property south of latitude"
11 -- and it gives the latitude, and then -- then it says,
12 "excluding any portions that the State Department of
13 Land and Natural Resources, the United States Fish and
14 Wildlife Service, and the United States Corps of
15 Engineers find do not merit preservation, but shall not
16 be less than 18 acres and shall not exceed 130 acres."

17 And we've heard testimony today from people
18 saying that it should be 130 acres. We've had an agency
19 letter that says it should be 100 acres. The
20 applicant -- I think the latest proposal -- or the
21 proposal that went to the Planning Commission was 40
22 acres. We still do not have confirmation from all the
23 agencies as to what that magic number is. And in order
24 for Condition 27 to be able to be complied with,
25 everybody's gonna have to know what that number is.

1 So this is one of the -- one of the conditions
2 that's holding up this project taking the next step,
3 which is going to the Planning Commission to try and get
4 confirmation that a couple of these conditions are met.
5 And then if they're able to get that, at that time, and
6 only at that time, can it advance to try and obtain
7 Project District Phase 2 approval, which is, basically,
8 approval of a -- a concept plan for the entire project.

9 It's -- it's somewhat equivalent -- for some
10 of you that know the SMA permit process, it's somewhat
11 equivalent to that except this is definitely not an SMA
12 permit because it's not on -- it's on the opposite side
13 of the street. But for you that have knowledge of that
14 permit, it's quite similar. You have to look at a site
15 plan, you wanna look at some elevations, you -- you look
16 at, you know, the drainage and -- and the traffic and,
17 you know, water and -- and things like that. So --

18 Did that answer your question? I know that
19 was a really long answer. Sorry.

20 CHAIR COUCH: That -- that helps quite a bit.
21 Did that bring up any questions with any of the Members?
22 Okay.

23 And, also, another testifier talked about
24 Condition 13 and 26, talking about the preservation
25 review procedures, talking about an archeological

1 inventory study. Is that -- I guess there's a --
2 there's -- there might be timing issues in here.

3 And that leads to my other question that says,
4 are you satisfied right now, the Department, with the
5 current compliance with the zoning conditions? And --
6 and how and when do they get enforced? I mean,
7 obviously, some of it isn't gonna happen until -- they
8 have to do some things before Project District Phase 2.
9 And then some things can't happen until some other
10 things happen. So --

11 MS. CUA: Right.

12 CHAIR COUCH: -- where are you in the -- in
13 the -- with them being in compliance with the zoning
14 conditions?

15 MS. CUA: I guess the best answer that I can
16 give to that question is, based on the meetings I've
17 had, based on the documents that I've been receiving,
18 the applicant is in the process of trying to -- to -- to
19 comply with some of these conditions. They have to in
20 order to move forward in the process.

21 It is very typical of a Change in Zoning for
22 such a large project that it takes a long time to get
23 compliance, especially when the conditions deal with
24 other agencies. And a -- not a lot. There are a number
25 of conditions that deal with other agencies.

1 Again, I -- I do have to state one thing that
2 is very unusual that I found with this ordinance. And
3 -- and didn't realize it until it was done with the
4 Change in Zoning process, is that you have to read these
5 conditions really well because, unlike most conditions,
6 approvals need to be granted before the next phase of
7 the permit approval can happen, which is -- again, it's
8 not -- it's not typical. It's not typical that someone
9 would have to go to the Planning Commission to get a
10 couple of conditions complied with first, before they
11 can advance in the permit process. So I'm not sure if
12 it was intentional by the -- by the -- by the Planning
13 Commission, or -- or -- or Council when that was
14 written, but, you know, we're going by -- by the letter
15 of what is -- is -- is written in the ordinance.

16 And when it says you have to comply with this
17 condition prior to Phase 2 approval, then you have to
18 make sure that gets complied with. And that's just what
19 we're trying to deal with here.

20 CHAIR COUCH: Okay. Members, any further
21 questions? Ms. Cochran?

22 COUNCILMEMBER COCHRAN: Thank you, Ms. Cua.
23 And so in reference to what you just stated, certain --
24 certain conditions need to be complied with prior to
25 moving forward. You mention there's a couple of them,

1 and you cited 27. There was another or there's --

2 MS. CUA: 26 is another one. I'm sorry, I --
3 I -- I can't rattle off those numbers, but I know 26 and
4 27. So if you look at the last sentence of -- of the
5 conditions, it's there. And -- and some -- see, some
6 conditions just say you need to submit a report before
7 the Phase 2 Project District approval, or submit
8 something to an agency prior to the approval. But, in
9 some cases, it says, you have to obtain approval of the
10 report from the Planning Commission. And that -- that
11 is unusual, but that's what's stated in here. And
12 that's -- that's what we're geared up to do.

13 COUNCILMEMBER COCHRAN: Okay. Very good.

14 CHAIR COUCH: Okay. Mr. Spence, you -- follow
15 up on that?

16 MR. SPENCE: I would -- I would just add a
17 little bit to that. 'Cause this project has a lot of
18 conditions on it. If there's only one condition that
19 says you need such and such approval before getting a
20 Phase 2, that still has to be complied with. A single
21 condition could hold up the whole project for -- until
22 that approval is -- is obtained. So it's -- you know,
23 there's a number of these, as pertain here, but even
24 just one.

25 CHAIR COUCH: Okay. Ms. Cua.

1 MS. CUA: One other condition just that I
2 found, that is probably interesting to the Council, is
3 that Condition 28 -- and I'm not gonna read the
4 condition because it's very long -- but, again, the last
5 paragraph, they're required to do a Transportation
6 Management Plan. And the last sentence of that
7 Condition 28 says, "The Transportation Management Plan
8 shall be reviewed and approved by the State Department
9 of Transportation, the County Department of Public Works
10 and the County Department of Transportation prior to
11 Project District Phase 2 approval."

12 So, you know, that's another one where, in
13 addition to, on some of these conditions, having to go
14 to the Planning Commission to get something approved
15 before they move on to the Phase 2 Project District
16 application, in this case, they have to -- for this
17 condition alone, have to receive approval from three
18 agencies before this condition can be met. So it's not
19 -- it's not easy to satisfy some of these conditions, is
20 what I'm trying to say.

21 COUNCILMEMBER COCHRAN: Thank you. Quite
22 interesting comments.

23 CHAIR COUCH: Ms. Cua, you -- you mentioned
24 that condition and -- and the -- in the report, the
25 status says that the TMP documents have been reviewed

1 and approved by all relevant agencies, this condition
2 has been satisfied. Who -- who verifies that?

3 MS. CUA: Well, when they -- and -- and it
4 might have been. I -- I -- I am -- I don't -- I'm not
5 exactly sure. But what would normally happen is we --
6 the applicant, when they submit the report and gonna
7 make that statement, they would give us either letters
8 from the respective agencies or some kind of a sign-off
9 that it's been approved. Then we would take the
10 agency's word.

11 CHAIR COUCH: So, essentially, you -- you're
12 the one that --

13 MS. CUA: Yes.

14 CHAIR COUCH: Your Department --

15 MS. CUA: Ultimately.

16 CHAIR COUCH: -- says, okay --

17 MS. CUA: Yes.

18 CHAIR COUCH: -- this is checked off --

19 MS. CUA: Yes.

20 CHAIR COUCH: -- and ready to -- okay. And
21 those documents are available if --

22 MS. CUA: Yes.

23 CHAIR COUCH: If the public wants to -- okay.

24 MS. CUA: That's correct.

25 CHAIR COUCH: Members, any further questions?

1 Okay. Since this is an annual report -- actually,
2 there's two annual reports here -- and that they're
3 required to submit an annual report annually, and keep
4 the public informed and the Council informed as to
5 what's going on, we -- we have the reports here, we've
6 heard the comments from testifiers, and we've heard the
7 comments. We're not approving anything today. All
8 we're doing is saying, okay, we've -- we've seen the
9 annual report, that, so far, the Department is -- has no
10 concerns -- let me -- if that's right, you guys have no
11 concerns at this point in this -- in the procedures.
12 There's still a lot more process to go through.

13 So at this time, we should -- it's the Chair's
14 recommendation to file these reports. We're gonna get
15 another one next year, and have to go through the same
16 process again, just to see where they are. This -- just
17 to serve notice is that this report is being heavily
18 scrutinized by both us and the public. And that this is
19 unusual -- this and another project.

20 Normally, Council gets the reports, they can
21 read 'em, and we file the communications immediately.
22 It's unusual to have them come up and discussed here,
23 but I felt that -- your Chair felt that this was very
24 important, a very important project that we need to keep
25 kind of an eye on and -- and see what's going on.

1 So it's the Chair's recommendation to -- if
2 there's no further discussion, I'll entertain a motion
3 to file County Communication No. 12-80.

4 COUNCILMEMBER COCHRAN: Chair?

5 CHAIR COUCH: Oh, okay. Ms. Cochran.

6 COUNCILMEMBER COCHRAN: Before we close, in
7 regards to the Condition 28 and that the documents have
8 been reviewed and approved by relevant agencies, is
9 there a way to get that to be inserted within our -- our
10 documentation here, to see that -- I mean, as this
11 progresses, and maybe throughout the year, that these
12 get checked off the list of being, you know, complied
13 with, or these agencies, is there a way for us to --
14 would that just be our individual offices --

15 MS. CUA: No.

16 COUNCILMEMBER COCHRAN: -- to look into?

17 CHAIR COUCH: Ms. Cua?

18 MS. CUA: I think when the applicant -- and
19 maybe you need to ask the applicant as well, but when
20 the applicant is submitting updated Compliance Reports,
21 as they've satisfied various conditions, they should be
22 including, you know, documentation to that effect. That
23 would be, I think, the easiest way. Because we'd need
24 the same thing, you know. And they submit the
25 Compliance Report to you and they submit it to us as

1 well. So I don't -- I don't know if you wanna ask the
2 applicant about that, but I think that would be the
3 easiest way.

4 COUNCILMEMBER COCHRAN: Okay. But, yet, we
5 haven't seen these, correct, Chair?

6 CHAIR COUCH: Well, it wasn't in our submittal
7 here. They may have been submitted at a separate time
8 that's -- when -- when they come in. We -- we typically
9 are gonna have a binder with everything that comes in
10 for that project in our office, but I don't know how you
11 wanna do that. I -- I don't recall -- I -- I saw some
12 reports, but I don't recall. We can ask the applicant
13 if he's sent them. Usually -- usually, they'll come in
14 as a communication, and, typically, those will get filed
15 in -- so that you can take a look at 'em.

16 COUNCILMEMBER COCHRAN: Okay. Do we wanna
17 have applicant down? To just --

18 CHAIR COUCH: It's --

19 COUNCILMEMBER COCHRAN: -- ask that question?

20 CHAIR COUCH: If there's no objection,
21 Members?

22 COUNCIL MEMBERS: No objections.

23 CHAIR COUCH: Okay. The applicant is here, or
24 at least a representative of the applicant, Mr. Jencks.
25 Please state your name and who you represent for the

1 record.

2 MR. JENCKS: Name is Charlie Jencks. I'm the
3 owner's representative for Honuaula Partners.

4 COUNCILMEMBER COCHRAN: Thank you.

5 CHAIR COUCH: Go ahead.

6 COUNCILMEMBER COCHRAN: Well, the question was
7 in regards to compliance, and, I guess, reviewed and
8 approved documents by the agencies that the condition,
9 you know, needs to go through.

10 MR. JENCKS: Sure.

11 COUNCILMEMBER COCHRAN: It looks like
12 Condition 28 has done so. I was just wondering how we
13 can -- if the copies have been sent to Planning and
14 ourselves, or how does that -- the process work for you
15 folks?

16 MR. JENCKS: Well, my -- my recollection --
17 and I can go back and check -- is that when I submitted
18 the annual report for that year, and that report was --
19 that condition was satisfied, I attached the document
20 and the letters from the agencies.

21 There's another condition that we also
22 satisfied, which is the condition with regard to a sewer
23 analyses that was reviewed by the Council and accepted
24 and filed. And I believe that was also attached, but I
25 -- I can certainly make those available and provide them

1 to you. Not a problem.

2 COUNCILMEMBER COCHRAN: Okay.

3 CHAIR COUCH: Okay. So, Mr. Jencks, you're
4 saying that those -- when those compliance reports -- or
5 when those compliances have happened, you attached it to
6 that --

7 MR. JENCKS: Yes.

8 CHAIR COUCH: -- annual report? Okay.

9 MR. JENCKS: Yeah.

10 CHAIR COUCH: Members, any more questions for
11 Mr. Jencks? Okay. Thank you, Mr. Jencks.

12 MR. JENCKS: You're welcome.

13 CHAIR COUCH: All right. Now, if there's no
14 further discussion, I will entertain a motion to file
15 County Communications No. 12-80 and 13-156.

16 COUNCILMEMBER GUZMAN: So move, Chair.

17 COUNCILMEMBER WHITE: Second.

18 CHAIR COUCH: Okay. It's been moved by
19 Mr. Guzman and seconded by Mr. White to file County
20 Communications 12-80 and 13-156. Any discussion? All
21 those in favor, please say "aye".

22 COUNCIL MEMBERS: Aye.

23 CHAIR COUCH: Opposed? Motion carries,
24 five-zero, with two Members excused, Member -- Council
25 Chair Baisa and Committee Vice-Chair Victorino.

1 VOTE: AYES: Chair Couch, Councilmembers Cochran,
2 Crivello, Guzman and White.
3 NOES: None.
4 ABSTAIN: None.
5 ABSENT: None.
6 EXC.: Vice-Chair Victorino and Councilmember
7 Baisa.
8 MOTION CARRIED.
9 ACTION: FILING of communication by C.R.
10 CHAIR COUCH: Okay. Thank you. Members,
11 we're gonna take our morning break, and we'll be back at
12 10:30. This meeting is in recess. ...(gavel)...
13 RECESS: 10:20 a.m.
14 RECONVENE: 10:40 a.m.
15 CHAIR COUCH: ...(gavel)... The Planning
16 Committee meeting of May 21st, 2013 will come back to
17 order.
18 ITEM NO. 9: REQUIRING NOTIFICATION TO THE COUNCIL OF
19 UNFULFILLED CONDITIONS OF ZONING (CC
20 12-261)
21 CHAIR COUCH: Okay, Members, we're on Item No.
22 PC-9 right now. It's -- PC-9 is requiring notification
23 to Council of unfulfilled -- say that fast three times
24 -- conditions of zoning. The Committee is in receipt of
25 County Communication 12-261 from former County Council
Chair Danny A. Mateo, transmitting a proposed resolution
entitled REFERRING TO THE LANAI, MAUI, AND MOLOKAI

1 PLANNING COMMISSIONS A PROPOSED BILL AMENDING SECTION
2 19.510.050, MAUI COUNTY CODE, TO REQUIRE NOTIFICATION TO
3 THE COUNCIL OF UNFULFILLED CONDITIONS OF ZONING. The
4 purpose of the proposed resolution is to refer to the
5 Planning Commissions a proposed bill entitled the same
6 thing. The purpose of that bill is to require the
7 Planning Department to transmit a quarterly report to
8 Council on any unfulfilled conditions of zoning
9 provision as required by Section 19.510.050, Maui County
10 Code, within specified time limits.

11 I'd first like to hear from the Department.
12 Mr. Alueta, are you ready to talk about that?

13 MR. ALUETA: Sure. I was just reading the --
14 the proposed bill.

15 Again, it would be very difficult for the
16 Department to try to do this on a quarterly basis, much
17 less even an annual basis. I think one -- one of the
18 things that would need to be done is that every single
19 zoning would then become a conditions of -- I mean,
20 every conditional zoning would have to have a provision
21 where the applicant or landowner is required to provide
22 us with an annual -- annual report. Not all zoning
23 conditions have that annual report requirement. So
24 going forward, that would be something we'd have to
25 track.

1 CHAIR COUCH: Mr. Spence, any comments on
2 that?

3 MR. SPENCE: Thank you, Mr. Chairman. When
4 the subject came up, I did a little bit of research.
5 Since 2000, there's been about 80 changes in zoning. So
6 that means that, every quarter, you know, as -- and I
7 missed a little bit of what Joe said, and I apologize
8 for being late. That means, every quarter, we would
9 have to inquire of the landowner, you know, what --
10 what's the status of your zoning. And, potentially, we
11 would have to go out and look to see, you know, has
12 anything happened, maybe talk to some other State or
13 County agencies, have they complied with the conditions,
14 and then write that report to the County Council four
15 times a year. So over that, whatever it is, 13 period
16 of time -- 13-year period of time, we would potentially
17 write the County Council, what is it, 320 -- if -- if
18 trends continue, we would write the County Council 320
19 reports on the status of each one of those changes in
20 zoning.

21 That's a lot of paperwork. And that's a lot
22 of time, staff effort. That's also your Staff, the
23 Committee's time that you would have to spend. I
24 suppose you could just go, okay, received, received,
25 received, but then, you know, there's always something

1 that the Committee is gonna wanna discuss.

2 I think rather than just blanket requiring
3 that every Change in Zoning receive a -- you know, have
4 to comply with a quarterly reporting, actually requiring
5 the Planning Department write quarterly reports for all
6 these changes in zoning, I think the better way is just
7 what we did with the first agenda item. For those
8 projects that really should be reported to the County
9 Council, the Council require it when the zoning is
10 changed. And then the applicant's responsible, they
11 know they're responsible, and they go through the proper
12 channels.

13 But so many of the -- the changes in zoning we
14 receive or that the Council approves are small things,
15 you know, Kihei Baptist Church -- I'm trying to think of
16 things that I processed -- you know, just some -- some
17 of the smaller things. We talked about two or three-lot
18 subdivision in -- out in Makena. You know, those kinds
19 of things. I'm not sure why those need to be reported
20 to the Council every quarter. The larger projects, yes.
21 The run-of-the-mill changes in zoning, I personally
22 don't see that the Council would benefit by that.

23 CHAIR COUCH: Okay. Mr. Hopper, any comments?
24 Okay. Before I ask the Members, I just wanted to follow
25 up to your comments, Mr. Spence. Who -- who keeps track

1 of conditions of zoning now and makes sure that they are
2 complied with?

3 MR. ALUETA: Thank you, Mr. Chair. I'll try
4 to answer that as best as I can. Basically, once the
5 zoning condition -- or there's a Change in Zoning, the
6 first line is gonna be when they come in to develop the
7 parcel during building permit, so for that entitlement.
8 And at that time period -- at that time we would confirm
9 that the conditions of zoning have been met before we
10 grant any more zoning entitlements, or developmental
11 entitlements. So, typically, what happened at the
12 building permit stage, they'll come in and try to get a
13 building permit, and we'll double-check to make sure all
14 the conditions have been met.

15 Sometimes the conditions are ones that are
16 construction related. And those are handled by the
17 appropriate agency, for the most part. We'll
18 double-check to make sure they've been met, such as
19 infrastructure improvements. Some are ongoing, meaning
20 they run with the land, for conditions of zoning.
21 There's a project out in Spreckelsville where, during
22 their zoning change, they prohibited ohana or accessory
23 dwellings. And so every time they come in for a
24 building permit, we confirm that -- that they're
25 building a structure or a non -- not building an

1 accessory dwelling. And that -- that -- that's one of
2 those that's an ongoing Land Use condition.

3 CHAIR COUCH: Okay. Members, any questions?
4 Mr. White, then Mr. Guzman.

5 COUNCILMEMBER WHITE: Thank you, Chair.
6 Mr. Alueta, that would be the same for conditions tied
7 to a SMA permit, too, wouldn't it?

8 MR. ALUETA: Yes.

9 COUNCILMEMBER WHITE: Yeah. So we're -- I'm
10 trying to recall the -- the genesis of this -- this
11 idea. My recollection is that we -- we have had
12 projects come up from time to time and -- and Council is
13 wondering whether the -- whether the conditions of
14 zoning have been met, and whether it's proceeding as a
15 project or whether we should pull it -- you know, pull
16 back the -- the -- the zoning if -- if they haven't met
17 the conditions. I think -- at least that's my
18 recollection. Do you recall what -- what the genesis of
19 this was?

20 Mr. Chair, I -- I feel this is very burdensome
21 on the Department. And having gone through the process,
22 at least at the SMA level, and having to comply with
23 various conditions, I know the Department does a very
24 good job of making sure that there's compliance before
25 you're allowed to proceed. And so I don't think that

1 CHAIR COUCH: Mr. Guzman?

2 COUNCILMEMBER GUZMAN: Thank you, Chair. I --
3 I was going to ask the same question that my colleague
4 Council White was addressing in terms of the -- the
5 intent, the legislative intent, behind this measure. Is
6 there any information that you have yourself, Chair, in
7 regards to why these quarterly reports would be
8 beneficial for the Council?

9 CHAIR COUCH: It's my recollection that there
10 were a couple things that came up that possibly slipped
11 through the cracks. And I cannot remember which one
12 they were now. But it -- it rose up via, I believe, a
13 request from somebody in the public saying, hey, have
14 they met their conditions of zoning yet. And, also, I
15 -- I kind of agree with Member White about, you know, if
16 it's something that's important that the Council would
17 put that condition for the annual report on there and
18 put that onus on the -- the applicant or the people
19 looking for a Change in Zoning.

20 I know -- I think there's a affordable housing
21 project that the three of us, one of our first ones that
22 came through that had a bunch of conditions on there.
23 It wasn't quite a condition of zoning as the 201 --
24 201H, but we had conditions on there. And I don't
25 recall if we put a requirement for annual reports,

1 'cause I haven't seen any. The Kaiwahine project, I
2 know that there was some conditions that they needed to
3 go forward. And one of them was that if they haven't
4 done anything in five years, that, I think, we rescinded
5 our approval.

6 COUNCILMEMBER GUZMAN: Yeah. You -- you know,
7 Chair, I'm just trying to figure out -- figure out what
8 the analysis is regarding this measure. I -- I -- I
9 think it would be more applicable if we had like a
10 sunset provisions that, you know, that -- that would --
11 a sunset ordinance that would give deadlines for certain
12 projects. And then I could see that, yeah, maybe we
13 need to start monitoring them more closely. But I'm
14 under the understanding that the Department is already
15 monitoring them through the various stages of the
16 permitting process.

17 I guess my other question would be do -- do
18 you have a master database that -- that records or
19 you're recording all of the different projects out there
20 that have conditions on them? I mean, could I ask you
21 right here and now to pull up a -- a list of all those
22 projects?

23 MR. ALUETA: You -- any permit -- any project
24 that was granted a Change in Zoning, we could pretty
25 much pull up a master list and -- and, in fact, you

1 could also, through the KivaNet system, and just
2 query -- and the code is Change in Zoning or CIZ. And
3 you can put the CIZ percent sign on the wildcard on the
4 -- on the query. And it's on the County website, on the
5 -- on the web. And it would pull up every Change in
6 Zoning. And then for most of 'em, for the newer ones, I
7 believe going back to maybe the nineties, you could even
8 drill down and see each condition of approval. The same
9 thing goes with any developmental permit that -- that
10 the County has, for the most part is -- is on online.
11 And as we go forward, more and more information, again,
12 is online for people to see. And that's how a lot of
13 people will contact us. They will find -- query the
14 parcel, find the permits that are associated with that
15 parcel, and then check the conditions and say, hey, have
16 they complied with this condition. And so --

17 COUNCILMEMBER GUZMAN: So does -- does your
18 software system -- your database -- that wouldn't be too
19 difficult to -- to do a quarterly report, though. It
20 sounds as though that you -- you have it at your
21 fingertips to --

22 MR. ALUETA: You would --

23 COUNCILMEMBER GUZMAN: -- be able to do that.

24 MR. ALUETA: -- have to go through each
25 condition. The problem is, we don't -- we don't -- we

1 -- we could pull up the database, and then we'd have to
2 find out did they comply with that condition. And most
3 of those conditions are developmental conditions or,
4 again, as -- they're ongoing conditions. And so we
5 don't do that detailed "did they comply with this" 'til
6 they actually come in for a developmental permit. And
7 then we pull up all the conditions and we say -- ask
8 them -- we ask the applicant, okay, here's your
9 conditions that you got a Change in Zoning, here's all
10 the conditions, and then we'll see whether or not, okay,
11 did you do it, did you dedicate a roadway requirement.
12 Public Works will, basically, handle that. They'll take
13 care of their permits because they have to sign off on
14 the building permit or the grading permit or something
15 like that.

16 And so that's -- that's when we get down to
17 the nitty gritty is when they actually come in to
18 develop something. 'Cause until they do something on
19 the land, it's really -- it's just an entitlement that
20 the conditions have -- I mean, they may or may not have
21 done the entitlements or they're still working on
22 finishing the conditions.

23 A lot of 'em, the conditions have to do with
24 infrastructure improvements. So they may -- they get a
25 Change in Zoning from an Ag to an Urban, but there's

1 either no roadway, no water system or no sewer system to
2 the area. And they're still working out the kinks on
3 the cost to develop that system to -- to fully get the
4 building permit to construct whatever they're attempting
5 to do.

6 COUNCILMEMBER GUZMAN: So -- I'm just trying
7 to understand that. So in your system, you -- you don't
8 have the ability to check on the different conditions
9 that are per project?

10 MR. ALUETA: You can. You would pull up and
11 you would be able to print out --

12 COUNCILMEMBER GUZMAN: And they're -- and
13 they're all listed there?

14 MR. ALUETA: They're all listed. But we don't
15 check 'em. There's no way --

16 COUNCILMEMBER GUZMAN: Don't check to see
17 whether -- I mean, you don't have a check box as --

18 MR. ALUETA: Yeah.

19 COUNCILMEMBER GUZMAN: -- this was -- this was
20 complied with --

21 MR. ALUETA: Yeah.

22 COUNCILMEMBER GUZMAN: -- Condition No. 2 was
23 complied with?

24 MR. ALUETA: Right.

25 COUNCILMEMBER GUZMAN: Oh, okay.

1 MR. ALUETA: So we couldn't, say, pull up all
2 the ones that are not completed.

3 COUNCILMEMBER GUZMAN: Let me ask you this to
4 the Director: Is there a possibility that a software
5 system that is designed could -- could be capable of
6 tracking these type of data?

7 MR. SPENCE: Yes. We -- I think the County as
8 a whole is looking at a new -- for lack of a better
9 word, a new permit tracking system. The -- the current
10 one -- and really this is more a question for I.T., but
11 the Kiva system that we're currently using is no longer
12 supported. It's just an older system and it's not
13 horribly user friendly.

14 We can do things like list all the conditions
15 of zoning, we can't tell you, you know, which ones. We
16 would have to go inquire of the landowner which ones
17 have been complied with, or what the status of complying
18 is.

19 So, no, our system won't do that. And, yes,
20 we do -- would really like a system that would aid us in
21 doing reports or those kinds of things.

22 I would also note that sometimes conditions
23 are -- they're -- they have either ongoing compliance --
24 I mean, it's not just a matter of checking off, yes, I
25 made my roadway dedication or, yes, I put in a water

1 line, but it's -- there's like projects in South Maui
2 that have water quality monitoring requirements. So
3 those are ongoing things. So you can't just really,
4 say, you know, check off a box that, yeah, they did it.
5 They're supposed to do it either annually or every six
6 months or something.

7 So it would -- you know, it's a constant
8 monitoring, no pun intended. They're monitoring,
9 Planning Department's monitoring. We're -- you know,
10 we're required to keep up on what they're doing or what
11 they haven't done.

12 COUNCILMEMBER GUZMAN: Follow-up, Chair?
13 Mr. Spence, is there -- I guess what I'm trying to
14 analyze here is has -- is there a -- certain situations
15 wherein a condition hasn't been met and the project
16 proceeds, where it has fallen through the cracks, where
17 maybe an error or -- is that a -- is that something that
18 could happen or has happened in the past, and -- and
19 that's why this measure could have been initiated?

20 MR. SPENCE: I have no doubt, Councilmember
21 Guzman, that that has happened, where things have fallen
22 through the cracks.

23 As Mr. Alueta was saying, some of 'em are
24 really easy to say, you know, do your roadway
25 dedication, then you can build a -- you can pull a

1 building permit. Those things are easy to say you have
2 or have not complied. It's the ongoing reporting. It's
3 the notification that -- I mean, say at Pulelehua, I --
4 that Maui Pine promise on the west side, I think there's
5 a condition that you're supposed to notify all potential
6 buyers that, you know, there's an airport nearby and
7 there may be noise as a result.

8 You know, four years from now, when they're --
9 five years from now, when they're actually selling
10 homes, you know, we'll -- we'll -- I have no doubt we
11 will ask, you know, Maui Pine, did you tell everybody.
12 And they'll tell us yes, and they'll show us some
13 documentation. But, you know, between now and then,
14 there's nothing for us to monitor. Until they actually
15 sell a product, you know, there isn't gonna be anything
16 for us to monitor or report on.

17 COUNCILMEMBER GUZMAN: So --

18 MR. SPENCE: I'm sorry. That's sort of a
19 roundabout answer, but --

20 COUNCILMEMBER GUZMAN: So, Mr. Spence, you
21 mentioned earlier that you -- you possibly could have
22 the ability to bifurcate the, like, smaller projects
23 versus the -- the larger projects. And it sounds to me,
24 or I'm assuming, that the larger projects are more
25 difficult in terms of compliance issues. Is it -- is it

1 still possible in -- in regards to your database that
2 you currently have to bifurcate or at least identify the
3 more difficult projects that you could monitor on a
4 quarterly basis?

5 MR. SPENCE: I don't think -- well, I -- I
6 think quarterly is too often, but I think -- I think the
7 County Council is doing a good job already in deciding
8 which ones need annual reports. I believe there's a
9 similar requirement of Pulelehua, for Maui Pine to -- to
10 give this Council an annual report on how they're doing
11 with implementing their project. Honuaula -- I'm trying
12 to think of others. I'm sure there's others. I think
13 that -- my opinion, and partially because I -- I believe
14 it's true, and partially because I don't wanna get stuck
15 doing more reporting, I think it -- I think it is really
16 up to the Council to say which projects are providing
17 annual reports or not.

18 COUNCILMEMBER GUZMAN: How about in terms of
19 your -- your -- your duties or your work capacity? Can
20 you do an annual report instead of a quarterly, or a
21 biannual? Would that be too much work for you? Or --

22 MR. SPENCE: As -- as Mr. Alueta said, there's
23 -- you know, there's -- like the project in
24 Spreckelsville, Stable Road subdivision, you know, they
25 have a condition of no ohanas. There's no annual report

1 or biannual report that we would issue saying nobody has
2 built ohana units.

3 COUNCILMEMBER GUZMAN: No. I guess let me
4 rephrase my question. Can you, in your -- in your -- I
5 guess, your work capacity or your -- your job duties,
6 can you produce an annual report or biannual report
7 without having too much hardship on your Department?

8 MR. SPENCE: No. I -- I think -- I think it
9 would be exceedingly burdensome. And the reason I think
10 it would be exceedingly burdensome is so many of the
11 conditions are just not applicable to that kind of
12 reporting.

13 CHAIR COUCH: Thank you --

14 COUNCILMEMBER GUZMAN: Thank you Chair.

15 CHAIR COUCH: -- Mr. Guzman. Ms. Crivello?

16 COUNCILMEMBER CRIVELLO: Oh. Thank you.

17 But -- I guess Mr. Guzman has asked most of my
18 questions, but -- so what I'm understanding -- what I'm
19 hearing you say is that if Council wants to know if
20 conditions are not being met, we would put in that
21 request to your Department, otherwise, there is really
22 no process to let Council know that -- especially the
23 large developments, that conditions are not being met?
24 Or -- or does it make sense what Mr. Guzman mentioned
25 earlier, that we sort of set a sunset or timeframe,

1 would that be more helpful?

2 MR. SPENCE: The -- the sunset's another
3 matter. And I believe there's a Corporation Counsel's
4 opinion on that. So I'll leave that in a second to
5 Corporation Counsel.

6 But the -- right now, the -- the practice has
7 been, if there's a large project, say Pulelehua, and the
8 Council believes there should be reporting to them on
9 what's going on with the project, what the status is,
10 you can require that of the applicant when they come
11 before you for that zoning.

12 There's also gonna be, you know, manini
13 projects that come before you, just to straighten out a
14 map or to -- you know, like we had in Makena, it was a
15 downzone from Single-Family Residential to Rural to help
16 protect the -- the character of that area. Council
17 chose not to put a condition of annual reporting on
18 that. I forget how many lots it was. It was like two
19 to four lots, something very small. And I personally
20 don't see any purpose for that kind of reporting. I
21 mean, that's something -- I mean, you zone it, you're
22 pau, you know, you've already done -- everything's
23 already been addressed.

24 So I think it's within the Council's purview.
25 If it's a big project and you feel that you need that

1 kind of reporting, you would make a condition on that,
2 on that zoning. Otherwise -- you know, we have a very
3 long history of zoning within this County. And if the
4 Council or a member of the public believes that some
5 zoning condition is being violated, you know, you can
6 call us. And we'll follow up and let you know. I mean,
7 you know, that information is available to you and to
8 the public and to the landowners. A lot of people buy
9 properties and are unaware that there's conditions on
10 their property. We're happy to look that up for them as
11 well.

12 COUNCILMEMBER CRIVELLO: Thank you. And I --
13 I agree with you that, perhaps, the quarterly reporting
14 would be too cumbersome. It makes sense, probably, when
15 we need it, then request it at -- at the time or set it
16 from -- from the get-go what's expected. Thank you.

17 CHAIR COUCH: Okay. Members, any further
18 questions? Ms. -- Ms. Cochran, then Mr. White.

19 COUNCILMEMBER COCHRAN: Thank you, Chair. And
20 thank you, Department. So I'm in very much support of
21 this reso, though, referral to commissions, Planning
22 Commission, to take a look at this, vet it out, have
23 community input and all that stuff. So I'm totally in
24 favor of pushing this forward, get it to Planning
25 Commissions. And I believe it stemmed from Mr. Mateo

1 last year.

2 And there has been incidences, as you say, Mr.
3 Spence. Yes, not denying that things have happened in
4 the past. And I think that is what this is trying to
5 avoid. This is what it's trying to address. As -- as
6 our Administrations change, as our Directors change, as
7 our Council Members change, the history is lost. And so
8 we come here, we sit, and we don't realize that these
9 conditions were done back in the day and this and that.
10 And now we're getting, you know, constituents saying,
11 how come this, how come that. Well, we're clearly not
12 aware. We're -- I can speak for myself. I didn't know
13 to ask that there was such a condition that needed to be
14 complied with, to begin with, you know. So --

15 But thank you for giving me the idea. 'Cause
16 I really have some questions in regards what's the
17 status of Kapalua Mauka right now. So I suppose I could
18 bring that up to the table for all of us to -- to look
19 at, once again, revisit, and see where they at. So
20 that's a -- that's a great comment. I think, you know,
21 it opened my eyes that, hey, at any time, we, the
22 Council, can pull up a development. Fine.

23 But, you know what, I do like the idea. I'm
24 sorry that you feel you're gonna be overburdened with
25 extra work and stuff, but, you know, I -- I feel that

1 there's a need. And it's -- and I know there's some
2 that are larger than others, manini, whatever, but I
3 think there's a -- there's a reason why any condition
4 was put on a certain project, I don't care how big or
5 small. And I would like to know in confidence that it's
6 being addressed, that it has been done. And if there is
7 a way to simplify it, to make it sorta more of a
8 checklist thing, great, but, you know what I mean, this
9 day and age, we have so much technology, I'm thinking
10 perhaps we -- we can manage something.

11 I personally am in favor. And, again, you
12 know, I don't wanna be left on my head to figure every
13 single permit and every single zoning, and for me to
14 follow up on, either. So I think, collectively, we all
15 can. But I'm definitely in favor of this reso, which is
16 to push it forward to Planning Commissions, to vet out
17 and discuss and have the general public and everyone
18 involved to have a discussion on the matter. So thank
19 you, Chair.

20 CHAIR COUCH: Okay. For the Members' --
21 before I call on Mr. White, for the Members'
22 information, we can modify anything in here before we
23 send it down, if we feel quarterly is too onerous.
24 Mr. White?

25 COUNCILMEMBER WHITE: Thank you, Chair. I --

1 I wouldn't have any problem supporting us in this
2 Committee coming up with a list of projects that we'd
3 like to have them give us an update on the -- on the
4 zoning, but I -- I still feel that this is -- this is
5 asking for way too much. And I'm not sure that I can
6 support it in -- in any respect just because it's gonna
7 -- it's gonna end up with us asking for a lot of
8 reporting that isn't gonna have much bearing on anything
9 we do. And, yet, we still have the ability to identify
10 projects that we'd like to have an update on the zoning.

11 And I think it -- I think what Ms. Cochran is
12 interested in following up on is very important to do,
13 but it's something we already have the ability to do as
14 we sit here today without this. So I'm -- I'm not in
15 support of it. Thank you, Chair.

16 CHAIR COUCH: Okay. Mr. Guzman?

17 COUNCILMEMBER GUZMAN: Oh. Thank you, Chair.
18 I think that I would be in support of this in -- in
19 terms of having it vetted out before the Planning
20 Commission.

21 I also wanted to address the fact that maybe
22 it could be used as a legitimate purpose to upgrade the
23 Planning Department software, you know. Other than not
24 having a requirement, they wouldn't be able to ask for
25 an upgrade in software. And I think that, you know,

1 having an upgrade in software would probably make this
2 process a lot easier.

3 I would propose an amendment to Section G. I
4 do understand that -- just hearing from the Department,
5 that quarterly would be quite burdensome. I would
6 propose that, on Section G of the Resolution, that we
7 amend quarterly to annual.

8 CHAIR COUCH: Well, when we get to a motion,
9 we -- we'll -- you can bring that up --

10 COUNCILMEMBER GUZMAN: Okay.

11 CHAIR COUCH: -- as an amendment.

12 COUNCILMEMBER GUZMAN: Thank you.

13 CHAIR COUCH: Members, any other questions?
14 Just out of curiosity, Mr. Spence, and just from the top
15 of your head, if you could, if we change that to annual,
16 you said there's -- just you did a quick check and
17 there's 80 Change in Zonings since year 2000?

18 MR. SPENCE: That's correct.

19 CHAIR COUCH: So you would have to have 80
20 reports every year, if this were annual, somebody to go
21 through each set of zoning and see whether or not things
22 have been complied with. I know the first passthrough
23 would be onerous, but let's say we got this going and,
24 every year, you'd have to just do a follow-up report.
25 What -- what would you consider the amount of people you

1 would need to handle that subject.

2 MR. SPENCE: Well, because -- and -- and I'll
3 say one thing about the -- the reso. It refers to a
4 different section of 510 that talks about the conditions
5 of zoning and limits 'em to five years, I would say,
6 unless the County Council, you know, says in perpetuity
7 -- excuse me -- or something like that. For instance,
8 the water quality monitoring off of some of the --
9 the -- South Maui, I guess they were the hotels or off
10 of Makena, those kinds of things would be in perpetuity,
11 you know, that they have to -- to do those. So it
12 wouldn't be limited to five years. It would be -- there
13 would be ongoing reporting as -- you know, as needed.
14 The --

15 I would not expect the trend in requests for
16 changes in zoning to change. So projecting into the
17 future, I mean, we're looking at a lot of small to large
18 projects and the requirements for reporting for that.

19 If we just took the 80 changes in zoning and
20 had to report on those, we'd probably need a couple of
21 people. It's a lot of work to go request from the
22 developer. Or since projects have been -- I don't know
23 how we would handle it -- once a project has been built,
24 subdivided, and you have 50 new owners, how we would
25 follow up with that kind of reporting. It's gonna be --

1 it would be a difficult task.

2 CHAIR COUCH: Okay. Mr. Hopper, do you have
3 any comments to weigh in on this, or are we fine legally
4 in requiring either one of those? Or --

5 MR. HOPPER: Sorry. Mr. Chair, could you
6 please repeat the question? I was reviewing a -- a
7 section of the ordinance.

8 CHAIR COUCH: Go ahead. I'm sorry.

9 MR. HOPPER: Would you please repeat the --
10 the question?

11 CHAIR COUCH: Do you have any comments on
12 where we're going right now, or are we -- do you see any
13 legal roadblocks, or are we okay in -- in where we're
14 headed?

15 MR. HOPPER: Well, the -- most -- most
16 conditions, or at least a lot of conditions, the -- the
17 five-year timeframe in C is only -- is essentially if --
18 if no time limitation is set within a maximum of five
19 years from the date the ordinance is in effect. So the
20 Commissions may wanna look at giving a more specific or
21 a different date for conditions that need to be
22 reported. Because it doesn't require reporting of every
23 condition. It says, regarding conditions of zoning that
24 have not been fulfilled within the time limitation
25 specified in Subsection C. So that's only gonna be

1 conditions, really, that -- where there's no time
2 limitation and the default five-year timeframe applies.
3 So I'm not sure what the Council wants reported on.

4 This also deals with ordinances approved on
5 January 1st, 2013, and thereafter. So it's only future
6 ordinances. It's not current conditions of zoning.

7 So just a couple of things noted there, but I
8 would note that Subsection C, the five-year timeframe,
9 only applies if there's no time limit set. And -- and a
10 lot of, if not most of, the conditions say that they
11 need to be fulfilled, which makes sense, prior to a
12 Phase 2 or prior to building permits being issued.

13 And, frankly, that's probably the best way to
14 do zoning conditions. Because it requires the developer
15 to fulfill something before the next stage of the
16 development, rather than just open-ended and requiring
17 somebody to enforce kind of out of nowhere.

18 But in any case, it may be a good idea to be
19 more specific than just referencing Subsection C. But,
20 again, that's something that the Council or the Planning
21 Commission can decide on specifically which conditions
22 they want reports on. Because this only does a very
23 limited, I would think, number of conditions.

24 CHAIR COUCH: Okay. And, Members, just to
25 note that Subsection C is already in existence in

1 19.510.050. So there's -- if we wanted to make a change
2 to that, we would have to propose an amendment. This
3 bill, all -- all it is doing is adding G, essentially,
4 and, I believe, some nonsubstantive changes that -- that
5 says the quarterly report.

6 You know, I tend to agree with Mr. White on
7 this one. And at this point, I'm inclined to -- since
8 we have kind of a divided Committee, I'm inclined to
9 hear from a couple more Members, Chair Baisa and
10 Vice-Chair of the Committee, Victorino. Without
11 objection, unless there's further comment, I'd -- okay,
12 Ms. Cochran.

13 COUNCILMEMBER COCHRAN: I do have a comment --

14 CHAIR COUCH: Okay.

15 COUNCILMEMBER COCHRAN: -- before we -- if --

16 CHAIR COUCH: Sure.

17 COUNCILMEMBER COCHRAN: -- you're gonna
18 propose at this point. Looking at, I guess it's the --
19 L -- no. H, I -- I, the very -- in regards to Public
20 Works, why are we leaving them off the hook? They
21 should do a report, too. Compliances on their -- they
22 enforce the provisions of the conditions. So do you,
23 Planning, dialogue with them? And, if so, do you folks
24 -- can you compile, perhaps, this annual report or
25 quarterly, whatever we decide on, together? Or bring

1 manpower -- you know, your Department staff to work in
2 conjunction with each other, communicate, or -- I don't
3 know -- to carry the burden here.

4 MR. SPENCE: I think -- Mr. Chairman?

5 CHAIR COUCH: Yeah, go ahead.

6 MR. SPENCE: That's part of the -- the
7 burdensome part, is we would be going to any and all
8 State, County, Federal agencies that had anything to do
9 with the conditions and find out from them, as well as
10 the property owner, what is the status. For instance, a
11 very common condition is if you encounter any bones or
12 cultural artifacts while -- during construction, you
13 will report to SHPD, and, you know, all construction
14 activity will cease. So, you know, we'll go to SHPD,
15 have there been any contacts with you regarding this
16 project. They'll write us a letter back saying yes or
17 no. We'll contact the developer, have there been any --
18 have you encountered any cultural artifacts. They'll
19 answer back yes or no. I mean, we're gonna compile
20 quite a big pile of letters in order to make that
21 report.

22 But then I also wonder, like I said before, so
23 what after the property is subdivided and homes are
24 built and somebody wants to install a garage, that
25 condition is still in place. Should we go -- excuse me

1 -- shall we go inquire of that landowner every time, you
2 know, they wanna put up a -- you know, a garage or an
3 addition to their house? You know, please report back
4 to us so we can report to the County Council that, you
5 know, if you encountered anything. You know, it -- it's
6 problematic.

7 COUNCILMEMBER COCHRAN: Well, thank you. And,
8 you know, an add-on, that's a little extreme that, well,
9 why should you, but maybe there could be a dollar
10 amount. If improvements of \$250,000 or -- I don't
11 know -- to maybe narrow it down to the size and scope of
12 the trigger to, you know, look into whether that --
13 whatever condition that may apply at the time is -- is,
14 you know, enforced or complied with, something of that
15 nature.

16 And, also, along these lines, and perhaps
17 maybe a Department of Enforcement, maybe under the
18 County Auditor that's gonna be coming up, or something,
19 to sorta monitor these as a whole with -- with Planning,
20 with Public Works and what-have-you.

21 I mean, I don't know, Chair. I'm just trying
22 to say I like this idea. I'm hearing the concerns of
23 everybody, and I get it. And I don't wanna -- and I --
24 I don't wanna overburden anybody, but the point is, I
25 think this is something that really should not be

1 overlooked, and that I'd like to find a happy medium
2 ground here of some sort, too.

3 CHAIR COUCH: Mr. Alueta?

4 MR. ALUETA: Yeah. I guess, from -- from my
5 -- from a planning aspect, overall planning aspect,
6 conditions of zoning are -- or, basically, conditional
7 zoning of any property is -- is actually really bad.
8 I'm probably one of the few planners that have
9 recommended no change -- no conditions of zoning,
10 meaning this -- when you zone something, all the
11 conditions of zoning are right here in Title 19. That's
12 what they're subject to. Okay.

13 So when you come up for -- when somebody comes
14 in to change zoning from, say, Single-Family to
15 Commercial, you're now saying the conditions that you
16 follow for that parcel is moved from 19.08 Residential
17 to one of the Commercial Districts. It's only -- the
18 only time is if you have some specific reason to add a
19 condition to protect that parcel. Maybe the parcel is
20 adjacent to the residential area, and you feel you don't
21 want any gas stations. So you restrict the zoning,
22 saying you can do commercial, but you cannot do this.
23 You -- you -- you pair it down. Because the site
24 location, you have a specific condition for that site.

25 In general, in planning, you don't wanna put

1 any conditions. It should only be in your Title 19.
2 It's only when you're dealing with specific site
3 conditions.

4 Conditions that are handled by another agency,
5 that are already law, State law, such as archaeological
6 monitoring, requirement for improvements of roadway
7 dedication. You only add additional conditions like
8 that if there is no other law that's gonna catch it.

9 Somebody's gonna come in with a building
10 permit for build a commercial complex. Public Works is
11 gonna say, well, you need to dedicate X, Y and Z
12 right-of-way for the property, and you need to improve
13 it and dedicate it -- improve it and dedicate it to the
14 County. You don't need to repeat it in a Change in
15 Zoning. And a lot of times, not only in the SMA, but in
16 Change of Zonings, it's being added on. And so, all of
17 a sudden, you're making a Change in Zoning, right, a
18 developmental permit. And that's not what it's supposed
19 to be. It's supposed to be implementing a Community
20 Plan that says this is where we want this type of
21 development.

22 The fine-tuning of what is gonna happen is --
23 is outlined in your actual Zoning Code, okay, as well as
24 in your developmental review from either State Historic
25 Preservation, which are your grading permit or your

1 roadway dedication, or Water Department requiring,
2 before I give you a building permit, you need to put in
3 a water lateral, Fire Department, before I give you a
4 building permit, you're gonna put in a fire hydrant.
5 Those conditions should not be placed in.

6 Now, I don't know if I coined the term, but a
7 lot of times we have, in Hawaii and Maui County, what we
8 call pinata zoning. Okay. And that is when the
9 developer comes in for something, and we all -- all nine
10 of you take a whack at the developer and say, what kind
11 of candy can I get out of the developer. Okay. And
12 that's when we get these conditions of you're gonna --
13 you're gonna contribute 50 Apple computers to the local
14 school or -- you know what I mean. And that -- that's
15 what's -- the conditions that sometimes get placed in
16 here, or the general condition, which is the hardest to
17 enforce, and that is as representations made.

18 Once you start doing that, you move from being
19 a zoning change to a developmental permit. And that's
20 not what zoning is all about. That zoning is just,
21 here's a zoning, this is what we want, and we recognize
22 that anything in Title 19, from A to Z, could
23 potentially be built there. The impacts of that have
24 generally been -- have been generally reviewed. And the
25 impacts of the construction is gonna be -- is gonna be

1 implemented through existing laws that you have that are
2 administrative laws. Okay. So your building permit,
3 your Water Department.

4 So, again, I don't like having conditions
5 attached to a zoning. Only if there's a site specific.
6 Because you're trying to mitigate something that goes
7 beyond what is in the zoning. Those conditions, you
8 know, we do track. Okay. We have -- like I say, if you
9 don't wanna have ohanas, you limit it. We check when
10 they come in for the building permit.

11 Again, we can pull up, in our database, all
12 the zonings. We can then print out all the conditions
13 of zoning. And it's just gonna be a matter of us going
14 through one by one, did they comply with that. Okay.
15 And a lot of the conditions, right, as I indicated, are
16 really administerial [sic], meaning they're being
17 handled by Public Works. Okay.

18 Lot of them are -- you're gonna have a -- I
19 mean, I've seen some really funky -- I mean, like I say,
20 they're developmental conditions when they're in a
21 zoning code, and they shouldn't be. But they deal --
22 they deal with, you know, you're gonna dedicate a
23 right-of-way, or they are meet the parks -- dedicate so
24 much lands for parks. Okay. We're gonna have to send
25 that out to Parks Department say, hey, did you comply

1 with that. Okay.

2 Normally, that doesn't -- the reason it
3 happens during the building permit stage is because,
4 when the applicant comes in, they give us 10 -- you
5 know, five copies of the building permit, DSA routes it
6 to everybody. Okay. Parks Department signs off, Water
7 Department signs off, if they've complied with their
8 conditions. Because they all know, there's the project,
9 they're coming in, do we have a condition on that
10 project. Okay.

11 So, again, that's the way we currently do it.
12 Do things fall through the cracks? Yeah, because maybe
13 there's an obscure condition that's attached. We may --
14 it's in our database, we kinda track it, maybe Parks
15 forgets about it, or maybe some other department that
16 said they had that condition is not aware of it, they're
17 not using the same system as us. But for the most part,
18 we kinda are the catchall. We're gonna see the
19 conditions, we're gonna print up the conditions, and
20 we're gonna make sure if there's a -- we're gonna
21 double-check, meaning with Water, did they comply with
22 that.

23 And for the most part, the conditions that are
24 in the zoning, there's an existing Water Department law,
25 there's an -- board -- I mean, there's a rule there they

1 have to do so much service improvements. Or Public
2 Works has their rules that catches it.

3 But, again, anything can be done given the
4 amount of money and time, but we can track -- if you
5 want a report, we can give it to you, and we'll try our
6 best to parse it out. Like I say, the trouble is gonna
7 be when we have larger projects in the future. We just
8 have to be more cognizant when those properties get
9 chopped up, meaning a permitted for one larger,
10 1,000-acre, parcel, it's one TMK at the time, and it
11 gets chopped down to make sure that that Change in
12 Zoning is attached to all the individual new parcels.
13 And for the most part, we have been able to do that, but
14 sometimes it gets slipped through the cracks.

15 CHAIR COUCH: Thank you, Mr. Alueta, for
16 Planning 101 According to Joe. It was very good
17 information.

18 Before I call on Ms. Crivello, Members,
19 remember that this says on any Change in Zoning after
20 January 1st, 2013. So starting this year. So kind of
21 starting from scratch, because there hasn't been many
22 Change in Zonings this year. And, again, it's the
23 Chair's thought that if it's something that we feel that
24 needs to be tracked when we do the Change in Zoning,
25 then we should require it in -- in the -- as one of the

1 conditions of zoning that Mr. Alueta doesn't like. But
2 I just wanted to give my two cents and then have
3 Ms. Crivello speak as well. Go ahead, Ms. Crivello.

4 COUNCILMEMBER CRIVELLO: Well, I need to ask
5 if they do not meet the conditions, then it reverts back
6 to the original zoning district? No. What happens,
7 then?

8 MR. ALUETA: It -- it can't -- Mr. Chair,
9 sorry. According to this, it -- it gives you the
10 grounds in which to initiate another zoning change to
11 change it back. You do not have a automatic sunset
12 provision that says that automatically. I think that's
13 a little onerous because you're not giving someone the
14 appropriate notice or due diligence to -- to address the
15 concerns that maybe the Council has. And so that's why
16 it has that provision, basically. The Council would
17 have to find that, hey, did they meet the conditions,
18 we're going to initiate a change back to the original
19 zoning.

20 COUNCILMEMBER CRIVELLO: Well, I guess that's
21 -- that's my question. If they don't meet the
22 conditions, then they don't get their -- their zoning,
23 right? That's the basic of it. Okay.

24 CHAIR COUCH: Mr. Spence?

25 MR. SPENCE: Thank you, Mr. Chairman. There

1 was a Corporation Counsel opinion a couple years ago
2 specifically -- I mean, it's come up a couple times,
3 sunsetting, you know, can the -- can the zoning sunset
4 if they don't start construction within a certain amount
5 of time, if they don't meet their conditions, et cetera,
6 et cetera. The -- there's a Corporation Counsel opinion
7 as your -- the Council grants zoning legislatively. It
8 would also have to take another legislative action to
9 revert it back. So it -- it would -- since Council can
10 initiate zoning -- say you had something zoned
11 Single-Family Residential, you would have to initiate
12 that by resolution and send it down through the Planning
13 Department and public hearings and all of that, and then
14 back up to this Council. And it would require another
15 legislative act to -- to revert it back to whatever it
16 was before. So -- and the -- and the opinion was, is
17 that you couldn't -- you could not just build into it a
18 -- a sunset clause.

19 CHAIR COUCH: Thank you, Ms. Crivello. Along
20 those lines, to bring to the Members' attentions,
21 sometimes that there are conditions in zoning, they get
22 the zoning change and they go through the development,
23 and then a condition here or there is not met well after
24 any kind of construction or anything is done. In those
25 instances, don't we give notice of violation and fine

1 them until they comply with those conditions? Is that
2 how that works?

3 MR. SPENCE: The short answer is yes. If --
4 if we receive a complaint that a violation has -- well,
5 let me -- let me back up a little bit. When somebody
6 comes in for a grading permit or they, you know, apply
7 for subdivision, or if it's a single structure -- say
8 one of the -- the buildings down in Maui Business Park
9 2, we're gonna review -- part of the Planning
10 Department's function is to review that building permit
11 to the requirements of zoning. And so in case of, you
12 know, Maui Business Park Phase 2, Target wants to come
13 in, so when we look at that building permit, we're gonna
14 say, okay, what are the conditions of zoning on that
15 entire area. And if there are special setbacks, if
16 they're -- you know, whatever the requirements are,
17 we're gonna make sure those things are met before
18 signing off on that building permit.

19 If, afterwards, we find out that something is
20 -- has been violated, certain uses that aren't permitted
21 by conditions of zoning, you know, whatever the --
22 whatever the case may be, you know, normally, we -- we
23 enforce on a complaint basis, we will look into that, we
24 will look into the specifics of that, the conditions of
25 the zoning that are purportedly being violated, and we

1 will follow up.

2 CHAIR COUCH: Okay. Another instance might be
3 the -- you said there was some conditions on a project
4 that says they have to continually monitor the water
5 every six months or a year, something like that. If
6 they were to fail to come up with that and somebody
7 complained, then you would start requiring them to come
8 into compliance or --

9 MR. SPENCE: That's correct.

10 CHAIR COUCH: -- pay the penalty.

11 MR. SPENCE: That's correct.

12 CHAIR COUCH: Okay. Ms. Cochran?

13 COUNCILMEMBER COCHRAN: Thank you, Chair.

14 And -- and, you know, again, this is like the whole
15 complaint-driven issue, too, that's been an ongoing just
16 complaint, I mean, forever. And I think if we had more
17 inspectors, if we had more eyes and ears doing the
18 groundwork, footwork, where they need to be, we could
19 avoid this. You know, we got one inspector for South
20 Maui. I think 75,000 parcels is what they're, you know,
21 in charge of. That's impossible for one person to keep
22 on top of, just impossible. You know, Public Works, one
23 inspector for all of West Maui and Lanai. Who's
24 watching Maui when he's over on Lanai? I mean, you
25 know, this is just really ridiculous for me. And I

1 spoke about this during Budget. I think that there's --
2 you know, there's ways to address what is trying to be
3 implemented here.

4 So perhaps this is part of the solution, this
5 -- this reso, but, also, I think it is perhaps software,
6 you know, more eyes and ears on the ground, just keeping
7 track and monitoring and -- and getting to the bottom of
8 things before they become this complaint-driven issue.
9 So, for me, you know, it's not one quick fix, obviously,
10 but I think this is a step in the right direction.
11 Again, we'll vet it out and work through it, but I'm --
12 I see this as a step in the right direction as in,
13 hopefully, addressing this complaint-driven system that
14 we have, which I just -- it -- it's frustrating.

15 So thank you, Chair.

16 CHAIR COUCH: Okay. Members, any further
17 questions? What I'd like to do -- what the Chair would
18 like to do is to hear from our other two Members, too,
19 because they've had a little bit more experience at
20 this. We're all at least only a couple years into this,
21 at most experience. So without objection, I'd like to
22 defer this matter, and we'll bring it up again when we
23 can get a little bit more discussion.

24 COUNCIL MEMBERS: No objections.

25 CHAIR COUCH: Okay. So this -- Number 9 is --

1 PC-9 is deferred at this time.

2 ACTION: DEFER pending further discussion.

3 ITEM NO. 11: CONDITIONS OF STATE LAND USE DISTRICT
4 BOUNDARY AMENDMENTS (CC 12-262)

5 CHAIR COUCH: Members, and if you look at
6 PC-11, it's kind of the same thing, but for the District
7 Boundary Amendments for Land Use Commission. Just --
8 you've heard the Department, you've heard our
9 discussions so far, and this is similar discussion, but
10 my only concern is what kind of legality do we have on a
11 -- on a State Land Use Commission issue, even though, a
12 lot of times, there's -- the Planning Department,
13 Planning Commission, handles that District Boundary
14 Amendment. So either Mr. Hopper or Mr. Spence, your
15 comments on are we treading into waters that aren't ours
16 to tread in, in this one?

17 MR. SPENCE: Well, Mr. Chairman, the County
18 Council has authority to change the State District for
19 properties under 15 acres. So certainly that -- that --
20 those properties under 15 acres, those areas of property
21 under 15 acres, are within the Council's purview.

22 The -- I am trying to recall a time when the
23 Council put conditions on a District Boundary Amendment.
24 It's usually -- usually, the -- the Change in Zoning,
25 the District Boundary Amendment go together. And it's

1 -- usually, there's conditions on the zoning. And very
2 often, it follows with a Community Plan Amendment, but
3 -- I don't know. That's something we -- we would even
4 have to look at. I don't recall an instance where there
5 are conditions on a District Boundary Amendment.

6 CHAIR COUCH: Were you not here this morning?

7 MR. SPENCE: That -- that particular project
8 this -- from this morning was with the State Land Use
9 Commission.

10 CHAIR COUCH: Right. Right. That -- so there
11 are conditions on a District Boundary Amendment, but not
12 set by Council?

13 MR. SPENCE: Correct.

14 CHAIR COUCH: So I think that's what this is
15 referring to, the State -- if the State Land Use
16 Commission puts conditions on their District Boundary
17 Amendment, do we -- I guess my question is, do we have
18 the authority to require the applicant to -- or the
19 Department to come up with, again, quarterly reports? I
20 know we have authority, but to require the Department --
21 request that the Department come up -- or by ordinance,
22 to require these reports. But is that stepping out of
23 our kuleana, if the State Land Use District -- the State
24 Land Use Commission handles this?

25 UNIDENTIFIED SPEAKER: I think you're --

1 MR. HOPPER: Mr. Chair, this section only
2 deals with -- with County initiated -- or not
3 initiated -- County Council conditions placed on
4 District Boundary Amendments under 15 acres. 'Cause it
5 refers to the Council's conditions. It has nothing to
6 do with the Land Use Commission's conditions. That's
7 something that would need to be taken up by the Land Use
8 Commission as far as enforcement. And, in fact, what
9 happened in -- in the case that was discussed this
10 morning. But this Code section deals specifically with
11 Council conditions that are placed on District Boundary
12 Amendments. So that's what the reporting would have to
13 be done on.

14 I would also note that it changes from a
15 reasonable time to three years from the effective date
16 of the ordinance for condition compliance if no time
17 limitation is established. So that's an important
18 change to be noted.

19 But I don't see any problem with -- with
20 reporting of conditions that the -- the Council places
21 on the -- on these District Boundary Amendments. 'Cause
22 if the Council has authority to place the conditions, it
23 can certainly require, if it wants, reporting of those
24 conditions.

25 But this doesn't apply to State conditions

1 because it's talking about specifically District
2 Boundary Amendments approved by ordinance. And those
3 aren't approved by -- the State level ones are not
4 approved by ordinance.

5 CHAIR COUCH: Okay. Well, in that case,
6 Members, I also agree with Mr. Spence, is that, in the
7 Change of Zoning process, there would be the District
8 Boundary Amendment. So they come up together, and
9 the -- the conditions are actually put on the zoning.

10 Mr. Spence, is there ever an instance where
11 they only do a District Boundary Amendment without a
12 Change in Zoning? Have you heard of that? Either you
13 or Mr. Alueta. Again, 15 acres or less.

14 MR. SPENCE: We're -- between Mr. Alueta and
15 myself, we're trying to remember of an instance where
16 there's been a condition on --

17 CHAIR COUCH: A DBA and no CIZ.

18 MR. SPENCE: Where you have mismatching County
19 zoning and underlying District Boundary, and you're
20 trying to make the District Boundary match the -- I'm
21 trying to think of an instance. I mean, we can research
22 that.

23 CHAIR COUCH: All right. Just curious. I
24 mean, otherwise, it kinda makes this -- if there is an
25 instance where we would do just the DBA and not the CIZ.

1 MR. ALUETA: The only -- like I say, the only
2 place that we know of that -- where someone could
3 potentially come in for a -- well, actually, it's the
4 opposite. I was thinking of Pukalani, as he was, also,
5 where you actually have a State Urban -- I'm sorry --
6 you have a Residential, but you have a State Ag. So
7 they still need to have a DBA to implement the -- to go
8 from Ag to Urban, because they actually have a
9 underlining zoning of Residential, but they have a State
10 Ag designation. And so that's one area where you would
11 probably have a DBA less than 15 acres, but no Change in
12 Zoning, because it's already been zoned by the County.

13 CHAIR COUCH: I believe we actually did that
14 in Makena. There was --

15 MR. ALUETA: Right.

16 CHAIR COUCH: It's zoned Rural, it went from
17 Urban, we brought it back to Rural, DBA to Rural. But I
18 don't think we put any conditions on there. Usually,
19 you wouldn't put a condition on there, would you?

20 MR. SPENCE: Normally, you wouldn't.

21 MR. ALUETA: Just like Change in Zonings,
22 you're not -- (inaudible) -- conditions, either.

23 CHAIR COUCH: Very good. All right. So,
24 Members, again, this is one, I think, it depends on how
25 we go with PC-9. So without objections, I would like to

1 defer this one until we can have the full Committee
2 discuss it.

3 COUNCIL MEMBERS: No objections.

4 CHAIR COUCH: Okay. So this item is also
5 deferred.

6 ACTION: DEFER pending further discussion.

7 CHAIR COUCH: Members, we only have three
8 items left. There might be some -- some good discussion
9 on there. What's your preference, do you wanna go to an
10 early lunch break and come back at, say 15 after one?

11 COUNCILMEMBER COCHRAN: Yeah.

12 CHAIR COUCH: Okay. So we will recess until
13 1:15, and then we'll pick up the next three. We're in
14 recess. ...(gavel)...

15 RECESS: 11:45 a.m.

16 RECONVENE: 1:25 p.m.

17 CHAIR COUCH: ...(gavel)... The Planning
18 Committee meeting of May 21st, 2013, will come back to
19 order.

20 ITEM NO. 19: PUBLIC/QUASI-PUBLIC DISTRICTS (CC 11-219)

21 CHAIR COUCH: Members, on our agenda, we
22 have -- up next is PC-13; however, without objection,
23 I'd like to go to the last item on the agenda, PC-19,
24 and discuss that. As you will hear from Mr. Alueta,
25 there is a -- a good reason for that. If there's no

1 objection.

2 COUNCIL MEMBERS: No objections.

3 CHAIR COUCH: Okay. So we'll go with PC-19,
4 which is talking about Public/Quasi-Public Districts.
5 And we're in receipt of County Communication 11-219,
6 which is -- should be in the binders. And it's from the
7 Planning Director transmitting a proposed bill entitled
8 A BILL FOR AN ORDINANCE AMENDING SECTION 19.04.040, MAUI
9 COUNTY CODE, AND AMENDING CHAPTER 19.31, MAUI COUNTY
10 CODE, RELATING TO PUBLIC/QUASI-PUBLIC DISTRICTS. The
11 purpose of the proposed bill is to update development
12 standards in the Public/Quasi-Public Districts to reduce
13 the amount of variance applications by property owners.

14 And just for your Members' clarification,
15 County Communication 11-219 has some information in the
16 front and what appears to be a bill and then some
17 Planning Committee -- Commission reports, and at the end
18 of the Lanai Planning Commission report, there is the
19 actual ordinance that we will be working off of. So at
20 the very end of the Lanai Planning Commission is the --
21 the language that we'll be using.

22 So if everybody has that, we'll start with the
23 Department to see what their issue is here and -- and
24 what they're trying to accomplish.

25 MR. ALUETA: Thank you, Mr. Chair. Again,

1 this is part of our update to Title 19. As you know
2 some of the sections in Title 19 are -- are a little
3 dated. We're going chapter by chapter upgrading them,
4 including, you know, using table formats to make it
5 easier to understand, have a standardized methodology
6 that each zoning category will have, you'll have your
7 purpose and intent, your permitted uses, uses that are
8 considered accessory, uses that could be considered
9 special uses that would be reviewed by the Planning
10 Commission, and then your standardized development
11 standards within the varying uses.

12 We currently have what you call a
13 Public/Quasi-Public District. And it's called P-1.
14 However, not all public uses or Public/Quasi-Public uses
15 are the same way, and you might wanna have two different
16 development standards. So we've -- what we're doing is,
17 basically, breaking it down into having two different
18 development standards. One would allow for larger
19 heights.

20 This would -- this would be beneficial for you
21 when you wanna zone something, instead of just being
22 P-1, but P 2 -- classic would be the hospital has higher
23 height requirements -- but you may not wanna have a
24 90-foot height in all of your Public/Quasi-Public
25 Districts for smaller scale properties. So you would

1 still have your P-1 District that where most everything
2 is currently zoned P-1, Public/Quasi-Public. And that's
3 pretty much the -- one of the may it please gists of it.

4 For the amendments -- another one, like I say,
5 it's updated. It's kinda interesting, is that some
6 things that you would think would be allowed in the
7 Public/Quasi-Public District are not listed as being
8 allowed. And when the ordinance was probably first
9 drafted, most -- in -- in 1930, when you look at it, all
10 the uses that are allowed are pretty much governmental
11 functions, or churches, that you would think, but
12 another one is like -- it -- it limits -- like nonprofit
13 charitable organizations, it limits it to offices of
14 nonprofit charitable organizations.

15 And so one of the cases that we have that we
16 -- that we currently are working on right now, that --
17 that, actually, is in for a building permit is Hospice
18 Maui. And they're in the P-1 District. But it's not
19 offices for Hospice Maui; it's, actually, a housing
20 facility that they operate. And so it doesn't really
21 qualify. But the property that they're on is currently
22 P-1. So this would -- new amendments would allow for
23 nonprofit organizations to not only just have offices,
24 but to do whatever their -- their stated goal is for
25 that.

1 Again, not everybody's gonna have P-1, a lot
2 of districts, so it's kind of a rare thing.

3 We also wanna be able to put -- add some other
4 things like wastewater treatment facilities, you know,
5 water treatment facilities in the Public/Quasi-Public
6 District, which would make more sense. Your -- as well
7 as have some development standards that would assist in
8 those.

9 So you'll see that there's some new -- and if
10 you look under the ordinance, you'll see the old uses,
11 they've, basically, been taken out. And the one quick
12 amendment, I guess you could have, in 19.31.020, as
13 pointed out by the Chair earlier, was that it should say
14 permitted uses allowed in the -- and it should just be
15 -- it should either be changed to P-1 and P-2
16 Public/Quasi-Public District or just the
17 Public/Quasi-Public District. 'Cause, basically, the --
18 there's not gonna be a difference in uses between P-1
19 and P-2. The uses will be the same. The only
20 difference is gonna be development standards.

21 So all the existing uses that are currently in
22 there are -- are relisted again in the table format. We
23 are adding -- let's see -- wastewater treatment
24 facilities, water treatment facilities, cemeteries and
25 crematoriums, Public/Quasi-Public uses or facilities --

1 so, again, that would -- for hospice -- education, which
2 is covered, general and specialized, and then public
3 facilities or public uses. So that -- we hope that will
4 cover most of the districts or uses that would
5 potentially go into this Public/Quasi-Public zoning
6 category.

7 We -- again, we're not proposing to rezone
8 anybody at this time; however, it would be beneficial to
9 eventually, you know, when we do the Community Plan
10 Update, to look at what uses or areas. So you could
11 potentially rezone some of the churches, some of the
12 existing cemeteries that may be either existing within a
13 Residential District where you had to issue conditional
14 permits for, or church facilities in the Residential
15 Districts where they're under -- they're there by
16 Special Use Permit or Conditional Permit. Other --
17 other things like that -- or the hospital, which is
18 currently, I believe, in the Residential District. MCC
19 is currently located in the Residential and Industrial
20 District. So you may wanna look at that down the line.

21 And so we wanna be able to create a district
22 that would easily accommodate those uses and, also,
23 minimize amount of variances that we currently process.
24 Because a lot of times, such as the Residential
25 District, you have a height limit of 30 feet, obviously,

1 school facilities, such as MCC, or hospital facilities
2 are -- have greater heights than 30 feet.

3 And that's -- again, it does allow for -- has
4 accessory uses that would be allowed, development
5 standards. Height is just basically gonna be -- allow
6 for greater heights. Let's see. And we have a section
7 there for special uses, which would be other uses,
8 similar intensity, to be determined as conforming to the
9 intent of this title pursuant to 19.510.020 of this
10 section.

11 CHAIR COUCH: Okay. Before we get to the
12 Members, I wanna ask, Mr. Spence, if you have any
13 comments to add?

14 MR. SPENCE: No. I think Mr. Alueta covered
15 it sufficiently.

16 CHAIR COUCH: And, Mr. Hopper, any comments
17 you would like to add?

18 MR. HOPPER: Just that I believe giving the --
19 the usual language giving authority to make
20 nonsubstantive changes would probably cover the -- when
21 -- when Joe mentioned at the beginning, and you
22 mentioned, that it should mention P-1 and P-2
23 Public/Quasi-Public Districts rather than just P-1
24 Public/Quasi-Public District at the beginning of
25 19.31.020.

1 CHAIR COUCH: Okay. I did wanna ask you about
2 that, Corp. Counsel. If we put that P-1 and P-2 in
3 there, Members, at 19.31.020, under permitted uses, and
4 then the following permitted uses are allowed in the P-1
5 and P-2 Public/Quasi-Public District, would we need to
6 define P-1 and P-2 elsewhere? Or is that going to be
7 confusing in that we have a P-1 and a P-2 and the only
8 thing -- apparent difference is the design criteria? Or
9 is that enough?

10 MR. HOPPER: I think this isn't -- and
11 Mr. Alueta can correct me if I'm wrong, but I don't
12 think this would be the only case where the only
13 difference you have is -- is in the -- in the Design
14 Standards. I think you have -- I mean, the uses would
15 be the same. So I think maybe Rural is an example. I
16 think there's a RU.51.0. I think Residential --

17 UNIDENTIFIED SPEAKER: Residential, also.

18 MR. HOPPER: Or R-1, 2 and R 3. Those are the
19 uses, I think --

20 UNIDENTIFIED SPEAKER: Same.

21 MR. HOPPER: If I'm not mistaken, the uses are
22 the same; it's just you're dealing with different
23 standards. So I think this would be consistent with
24 other ordinances because you're saying here the uses are
25 the same in P-1 and P-2, and then, when you go to the

1 design standards, that's where you differentiate. So I
2 think that's consistent with what we've done in certain
3 other ordinances.

4 CHAIR COUCH: And that's where we're doing the
5 consolidation, Mr. Alueta, R-1, R-2 and R-3 used to be
6 separate chapters, now they're -- or separate -- yeah,
7 chapters.

8 MR. ALUETA: Correct.

9 CHAIR COUCH: Now they're under one chapter,
10 just with some design guideline differences, is that
11 right?

12 MR. ALUETA: Yes. The -- well, they already
13 have their differences, so R -- R-0, R-1, R-2 and R-3
14 are being consolidated. And then on the development
15 standards side, it'll be a table just like you see.

16 CHAIR COUCH: Okay.

17 MR. ALUETA: P-1, P-2, that'll have the
18 different minimum lot sizes for that. You also see it
19 in the recently -- I think it was -- oh, maybe you
20 haven't gotten it yet, but the Hotel District is the
21 same way. You have H-1, H-M --

22 CHAIR COUCH: Right.

23 MR. ALUETA: -- and H-2. And now we're gonna
24 add a Hotel District for those probably that are just
25 zoned Hotel.

1 CHAIR COUCH: And we kinda did that with the
2 M-1, M-2, and M-3 as well, is that right? Oh, we had
3 different --

4 MR. ALUETA: We had different use. So those
5 were separated because you were trying to separate out
6 the different categories of -- of Industrial --

7 CHAIR COUCH: Okay.

8 MR. ALUETA: -- uses.

9 CHAIR COUCH: All right. And the other
10 question I had for Corp. Counsel would be, you know, if
11 we change this to P-1 and P-2, what are the current
12 Public/Quasi-Public zonings going to turn into? Is that
13 at the discretion of the Department because of the size
14 of the buildings that are there? Or do -- is it kind of
15 an interim kind of thing until we determine?

16 MR. ALUETA: Well, currently, you have lands
17 that are zoned P-1 Public/Quasi-Public. And they will
18 be -- they won't be affected. P-2 will be established
19 just like you established the M-3 District where you
20 didn't -- you didn't zone anybody M-3. And the same
21 thing here, we're not gonna zone anybody P-2, P-2, or
22 Public/Quasi-Public P-2. But it will -- what it does is
23 allow for a zoning category that is more appropriate for
24 existing Public/Quasi-Public uses, like I said, such as
25 MCC, maybe the prison, or -- or even the hospitals.

1 CHAIR COUCH: Well, my concern would be
2 somebody in the current -- currently in P-1,
3 Public/Quasi-Public, whose building height is above 40
4 feet, now we go into this and, all of a sudden, they'll
5 be nonconforming if they become P-1.

6 MR. ALUETA: The -- the current Code, P-1 is
7 there already. You already have a P-1 District in 19 --
8 in 19 --

9 CHAIR COUCH: I understand.

10 MR. ALUETA: And so we're just -- so they --
11 if they are already existing with a 40 -- above the
12 40-foot height limit, then they're either already
13 existing nonconforming or they were granted a variance
14 for that. And that would not change.

15 CHAIR COUCH: So P-1 --

16 MR. ALUETA: Exists.

17 CHAIR COUCH: -- for instance -- yeah, it
18 exists, but the -- the design criteria is maximum height
19 is 40 feet.

20 MR. ALUETA: Which --

21 CHAIR COUCH: Anything above that -- yes,
22 Mr. Hopper.

23 MR. HOPPER: Maybe to assist. On Page 3 of
24 the draft, you can see, in bracketed language, the
25 original language of the P-1 District. And it goes into

1 minimum lot area, lot width, building setback and
2 height. Maximum height was two stories, not to exceed
3 35 feet. And then I -- I just double-checked, but the
4 minimum lot area, 15,000, that's in P-1. So there
5 shouldn't be anybody who -- who is above that without a
6 variance, as Mr. Alueta said.

7 So everyone who's currently in P-1 now is
8 gonna stay P-1. It's just there will be a P-2 for
9 either those people, if they wanna expand, or if you
10 needed a new district that -- that allows for that. But
11 I -- I don't believe there will be anyone designated P-2
12 at -- at this point. That's -- that's gonna be a new
13 category. What you're really doing is -- some of the
14 P-1 standards are becoming more generous, like you're
15 allowing an extra five feet in height and -- and -- and
16 such, but -- yeah, this should -- current property
17 standards or current zonings really are going to still
18 be P-1. And if they meet the existing criteria, they're
19 gonna meet the new criteria as well.

20 CHAIR COUCH: Okay. But there may be some
21 existing nonconformances because they've got the
22 variance, right?

23 MR. ALUETA: Correct. Or -- or, again, when I
24 -- I'm -- I'm a little conservative when I -- I redraft
25 some of these ordinances. I try not to give you a lot

1 of new things. So I normally will take the existing
2 Code, which is what I did with this, and just put it
3 into a table format. And then I'm adding a new section
4 just of higher -- higher development standards. I'm
5 only marginally adding a few uses just to clarify what
6 can be allowed in the Public/Quasi-Public and things
7 that we won't allow.

8 So I did not -- if anything, like I said, I
9 gave a little five foot extra because we know from
10 experience that many of these churches or synagogs, or
11 whatever, have height beyond the 35 feet, and we've
12 granted variances for them. So that would cover,
13 actually, some of these existing facilities that are in
14 the P-1 District who maybe have gotten a little height
15 variance, might actually now no longer need that
16 variance, or they would meet the existing Code.

17 I will note that, you know, like I say, the
18 lot -- minimum lot width of 100 feet, that's the
19 existing Code. I -- personally, I think that's kind of
20 a -- a large lot, you know, when you have a minimum.
21 But I didn't -- again, I didn't feel comfortable making
22 a significant -- making that change. So you -- I mean,
23 I'm just throwing that out there just so you're aware of
24 it. You know, maybe there are some churches that are on
25 a 6,000-square-foot lot, and they wouldn't qualify for a

1 P-1. But --

2 CHAIR COUCH: Okay.

3 MR. ALUETA: -- for the most part, again, I
4 took the existing Code, I just reformatted into table
5 format, and then allowing more flexibility for a future
6 P-2 District that could accommodate some of our bigger
7 Public/Quasi-Public uses. And, again, I mentioned many
8 of those already.

9 CHAIR COUCH: And -- and I just wanna get it
10 on record. And I don't know how we can -- we can work
11 this, but if there -- if we come up with these minimum
12 standards, and somebody, for some reason, you know, they
13 qualify for P-1, but they're -- you got a variance, now
14 they're non -- "nonconforming", if they wanted to do an
15 addition or something like that, I'm -- I'm afraid that
16 the Planning Department's gonna say, oh, you need to be
17 P-2 so you need to go through a Change of Zoning to get
18 to P-2. I wanna try to avoid that, if at all possible,
19 if there's a way to do that.

20 MR. SPENCE: Yeah. Well, Mr. Chairman, a
21 couple things on that. Excuse me. Start off, if -- if
22 somebody's received a variance that doesn't -- that
23 brings them into conformity. It's sort of a roundabout
24 way of doing it, but they've received a variance from
25 the requirements of the law, and so they are allowed to

1 -- to be whatever height or lot width or, you know,
2 whatever the variance is for. So that -- that, in
3 essence, by being granted a variance, you're saying,
4 okay, this is permitted for you in this instance for
5 whatever reason. So they -- they wouldn't be
6 nonconforming. They would then be conforming according
7 to the variance.

8 CHAIR COUCH: Okay.

9 MR. SPENCE: Okay. Where we would have a
10 nonconformity would be like -- let's say -- let's just
11 say that the hospital was already zoned P-1, you know,
12 and they have all these heights. They would -- they
13 would be nonconforming if they were already exceeding
14 and they haven't received a variance.

15 At some point, especially for something like a
16 hospital or the university, you know, either the Council
17 or the Planning Department would initiate -- could -- I
18 wouldn't say would -- could initiate zoning just so they
19 could, you know, continue with their function, you know,
20 in serving the community. So those kinds of things,
21 where there's a public good going on with the particular
22 facility, you know, we would generally have -- you know,
23 on a case-by-case basis, I would say we would generally
24 have no problem initiating something like that.

25 CHAIR COUCH: Okay. That -- that's just my

1 concern, if somebody, say the hospital, wanted to add
2 another wing or whatever. I don't know. And then they
3 would have to get the Change in Zoning to P-2, and that
4 would -- you know the process. It takes a while.

5 MR. SPENCE: It does. It takes a very long
6 time. And --

7 CHAIR COUCH: So I'm just wondering if there's
8 -- if there are -- if we know of places that are that
9 way already, can we, through this ordinance, make them
10 P-2 versus P-1, or is there any way legally we could do
11 something like that?

12 MR. SPENCE: You would have to go on a
13 parcel-by-parcel basis, based on what that use is on
14 that property. You can't just -- I mean, these -- these
15 are -- creating a Zoning District does not zone a
16 particular property.

17 CHAIR COUCH: Understood.

18 MR. SPENCE: You would have to go -- you know,
19 you would have to look at the particular circumstances
20 for that property and then zone accordingly.

21 CHAIR COUCH: Okay. Mr. Hopper?

22 MR. HOPPER: And, Mr. Chair, could you
23 comprehensively zone properties. You'd have to describe
24 them. But for this particular ordinance, I would say
25 that's -- that would be something that would have to go

1 back to the Planning Commission, I would say, if you're
2 actually gonna rezone areas. You know, it's -- it's not
3 the same, generally, a type of notice as Change in
4 Zoning for an individual parcel, meaning that the
5 Council generally can do comprehensive zoning. It's
6 done it before with the Rural Districts, for example.
7 But, you know, that -- that's something that I don't
8 think, with this ordinance right now, could be done
9 without sending another bill down to the commissions.
10 And you -- you would need to describe the areas that
11 were gonna be rezoned.

12 CHAIR COUCH: Okay.

13 MR. HOPPER: And -- and the -- the issue about
14 a variance, if a building has a variance, that variance
15 is specific to that -- that building generally. So if
16 it's gonna expand or something, I think the Board of
17 Variances and Appeals may need to take another look at
18 the -- at the application. 'Cause those are -- those
19 are generally application specific, so -- so I think
20 they -- we may have the option of coming in and either
21 amending or getting a new variance for the -- the new
22 portion or being rezoned to P -- P-2. But I think if
23 you're expanding a variance, that is different than just
24 continuing to operate --

25 CHAIR COUCH: Right.

1 MR. HOPPER: -- current variance. So you have
2 to look at the approval of that variance, certainly.

3 CHAIR COUCH: Okay. All right. That out of
4 the way, Members, any questions? We're gonna -- you've
5 had a chance to take a look and see what's gonna be
6 added. If there are no questions, I do want to, by
7 consensus, change that 13 -- 19.31.020 to say P-1 and
8 P-2 --

9 COUNCIL MEMBERS: No objection.

10 CHAIR COUCH: -- if there's no objections to
11 that. And then, also, on that same page, Page 2, under
12 Principal Uses and Structures, where it says
13 kindergartens, elementary schools, high schools,
14 colleges and libraries, I just am not -- not sure why
15 middle schools were left out, but as long as they're
16 listing 'em all, should we put middle schools in there
17 as well?

18 UNIDENTIFIED SPEAKER: Consensus.

19 CHAIR COUCH: Consensus, yeah. There you go.
20 Wait, that's the wrong Committee.

21 COUNCILMEMBER COCHRAN: What about charters,
22 immersions?

23 CHAIR COUCH: And, Members, do you have any
24 other comments or questions?

25 COUNCILMEMBER COCHRAN: Chair?

1 CHAIR COUCH: Yes, Ms. Cochran.

2 COUNCILMEMBER COCHRAN: Thank you. So is one
3 of the intents here, Mr. Alueta or Mr. Spence, you're
4 saying to, you know, the BVA -- these variances that are
5 occurring to cut -- minimize them, I guess, or cut back
6 on having to go through that process? You're trying to
7 address the new verbiage here to address those. So I'm
8 wondering, I know you're talking about -- you -- you
9 mentioned, Mr. Alueta, churches and cemeteries and the
10 school and hospital that already are sort of in that
11 category. So is there a way to maybe get a list of
12 others where -- pretty much, I mean, that hospital will
13 probably always be a hospital, the university will
14 always be -- so we kinda know that, the cemetery will be
15 where it is. So I was just wondering, Chair, if there's
16 a way to get that and -- and, I don't know, is that
17 gonna be addressed through here, or we can collectively
18 take up each of these parcels and do the rezoning, so
19 they don't have to, in the future, come back for
20 variances and what-have-you, or continue their, you
21 know, conditional use -- use permits or whatever it is
22 they're on at this point?

23 MR. ALUETA: Yeah. And that's -- that's part
24 -- Mr. Chair?

25 CHAIR COUCH: Uh-huh.

1 MR. ALUETA: That's part of our -- you know,
2 one of our -- dead sea scroll project, was to identify
3 existing uses on zoning, and to maybe correct the zoning
4 at that point, when it's consistent with the Community
5 Plan. So you might see some of that during the adoption
6 of the -- the new zoning maps. But, also, during your
7 -- during your reviews of each Community Plan, you'll
8 see, hey, this area is Public/Quasi-Public, we continue
9 to support that, let's do a comprehensive rezoning at
10 the time.

11 But I think you wanna -- in the cases where
12 it's clear, like I say, the -- the schools and the
13 churches, that we can potentially do that before the
14 Community Plans come about. Because it's not gonna
15 change on the new -- I do not anticipate those uses
16 changing. But, at the same time, this gives the school,
17 as well as the hospital, an opportunity, when they do
18 plan on their expansion -- they say, hey, let's just get
19 this out of the way, come in -- let's come in and do a
20 Change in Zoning to P-2, and then we don't have to file
21 for a Conditional Use Permit along with five different
22 variances for their buildings. They can just get one
23 zoning change from the Council and be done with it. And
24 then -- and like I say, no conditions. All you have is
25 this is your conditions or only -- you'll only have --

1 this standards and conditions will be the ones that they
2 follow rather than some here and there that could occur
3 during the Conditional Permit process or a variance
4 process where conditions might be added.

5 So we are trying to eliminate, one, these
6 conditional use permits, which I also love, as well as
7 variances. You know, you try to modify your codes and
8 keep them based on -- keep them updated to what's really
9 happening in the real world.

10 COUNCILMEMBER COCHRAN: Okay. All right.
11 Very good. Thank you.

12 CHAIR COUCH: Okay.

13 COUNCILMEMBER COCHRAN: Good.

14 CHAIR COUCH: Thank you, Ms. Cochran.

15 Members, Mr. Alueta did mention a couple of
16 things. One was the nonprofit facilities, that is a
17 change from the existing P-1. If there's -- just to
18 remind you that that change from offices for nonprofit
19 organizations to facilities. And I believe there's
20 addition of wastewater treatment facilities and, I
21 believe, water treatment facilities and small energy
22 systems, small scale. If anybody has any questions on
23 those? And then, if not, I'm gonna go to the next
24 section, on Page 4. He did mention that the minimum lot
25 width in feet for P-1 is 100 as -- as it currently

1 exists. Any desire to change that? And, if so -- or
2 Mr. Spence or Mr. Alueta, do you have any comments on --
3 Mr. Alueta, you mentioned that you thought that might be
4 a little bit too excessive?

5 MR. ALUETA: Well, I was -- both the lot width
6 as well as the lot size, minimum lot size, I'm just
7 thinking outside the box of what is out there now, how
8 many of these facilities are out there, do you have any
9 small churches that would be considered. If they went
10 to a P-1, they would be nonconforming altogether.

11 I'm just thinking -- that's all I was thinking
12 of, is that we do have small churches here and there
13 through Kahului, most of them -- Paia -- I mean, so they
14 -- they -- they'll be existing -- if they -- if they're
15 already zoned P-1, they're existing nonconforming
16 because of the lot size. It doesn't mean they can't
17 expand. It's just that from a -- from -- from that
18 aspect, they're -- they're limited to certain -- as far
19 as nonconforming, but only on the lot size.

20 I was just thinking of the real world. I
21 mean, are you gonna have a really small pocket church?
22 I just had to think of -- that's all. I just don't
23 wanna create more -- I mean, again, like I say, it's an
24 existing law. It's already -- I didn't wanna make a
25 broad stroke change on it. So --

1 CHAIR COUCH: But if you had the -- the
2 scepter to rule the world, would you make the change on
3 -- on those two items? As a planner, as, you know, we
4 got our Planning 101 this morning, so -- I mean, as long
5 as we're here, this is -- this is the best time to do
6 it. But I also don't want you to just, hey, off the
7 cuff, yeah, maybe this is a good idea without
8 understanding any of the ramifications. So --

9 MR. SPENCE: I just wonder, Mr. Chairman,
10 between now and -- I mean, assuming this Committee votes
11 to approve and sends it out to full Council, we could do
12 a little bit additional research and just go, okay, so
13 what's the lot size that, you know -- I don't know --
14 whatever are on the Community Plans for this use and we
15 can -- we can get you --

16 CHAIR COUCH: Make those changes at first
17 reading?

18 MR. SPENCE: Yeah.

19 CHAIR COUCH: Okay. If you can commit to do
20 that, then we can just leave that as-is, if there's no
21 --

22 MR. SPENCE: I'll commit Joe to do it.

23 CHAIR COUCH: Okay. You'll commit Joe to do
24 it. Okay. Great.

25 MR. ALUETA: I can do it.

1 CHAIR COUCH: Members, any other questions?
2 Those are the -- the issues that were brought up by the
3 presentation. So anybody have any questions? Then one
4 other last question on form and legality, or whatnot.
5 It says here, in 19.31.060, that the Planning Director
6 may adopt rules to implement this chapter. Is that
7 something new for this -- for Public/Quasi-Public or any
8 other zoning or --

9 MR. HOPPER: You know, Mr. -- Mr. Chair, this
10 is something that's being placed in all the new
11 ordinances. It's not currently in this ordinance, but
12 we're recommending that be placed in -- in all of the
13 new ordinances. That would allow the Department to make
14 Administrative Rules. They could not alter the meaning
15 of the -- of the Code, but in case an ambiguity pops up,
16 they could do Administrative Rules along those lines
17 and -- and maybe clarify those. Or -- or if there's a
18 process within the -- for example, something like
19 determining an appropriate accessory use, there could be
20 rules made. And if you don't have the authority, it can
21 be questioned where the -- the rules come -- where the
22 rulemaking authority would come from. So this is
23 something that -- that had been recommended, I think it
24 was probably about six years ago, when we started doing
25 new ordinances to include.

1 CHAIR COUCH: So this is, in essence, a way
2 that they can get rid of their interpretation binders
3 and get 'em actually in rules versus Code? I think
4 Mr. White will be extremely happy with that.

5 COUNCILMEMBER WHITE: Yeah. Actually, I was
6 gonna point out that it says they can make rules, but
7 not interpretations.

8 CHAIR COUCH: Okay. Any other questions,
9 Members? Okay. Hearing -- no further -- if there's no
10 further discussion, I'll entertain a motion to recommend
11 the passage on first reading of a proposed bill entitled
12 A BILL FOR AN ORDINANCE AMENDING SECTION 19.04 --
13 04.040, MAUI COUNTY CODE, AND AMENDING CHAPTER 19.31,
14 MAUI COUNTY CODE, RELATING TO PUBLIC/QUASI-PUBLIC
15 DISTRICTS, and then, also, allow Staff to make
16 nonsubstantive revisions, and file County Communication
17 No. 11-219.

18 COUNCILMEMBER GUZMAN: So moved.

19 CHAIR COUCH: Okay.

20 COUNCILMEMBER WHITE: Seconded, but --

21 CHAIR COUCH: All right.

22 COUNCILMEMBER WHITE: -- Mr. Chair, I would --

23 CHAIR COUCH: We're getting into discussion,
24 yeah.

25 COUNCILMEMBER WHITE: No, not discussion, but

1 I think the motion was to pass it as amended.

2 CHAIR COUCH: Yes. I was just gonna mention
3 as amended.

4 COUNCILMEMBER WHITE: Okay.

5 CHAIR COUCH: Yeah.

6 COUNCILMEMBER WHITE: Okay.

7 CHAIR COUCH: Good. As we, in -- in
8 consensus, amended it. So is that -- if that's all
9 right with Staff? Okay.

10 MR. HOPPER: Mr. Chair?

11 CHAIR COUCH: Yeah.

12 MR. HOPPER: And incorporating the change
13 referencing P-1 and P-2.

14 CHAIR COUCH: Correct.

15 MR. HOPPER: If that was a voting --

16 CHAIR COUCH: Yeah.

17 MR. HOPPER: -- on amendment, but just
18 clarify.

19 CHAIR COUCH: That amendment and the middle
20 school, adding middle school in, that was done by
21 consensus. All right. Any further discussion, Members?
22 All those in favor, please say "aye".

23 COUNCIL MEMBERS: Aye.

24 CHAIR COUCH: All those opposed? Okay.

25 Measure passes, five-zero, with Council Chair Baisa and

1 Committee Vice-Chair Victorino excused.

2 VOTE: AYES: Chair Couch, Councilmembers Cochran,
3 Crivello, Guzman and White.

4 NOES: None.

5 ABSTAIN: None.

6 ABSENT: None.

7 EXC.: Vice-Chair Victorino and Councilmember
8 Baisa.

9 MOTION CARRIED.

10 ACTION: FIRST READING of revised bill and
11 FILING of communication by C.R.

12 CHAIR COUCH: All right, Members. Thank you.

13 We got one -- pretty quick on that one.

14 ITEM NO. 13: CHANGE OF ZONING PROTESTS (CC 13-76).

15 CHAIR COUCH: Next one, Members, is going back
16 to PC-13. This is called Change of Zoning Protests.

17 And we're in receipt of County Communication 13-76 from

18 Council Chair Gladys Baisa transmitting a proposed

19 resolution entitled Referring to the Lanai, Maui,

20 Molokai -- and Molokai Planning Commissions a Proposed

21 Bill Amending Section 19.510.040, Maui County Code,

22 Relating to Change of Zoning Protests.

23 The purpose of the proposed resolution is to

24 refer to the Planning Commission a proposed bill with

25 the same title. The purpose of the proposed bill is to

clarify how the percentage of owners or lessees

1 protesting a Change of Zoning is to be calculated.

2 You wanna start off, Planning Department, as
3 to your thoughts on this, since Chair Baisa is not here
4 to talk about it?

5 MR. SPENCE: Yes. Thank you, Mr. Chairman.

6 This -- this item comes up -- oh, I would say
7 within the last few years, we had a -- it's come up
8 before, but, in the last couple years, it came up with
9 the proposed rezoning of Hanzawa Store. And so all the
10 Council Members know, they are a former client of mine,
11 but the -- this is -- this isn't being proposed -- just
12 as a -- for this particular circumstance, what it is,
13 was we had many Committee meetings just dealing with the
14 idea of how do you count the protests of properties
15 within 500 feet. So Councilmember -- excuse me --
16 Council Chair Baisa is proposing this ordinance to
17 clarify what that means.

18 And what we talked about in Committee over and
19 over again was, you know, do you count all the people
20 within 500 feet, is it just the property, or is it the
21 area of land. It was very confusing. And both the --
22 the public and the applicants and the Council were very
23 frustrated by -- by the uncertainty.

24 So I think this is -- what's been drafted here
25 and proposed to be considered is -- would clarify things

1 quite a bit.

2 I do have a couple specific comments, if you
3 want.

4 Under Number B-1, the protest area, the -- I
5 have two questions regarding that. On the
6 publicly-owned parcels, such as roadways and parks,
7 shall be included in the computation, that was one of
8 the -- one of the points of contention is that you had
9 County zoned -- or County owned land within the 500
10 feet, and there was never a decision on whether that
11 could be counted or not.

12 So however this goes through the -- through
13 the process that we're about to undertake with this, I
14 would -- one thing I would ask for clarity is does --
15 would the County-owned property have a vote. Because
16 all of the -- all the surrounding landowners, you know,
17 you're, basically, counting one -- one property, they
18 can have a protest or they can say that they approve,
19 but we don't know about the publicly-owned property. It
20 could be a Parks Department property, it could be a
21 public roadway. Just -- so that's something we would
22 look through for -- we would look for clarity during the
23 process.

24 The other -- under Number 2, protest by less
25 than all owners of [sic] lessees of a parcel. A parcel

1 within 500-foot distance of the boundaries of the
2 subject parcel shall be treated as having filed a
3 protest if any of the parcel's owners or lessees filed a
4 timely protest.

5 The question I would have with that, that we
6 can clarify during the process, is what about
7 condominiums? If you have a protest by one person in a
8 condominium project of, say, 500 owners, how does that
9 count?

10 This would say, the way this is written, that
11 one voice, you know, that wanted to use that adjacent
12 vacant parcel to walk their dog, or something like that,
13 that would -- you know, that would have a negative vote
14 the way this is written.

15 CHAIR COUCH: Okay. Mr. Alueta, you had some
16 comments?

17 MR. ALUETA: Well, I'm also the -- I guess the
18 way this -- this is written, right, as far as protests
19 deals with the question, is it a doughnut or a hole. So
20 this one makes it -- the way this is written currently,
21 it's a doughnut, meaning -- so if you -- in the case of,
22 as Mr. Spence pointed out, a condo -- right -- protest,
23 what if -- what if the project is your project, is on
24 your own property, and one owner is opposed to it, to
25 the change of the parcel that they live on, how do

1 you --

2 CHAIR COUCH: Run that by me again.

3 MR. ALUETA: Okay. The way I read this
4 scenario currently, right, and the way it's always been
5 calculated, it's always been a doughnut. Meaning if you
6 have -- it's 500 feet from the parcel in question. So
7 you're on a one-acre parcel, you're trying to seek a
8 Change in Zoning -- right -- and you're notified 500
9 feet from the one-acre parcel, okay, but you're not
10 counting the -- you're not counting the one-acre parcel.
11 What if the people who are seeking the zoning change,
12 say it's a condominium complex, one person or two people
13 in a condo opposes the Change in Zoning of their own
14 condo? And they -- do they have a vote at all? So
15 that's the question of --

16 CHAIR COUCH: Oh, even a -- even a -- another
17 scenario, possibly, is there's three titleholders of a
18 piece of land, and two -- or one of them wants to change
19 zonings and the other two don't, what -- what happens
20 there?

21 MR. SPENCE: Well, in -- in that scenario, you
22 have 19.510. I think it requires that the property
23 owners -- the way that it's worded, the property owners
24 would -- would have to agree to that. The -- I think
25 Mr. Alueta's example is a little bit different. Say you

1 had a condominiumized, say, a rural lot --

2 CHAIR COUCH: Uh-huh.

3 MR. SPENCE: -- and so you have two owners on
4 the same lot. One of 'em's coming in for some kind of
5 permit or zoning or a variance, or, you know, something
6 like that, if you -- if you're just measuring all the
7 properties within 500 feet --

8 CHAIR COUCH: Of that parcel.

9 MR. SPENCE: -- of that parcel, you're leaving
10 your own property outside. So that other owner of that
11 property would not have a vote.

12 CHAIR COUCH: What is -- what is the
13 Department's recommendation? I -- I kind of would think
14 that you'd want the people who own the property to have
15 a vote, but the question then would be, if it's a
16 500-unit condominium, what's the number there.

17 MR. ALUETA: Yeah. Well, I think the issue
18 really came up when -- I think when the Council tried to
19 rezone a parcel, and the owner of the parcel wasn't
20 supportive of the change. And so -- in the case of
21 Kaanapali. And so the question was how do you count the
22 area of protests, because the people who -- the parcel
23 in which the people -- the people who own -- the land
24 that was owned, right, they opposed the change. And so
25 because -- so they -- they were asking, well, do we --

1 do we not get calculated in the -- in the area of
2 protest. You see what I'm saying?

3 So is it a circle? So is it a circle, I mean,
4 where you count all the land in the areas, or is it a
5 doughnut where you only count those outside? So
6 somebody may own a parcel, the County wants to zone it,
7 change it, he's opposed to it, but he doesn't get
8 counted in the protest. You see what I'm saying? And
9 on -- in that aspect.

10 And -- and, then again, I don't think you're
11 gonna make anybody happy, no matter how you calculate
12 that. Okay. Especially when you're moving from land to
13 parcels. Okay. 'Cause now, all of a sudden, you are --
14 it's -- it's the reason that we have a Senate and -- and
15 a House of Representatives, because land, basically,
16 represents the land area. So somebody that has a
17 50-acre parcel has only one -- is counted only once
18 because it's one parcel, whereas, before, it was
19 calculated by land area. So whoever had the most land
20 area within that 500 feet, they -- you would -- if they
21 owned the majority of it, right, you would never get to
22 the 60 percent. And that's where the case, in some
23 areas, you have that, if you follow me.

24 If you have a Change in Zoning on a
25 neighborhood parcel, it's one parcel, all the neighbors

1 around it oppose it, and they all have
2 10,000-square-foot lots, okay, but another parcel, next
3 door, is 20 acres, and that's within the 20, if you --
4 that -- that 20-acre person trumps all the small
5 10,000-square-foot lots because he's got 20 acres.

6 CHAIR COUCH: Because you -- you calculate it
7 by land --

8 MR. ALUETA: When you calculate it by land --

9 CHAIR COUCH: -- lot size?

10 MR. ALUETA: Correct.

11 CHAIR COUCH: Okay.

12 MR. ALUETA: And that was always the -- one of
13 the complaints before was you'd have a Change in Zoning,
14 it was adjacent to -- or it was A&B, you know, they
15 owned all the land around it. So you would never get to
16 that threshold where it would require a majority vote by
17 it. But, as I said, it's -- no matter which way --
18 whether you calculate by land or calculate by parcel,
19 someone will always feel disenfranchised. So I'm just
20 -- be aware of that. And that's the kind of comments
21 we're gonna get when we go to Planning Commission with
22 this.

23 CHAIR COUCH: Another issue might be, you
24 talked about roads and, for instance -- let's go back to
25 the Hanzawa Store issue. The store is on a road, is

1 right on a road, so an abutting parcel, does that -- is
2 the road, and then the other parcels that were across.
3 So would the road count as a parcel, A, B? Like you
4 said, does the County then get a voice, or a -- a vote
5 in the protest, if not? Which kinda makes no sense
6 there.

7 But the other thing is, is -- you know, is
8 that counted in the 500 feet? Let's say you do have
9 something like that store, and, across the street, say
10 it was actually a subdivision of, you know, 10 -- or
11 6,000-square-foot homes. And if you count the road,
12 then you're gonna get maybe one set of -- one row of
13 houses that are -- are thrown out. Right? If -- if the
14 road is not counted because it's the -- it's a boundary,
15 it's a -- kind of a -- you know, uninterested party kind
16 of situation, then do you incorporate the other row of
17 houses that you may have skipped? I know it's -- it's
18 really complicated. And I was just curious how you guys
19 would handle --

20 MR. ALUETA: So I would recommend keeping it
21 simple. If you're measuring 500 feet from the parcel
22 that's coming in for the change, just measure 500 feet
23 regardless of whether or not there's a -- a roadway
24 parcel --

25 CHAIR COUCH: Okay.

1 MR. ALUETA: -- that's 40 feet. That means
2 he's gonna have to notify. Because, according to this,
3 you still have to notify the County, who owns the road.
4 And then you have to notify the next 460 feet, you know,
5 beyond the road. And 500 feet is -- is 500 feet, that's
6 more than a football field, when you think about how far
7 a notice goes out. So that you -- you are definitely
8 overkill -- not overkilling, but you are covering a good
9 amount of area in your notification.

10 CHAIR COUCH: Members, any questions before I
11 -- I have a few more, but I wanna let you guys chime in.
12 Mr. White?

13 COUNCILMEMBER WHITE: Just so that I can,
14 hopefully, get a little clearer on this, the protest --
15 initial protest may be filed by one individual, and then
16 it must be followed up by the validation of 40 percent
17 of the parcel owners, or does it need to have 40 percent
18 of the parcel owners in order to file initially?

19 MR. SPENCE: It would be 40 percent initially.
20 I mean, when -- when you -- when you apply for a Change
21 in Zoning, you provide public notice for the public
22 hearing held by the Planning Commission.

23 COUNCILMEMBER WHITE: Right.

24 MR. SPENCE: And you notify all the owners
25 within 500 feet. It's how do you measure all of -- how

1 do you measure within 500 feet? Is it -- you know, so
2 all these questions that we just said, how do you -- and
3 how do you measure the 40 percent? Is it the number of
4 landowners, 40 percent of the landowners within 500
5 feet? Is it the area of land within 500 feet?

6 COUNCILMEMBER WHITE: Yeah, I under -- I
7 understand that.

8 MR. SPENCE: Okay.

9 COUNCILMEMBER WHITE: My question is, in the
10 initial hearing, which I'm assuming that's when the --
11 when the protest needs to be lodged --

12 UNIDENTIFIED SPEAKER: Right.

13 COUNCILMEMBER WHITE: -- do you need to have
14 the 40 percent lined up at that point?

15 UNIDENTIFIED SPEAKER: No.

16 COUNCILMEMBER WHITE: Or just that -- just the
17 one to initiate the --

18 MR. ALUETA: You only --

19 COUNCILMEMBER WHITE: Protest.

20 MR. ALUETA: The initial public hearing at the
21 Planning Commission, anyone that files for a protest,
22 right, they say, I'm against the project or I have
23 concerns over the project, we then have to decipher, is
24 this a protest or concern. Most of the time, we'll
25 throw everybody in the protest, unless they're saying "I

1 support it". By the time they come to Planning
2 Commission, the neighbors have either organized and they
3 will send in letters saying "I protest", and then we
4 will start the calculation. Once we get a few, the
5 planner, because they're getting -- these notices go
6 out, there's a 45 -- 30-day notice and all that. When
7 we start getting these ahead of time, we start
8 calculating, okay, well, I got one, how many -- we call
9 our GIS people, we figure out how many parcels are in
10 the area, and we calculate either by -- in this case,
11 it'll be by the number of parcels, which will kinda make
12 it easier because we'll just say, okay, how many
13 parcels, how many protests. But do they match up,
14 meaning -- we're hoping that the people who send in are
15 not just somebody -- you know, the property's in Kihei,
16 and you got a guy from Haiku sending a letter of
17 protest. I mean, you do have to check that because
18 that's how people will (inaudible). You're hoping that
19 it'll be someone who got a notice in the paper or notice
20 in the mail because they were in the 500 feet. We then
21 make sure that that person is within that 500 feet, and
22 then we start to do a running total. And a lot of time,
23 you know, we'll get to 28 percent or 30 percent, but
24 we'll never meet the 40 percent threshold. Okay.

25 And the -- again, the threshold is only for

1 you guys, for the Council. It only determines whether
2 or not you gotta have a supermajority. In this case,
3 it's saying seven now. So --

4 COUNCILMEMBER WHITE: Okay. So from the
5 Planning Commission standpoint, it doesn't matter how
6 many?

7 MR. ALUETA: Right. Commission just votes.

8 COUNCILMEMBER WHITE: Just lodged as protests?

9 MR. ALUETA: Right.

10 MR. SPENCE: Right.

11 MR. ALUETA: Yeah. There is no -- they just
12 need a majority at the Planning Commission. Because
13 they're not an -- in -- in zoning changes, they're not
14 an approving body; they're just a recommending body to
15 the Council.

16 CHAIR COUCH: And -- and, Members, that --
17 just to remind you, currently, if 40 percent -- if
18 there's 40 percent that protest, seven Members of the
19 Council has to approve this Change in Zoning. This law
20 -- this bill is asking to change that to six and
21 determining how to calculate that 40 percent. Yes?

22 MR. SPENCE: Just -- thank you, Mr. Chairman.
23 Just for -- one more thing to put on the record. If the
24 County Council passes this ordinance, in whatever form,
25 it will not benefit Hanzawa Store. I don't want any

1 Council Member or anybody watching on Akaku thinking
2 that, you know, this is a workaround for that issue.
3 It's not that. That horse has left the barn. The
4 Planning Commission already held the public hearing. 40
5 percent of the people, it was finally -- I believe it
6 was finally determined that 40 percent had protested.
7 And so that's pau. So this is just -- so I don't even
8 know if that -- that thing is still alive or not. But
9 what this would do would clarify, from this point
10 forward, on what -- how the 40 percent would be.

11 CHAIR COUCH: And it's my understanding from
12 that specific case that there was a long, long, long
13 discussion as to what constituted 40 percent, is that
14 right?

15 MR. SPENCE: There were -- there was at least
16 three Committee meetings just dealing with this. And at
17 least where it was brought up, you know, a number of
18 times, and how do we calculate it. And the applicant
19 had hired a civil engineer to count 40 percent, and
20 other people argued it was 40 percent of the lot owners,
21 in which there were numerous owners on a couple of the
22 lots. So it got very, you know, complicated and very
23 frustrating for everybody involved.

24 And I think, for the sake of clarity, when
25 this happens next time, that's what we're trying to

1 clear up.

2 COUNCILMEMBER WHITE: So just for clarity, a
3 condominium, because it's a separate TMK, is considered
4 a parcel?

5 MR. SPENCE: No. And that's one of -- it's
6 one parcel, and that's one of the things that we should
7 consider as we go forward, is how to deal with that very
8 issue.

9 COUNCILMEMBER WHITE: Okay.

10 CHAIR COUCH: Members?

11 COUNCILMEMBER COCHRAN: Chair?

12 CHAIR COUCH: Ms. Cochran.

13 COUNCILMEMBER COCHRAN: Item No. 4, before, my
14 -- am I correct into thinking that this will hinder or
15 prohibit public input? Or is any type of intervention
16 in this section if the Change of Zoning is initiated by
17 yourself, Planning Director, and ourselves, the Council?
18 Is that what that's saying to me?

19 CHAIR COUCH: Go ahead.

20 MR. HOPPER: The term "intervention", there's
21 -- there's not interventions allowed in the -- in the
22 Council proceedings. There's -- there's the protest
23 which would require the heightened vote, so you would
24 need a supermajority vote. It looks like this section
25 is saying that unless the Planning Director or the

1 Council decides, in writing, that the protest provisions
2 would apply, there would be no protest -- there wouldn't
3 be any protest such that the Council would need a
4 supermajority to vote, if a proposal was initiated by
5 the Director or Council. So, I mean, there's no
6 intervention process, anyway, but this would, basically,
7 said -- say if the Change in Zoning is initiated by a
8 Council Member or the Planning Director, unless they
9 specifically say -- or it looks like it says unless they
10 specify in writing at the time of the Change in Zoning,
11 the protest provisions under this section shall not
12 apply to that Change in Zoning. So there would not be a
13 40 percent threshold and a -- and a requirement -- if
14 there is a 40 percent threshold met, a requirement that
15 you get a supermajority vote of Council for those types
16 of changes. So that's what's being proposed in Number
17 4.

18 COUNCILMEMBER COCHRAN: Okay.

19 MR. SPENCE: Mr. Chairman?

20 CHAIR COUCH: Yes.

21 MR. SPENCE: If -- if I could just comment on
22 that as well. The -- and we did hear testimony this
23 morning, I think from Lanai, regarding this. What I --
24 what I see -- so far, the Council initiated changes in
25 zoning, that I've seen, were map corrections or, you

1 know, other extreme hardship cases. So I don't see --
2 and, actually, to reflect -- to reflect the actual
3 property use; not to grant entitlements or new
4 development or new uses.

5 The -- the things that I would -- that the
6 Planning Director would initiate would be like
7 comprehensive zoning, say to zone according to the
8 Community Plans, to displace Interim zoning, my favorite
9 Temporary Zoning District from 50 years ago. We're
10 gonna have some issues come up with that possibly in the
11 near future. Or the (inaudible) thing where we have --
12 where our zoning maps are unclear, or we have properties
13 that are zoned Open Zone, but we have no such district.

14 So planning-initiated zoning for -- would be
15 for those kinds of things, to correct the gross errors
16 or to clarify, you know, lots of zonings, not -- not
17 to -- necessarily to -- well, I'm even trying to think
18 of a case where we would allow, well, much development,
19 if any. It's more just to -- to do the comprehensive
20 zoning, to follow up with the Community Plans, those
21 kinds of things.

22 COUNCILMEMBER COCHRAN: Okay. Very good.
23 That's comforting to know. Thank you.

24 MR. SPENCE: No. I'll say on the record, if
25 -- I mean, we're -- we're not gonna initiate zoning for

1 something like A&B's Waiale project or, you know, so
2 many of the other big projects that are out there.
3 That's just not gonna happen. So --

4 COUNCILMEMBER COCHRAN: Okay.

5 MR. SPENCE: -- you know, you can -- you can
6 take some assurance in that.

7 COUNCILMEMBER COCHRAN: Good. Thank you.
8 Thank you, Chair.

9 CHAIR COUCH: Thank you. Members? I have
10 another question. You know when we went through last
11 term with the short-term rental notifications, and we
12 had a little bit of a different take on that, where the
13 closer to the parcel, the more weight somebody had.
14 Now, that, I understand, is a little bit different
15 because that's a -- a smaller parcel that could have --
16 and -- and the use could have immediate effect on people
17 around and not so immediate. You know, one down
18 further, you know, one property further. Should we
19 consider something like that here as well, or is that --
20 is this too broad of a scope type notification here?

21 MR. ALUETA: Thank you, Mr. Chair. I think
22 it's -- it's -- again, it's a little too broad on the
23 scope. And you're looking at, again, like a 500-foot
24 level.

25 CHAIR COUCH: Uh-huh.

1 MR. ALUETA: You know, you got the CPs at --
2 at your 1,000-foot level looking down. And as a zoning
3 change, you get down to your 500-foot level of looking.
4 It's when you get down on the ground, as in the case of
5 STR permits or other developmental permits that are not
6 specific to that zoning category, where you are trying
7 to mitigate some specific impact. That's when you're
8 kinda making those notifications.

9 CHAIR COUCH: Okay. So that -- that type of
10 notification --

11 MR. ALUETA: Right.

12 CHAIR COUCH: -- requirement?

13 MR. ALUETA: Right.

14 CHAIR COUCH: Okay.

15 MR. ALUETA: That's why it's a little
16 different from a Change in -- where this one is for a
17 Change in Zoning, and dealing at the Council level.

18 CHAIR COUCH: Okay. All right. Members, any
19 further questions? Okay. So the -- the issue before us
20 here is to actually send this -- refer this to the
21 Planning Commission. It will come back to us after they
22 hear about it. And, hopefully, they'll discuss some of
23 the condo stuff. And if they decide to -- to say, well,
24 let's let Council see how they wanna deal with it, at
25 that time we'll devote a full Committee meeting on this.

1 So this is just now to get it down there. I don't see
2 any significant changes that anybody is concerned with,
3 unless somebody is concerned. Okay. If there's no --
4 yes?

5 MR. SPENCE: I would -- I would just note that
6 this is gonna go to all three Planning Commissions.

7 CHAIR COUCH: Correct.

8 MR. SPENCE: So there will be lots of really
9 interesting input from many different perspectives.

10 CHAIR COUCH: Yeah. And that -- and that's --
11 I mean, we've had one testifier today on this. And I'm
12 sure that, when it gets to the Commissions, it -- it
13 probably will get more.

14 So if there's no further discussion, I'll
15 entertain a motion to recommend the adoption of proposed
16 resolution entitled REFERRING TO THE LANAI, MAUI, AND
17 MOLOKAI PLANNING COMMISSIONS A PROPOSED BILL AMENDING
18 SECTION 19.510.040, MAUI COUNTY CODE, RELATING TO CHANGE
19 OF ZONING PROTESTS, and allow Staff to make
20 nonsubstantive revisions and the filing of County
21 Communication 13-76.

22 MS. BOUTHILLIER: Mr. Chair.

23 CHAIR COUCH: Oh.

24 COUNCILMEMBER WHITE: So move.

25 MS. BOUTHILLIER: (Inaudible).

1 CHAIR COUCH: Oh, okay. Yeah. All right. We
2 will not file. I will -- I will change that to allow
3 staff to make nonsubstantive revisions, if necessary,
4 and no filing. This is just to refer to the Planning
5 Commission. Yeah. Thank you. All right.

6 COUNCILMEMBER WHITE: So made the motion. We
7 need a second.

8 CHAIR COUCH: Okay.

9 COUNCILMEMBER COCHRAN: Second.

10 CHAIR COUCH: Okay. We have a motion from
11 Mike White and a second from Elle Cochran. Is there any
12 further discussion? Okay. All those in favor, please
13 say "aye".

14 COUNCIL MEMBERS: Aye.

15 CHAIR COUCH: Opposed? Motion carries,
16 five-zero. Thank you, Members. And two excused,
17 Council Chair Baisa and Vice-Chair of the Committee,
18 Victorino.

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1 VOTE: AYES: Chair Couch, Councilmembers Cochran,
2 Crivello, Guzman and White.
3 NOES: None.
4 ABSTAIN: None.
5 ABSENT: None.
6 EXC.: Vice-Chair Victorino and Councilmember
7 Baisa.

8 MOTION CARRIED.

9 ACTION: ADOPTION of resolution by C.R.

10 CHAIR COUCH: Okay. Now we're on PC-14,
11 Members. And we're -- we're almost done. I think we
12 can do one more before we do a break. Oh, boy.
13 Members, I would like to see if we can go to PC-20, and
14 then we'll talk about PC-14 at the end.

15 COUNCILMEMBER COCHRAN: All right.

16 CHAIR COUCH: If that's all right? If there
17 -- without objection. 'Cause I -- I feel that PC-14 is
18 going to have a big discussion.

19 UNIDENTIFIED SPEAKER: This?

20 CHAIR COUCH: Yeah. So without objections,
21 we'll go to PC-20.

22 COUNCIL MEMBERS: No objections.

23 ITEM NO. 20: MAXIMUM WALL HEIGHT IN AGRICULTURAL
24 DISTRICTS (CC 10-12)

25 CHAIR COUCH: Okay. Members, the Committee's
in receipt of the following: County Communication

1 10-12, from former Council Chair Danny A. Mateo,
2 transmitting correspondence dated December 11th, 2009,
3 from Jim Whitehead relating to the interpretation and
4 enforcement of the maximum wall height district standard
5 contained in the Agricultural District zoning ordinance,
6 Chapter 19.30A, Maui County Code.

7 The Committee is also in receipt of a
8 corresponding dated -- correspondence dated February
9 4th, 2010 from Council Chair Gladys C. Baisa
10 transmitting correspondence from the Planning
11 Commissions, along with proposed bill, to amend Chapter
12 19.04, Maui County Code, to allow one utility pedestal
13 wall per lot up to a maximum of seven feet in height and
14 seven feet in width.

15 The Committee is also in receipt of
16 correspondence dated April 8th, 2013, from the
17 Department of Corporation Counsel, transmitting a
18 revised proposed bill entitled A BILL FOR AN ORDINANCE
19 AMENDING CHAPTER 19.04, MAUI COUNTY CODE, RELATING TO
20 COMPREHENSIVE ZONING PROVISIONS AND CHAPTER 19.30A, MAUI
21 COUNTY CODE, RELATING TO AGRICULTURAL DISTRICT. The
22 revised proposed bill deletes the term "pedestal" and
23 clarifies that a utility wall includes a freestanding
24 wall or a portition -- portion of a wall designated to
25 support utility services.

1 We also have some comments from Planning,
2 Public Works and Corporation Counsel. And let's start
3 with, at least, Planning.

4 MR. ALUETA: Thank you, Mr. Chair. We're --
5 again, this was a result of, I guess, some enforcement
6 issues and to clarify the law to -- to allow for utility
7 walls within the setback area for the Agricultural
8 District.

9 As you know within 19.30A, when they adopted
10 the comprehensive Agricultural Bill, one of the
11 development standards that they wanted to have was they
12 said you can build walls greater than four feet of
13 height. It didn't preclude you from doing mounds or
14 anything else, or landscaping, but to have walls on --
15 within that setback area within the Agricultural
16 District. This was primarily to preserve the rule and
17 agricultural character of our ag areas, and, mostly, I
18 guess you could say, the ag lands down in Makena where
19 you have those huge walls along the roadway that's
20 actually zoned Ag. And that was one of the areas that
21 came about where people started building these boundary
22 walls. So when they adopted 19.30A, they put this
23 provision in regarding four-foot wall heights.

24 Little did we know that some people would try
25 to put their utilities on. And that the -- MECO has

1 different standards, which they require about a six-foot
2 high wall, to mount electrical sub-metering.

3 Again, people have a choice. They can either
4 put the wall outside of the 25-foot front yard setback
5 or have the electrical meters mounted on their houses.
6 What we found was some people with these large
7 agricultural lots chose to put their electrical utility
8 meters down by the roadway or within the setback area.
9 And so some -- these -- these walls were in violation of
10 the Zoning Code. Therefore, a lot of people got cited.

11 Council brought it up. It was discussed
12 thoroughly. And so the County Council asked the
13 Planning Department to look at a proposal that would not
14 necessarily allow for all the -- allow walls to be
15 built, but to allow for an exception which would be for
16 utility pedestal walls. And it's sorta -- now, it's
17 morphed into this utility wall. Because the intention
18 was just to have -- you can still do a four-foot wall,
19 that's the way it's written now, and then you can have a
20 section of that boundary wall be seven feet wide and
21 seven feet high in which you would mount your utilities.
22 And so you would be allowed only one of these per lot.
23 And, again, this -- so it could be either part of a
24 boundary wall, or it could just be a freestanding
25 utility wall, pedestal wall. But this provision or

1 amendment to 19.30A would allow this one exception to
2 the five-foot height maximum within the Agricultural
3 District.

4 UNIDENTIFIED SPEAKER: Four foot.

5 UNIDENTIFIED SPEAKER: You mean four foot
6 high.

7 CHAIR COUCH: Four foot high.

8 MR. ALUETA: I mean, four foot. Four foot
9 height max, yes.

10 CHAIR COUCH: And, Members, we're working off
11 the Communication, April 8th, 2013, memo to the Chair
12 from Mr. Hopper. So that's the one we'll be working off
13 of.

14 Mr. Alueta, before we get into the questions,
15 will this fix the issue that has cropped up at
16 Launiupoko where some of this started?

17 MR. ALUETA: For those with utility pedestal
18 walls, yes.

19 CHAIR COUCH: Right.

20 MR. ALUETA: But not boundary walls.

21 CHAIR COUCH: Correct.

22 MR. ALUETA: And -- and -- and this issue
23 comes up with other -- other agricultural subdivisions
24 in which they did this, it would also resolve that
25 problem.

1 CHAIR COUCH: Okay. All right. Members, any
2 questions? Mr. White?

3 COUNCILMEMBER WHITE: So you just mentioned
4 perimeter walls. My understanding is this four-foot
5 wall height applies to all walls on Ag lots or --

6 MR. ALUETA: Yes.

7 COUNCILMEMBER WHITE: So there's nothing that
8 -- you said that they can -- they can build a berm or
9 landscaping and do whatever they want. What is the
10 purpose of the four-foot height?

11 MR. ALUETA: That was just what was decided by
12 the Council at the time to maintain more of an open
13 area, but, also, allow for people who wanted to have a
14 four-foot boundary wall. You could still do a -- I
15 mean, you can do taller walls, but they have to be
16 outside of that 25-foot setback, front yard setback, and
17 15-foot side yard setback within the Agricultural
18 District.

19 COUNCILMEMBER WHITE: Oh, okay.

20 MR. ALUETA: So you would --

21 COUNCILMEMBER WHITE: You just set it back?

22 MR. ALUETA: You just have to set it back,
23 that is correct.

24 And in this case -- but they wanted to make
25 one exception because -- so the meter reader, I guess,

1 didn't have to drive all the way up to someone's
2 property, they wanted to have a little more privacy. So
3 these could be up along the roadway. A lot of times
4 people can consolidate -- the reason we -- consolidate
5 not only their electrical, but their telephone, their
6 cable, and maybe even stick a mailbox on it, if they
7 want. But they wanted to make -- the amendment to the
8 ordinance allows for it to be big enough to accommodate
9 more than one meter. That's why it's seven feet by
10 seven feet, not just your standard four-foot by six-foot
11 high wall. We wanted to allow for some flexibility
12 because there are some -- maybe a lot with a flag lot.
13 So I think based on my discussions with MECO, with Maui
14 Electric, I think you could put like three meters on the
15 size of this wall.

16 COUNCILMEMBER WHITE: Okay. There's nothing
17 that prohibits somebody, if they want privacy, from
18 planting bamboo all along their boundary, right?

19 MR. ALUETA: No.

20 COUNCILMEMBER WHITE: So the -- the wall
21 height really doesn't accomplish much in the way of
22 keeping things open, except you can see over a four-foot
23 wall. If somebody plants bamboo right behind that or --
24 instead of a wall, you're not gonna see anything from
25 the road. I'm not sure what this -- I mean, I

1 understand that this doesn't address the four-foot
2 height, but we're just talking about providing
3 authorization for a seven -- seven-by-seven-foot utility
4 wall.

5 UNIDENTIFIED SPEAKER: Correct. That's all it
6 is.

7 COUNCILMEMBER WHITE: Okay.

8 CHAIR COUCH: Okay. Mr. Guzman?

9 COUNCILMEMBER GUZMAN: Thank you, Chair. I
10 just had a question. On the -- if we're talking about a
11 utility wall, a seven-foot or six-foot utility wall, you
12 don't have any regulations in terms of the length of the
13 wall, do you? I mean, it can be seven feet long as far
14 --

15 UNIDENTIFIED SPEAKER: No.

16 COUNCILMEMBER GUZMAN: Seven -- seven feet is
17 the length. And the height is --

18 UNIDENTIFIED SPEAKER: Seven feet.

19 COUNCILMEMBER GUZMAN: Seven feet. Okay.

20 UNIDENTIFIED SPEAKER: Correct.

21 COUNCILMEMBER GUZMAN: Thank you.

22 CHAIR COUCH: Anybody else? Okay.

23 Mr. Hopper, any comments from you? Okay. Wow. That
24 was easy, so far. If there's no further discussion,
25 I'll entertain a motion to recommend passage on first

1 reading of a proposed bill entitled A BILL FOR AN
2 ORDINANCE AMENDING CHAPTER 19.04, MAUI COUNTY CODE,
3 RELATING TO COMPREHENSIVE ZONING PROVISIONS, AND CHAPTER
4 19.30A, MAUI COUNTY CODE, RELATING TO AGRICULTURAL
5 DISTRICT, and to allow Staff to make nonsubstantive
6 revisions, and the filing of County Communication 10-12.

7 COUNCILMEMBER WHITE: So moved.

8 COUNCILMEMBER GUZMAN: So move.

9 CHAIR COUCH: So we gotta --

10 COUNCILMEMBER GUZMAN: Second.

11 CHAIR COUCH: A -- a motion by Mr. White and
12 seconded by Mr. Guzman. Any further discussion? All
13 those in favor, please say "aye".

14 COUNCIL MEMBERS: Aye.

15 CHAIR COUCH: All those opposed? The motion
16 carries, five-zero. Two excused, Member Baisa or Chair
17 Baisa and Member Victorino.

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1 VOTE: AYES: Chair Couch, Councilmembers Cochran,
2 Crivello, Guzman and White.
3 NOES: None.
4 ABSTAIN: None.
5 ABSENT: None.
6 EXC.: Vice-Chair Victorino and Councilmember
7 Baisa.

8 MOTION CARRIED.

9 ACTION: FIRST READING of bill and FILING of
10 communication by C.R.

11 CHAIR COUCH: Okay, Members. Thank you.

12 NO. 14: ROADSIDE STANDS AND FARMER'S MARKETS IN THE
13 AGRICULTURAL DISTRICTS (CC 13-85)

14 CHAIR COUCH: Now, on to PC-14. And I think
15 that's our final one for the day. All right. Members,
16 this Committee is in receipt of County Communication
17 13-85, from Councilmember Cochran, transmitting a
18 proposed resolution entitled REFERRING TO THE LANAI,
19 MAUI, AND MOLOKAI PLANNING COMMISSIONS A PROPOSED BILL
20 AMENDING CHAPTER 19.30A, MAUI COUNTY CODE, RELATING TO
21 ROADSIDE STANDS AND FARMER'S MARKETS IN THE AGRICULTURAL
22 DISTRICT.

23 The purpose of the proposed resolution is to
24 refer to the Planning Commissions a proposed bill
25 entitled A BILL FOR AN ORDINANCE AMENDING CHAPTER
19.30A, MAUI COUNTY CODE, RELATING TO ROADSIDE STANDS

1 AND FARMER'S MARKETS IN THE AGRICULTURAL DISTRICT.

2 The purpose of the proposed bill is to allow,
3 as accessory uses, in the County Agricultural District,
4 subject to certain restrictions, one, roadside stands
5 owned and operated by a producer for the display and
6 sale of agricultural products grown in Hawaii and
7 value-added products that were produced using
8 agricultural products grown in Hawaii, and, two,
9 farmer's markets owned and operated by a producer for
10 the display and sale of agricultural products grown in
11 Hawaii, value-added products that were produced using
12 agricultural projects -- products growing -- grown in
13 Hawaii, and logo items relating to the producer's
14 agricultural operations and other food items.

15 Before we go with Mr. Spence or Mr. Alueta,
16 I'd actually like to hear from Ms. Cochran, since you
17 brought the bill up.

18 COUNCILMEMBER COCHRAN: Sure. Thank you,
19 Chair.

20 Basically, simply just trying to conform with
21 the State statute that's currently existing, just to be
22 in -- consistent with that at this point.

23 Also, hoping to -- we had the one testifier,
24 Mr. Gene, who had testified in favor of this. You know,
25 he grow -- he has his farming elsewhere, and he'd like

1 to sell it at the stand. And today's current codes
2 wouldn't allow that.

3 I had another email sent in, in regards to
4 saying that this would actually open up more leeway for
5 people to sell wholesale products, not so much, you
6 know, homegrown, Maui grown stuff, but I tend to
7 disagree. I'm trying to make it so a -- to discourage,
8 you know, these -- I think he called it farm -- what
9 does he call them? Farm -- well, they're peddler's
10 markets, basically. So you can go to Whole Foods and --
11 and sell -- you know, buy bulk and then sell it as if
12 you had grown it kinda thing.

13 So that's kind of it, real briefly, so we can
14 lead into discussion at this point. It's just trying to
15 encourage people and farming and selling their produce.
16 You know, Maui grown, especially, locally. And,
17 hopefully, this will help urge that and implement those
18 practices a little easier, a little better and in a more
19 conforming style in regards to State -- State statutes.

20 CHAIR COUCH: Okay. Department, your thoughts
21 on this legislation, and then Corp. Counsel maybe can
22 discuss how this pertains to HRS 205. Department?

23 MR. ALUETA: Currently, the amendment was done
24 in 19 -- to 19.30A, again, to encourage farmers and to
25 be able to have 'em a direct access to the retail market

1 from their property for products they've grown and
2 value-added products that they produce on-site.

3 In many of our areas, we -- we do say within
4 the County of Maui. So not just grown on the property.
5 You could -- in many of our Special Use Permits, that's
6 what we've -- we've allowed. So I'm not sure if --
7 limitation maybe it could be for County of Maui, not
8 just grown in -- in the State of Hawaii.

9 But another concern is what if the person has
10 no farm? So what we typically see at some of these
11 farmer's markets is people go down to the co-op and will
12 buy the produce, they're locally grown, they're bought
13 from the co-op, and then they will take them to the swap
14 meet or the farmer's markets. In extreme cases, they're
15 bringing brought -- being brought in from other
16 countries, but your proposal, as well as other proposals
17 we've seen, will limit it. You saw us have our -- our
18 definition for farmer's markets in the last business
19 bills you saw where we limited to products grown and
20 processed in the County of Maui.

21 You could do it as -- I mean, I have no real
22 objections to the amendments as long as you realize that
23 will occur. Okay. So as long as you got no problem
24 with that, then I don't think the Department has much of
25 an issue, either. It's gonna be -- so anybody in the

1 agricultural lands, regardless of whether they have a
2 farm or not, will be able to set up a farmer's market or
3 a roadside fruit stand and sell any product as long as
4 it's agricultural products grown in the State of Hawaii.
5 So as long as you're -- you're comfortable with that,
6 then we're fine.

7 CHAIR COUCH: Members, any comments?
8 Ms. Cochran, you -- I know you stated why you brought it
9 up. Is there any further comment that you have on that,
10 or wanna open it up for everybody to discuss?

11 COUNCILMEMBER COCHRAN: I mean, I can open up
12 -- open it up for everyone else to chime in and give
13 their thoughts and ideas to what's being proposed here.

14 CHAIR COUCH: Okay. And, Mr. Guzman, as the
15 Chairman of the Committee that deals with agriculture,
16 do you have any comments?

17 COUNCILMEMBER GUZMAN: It's just in terms of
18 the drafting. I like the intent. And I have to applaud
19 my colleague for the intent. I know that our farmers
20 and our agricultural industry needs that additional
21 stream of revenue, especially in these hard times, but I
22 also agree with the Planning Department in terms of the
23 language set forth in this ordinance as being too broad
24 and too general, and could possibly lead to an abuse of
25 creating these peddler type markets.

1 First of all, I'd like to know what is the
2 definition of producer in this -- in this ordinance?
3 Because nowhere in our Code is there language of a
4 producer. And that's probably one of the main questions
5 that I have right now, is that, under this draft, it
6 says that -- that the -- I guess, the roadside stand be
7 owned and operated by a producer for the display and
8 sale of the agriculture products. What's the producer?
9 Is he the landowner? Is he the -- is he like what
10 Mr. Alueta was saying, a person that could buy products
11 from another area and then come in and sell it at this
12 roadside stand?

13 And then another question was the ordinance,
14 this amended section, changes -- or at least deletes
15 agricultural products in the first sentence here, in
16 Number 3, which is specifically defined in the -- in the
17 ordinance -- in our section of definitions, and replaces
18 it to roadside. Now, what is roadside? I mean, it's
19 just a word that they've replaced with a formalized
20 definition, which is agricultural products. And they're
21 replacing it to -- with roadside. But there's no
22 definition of roadside. So that's another area.

23 I have more. Would you like to --

24 UNIDENTIFIED SPEAKER: Well --

25 COUNCILMEMBER GUZMAN: I'm sure the Department

1 would chime in on some of this stuff --

2 CHAIR COUCH: Yeah.

3 COUNCILMEMBER GUZMAN: -- that I --

4 CHAIR COUCH: Let's have some comment from
5 Mr. Hopper, then the Department.

6 MR. HOPPER: Yeah. I'd -- I've not had an
7 opportunity to review and -- and approve this -- this
8 ordinance, because it hasn't gone to the Planning
9 Commissions yet, but just to note that I think a lot of
10 this language tracks pretty specifically the Hawaii
11 Revised Statutes language on what's permitted in
12 Agricultural Districts. There's -- one of the permitted
13 uses in the state -- and, again, there's -- there's --
14 obviously, there's -- there's a State Agricultural
15 District in HRS 205 that has a list of permitted uses on
16 different classifications of lands. And in that
17 section, which is 205-2A, and then I think subsection --
18 no, sorry -- D-15. There's a -- one of the permitted
19 uses is agricultural-based commercial operations,
20 including, colon, and there's three things included.
21 And one of the things that the State law says -- and,
22 again, I don't see any definitions here. The State law
23 states a roadside stand that is not an enclosed
24 structure owned and operated by a producer for the
25 display and sale of agricultural products grown in

1 Hawaii and value-added products that were produced using
2 agricultural products grown in Hawaii. And I think a
3 lot -- so I think a lot of this language is taken from
4 -- from the HRS Section. So perhaps some guidance.

5 And, again, I can't immediately locate a
6 definition for a couple of those terms in the HRS.

7 COUNCILMEMBER GUZMAN: Yeah. That was my
8 point as well. The HRS 205 is very vague in itself.

9 Additionally, you know, there is no minimum
10 threshold on the amount of Hawaii agricultural products
11 in the -- in the merchandise. So, basically, what this
12 ordinance, this amended ordinance, somewhat says,
13 loosely, is that you can take one bean of -- of coffee
14 bean made -- produced in Kona and, basically, put it in
15 -- into another bag that's from Columbia and call it a
16 value-added product. So I think that's another issue
17 where -- wherein I have problems with it. The HRS
18 doesn't define it, either.

19 There's -- there's some more, if you'd like me
20 to go forward to it, but -- additionally --

21 CHAIR COUCH: Well, let's see if the
22 Department has comment on that.

23 COUNCILMEMBER GUZMAN: Oh, yeah.

24 CHAIR COUCH: Those -- those statements.

25 MR. SPENCE: First, let me say I also

1 appreciate the -- the effort and the thought that, you
2 know, we should clarify this and -- and make it easier
3 to -- to do some of these things.

4 We also have the question on producer?

5 UNIDENTIFIED SPEAKER: Yes.

6 MR. SPENCE: I don't know what that is. Is
7 that a farmer? Is that the -- the person who's
8 producing the value-added whatever it is? For some
9 reason, I see a roadside stand -- my idea of what a
10 roadside stand should be -- that was a good call -- with
11 bottles of kimchi lined up, you know, from Hawaii grown
12 value-added manufacturing or, you know, bottling,
13 pickling. So, yeah. I -- I don't know about the one
14 coffee bean, but, conceivably, you know, that kinda
15 thing could take place.

16 We have a lot of very creative people in our
17 County.

18 UNIDENTIFIED SPEAKER: Producers.

19 MR. SPENCE: Entrepreneurs. Right? So I
20 think the -- I think the intent is really good. And I
21 think we can clarify a lot of these things. But they're
22 good questions to ask.

23 COUNCILMEMBER GUZMAN: And I also -- in terms
24 of that language in here that calls for other products.
25 And so I need clarification on what those other products

1 are. Are those soda, hot dogs? I don't know what
2 that -- what that means. I don't want a mini mart on
3 every Ag lot, you know.

4 I like the -- the original ordinance where it
5 confines it to County, Maui County grown, but I totally
6 understand in terms of trying to promote the -- the
7 entire State. But I think we need to have some measures
8 in there, tweak it so that we can somehow have this more
9 manageable in terms of enforcement, because I can see
10 this just getting away from us.

11 Another aspect would be the logo. A court --
12 the way I read this ordinance is, basically, the logo
13 that -- that, basically, the agriculture farmer would be
14 allowed to place on an item to sell is not defined. So
15 you can put a sticky and say "Don Guzman Farm" and put
16 it on a Gucci shirt, or a Nike shirt or whatever, if --
17 if you're not, you know, violating any, you know,
18 propriety [sic] rules, but, basically, put something as
19 generic as that and sell it. So I don't know what logo
20 is. So I think -- the intent is really good, I like it,
21 but I think we -- it needs to have a little bit -- it
22 needs to be polished more.

23 MR. ALUETA: If I may, Mr. Chair?

24 CHAIR COUCH: Go ahead.

25 MR. ALUETA: I think -- I agree with you.

1 That -- that was the kind of things I looked at, is like
2 what is the other ones. And so I'll give you a little
3 bit of background from where agricultural product stands
4 came from and where some of this language, actually, got
5 stuck into, I think, besides the State language, is that
6 -- and at the same time, how much of an issue is it, and
7 do you go through the regulations before you really
8 don't really care? I mean, it's not -- there's not
9 gonna be that much of an issue. You see what I'm
10 saying? It's that, do we care? That's why I asked, do
11 you really care? If somebody starts to sell a few logo
12 wear from their place, and they're selling agricultural
13 products, do we really need to get that nitpicky? Are
14 we more concerned about having the ag products get out
15 to the market, if that's the larger goal, and we kind of
16 don't worry about it.

17 But long ago, I mean, Maui Land & Pine, when
18 they were still Maui Land & Pine, okay, they -- on old
19 Haleakala Highway, they wanted to do a -- a farmer --
20 basically, a market. They didn't grow really that much
21 pineapple on it, but that's where they wanted to have
22 the tour buses come, and they would sell logo wear,
23 pineapple, do pineapple chutney and all this other stuff
24 to promote their company. I mean, this is a company
25 that had 15,000 acres in production, basically. And

1 they, basically, got shot down for -- for a Special Use
2 Permit up on Old Haleakala Highway, on their own
3 property, because they weren't growing any, I guess,
4 pineapple on that property at that time. And people
5 viewed it as a -- a footstep or door into
6 commercializing that area.

7 And so from that, there was -- the State law
8 changes. That's why there was some changes in the State
9 law, because they said, hey, we gotta be able to support
10 some of our -- even our big farmers need help, not just
11 our -- our little guys. And so the laws were expanded
12 to allow -- to not be so specific to the island or the
13 County. So it was Statewide. That was part of -- that
14 was from -- that's how the State -- from the State side,
15 that push came about.

16 Now, how we regulate it now on -- in the old
17 days was everything was a Special Use Permit. Okay. So
18 when we amended the Code in 19 -- 19.30A, in '99, for
19 the Ag -- the Ag Bill, that's when we said how big are
20 we issuing Special Use Permits. 'Cause we were issuing
21 Special Use Permits, State Land Special Use Permits --
22 and, in some cases, had to come to Council for
23 Conditional Permits -- okay -- for fruit stands out in
24 Hana and in Keanae and in Wailua, Wailua Nui. And so
25 it's -- and Nahiku. And so you -- we kinda got -- we

1 had to set up a parameter.

2 And that's where the County's came about with
3 the 300 square feet, 50 percent being open, and was
4 being as an allowed use. And we limit it to the County
5 of Maui, you know, for the -- for the growth.

6 Even though we allowed it in the County,
7 right, if majority of their products are being sold is,
8 basically, Costco products -- and, trust me, I been to
9 Costco and I see all the fruit stand and farmer markets
10 that are along all the way to Hana loading up at Costco
11 for their ice cream and their cases of soda that they
12 sell at their fruit stands all along Hana Highway. If
13 they -- a -- a majority of their products is not farm
14 related, they require State Special Use Permit. And in
15 some cases, we'll even say, hey, you really need to get
16 a Conditional Permit from the Council. Okay. Most of
17 them will try to stay within -- they'll try to keep
18 their products local. Okay.

19 But it's hard. It's -- it's -- it's a moving
20 target for many of these people. And you have millions
21 of tourists going to Hana, and there's very limited
22 commercial establishments. I mean, realistically, once
23 you leave Paia, there is no real commercial store until
24 you hit Hana again.

25 Our famous applicant Skippy, or -- along what

1 we call the strip mall, okay, is -- it's a constant
2 moving target. He sells smoked marlin, or he claims I
3 -- I caught it off of my land. You mean you caught a
4 marlin off your -- off the shore? I mean, yeah. Or
5 he's growing coffee, he has wild coffee. Oh, I'm
6 serving coffee. I mean, it's -- it's a moving target.
7 But if you go out there, what does it look like? It --
8 I mean, if you've been there, I mean, you know what it
9 looks like.

10 And so I -- I see your concern, but, at the
11 same time, how much of a problem is it? That -- that --
12 that's where -- how much of a problem is the free market
13 that's going on along Hana Highway with some of these
14 fruit stands going on? How much are turning into bona
15 fide full-on commercial operations where you wanna say
16 maybe you need a Change in Zoning? And so I think it's
17 always gonna be a moving target.

18 Again, I think this is -- having our County
19 laws comport with the State law, I -- I -- I agree that
20 that's -- that's why -- I mean, so I kinda like the
21 amendment in that aspect. But the County can be more
22 restrictive. And -- and so you take that into mind. So
23 it's just -- when this comes back to you, I mean, you'll
24 get your comments from the different Commissions, but
25 keep that in mind, like how much of a issue is this and

1 how much of a concern could it be where you have
2 outright commercialism. And then what -- how do you
3 define what other product, what's the percentage?

4 For us, during the Special Use Permit process,
5 it's always been, is the majority of the products being
6 sold agricultural products grown in the County of Maui,
7 or are they imported from Washington State, you know
8 what I mean.

9 And -- and then, also, is a person with the
10 fruit stand having the fruit stand because he has an
11 agricultural activity? Or they are producing an
12 agricultural product, value-added product, themselves?
13 Or how much is it because their fruit stand is a
14 convenient location along Hana Highway and they can sell
15 soda and water? And that's where I'm -- as a farmer, I
16 want to see the farmer have the stand.

17 COUNCILMEMBER GUZMAN: Oh, yeah.

18 MR. ALUETA: Not the -- not the person who
19 just happens to have that small little lot along Hana
20 Highway and -- and is -- is location, location, location
21 on the commercial side. Okay. So I --

22 COUNCILMEMBER GUZMAN: Well -- I'm sorry to --

23 MR. ALUETA: No, no. I'm done.

24 COUNCILMEMBER GUZMAN: But -- I understand
25 where you're coming from, because what -- what currently

1 that -- what we have right now is you have a set
2 standard and measuring how a -- I guess this would be
3 called an agricultural product. What's the original
4 ordinance? Agricultural -- well, any -- anyway, the
5 current ordinance as we have it, you have this standard
6 or measurement of -- of enforcement. And when you go to
7 one of those -- those places, you have kind of a set
8 standard what you're looking for. This current
9 amendment, this current ordinance doesn't have any kind
10 of measurement as -- as to what to look for in terms of
11 what is a Hawaii product and what is an added value
12 product produced in -- from agricultural Hawaii.

13 So what that means to me is, basically, you
14 can take papaya that you buy from Oahu that's grown in
15 India and place it in a package and put lavender
16 freshener in -- into the package, send it to Maui. And
17 it's added value because of the freshness of the
18 lavender that's included in the package, and now it is
19 added value product of Hawaii. I see -- you know, you
20 see this in big corporations all over the world. And
21 when it comes to technology, that's what's happening.

22 But I think this is a -- you know, I like the
23 direction of this ordinance. We just need to clean it
24 up so that it's manageable and enforceable. And I'd
25 like to see what the Commission comes up with. And,

1 eventually, when the Planning Commission is pau with it,
2 I'd like to at least request a referral to my Committee
3 to see if we can vet some of that stuff through and make
4 sure, and then refer it back to the Planning Committee.
5 But thank you.

6 CHAIR COUCH: Members? Ms. --

7 COUNCILMEMBER COCHRAN: Oh, no. Go ahead.

8 CHAIR COUCH: Mr. White, then Ms. Cochran.

9 COUNCILMEMBER COCHRAN: I'll close out
10 comments.

11 COUNCILMEMBER WHITE: Thank you, Chair. I
12 think Mr. Guzman has done an outstanding job of covering
13 some of the issues. I like the direction. And I thank
14 Ms. Cochran for bringing this forward, because I think
15 -- I think we're all focused on making sure that we
16 allow our true farmers the ability to set up stands to
17 sell not only their own products, but, also, to have
18 enough of a variety of things to offer so that people
19 will stop for something other than just the two or three
20 products that they grow on their own land. I don't have
21 a problem with them selling their own logo items. I
22 don't have a problem selling -- with them selling
23 value-added items.

24 So I think this is headed in the right
25 direction, but Mr. Guzman brings up enough concerns that

1 I'm -- I'm wondering whether we should maybe address
2 some of them before we send it to the Commission rather
3 than not providing them a little bit clearer direction,
4 and then having to fix it when it comes back. So I
5 don't know whether you're thinking that we might be able
6 to defer this, and have Mr. Guzman and Ms. Cochran dress
7 it up a little bit more. Or --

8 CHAIR COUCH: Well, after hearing what
9 Mr. Guzman said, and, you know, having had some
10 criticisms from the Planning Commission, saying you guys
11 are sending us stuff that you want us to fix as opposed
12 to you fixing it, then sending it to us, I -- I would
13 concur with Mr. Guzman in sending it -- referring it to
14 his Committee for -- for a long discussion and -- and
15 some study and -- and get it tweaked to what Ms. Cochran
16 intended and what I think everybody wants. But, also,
17 we need to prevent the abuses, potential abuses. I know
18 you can't prevent everything, but we just -- we don't
19 wanna see, you know, mile after mile of roadside stands
20 everywhere. So somewhere in between, I think we can --
21 we can craft something at Mr. Guzman's Committee, and
22 then bring it back here, and then send it to the
23 Planning Commission.

24 Ms. Cochran, you had some comments you wanted
25 to make?

1 COUNCILMEMBER COCHRAN: Yeah. Thank you for
2 everyone's comments. And -- and that's fine. I mean, I
3 -- I brought this to the table so we all can discuss it,
4 vet it out, work it through. And I get that everybody
5 understands the intent of this. And, you know, it's
6 just the simple mom and pop who wants to grow some stuff
7 on their land, set up a stand outside and sell their
8 stuff. You know, I mean, really. And I understand
9 we're not gonna catch all the people that aren't
10 following the rules. That happens all through planning
11 and permitting, we just been through all this,
12 inspectors, we have not enough eyes and ears.

13 But, you know, again, Mr. Alueta, brought up a
14 good point. The stands all along Hana, yeah, they're
15 selling their homemade bakeries, and their fruits and
16 their flowers are sold there, but they also got a cooler
17 of water and sodas and -- I mean, is that so -- so -- so
18 I know it's just -- it just comes with the territory in
19 a sense. Yeah, I got a stand in Honokohau, I got stands
20 out at Kahakuloa. You know, these people -- the
21 visitors love it. And they're not be -- they're not
22 harming peoples, oh, my God, guest tourist experience
23 when they come here because of them. So that's all I'm
24 trying to, you know, encourage and make it easier to do.

25 I think the actual true farmers and -- and

1 most of the lots are huge. This -- this narrows it down
2 to one roadside stand per lot, you know, or per --
3 and -- and selling of agricultural products. And, I
4 mean, I guess unless the shirt was grown out of
5 homegrown cotton, which I personally do have cotton in
6 my yard, I could, then -- so it's just -- I mean,
7 really, as Mr. Alueta pointed out, how much of a, you
8 know, eyesore or whatever, how bad is it, if
9 something -- a product from another part of this State
10 gets sold here. We're still helping one another. We're
11 still drumming of the economy for our State and what's
12 produced here in our State.

13 I think the issue is the whole Costco thing,
14 the -- the importing of the outside items, that at least
15 these little roadside stands can help, you know,
16 discourage that much more coming into our -- you know,
17 food security issues can be addressed this way and
18 what-have-you, that we all preach and talk about.

19 So, again, I'm more than happy to say if we
20 wanna run it through Mr. Guzman's Committee and really
21 sit down and put our heads and thoughts and hearts into
22 this, great, I support that. And then run it through
23 the Planning Commissions and get that much more input.
24 But I hope to see a really -- a product that comes out
25 of this that's gonna be easier for people who truly,

1 truly wanna sell what they grow and sell what they make.
2 And, you know, that's kind of the whole intent. So
3 thanks for this opportunity.

4 CHAIR COUCH: With that, Members, we could
5 still have a little bit further discussion, but I'm
6 going to take a five-minute recess, 10 after, for some
7 procedural issues. So five-minute recess. ...(gavel)...

8 RECESS: 3:06 p.m.

9 RECONVENE: 3:12 p.m.

10 CHAIR COUCH: ...(gavel)... Okay. The
11 Planning Committee meeting of May 21st, 2013 will come
12 back to order. And, Mr. Guzman, I guess you have a new
13 logo for your farm now?

14 COUNCILMEMBER GUZMAN: I guess my staff heard
15 me on TV and produced a Don Guzman Farms logo.

16 CHAIR COUCH: Oh, there you go. Perfect.

17 All right. Members, I checked with Staff on
18 how to do this, 'cause this doesn't happen very often.
19 So what I would like to do, I'll entertain a motion to
20 refer this matter to the Economic Development, Energy,
21 Agriculture and Recreation Committee. And from there,
22 they can tweak it and then send it to the Planning
23 Commission. It doesn't have to come back here, so it
24 saves a bunch of steps. So I'll entertain a motion to
25 refer this item to Economic Development, Energy and

1 Agriculture and Recreation Committee.

2 COUNCILMEMBER COCHRAN: Chair, so moved as
3 stated.

4 COUNCILMEMBER GUZMAN: Second.

5 CHAIR COUCH: Okay. It's been moved by
6 Ms. Cochran and seconded by Mr. Guzman to refer this to
7 Mr. Guzman's Committee. Any further comments?

8 COUNCILMEMBER COCHRAN: No. I just appreciate
9 this opportunity.

10 CHAIR COUCH: Okay. All those in favor,
11 please say "aye".

12 COUNCIL MEMBERS: Aye.

13 CHAIR COUCH: Opposed? Motion carries,
14 five-zero.

15 VOTE: AYES: Chair Couch, Councilmembers Cochran,
16 Crivello, Guzman and White.

17 NOES: None.

18 ABSTAIN: None.

19 ABSENT: None.

20 EXC.: Vice-Chair Victorino and Councilmember
Baisa.

21 MOTION CARRIED.

22 ACTION: REFERRAL of C.C. 13-85 to the Economic
23 Development, Energy, Agricultural and
Recreation Committee by C.R.

24 CHAIR COUCH: And we'll -- Staff, just a
25 question. We're gonna leave this -- this Communication,

1 then, just moves with them, is that correct? So it's no
2 longer in this Committee? Okay. I just wanted to
3 double-check that.

4 Members, that -- that being the last bit of
5 business we have for the day, I really appreciate your
6 taking the extra day, and for most of the day. We got a
7 lot of things off of the agenda, and clearing it up for
8 some pretty heavy duty stuff coming here after July. So
9 I wanna thank this -- the Administration, Joe and Will.
10 You guys did a great job. And Michael, thank you very
11 much. And, of course, Staff, Gina and Yvette. And
12 thank you very much. This meeting is adjourned.

13 ADJOURN: 3:20 p.m.

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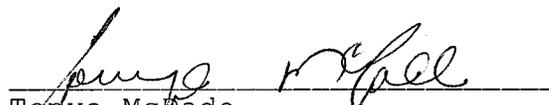
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CERTIFICATE

I, TONYA McDADE, Hawaii Certified Shorthand Reporter #447, do hereby certify that the electronically-recorded proceedings contained herein were, after the fact, taken by me in machine shorthand and thereafter was reduced to print by means of computer-aided transcription; and that the foregoing represents, to the best of my ability, a true and accurate transcript of the electronically-recorded proceedings provided to me in the foregoing matter.

I further certify that I am not an employee nor an attorney for any of the parties hereto, nor in any way concerned with the cause.

DATED this 13th day of June, 2013.



Tonya McDeade
Registered Professional Reporter
Certified Realtime Reporter
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