

PLANNING COMMITTEE
Council of the County of Maui

MINUTES

August 1, 2013

Council Chamber, 8th Floor

CONVENE: 9:02 a.m.

PRESENT: VOTING MEMBERS:

Councilmember Donald G. Couch, Jr., Chair
Councilmember Michael P. Victorino, Vice-Chair (out 11:39 a.m.,
in 11:48 a.m., out 2:19 p.m.)
Councilmember Gladys C. Baisa
Councilmember Elle Cochran
Councilmember Stacy Crivello
Councilmember Mike White (out 12:03 p.m., in 1:50 p.m.)

NON-VOTING MEMBERS:

Councilmember G. Riki Hokama (in 10:38 a.m.)

EXCUSED: VOTING MEMBERS:

Councilmember Don S. Guzman

STAFF:

Regina Gormley, Legislative Attorney
Yvette Bouthillier, Committee Secretary

Ella Alcon, Council Aide, Molokai Council Office (via telephone conference
bridge)

Denise Fernandez, Council Aide, Lanai Council Office (via telephone conference
bridge)

Dawn Lono, Council Aide, Hana Council Office (via telephone conference
bridge)

ADMIN.:

William Spence, Director, Department of Planning
Ann T. Cua, Planner VI, Current Planning Division, Department of Planning
(PC-9, PC-11, PC-16)
Joseph W. Alueta, Administrative Planning Officer, Department of Planning
(PC-30)
David M. Yamashita, Planner VI, Long-Range Planning Division, Department of
Planning (PC-22)
Gina M. Flammer, Planner V, Current Planning Division, Department of Planning
(PC-16)

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Michael J. Hopper, Deputy Corporation Counsel, Department of the Corporation
Counsel

OTHERS: Lucienne de Naie (PC-15, PC-9, PC-11)
Michael Gronemeyer (PC-30)
Butch Gima (PC-15, PC-22), Lanai Council Office (via telephone conference)
Lynn McCrory, Senior Vice President of Government Affairs of Pulamalani
(PC-22)
Shelley Maddigan, President, Kula Community Association (PC-15, PC-9, PC-
11)
Thomas Croly (PC-16)
Netra Halperin (PC-16, PC-15, PC-9)
Ron McOmber (PC-15, PC-22), Lanai Council Office (via telephone conference)
Jack Naiditch (PC-30)
Dick Mayer (PC-15, PC-9, PC-11)
Michael Covich (PC-15)
Others (5)

PRESS: *Akaku: Maui Community Television, Inc.*

CHAIR COUCH: Good morning. Will the Planning Committee of August 1, 2013 please come to order? It's about 9:02. And I wanna remind everybody in the Chambers to please turn off your cell phones or any other noise-making devices or at least put them on stun so we don't have disruption in the Chambers. I want to welcome my Committee voting Members. Let's see. We have Committee Vice-Chair, Mike Victorino. Good morning.

VICE-CHAIR VICTORINO: Good morning, Chair.

CHAIR COUCH: We have Council Chair Gladys Baisa. Good morning.

COUNCILMEMBER BAISA: Good morning, Chair.

CHAIR COUCH: And then, just right down the row, we have Councilmember Stacy Crivello. Good morning.

COUNCILMEMBER CRIVELLO: . . . *(Inaudible)* . . .

CHAIR COUCH: And Councilmember Elle Cochran.

COUNCILMEMBER COCHRAN: Aloha, good morning, Chair.

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CHAIR COUCH: Good morning. Councilmember Mike White.

COUNCILMEMBER WHITE: Good morning.

CHAIR COUCH: And excused is Councilmember Don Guzman. Alright, Members, we have no non-voting Members here today. From the Administration, we have Will Spence, the Planning Director. Good morning, Mr. Spence.

MR. SPENCE: Good morning, Mr. Chair.

CHAIR COUCH: And, as always, we have Joe Alueta in the back. Good morning. And we are scheduled to possibly have Ann Cua; and we do have David Yamashita in the back and Gina Flammer in the back, all from the Planning Department. And then Michael Hopper, Deputy Corporation Counsel, good morning. And Legislative Attorney, we have Gina Gormley, good morning; and Secretary, Yvette Bouthillier, good morning. Alright, Members, we have a lot of items on our agenda today. Before we proceed with public testimony, I just wanna remind you and the members of the gallery that we have PC-15, which is the General Plan Advisory Committee and Community Plan Advisory Committees; PC-22, which is Time Extension for the Lanai Community Plan Advisory Committee; PC-16, Short-Term Rental Home Restrictions on Maui Meadows; PC-9, Requiring Notification to the Council of Unfulfilled Conditions of Zoning; PC-11, Conditions of State Land Use District Boundary Amendments; and PC-30, Permitting Transient Vacation Rentals in Planned Development Approved on or before April 20, 1981. And we have assisting us this morning from the Hana District Office is Dawn Lono. Let's see, let's get her on. Assisting us this morning from the Hana District Office is Dawn Lono. Good morning, Dawn.

MS. LONO: Good morning, Chair.

CHAIR COUCH: From the Lanai District Office is Denise Fernandez. Good morning, Denise.

MS. FERNANDEZ: Good morning, Chair.

CHAIR COUCH: And from the Molokai District Office is Ella Alcon. Good morning, Ella.

MS. ALCON: Good morning, Chair.

CHAIR COUCH: Members, as always, should you have questions or need clarification from any of the testifiers, please speak directly into your microphone. This will help to ensure that testifiers in the district offices will be able to clearly hear and understand your questions or comments. Alright, we're getting ready to accept public testimony. For those individuals who will be testifying in the Chamber, please sign up at the desk

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located in the back just outside the Chamber door. If you will be testifying from the remote testimony locations specified on the meeting agenda, please sign up with the Council Staff at that location. Testimony will be limited to the items listed on the agenda today, and I read them off them off earlier. Each testifier will be allowed to testify for up to three minutes per item with one minute to conclude if requested. We will be using the lighting system; I think it'll be turned on in a minute. And at the end of three minutes, the light will turn red...I'm sorry, yellow. And then, at the end of four minutes, it'll turn red; and please stop talking when it turns red. When testifying, please state your name and the name of any organization you are representing. Members, without objections, I will now open public testimony.

COUNCIL MEMBERS: No objections.

CHAIR COUCH: Okay, here we go. First person to testify--we'll start in house-- Lucienne de Naie followed by Michael Gronemeyer.

...BEGIN PUBLIC TESTIMONY...

MS. de NAIE: Thank you, Chair Couch. Good morning, Council members. My name is Lucienne de Naie and I'm testifying on my own behalf. I'm testifying on three items today, so I guess my three minutes will just sort of stack up one on top of each other. First is the Item PC-15, the General Plan Advisory Committees and Community Plan Advisory Committees. As a person who has served on one of these advisory committees and has many friends who've served on others, I'm just questioning why it is necessary for the Council and Mayor to appoint both the members of these committees and then to also have control over who the chair of this committee would be. It doesn't seem like you're really trusting the public when you do that. These folks are supposed to represent the public, they're supposed to have been chosen carefully and vetted for their ability to actually be able to effectively participate in this process. And so there should be, among the 13 people chosen for a CAC, a handful of people who would be very qualified to be chair if this Council and the Mayor have done their work. So the fact that you would need to then have another layer and decide who would be the chair just seems like it's not very democratic. It certainly breaks with all precedent. Somehow our CACs have worked for years. Many of our public officials have served on CACs - Mayor Arakawa has, various other folks have. It's like it just seems like they've been doing a pretty good job of choosing who they need to be their chair. And it seems like if it ain't broken, why fix it? So, respectfully, I would just ask you to file this communication as something that's really not needed. Can I start over again now --

CHAIR COUCH: Sure.

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MS. de NAIE: --with a PC-9? Thank you. PC-9 is about the Conditions of Zoning. And this really is a black hole in Maui County. We have seen many, many controversial projects approved because their impacts were going to be addressed by Conditions of Zoning. And then who's left to enforce the Conditions of Zoning? In the past, it was joked that that's kind of an empty desk. What it seems we need is a better procedure. I think people want to enforce these conditions, but there seems to be a lack of procedural clarity. So this is a great start that there will be at least information clarified about what is unfulfilled; but we also need a mechanism for enforcing those unfulfilled conditions in a fair way, but in a way that the public gets what they expect. And we also need to know that some of these quarterly reports may not really denote conditions that are unfulfilled; and citizens may have to go and swing their bats out there and say, look, we're on the ground and we can tell you this condition is not being fulfilled. I will give you a brief example. When Makena Resort was passed, it was a Condition of Zoning that the landowners agreed to fund a plan for the State park at Makena. This was to move along a long-term objective that's in the Kihei-Makena Community Plan that there'd be a master plan for this park. The language was a little bit vague, but it did say that the plan was supposed to be for the State Parks to service. I participated in those discussions with the landowners of Makena Resort, successive landowners and with the State Parks. And the State Parks said over and over again, what we need is a plan that has these aspects. What they were given and what the Planning Department signed off on was a plan that told them what should be in a plan. They really didn't need that. They already knew what should be in a plan, because they're park planners and they've planned many parks. What they really needed was the studies done, the investment made, the public meetings held and so forth and so on. That was not specifically enumerated in this condition, but the Planning Department chose to define those things as being outside the scope of this condition and was satisfied with the report about what a report should be. We're still waiting for the Maluaka area that's supposed to be added in Makena Resort, to be added to expand the beach park. The current owners say it should be to the north, the former owners said it should be to the south, the public wants it for the south. We really need some better mechanisms to make sure that these things do get enforced. So this is a start, but you need to add a couple of things to it. You really need to add the enforcement. You need to add the provision that a report may be filed, a quarterly report, that says everything's okay. But there may be new information that comes out that shows it's not okay, and the County should act on that information and enforce. It shouldn't say, if we got this report and it says it's okay, that's the end of the story for us which I'm afraid is gonna be it for this Makena Resort master plan. Let me go on to the last item...PC-11. Oh yes, and on PC-9, too, we really should be communicating what the Land Use Commission, that should be folded into this. They have conditions, the County has conditions, everybody should know everybody else's conditions; because, otherwise, citizens are left thinking that things are being taken care of and they're not. So that segue-ways into PC-11. This is about communicating to the State Land Use Commission and the County. And the County, right now, seems to sort of have a spotty record of

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knowing what conditions might run with projects from the State Land Use Commission. Sometimes they are brought up during the planning process and sometimes they are not. A classic example of this is the megamall in Kihei. It had conditions; those conditions were pretty clear. Frontage road was required, certain other things were required; those were sort of ignored by the Department of Transportation, by the County. Nobody asked and said, aren't we supposed to be seeing these things happen or isn't this supposed to then be amended if they're not happening at the Land Use Commission? No one asked those questions except a group of citizens. So this is a good first step. But, once again, we need to keep in mind that we may get a report that says everything's fine, and it's not. So we need a provision that says this does not preclude other information being brought forward if we get a good, clean report. That's not the end of the story. We need to have a way of keeping on top of new information that comes out that should be the County's responsibility to make sure that these conditions are enforced, because some of them are complex and need to be clearly explained. Also, we should have some sort of enforcement mechanism. This going back and forth and taking up hours of the Land Use Commission's time and so forth, you know, it's a tough one. There should just sort of be, either it goes to the Board of Variances...it does something where you decide, was it enforced or wasn't it enforced, people can participate. You need the teeth there. So I hope you will consider...I know this is just the beginning of the discussion of these very needed matters about how our conditions are enforced. And I hope you will consider the suggestions that they need to have these other refining principals in them in the final language in order to do what really I think the intention is. The intention is to create better communication between regulatory bodies that have the right to ask for things in the public's name. And this is all about the public getting some benefit when there are impacts; that's what conditions are about. And if the conditions are just pieces of paper, the public does not get benefit. Thank you for your consideration, aloha.

CHAIR COUCH: Thank you, Ms. de Naie. Members, any questions for the testifier?
Ms. Cochran?

COUNCILMEMBER COCHRAN: Thank you, Chair. And good morning, nice to see you, Lucienne. Thank you for your testimony. Just curious if you actually have language that you see could fit in with this?

MS. de NAIE: I did not bring language. I know some of the community associations have been working on this. They may have submitted some language. And so I will trust someone in this community has gone to, you know, given you a good outline to work from.

COUNCILMEMBER COCHRAN: Okay, thank you.

MS. de NAIE: Aloha.

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COUNCILMEMBER COCHRAN: Chair.

CHAIR COUCH: Thank you. Members, any questions of the testifier? Hearing none, thank you, Ms. de Naie. Michael Gronemeyer? And following Mr. Gronemeyer, we'll go to the outlying offices.

MR. GRONEMEYER: Aloha, Planning Commission and Chair. Mahalo for this opportunity to testify. My name is Michael Gronemeyer. I'm a resident of Lahaina and a unit owner at Puamana. I'm also speaking on behalf of Puamana Community Association. I, along with approximately 90 percent of Puamana owners, support the proposed bill under PC-30 in today's agenda. Puamana was approved as a multi-family, planned development in 1967 with the characteristics of Apartment zoning, but without changing the underlying zoning to Apartment. A high percentage of Puamana owners have successfully operated TVRs since it was built. When apartments were grandfathered for TVR projectwide, Puamana was unintentionally not included because the underlying zoning was not Apartment. We've been working to resolve this situation since 2005; we think we're very close. We are pleased that the January 22nd Planning Commission discussion raised no objections to Puamana being treated as a pre-1981 apartment for TVR purposes. The primary discussion item at that meeting seemed to be whether Maui County Council should consider reducing some of the restrictions in the bill, primarily the size restriction. Puamana does not take a position on reducing the restrictions. We do want this bill to be passed as soon as possible. In summary, we want a fair solution to treat Puamana like other multi-family apartments/condominiums which were built before TVR restrictions existed in 1981 and who have successfully conducted TVR for over 30 years. The proposed bill does that and we support it. Thank you.

CHAIR COUCH: Thank you, Mr. Gronemeyer. Members, any questions of testifier? Seeing none, thank you. Alright, let's go to the Molokai Office. Anybody there to testify?

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

CHAIR COUCH: Okay. How about the Hana Office?

MS. LONO: The Hana Office has no one waiting to testify.

CHAIR COUCH: And the Lanai Office?

MS. FERNANDEZ: Mr. Chair, the first person to testify at the Lanai Office is Butch Gima who will be testifying on Item PC-22 and -15.

CHAIR COUCH: Okay, thank you. Go ahead, Mr. Gima.

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MR. GIMA: Okay. Good morning, Chair, Council members. I wanna testify first on PC-15. I ask that you guys reject this amendment. It's my understanding that this came about as possibly all the huhu that came around with the Maui General Plan. It appears that it's kinda like throwing out the baby with the bathwater. If in fact this is the basis for the amendment, then, you know, the Maui General Plan Committee should deal with it on its own. I don't see any benefits for the Mayor, you know, appointing or removing chair. I think we should let the group process of the committee dictate that. The second thing I'm testifying on is PC-22 regarding the extension for the Lanai CPAC. I believe it's important that we receive the extension so we can complete our plan. It seems like a no brainer. And from my understanding, if the extension is granted, it would only go to September 9th, so I don't know if there is the option of extending to a later date. Because if in fact we have to end on September 9th, we're gonna be crunched between now and then to complete the plan. I think we have three proposed meeting dates and a possible fourth. And based on the meetings we've had for the last six months, that's gonna be, you know, pretty tight. The reason why we're needing the extension are...I mean we've had couple things that have significantly affected the length of the six-month process. Just when we started, as you well know, Pulama Lanai was really just beginning their vision and plans for Lanai and the changes. So there was a lot of time given to Pulama Lanai to explain what their plans were; and, subsequently, there was lot of discussion by the committee and by testifiers. In addition to that, I think the changes in the Code dictated a lot more explanation of what we had to do as opposed to what happened in the 1998 update and in 1992 community plan. I believe, the planners, this was their first go around to do a community plan, so they were learning just as much as we were through this process. So I ask that you not only extend the time for the Lanai CPAC to complete its plan; but, if possible, even extend it, you know, another month or two so we don't have to feel like we're rushed and have to cram everything into the last three or four meetings. Thank you.

VICE-CHAIR VICTORINO: Mr. Chair?

CHAIR COUCH: Thank you, Mr. Gima. Hang around, I think we have a few questions for you. First, Mr. Victorino?

VICE-CHAIR VICTORINO: Yeah, thank you, Butch. Butch, what would be, if we were to propose a date, what would you be comfortable with as far as an extension, a specific date?

CHAIR COUCH: Did you hear that, Mr. Gima?

MR. GIMA: Yeah, I think Mike said is if I could recommend a specific date?

CHAIR COUCH: Correct.

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VICE-CHAIR VICTORINO: Yes, please.

MR. GIMA: I would say October 31st.

VICE-CHAIR VICTORINO: Thank you. You know, just so that we have something to work with if we were...when we discuss the matter. Thank you, Butch.

CHAIR COUCH: Okay, any other Members testifying...questions for the testifier? Alright, Mr. Gima, if we say October 31st, are you gonna come and ask us for another extension?

MR. GIMA: I feel confident we'll complete it by then.

CHAIR COUCH: Okay. Alright, thank you, Mr. Gima.

MR. GIMA: Okay, thank you.

CHAIR COUCH: We have another testifier in Lanai? We'll just stay with them for right now.

MS. FERNANDEZ: No, it's only this one. There's no more testifiers.

CHAIR COUCH: Okay. So you folks out there in Lanai, Molokai and Hana, we'll come back to you at the very end of the testimony or you can e-mail Staff and see if you got anybody else coming in, okay? Alright, up here we have...up next is Lynn McCrory followed by Shelley Maddigan.

MS. McCRORY: Good morning. I'm Lynn McCrory with Pulama Lanai. Thank you, Committee Chair and your Committee Members, for the opportunity to speak in support of PC-22, the time extension for the Lanai Community Plan. We're supporting this extension because of a number of reasons that you just heard from Butch Gima who was the Chair of the LPAC committee. It's a very complex process. Kurt Matsumoto was hired on December 1, and all of a sudden here we are all trying to figure out what are we looking at for Lanai when the plans hadn't been made. So there was a fair amount of time that we needed in order to put pieces together to even bring them into the LPAC committee. There were whole points in times when there were explanations that took a long time. Not all committee members are familiar with some of the varied processes or parts of government, so that took a little longer to explain. And that's fine, because they came out of it with more information and, you know, much more able to speak on any number of issues which will make them much better and more attentive citizens; and that's what we're looking for. Also, one of the things that occurred throughout the process was that there were whole points in time when we needed to have quorum and we didn't have it and phone calls were made to try to get people to come in, so that delayed

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things any number of times. So I would also support Butch in saying an extension beyond the September 9th. That is really short for us. There are the three meetings scheduled. I know there's gonna be further explanation. Just even in reading through everything and then looking at the maps and putting it all together and saying, yes, we're all comfortable with it before it goes off to the Planning Commission for their review and then finally to you for your review. So 10/31 would be great with us, that's fine. And I hope that you will support this extension. I thank you for your time and thank you again.

CHAIR COUCH: Thank you, Ms. McCrory. Members, any questions for the testifier? Seeing none, thank you.

MS. McCRORY: Thank you.

CHAIR COUCH: Shelley Maddigan followed by Thomas Croly.

MS. MADDIGAN: Good morning --

CHAIR COUCH: Good morning.

MS. MADDIGAN: --Chair and Committee. I am Shelley Maddigan, President of the Kula Community Association. And I am here with a unanimous opinion and request from our board of the Kula Association regarding PC-15, chairmanship of the general plan advisory committees and community plan advisory committees. The Kula Association Board asks the Planning Committee to not even consider this bill giving the Mayor and Council the power to select and remove the chair of all upcoming community plan advisory committees. We strongly request that this proposed bill be approved on first...not, excuse me, not be approved on first reading and not be forwarded to the Planning Commission because these all-volunteer, citizen committees must be permitted to select and retain their own leader. We have similar concerns regarding the general plan advisory committees. During the Maui Plan process, Council members spoke often about allowing communities to decide their future. This proposed ordinance is disrespectful to our communities and to the citizens of Maui. The Mayor and Council already control who may serve on these committees. The Kula Association Board believes the citizens who agree to volunteer countless hours to these committees are able to determine which of their group shall serve as committee chair. The council's chairperson is selected by its members. The planning commissions select their own leaders, juries select their own chair, and the GPACs and community plan advisory committees should select their own chair. I'm now gonna move on to PC-9, if I get a little more time, requiring notification to the Council of unfulfilled conditions of zoning. The purpose of this proposed bill is to require the Department of Planning to transmit a quarterly report to the Council on any unfulfilled conditions of zoning provisions as required by Section 19.510.050, Maui County Code. The Kula Community Association

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Board approves the proposed ordinance regarding timely notification to the Council of unfulfilled conditions of Maui County zoning. However, the board has two major concerns and wishes to have amendments included before transmission of the planning commissions. The proposed ordinance needs to explicitly state that failure by the Planning Department to report a zoning violation or a condition does not mean that there is no violation and does not waive, in any way, the right to subsequently enforce zoning conditions. There shall be no time limit to enforce zoning code requirements and conditions. The measure also needs to clarify that such reports are management reports only and will not act to bar any private or public right of action. A second amendment would require action by the Planning Director to initiate steps to get compliance with unfulfilled conditions or give the Planning Director the authority to initiate action to revert the zoning. PC-11, requiring notification to the Council of unfulfilled conditions of the State Land Use District Boundary amendments, the Kula Association Board understands the purpose of the proposed bill is to require Planning Department to transmit a quarterly report to the Council on any unfulfilled conditions of the State Land Use District Boundary amendments as required by 19.68.040, Maui County Code, within a maximum of three years if no time limitation is established by the Council. Similar to PC-9 regarding zoning conditions, the Kula Association Board believes that an amendment is needed to explicitly state that any failure to identify, in a quarterly report, a land use condition shortfall does not waive the right to subsequently enforce any unmet conditions. The measure needs to clarify that such reports are management reports only and will not act to bar any private or public right of action. A second amendment would require the Planning Department to also notify both the State Land Use Commission and the State Office of Planning of condition violations. A third amendment would authorize the Planning Director to initiate steps to get compliance with unfulfilled conditions and the authority to initiate action and the use of commission to revert the boundary amendment. And I think that covers it. Thank you very much.

CHAIR COUCH: Thank you, Ms. Maddigan. Members, any questions of the testifier?

VICE-CHAIR VICTORINO: Chair?

CHAIR COUCH: Mr. Victorino?

VICE-CHAIR VICTORINO: If we could request Ms. Maddigan's testimony, 'cause there's a lot she brought forward. And even was writing as fast as I could, I couldn't keep up with you, I'm sorry.

CHAIR COUCH: Do you have that in writing, Ms. Maddigan?

MS. MADDIGAN: I think it was all submitted, yeah.

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CHAIR COUCH: I think, yeah, I think it's in the binder.

VICE-CHAIR VICTORINO: It is?

COUNCILMEMBER BAISA: It is.

MS. MADDIGAN: Everybody has a copy of what I just read.

VICE-CHAIR VICTORINO: Okay. I missed it, I apologize. Okay.

CHAIR COUCH: No worries.

VICE-CHAIR VICTORINO: I missed that.

CHAIR COUCH: Anybody else, Members, any other questions of the testifier? Seeing none, thank you, Ms. Maddigan.

MS. MADDIGAN: Thank you.

CHAIR COUCH: Next up is Thomas Croly followed by Netra Halperin.

MR. CROLY: Aloha, Chair; aloha, Committee. I'm Thomas Croly, testifying on my own behalf and as a resident of Maui Meadows on PC-17 with respect to the cap of the number of short-term rental permits in Maui Meadows. As many of you know and many of the members of the public know, I'm probably the most informed person of the public with respect to the short-term rental and the B&B ordinance and people come to me with a lot of questions about it. When people call, I try to tell them what they need to do to be compliant with any of these ordinances. Unfortunately, when people call me now from Maui Meadows, I have to say, well, sorry the cap has been met and you can't be compliant. So, you know, it's a bit of a problem. I'm aware, just because of this position, that there's at least three people in Maui Meadows who have already started to put together applications, they've already spent between three and five thousand dollars with consultants to prepare applications, and those applications are not allowed to be submitted at this point. So I can tell you that there already is a bit of a backlog. To my knowledge of the permits that have been issued in Maui Meadows, none has caused any kind of impacts that would say that this is causing a problem in the community including one that's just a few doors down from my house that I walk pass every day when I'm out walking the dog. I would urge you when you do review this--and I recognize that today we won't be taking action on it--but when we do review the ordinance as a whole, to either abolish this limit or raise it significantly from what it is. There's 625 homes in Maui Meadows, and limiting this to five was perhaps too low. I would like to recognize the Planning Director and his department for the hard work that they've been doing in

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cranking out these permits. I don't think there's any other permit that goes through the Planning Department where the volume is nearly as great as these short-term rental permits have become. And they've really become...the Planning Department, as some of the planners have told me, has become the short-term rental permitting department. And that's a bit unfortunate, but it's good that we're getting the thing done. But, to that end, I would encourage you that, in future review, that we do everything that we can in the law to both give the Director some discretion so that he can waive some of the requirements and make the streamlining process as easy as possible. The people that we're after, you know, that we wanna make it difficult for, are those who won't comply. And they're either gonna be the people that don't come forward or the people who get granted permits and then don't comply with the conditions of their permit. If someone gets a permit and complies with the condition of their permits, you're not gonna be able to see the difference between this property and another, because their cars are gonna be parked on site, they're not gonna be making noise that their neighbors can hear and it's really not going to be a problem. So the idea of a limit of a certain number in any given area really won't be necessary if people are doing their job and complying with the ordinance. And those are the guys...that's where the effort needs to be made to either keep them out or revoke a permit or something like that, not making the bar so high for the people who are trying to comply to come through. So, again, I thank you for your discussion on this matter today, and I know that you'll be bringing it up in the future when we review the overall ordinance. Thanks.

CHAIR COUCH: Okay. Thank you, Mr. Croly. Members, any questions for the testifier?
Chair Baisa?

COUNCILMEMBER BAISA: Thank you very much, Chair; and thank you, Mr. Croly, for being here this morning. I do know that you have a wealth of information. How many permits have been granted in the South Maui area along with Maui Meadows?

MR. CROLY: You know, you might ask the Director that question for the most updated. But I looked at it less than a month ago, and I think we had about 25 permits that have been issued in South Maui overall of which five are in Maui Meadows.

COUNCILMEMBER BAISA: And just as an...give us an idea, a bigger idea, of the island. How many have been...altogether?

MR. CROLY: Overall, on the island, I think we've got about 75 or 65 or 75 that have been issued, and there's probably that many that are in process right now.

COUNCILMEMBER BAISA: Okay. Just trying to get some reference --

MR. CROLY: Yeah.

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COUNCILMEMBER BAISA: --as to how that five looks in regard to other areas. Thank you. Thank you very much.

CHAIR COUCH: Members, any other questions of the testifier? Seeing none, thank you. Up next is Netra Halperin and then Ron McOmer in Lanai.

MS. HALPERIN: Good morning, Council. I'm Netra Halperin; and I'm being a planning consultant right now, so I also wanted to speak on PC-16. Basically, everything Tom Croly said I agree with. And yes, also, Maui Meadows has half-acre lots and it's very vegetative, there's lots of plants and buffers. And so I think it's actually a very good place for vacation rentals, because, you know, you can do it so discretely. You can have the cars easily on the property, they're not visible to anybody, there's no noise problems because everything's buffered and larger lots. And I agree with him, I have clients who are in Maui Meadows who would like to comply with the law who've done a lot of work, have spent money. And, yet, then that cap made a real problem and it's unfortunate. Because I originally went to the Planning Department I think it was in January, and they said, well, you know, we're getting near the cap, so why don't you start working on the permit; and then during that time, the cap was reached. And my client's feeling, you know, upset,, because here they wanna do the right and then there's this cap. And I think everything he said is basically true, there isn't any impacts that have been created. And I think, in this industry in general, there was a few--as they always say--bad apples. But the majority of people are operating quietly with, you know, no neighbor problems. So I absolutely recommend that, as soon as possible, that that cap be looked at and raised. And all the other caps on all the other neighborhoods, they're nowhere near being reached, so this one was placed artificially low. And so, while I'm here, I'd like to talk on PC-15, also, if I could start again please? I agree with all the other testifiers. I think it's just not very respectful, the planning committees of the general plan and community plan to say that the Mayor and the Council can choose the chair. In all other governmental bodies, you know, in the State House and the Senate and the Council, the members get to choose their own chair, so I think that's appropriate. And, as everybody's already mentioned, the Council has chosen these people. So, obviously, these are all people that are qualified to be on the committee, so let them choose who the chair can be. And then regarding another one, PC-9, I agree with that one. I think that's a good one for developers, that it's been kind of a joke in a sad sort of way that people...and it makes people lose confidence in government if they go to all the effort of going and testifying and requiring developers to meet these criterion to basically give back public benefit for the services, all the infrastructure they're gonna use and for the use that all of the people--like, if it's a subdivision--will be using on the roads and the sewers, et cetera, and to give that back, and communities around the country do. So often there's these requirements, these conditions and then there's no accountability, and that loses confidence. The one thing I would wanna make sure is that it's not also the same

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bar for homeowners and families doing subdivisions. To me, this is for a developer who is building a subdivision, not for, you know, a family who just wants to subdivide their land for their children or something; that seems a little overkill for that. So I think that's it on all topics.

CHAIR COUCH: Thank you, Ms. Halperin. Members, any questions of the testifier? Ms. Halperin, I have one and it's kinda goes to everybody who talked to PC-15. Are you aware that HRS 50-3 states, the commission shall consist--this about the charter commissions--the commission shall consist of eleven members, one of whom shall be appointed by the Mayor as the chairperson of the commission? So our Charter Commission, our biggest and most important commission, has that requirement, are you aware of that?

MS. HALPERIN: No, I'm not aware of this.

CHAIR COUCH: Okay.

MS. HALPERIN: So you're saying that this didn't just come out of the air --

CHAIR COUCH: No, it did not.

MS. HALPERIN: --that the Charter Commission itself...well there's several things the Charter Commission did that I didn't approve of but...

CHAIR COUCH: That's okay. No, that's fine. Thank you, Ms. Halperin.

MS. HALPERIN: Okay.

CHAIR COUCH: Members, any further questions? Alright. Seeing none, thank you, Ms. Halperin.

MS. HALPERIN: Okay, thank you.

CHAIR COUCH: Along with several of us, by the way, Ms. Halperin. We agree with that comment. Lanai, is Ron McOmber up?

MS. FERNANDEZ: Yes, he is. So the next person to testify is Ron McOmber --

CHAIR COUCH: Okay.

MS. FERNANDEZ: --representing Lanai CPAC, and he will be testifying on Item PC-15 and PC-22.

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MR. McOMBER: Good morning, Chair --

CHAIR COUCH: Good morning.

MR. McOMBER: --and Members of the Committee. I'm Ron McOmber a 43-year--not old--but 43 years a resident of Lanai. I'm also a member of the CPAC. And I was the Chair of the last CPAC in '98. I am really disturbed by this thing that the Mayor wants to have the ability to pull the chair from either one of the community plan or the...the next thing he's gonna be doing is asking to remove the Chair from the Planning Commission. These people are picked by the people on the committee, and that's the way it should be. This is gonna turn into a political football, and it should not happen. The Mayor has no right to do this. And I...they extended his power, and I think it's ill advised that you folks let him do this. He has the choice of four people on the CPAC. And even some of the four people that he picked on the CPAC did not show up and do a good job on the CPAC. We almost didn't have a quorum. And a lot of that's because some of his people that he picked for the CPAC didn't show up. So my concern is this should not happen. This particular part of it, he's overstepping his bounds, and I don't believe this should be for the sanity of the committees. The committees work hard, they pick their own people from within the community and that's the way it should be. He should have no right to remove a chair from any of the commissions or boards. Thank you very much. Now I'd like to testify on -22, PC-22.

CHAIR COUCH: Go ahead.

MR. McOMBER: The extension is needed. And I'm sure you've heard this before, but when we go into the community plan, at this time, Ellison had just bought the island. And all at once, we finding out through rumors that Capital had sold it to this gentleman. And this gentleman's coming in has all kinds of plans for Lanai. So the community plan people asked Kurt Matsumoto, which is the COO of their company, to show us what they had on the docket coming up in the next five to ten years. Immediately, when he brought out his plans and maps, it threw us into quite a hassle, because the amount of stuff that was gonna happen, we had to address one way or the other. And it threw this whole situation, the timeline, out of whack. So we really need this extension to address what's going on with our community and the community plan and what the Pulama Lanai is going to do for us. So to have a complete community plan going forward to the Planning Commission and back to you folks, you need to see what we looked at and what we addressed. We need to address all of it, from desal to luxury homes down on the other side of the island. Our water issues are gravely impacted by this, and we need to address all this. And I thank you very much for holding this hearing, and please approve the extension. Thank you.

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CHAIR COUCH: Thank you, Mr. McOmber. Members, any questions of the testifier?

COUNCILMEMBER COCHRAN: Chair?

CHAIR COUCH: Ms. Cochran?

COUNCILMEMBER COCHRAN: Thank you. Good morning, Mr. McOmber, nice to have you here. Are you good with that October 31st extension time frame?

MR. McOMBER: What'd she say?

CHAIR COUCH: Did you get that, Mr. McOmber?

MR. McOMBER: Didn't get that.

CHAIR COUCH: The question was, are you okay with the October 31st time frame?

MR. McOMBER: Well I think so. I don't know what, you know, we got an awful lot of stuff still on our docket. And I hope that we can get it out of there, because we're losing members. Well other people committed to the short term that we had and we're losing people, so we need to do it as soon as we can. I'm hoping we can be out of there by that date. Yes.

CHAIR COUCH: Okay.

COUNCILMEMBER COCHRAN: Thank you, Mr. McOmber.

CHAIR COUCH: Thank you. Members, any other questions? Mr. McOmber, I have the same question for you that I had for Ms. Halperin on PC-15. Are you aware that the Hawaii Revised Statutes Section 50-3 requires that the Mayor appoint the chair of the commission?

MR. McOMBER: Yeah, but then how come he hasn't been doing that?

CHAIR COUCH: They did. He did. And, by the way...

MR. McOMBER: The question is, if he has that authority, then why hasn't he been doing it up till now? 'Cause I don't remember him appointing a chair. I know he has the right to appoint certain people, but I never heard that the Mayor had the right to appoint a chair for these commissions.

CHAIR COUCH: He did. So...and...

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MR. McOMBER: Well that should be wrong, you guys ought to address that.

CHAIR COUCH: It's a law, and he did not introduce this, in fact, I introduced this bill. So just so you know. Thank you.

MR. McOMBER: Well thank you for the info. But, again, I strongly recommend that we either get that on the ballot or do something to change that, because that's uncomfortable for us that are involved with the community. Thank you.

CHAIR COUCH: Thank you. Next testifier is Jack Naiditch, and Mr. Naiditch is the last person to sign up to testify here. Anybody else who wants to testify here, please go do so in the back.

MR. NAIDITCH: Good morning, Chairman, Members of the Committee. Thank you for allowing me to testify today. My name is Jack Naiditch. I represent a group of owners at Kaanapali Plantation, which is a planned unit development on the West Side. And I'm here to speak about the last item on your agenda which is No. 30. I'm here to request, on behalf of these owners, that the proposed amendment to 19.32.040 be changed to decrease or reduce the 25-acre limitation. Kaanapali Plantation is a 10-acre planned unit development. It was formed prior to 1981, it had rental units, transient vacation rental units in effect prior to 1981. It is designed to conform with the intent of the planned development. It has more than 20 percent open space owned by lot owners...not lot owners, but unit owners in common. So it meets every definition of the planned unit development and it meets every limitation on this proposed ordinance except the 25-acre limitation. Twenty-five-acre limitation is apparently there because that would allow only one planned unit development in this county to qualify for this zoning change, and that is Puamana. There is no other reason. In fact, that was the reason that was given by the Planning Department at the Planning Commission meeting earlier or either late this last year or earlier this year. It was asked, at that meeting, well why don't we just call this a spade a spade and call this the Puamana ordinance? And the response was, well that would constitute spot zoning. We believe this limitation is arbitrary and it doesn't have any rational basis to the purpose of this ordinance. You've heard, already, testimony from the members of Puamana, or a person representing 90 percent, and he has no...and that development has no problem with reducing size limitation. I understand that this Committee has received some letters of support both from those at Kaanapali Plantation who wish to have the size reduced and from those who don't. I wanna make one very clear fact. I understand there's been some confusion as to whether, under the CC&Rs or declaration of Kaanapali Plantation, that TVR use is permitted. And it is specifically permitted in the governing documents that were formed way before 1981 for this development. It specifically provides that the houses shall be occupied and used only as private dwellings or transient living accommodation by the owners or their tenants. So it

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specifically provides for TVR. Many people bought their units at Kaanapali Plantation based on, relying on, the CC&Rs; relying on the brokers telling them, you could do transient vacation rentals. There's been some attempts, internally, by owners there to amend this provision, but they've all failed. And, of course, that's a contractual issue within the development itself, not something for this Council to rule on either directly or indirectly.

CHAIR COUCH: Okay, Mr. Naiditch, ten seconds.

MR. NAIDITCH: So, in closing, we would request that the size limitation, the acreage limitation, be substantially reduced or eliminated to provide for not only our PUD, but other similarly situated PUDs so this does not become an issue of spot zoning.

CHAIR COUCH: Okay, thank you, Mr. Naiditch. Members, any questions of the testifier? Seeing none, thank you, Mr. Naiditch.

MR. NAIDITCH: You're welcome.

CHAIR COUCH: Alright, we have somebody who's come up to testify, is Dick Mayer. And Dick Mayer is now the last person in the Chamber to sign up to testify.

MR. MAYER: Thank you, Chair Couch and Members of the Committee. I'd like to speak on Items PC-9, -11 and -15. I'd like to speak separately on each of the items. I've also been asked by the Kihei Community Association...unfortunately, they have a meeting just this morning of the Board of Directors and were unable to come. I believe they sent you testimony, and so I'd like to reinforce that testimony. I agree with it, and would like to make sure that it has been entered into the record. First--I'll do these in numerical order--first, PC-9, Requiring Notification of the Council of Unfulfilled Conditions of Zoning. I think this is a very good first step to get this ordinance passed, and I'm glad that you'll be sending this on to the Planning Commission for their review and eventually, hopefully, transmittal back to you. There are times when zoning conditions are not met, and I would hope that the Planning Director will go ahead and his staff will go ahead and determine what zoning violations have been made, but I do urge two amendments. The first is that there should be also a clause in there that, for example, if there's a property that has violated a zoning condition, but somehow it didn't get transmitted in the report to you, that somehow that doesn't waive the requirement of the owner of that land to comply with those conditions. This could end up with a lot of legal conflict later on. Let's say you put down seven conditions on a particular development and one of them wasn't noticed by the staff when they reviewed the zoning conditions and they transmitted it and said, well there are three violations here. But let's say there's another one in that group that wasn't mentioned. I would hope that by having mentioned the three that were violated, that somehow it doesn't waive the need to still comply with that fourth

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amendment, and so I'm...fourth condition. So I'm hoping that you'll amend this motion before you send it on to the Planning Commission to make sure that there is no future liability and conflicts for the Council on this. It could get into a very messy situation and cost the County considerable amount of money. Also, I would urge you to have, as an amendment to this proposed ordinance and statement, saying that the Planning Director, if they notice zoning violations, should take action to get compliance by notifying the owner of the land or the development or whatever it is that they need to comply by a certain number of dates that there should be some enforcement action included in this particular ordinance, not just report to the Council and then people say, okay, it was reported. 'Cause you don't have the authority as Council members to enforce these things, but the staff does have that ability and obligation, I would hope, and that should be part of this particular ordinance. Moving on to PC-11, requiring notification to the Council of unfulfilled conditions of the State Land Use District Boundary amendments. This is a very similar, and parallel, to the previous item I mentioned. This is not zoning, but now this is a State Boundary amendments. And the State law requires that the Planning Director be the enforcement agent for the State Land Use Commission with regard to boundary changes that have taken place. So let's say a particular development on Maui has been given conditions by the State Land Use Commission. They don't have the eyes on the ground here, the feet on the ground, to see what's happening here. The Planning Department could notice that, for example, a particular intersection wasn't improved as required, putting a burden on other developments and projects. So I would urge you to amend this motion. It's a good motion that the Council be appraised of it, but I would add three amendments to that. The first is similar to what I just said before that it explicitly states that any failure to identify in a quarterly report a land use condition does not waive the right to subsequently enforce this item. That should also be in there so that the State Land Use Commission or the County could enforce a condition that was imposed. Secondly, that besides the Council being notified, the State Land Use Commission itself and the State Office of Planning, which works with the State Land Use Commission, both of them should be notified in those quarterly reports so they're aware of what's happening on Maui. And thirdly, that, similar to what I said a few minutes ago, that the Planning Director should initiate action to get compliance with these conditions. Not just a report to you folks and, okay, that's it, we reported; but actually be able to get...this should be in a cooperative manner that if something wasn't done properly, that the owner should be given 90 days, a year, whatever it would be depending on the type of condition that is involved, to get compliance. Okay. And, lastly, I'd like to speak now to the third item in the list, the PC-15, the chairmanship of the General Plan Advisory Committees and the Community Plan Advisory Committees. I recognize what Chair Couch has said that the chair of the Charter Commission is appointed, but that's a State law, it's not a County ordinance that that be required as he stated, HRS. The County doesn't generally require, it doesn't as far as I know, require committees and commissions to have the chair appointed by the Mayor. The Mayor recommends members of a committee or commission and the Council approves, and then it's up to that

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body to select its own chair. This makes for good leadership. How would you like it, as Council members, if after you were elected, there was some outside entity of law that said who's gonna be your Chair. For example, it might say the top vote getter in the last election. Well what happens if the top vote getter, perhaps, had no contender in his race or her race and got a lot of votes, but the second or third or fourth person or the person that would be the best leader for your group happened to have a contender and so there was a lower vote total? And so the group was denied the ability to select its own leader because somehow the top vote getter who had no opposition, and that's happened many times in our County, all of a sudden became Chair. Similarly, for the GPAC and the community plan groups, I believe it would be most effective for the group itself, which has been selected by the Mayor and approved by the Council, be able to select its own leader to regulate and run the meetings, coordinate things and do things. This person that is responsible to the group that elected it, and they will give back and forth. And I'll give my own experience. I've served on several of these commissions, I was on the Planning Commission, I've served on a general plan advisory committee and I've also served on a community plan advisory committee. I think it was very important in all cases that we have the ability to select the chair. In the case of the GPAC, we met for about half a year...for about a year, putting together the Countywide Policy Plan. When that was finished, the group said, let's have another look and see, do we wanna keep the same chair and vice-chair, et cetera in the process? They went ahead, they did acknowledge that the leadership had been proper and they continue with that. So the group itself takes control of who is running their entity, and I would strongly urge that you follow that particular example. And what I'm asking you on this particular ordinance, PC-15, is that you reject the ordinance itself, don't send it to the Planning Commission at all. The other two, I urge you to send on to the Planning Commission. This one, I urge you not to send it forth, let it die and not take up the time of the Planning Commission, they will have the meetings on all islands, they have to discuss it, it will come back to you, you'll have to have first readings, second reads, committee meetings, et cetera. It'll take a lot of time for something that really should not be done at all. So I urge you to take a look at good ordinances. You have a lot of other ordinances that you'll be sending to the Planning Commission in the next year with regard to impact fees and that'll take a lot of time. So I urge you please, at this stage, don't send PC-15 forth, reject it; and you've heard this from other communities, the Kihei Community Association, the Kula Community Association, people from Lanai, et cetera. So please turn this one down. And I thank you.

CHAIR COUCH: Thank you, Mr. Mayer. Members, any questions for the testifier? Seeing none, thank you, Mr. Mayer. We have another testifier, Michael Covich.

MR. COVICH: Good morning, Chair, Council members. My name is Michael Covich. I just happened to drop in today 'cause I wanted to talk with some people. But on PC-15, to me, what those chairs are about is they should be selected by their members to allow the

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Mayor to appoint, at will, anybody he chooses to be the chair of a commission gives ideological and philosophical power over the committees to the Mayor; that sets the agenda. It's the wrong thing to do. Members of those commissions, they should choose who they choose to represent them as chair. Thank you.

CHAIR COUCH: Thank you, Mr. Covich. Members, any questions to the testifier? Seeing none, thank you. Hana Office, anybody there to testify?

MS. LONO: The Hana Office has no one waiting to testify, Chair.

CHAIR COUCH: Okay. Molokai Office, anybody there to testify?

MS. ALCON: No one's here on Molokai waiting to testify.

CHAIR COUCH: And Lanai Office, anybody there waiting to testify?

MS. FERNANDEZ: The Lanai Office has no one waiting to testify.

CHAIR COUCH: Okay. And, Members, this is the last chance for anybody in the gallery to come on down. Seeing nobody rushing down, without objection, we'll close public testimony.

COUNCIL MEMBERS: No objections.

...END OF PUBLIC TESTIMONY...

**ITEM NO. 30: PERMITTING TRANSIENT VACATION RENTALS IN
PLANNED DEVELOPMENTS APPROVED ON OR
BEFORE APRIL 20, 1981 (CC 12-17)**

CHAIR COUCH: Okay. Members, because of some timing issues, I would like to, without objection, move PC-30 to the first item on the agenda. And then because the Lanai Office is closing at noon, I'd like to move PC-22 to number two on the agenda, without objections.

COUNCIL MEMBERS: No objections.

CHAIR COUCH: Okay. That being said, Members, we're going right to PC-30. So I'll give you a second to get your binders all ready to go.

VICE-CHAIR VICTORINO: And, Mr. Chair?

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CHAIR COUCH: Yes, Mr. Victorino?

VICE-CHAIR VICTORINO: You know, I apologize, I still haven't been able to locate that testimony. I don't know where they put it in these binders. We have binders. And I apologize, so if somebody could direct me.

CHAIR COUCH: And which one is that?

VICE-CHAIR VICTORINO: The Kula President's testimony that you said was in the binder.

CHAIR COUCH: Okay. We'll have Staff work on that.

VICE-CHAIR VICTORINO: If somebody...I apologize, I...

CHAIR COUCH: Alright. So, Members, if you turn to your binders to Item No. 30. And I believe we're looking at the correspondence from Corporation Counsel dated July 18, 2013, and we'll be working off that copy. I guess the Lanai Office doesn't wanna...actually if we can get the Staff to e-mail the Lanai Office if Mr. Gima is still there and wants to possibly be a resource person, they can call us back or e-mail us and we'll get back to 'em. Okay, Members, looking at Item No. PC-30, we are in receipt of the following County Communication No. 12-17, from Councilmember Elle Cochran, transmitting a proposed resolution to refer to the planning commissions a proposed bill permitting transient vacation rentals in planned developments that were approved on or before April 20, 1981. And then a correspondence dated March 6, 2013, from Council Chair Baisa, transmitting correspondence dated February 27, 2013, from the Planning Director, transmitting comments from the Maui Planning Commission in response to our resolution, sending it down in 2012. Correspondence dated July 18, 2013, from the Department of Corporation Counsel, transmitting the revised proposed bill, and that's the one we're gonna work from. First, I would like to have the Department of Planning give us their comments on this.

MR. ALUETA: Good morning, Chair and Council members.

CHAIR COUCH: Good morning.

MR. ALUETA: The item was sent to the Maui Planning Commission on January 8, 2013. The Commission did vote to...approval of the bill as drafted to the Maui County Council and for the Council to conduct further hearings, research and outreach to determine whether other similar projects should be addressed either by proposed bill or by similar measure. That's all we have on that matters.

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CHAIR COUCH: Okay. Now I remember in our discussion before sending it to the Planning Commission that we had a matrix that wasn't approved by either Corp. Counsel or the Planning Department. Has the Planning Department done any research to take a look at whether there are other PUDs that could qualify under this law if we were to change any of the conditions?

MR. ALUETA: I'm not familiar with the matrix, I'm sorry, Mr. Chair. And I'm not sure if it was transmitted.

CHAIR COUCH: Yeah, it was...there was a matrix that said which properties were PUDs, what conditions were made. And I believe Corp. Counsel said...or Planning Department said that that wasn't verified, and so we wanted to...yes, Mr. Hopper?

MR. HOPPER: Mr. Chair, at the time, I believe I had said that the bill was not approved. It is now, but just note it that the resolution was signed off on. As far as a matrix or a list of properties that this would affect, our office wouldn't have any comments on that. That would be something that should be verified by, you know, research so that if these conditions do change or if the characteristics change, it's known which projects this would apply to --

CHAIR COUCH: Right.

MR. HOPPER: --I think for the Council's information. But as far as us approving that as to form and legality, that's not something that was done. We did approve the ordinance in its form currently, though, as to form and legality prior to transmittal to this Committee.

CHAIR COUCH: Right. And I think those were almost the exact same words you said last time, too. Okay. So, Department, there hasn't really been any...should we decide to move the, for instance, the acreage down to nine acres, which was what was discussed at this Committee last time, what effect would that have? How many other planned unit developments...with all the other conditions being the same, how many other planned use [*sic*] developments would be included in that?

MR. SPENCE: Mr. Chairman --

CHAIR COUCH: Yes?

MR. SPENCE: --we don't know.

CHAIR COUCH: Okay.

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MR. SPENCE: The focus on this bill and...we have a staff planner that's not here at this particular time who may know some...has some additional information. But I'm not aware whether reducing the size of this would affect other properties or not. I'm not saying it wouldn't. I'm just saying, I'm not aware of that to be a fact or not.

CHAIR COUCH: Okay. It's my understand, at least from that matrix, that there were two other properties. One of them being the Kaanapali Plantation and the other one Alaeloa is the other one, and we discussed that at length in the meeting before sending it to the Commission. And I believe the charge was to see if those were acceptable to include into this bill. But I'll have to take a look at our minutes again. Members...Corp. Counsel, you had some other questions on this? You're okay with the form and legality of course?

MR. HOPPER: Yes. No, we signed off. It's just if there are amendments made that changed the characteristics, just advising...I mean it's less of a legal issue and more of I think a basic, you know, issue with the legislations to be aware of which other developments this would affect. But as far as legality, it's going to affect whichever developments are described therein. So if someone comes in later and says, I meet these characteristics, and they can prove that, they would have the benefit of the ordinance.

CHAIR COUCH: Okay. Let me ask you this, if we change, on Page 2 of your submittal, No. H and then Item 2, where it says, "planned development must have an area of at least 25 acres", if that could change to another number, would this then require it to go back down to the Planning Commission?

MR. HOPPER: Mr. Chair, I don't believe so. I think that that proposed change was discussed at the Commission and was rejected. Maybe that's something to look into. But, typically, when a planning commission would get a bill like this, they could have the ability to make changes to it. And the fact that they didn't make a particular change, wouldn't necessarily mandate that if they decided not to make that change and the Council did, it would have to go back to the commission. But, that being said, if the Council wants to send it back to commission to review that issue or wants the Planning Department to gather more data on that issue, then those are things within the Council's discretion. But because clearly these characteristics were sent to the commission and they could have made alterations to those or recommended changes like that, we typically held it as long as it's within the same basically general scope of the original bill that those types of amendments wouldn't have to go back to the planning commission if the Council made them.

CHAIR COUCH: Okay. Members, any questions of the Department or Corp. Counsel on this? Ms. Crivello?

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COUNCILMEMBER CRIVELLO: I'm just asking for clarification. So should we just pass what is before us as it...just take care of Puamana or like other developments like Kaanapali Plantation?

CHAIR COUCH: Mister...

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

CHAIR COUCH: Yeah, Mister...

MR. ALUETA: Currently, as the bill is proposed right now, the only property that would be impacted or benefit from it is Puamana.

COUNCILMEMBER CRIVELLO: Okay, thank you.

CHAIR COUCH: Okay. Mr. Hopper?

MR. HOPPER: I'm sorry, Mr. Chair. Just to add to my comments. I should add the caveat that if somehow changing these characteristics would affect any properties on Molokai or Lanai, those would have to go to those commissions 'cause they did not review this bill at all. I don't know if any of those changes would. I don't even know if there's any PUDs that are approved. If there's no PUDs on either island, then disregard my comments. I just wanted to get that in for the record in case that happens. I just don't know what else is out there other than Maui developments.

CHAIR COUCH: Okay. Ms. Baisa...Chair Baisa?

COUNCILMEMBER BAISA: Thank you very much, Chair. Chair, is that matrix that you're referring to available and/or can somebody tell us where it is? Because, to me, it's important. I heard you state that it probably involved two more planned developments. If we were to reduce this amount of acreage required to nine acres, are we fairly certain that that is correct? And if it is, then I'm kinda comfortable with including the Kaanapali Plantation, 'cause they are here saying, you know, our members, a majority, wanna do this. The other one you mentioned, we didn't quite hear the name, and what is the situation with them?

CHAIR COUCH: I believe it was Alaeloa, which is already has a mix of residential...I mean single-family homes and multi-family homes and is already doing those kind of activities mainly because of the Minatoya decision allows them to do that.

COUNCILMEMBER BAISA: Right, but we don't have any formal notification to or from them saying, we're aware of this and we like it.

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CHAIR COUCH: Correct.

COUNCILMEMBER BAISA: And that bothers me a little bit, because, you know, if you're gonna do something as important as changing the use, I would like to have some indication from them that they're aware that we're doing it and that they're okay with it. 'Cause, you know, it is a big deal.

CHAIR COUCH: Yes, and it's my understanding that--I thought we had that as part of our binder, that matrix--but it was my understanding that the issue with the matrix was, it was done by somebody from the public without...I could say, I guess, verification from the Department. And...

COUNCILMEMBER BAISA: And while I would very much like to support this... 'cause, you know, I've had a lot of meetings with these folks like everybody else has I guess in regards to Puamana --

CHAIR COUCH: Uh-huh.

COUNCILMEMBER BAISA: --and I'd like to see this straightened out once and for all.

CHAIR COUCH: Right.

COUNCILMEMBER BAISA: But I am concerned that, you know, if we're gonna affect others, that we have some communication with them so that we know that we're not doing anything that's gonna surprise them.

CHAIR COUCH: Alright. I don't see that matrix in my binder, so I'm not sure that it actually made it to there, but I know we had it and passed it around a little bit. Ms. Cochran, do you have any comments since this is your bill?

COUNCILMEMBER COCHRAN: Yeah, well I concur with what Ms. Baisa just stated. And, yeah, it's something that, of course, I introduced it so obviously I'd like support to push it through. But, at this point, if there's gonna be alterations to the existing, then, yes, I would like it vetted out for the community is gonna be affected, and Alaeloa is one of them. They haven't heard, we haven't, you know, vetted it through them. So it is something important, I feel, to get their take on this.

CHAIR COUCH: Okay, thank you, Ms. Cochran. At this point, nobody's affected but Puamana, because --

COUNCILMEMBER COCHRAN: Right.

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CHAIR COUCH: --there have been no changes made. It's up for discussion however anybody wants to go with this, if we wanna stick with just what came back from the Planning Commission since apparently they did discuss it and rejected changing it down to nine acres. We can do that. Mr. White?

COUNCILMEMBER WHITE: Thank you, Chair. For the Department, basically, the way we've been operating...or you've been operating is that you've been following the Minatoya decision...or opinion--not a decision, it's an opinion--is that correct? Or maybe Mr. Hopper.

CHAIR COUCH: Yes, Mr. Hopper?

MR. HOPPER: Just to clarify...thank you, Mr. Chair. The Minatoya Opinion applies to Apartment-zoned areas, because Puamana is not zoned Apartment that...and because that was based on a specific amendment to the Apartment district ordinance.

COUNCILMEMBER WHITE: Uh-huh.

MR. HOPPER: The Minatoya Opinion was based on reading that Apartment district ordinance change. So that opinion would have no application with respect to Puamana 'cause it did not have Apartment zoning. There's, in your binder, an opinion in 2005 regarding Puamana. It states that the grandfathering there is done under the Code based on each unit whether or not that unit can show if they are operating...if they have operated without stopping for a 12-month period since before 1981, and I think some of the owners in Puamana expressed that they might not be able to show that or that could be an issue. So to clarify that the...I think that's the intent of the legislation is to say that if the development operated prior to 1981, not each unit, that the entire development would be allowed to operate as transient vacation rentals going forward. But just to clarify, the Minatoya Opinion would only apply to Apartment buildings...or Apartment-zoned areas. There's a 2005 Corporation Counsel opinion that's in your binder that applies specifically to Puamana. So they are a bit different issues because one has Apartment zoning --

COUNCILMEMBER WHITE: Right.

MR. HOPPER: --and the other has Residential.

COUNCILMEMBER WHITE: But as far as the Department has been dealing...or how they've been dealing with enforcement is they've been allowing it to continue. Have they had any...well, have you had any discussions with people in Alaeloa or Kaanapali Plantation?

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MR. ALUETA: I'm not aware of any...the enforcement actions on either one of those projects. I will say that based on the testimony that was given at the Planning Commission, my recollection of the meeting and the minutes have been passed out was that I don't believe that it was a clear consensus on some of the other projects. Meaning, I do not believe that there was, those other organizations, there was a complete 100 percent agreement that they wanted to be included. In fact...so we can only speak to the testimony or the...Puamana as being there was a clear consensus. But I don't recall how the testimony went, and I don't recall there being everyone in the other projects all wanted to be included or not wanted to be included.

COUNCILMEMBER WHITE: Okay.

MR. ALUETA: 'Cause I believe I got phone calls on that.

COUNCILMEMBER WHITE: Okay, thank you, Chair.

CHAIR COUCH: Thank you. Ms. Cochran?

COUNCILMEMBER COCHRAN: Thank you, Chair. And my office was able to find that matrix you've been referring to.

CHAIR COUCH: Okay.

COUNCILMEMBER COCHRAN: So can I have it distributed to the fellow Members?

CHAIR COUCH: Sure. At this point, we're getting close...I mean we're --

COUNCILMEMBER COCHRAN: Mid-morning break?

CHAIR COUCH: --beyond our mid-morning break.

COUNCILMEMBER COCHRAN: Okay.

CHAIR COUCH: So let's take a ten...or well, be back at 10:30, and we'll pick this up. So we are in recess. . . . (*gavel*) . . .

RECESS: 10:20 a.m.

RECONVENE: 10:36 a.m.

CHAIR COUCH: . . . (*gavel*) . . . The Planning Committee of August 1, 2013, shall come back to order. Alright, Members, this matrix was passed out. And it's not verified by the

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Planning Department; however, the person who did make this matrix explained to me that he looked at all the stuff on our websites and some of this information is from RPT where there's each condo complex has to give their, you know, whether or not they're doing transient vacation rentals or not, et cetera. So while this isn't official and hasn't been completely verified from the Department, at least you have the information there. Mr. Spence?

MR. SPENCE: Yes, Mr. Chairman, we have a staff planner who is coming over who has reviewed this before. He doesn't even...it doesn't sound like he's horribly familiar with it, but he may be able to shed some light on it for the Committee Members.

CHAIR COUCH: Okay. Mr. Hopper?

MR. HOPPER: I would just, Mr. Chair, advise against relying on an unverified list. It may be accurate or generally correct, but that's just my general advice to you that if, you know, until the Planning Department can actually verify which developments would be affected by particular changes, I'd advise against relying on something that basically you cannot verify it at this stage.

CHAIR COUCH: Understood. And now we have this into the record, so I'm gonna ask them to...if this comes up again depends on what happens today, to see if we can work on verification of this if necessary. We'll see what happens at the end of this item. And Chair would like to recognize the attendance of non-voting Member, Riki Hokama. Good morning.

COUNCILMEMBER HOKAMA: Chairman.

CHAIR COUCH: Okay. Any other questions to the Department or Corp. Counsel? Okay, Mr. Victorino?

VICE-CHAIR VICTORINO: Well not so much a question for them, but a question for you.

CHAIR COUCH: Uh-huh?

VICE-CHAIR VICTORINO: Where do you wanna take this then if, you know, we still waiting for staff planner to come to kind of verify whatever this matrix may be? And there's still some very unanswered questions. How do you want us to proceed with this, Mr. Chair?

CHAIR COUCH: It's the Chair's recommendation if we wanna go that far is, we wanna get this PC-30 out as is written. This other situation came up after this was posted, and people thought that they were gonna lose their rights and whatnot. As far as I can tell, they're not gonna lose their rights no matter what happens in this. So if another property would

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like to be involved in something like this, I would suggest them to come back and submit a new bill that the Planning Commission can take a look at and that all proper, property owners have a chance to weigh in on it. So it's gonna be that...at least the Chair's desire right now is to leave the bill as is and pass it out as is, but that's totally up to the Committee.

VICE-CHAIR VICTORINO: So that would be your recommendation?

CHAIR COUCH: Yeah.

VICE-CHAIR VICTORINO: And for the purposes of moving this on, then if that's your recommendation, I will move for your recommendation and if...

CHAIR COUCH: If there are no further comments, I'd be happy to take that motion. If everybody's satisfied with that, I'm willing to move forward with that. And if there's some things that happen between now and first reading that allow for a minor change that doesn't look like it has to go back to Planning Commission, then I'm open for that, too, when we get on to first reading so long as the Council Chair is agreeable to that, if something comes up, that is fine. I don't wanna do Committee work on Council floor. Ms. Chair Baisa?

COUNCILMEMBER BAISA: Thank you very much. I was just gonna tell you, if there is any...if we're thinking about including anybody else or making a big amendment like the acreage, I think we'd better wait awhile. But everybody's okay, I can support moving this out as is.

CHAIR COUCH: Okay. Mr. White?

COUNCILMEMBER WHITE: The only challenge that I have is that we're basically asking somebody else to...who's in pretty much the same boat, from what it seems, to go back through the entire process. And as we all know, that can be fairly onerous and time consuming. I would prefer that we defer this and/or look at changing it to nine acres, or whatever it is, at first reading if this list can be verified and we know who we're authorizing to move ahead under this bill. So I...

CHAIR COUCH: Okay. So just if, for the Members' sake, if this were to...if we were to say on first reading, go to nine acres, that would only include Kaanapali Plantation and Alaeloa based on this matrix. Now if Planning comes up and says, well, we found 16 other ones, then definitely the amendment would die, in my opinion. But if it's just those two and it's confirmed, I'm thinking then that's okay, because that is already happening on both of those properties. Ms. Baisa?

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COUNCILMEMBER WHITE: That's my feeling...

CHAIR COUCH: Chair Baisa?

COUNCILMEMBER BAISA: Chair, I would prefer that if we are going to include the acreage issue, that we defer this on to your next meeting. That's enough time for us to check and verify this list, and then we do it and pass it on to first reading. I really do not like to make changes at first reading. When we anticipate it, we should hold it in Committee and finish it.

CHAIR COUCH: Okay. And the next meeting is going to be the 15th I believe; that's two weeks. Ms. Cochran, this is your baby.

COUNCILMEMBER COCHRAN: Yeah.

CHAIR COUCH: Any thoughts?

COUNCILMEMBER COCHRAN: Well I, again, concur with Chair Baisa. You know, if there's some amendments to be made, I'd like it to be done here --

CHAIR COUCH: Okay.

COUNCILMEMBER COCHRAN: --on this floor in this Committee and then move it out. So that's my preference, also.

VICE-CHAIR VICTORINO: Chair?

CHAIR COUCH: Mr. Victorino?

VICE-CHAIR VICTORINO: Chair, you know, and I tend to agree. Even though I would support your proposal, there is still enough questions out there and I agree with my colleagues that we don't wanna do Committee work at first reading.

CHAIR COUCH: Correct.

VICE-CHAIR VICTORINO: And we've done Committee work only when something has come out last minute --

CHAIR COUCH: Right.

VICE-CHAIR VICTORINO: --and we were unaware of it. We're aware of something --

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CHAIR COUCH: We're aware of this, yes.

VICE-CHAIR VICTORINO: --and then we go stumbling through that. And another two weeks, I think, not be earth shattering for most people.

CHAIR COUCH: I tend to agree. My only concern would be that we don't go much further. And if we don't get any verification and whatnot by the time our next meeting, we will post this on the next meeting, if it's alright with the Members. And then, you know, implore our Planning Department to see if this is something they can do in two weeks, let me ask them first. Let's not put them on the spot and say, too bad, so sad. Planning Department, any thoughts, comments on this that if the will of the Committee would be to move this down to nine acres, your thoughts on if you can get the verification between now and then? Now and the 15th of August.

MR. SPENCE: We can work on that, Mr. Chairman.

CHAIR COUCH: Okay. I'd like to see if we can get that in advance so we know where we stand so it can be posted, if you can. If not, at least be able to bring it to the meeting, if that's alright with...Ms. Cochran?

COUNCILMEMBER COCHRAN: Thank you, Chair. And so I just want it stated for the record that this was completely brought up by Puamana itself.

CHAIR COUCH: Right.

COUNCILMEMBER COCHRAN: And it was to straighten out a discrepancy sorta thing going on...that's not the right word. But there was a difference in opinion, I guess --

CHAIR COUCH: Uh-huh.

COUNCILMEMBER COCHRAN: --in regards to what Corporation Counsel had called on that PUD versus, I guess, back in the day, that Planning Director's call. So they just wanted to clear the air, you know, put it all under one heading, one name and everything. And so now...and this is where we vetted it through us back to Planning back to us again.

CHAIR COUCH: Right.

COUNCILMEMBER COCHRAN: And in the meantime other projects such as Kaanapali Plantation has stepped forward saying, why aren't we included? I just want it stated for the record that Puamana put a lot of tireless hours.

CHAIR COUCH: Uh-huh.

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COUNCILMEMBER COCHRAN: Ms. Flammer, Mr. Spence, everybody, myself, my office, so that is why this is presented --

CHAIR COUCH: Yeah.

COUNCILMEMBER COCHRAN: -- to begin with. And so, personally, I would like to move it out as is, like, today. But now that we have people saying, well, let's drop the acreage. That's fine and dandy. I'll work with others. But I just want it stated for the record, I'm very comfortable with what it is, and I wanna move it out, so...

CHAIR COUCH: And I agree with you; however, I'm willing to give a 14-day extension, but that's all.

COUNCILMEMBER COCHRAN: Okay.

CHAIR COUCH: Mr. Victorino?

VICE-CHAIR VICTORINO: And I, you know, I can empathize with Ms. Cochran and the hard work on something and Puamana being the one that's done all the work; however, I think now others realize the consequences or maybe the unintended consequences that may occur. And so it's, you know, again, for us, if we can wrap up more than one piece of legislation encompassing many others that maybe needing that change, then I am, you know, although I'd like to pass it out today, too, I'd rather have it done, whether it's Alaeloa or Kaanapali Plantation. I mean this was 1965, one was 1970, according to this matrix which is not verified. But I can tell you some of these have been around a long, long time --

CHAIR COUCH: Yeah.

VICE-CHAIR VICTORINO: --since I've been on this island. So I'd rather--no offense to you, Ms. Cochran or anybody--I'd rather just get it done right the first time and not have to amend. But thank you, Puamana, for bringing this forward, to getting it to this point. So now the others, and maybe make it known, the others out there, if you've got a question, best you get to the Planning Department in the next week or so, so that we can make sure you're included, if you think you should be included. I don't know if that's important or not. But anybody who thinks they should be, should get it done. But, yeah, deferring this for two weeks, Mr. Chair, I agree with you. I think all of us would just rather do it right and encompass anybody else. Change the acreage if that's what we really, really want; and I think that's what I'm hearing. Yeah, let's get it done.

CHAIR COUCH: Okay.

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VICE-CHAIR VICTORINO: Thank you, Mr. Chair.

CHAIR COUCH: Members, any other comments? We do have the planner that I believe was involved in this the first time in the back if you wanna hear from him or if we're okay with just moving it...alright.

VICE-CHAIR VICTORINO: Let's move it.

CHAIR COUCH: Alright. So without any objection, we'll defer this to...I'm sorry, August 15th.

COUNCIL MEMBERS: No objections.

COUNCIL MEMBERS VOICED NO OBJECTIONS. (Excused: DG)

ACTION: DEFER pending further discussion.

**ITEM NO. 22: TIME EXTENSION FOR LANAI COMMUNITY PLAN
ADVISORY COMMITTEE TO REVIEW THE DRAFT
LANAI COMMUNITY PLAN (CC 13-205)**

CHAIR COUCH: Okay. Thank you, Members, that's a tough one. So, Mr. Spence, you've got your work cut out for you as usual.

MR. SPENCE: Thank you, Mr. Chairman.

CHAIR COUCH: Okay. Now, we'll move on to PC-22. And I understand that we will have Mr. Gima available at 11:15 if necessary, and we will be able to call him back if Members wanna bring him down. But go to your binders, Members, to PC-22. And thank you, Mr. Hokama, for coming to help work on this one. Alright, Members, the Committee is in receipt of County Communication 13-205, from the Planning Director, transmitting a proposed resolution entitled, "Approving a Time Extension for the Lanai Community Plan Advisory Committee to Review the Draft Lanai Community Plan". The purpose of the proposed resolution is to provide an extension until September 9, 2013, for the Lanai Community Plan Advisory Committee to complete its review of the draft Lanai Community Plan. Members, we first wanna hear from the Planning Department, and then, if necessary, Corporation Counsel and then we will check with Mr. Hokama, the area representative. So, Mr. Spence or Mister...go ahead, either one.

MR. YAMASHITA: Okay, thank you, Chair. I just wanted to add...or make...

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CHAIR COUCH: Just identify yourself for the record, please.

MR. YAMASHITA: Oh, I'm sorry. David Yamashita, I'm the Planning Supervisor for the Long-Range Division.

CHAIR COUCH: Thank you.

MR. YAMASHITA: I just wanted to make a few comments about the process just to provide a little bit of background as to why the extension is needed. And some of the points Butch...Mr. Gima has already made as well as Mr. McOmer and Ms. McCrory. But to begin with, as they said, this was a really complex task that we had to deal with in six months as required by County Code. And, as Butch mentioned, Pulama Lanai had just started their own visioning in January when we were starting the CPAC process as well. And they were proposing several really big ideas that we had to think about where these things would go, what's the impact, how do we fold this into the whole island. As an example, some of the big ideas included building a desalinization plant, constructing a third resort on the island, looking at an expansion of the city, developing a new university, thinking about how to diversify the economy. These are all issues that take a lot of time to ponder, and the committee also had to ponder this as well. How do we fold these ideas into the community plan, again, what are the impacts, what do people think about them? And so, as you can see, it was a really huge task. We had divided the meetings into topics, so at each meeting--each meeting was about three hours, so times more--we considered one chapter. And some of these issues took more than one meeting, as you can imagine. Thinking about expansion of the town was not something we could just talk about and discuss in three hours, so some of these did take a while. I should point out, too, that each meeting, there were two opportunities for public testimony. So sometimes at the beginning of the meeting, there would be maybe six or seven, sometimes more people, and that took up maybe 30 minutes. And at the end of the meeting, there was another opportunity for public testimony. So sometimes, you know, you'd have a few people testifying during that period as well. And, in closing, I just wanted to say that we had about...right now, till this point, we had our last meeting July 2nd, so that's about 25 weeks. We had 18 meetings in 25 weeks. And the committee, as I said, each meeting was at least three hours, if not more. And so the committee has been really busy. And we, as staff, and I'm sure for the committee, would like to complete the project, and so we have no interest in prolonging this any longer than it needs to be. We also have to work on the Molokai Community Plan. And we've already talked to Ms. Crivello about that, and the same team will be working on that one as well. So, as I said, we really wanna get this done. So, again, these are just some of the, I think, things that the Council should be aware of as we work on this plan. Thank you.

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CHAIR COUCH: Okay, Mr. Spence, any comments?

MR. SPENCE: Just in terms of I support the extension. I believe that the testifiers pretty much covered the issues along with Mr. Yamashita. We're also dealing with 2.80B, you know, the section of Code that prescribes our general planning process. I believe it does make it more complex, you know, than the previous. I don't think it's any secret, I'm not horribly fond of that section of our Code. But for the purposes of getting the community's input into this plan, I think it is important to grant the extension.

CHAIR COUCH: Okay, Mr. Hopper, any comments?

MR. HOPPER: Thanks, Mr. Chair. Only that, right now, the proposed resolution of September 9, 2013 as the new deadline --

CHAIR COUCH: Uh-huh.

MR. HOPPER: --if that's going to change, then obviously the Committee would have to make that in their recommendations.

CHAIR COUCH: Okay. Mr. Hokama? I see you sitting patiently over there.

COUNCILMEMBER HOKAMA: Chairman, thank you very much for letting me participate in your meeting today. My understanding of the situation, Chairman, is that they need to just have one or two more meetings to finalize the maps, as I understand it. They're very close to completing their work. And so, you know, I can be supportive of a very short extension; however, my disappointment lies that this is the beginning of a very long process, multiple community plans. If this is how we're gonna start, I don't know how we're gonna then tell each succeeding region why we wouldn't consider an extension request for their needs, too. Because every region can come up with a grand issue coming up at that time of review that they're gonna need more time. You know, this is a snapshot in time that we're working on, Chairman. Things come up, you know. I would say, like Mr. Spence, I'm not fond at all of this process, you know. I'm willing to make major revisions to the ordinance, 'cause this was the answer to the problem the last go around --

CHAIR COUCH: Uh-huh.

COUNCILMEMBER HOKAMA: --okay. Somehow we just seem to have made it worse to some. I thought our Lanai plan was a very good plan. We needed some revisions, some updating, but was a hell of a damn good plan to start with. I didn't expect this much of time that was needed. Of course we have a new owner. But, saying that, Lanai is not a test tube or a guinea pig, okay. It is a community that's gonna move forward with lot of

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different entities working together, but in no way our Lanaians a test project and I want it stated for the record, right now. Well, I'm supportive of this short extension, Mr. Chairman. I don't think we need to change the time. My earlier talks with Mr. Spence is that the staff should have been already completed with their final verbiage and they just need official meetings to finally accept the mapping. So, you know, I would like to help Ms. Crivello move on to Molokai as soon as possible, Chairman, with everyone's support. Thank you.

CHAIR COUCH: Okay. Comments, Planning Department?

MR. SPENCE: No comments, Mr. Chair.

CHAIR COUCH: Okay. Mr. Victorino?

VICE-CHAIR VICTORINO: You know, and I appreciate my colleague from Lanai. And if anyone knows their district, I would think the district representative. However, I've heard, you know, we've heard the testimony from the three testifiers from Lanai and two are committee members and one is the company's representative. Mr. Yamashita, I guess this question would go to you. Do you truly believe that September 9th extension would be sufficient or what was asked for this morning by the testifiers, extending it to October 31st? Which would...and I not trying to hold back Molokai, I'm not trying to, you know, say anybody's right or wrong, but to ensure that the community would be comfortable in the end result, you know. The committee's working hard and you said how many meetings, understood; however, the same committee or at least a few of them came today and testified that an extension...and the 31st was given by them of October. Would you think the September 9th would be sufficient and you could wrap it all up or if we extended it to the 31st of October, would that be more sufficient time allotment for this group?

MR. YAMASHITA: Thank you for the question. The short answer is, I don't think we need October 31.

VICE-CHAIR VICTORINO: Uh-huh.

MR. YAMASHITA: September 9th would be pushing it. Yes, I think as Councilman Hokama said, we're close. The maps, yes, we need to finish the maps. The devil is in the details for the maps.

VICE-CHAIR VICTORINO: Right.

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MR. YAMASHITA: I mean because we're essentially coming up with new community plan designations for some areas that where it's not clear even according to the company exactly what the land use is gonna be. So we have to get a lot of these things lined up.

VICE-CHAIR VICTORINO: Uh-huh.

MR. YAMASHITA: So September 9th would really be pushing it. If there was a kinda compromise between the 9th and the 31st?

VICE-CHAIR VICTORINO: Maybe September 30th or something like that? Would you think that would be sufficient? I'm trying to --

MR. YAMASHITA: Yes.

VICE-CHAIR VICTORINO: --gauge so that...

MR. YAMASHITA: I understand.

VICE-CHAIR VICTORINO: Yeah.

MR. YAMASHITA: I mean that's better than the 9th. I guess I don't wanna be put in a position where...I mean what we wanna do is pass on to the Planning Commission a document that is as complete and finished as possible, and that includes the Land Use maps, it includes all the text and the draft. And I think for all of us, that would be one of the...a great service to the Planning Commission instead of giving them a document that has pieces that still need to be finished up. So I mean that's our interest. And, as I said, we have no...we don't wanna prolong this any longer than we do, so...

VICE-CHAIR VICTORINO: Understood, Mr. Yamashita. And I'm not trying to put you on the spot.

MR. YAMASHITA: Sure.

VICE-CHAIR VICTORINO: But, you know, again, when talking to the committee members this morning, they thought the 31st was a more suitable one; but you're thinking maybe that's too long. So if we could come out like with say, September 30th or October 15th, you know, I'm just throwing dates out there, Mr. Chair. And, again, we're gonna discuss it further. But something that you...because you guys have to complete the work, and I agree, you don't wanna send a document uncompleted and not done properly. So what is your best, heartfelt guess and what would you prefer if I gave you choices of a date? What would you prefer? I not saying that's what we're gonna go with, but what would you prefer, Mr. Yamashita? 'Cause you guys gotta do all that work.

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MR. YAMASHITA: October 15th.

VICE-CHAIR VICTORINO: Okay, thank you, Mr. Chair. And that's up to the other Members, how they feel; but I'm looking at trying to find where everybody could come together. And this is important, and this is...and I'll say this, and I mean no offense to Mr. Hokama or Lanai, we never thought them as the test tube. But they are the first ones, and they are the ones that will be what others will look back at and how their process went, so I think that's important. But they have a real big difference. They're owned, pretty much, by one owner which other communities in this County does not have that same situation, so there is a really a little dichotomy that's different than probably other communities throughout this County. So anyhow, thank you, Mr. Yamashita. Thank you, Chair.

CHAIR COUCH: Thank you. Members...Ms. Chair Baisa and then Ms. Crivello.

COUNCILMEMBER BAISA: Thank you very much, Chair. This takes me back to the days of doing the General Plan. And, unfortunately, I have the scars of trying to deal with the time table involved. And this brings me right back to deja vu, you know, and I see both sides. I see what Member Hokama is saying, and I see what everybody else is saying. But I can tell you one thing from having gone through this extension thing and, you know, the desire to get it right and get it done. What you have to do is you have to set a date and you have to say, we're gonna meet that date no matter what it takes whether we meet all day or all night or whenever we have to meet, but we're gonna meet it. We did that last year when we said we're gonna complete this thing by December; and by God, it took a lot of doing but we did it. And earlier, when the GPAC was trying to wrap it up, they had the same problem with maps. We had the same problem with the Council, getting the General Plan out. It was the maps. But once we set that date, it's amazing how the miracle came out of the Planning Department. And I know that it probably caused them great angst and, you know, overtime and I don't know what else it took, but they got it done. So I'm for compromise. I always like to find, you know, something in the middle so everybody goes away feeling a little better. And while I think September 9th is probably a tight, you know, a really tight deadline, like Mr. Victorino, the first thing out of my mouth or my mind was, how about September 30th? And, to me, if everybody puts their mind to it and works a little harder and maybe has however many meetings you have to have, you gotta have it done. And you have to...everybody's gotta commit, we're gonna do this; and you...amazed it will get done. You need strong hand guiding it and everybody's gotta commit, but I believe it can be done.

CHAIR COUCH: Okay, thank you, Chair Baisa. Ms. Crivello?

COUNCILMEMBER CRIVELLO: Thank you, Chair. First of all, I'd like to thank the Planning Department and my colleague from Lanai for the consideration or thought of moving

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forward with the Molokai Community Plan. And I believe, you know, the temperature gauge would come from my colleague from Lanai, but I also heard members from the community. I truly value community process. And these are volunteers who put in their time; and they are saying, they need at least 3 to 4 more meetings to have the allowance of reviewing the complete draft of the Lanai Community Plan. So I believe you're having Mr. Gima available, and I think September 9th is truly crunching it. People have, you know, I think they even mentioned about the difficulty at times to get a quorum from the commission members. And so that can be...that's also a consideration as to when they're available to continue and meeting their meetings on the demands of finalizing the draft. So if October 15th is a compromise or October 31st, I'd like to see an extension. I can feel for our sister island and being the small community you are. But they do have a major challenge. How does the island's vision fit in with Pulama Lanai, so I think that's the challenge to that making sure that the land uses or the mapping and the overlays are according to what the community agrees to.

CHAIR COUCH: Okay. Thank you, Ms. Crivello. Members, any other comments before I have a couple questions for the Department? Okay. One of the comments made by the testifiers about losing members and they're having a hard time getting quorum, how's that, Mr. Yamashita, how often does that happen, do you feel that that's gonna continue on?

MR. YAMASHITA: Well, let me say, we've always had quorum at the meetings. But what we did notice was in maybe the last third, maybe the last five or six meetings, it was down to making sure we had one more person come 'cause we would need our quorum. So we did end up, as I think Mr. McOmber alluded to, we ended up making phone calls a half an hour before the meetings. So there was some drop off, but once we called and made sure people understood how urgent the situation was, and they did show up. But, yes, there was a noticeable drop off, and people who were showing up at five minutes before the meeting.

CHAIR COUCH: Okay. And, Mr. Spence, the comment was made that you just needed one or two more meetings. Is that a little bit...is one or two the actual number or do you need a few more than that?

MR. SPENCE: I think we could cram it into that; but I think, as Dave has pointed out, that would be difficult. But I know they have been through...the CPAC has been through the text completely. It is the mapping at this point. And previous to this meeting, I was not aware that there was ongoing changes. You know, there's apparently still some things in flux on what's being presented to the CPAC, but the, you know, it's the mapping and that's, you know, that's a part that everybody focuses on that involves a lot of discussion. We could do it in a couple of meetings, but I think it would be more comfortable going a little bit further.

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CHAIR COUCH: Okay. And last is a comment before opening up to the floor again. I share Mr. Hokama's concern about setting precedence, you know, and moving the whole process. You know, if Lanai could do it, why can't Molokai, then why can't West Maui and South Maui extend? That would just push this process out a number of years further than it seems to be going already. So I'm very reluctant to extend any, but obviously we can work on something. That's just where the Chair sits. Because having gone through the mapping of the General Plan issues that we did the last term and watching all the other stuff and the previous community plans as well, back in the '90s, it's an arduous process. And we're trying to hold some feet to the fire and let's get the work done. So, Mr. Hokama, do you have any further comments on this?

COUNCILMEMBER HOKAMA: Chairman, maybe what would help the Committee and the Council down the road is...let's say this scenario. The Council grants the extension, they finish up Lanai, we move on to Molokai; but the Lanai plan then goes to the Planning Commission. So does your staff, Mr. Spence, half works on Lanai with Planning Commission and the other half works with Molokai CPAC?

MR. SPENCE: Could you repeat the question?

COUNCILMEMBER HOKAMA: I'm just trying to find out how your manpower requirements gets adjusted since the Lanai process goes to phase two, which is Planning Commission --

MR. SPENCE: Right.

COUNCILMEMBER HOKAMA: --okay. It doesn't stop, that we going kick up Molokai, step one, CPAC. And you have your same amount of people, your same amount of consultants. There's no problem with entering the new component?

MR. SPENCE: We're gonna be looking at that internally, and we will...if we need additional resources, we will come back and talk to the Council. I mean I understand the urgency as well. The...I mean...

COUNCILMEMBER HOKAMA: I appreciate, yeah, you're very aware of it, Director.

MR. SPENCE: Yeah.

COUNCILMEMBER HOKAMA: I appreciate that very much.

MR. SPENCE: I mean the way the 2.80B is laid out, it's set up for failure to meet the 10-year time requirements by the County Charter. And that's regardless of whether we have

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100 people in the Planning Department. It's just the way that it's set up, it's gonna bottleneck at planning commissions, you know, then it's gonna...everything get transmitted to the Council and the Council has other business besides this. You have your annual budget review. I mean it's a lengthy process. And we'll see what we can do about this. But, yeah, I'm very aware of the process and the issues involved.

COUNCILMEMBER HOKAMA: Okay. Just some points of clarification, Chair, and thank you again. My other comments about the test tube or the Petri dish, I don't know which I used, is more about an attitude of Ellison and how he describes how he wants to do projects on Lanai, okay, in press releases in San Francisco and other cities of the country. I find it real interesting since he's never talked to the community first about his visioning, okay. We gotta read about it, we gotta hear about it. I think this is a healthy part of the process, because now Lanaians are gonna find out exactly what the company would like to do on the island. But it hasn't change, yeah, throughout my tenure, Chairman. What is good for the island is good for the company. Not necessarily what is good for the company is good for the island. And that, to me, continues to prove itself decade after decade. And so I just would like us to get on because this is phase one of a three-step process. And even after we pass the community plan, we still get community plan revisions request, land use classification revisions request, so planning never stops, okay. It's just, again, a snapshot of time when we take those actions, Chairman. And I for one, you know, can appreciate those that have given time to the CPAC. But they were given a schedule by the Department that was asked to agree to so that they can get the work done within the time allotment, okay. My frustration is going through all this, we still end up with this type of request. And I know things happen. But, as Mr. Yamashita said, I think they got, what, 18 meetings in 25 weeks. That's a lot of meetings they did, okay.

CHAIR COUCH: That's a lot of meetings, yeah.

COUNCILMEMBER HOKAMA: So that shows the community's commitment. They showed up, okay.

MR. SPENCE: Uh-huh.

COUNCILMEMBER HOKAMA: Maybe not all 13 at one time, I agree; but they showed a commitment to participate and give input in this process. And, to me, that is a satisfying thing, Chairman. I just would like to move on to the next phase as expeditiously as possible. And I know Mr. Yamashita hasn't been twiddling thumbs for two months before we got to this point of not working on the plan --

CHAIR COUCH: Right.

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COUNCILMEMBER HOKAMA: --to get it to the next phase. So, you know, what is fair in time for processing, you know, I can go with that, but my thing, shorter the better, gentlemen. Thank you.

CHAIR COUCH: Thank you, Mr. Hokama. Ms. Crivello?

COUNCILMEMBER CRIVELLO: I have a question for Mr. Spence. Do you have a target start date for Molokai's planning?

MR. SPENCE: We have a draft plan in house. I think it's near completion. We still have to empanel the CPAC, so that's another agenda item for another Committee. So we're getting pretty ready to go on that. We have a lot of the mapping done already.

COUNCILMEMBER CRIVELLO: So do you have a target date? Say we get our people all approved and ready to...

MR. SPENCE: The dates are gonna start falling in place once the CPAC members are selected and we can start mailing them information and start looking at schedules.

COUNCILMEMBER CRIVELLO: Okay, thank you.

CHAIR COUCH: Well that brings up another question is, when are the CPAC members gonna be selected? Is that on your guys'...I mean are you ready for the selection? I mean if we could...if you could tell the Mayor's Office that, hey, get your guys picked.

MR. SPENCE: Yeah, I'm not sure if Policy Committee has already selected, if that's been through. I'm not sure.

COUNCILMEMBER HOKAMA: We are gonna need to update the list. We're gonna make one last public request for Molokaianians to apply that wanna participate, and then we'll make our recommendation of the Council's nine members. And the Mayor would need to come up with his list of four.

MR. SPENCE: Okay.

CHAIR COUCH: Okay. And one other question, Mr. Spence--and, Staff, let me know if we're veering off agenda--Ms. Crivello mentioned the Molokai...and I believe at the beginning of this whole thing, we were gonna try and do two at a time. And so far we're still kinda serially doing one. I know we'll be overlapping, but are we getting closer to doing two almost simultaneously or is that hard to wish for?

MR. SPENCE: Like I said, we'll be looking at that internally --

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CHAIR COUCH: Okay.

MR. SPENCE: --as far as staffing requirements. And if we need additional resources, we'll come back and talk to the Council.

CHAIR COUCH: Okay. I know we're kind of overlapped. If once Lanai goes to the Planning Commission, then we get right into Molokai. That's I think a little bit better than before, but it would be really nice to do two at a time. Alright, Members, any other comments? Okay, without objection, I'll give you my recommendation.

COUNCIL MEMBERS: Recommendation?

CHAIR COUCH: I recommend that...I'll entertain a motion to recommend the adoption of proposed resolution entitled, "Approving a Time Extension for the Lanai Community Plan Advisory Committee to Review the Draft Lanai Community Plan". And then once we get that motion, we'll work on the date.

VICE-CHAIR VICTORINO: So moved, Mr. Chair.

CHAIR COUCH: Okay. It's been moved by Mr. Victorino --

COUNCILMEMBER BAISA: Second.

CHAIR COUCH: --and seconded by Ms. Baisa.

VICE-CHAIR VICTORINO: Chair?

CHAIR COUCH: Alright. Go for it, Mr. Victorino.

VICE-CHAIR VICTORINO: Yeah. And I'm going to propose on the best information possible by both the Department and the committee members from the community that called in, and I would like to change the September 9, 2013 extension date and change it to October 15, 2013.

CHAIR COUCH: Do I have a second?

COUNCILMEMBER COCHRAN: Second.

CHAIR COUCH: Okay. Okay, it's been moved by Mr. Victorino and seconded by Ms. Cochran to change the date to October 15th. Comments?

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VICE-CHAIR VICTORINO: Mr. Chair?

CHAIR COUCH: Yes, Mr. Victorino?

VICE-CHAIR VICTORINO: And, again, this is a request that is coming not only from the Department, in part, but also some of the members on the...I'm sorry, my mind went blank, I'm sorry...this advisory committee, sorry.

CHAIR COUCH: Uh-huh.

VICE-CHAIR VICTORINO: And, you know, I hope my colleagues understand that I, too, don't want extensions; however, you're dealing with a community-based group, a group that gives of their time. You know, many of us, when we had crunch time here, went extra meetings, but the public perceives us as we get paid for it so we should do it. These are volunteers. Yeah, I know they volunteered and I knew that there were timelines, I should say, put on this. But, again, there's circumstances that have been brought up, changes; Mr. Hokama, again, recognizing Mr. Ellison and his visions. You know, this community is in a real transitional change...transition, I should say, not change, just transition. And so I'd want to give them the opportunity to finish up, make sure the maps are as done or as completed as possible. So with all of that, Mr. Chair, and we've heard it from the Department and we've heard it from some of the members of the community and on the advisory that this--oh, what is that?--about 45-days extension should be sufficient to finish it up; and that's what I hope we can support. I hope other communities won't have the same dilemmas, but they may. And like you said, Mr. Spence, this'll set up not to conclude the way it should've concluded in ten years. I think we all see that. But we're in the process now, and I believe if we don't allow those public members enough time, then quickly, we're gonna either get a rubber stamp or people not wanting to participate. I think that's the important precedent I'm looking at. And those that are out there, understand we got dates and we don't wanna go farther than those dates that we set; however, let's do your job and do it. They've done a great job till this point, they've had all these meetings; but they need a few more to wrap it up, you need a few more to get the maps done. I don't see a problem. I mean we're gonna get Miss...you know, Molokai's people pretty much, hopefully, in the next 30 days, I don't know. I speaking out of...I apologize, I speaking out of turn. I should not put dates for other...I apologize, Mr. Hokama. But they're not ready to go right now, just thought I just heard. And so again, you know, I really believe I'd like to give Mr. McOmbler and Gima and all the rest of those who are working on it, a little more time to finish it up. And even the Department has asked for a little more time. I think it's only fair to them, so I'll see what my colleagues believe, but that's...in this case, I see the validity of it. I might not see it in another circumstance. I may not see it in another area. I look area by area. And this one has some very unique challenges that have only come about in the last year or so.

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CHAIR COUCH: Okay.

VICE-CHAIR VICTORINO: I mean it's really come about. Thank you.

CHAIR COUCH: Thank you, Mr. Victorino. Real quick question before we go on to more discussion. What's the current deadline? Mr. Yamashita?

MR. YAMASHITA: July 2nd is when the...

CHAIR COUCH: So we're past already.

MR. YAMASHITA: Yeah.

CHAIR COUCH: So we're adding July, August, September; so that's 90 days plus 15, 115 days...105 days, sorry.

MR. YAMASHITA: Right. But the original request, we, maybe not having done an extension before, we had assumed that we could apply for or get our two-month extension which would have been September 9th, so that's when it would have been just two months or...

CHAIR COUCH: Okay.

MR. YAMASHITA: Yeah.

CHAIR COUCH: Chair Baisa?

COUNCILMEMBER BAISA: Oh, I'm sorry. Maybe the seconder wants to go first.

CHAIR COUCH: Yeah.

COUNCILMEMBER BAISA: I'll defer.

COUNCILMEMBER COCHRAN: No, yeah, I'm just, you know, I hear Mr. Victorino, but also Mr. Hokama, area representative. But again, you know, I'd like to give a little bit more time. I heard it'd be kind of a crunch for the September 9th deadline, and that's primarily why I'm seconding it. And I understand the precedent-setting mode this can set for the rest of the community plans; but, at this point, I feel the need to give them a little extra time. Thank you.

CHAIR COUCH: Chair Baisa?

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COUNCILMEMBER BAISA: Thank you very much, Chair Couch. I'd like to ask the Department, if September 30th would be acceptable. I just want to crunch it a little bit to see if we can get some excitement going here.

MR. SPENCE: Yes, thank you, Mr. Chairman, Madam Chair. I conferred with Dave a little bit; we think we can do it.

COUNCILMEMBER BAISA: You could do...

CHAIR COUCH: September 30th?

MR. SPENCE: September 30th. I am also concerned about extending too long, because then you get too much breathing room and people start not taking it so seriously. I'm just...I mean that's just human nature. I'm not wanting to do that to anybody.

COUNCILMEMBER BAISA: Thank you very much. Going through what I did, I think that --

MR. SPENCE: Yeah.

COUNCILMEMBER BAISA: --you set that date and then everybody has to live by it.

MR. SPENCE: That's right.

COUNCILMEMBER BAISA: But the more...it's like kids, you know, you gotta tell them, I want you here at 9 o'clock, not maybe. Otherwise, it just, you know, it's priorities in our lives, and I'm really worried. I'm so concerned about completing all of the community plans. You know, having been through what I've been through, I'm so worried that we don't...we gotta find a way to move these community plan processes faster because they become outdated before they're done. And, you know, Director Spence, you and I have talked about this process, and I think we all made a promise at the end of the General Plan process that we're gonna look at this process. And I agree totally with Member Hokama, it has to be revised, it doesn't work. We gotta find a better way to get community planning going on continuously and moving expeditiously. As Member Crivello always says, community participation is so important, but it is time consuming, the way we have it set up. So I think we need to look around the nation. And we certainly have the ability to do that with Mr. Hokama in our midst. You know, he's very much aware and has contacts of what's happening all over the country. We need to look around and see how other people do this, and can we do it faster and better. But I think that, you know, going to September 30th is generous. It does give, you know, a number of days to complete these meetings. And if we're talking about two or three meetings, we should be able to do it. It's August and all of September. Thank you.

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CHAIR COUCH: So is that a motion to amend the amendment or is Mr. Victorino willing to change the date to the 30th?

VICE-CHAIR VICTORINO: I have no problem with changing it to the 30th with the acceptance of the seconder and, you know --

COUNCILMEMBER COCHRAN: Yeah, that's...

VICE-CHAIR VICTORINO: --I have no problem.

COUNCILMEMBER COCHRAN: Yeah, I'm okay with that.

CHAIR COUCH: Okay. So we go to 9/30?

VICE-CHAIR VICTORINO: Mr. Chair?

CHAIR COUCH: Any...Mr. Victorino?

VICE-CHAIR VICTORINO: And I thank you. And you know, again, just so that everybody's clear, I took the 10/15 off of Mr. Yamashita's...

CHAIR COUCH: Sure.

VICE-CHAIR VICTORINO: I want nobody getting upset. However, if you guys have consulted and feel that you can get your job done. And I think Butch Gima guys, I think, you know, they'll be able to get their job done. I'm comfortable with the September 30th, no problem as far as that.

CHAIR COUCH: Okay. Members, any further comments? Mr. Yamashita, did you have a comment to make?

MR. YAMASHITA: Yeah, I just wanted to just make sure people understood that we, right now, we have four meetings set up: August 28th, 29th and September 4th and 5th. And it's, a lot of it, the focus is gonna be on maps. We also wanted to give the Committee and the community a chance to review the document in its entirety. So it's maps and looking at the text as well. But we do have four meetings set up right now.

CHAIR COUCH: Any chance of getting some of those earlier than the...I mean that's 20 days from now.

MR. YAMASHITA: Well, yeah, we have two of our team members that are out on vacation right now. And so we've, you know, they're not here, they're gonna be coming back

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soon. But we are working on the draft right now. I mean it's not as if work has stopped. We're continually working on the text and also doing some work on the maps.

CHAIR COUCH: Okay. Further comments? Mr. White?

COUNCILMEMBER WHITE: Thank you, Chair. I'm comfortable with a short time frame, mostly because this is just the first step. Then it has public input again during the Lanai Planning Commission review and then public input again when it comes to us. So I think, you know, I think we all know how time-consuming this whole process is.

CHAIR COUCH: Yes.

COUNCILMEMBER WHITE: And I hope that Mr. Spence will be coming to you with some changes to Code, so that we can look for places where we can shorten the process. Because it's a very important process for us to go through and we all support it, but we need to keep it rolling.

CHAIR COUCH: Uh-huh.

COUNCILMEMBER WHITE: And having this process shortened by a couple of weeks really doesn't dramatically change the public input, because it's just simply gonna go to a different type of public input and continue to move.

CHAIR COUCH: Yeah. Okay. Members, any further comment? Alright. So the motion before us is to amend the date to September 30th. It's been moved by Mr. Victorino and seconded by Ms. Cochran. All those in favor, please say, "aye".

COUNCIL MEMBERS: Aye.

CHAIR COUCH: Opposed? Let the record show six "ayes", zero--one, two, three, four, five, six--and one "excused", yeah, six "ayes". And Mr. Hokama sat for the vote, but unfortunately you weren't allowed to vote. Sorry, Mr. Hokama.

VOTE: **AYES:** **Chair Couch, Vice-Chair Victorino,
Councilmembers Baisa, Cochran, Crivello, and
White.**

NOES: **None.**

ABSTAIN: **None.**

ABSENT: **None.**

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EXC.: Councilmember Guzman.

MOTION CARRIED.

ACTION: APPROVE AMENDMENT TO MAIN MOTION.

CHAIR COUCH: Alright, now on the main motion, before Mr. Victorino goes, on the main motion, it's been moved --

VICE-CHAIR VICTORINO: Forgot about that.

CHAIR COUCH: --it's been moved by Mr. Victorino and seconded by Chair Baisa to adopt the proposed resolution approving the time extension for the Lanai Community Plan Advisory Committee to review the draft Lanai Community Plan. All those in favor, please say, "aye".

COUNCIL MEMBERS: Aye.

CHAIR COUCH: Opposed? Motion passes, six, zero with one "excused", Mr. Guzman.

VOTE: AYES: Chair Couch, Vice-Chair Victorino, Councilmembers Baisa, Cochran, Crivello, and White.

NOES: None.

ABSTAIN: None.

ABSENT: None.

EXC.: Councilmember Guzman.

MOTION CARRIED.

ACTION: ADOPTION of revised resolution; and FILING of communication by C.R.

UNIDENTIFIED SPEAKER: ... *(Inaudible)* ... Does that include filing of the communication?

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CHAIR COUCH: Yes, that includes filing of the Communication 13-205. Thank you. Alright, Members...thank you, Mr. Hokama, for joining us; and you're more than welcome to stick around for our next one.

**ITEM NO. 15: GENERAL PLAN ADVISORY COMMITTEES AND
COMMUNITY PLAN ADVISORY COMMITTEES**
(CC 13-86)

CHAIR COUCH: I would like to get one more in before we go to lunch, and I believe that is Item No. PC-15. So open your books to that page. Okay. While you're looking for it, I just wanna let you know that we're in receipt...this Committee's in receipt of County Communication 13-86, from me, transmitting a proposed bill entitled, "A Bill for an Ordinance Amending Chapter 2.80B, Maui County Code, Relating to the General Plan Advisory Committees and the Community Plan Advisory Committees". The purpose of the proposed bill is to give the Mayor the authority to select and remove the chairs of each general plan advisory committee and each community plan advisory committee, subject to the approval of the Council. Members, would like to hear some comments from the Planning Department, but I just wanted to take a second to point out the reason I brought this up was that there had been some issues in some of the committees. And in the Charter, it talks about boards and commissions and how those are formed; but it doesn't talk about committees. In HRS, as I mentioned at the testimony, HRS 50-3, it specifically states that the Mayor shall appoint the chairperson of the Charter Commission. And the reason that is...it's my understanding that in other jurisdictions, there facilitators versus chairs of especially general plan committees and community plan committees throughout the country. And if Mr. Spence can verify that, I'd appreciate it. But only because of the emotionally charged...usually these advisory committees are 'cause there's people on both sides; and a lot of times, somebody who isn't a professional facilitator, it causes these meetings to go a lot longer than normal. That's been my study and that's the reason I brought this up. This doesn't go all the way to the point of saying, we should have a facilitator versus a chair; but I think this is kind of a compromise because it's already...there is precedence in the Charter Commission, and I think there's wisdom that the legislatures had in making that law. So, Mr. Spence, in your...I mean we've had discussions before, and it's my understanding that facilitators are generally used as opposed to chairs of these meetings.

MR. SPENCE: Thank you, Mr. Chairman. I'm not exactly remembering our conversations a whole lot, but I will comment that, you know, it's done differently all around the country. There's no set way to do this, there's no right way. I mean if...so long as the end result is a good one that the community has input all the way through. I understand the purpose of the proposed bill, at the same time, and while certainly recognizing the concerns of the testifiers. I recall the last go around of the community plans, we had chairs that completely dominated committees. We also had, I believe, one committee where they had alternating chairs which led to great inefficiency. Also with...just to be honest, the

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last...the GPAC, we had a chairman who was not following, you know, with County regulations and was filing his own agendas with the County Clerk and not checking with the Planning Department. There was a lot of internal arguments with committee members and the chair, and that led to a lot of inefficiency. We had hours--and we're talking hours--were spent arguing back and forth about protocol and procedures, and there was no way to remove that chair. So, you know, I think that the intent of the bill is a good one. I think there is...that's something that would result...or some form of this bill would result in more efficiency in the process.

VICE-CHAIR VICTORINO: Mr. Chair?

CHAIR COUCH: Okay. Mr. Victorino?

VICE-CHAIR VICTORINO: Thank you. And thank you, Mr. Spence, for some clarification, you know, I appreciate that. And, you know, 'cause my first take was like, absolutely not. However, I still cannot feel that when you set these advisory committees, GPACs and others, that the Mayor, whomever he or she may be, would have the right to then assign the chair. If you talking facilitator, I might be more sympathetic to that. I had a facilitator in our taskforce with Refuse. We had a facilitator, we never had a chair. And this was a professional mediator that came to every meeting, and all she did is control the meeting. She didn't have a vote, she was a facilitator. And I like that system, because that person really just controlling the meeting, keeping it on track; and it really worked really well. But it was a facilitator. And it wasn't assigned by the Mayor, it was hired out, okay. So I cannot support this the way it is formed right now. Now, if you can get me something that says, a facilitator that would be hired to conduct the meeting, if that's what you're kinda moving towards, Mr. Couch, or something of that form, then I'd be more understanding and more supportive. But, again, if you have a committee and they cannot pick their leadership, well first of all then that committee may have a challenge, you know, 'cause I've been on a number of boards and commissions and we've always picked our leaders. But more importantly, I think the idea in this area--and maybe this is where we need to go--is a facilitator instead of a chair, and then you have the committee members, they vote. All that person does is keep the meeting moving on, keep the meeting in order, keep the subject matter that's supposed to be talked about on the table and not, you know, deviating all over the place. Now that may be a little more cumbersome, that may be a little more different, Mr. Chair; but that's my take on this at this point. Thank you, Chair.

CHAIR COUCH: Okay. Members, any other comments? Chair Baisa?

COUNCILMEMBER BAISA: I understand thoroughly what is before us and why it's before us. I've been trying to find a middle of the road with this thing before us. And, you know, while I totally, totally understand and appreciate the testimony we received about a group

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being able to appoint its own chair. I think that's the easy part. Appointing the chair and the group deciding, okay, we want so and so to be our leader is easy, and I think it's democratic and, you know, it's fine. The problem comes in when there is a possible need to replace that person or to remove the person; that's when it becomes very challenging. Because, you know, over the months as this group meet--and in this case, they met for months and months and months--it becomes very difficult to say, you know, we don't think our chair is doing very well and so we want to remove him and replace him, because, you know, friendships and the group that gets divided and all this happens, the internal culture that comes into this group makes it difficult. So an outside person probably would be a better person. Now I'm not sure that that should be the Mayor because we don't want to bring...and it's been told straight up to me so I'll be straight up, we don't want politics to enter this, we wanna remove it from that. And so that's an issue. In discussing this with some of the folks that were here today during the break, an idea was tossed out and maybe we could talk about it a little bit. And that would be maybe revising this legislation that creates this group and the appointing of the chair that there be included in here like periodic reviews of how is this group doing and is the chair effective? Maybe after six months everybody sitting down and talking about this. Is it going in the right direction, do we have the leadership we need? That was never done, and so we could insert that into the formation of the group. And that was an alternative that was discussed today, informally, you know, during --

CHAIR COUCH: Uh-huh.

COUNCILMEMBER BAISA: --the break. 'Cause I'm trying to find, again, I don't want to take away...and, you know, people feel that when you take away the ability of the group to appoint their chair, that you're taking away some community input; and I totally understand that. But it didn't work very well when it came to the point where we need to make a change. How do you make that happen? And sometimes it needs to happen.

CHAIR COUCH: Okay. Ms. Crivello?

COUNCILMEMBER CRIVELLO: Personally, I think the committee...or the community people should select their leader. But also, consideration, if we would like to bring in a facilitator, then you have to look, is it affordable for Planning or us as a County to be able to afford the facilitator. I can only identify my island. It's so territorial, it's who's going to be allowed to facilitate and who they will accept, and that becomes a question. I believe that the GPAC process and the fact that we are empowering our community to come up with your plan for your island, you know, if you look at different islands or different communities, you have...I take my island, alone, we have so many plans shelved and strategic plans for our island and it has been shared as well as facilitated by different people. But your community knows your leadership and they will be able to identify better than we, as a whole of nine Councilors, can identify who can be the chair

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for the Molokai community, Kihei or what have you. So I can understand the intent of the bill, but I also would like to ask if the Planning Department will have training. When you have your planning commission and your planning commission selects their chair, I understand there's some training as to what are the protocols and what's gotta be put in place and how you're gonna run your agenda and what have you. So the procedural side, I would hope that the facilitation on that part will come from the Planning team. I don't agree, at this time, to take away from the communities, all these volunteers, their discretion as who can help lead them as well as facilitate the process that they have to go through to come up with their plans.

CHAIR COUCH: Okay. Mr. White?

COUNCILMEMBER WHITE: Thank you, Chair. I feel similarly that we shouldn't be taking away the ability of each community group to choose their own leadership. I do think it makes some sense to provide the chair, whoever the community group selects, provide the chair some training on how to keep the meeting going, how to make the deadlines that we've set up. Because each of these processes is gonna have its own deadline. But, you know, we have the process set up so it goes from the community group to the planning commission and then back to us. So it's very difficult for me to say, we can't allow them to do their own work without us having the Mayor appoint someone who's then confirmed by six of us. I trust the communities to do the work. Sometimes it's gonna work well, sometimes it's not gonna work so well. But then the planning commission has the ability to make some fixes. The Planning Department has the ability to provide some training and guidance to the chair. And so I think we should just leave it in the communities' hands and give them some assistance with some facilitation and training as to how to keep the meeting going and how to keep the focus on what needs to be done. And, basically, the impetus for that is you've got a set amount of time within which to complete your work; and that I would much rather that be the focus than trying to pick a chair for each community, so my two cents.

CHAIR COUCH: Okay. Mr. Hokama, you're sitting through this; I'm assuming you have some comments you'd like to make.

COUNCILMEMBER HOKAMA: I am happily listening to my colleagues' input to you Chair. My suggestion would be...I like what Ms. Crivello and Mr. White mentioned, and maybe that's some kind of hybrid. I think you might wanna look at options. I can support a community panel picking their own chair. I think maybe you wanna look at planning commission. Maybe the chair will not vote if that's an issue of too strong of leadership from the chair. The chair can only vote in cases of ties like planning commission, but he still helps run the meeting. I think the facilitator is a good part. 'Cause I think in this type of reviews, a facilitator can assist the chair in staying on track, knowing the subject matter very, very well as a professional planner as one way of approaching it. And then

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let the chair still run the meeting; let the facilitator help the chair keep on time with the Director's assistance. And then if, you know, and then if need be, vote to break a tie situation. But that's another way to approach it, Chairman, if the concern is too strong a chair.

CHAIR COUCH: Or too weak.

COUNCILMEMBER HOKAMA: Or too weak a chair. But I think part of the things that helps a chair is, you know, either Corp. Counsel or someone has to assist them with parliamentary procedure; that's how you maintain order and run a meeting. And if the person cannot have some sense of responsibility in that then that's the wrong person for the chair. 'Cause you're gonna have, you know, meetings that going take forever 'cause everybody has the floor. So that's one way of, I would say, approaching it, Chairman. Thank you.

CHAIR COUCH: Okay. Mr. Spence?

MR. SPENCE: And just listening to the Members' comments about, you know, well the planning commissions choose their own chairs. Normally, just for the Members' information, the CPACs are empaneled, boom, they're there. The planning commissioners, when they get two new members every year, their people are rotated on and off. Those new members are never the chairperson, they practice for a year, they get used to the way that Robert's Rules are. I mean the CPAC members are thrown into it just immediately. So certainly there's a lot of merit to the idea of having some training at least for the chairman. And you know, as we're seeing, we have people who've, coming back on these CPACs, who have been members of the planning commission, members of past CPACs, you know. So they already have a lot of practice in these things, but that's not always the case. And, my personal recommendation, I would...I think the committee should choose their chairpersons. I think there should be some kind of mechanism for removing them if the need arises.

CHAIR COUCH: Okay. Ms. Cochran?

COUNCILMEMBER COCHRAN: Chair, thank you. And, yeah, I appreciate all the comments and the different ideas being tossed around, but definitely I'm all about the community voice --

CHAIR COUCH: Uh-huh.

COUNCILMEMBER COCHRAN: --and having their own representation and their choosing of who they would like to have, you know, manage the meetings and what have you. And, you know, I like that people are seasoned and they have experience and knowledge of

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how to do meetings, conduct and be in meetings; but, also, I don't want it so daunting that newcomers are too afraid --

MR. SPENCE: Right.

COUNCILMEMBER COCHRAN: --to participate. Because, I'll tell you, it's the same people getting recycled through a lot of these commissions, and I would like to see fresh, new ideas and set of eyes and what have you on, you know, making decisions. And so, again, I appreciate, but then the training word has been tossed around and that's awesome. I think that would definitely help any newcomers and give an open, you know, more confident welcoming feeling to anybody new who wants to step up and get involved. And so great, yes, we would like seasoned and experienced; but then, again, let's not make it so, well, we wanna make sure you know what you're doing before you, you know, jump on board. I think to be flexible and open to others who are willing to step up and wanna learn is also an important part. Thank you, Chair.

MR. SPENCE: Oh, yeah.

CHAIR COUCH: Okay. And, Mr. Spence...or actually Mr. Hopper maybe. I'm certain we wouldn't need anything in ordinance to say, get them training. But as far as if we were to decide a facilitator to help out, would that be an issue that we may need to have some sort of...something codified in that if there's a conflict between...if we would decide to go with a facilitator as well, if there's a conflict between what the chair wants to do and what the facilitator wants to do, should there be something in Code to address that?

MR. HOPPER: Well, Mr. Chair, if you're talking about a chair under Robert's Rules of Order, then that chairperson, unless the commissions' rules state otherwise, is going to have the final decision in all parliamentary rules, is going to have the final decision on most aspects and could take advice from a facilitator. But I mean I suppose there could be something placed in the Code, but I think that would be very difficult to kind of have the facilitator have final say on certain things and have the chair have the final say on others. I mean I think, at least under the Robert's Rules of Order, chair, that's the individual who does make the final decisions on rules and other issues. I think it'd be extraordinarily difficult to mandate what a facilitator would do. I don't know if the commission would want one to assist. Having advised boards and commissions over the past seven years, I think maybe training on what the role of the chair is and more of an emphasis on what the role of the chair is under either the commissions' own rules or Robert's Rules of Order could be helpful in a lot of cases. But as far as a facilitator, I'd really need to take a look at that one. If there was going to be obviously anything mandated that the commission had to do, that could be an ordinance or the commission could put that in its own rules. Those are the two options there. Exactly how to spell that out would be difficult because, you know, it would be very hard to carve out, here's what the chair has the final say on,

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here's what the facilitator has final say on and et cetera. So I think it would mostly be advisory, and I do think that through Corporation Counsel, through the Planning Department, through...I don't know if you would have a parliamentarian come in and give some guidance as well. But that training, I think, would probably be easier to implement as far as rather than a mandate of using a facilitator. The legality of that would just be hard in advising the chair at the meeting on what their role is and who has to make the final decision, especially if there's a conflict between the two.

CHAIR COUCH: And then Mr. Spence's other comment was, fine, let the community select their chair, but there should be some mechanism to possibly remove the chair if there are issues with that. In my mind, that if the committee is going to elect a chair, then they're the ones that would have to remove it even if it, you know, we at Council or whomever thinks that it's going in just in an oddball direction, that's totally up to the committee. If one were to say, the committee elects their chair, then they would be the one that would have to also remove their chair. Ms. Crivello?

COUNCILMEMBER CRIVELLO: Thank you, Chair. Also, though, during these process, you have Corp. Counsel there, right, that participates in the meetings or on the sidelines. And what I've often watched, including my participation with charter, because the leadership or the chairmanship also this is a brand new game. So Corp. Counsel is usually the guiding force to tap 'em and say, no, you can't do it that way, it's gotta be this way. So I see the coverage as far as it's how you're being procedural and following protocol with the assistance of Corp. Counsel as well as having your planning team there. So I can understand why you would want something like this through your experiences and how we wanna move it along further. But I think, you know, the sense of clarity gotta come from our Corp. Counsel during the process as well as from our planning team. And I just find it so hard to deprive our community people to make the determination as to who they feel can chair the process. And I have enough faith in our community people that that person isn't doing the right job, they'll remove him. It's just having faith in our community. Thank you.

CHAIR COUCH: Okay. Members, any further comments? Ms. Chair Baisa?

COUNCILMEMBER BAISA: Just one last comment. Having sat through the majority of the GPAC meetings, there were times when the GPAC met on weekends and met late into the evening --

CHAIR COUCH: Uh-huh.

COUNCILMEMBER BAISA: --that Corp. Counsel was not available. And so if we're going to, you know, and I think it's a really good idea, rely on Corp. Counsel to help us keep things in line, then we have to be sure that they're there. Thank you.

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CHAIR COUCH: Okay. Members, any further comment? Okay. I think that the Planning Department has gotten some feedback from us in that they may want to take a look at definite training of the CPAC members, the chair and the vice-chair, I would assume. And, you know, I'm kinda willing to let this stand as it is if we can see how that works. I just recall having a conversation with somebody from another jurisdiction that was just shocked and amazed that our General Plan Advisory Committee, they had a chair and that they did not have a facilitator, they just couldn't understand why that happened. So and they were also saying that theirs got done rather rapidly. So I'm willing to go ahead and file this at this point with the notion that the Planning Department has heard us, has heard the concerns. And if it just isn't working, we can bring something up like this in the future.

VICE-CHAIR VICTORINO: Mr. Chair?

CHAIR COUCH: Mr. Victorino?

VICE-CHAIR VICTORINO: You know, and thank you. And, again, I think the concept you brought forward has some merit, and it may have...and may sometimes be needed; however, I would like somehow for us to look at for these advisory...like GPAC and some of the high-profile... 'cause when we did the taskforce, a refuse taskforce, we also had chair and vice-chair, but the facilitator ran the meeting. Could not make motions, could not advise, could not tell us which way. We had Corp. Counsel there, also--I forget who was the Corp. Counsel that was assigned to us--and they were there for that purpose. So motions were made by the people on the floor with the advice of Corp. Counsel, you know, to make sure what the legalities and all that. But again, like everything else, it was something that was going to be transmitted to Council for review and approval.

CHAIR COUCH: Uh-huh.

VICE-CHAIR VICTORINO: Similar to what all of these committees do, they put this together and send it to us for our approval. So it may be something to look into. And I don't know, Mr. Spence, you know, and it costs money. And, again, there's always that word, "dollars". You know, I'm not gonna deny that. But these are professional people who conduct the meeting. And so it was much...it was very expedient, we were able to get things done, bring our recommendations forward in the time frame that was allowed us, you know. And so there is some real merit to this, you know, I'd like something to be, you know, something to put on the record that we looked into this for these specific groups. Because they are, like you said, brought in from, like we were, just brought off the street and here, it was sixteen of us or seventeen of us--I forget what it was, the total number was--and this is the committee and this is your task and this is what you're charged to do. That was it. Now they did have training on Robert's Rules and all that, so

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we did have that right off the top; and so that helped us move that meeting along. And we had all kinds of people: business, environmental, I mean we had a wide-variety of people on this committee. And it seemed to have worked out real well. Again, the chair was the chair of the committee, but the facilitator, we had her or him--'cause we had some changes 'cause sometimes somebody couldn't be there--but these mediators ran the meeting. That's all they did; made no motions, made no advice. You decided what you wanted to do. And each day we came in, we had a certain agenda of what we wanted to accomplish for that day, and that's what they followed. They followed that format and nothing else. It seemed to have worked real well. I wish I had other opportunities to work with them. But, again, it kept us focused on the meeting.

CHAIR COUCH: Okay.

VICE-CHAIR VICTORINO: So something to look into. I'd like something, you know, I understand what you're saying, but I'd like something not to just be dropped off. Maybe looking at something and coming back maybe at a later time with some other ideas.

CHAIR COUCH: Yeah, and I'm willing to certainly do that. One of the questions I would have for Mr. Hopper would be, is it--my understanding--that the planning commission, actually the chair, does not vote unless there is a tie?

MR. HOPPER: Yes, Mr. Chair, under Robert's Rules of Order, unless there's an exception in the rules, most boards have that as the default other than rules that apply. And so under that, the chairperson would not vote unless there's a tie. And I believe that's the case in just about every board and commission that we've advised, unless it's necessary to take action. For example, if there's only five members and that's a bare quorum, the chair's going to have to vote. Or to break a tie, so if there's a four-four split or if there's a four-one split and the chair is there, the chair would have to vote to, you know, to see if there's action.

CHAIR COUCH: So quorum, yeah.

MR. HOPPER: But the role of the chair under Robert's Rules, it's usually dictated by Robert's Rules in most of the boards and commissions. And so, yes, that's the status for the chairperson in Robert's Rules. They actually have a relatively restrictive or supposed to have a relatively restrictive role as far as commenting for or against particular proposals. The Robert's Rules goes into that and has some, you know, has some actually fairly strong restrictions on the chairperson's role and how that's envisioned by Robert's Rules.

CHAIR COUCH: Okay. Alright, Members, my recommendation would be to file this at this point and see how it works with the next advisory committee. And if there's an issue, we can certainly bring something similar back or a different...

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VICE-CHAIR VICTORINO: So moved, Mr. Chair.

CHAIR COUCH: Okay.

COUNCILMEMBER COCHRAN: No objections.

COUNCILMEMBER BAISA: No objections.

CHAIR COUCH: Okay. Well, we have to have a motion to file.

VICE-CHAIR VICTORINO: We have to have a motion 'cause you filing.

COUNCILMEMBER BAISA: You made a motion?

COUNCILMEMBER WHITE: Second.

CHAIR COUCH: Yeah.

COUNCILMEMBER BAISA: You filing.

COUNCILMEMBER COCHRAN: Oh.

CHAIR COUCH: Okay. It's been moved by Mr. Victorino, seconded by Mr. White to file this communication. Any further comment? All those in favor, please say, "aye".

COUNCIL MEMBERS: Aye.

CHAIR COUCH: All those opposed, say, "no". The "ayes" have it - six, zero, with one "excused".

VOTE: **AYES:** **Chair Couch, Vice-Chair Victorino, Councilmembers Baisa, Cochran, Crivello, and White.**

NOES: **None.**

ABSTAIN: **None.**

ABSENT: **None.**

EXC.: **Councilmember Guzman.**

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MOTION CARRIED.

ACTION: FILING of communication by C.R.

CHAIR COUCH: Alright, Members, it's time for lunch. Let's get back here at 1:30, and we can pick up the rest of our items. They should go a lot faster than these three, thank you. This meeting is in recess. . . . (*gavel*) . . .

RECESS: 12:03 p.m.

RECONVENE: 1:34 p.m.

ITEM NO. 16: SHORT-TERM RENTAL HOME RESTRICTIONS IN MAUI MEADOWS (CC 13-90)

CHAIR COUCH: . . . (*gavel*) . . . Will the Planning Committee meeting of August 1st please come back to order? Members, we're back on the agenda in the order that...we're back into the right order now. We're on PC-16 at this point. And just to let Members know that we're in receipt of a communication from the Department of Planning, it's Communication No. 13-90. That explains...providing notice that as of March 4, 2013, the cap of five short-term rental homes in Maui Meadows has been met. At this point, we're here for discussion from the Department and then get to see where we wanna go from here. But there is no bill before us at this point, it's more of a, let's see what we're gonna do from here. So if the Department wouldn't mind, we have Ms. Flammer, Gina Flammer, from the Department of Planning and Ms. Ann Cua. Good afternoon, ladies.

MS. FLAMMER: Good afternoon.

MS. CUA: Good afternoon, Chair and Members.

CHAIR COUCH: Okay. So who wants to take this one on?

MS. FLAMMER: I can. Today's item is just a notification that what is required by the short-term rental homes bill for when we reach a cap. And we reached the sub-cap for Maui Meadows which has five, so we transmitted a letter to you informing you of that.

CHAIR COUCH: Okay. Anything, Ms. Cua?

MS. CUA: No, that's it.

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CHAIR COUCH: Okay.

MS. CUA: Now we wait for direction from this body as to what to do.

CHAIR COUCH: Okay. Members, any questions of the Department? Ms. Chair Baisa, looks like you're ready to ask a question.

COUNCILMEMBER BAISA: Yes, thank you very much, Chair. And thank you, Department folks, for being here. I had asked this question earlier of a testifier, and so I'll repeat it. I don't know if you heard me. But I was trying to ask him, how many permits had been granted in South Maui as a whole, not just in Maui Meadows? And he gave me an answer and said I should check with you.

MS. FLAMMER: Oh, okay. The answer should be 25. We do have some letters pending, kinda going through the pipeline. That's for issued permits. I have the other areas if you're curious?

COUNCILMEMBER BAISA: Yes, we wanted to know those, too, yeah.

MS. FLAMMER: Okay, great. So let's start with...we'll start with the 25 for Kihei-Makena --

COUNCILMEMBER BAISA: Yeah?

MS. FLAMMER: --25 for Paia-Haiku, 20 for West Maui, 5 up in the Kula-Pukalani-Makawao District, 4 for Wailuku-Kahului, we have 4 on Molokai and 1 on Lanai. That represents 80. We also have about another 80 applications that are pending, being processed right now.

CHAIR COUCH: Can we go through that real quickly one more time? We can't write that fast.

COUNCILMEMBER BAISA: I was trying to take shorthand, too. Yes, thank you.

MS. FLAMMER: Sure. It's 25, Kihei-Makena; 25, Paia-Haiku; then we have 20 for West Maui; 5 for the Makawao-Kula-Pukalani area; 4 for Wailuku-Kahului; 4 on the island of Molokai and 1 on Lanai. This is all permits issued.

COUNCILMEMBER BAISA: May I continue, Chair?

CHAIR COUCH: Yes.

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COUNCILMEMBER BAISA: Looking at those numbers, and we do have an overall limit, right, and that overall limit, remind us please?

MS. FLAMMER: Is 400, is the total cap for all areas.

COUNCILMEMBER BAISA: And this began...when did we start this permitting?

MS. FLAMMER: The ordinance was passed at the end of May, took us a couple months to get the application out. We started receiving applications as early as June, I think, our very first one came in. So it's been a little over a year that we've been processing them.

COUNCILMEMBER BAISA: And we've done 80?

MS. FLAMMER: We've done 80. Now the properties that are on agriculturally-zoned land are required to come in for an additional permit. Those can take a little bit longer for processing because we've scheduled it with the Maui Planning Commission, so many of those are still being processed.

COUNCILMEMBER BAISA: Chair, do you think that this rate is going to continue or do you think this was the initial, God, we're dying to get in here, and we've been waiting for a long time?

MS. FLAMMER: We had a influx at the very beginning, which was really nice to see people that wanted to come into compliance. And these were brave people that wanted to come in right in the beginning; other people waited a little bit kinda to see. Once we started issuing permits, we started getting more. We're getting...I don't wanna call it a steady stream, 'cause it kinda comes in waves where we'll get three one week, sometimes a consultant will come in with several all at once. So we're continuing to get them in, but it's a little more of a trickle at this point.

COUNCILMEMBER BAISA: The reason why I'm trying to get a feeling for this, you know, how the requests are coming in is to look forward, you know. If we maintain this cap of five, Chair, at this rate, this is going to...and if we didn't give them any more, I think it's gonna take us another four, five years before we finally get to that 400 cap, could be even longer if this peters off, and it looks like it might. I don't know, you know, when we set these caps, we really didn't have the experience, at least in my experience. We didn't have the experience, we didn't know 'cause we had never had these permit laws before, so we couldn't judge how many people would eventually apply or what a good cap was. And so we kind of arbitrarily, using a formula, decided on how we would break this up in the various areas. But we also were cognizant that we probably would have to modify them, and I think we're at that point. Now the question is, how do we modify it and do

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you guys have any recommendations based on your knowledge, which is much deeper than ours, of what you see walking in the door every day?

MS. FLAMMER: I know there was a preliminary look at one of the areas. We looked at Paia-Haiku, just looking what's available out on the Web and how many had permit numbers, and we were pleasantly surprised to see that most of them do, already. Now whether new people come into the market, you can't really predict that. So it's hard to judge what the future's gonna hold. We do have in the law that when we reach 90 percent of the cap, it does come back to you for review so that should give a little bit of time. We can, at that time, if you'd like, we can provide you with some information about what's available in the market. We did talk about that when we were discussing the bill. We had gone on and kind of gotten some estimates to see that the cap hold enough room. We can also see from the public if there's more demand for spots once we get close. We can tell by phone calls that come in from people. They usually contact us by phone first with questions before a application just shows up.

COUNCILMEMBER BAISA: Chair, maybe you can help us, because some of us are new to this. How did we wind up with the limit of five in Maui Meadows?

CHAIR COUCH: Okay. Just to refresh the memory of those that may...actually not have been here before so to add to their memory, we had a group from Maui Meadows that was very concerned about the proliferation of an excess number of short-term rentals in Maui Meadows. And they worked with us, with the people, the vacation rental association, and they came up with that number five just to see, a) how long it would take to reach, and b) as let's have five and see how good citizens are gonna be and if we even know that they're there other than the sign in front of their house. So we see how quickly we reached five. I'd like to ask the Department if there's any calls, any applications in the works for or requests for more in Maui Meadows that you've had to turn down?

MS. FLAMMER: I field many of the calls for this. Through that, I've received two calls from people. One, the consultant was here earlier today testifying. And then the other person had been working on the application, took a five- or six-month break; and by the time she came in, the cap was already full. Those are the two that I'm aware of, personally, just from answering phone calls at the Department.

CHAIR COUCH: Okay. So there are potentially two that if we up the cap, they would be ready to come pretty much right away?

MS. FLAMMER: That we're aware of. I think one of the testifiers mentioned he was aware of one other. I think word's gotten out, though, that the cap is full.

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MR. SPENCE: Mr. Chairman, I think if...I mean no matter what the Council does I think in that particular area that if you raise the cap it would get full pretty quickly. I think there would be other people interested in applying in that area.

CHAIR COUCH: Okay.

VICE-CHAIR VICTORINO: Chair?

CHAIR COUCH: Mr. Victorino?

VICE-CHAIR VICTORINO: I don't know if Ms. Baisa...

CHAIR COUCH: Were you finished, Chair Baisa?

COUNCILMEMBER BAISA: Let Mr. Victorino go ahead. I can go on for a while, yeah.

VICE-CHAIR VICTORINO: If you wanna go on for a while, I can wait.

COUNCILMEMBER BAISA: No, go ahead, please.

VICE-CHAIR VICTORINO: See, we treat each other nicely, right? What...could you...you gave us how many each area had issued. Can you refresh our memories, how much each area was allowed? Now I know Maui Meadows was a special, you know, whole special thing, you know. But we had exact numbers for each region. So what I...if you said you did 80 and you get 80 more, not even halfway there. So maybe one place you might see proliferation but these others don't seem to be moving very quickly. But could I have the numbers that were permitted per area?

MS. FLAMMER: Sure. These are the cap numbers --

VICE-CHAIR VICTORINO: Yeah, the...

MS. FLAMMER: --and I'm gonna just read them in order that they are in the ordinance. Hana is allocated 48 --

VICE-CHAIR VICTORINO: Okay.

MS. FLAMMER: --Kihei-Makena, 100, provided that there are no more than five permitted in the subdivision known as Maui Meadows --

VICE-CHAIR VICTORINO: Okay.

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MS. FLAMMER: --for Makawao-Pukalani-Kula, the cap is 40; for Paia-Haiku, we're looking at 88; Wailuku-Kahului, 36; and then West Maui, 88.

VICE-CHAIR VICTORINO: And Molokai and Lanai had no numbers for them as far as capping?

MS. FLAMMER: No, they're not included in the bill.

VICE-CHAIR VICTORINO: They're not included in the 400 that we're referring to?

MS. FLAMMER: I thank you for that clarification.

VICE-CHAIR VICTORINO: Yeah, I think that's important for people to understand. And when you went down the list, you never mentioned Hana in any way.

MS. FLAMMER: Oh.

VICE-CHAIR VICTORINO: Yes. I was wondering when Hana was going get included. If Mr. Carroll was here, I would've known that question would've come up.

MS. FLAMMER: Thank you, I handle Hana.

VICE-CHAIR VICTORINO: Yes, please.

MS. FLAMMER: Yes. So I'll tell you it. Hana, we've had a couple administrative permits issued, one short-term rental and we had a couple B&Bs. In Hana, if you meet certain triggers, you go before the Hana Advisory Committee first, and then you go to the Maui Planning Commission. That process delays the permitting process to the point where we're having our first Hana ones come this September before the Maui Planning Commission, the first four, yeah. We have another two that have...all have been recommended approval at the Hana Advisory Committee. So we've had four...we've had six go and then we have another four that are gonna go before Hana in September, also. So...

VICE-CHAIR VICTORINO: So you're looking at ten. Best case scenario, ten, that if it all gets approved, you'll have ten?

MS. FLAMMER: Well that's what's going on now. We have about 20 --

VICE-CHAIR VICTORINO: About 20 in the pot.

MS. FLAMMER: --applications in.

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VICE-CHAIR VICTORINO: Okay. Is that including this ten, too, the total...

MS. FLAMMER: Yes, that's including the ten, yes.

VICE-CHAIR VICTORINO: Total of 20. So another area that's about halfway there. So as you can see, Mr. Chair, when you're looking at the totality of each area, none of them outside of maybe Haiku and, of course Maui Meadows, have hit their threshold. The rest seem to be a long way off. It doesn't seem like there's a real charge, as I heard earlier, in the door for that. And in my, you know, my...I got you moving, Mr. Spence, that's good. Okay, I'm sorry.

MR. SPENCE: I would say that no, there's not the charge of the couple thousand --

VICE-CHAIR VICTORINO: Yeah.

MR. SPENCE: --that we think are out there. But our Department has been overwhelmed with applications, the 160. It takes...well, they don't go to planning commission, most of 'em, unless they need a Special Use Permit. While they don't come to this Council, we're saving...so far we've saved the Council 160 conditional permit applications. It's still a whole lot of processing within my Department, and we've been paying a lot of overtime just for the planners to get caught up. So it's...there has been a rush.

VICE-CHAIR VICTORINO: Well, no, and I can appreciate that 160, but when I'm looking at the 400 and the thousands we were told of, that we would have a flood that we could not even conceivably stop.

MR. SPENCE: Right, and that's a discussion for --

VICE-CHAIR VICTORINO: Another time, another place.

MR. SPENCE: --and but I think that's a worthy discussion.

VICE-CHAIR VICTORINO: Yeah, and I think maybe, Mr. Chair, we could have another meeting specifically for that and that purpose. I know the subject matter is the five here. I don't know how the Makena...oh, no Makena, the Maui Meadows community would feel because they were adamant.

CHAIR COUCH: Uh-huh.

VICE-CHAIR VICTORINO: I was here. I mean you were here and I think most of us was here except maybe Ms. Crivello. They were adamant about the five, you know.

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CHAIR COUCH: Yep.

VICE-CHAIR VICTORINO: They, you know, they didn't want a proliferation in their community. And it seems like maybe, there, that's one of those things that maybe has to be discussed with them and let them help us with that. But anyhow, thank you, Mr. Chair, for my opportunity.

CHAIR COUCH: Thank you, Mr. Victorino. Ms. Baisa, Chair Baisa?

COUNCILMEMBER BAISA: Question following up on what Member Victorino is talking about. Have you had any kind of communication with that original committee that you worked with to set the five?

CHAIR COUCH: When this item came up, there was a huge hue and cry saying, what's going on? And I mentioned to 'em that we're just discussing it and not gonna act on it right now. But so there is some concern, and I guess that leads to my question I have for the Department is, have there been complaints on the five in Maui Meadows, yet? I know they're fairly recent. And March was when you reached the limit. But have there been complaints? 'Cause that was the other portion of this agreeing to just five, see how good neighbors they are.

MR. SPENCE: Mr. Chairman, I'm not aware of any complaints of the five we permitted thus far.

CHAIR COUCH: Okay.

MR. SPENCE: I mean even on one that was particularly controversial, we haven't heard anything.

CHAIR COUCH: Okay. And Madam Chair, to continue on with that train of thought and with what Mr. Victorino said. Yes, part of this is to prepare us for one of the things that in the short-term rental bill was that we were going to review this in two years, and that two years is gonna be up in the middle of next year. So one of the things is, is we're just discussing this and just letting the Committee know that this is coming up and we will be discussing all the potential changes to the short-term rental bill and potentially the B&B bill sometime next year, so that's kinda what this discussion is, kind of a lead into. Madam Chair?

COUNCILMEMBER BAISA: Chair, I think it would be really, really relevant when we get to that review. So we really wanna ask Planning Department to keep a really close eye on RFSs to make sure --

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CHAIR COUCH: Yes.

COUNCILMEMBER BAISA: --that if there are any, that, you know, we know the nature of it. Is it noise, is it parking, is it hours, you know, what is it? So that when we relook at the ordinances, and if we have to make amendments --

CHAIR COUCH: Right.

COUNCILMEMBER BAISA: --then we know what to watch out for. This was a whole idea was to float these things and see what happen.

CHAIR COUCH: Exactly. And that's the intent of the Chair is to make sure that all the RFSs and the Department has the answer to those questions. Especially for Maui Meadows, because they're the ones that were at the limit already, and they're gonna come up with suggestions on how to make the process even easier for that department and better for the neighborhoods as well. So this is gonna be a fairly comprehensive overview of how it's gone for the last year and a half. And we will let the Maui Meadows folks know when that meeting is and say, there's the potential of upping that cap at that time. And by then, they should have at least a year's worth of experience on the five that are there. So hopefully we'll have some good data by then. Okay, anybody else? Mr. White?

COUNCILMEMBER WHITE: Thank you, Chair. The question I have for the Department is, do you maintain a waitlist of the people who have put in applications that have been turned down? Or are they gonna have to jump back into line whenever the cap is increased if it is?

MR. SPENCE: It's pretty much a first come, first served.

COUNCILMEMBER WHITE: But my question is, if some of these...my understanding is some of the people turned in applications and they were given back because the cap has been met.

MR. SPENCE: Right.

COUNCILMEMBER WHITE: So do they have to jump back in line or start all over again or are they going to be at least considered as having already applied when the cap is increased if it is?

MR. SPENCE: If the cap was increased, we...no, they're not in line. If the cap were increased, again, they would...it's pretty well understood, people are tracking this, they would jump in line immediately if the Council was to increase that cap.

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COUNCILMEMBER WHITE: Yeah, I'm not sure I'm terribly comfortable with that, but...

MR. SPENCE: No, we do not...okay, we do not consider that they've already applied.

COUNCILMEMBER WHITE: Even though they have?

MR. SPENCE: Yeah. We're not holding those applications. There's all kinds of problems with just holding applications. Properties sell, I mean it --

COUNCILMEMBER WHITE: Yeah. No, I can understand that.

MR. SPENCE: --this is something we deal with a lot. But if the Council was to increase that cap, there's consultants out there that are watching all this, there's property owners that are watching this, they will let their clients know the day it passes out of committee. So trust me, when that is increased, we will have applications very shortly.

CHAIR COUCH: I guess Mr. White's concern is that if somebody's been already submitted an application and is waiting and happens to be on vacation that week or something and then the new cap gets met and they're sitting there with their application and like, what, wait a minute, what happened? Is there something for those guys, maybe a notification to them that is coming down, so get ready or something?

COUNCILMEMBER WHITE: 'Cause the reason I'm concerned about this is that because of the cap in Maui Meadows, we understood at the time we, you know, we voted on the cap that we were essentially putting a bunch of people out of business. And I don't know how many people were put out of business, but I don't think that's happened in other areas. So it just doesn't seem fair, to me, that after taking the step that we did that we don't have some method of people at least having the assurance of a place in line, if not an application on file. I don't know how you'd do that, but --

MS. FLAMMER: I could just...

COUNCILMEMBER WHITE: --I think I could figure out how to do it, but...

CHAIR COUCH: Yeah. Ms. Flammer?

MS. FLAMMER: If I could just add a little piece of information to this? Part of the application is a home inspection, a current one. I would wanna know when the application came in that that was the most current that it could possibly be. It certifies that the house in its current state meets all of our requirements. If there were a year delay, then the form would not be current anymore.

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COUNCILMEMBER WHITE: So...

MS. FLAMMER: We also issue permits based upon when they are finished being processed. We get the question a lot - does turning in my application give me priority? But we can only issue a permit once we're finished processing it, and that's really up to the applicant to make sure everything's there and in order. I don't know if that helps you or not.

COUNCILMEMBER WHITE: No. But thank you anyway.

MR. SPENCE: There's going to be some built-in seeming inequities in this. The first person on the block to file an application and complete the process is gonna force the next guy within 500 feet to go to public hearing. I mean that's all there is to it. Even though if they may have filed, you know, one day behind or something like that.

COUNCILMEMBER WHITE: Uh-huh.

MR. SPENCE: I mean those situations are just going to occur and there's not a whole lot we can do about that.

COUNCILMEMBER WHITE: Well, I guess we have to be glad that they're the ones having to deal with it on a daily basis.

CHAIR COUCH: Yes. Any other comments, Members? Chair Baisa?

COUNCILMEMBER BAISA: I do want to thank the Planning Department for taking away this awesome responsibility. No, it used to tie Council up a lot in doing these permits. And it was, I think, a good move to get it out of here, because we can't even keep up with all the items that we have to deal with. And you add the permits and, you know, it just throws us back some more. So I think it's a really positive move that we took, and I wanna thank them. I know it's difficult and I hear all about, you know, the challenges of doing it, so thank you very much.

CHAIR COUCH: Okay, Members. Alright, you know, this is just a notice. And I guess I would ask Staff a procedure here. My intent is probably to file this, but I would like this to be on note. You know, when we get the item where we're going to go over the short-term rental bill, we wanna note that that cap has been reached. So is there a way to get that moved over to that item when it comes up, if and when it comes up or do we defer this until that time? What would be easier for you guys? Okay, alright. I think the recommendation is going to be to defer this item. And we will pick it up again when the short-term rental bill comes to us again.

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COUNCIL MEMBERS: No objections.

CHAIR COUCH: Okay. Alright, so this item is deferred.

ACTION: DEFER pending further discussion.

ITEM NO. 9: REQUIRING NOTIFICATION TO THE COUNCIL OF UNFULFILLED CONDITIONS OF ZONING (CC 12-261)

CHAIR COUCH: Okay, onward and upward, gang. We're on PC-9 now. This Committee is in receipt of County Communication 12-261, from former Council Chair Danny A. Mateo, transmitting a proposed resolution entitled, "Referring to the Lanai, Maui, Molokai Planning Commissions a Proposed Bill Amending Section 19.510.050, Maui County Code, to Require Notification to the Council of Unfulfilled Conditions of Zoning". The purpose of the proposed resolution is to refer to the planning commissions the proposed bill that we just read. So the purpose of the proposed bill is to require the Department of Planning to transmit a quarterly report to the Council on any unfulfilled conditions of zoning provisions as required by Section 19.510.050, Maui County Code, within specified time limitations. Mr. Director, you have some comments on that?

MR. SPENCE: Yes, Mr. Chairman. We reviewed this bill, and I heard the testimony this morning. What appears to be just a really great thing, let's go track down all of the conditions of zoning on everything that's taken place. And I mean even from this day forward, it's going to be a practical difficulty for the Department and I think it'll be a practical difficulty for the Council as well. And I mean when we looked at it, we look back, say, ten years behind - how many Changes in Zoning did we do, how many conditions did we do. We did some research and really thought about this on its face. And our Senior Staff Planner, Ann Cua, is here, too, and she'll give you some additional information. But we went back just ten years. So we look back ten years thinking, okay, what will the Council have to be dealing with ten years in advance, ten years from now, if we went forward with this? So we looked in KIVA, there was 123 Changes in Zoning applications filed. I'm not sure of the exact number that have been passed, but it's pretty close to that. And the Council is very fond of adding conditions to zoning. There are seldom just straight zoning, so that means we're gonna be tracking a whole lot conditions. And I'll say, the...I'll let Ann get into the details of that. But I would like to also comment, the Council's current practice is...and the testimony you've heard today was also about the large projects: the Pulelehuas, the Makena Resort, Honuaula, those kinds of things, and that's what's foremost in people's minds. People don't think about the other hundred and whatever that have taken place and what that means to track. The Council's current practice on those large projects is to say, Mr. Developer, come back every year and give me a report on what's taken place. So I think that has been an

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effective action by the Council to say what progress has been taken and how are you complying with your conditions. I think this particular ordinance, I think we're asking for far more than what we can handle. And I'll let Ann talk a little bit about the practicalities of this.

CHAIR COUCH: Okay. Ms. Cua?

MS. CUA: Thank you, Mr. Chair, Members. As Director Spence mentioned, we know that the proposed bill is looking forward in terms of conditions that you impose to Change in Zonings as you move forward. However, for us to be able to truly analyze the impact of something like this on our Department and on the Council, we look back at about ten years. And, as the Director mentioned, we found about 123 just Change in Zonings now, we're not even talking about District Boundary amendments, which is another item on your agenda, just Change in Zonings. And you have very, very, very few Change in Zoning applications that are approved without conditions. So, you know, conditions can range--and most of you know this--can range, you can have like maybe four conditions, you can have up to 44 conditions. Makena Resort has 44 conditions on their Change in Zoning. So we just ran some numbers to see just how much of a huge task this could become. So we took that, you know, approximate 123 Changes in Zoning, and let's say we were conservative and said, we did an average, let's say an average of 15 conditions, only 15 conditions per project. So we took somewhere in the very low middle of maybe having 4 conditions to 44 conditions and we said, 15. And if you times that, you're looking at, you know, about 1800 conditions that we'd have to go and verify. And four times a year, so that number then becomes, you know, 7,300 conditions that were looking to verify. Now, I know you're only asking to see what hasn't been complied with. But in order to see what hasn't been complied with, you need to see what has been complied with. So what we try to do is, you know, I did like a basically a mental thought process of, okay, how do we do this? I mean 'cause we have situations now where when we have compliance reports that come in, we have to go through each condition and determine, okay, is this complied with or not? So one of the first things we do is, we'd research the ordinance. So we look at all the conditions, then we go to the project file or our electronic system and see...well, in the project file, we would see, okay, is there any documentation that the application has submitted? You know, any reports that were required, have those been submitted, have they been satisfied? Any insurance documents, have they been satisfied? We could check a number of those off that way. We probably would have to do a site visit to see if there were any kinda construction improvements required as a part of a Change in Zoning condition to see if those were complied with. After doing both of those tasks, and there might be still conditions that we are not sure if they've been complied with or not, then we'd have to look to the applicant, contact them, see if they can give us updated information. Then we're gonna have to compile a report, get that to you and so you would have to schedule it on your agenda. So, again, in doing some rough numbers, we thought, maybe if it took you one

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hour to...when you schedule the item to see, okay, if you're satisfied with how they're complying with the conditions. And let's say if there's...we get to the point where, you know, we're looking at over 100 Change in Zoning applications. If it took you maybe an hour to review each one, maybe you could get six on your agenda, six on one meeting agenda. And then you have to review that four times a year. I mean it just seems like a very overwhelming task. What we do now is, you have a number of large projects, like the Director mentioned: Pulelehua, Makena Resort, Maui Business Park II, Honouaula. You have put conditions, you started placing conditions on those that says, we wanna see you give us annual reports on your compliance with conditions. They've been doing that. They give us a copy, they give you a copy. You schedule it on your agenda, we come up here sometimes, we take an hour sometimes, we take three hours to go through those condition, applicants come here and so forth. So you're capturing the large fish basically, you know, you've already started to do that. And I think if you continue to do that, I think that's gonna be very helpful. You've seen us come before you a number of times on these large Change in Zoning applications. And we talk about compliance at that time. So another thing that happens in our office, if somebody's coming in--I'm talking about maybe the smaller scale projects now that might have a Change in Zoning attached to them with conditions--if they come in to us and wanna do a subdivision, our Zoning Division is gonna check, oh, they have a Change in Zoning application; oh, they have conditions. They then will require the applicant...and when the current division works with them to do a compliance report. And at that point in time, we check, okay, where are you at with your conditions? And then we make sure that they satisfy the conditions that need to be satisfied before we're able to sign off on a subdivision application. So I hope that gives you a little bit of background. We can answer any questions you may have.

CHAIR COUCH: Yeah, if you have something to say, Mr. Spence, as well?

MR. SPENCE: So thank you, Mr. Chairman. I'd like to add just a couple other things illustrating the difficulty with this. Besides the sheer volume that Ann has talked about, I went through and I grabbed a couple of Changes in Zoning just for my own reference. Things like two acres out in Haiku, change from Ag to Rural. There's one condition on the Change in Zoning that the standard one, that in an event of historic skeletal remains, et cetera are identified during construction activities all work needs to cease, et cetera, et cetera. What that means is, I need to go back to mom and pop and I say...I need to find out somehow, have you done any ground altering activities? I can look some in County records, has there been a grading permit pulled or something like that. But then I need to go ask them, did you find anything? And they're gonna say, no. And then I need to go check with SHPD. So just for this one really simple Change in Zoning for someone to provide housing for their family, I have to go back, you know, I have to look in our County records, I have to ask the property owner who may be gone by now--you know, they may have passed on and family members just left or whatever--and then I need to go

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check with state agency. That state agency's already overwhelmed and they can't keep up with all kinds of things. So we need to double check with that. I also looked at a project that Council passed in 2008. There's ten lots on Makaena Place in Pukalani. Conditions on each one of those lots...and I would like to ask the Council, how am I going to enforce this? The left turn movement shall be prohibited from Makaena Place during the morning peak hours as determined by the State Department of Transportation. Now I can go to Department of Transportation and ask them, have you noticed anybody turning left? I can ask each one of the property owners, have any of you turned left? You know, and then I'm gonna report that to you, by the way, nobody reports turning left from this place during the peak hours. At the time of any future improvements of Kula Highway at Makaena Place by the State of Hawaii fair share contribution, we have to go and research that every time. Is the State planning anything, what stage of planning any improvements are they in? And then we have to follow up with all the landowners, are you planning on contributing to this when it takes place? Within a year of the effective date of this ordinance, a minimum 20-foot paved roadway, we can go see that. Is there an emergency gate only on the makai end of Makaena Place? It's an emergency access at the bottom of the roadway. We're gonna have to go look, once a quarter, to make sure that gate's still there and report that to you. The improvements required by Condition 3 to 4 shall be secured by performance bond. So then we have to go check with Public Works to make sure those bonds are still in place. So multiply this kind of thing, if you really go down and you look at the kinds of conditions that the Council probably rightfully had placed on a lot of these Changes in Zoning, we're gonna go do a whole lot of work and not a whole lot's gonna be accomplish by it. I do think that the Council's practice of requiring developers of large projects to come and report to you directly, I think that's the best avenue to go. I also have a bit of a difficulty...I mean you're gonna hear a lot of complaints how the Planning Department's tracking me down, why are you following me up, why are you double checking on me, what are you doing here looking at my property? You're gonna hear a lot of those complaints if we follow this up.

CHAIR COUCH: Okay, thank you, Mr. Spence and Ms. Cua. Mr. Hopper, is there any concerns with Corporation Counsel on this bill as it stands?

MR. HOPPER: Mr. Chair, the workload issues and other things aren't really for us to comment on, that's a policy issue and a workload issue. The only thing I would add was, I would think it would be prudent to look at clarifying that if there is reporting done, that it's reporting of known violations by the Planning Department. And also kind of in concert with KCA's suggested language that in the event that the report doesn't identify a specific violation, it doesn't mean that the property is not in violation based on something maybe the Department was unaware of at the time or could not discover at that time. Maybe something was hidden, maybe at that exact time there wasn't a violation; but there was something in the past or there is later on dealing with the problem of someone saying, I was inspected and so now you can't ever get me for a violation because I passed

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an inspection report, you know. Looking at language like that, I think we could draft some language. I think it would deal with to the, you know, something like, to the knowledge of the Department at the time of the report was done, there were no violations that the Department was aware of, something like that to deal with that potential bar. And as far as enforcement remedies, there's a couple in the Code. One is, the Planning Director currently now does have the authority to initiate downzoning of the property. And the Planning Director now does have the authority to issue a violation on a property that is not in compliance and fine that property owner up to \$1,000 a day for a violation of a zoning condition. Those are the enforcement tools the Planning Director has. I'm not sure of what other tools there would be available. The maximum fine allowed is \$1,000 dollars. And in order to revert the zoning, there would have to be an ordinance done to undo the current zoning. So I think that those are the current remedies available to the Director and so I don't see of...I can't think of any additional ones there. So those are my comments. Again, the overall issue of whether or not the Council wants these reports, whether the Department can meet the deadlines, requirement, has the staff time, those are not per se legal issues that we would have a comment on at this time.

CHAIR COUCH: Okay, thank you, Mr. Hopper. Members, you've heard from the Department and Corporation Counsel, any comments? Mr. White had his hand up first.

COUNCILMEMBER WHITE: Thank you, Chair. In your estimation, are there any large projects for which we have not yet required a annual compliance report?

MS. CUA: I know when I was doing some research here, one that I thought you did, that you didn't, you hadn't started it yet, but the Land Use Commission did, is Kapalua Mauka, that's a large one. They don't have a...on their Condition of Zoning, they don't have the annual report condition; however, it is on their District Boundary amendment. So that's one that comes to mind. And I pretty much did all the other projects that I mentioned to you except for the Business Park, and those all had the condition. Older projects like Maui Lani --

COUNCILMEMBER WHITE: Uh-huh.

MS. CUA: --and Kehalani that are, you know, 25 years old, those are very large projects, they don't have it and they don't have that condition on there. But they're largely developed now as opposed to, you know, like in Maui Lani's case, they had, you know, almost 20 years where they weren't developing, and then they just pretty much developed.

COUNCILMEMBER WHITE: And if you were to look at developments such as Maui Lani, are they pretty much in compliance with all the conditions that they were given in the early stages?

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MS. CUA: Pretty much. I mean we...for both Maui Lani and Kehalani, we've been quite busy for quite a number of years now. They're both project districts.

COUNCILMEMBER WHITE: Uh-huh.

MS. CUA: And for all these subdivisions that you see going up, these retail components that have gone up, they have to come in and get Project District Phase 2 and 3 approval. Phase 1, you grant it. Phase 1 was the zoning. Planning Commission grants Phase 2 Project District. But Phase 3 Project District applications which for one project district, you can have hundreds of Phase 3 Project District applications because, you know, one commercial project, one commercial building, would be one Phase 3 Project District application. So, you know, when we look at all these administrative approvals, we have to look back and check on the, you know, the Project District Phase 1, which is the zoning conditions and the Phase 2 Project District conditions. So, you know, those, because we have so much movement on almost a daily basis of these projects that we're always in communication with the applicants and checking conditions.

COUNCILMEMBER WHITE: And you mentioned that when somebody comes in for a subdivision approval, you're gonna require a compliance report from them regarding all the conditions that have been placed on them initially, correct?

MS. CUA: We're gonna ask them for it. We can't...if there is an ordinance that says, you're required to do a compliance report, then obviously that's a requirement. But what our Zoning Division had started doing, actually they started doing it some time ago, is before they're able to sign off on any kind of subdivision, they work with us because we handle the Change in Zonings and they do ask for the applicant to submit some kind of compliance report and we have to acknowledge that the conditions either have or have not been complied with.

COUNCILMEMBER WHITE: But don't you do that on projects as well? Because I recall that --

MS. CUA: Okay, so...

COUNCILMEMBER WHITE: --there are other compliance reports --

MS. CUA: Right. So we're...so...

COUNCILMEMBER WHITE: --to make sure before approval is given --

MS. CUA: Right.

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COUNCILMEMBER WHITE: --you've gotta comply with all the conditions or you don't get the approval. So I think my point is, we have these triggers already in place that if you don't comply, you're not getting a subsequent approval. And so I'm just wondering if there are any real pukas left. If we've got a compliance report that has to be completed and all the conditions done before you get approval to move on with the construction of a project --

MS. CUA: Uh-huh.

COUNCILMEMBER WHITE: --and we're asking the big guys to do an annual compliance report, are there pukas that you guys could go and fill without us going to this extent?

MS. CUA: Right. If I could, Mr. Chair?

CHAIR COUCH: Go ahead.

MS. CUA: We're talking here about Land Use Permits or Change in Zoning and then you're gonna eventually talk about District Boundary amendments. What we haven't talked about that is a very regular practice of the Planning Department, and you know that very well, is all our SMA Permits and our Developmental Permits that we process through the Planning Commission and the Planning Commission issues. One of our standard conditions on all of those permits is that applicants submit a preliminary compliance report prior to receiving a building permit --

COUNCILMEMBER WHITE: Uh-huh.

MS. CUA: --and then a final compliance report prior to receiving a certificate of occupancy. What we do with those preliminary compliance reports is, we have to make sure that all the conditions that should be complied with prior to you getting a building permit. Like let's say if you needed to do...put certain kind of improvements on your plans, it needed to show on your construction plans, well that's obviously something that we have to make sure is there before you get a building permit. If one of your conditions is that you need an NPDES permit from the Department of Health, well we need to make sure we see that permit in hand because that's directly dealing with construction. But if there's a condition that says that you shall--what's a good one?--oh let's just say, you know, let's say landscape a certain area prior to opening of your hotel. Well, that can come right before you open up your hotel, so that can come before your certificate of occupancy. So, again, through the preliminary compliance report, we make sure that those conditions that need to be adhered to before you get a building permit that those have been completely satisfied. And the remainder of the conditions that can actually wait till you get your C.O., then we wait for the final compliance report, and that's when we make sure, okay, every condition has to be complied with before you get your C.O.

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COUNCILMEMBER WHITE: And, Chair, that brings up I think a very good point is that a lot of the conditions I think we're dealing with in some of these Changes in Zoning are conditions that you don't need to address until you've gone a long way down the road. And it doesn't make sense for us to be checking up on those conditions for years before they need to be addressed. So I agree with the, you know, the intent of keeping track and making sure that people are taking care of conditions that they're responsible for, but there's gotta be a better way than making them do a quarterly report.

CHAIR COUCH: Right. Mr. Spence, you had some comment?

MR. SPENCE: Yeah, I think a lot of these are self-enforcing, I mean like what Ann is saying. A lot of these things, need to be complied with before we can issue either building permit or certificate of occupancy. She's referring to SMA, but I'm also looking at like the Kihei Police Station: planting native Hawaiian plants, mitigating roadway impacts to Kanani Road, energy efficient design. Before we sign off on their certificate of occupancy, we're gonna look at those things. Okay, did they plant native plants that are drought tolerant? Did, you know, did they do anything for Kanani Road? I can't imagine the Police Department wanting to impact, you know, traffic. Anyway, I was thinking of another job for Officer Taguma. You know, energy efficient, we're gonna look at the building plans and say, okay, have they included energy efficiency, you know, provisions within these building plans? We're gonna look at those. I mean so those things are self-enforcing. I mean we have to look at those before we sign off on their C.O., that's just automatic.

COUNCILMEMBER WHITE: But a lot of what we're dealing with in Change in Zoning conditions are similar. They're not gonna be in need of enforcement or compliance until way down the line.

MR. SPENCE: Uh-huh.

COUNCILMEMBER WHITE: So I don't know how, you know, we gotta split it up somehow so we're not chasing chickens that haven't been born yet.

MR. SPENCE: But, as Mr. Hopper pointed out, there's already an entire section of County Code, 19.530, that deals with enforcement, and there's authority under the County to deal with both criminal and civil Code violations. And, you know, on top of that, we have...and the thing is, nobody really hears about all the enforcement that we do, how many letters we send out, how many notices of warning, how many notices of violation. People are unaware of the Code enforcement that we already do. As Ann points out, you know, she's talking about the one thing SMA can go up to \$10,000 a day, our County Code allows us to go up to \$1,000 a day. So those things, you know, those things are already in place. And as the testifiers were testifying this morning saying, this should not

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preempt any, you know, private civil action. Of course that wouldn't, you know, we're not preempting any...I don't think County Code can do that. There's a lot of mechanisms already in place for these things that are gonna take place years down the line.

COUNCILMEMBER WHITE: Thank you. Thank you, Chair.

CHAIR COUCH: Thank you, Mr. White. Ms. Cochran?

COUNCILMEMBER COCHRAN: Thank you, Chair. And, you know, I mean I don't care how big or small a condition is on a Change in Zoning. There's a reason why it was put in place. And, you know, in this day and age and you would know, Guru yourself, that perhaps there needs to be some type of special software to, you know, implement all the stuff, right. I know the initial thing is gonna be a can of worms, cumbersome, what have you; but if it takes an LTA position to vet it all out, lay it all out, put it in its designated categories, what have you; but label it as, revisit this condition on this date, this year or whatever. I mean I think, as the testifier said, this is a good start. And I believe it's the Department of Planning's job to do this. You know, why did the Council put Conditions of Zoning on...conditions on the zoning and just say, well, you know, down the road, maybe we'll check it out and if we hear, you know, maybe it's complaint driven or whatever, what have you, but I believe it's all important. So perhaps there's a software, perhaps there's an LTA position that can be put in place to address this initially and then figure out a strategy and a program, you know, a procedure and then let it ride out. And from here on out, we got something in place to start tracking properly and efficiently. I mean that's what I would like to see. How to get there? I don't have that answer right this second. But I think again, like testifier said, this is a good start and a step in the right direction I think we all wanna see. And, you know, Kapalua Mauka's in my backyard, I mean literally, and that's a project that I'd like to know how it's being tracked and I've yet to see an annual report I guess during my tenure here I think. So that's just my two cents. And I believe, you know, you have the big ones come to us, but not all. And so I'd like to see if there's a way to start a tracking process. And that's not gonna be cumbersome or burdensome, but I believe there's a doable solution to that as you probably can figure, our Guru himself. Thank you, Chair.

MR. SPENCE: Mr. Chairman?

CHAIR COUCH: Thank you, Ms. Cochran. Mr. Spence?

MR. SPENCE: Just a comment on that. One, Kapalua Mauka, we identified as one that didn't have a reporting requirement, that's why they don't come to you.

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COUNCILMEMBER COCHRAN: But on their District Boundary amendment, they have a annual report.

MR. SPENCE: Okay, but which goes to the State Land Use Commission? Okay. And we get a copy of that. Okay, but the thing, it's not a software issue to set up a system. I mean of course we would set up a system. But the way that this is written, means we physically, four times a year, we physically have to visit those sites and see that something is or is not being complied with. That's not a software issue, that's a manpower issue. And I guarantee you, if this goes forward, we're gonna be hiring, you know, this could turn into...with 123 Changes in Zoning, this could turn into two other positions, just to do this.

CHAIR COUCH: Okay. Chair Baisa?

COUNCILMEMBER COCHRAN: Well, it's your job.

COUNCILMEMBER BAISA: Thank you very much, Chair. Chair, this is a complicated thing. It's not as simple as it looks. I mean you listen to all of the, you know, the data that's involved, the tracking, the time, and whatever, and I'm hearing that this would be very difficult for the Department to have to do. And I agree, you know, the Department is already overloaded with stuff, and we certainly don't wanna build it much more. Pretty soon we're gonna need a County Planning building to house. No, really, you know, to house all the things that need to be tracked and taken care of. But, I'm wondering, if the onus to send in this report from the person who got the zoning change was put on them rather than on the Department, would that help, you know? You getting a zoning change, well, every quarter, you're gonna send us a report and say, I did, I didn't. And there's no way, of course, the Department can go out and verify all of this, and I don't think we need to expect them to do that. But then if you send in a falsified report, there can be a penalty. So would that work? I don't know, you know, I'm not doing this work.

CHAIR COUCH: Madam Chair, if I may just interject a comment before the Department answers that? Is, you know, it's the Chair thought that if the conditions are important enough that we need a report on it, then it's incumbent upon this Council to impose that condition to report annually.

COUNCILMEMBER BAISA: Uh-huh, right.

CHAIR COUCH: And I don't know why in the world it never did for Kapalua Mauka, that's just beyond my comprehension at this point. But, you know, we just took up one, what, yesterday --

COUNCILMEMBER BAISA: Yes.

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CHAIR COUCH: --or the day before, the veterinary.

COUNCILMEMBER BAISA: Right.

CHAIR COUCH: Maybe if we wanna see how good that he's handling the wetlands, maybe an annual report from him, small kine; just say, send it to Council and the Planning Department. We get those, it's up to us, on the smaller ones, it's up to us to take a look. And, oh, if we want it, bring it up before us; then, you know, a Member would say, don't file it, I have a question, and bring it to Committee.

COUNCILMEMBER BAISA: Right. And big difference between annual and quarterly.

CHAIR COUCH: Yes.

COUNCILMEMBER BAISA: You know, what are we talking about, an annual report or a quarterly report?

CHAIR COUCH: Right. So I mean I think it's incumbent upon us, you know.

COUNCILMEMBER BAISA: To request.

CHAIR COUCH: Unfortunately, some of the ones in the back --

COUNCILMEMBER BAISA: Yeah.

CHAIR COUCH: --that there isn't much we can do; maybe we can work on something there. But from now on, if it's an important enough thing that you want an annual report, then we should make that as a condition. So and that can still be a condition on that veterinary one at first reading possibly. Ms. Crivello?

COUNCILMEMBER CRIVELLO: Question on procedures. You mentioned that before issuing building permits, you would check if the applicant is in compliance. Does that include the conditions for the Change in Zoning?

MR. SPENCE: Yes. And I was going to suggest that...ask the Chairman if I could speak a little bit on that.

CHAIR COUCH: Go ahead.

MR. SPENCE: Zoning enforcement is also prior to a violation. We get building plans all the time where somebody is labeling a structure with two suspiciously looking like bedrooms

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with a full restroom, you know, bathrooms and what suspiciously looks like a kitchen; and they're saying, this is my workout building. And we look at the Conditions in Zoning and it says, no ohanas are allowed. And we go, I'm sorry, we can't sign off on this. We do that quite often. That enforcement comes upfront before anything is ever built. And, of course, we can't prevent the stuff that is built with no permits at all; but, you know, we can only go after the fact after them. But a consistent number...I mean we've had...Ann's talking about compliance with project district things. We've had a couple of pretty intense meetings in my office about some properties in Maui Lani whether they comply with the zoning and whether they comply with the Project District 2 approvals and the design guidelines and it gets very intense. But that part of enforcement comes before a building permit is ever issued. Nobody hears about that part, either. We have entire staff there that's all they do is check compliance with zoning.

COUNCILMEMBER CRIVELLO: So, in my opinion, if they're already having their checklist before the applicant can implement their plans and what have you. So we're asking our Planning Department, okay, you have this checklist, but we also want you, quarterly, to have your people do the quarterly report. So when a quarterly report comes to us, what do we do with it then? How do we say, you have not enforced this, so you go back again? And then there becomes a delay and then there becomes, in my opinion, another round of--how can you say it?--redundancy of what the Department already does from the get go. And I can see where it maybe the bigger developments that you have some very stringent kind of conditions that maybe have to be met. Maybe that can be taken into consideration. But I'm just here listening to this and saying and readying what...I'm saying, I'm going, wow, that can be costly for the Department, and then the cost is passed on to the applicant, also. So if and when it does come back to Council, what does Council do with it? I guess that's my question to those that have...you seasoned Councilors.

CHAIR COUCH: Well, I can answer a little bit about that. Typically a report will, it's usually an annual report, it gets submitted to the Council Chair and then it gets referred to Committee; and, more often than not, as you read through your binder, you'll look at it and if you have a question, typically it'll be filed right then and there. But if somebody has a question, then it'll be referred to the appropriate Committee, typically this one. So and that's the old method. The later method is, especially on Honuaula and Makena and I think I did it also for the A&B Marketplace, we're not filing 'em. As Chair, when I see those come in Council, I actually put them and make them an item and we discussed them. So we've done that already several times. And we have an open item for two of them, the Makena one and the Honuaula one. And we just got the A&B one, so we're gonna discuss that coming soon. Members, any other comments? Okay. If you don't mind, I'll give my recommendation?

COUNCILMEMBER BAISA: Recommendation?

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CHAIR COUCH: It's my recommendation that. . .and with a comment that the. . .as I mentioned before, if the conditions are important enough, then I think we need to send some sort of communication to the Land Use Committee and say, look, let's look at doing more annual reports if there are conditions or at least suggesting a condition of annual reports. So I don't know how we would phrase that, Staff, but I'd like to send a communication to the Land Use Commission. . .the commission. . .Committee and just make them aware of suggesting compliance report conditions if it's important enough that the body determines that. And then, that being said, I would like to...I recommend filing this communication at this point. Is there a motion for that since my Vice-Chair is excused?

COUNCILMEMBER BAISA: So moved.

COUNCILMEMBER WHITE: Second.

CHAIR COUCH: Okay, it's been moved by Chair Baisa and seconded by Mr. White to file this communication. Any further comment? Mr. White?

COUNCILMEMBER WHITE: Yeah, I support the filing at this point, because I think the bill as drafted is simply requiring the Department to keep track of these conditions going forward. And the Council itself has, as you've just mentioned and as Chair Baisa just mentioned, has the ability to make those conditions, make the reporting requirement the responsibility of the person who's requesting the Change in Zoning, and I think that's very appropriate. It's been done in the past and we can continue to do that. And that allows, for lack of a better word, an appropriate level of outsourcing rather than having to hire a whole bunch of people just go out and track down things that may not need to have been done yet. And I would prefer that we continue the practice of expecting those individuals who have the zoning change be responsible for that. One of the questions that I was just thinking of is, you know, our constituents are our best inspectors. When those compliance reports come in, I'm assuming that they're available online somewhere--are they?--and when they're on the agenda or are they not?

CHAIR COUCH: I believe the agenda items are made into PDF and people can look at them.

COUNCILMEMBER WHITE: Yeah, so if somebody has an interest in a particular development and tracking what has been done to comply with the various zoning changes, I would encourage people to go online, look up the compliance report and take a look. If it's in their neighborhood, check the things out and see if they've been complied with. And, you know, I think that's a more appropriate way to go than to put the onus on the Department, which would then have to go and do most of the leg work.

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CHAIR COUCH: Okay. Any further comment? Alright, so the motion before us is to file this communication with some communication to the Land Use Committee. All those in favor, say, "aye".

COUNCIL MEMBERS: Aye.

CHAIR COUCH: Opposed? Okay, there's--one, two, three, four--five "ayes" and two "excused", Mr. Guzman and Mr. Victorino.

VOTE: AYES: Chair Couch, Councilmembers Baisa, Cochran, Crivello, and White.

NOES: None.

ABSTAIN: None.

ABSENT: None.

EXC.: Vice-Chair Victorino, and Councilmember Guzman.

MOTION CARRIED.

ACTION: FILING of communication by C.R.

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

CHAIR COUCH: Okay. Last on our list, Members, we're making it through. It's PC-11, and it's very similar to what we were just discussing. We're in receipt of County Communication 12-262 in your binders, from former Council Chair Danny A. Mateo, transmitting a proposed resolution entitled, "Referring to the Lanai, Maui, and Molokai Planning Commissions a Proposed Bill Amending Section 19.68.040, Maui County Code, Relating to Conditions of State Land Use District Boundary Amendments. And the purpose of that proposed resolution is to refer to the planning commissions a proposed bill with pretty much the same title. The purpose of the proposed bill is to require Department of Planning to transmit a quarterly report to the Council on any unfulfilled conditions of State Land Use District Boundary amendments as required by Section 19.68.040, Maui County Code, within a maximum of three years if no time limitation is established by the Council. Is there anything more that you would like to add, Mr. Spence or Ms. Cua?

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MR. SPENCE: Mr. Chairman, I would say, it's similar to the previous item. And I would also note that the State Land Use Commission. . .I mean we have a few District Boundary amendments that are under 15 acres that fall to the County. Very rarely are there any conditions on those. Anything larger than 15 acres, it's an automatic condition that the applicants file a yearly report with the State Land Use Commission already.

CHAIR COUCH: Okay. Mr. Hopper, since this is involving the State Land Use Commission conditions, is there any concerns that the Corp. Counsel has with this?

MR. HOPPER: Well, Mr. Chair, I'd note, 19.68 of the Code is the County Code section for District Boundary amendments under 15 acres.

CHAIR COUCH: Uh-huh?

MR. HOPPER: So that's the only one's you're talking about. Those would be conditions that the Council would decide to place on those because it's the Council granting the conditions. The State Land Use Commission conditions are dealt with in HRS and Hawaii Administrative Rules. This is not proposing to deal with annual reporting requirements for those conditions. This is in 19.68 of the County Code. That Code section only applies to District...it applies to the District Boundary amendments that the Council has authority over, which are for lands under 15 acres.

CHAIR COUCH: Okay.

MR. HOPPER: So that's what this is on. I would note that this has a substantive change also proposed that basically establishes a minimum time limit if there's no time limitation established, changing that from a reasonable time to three years from the effective date of the ordinance for the District Boundary amendment. So that's to be noted as well, because the Change in Zoning provisions have a five-year, default time frame for conditions that don't specify a time period. This would establish a three-year time frame, again, under 19.68 which is only the County Council approve District Boundary amendments. This does not include the State Land Use Commission's District Boundary amendments which are not under 19.68 of the Code. To deal with that, I think there would at the very least be another section of the Code, and we would also wanna check with the Land Use Commission as to their rules. The County Planning Department is the enforcement authority for the State Land Use Commission's conditions; however, the State Land Use Commission has its own rules for those conditions when it's deciding on District Boundary amendments. And then the Council has its own set of rules when it decides on its District Boundary amendments within its jurisdiction. And, again, this pending legislation deals only with 19.68 which is the Council's District Boundary amendment conditions.

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CHAIR COUCH: Okay. Thank you, Mr. Hopper. Members, any comments? This essentially is what they're saying as with the last item. If not, I'd like to give my recommendation.

COUNCILMEMBER BAISA: Recommendation?

COUNCILMEMBER WHITE: Recommendation?

CHAIR COUCH: Okay. Before I do, just real quick question with Mr. Hopper or Staff. There are couple of things in here that looks like they're not really substantive changes, but it's something that needs to be considered. For instance, you're changing, you're taking out the words, "reclassification/boundary change" and changing it to "District Boundary amendment", a couple places. And then you're talking about the Office of Planning by the County Planning Director as opposed to the Department of Planning and Economic Development. Are those something that we wanna continue to do or should we do that in another bill? Mr. Hopper?

MR. HOPPER: Mr. Chair, there is a provision in the Code that allows the Clerk can make non-substantive changes; however, the Clerk's been pretty conservative on that reading. So I'm not sure if we can go that way, though, the Code would allow for that. I would suggest, though, not sending a bill. It would still need to go through planning commissions and everything. I wouldn't necessarily send a bill to make those kind of non-substantive changes only to the planning commissions.

CHAIR COUCH: Okay. It's the Chair's recommendation--and I would like to hear some discussion on this--to pass this to the Planning Commission with the amendment that we remove Item C on Page 2 and change the three years to five years to make it consistent with the Change in Zoning. So there's a...because Mr. Hopper thought it was a substantive change, it's from a reasonable time to five years, that would be my thought; but before we make any motions, any thoughts from the Committee on that? Chair Baisa?

COUNCILMEMBER BAISA: Just wanna be clear. I thought I heard Mr. Hopper say that we could make non-substantive changes, and you're saying it is a substantive change.

CHAIR COUCH: Mr. Hopper said that the change from reasonable time to three years was a substantive change.

COUNCILMEMBER BAISA: It is?

CHAIR COUCH: Yes.

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COUNCILMEMBER BAISA: So this has to go to planning commission?

CHAIR COUCH: It would have to go to planning commission. For that...that's the only change that I would recommend.

COUNCILMEMBER BAISA: So you would amend this thing going over, this legislation going over, to the planning commission to just be recommending that?

CHAIR COUCH: Yeah. Well, instead of three years, it would be five years --

COUNCILMEMBER BAISA: Yeah.

CHAIR COUCH: --and removing C. Any thoughts on that from the Department?

MR. SPENCE: Mr. Chairman, I sort of hate to...I mean that's gonna take a fair amount of time to send it down, to schedule it, to do all those things. I think if we're going to...in considering...I mean I'm talking to Ann, and she cannot even remember the last time there was conditions placed on a District Boundary amendment under 15 acres. I think it would be quite a bit of work without a whole lot of result.

CHAIR COUCH: Okay. That's true because if it's a District Boundary amendment, it's also accompanied by a Change in Zoning, right? And that's where we --

MR. SPENCE: Ninety nine point nine percent of the time...

CHAIR COUCH: --that's where we end up putting the conditions. Okay. Alright, that's good. That's why I wanted the discussion before I actually went through a motion. So now I've changed my recommendation. I recommend we file this communication.

COUNCILMEMBER BAISA: So moved.

COUNCILMEMBER WHITE: Second.

CHAIR COUCH: Okay. So it's been moved by Chair Baisa and seconded by Mr. White to file this communication. Any further discussion? All those in favor, please say, "aye".

COUNCIL MEMBERS: Aye.

CHAIR COUCH: Opposed? The motion carries, five, zero. Alright, Members...and two "excused", Mr. Guzman and Mr. Victorino.

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VOTE: **AYES:** **Chair Couch, Councilmembers Baisa, Cochran, Crivello, and White.**

NOES: **None.**

ABSTAIN: **None.**

ABSENT: **None.**

EXC.: **Vice-Chair Victorino, and Councilmember Guzman.**

MOTION CARRIED.

ACTION: FILING of communication by C.R.

CHAIR COUCH: Members, that is all we have on our agenda. And I thought I would get done by 3 o'clock, so we're a little early. I really appreciate you sticking through this thing. It was some very interesting discussions and hopefully we have some direction for the Department on several of these matters and direction for our Staff to communicate with the Land Use Committee of our concern about reporting on conditions. Ms. Baisa?

COUNCILMEMBER BAISA: Just a quick remark, and I think it's important. You know, we're trying a new calendar schedule this year and we're doing these full-day meetings for Committees that we know get packed agendas. And, Chair, I wanna thank you for, you know, getting a full agenda and getting through it. I think we got a lot accomplished today. Thank you.

CHAIR COUCH: Thank you, Chair Baisa. And we did get a lot accomplished, but we have a lot more to go on the list.

COUNCILMEMBER BAISA: That's why it's important that we get with it here. And thank you for doing your share.

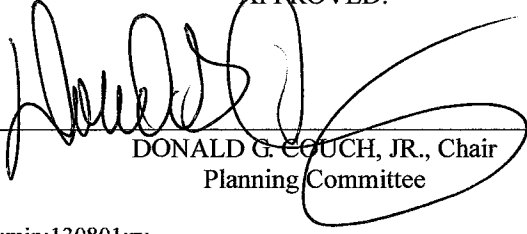
CHAIR COUCH: Okay. Without any further comment, this meeting is adjourned.
...(gavel)...

ADJOURN: 2:53 p.m.

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APPROVED:



DONALD G. COUCH, JR., Chair
Planning Committee

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Transcribed by: Raynette Yap

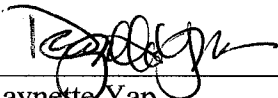
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CERTIFICATE

I, Raynette Yap, hereby certify that the foregoing represents to the best of my ability, a true and correct transcript of the proceedings. I further certify that I am not in any way concerned with the cause.

DATED the 16th day of August, 2013, in Kihei, Hawaii



Raynette Yap