

**MAUI PLANNING COMMISSION
REGULAR MINUTES
OCTOBER 28, 2014**

A. CALL TO ORDER

The regular meeting of the Maui Planning Commission was called to order by Chairperson Ivan Lay at approximately 9:00 a.m., Tuesday, October 28, 2014, Planning Conference Room, First Floor, Kalana Pakui Building, 250 South High Street, Wailuku, Maui.

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

Chairperson Lay: Planning Commission is now called to order. It's October 28, 2014 at 9:00 a.m. At this time we're gonna open up to public testimony. If anyone wishes to testify please step forward to the mic, identify yourself. You have three minutes for testimony. And we're doing this in case you can't testify when your agenda item comes up later on. If you do testify at this time, you won't be able to testify when your agenda comes up. Discussions can be made about anything except contested cases under Chapter 91 HRS. Does anyone wish to testify at this time?

B. PUBLIC TESTIMONY - At the discretion of the Chair, public testimony may also be taken when each agenda item is discussed, except for contested cases under Chapter 91, HRS. Individuals who cannot be present when the agenda item is discussed may testify at the beginning of the meeting instead and will not be allowed to testify again when the agenda item is discussed.

The following individual testified at the beginning of the meeting:

Lauren Sharon - Item E-2, Adoption of Written Decision and Order, Mr. Robert Holland

Her testimony can be found under the item on which she testified on.

Chairperson Lay: Does anyone wish...else wish to testify at this time? If so, please step forward and identify yourself. Seeing no one, public testimony is closed and we're on to our first agenda item.

Mr. Spence: Good morning, Commissioners. You have two public hearing items today. Both of them stem from County Council resolutions transmitting bills down for your review. I mean down from like the eighth floor, you know, to the basement here. Transmitting them from the Council to you and the other two planning commissions for your review and comment. And our Staff Planner this morning is Mr. Joseph Alueta.

C. PUBLIC HEARINGS (Action to be taken after each public hearing.)

1. **MR. WILLIAM SPENCE, Planning Director transmitting Council Resolution No. 14-40 referring to the Lanai, Maui, and Molokai Planning Commissions a proposed bill to amend Section 19.04.040 and Chapter 19.30A, Maui County Code pertaining to Commercial Agricultural Structures in the Agricultural District. (J. Alueta)**

Mr. Joseph Alueta: Good morning. My name is Joe Alueta. I'm your Administrative Planning Officer. Pretty sure some of you have seen me before. I pretty much handle the changes to the ordinances or act as a liaison when they come down from Council or if there's any State Legislature I will be...try to comment on that. I also handle some of your administrative rules, at least the drafting of it and before working with Corporation Counsel.

Mr. Alueta: Title 19 which is primarily our Zoning Code for Maui County can be amended in two different ways. One is by Director initiated which is me and Will put it together, we'll draft it and bring it before you or it will be initiated by the Council through a resolution and that's what you have today. Today you have two resolutions that have come down from the Council and they come normally from the Planning Committee, but in this case it's actually coming from the Agri--I don't even know what the original...official title, but it's the Ag Committee in the County Council headed by Don Guzman.

The intention is good. His idea is that he needs, he wants to help at least on the first one I believe...is the first the Ag, I'm sorry are we taking...Mr. Director, are we taking the first, the ag structures or the child care?

Mr. Spence: Well, the first one is the ag structures.

Mr. Alueta: Okay. So the ag structures, the intention is to help farmers or small farmers be able to have...as an accessory use within the Agricultural District commercial ag structures that would allow them to sell their products but also, it also expands it from where Maui County had previously had an exemption or only said you could be selling agricultural products grown in the County. The State Law changed which said it could be anywhere within the State. So this law, this amendment not only changes that so it's consistent the State Law is fine, but it also expands, like it goes into what can be done within these agricultural...commercial agricultural structures.

Prior to, and that's the reason I handed out this, the whole complete 19.30A is it...when these bills come down they always come down in piecemeal. They only amend the section. So you don't get to see the whole bill in its entirety. So I'd like to have you...we start with that fresh bill so you know what they're amending.

In short, what they're doing is they're taking out what from the existing law is roadside stands which are allowed up to 30...300 square feet, and they're replacing that. And they're also taking out what they call, what was previously allowed was farmer's markets and they're creating their own new definitions for those and standards and that's in the section, in other sections of the bill. I'm sorry I did not do a line by line type of...like sometimes I'll do a line by line of what the changes. What we opted to do was because we didn't get a word document. We got a PDF copy from them. So we just used PDF and we marked it up. I'd like to joke this is kinda like how some of my reports used come back when Colleen Suyama used to review them. I saw her in the audience as well as my St. Anthony days.

But this is pretty much...our comments are not so much we're opposed to it or anything like that. What we're trying to do is give you comments for food for thought, okay. For you to think about what it is now and to say do you...and maybe have a discussion on it. And you may say I'm not concerned with that or I think that should be discussed in more detail at the Council if there is a

consensus on an opinion one way or another of that concern then we wanna be able to track that on the record so we can get it back to them. And that's pretty much what it comes down to.

We did go to Lanai last week. Lanai does not have the issue because they don't have many independent agricultural lots. And for them they didn't see a problem at all, so they basically just said, you know, we're fine with it. Just leave it alone.

But for us again, some of the things that we would like to...we want you to consider is...so starting from Page 1, which it starts with Exhibit 1, and that's the start of the ordinance, and you look down into Section 2, there currently is open, you know, this open...25 percent open, and so what we would like to see is that after the word, "open" we just wanna add in, "while in operation." And that came up during our HCPO Conference, I believe by one of our ag people there were was misconception that you know if I have an ag product stand right now it has to be open all the time 24/7, and so they can never secure it. And what we're saying is no, just when you would open. It has to be you open the flaps up so it's an open structure, but you could still lock it up.

Because all of this is being placed...yes, Commissioner?...Okay, because this is all being placed as not as permitted uses, okay. This is all being listed under accessory uses, okay. So it comes into...it comes, one to the Director's job and my boss, the immediate boss, the Administrator for the Zoning Administration to determine when someone comes in and says I'm gonna build this structure under the...as an accessory. And we have to determine it's accessory to what? Do you have a real farm? That's gonna be the challenge, and so we tried to at least use some consistent language in here and that's where we put this, "customary, incident or subordinate to the principal use of land." If you look at where we wanted to add that in or at least, we feel there should be some...more clarifying language I guess.

And the reason I go into this is because they're allowing two commercial agricultural structures per lot to be sold, okay. And you know, if you have a farm like what used to be Maui Land and Pine or what is now the Maui Gold Pineapple or HC&S or whatever, and you're you know, a large agricultural operation, it's pretty easy to see and justify large accessory structures. Maui coffee growers or maybe even the new cacao farm or some of the other ones that are coming up where you have, you know, either hundreds of acres or even 30 or 20 acres and there's an active farming going on and you're trying to have...you're trying to sell one, not necessarily your raw product but your finished product. Okay, how do you...that's pretty easy, it's pretty clear cut, you can see that you know there's large agricultural operation. Most of the time it's very industrial. And then they have a nice, maybe a store shop or something like that. Most of these large agricultural operations have them closer to town. Okay, these ones are gonna be out in the more country because most of our smaller ag lots are out there and it's gonna be interesting who takes advantage of this. It's gonna be, I would think mostly on if you have a location, location, location, right? It's gonna be from a real estate standpoint if you have a good location, you're gonna put up...you're gonna have that traffic and market there. So...but there has to be a some kind of viable farm there that justifies it. But that's where the crux comes in. Does...we saw...if you use some agricultural products can you open a restaurant because they talk about food product? Okay, so we're just trying to figure out where's the line in the sand I guess you could say and get some guidance from you and you giving the guidance to the Council.

So on Page 2, you see it talks about contains agricultural products for sale that are grown, well we

would wanna say, "grown on the same zoning lot which occupy a minimum percentage of the total floor area containing products for sale" meaning...and that's the question, should there be a percentage of the floor area or a square footage of the floor area that is dedicated toward the actual agricultural products grown by that producer whether on the same zoning lot or another? But it's just helping us to define what's gonna be considered accessory. And then I guess for us we felt that you know if it doesn't meet that standard it should be kicked up to a Special Use Permit and then that way it can be decided by the Commission.

Again, you can see where they're taking out agricultural product stands, farmers market and putting in...and just calling it, two commercial ag structures and simplifying it from that aspect.

On Page 4, you're gonna see under 19.30A.060, Special Uses, okay, our comments are ziplines and zorbing. I mean that was kind of...some of our staff we're seeing that come in more. These are...a lot of these are trying to come in under Open Land Recreation and in the initial phase I guess years ago when they were brand new we had made...the previous Administration had allowed for this to be done under Open Land Recreation. We no longer consider them to be Open Land Recreation. They're commercial enterprises. They're not accessory to an agricultural operation. And so we are currently requiring Special Use Permits for those operations and therefore, we feel that it should just be listed here under Special Use Permits.

Also as you know the...we had...zorbing is, I'm sorry...zorbing is the hamster ball. You get into a giant hamster...rubberized hamster ball and you roll down the hill. That's the...that's pretty much what it is.

So as you know alternative energy with the Hawaii's requirement to move towards more alternative energy, the State as well as the County has amended that both the County and State Ag Law to allow for more photovoltaic panels on the Agricultural District. They have standards and minimum or maximum sizes, but we feel that you know if you don't meet, we would like to see 35 percent or greater than 35 percent of the lot. Right now it just says greater than 15 acres, but there's also a 35 percent requirement. So if they exceed that there should be an option for them. So that's just more clarifying language that we feel that will correct some of what we're doing now.

Another comment that came out of our staff was green waste recycling facilities whether that should be a...require a Special Use Permit. Now the reason we say that is because green waste...and that should be defined in some fashion, but if you're doing it...if you're a farmer and you're composting and green waste on your site that's not a problem. That's part of your thing. However, what we're finding is that people are having some vacant ag land and they're bringing in green waste offsite and they're processing it. And it's kind of an industrial process you grind and compost the thing and so we feel if someone's going to do that it should be a Special Use Permit.

Moving to Page 5, I apologize it does get a little messy here, and again, these are just comments both from Staff and from the...working with my bosses on what we wanna see. On the two new definitions or the definitions that they created, one was Agricultural Retail Food Establishment and then Agricultural Retail Structure. We're not sure what the difference is when you read the two. And so we just wanna...because they're both are allowing food and we don't know how much food. You know what I mean, like you can...it says, other food item. You know, again, it's very clear you know you're a coffee farmer. You're doing...you're wholesaling your coffee. Maybe you have a

coffee bar at the same time. I mean, you're not only wholesaling your beans or retailing your beans, you're retailing a final product of coffee. Okay, and that's a coffee shop. Now does that expand into a full restaurant? If you're growing lavender and I'm sprinkling lavender on mahimahi is that using...can I have a restaurant because I'm using an agricultural product grown on the property in a finished product and how big of an area? I mean, what are the requirements? And that's the crux you know that from an enforcement standpoint someone's gonna read this or someone wanting to do this is gonna ask us how much can I do, how far can I go? And if you don't care then no problem, we'll just let 'em all go. But if there is a concern then we'd like to know what are the concerns and what would be an acceptable limit before maybe a Special Use Permit is required.

The other thing is in the Agricultural District there needs to be some type of parking requirement. If somebody comes in on a...like say it's for a commercial retail, we're gonna hit them as a commercial retail. We don't have any other options. So 19.36A which is the Parking Code needs to be amended also and a new category needs to be which is parking within the agricultural...you know, either commercial or industrial structures within the Agricultural District and establish some type of parking code and also a waiver from the pavement. I think that's...I mean, I really don't feel that many of these agricultural areas need to have pavement. Gravel should be allowed more. But I think that should be a separate, like I say, it should be specifically called out in 19.36A in the Parking Code so that we have something we can go and stand on. Right now, we have in some instances tried to figure out a way to waive it. Sometimes we just...there's no way to get around it. We have to say you need to provide the paved parking for your structure and it makes no sense at all. Sometimes either in the middle of...literally in the middle of nowhere in an agricultural field because they put up a small office because it's more of a field office.

On the farmers market definition we...a few, I wanna say probably two years ago came to you with the business bill, year and a half ago with the B-2 and we came up with a definition for farmers market. That existing definition is in 19.04 now. And that should somehow dovetail into whatever definition they do. And so all we've asked is the Council look at both definitions and try to...if you're gonna keep 'em separate make it clear how they're separate or try to merge the two together to allow for it. Under the definition for...or limitation of two commercial structures, right...because a stall within a farmers market is defined as commercial agricultural structure and commercial agricultural structures are limited to two per lot, a farmers market be limited to two vendors that didn't seem to make much sense. So we're not sure somewhere along the way they need to modify either take out the definition of farmers market stall as a being commercial structure or exempt it.

You have on Page 6, and you'll probably wanna flip back to Page 6, and you'll probably wanna flip back to Page 5 when I read this, but it says, the restriction...it has some restrictions in the Department of Planning to maintain, but, "E. Within a commercial agricultural structure other food items and logo items shall occupy no more than 49 percent of the total floor area." So one, maybe that should be within the definition or in the standard that...in the definition they're establishing rather than...we're not sure. I mean, that's a possibility, but for us it seemed a little high, 49 percent. So we're not sure, again food for thought to talk about.

On the farmers market you'll see that it's limited to five acres, right, and daylight hours. And yet the other ones don't have that. So the...and it seems as if you would have a...that restriction is a little harsh given the fact it's gonna be on five acres and it's a farmers market. As opposed to a...and

you have the other commercial ag structure. So you could have as I said, 49 percent of retail or restaurant, other food items like I said a café or something like that, but it's not limited and it could be on a two-acre lot potentially if there's no real restrictions on how you define how that this structure is accessory to it. And so they wouldn't be limited to daylight hours and they could be on a smaller ag lot. So we're just not sure how if there's gonna be true restriction or not. I mean, and so we're not sure if that restriction should be even applied or that restriction should be applied to all commercial agricultural structures. I think that's...one way or another we don't...it seems like if you got five-acre parcel and you're doing a farmers market why should you be limited to daylight hours?

And I guess the last comment is that you know, we limit to several definitions use the term "parcel" or "parcels" and we generally use the term "lot." So just want to make...again, we're just point it out to the Council which way, I mean, as long as...pick one I guess or if you don't care then you can leave it. But we just wanted them to be aware of it. There is a conflict...not conflict so much as it is that you're using two different terms in different areas. That's pretty much all the comments that came from our Department. And so I'm...like I said, I'm pretty much...we just wanna hear from you what you think of the bill and how...if there's any concerns that you have with what was brought up. Thank you.

Chairperson Lay: At this time, I'm gonna open up to public testimony.

a) Public Hearing

Chairperson Lay: If anyone wishes to testify please step forward, identify yourself and you have three minutes. Seeing no one, public testimony is closed. Commissioners, questions or comments? Commissioner Wakida?

Ms. Wakida: Joe, I like your comments. I find all of...everything that's underlined is what has come to you correct?

Mr. Alueta: All that is being underlined is the brand new stuff that's being added by Council. Everything in a bracket is being removed by Council.

Ms. Wakida: Okay, I find the definition section on Page 5 very confusing. It seems to me that there's two basic areas that need to be defined. One is the structure and the second, is the activity within the structure. And it's got...they've given us three agricultural, retail food establishment, agricultural retail structure, commercial agricultural structure, farmers market. There just seems to be some confusing overlap. It seems just unnecessarily...seems like there's too many definitions. So I'm not clear on why there needs to be a commercial ag structure isn't that the same as an agricultural retail structure? And then the activity that goes on within, how does the farmers market differ from an agricultural retail structure? It says its 25 percent open but it doesn't say that an...well, the agricultural retail structure is fully enclosed but the food establishment doesn't say it's fully enclosed. You see what I mean? There's a lot of definitions and I just think it's more language than there needs to be.

Mr. Alueta: I think that was, I think that was our comments too that we're not sure what the...how they were intending to have this parsed out. We felt that some of this could be consolidated and

like I said, I guess...I guess because when they defined...when you look at what the uses of agricultural retail food establishment and then you look at what the agricultural retail structure, right, so they're saying one is the establishment and one is the structure but they have the exact same uses.

Ms. Wakida: Yeah.

Mr. Alueta: So we're not sure if they should even—

Chairperson Lay: Different.

Mr. Alueta: Yeah, shouldn't you just have one?

Mr. Spence: Yeah, they could do consolidates...

Mr. Alueta: They can just be consolidated and then—

Chairperson Lay: Under one title.

Mr. Alueta: Right. And that's why we're...because you're allowing...the reason is is because all they're saying is retail food establishment but other food items are allowed in both of them. So just call it an agricultural retail structure and then other food items are allowed anyway so, it would still be the same.

Chairperson Lay: Yeah.

Mr. Alueta: I mean, again that's what we're asking Council.

Chairperson Lay: Commissioner Ball?

Vice-Chair Ball: I think that maybe they're looking at one as a like a restaurant and one as a just a display type store is the way it reads to me that they're trying to differentiate between this is a restaurant and this is just a logo store that they don't have any food or anything. It's like Kaupo Store, right where they just have—I don't know if they have food there, but anyway, you go in there and it's like stuff to buy. Whereas, the retail food establishment, it would be, I don't know, some restaurant maybe that Halfway to Hana place that we approved a couple of weeks ago.

Chairperson Lay: For me I think it would be like if like you said the restaurant we got prepared food, what's prepared, and then you got the raw sales. I think that's where you have...there might be a difference.

Vice-Chair Ball: Right, where they have T-shirts and stuff that you just buy.

Chairperson Lay: Yeah. 'Cause one you'd be just buying the produce itself and other one will be prepared things.

Mr. Alueta: Right. But from a County standpoint we don't see any different between...I mean, we

don't see any difference as far as the use because you're both, you're selling a finished agricultural product, okay. It's whether or not you're regulated by DOH, you know, and their help...but that comes into play regardless.

Vice-Chair Ball: But wouldn't DOH be part of that even in the retail goods?

Mr. Alueta: Yeah, you're right, you're right. But I guess the Code that they're referencing with regards to Title 11, Chapter 12 are the rules of the Department of Health for the preparation of and service of food at a retail using agricultural products. So I think they're referencing a specific DOH Code that allows for it in the Ag District. And so we don't have problem with that. I think that Code comes into play regardless.

Vice-Chair Ball: And I agree I think it could be combined ...(inaudible)...in there.

Mr. Alueta: Because if you wanna allow it...

Chairperson Lay: Yeah.

Mr. Alueta: I mean, again the question is how much do you allow? I mean, it's clearly what is the limitation and then, you know or is there a limitation? You know, I mean, and again, it comes down to judgement as far as because again technically all of these are gonna fall under as an accessory use. So somebody's gotta make the call that says, yeah you can have that structure and it has to be accessory 'cause it has to be accessory to the specific...normally it has to be specific to that lot. So as I talked about location, location, location, just throwing that out...don't hold me to it, but say, you know, A&B has a prime location on a two-acre ag lot that's on a great busy corner. It's ag, right? But there's nothing really, it's just an open grassed field because it's on a corner of a lot...it's on a corner lot, great location, but they wanna then establish a soda fountain, whatever, you know, restaurant or you know a drink place because it's a great...because they're using Hawaii, HC&S sugar to make their great soda or they're using that sugar or wanna open a bar because I'm refining that sugar into rum, right or vodka and I set up a bar in the two-acre ag lot right on the corner, a busy corner, you know right at the corner of Kuau all the way to Hookipa, right there, oh thousands of people right there. Set up a bar in the Agricultural District. Would that be allowed because it's accessory to an agricultural product? May not be an agricultural product grown on that specific site or maybe it is. Maybe it's a corner of 1,000-acre sugar cane field. So that's where we're gonna have...we have the issue of how we're gonna make the call.

Chairperson Lay: Director?

Mr. Spence: Maybe just a couple of other examples like Ulupalakua Ranch, the Ranch Store. You know that's always been considering a nonconforming use. This law would allow them to expand that and I'm not saying that's a bad thing, I'm just pointing out that that would be possible under this law. Also, all the...you know you go up Crater Road and there's the ziplines tour, I think there's a couple other things up there besides ziplines, but those things are kinda considered accessory to Haleakala Ranch. You know, it's not directly related, but it's still, they would be accessory to, to the ranching operations you know as a primary use and then you would be able to have shops with logo wear and I don't know what else they would sell. It would allow more commercial uses...(inaudible)...

Chairperson Lay: Commissioner Ball?

Vice-Chair Ball: I guess my question is, is...I got two questions, well whose discretion would it be under? Who gets paid out there?

Mr. Alueta: No, no, no...

Vice-Chair Ball: That's the thing I worry about under the discretion because it's very difficult to apply for some when it's under the discretion of certain person where they cannot see it in black and white and okay, this is what we're following. That's one of my concerns there. And then my other question is why is this coming out? Is there an outcry for this or are we just trying to streamline things or where is this developing from?

Mr. Alueta: You wanna take a stab at that one?

Chairperson Lay: Director?

Mr. Hedani: Don't all jump in at one time.

Mr. Spence: What I know about it...Council Member Don Guzman does have like an informal agricultural committee that...and they just you know...it's an interesting group 'cause there's, you have ranchers, you have pro GMO, anti GMO, organic, non organic, very traditional farmers and they all sit around and they discuss the...you know, how to make things better under our agricultural laws. And so this is one of the things that came out there to try to loosen things up to provide farmers with you know, more flexibility in producing products, they found that the regular farmers market or the roadside stand definitions were just too tight so they wanted to allow some more things.

Chairperson Lay: Commissioner Higashi?

Mr. Higashi: Joe, looking at your drawing and so forth as a layperson it reminds me of trying to find a certain specific area and you don't know where to go because there's so many arrows on it. Is there something that you can do that would simplify it so that for the layperson... (inaudible)... raising agriculture on his property whether it's five acres or less or five acres or more and they're building a structure. What size structure would they need if it's five acres less or five acres more?

Mr. Alueta: Well, that's a good question. It's not necessarily directly related with this. Under the...in the Agricultural District, right if you have a farm and you come in for a farming structure, right? Under the current State Law you can come in and you're exempted from the building permit process. So we had people coming in and they're building barns and other structures as long as they are not dwellings, okay. As long as they're not a habitable, a dwelling structure, we're pretty much allowing for it provided that that they have a...for us, for the Planning Department we are requiring an ag plan, not an ag plan but has to be consistent with their agricultural plan to show that there is majority of the property is being farmed. That was under the State Law that exempted them from getting building permits. And what it is is basically is a self-certifying that this structure is accessory to and needed for agricultural operations. It does not exempt them from electrical or

plumbing so they still...so if they do that they would have to come back in for that. And again, these are for purely ag structures, okay.

So under our...a roadside stand would under the existing definition or under the existing law that would be fine. The issue that we have is when they start retailing non agricultural products from...and that's what this bill pretty much tries to address is that if I'm doing an agricultural...if I build this agricultural structure, I can use it for the processing, you know, the sorting of my papayas or the tomatoes, I have a greenhouse. No problem, you come in you don't even need a building permit for that. For us, as long as it meets the setback or SMA and it's part of your, it's a farming operation, you're growing...you know, you build a two, three-thousand square foot orchid structure, you know, I mean greenhouse that's all permitted. You don't need. That's fine. It's when you all of a sudden say okay, I'm gonna sell orchids that's fine too. You can sell retail orchids from your property.

But it's when you're saying I'm gonna...this orchids would make a great topping for some salad you know what I mean, in a finished product, you can bag orchids or bag lettuce, you know greens and then take it offsite or you could have people come. But when you start saying I'm gonna have a sit down restaurant that's where some people are saying I wanna be able to do a sit down and have people eat on a food establishment. If it's all being grown onsite is not a problem. But when you start adding other products that are not grown onsite or grown in the State of Hawaii then you become basically a restaurant or a commercialized restaurant and that's where I think they're trying to allow a little more flexibility for some of these farmers. But at the same time it opens the door for those who are...just have a great location, but don't necessary have a farm, a real farming going. And that's where we have the duty of trying to determine who's the real farm and who's not. And as my boss like to say, it's like is this...the bill is good and it helps a lot of people and so is it worth the risk to pass the bill because you're gonna help a lot of people for those few that may abuse the law and that's where the balance comes in. Do you wanna...I mean, realistically I mean there are some people who are going to really benefit from this and there are some people who are going to just try to abuse it. And is the hassle of trying to catch those people gonna be worth it or is it you know...that's pretty much, I mean it's the pros and cons of this bill, so...

Chairperson Lay: Commissioner Hedani?

Mr. Hedani: Just an opinion. I think Jim Smith is right when he says a lot of times we come in with stuff and we end up making everything so complicated that a normal person can't understand it. When I started off reading agricultural product stand the first change that they're proposing the language that exists there today to me is crystal clear. It means, a structure for the display and sale of agricultural products, period. Everybody can understand that. What this bill does is it...I don't know if it's intentional, but it confuses everything to the point where you can almost do whatever you want wherever you want on agricultural land as long as you comply with the terms of all of these provisions.

"A place with a wall area that is at least 25 percent open and is owned and operated by the single producer." What the hell does that mean? It doesn't even mean a building. It could be a wall that is open on 50 percent of the sides. I can't figure out what they're trying say. I didn't even realize that when we say, "open," you mean open for business because it doesn't say, "open for business." It says, open physically. So it's confusing. It's not designed to be understood by the normal

person. And that's why my opinion is that the bill is not ripe for prime time. I mean if you guys have this many comments on the thing it means the thing is half-baked and it really needs work in order to make it understandable. And I think what it does is it tries to circumvent existing laws by throwing everything and the kitchen sink in there in order to allow them to do whatever on agricultural land. How do you assess that? You assess it agricultural rates when it's a full-blown commercial operation with the restaurant and a bar, but the sugar that was used for the production of the rum that they sell out of one out of 50 items in the bar came from a plant. I think the bill poorly written and like the GMO initiative it's half-baked. That's just my opinion.

Chairperson Lay: Commissioner Wakida?

Ms. Wakida: Joe, I am confused by...on Page 1, this is apparently Section 19.04, it's got a definition of agricultural product stand here. And then over...of course, further on then you've got all these other definitions. Why...I don't know what 19.04, what else is there. But why is this definition popping up here as this agricultural product stand rather than being incorporated? If we're gonna have definitions, why isn't it part...why isn't it in the definitions? Why is it in two places? Why would it be in two places?

Mr. Alueta: Okay, one if it's in 19.04 that definition applies throughout the County, I mean throughout the Zoning Code meaning all the different Zoning Codes it would be subject to that. What they're saying here on these definitions that you see on Page 5, right, these are only...what they're saying is this definition...these definitions only apply to 19.30A. So only in the Agricultural District would you apply this definition.

Ms. Wakida: So according to that logic then you can have an agricultural product stand in some place other than an Ag District?

Mr. Alueta: Potentially. Potentially, I mean if you...farming is allowed in the Rural District. So if I had...I mean, I farm in the Rural District. And unfortunately I don't have a great location so I can't...there's no way for me to put an agricultural product stand out in the, you know, on my property because no one would see it. But if you had a Rural District and you had a farm, you could theoretically do an agricultural product stand that met this 19.04 definition.

Ms. Wakida: Okay, okay. Well, I agree with Mr. Hedani that the original definition was perfectly clear and that the definitions that have been given to us on Page 5 are...they are...they have muddied the waters so that anybody can do anything.

Mr. Alueta: Yeah, and that's...and again, I think that was point, the last point I was trying to make is and that the reason I'm not poo pooing the whole bill is that you know is the risk of the bad bill, right, worth the benefits, I mean that it's gonna help? And that's where I guess from the agricultural bill...I mean, from the Council's standpoint they feel that the risks are manageable and that this is gonna help people more than it's gonna be abused by those that try not to. I mean, that's the only logic I can come up with because you know, you're trying to solve a problem. Now...or should some of these problems be solved through you know administrative rules for Special Use Permits? And I think that's the main reason, they're trying to avoid the Special Use Permit process.

Unidentified Speaker: Yeah.

Mr. Alueta: So they're trying to make it a little easier so you don't have to go through a Special Use Permit. You can just get the use allowed as an accessory use.

Chairperson Lay: Commissioner Medeiros?

Mr. Medeiros: I agree with Commissioner Hedani and Wakida. This is way too confusing. You know the Special Use Permit was put into place for reason and people are trying to skip around it. I really don't understand what's going on. It was clear and then now they're trying to change everything and confusing a whole bunch of people and I disagree that the risk...the benefits outweigh the risk. You know, there will be a lot of abuse. I can see that you know. People are gonna wanna bring it up to the line, but then the line is not defined. You know, so until you guys clearly mark that line in the sand I don't like it.

Chairperson Lay: Commissioner Hedani?

Mr. Hedani: I think the only thing that I found redeeming in this bill is on the last page where it says, "agricultural product stands that are 300 square feet or less in floor area are exempt from the registration requirements of this section," which means doesn't apply. So the true intent of an agricultural stand is still there and everything else to me is a bastardization of the agricultural stand concept. It's like we get all the time applications for bed and breakfasts in structures that are intended to be farm dwellings and they're now hotel farm dwellings. I mean it's ass backwards.

Mr. Alueta: I think also you know, one of the points that was brought was that it's now changed from an agricultural stand and not an agricultural roadside stand. So before there was a setback requirement, you know I mean for those roadside stands. So there's still a setback, so they're gonna have to meet the new...as long as we consider those structures. The only issue we might have is that they may put up these structures...if the law passed, right, right now we require at least 15-foot setback, but if they just call it a stand and they come in under the State exemption, they don't get a building permit, no one's gonna review it, and they're gonna put the stand up without any building permits because they're not required and they could put it right up on the road with no setback. And so that's one of the things that we're concerned with is that there should...if you remove the definition of roadside stand and you just have a agricultural stand, you do that there should be at least setback from the road. Because it makes to no sense. For most people, if they're on the roadway they're gonna put the stand right up on the road where it's easy to park and pull up and visible. And so from a safety aspect we feel there should be enough adequate room for them to pull off the road from that stand.

Chairperson Lay: Commissioner Ball?

Vice-Chair Ball: And on that note, you know I'm all for streamlining things but when it comes to public safety whether it be traffic or their health I don't think streamlining is the proper avenue for that. Like Jason said we have a process in place for these things and you know, streamlining it may be good but when we're talking about the public safety I think that outweighs the streamlining process.

Chairperson Lay: Commissioner Wakida?

Ms. Wakida: While I was on the mainland I went with my family out into the country to this pumpkin patch area where families went and picked out their pumpkins, they had food booths and that kind of stuff and you know, temporary stands. But they also had there on several of the locations actual stores that had been built and they were like a whole country store with all kinds of, you know, kitschy stuff they sell like you know everything from place mats and all that kind of stuff you find in those country stores that was, you know, it was just like a regular retail store, and the little market, the apples and the pumpkins and things that were in the stalls outside were still there. I would hate to see that happen here where there are people out picking strawberries for example but then this commercial store goes up that sells all kinds of stuff and people are going up there like they would go to Longs or whatever to a commercial store. I would like to see that not happen here.

Mr. Alueta: That's a good point. I mean, like I say and I went and visited like Tanaka Farms in California they have that...the what you call the pumpkin patches, it's outside of L.A., and it's kinda interesting, and also the strawberry fields that are like going in between L.A. and San Diego and what's interesting is that the farm was there and the shopping center moved in and a Costco moved in nearby and so you have that encroachment. Typically you see in most farming communities and you see it here on Maui also is that that's how some of your...you had your farming communities all along Omaopio, you know, Road and then you had the Morihara Store, you know, you have that small little commercial area pop up. And that served as the agricultural product stand basically for the farmers in that area and that's the typical development of rural commercial. I mean you'll get that pocket commercial and that's normally where is now...in this bill you have the potential of having pocket commercial all around and the problem, and the concern I guess from the Department was what's the maximum? You know, I mean, how do you protect the ag from staying ag, protect that the commercial is gonna maintain a commercial activity that supports the ag and not turn into as you say, a full-blown commercial market. And so again, we share that same concern. We're just bringing it up and there was no limits. They have a 49 percent limit. We feel should that be...is that appropriate? Do you want it to be tighter? And so right now I'm hearing is that you would rather have them try to clean up the bill a little bit and maybe consolidate some of the stuff as well as look at having a little more, defining more restrictions of how much can be done on it. Is that, is that case?

Chairperson Lay: Commissioner Higashi?

Mr. Higashi: Yes, I just wanna cite an example and see whether you can clarify it. For instance, it says that I could not...I'm raising vegetables but I could not sell it in my friend's agricultural products 'cause I'm a lessee of that place or whatever. If I had a mobile vehicle and put my products on it is that part of an area that's permissible or it's not 'cause you see pineapples being sold in mobile kinds of units.

Mr. Alueta: Yeah, yeah. Okay, so first of all, like say if you grew cabbages, right, on one property you can sell them on another property. You could take them to another agricultural product stand and sell them from that agricultural product stand.

Mr. Higashi: Even though it's not my property?

Mr. Alueta: As long as it's...no, because...as long as the product is grown, the raw agricultural

product is grown within the State of Hawaii or...you know, we were more strict, but we're stating that to be you could sell any agricultural product grown in the State of Hawaii on that farm, on that stand. It's still an agricultural item.

Mr. Higashi: Oh, so that can be?

Mr. Alueta: Yeah, that would be...the mobile ones are a little different. They're covered under Chapter 2 of the County Code and they're registered with the Department of Taxation and there's a process in which they get a Vendor's Permit. Vendor's Permits are handled by the Tax Office, Vehicle Licensing and they have their own standards. We are a commenting agency on them and so that's pretty much...yeah, so they don't fall under the same realm, it's kinda like for the most part.

Chairperson Lay: For me, what I'd like to see a completed one with the corrections to see the flow, 'cause you know it's how we understand it and how the public can understand it, right? So if we have a corrected one like how you said you want the changes could be highlighted so we know what you did change and then we can critique that would be a little easier for me instead of trying to figure out where and what and trying to flow on how it's written. And also, you know besides us maybe the Hana Advisory Committee, Molokai Planning Commission, and Lanai Planning Commission to give their comments on it also 'cause our concerns might be different from theirs and their comments are important too because we're not sure on what they see going on over there and what they see might work for them.

Mr. Alueta: We'll be going to Molokai I believe next month. Hana did ask for the Hana Advisory Committee to...or I should say, we did get an email, I'm not sure if this was passed around to you. I was just given this this morning where the Hana Community Association is requesting that this ordinance be referred to the Hana Advisory Committee for comment. So your advisory committee.

Chairperson Lay: Director?

Mr. Spence: Okay, I have a copy of that email and I apology Commissioners. I didn't bring this particular letter with me. But we have a request from Council Member Carroll, and I'll just read it verbatim, it's short. "My office has received a request by the Hana Community Association asking for the transmittal of the proposed bill to amend Section 19.04.040 of Chapter 19.30A, Maui County Code pertaining to commercial ag structures in the Ag District to the Hana Advisory Committee. Please advise my office as to when this concern will be forwarded to the Hana Advisory Committee as the committee is anxious to discuss and provide input regarding this important legislation. If there's any questions or comments please feel free to contact my office." So we only got that letter on the 24th. So, being the 28th that's you know, pretty short. I know that Corporation Counsel has some comments but my thought is if you send this...I don't wanna delay getting this back up to Council because they sent it to us, we dropped the ball, we're past the 120 days that we're supposed to get this back to them. So I don't wanna delay this anymore, but you know, I don't wanna ignore their request by Council Member Carroll either. So my thought is if you provide comments today, and say yes, Director send this to the Hana Advisory Committee and then they could send with your authorization their comments to be sent straight to the Council or...(inaudible)...

Ms. Thomson: I think that would be fine. The Maui Planning Commission could request that the

Hana Advisory Committee review this bill and provide its comments with, you know, a direct copy to you and directly to Council and given the time considerations.

Chairperson Lay: Commissioner Wakida?

Ms. Wakida: And one last thing, 19.30A says, commercial agricultural structures as a general heading and then it has commercial agricultural structure as a specific item. I think that needs to be omitted. If you're gonna have general heading with several things under it, then those several things shouldn't be the same as the main heading. On Page 4, at the bottom it says commercial agricultural structure, you follow me?

Mr. Alueta: Yes, they're saying...they're creating a new...they're creating a new subsection within 19.30A.

Ms. Wakida: Right, but the name of the section is "Commercial Ag Structures". So if that's the main heading then I don't think it makes sense to have that be one of the subheading definitions.

Mr. Alueta: Oh, commercial, I see what you're saying.

Ms. Wakida: See?

Mr. Alueta: Okay.

Chairperson Lay: Commissioner Hedani?

Mr. Hedani: I move that we refer this matter to the Hana Advisory Committee for comments.

Vice-Chair Ball: Second.

Mr. Hedani: In addition to, in addition to our comments going directly to the Council.

Mr. Spence: And for clarification do you want, do you want to see their comments before your comments go to Council or you can...you send them straight to the Council?

Mr. Hedani: I think they can send it straight to the Council because if anybody is gonna be affected I think the drive from Kahului to Hana is gonna be the most affected.

Chairperson Lay: So we would have to vote on that?

Ms. Thomson: Yes.

Ms. Wakida: Question? Does Joe go with the...go with this Hana?

Mr. Spence: Yes.

Ms. Wakida: Good.

Chairperson Lay: Any more discussion on the motion? Director, would you like to repeat the motion?

Mr. Spence: Okay, the motion is to send this bill to the Hana Advisory Committee for their review and their comments can be sent straight to the County Council.

Mr. Alueta: As well as the—

Mr. Spence: And you will...yes, and the—

Mr. Alueta: And the Commission's comments.

Mr. Spence: Yes...their comments will come back to the Commission.

Mr. Alueta: Right, but I thought the motion was to have—

Mr. Hedani: I'm not gonna hold up our comments—

Mr. Alueta: Yeah, yeah, your comments are gonna go straight and if I can summarize some of your comments maybe—

Mr. Spence: Okay, let's vote on the motion. Okay, so again, the motion is to refer this to the Hana Advisory Committee. Their comments will come...will go straight to the County Council and also this Commission will receive comments, a copy of those comments.

Chairperson Lay: Call for the vote. All those in favor?

Mr. Spence: That's six ayes.

Chairperson Lay: Motion carries.

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

**VOTED: To Refer this Bill to the Hana Advisory Committee, and That Their Comments be Sent Directly to the County Council with the Commission Receiving a Copy of the Advisory Committee's Comments.
(Assenting - W. Hedani, K. Ball, J. Medeiros, S. Duvauchelle, P. Wakida, R. Higashi)
(Excused - J. Freitas, M. Tsai)**

Mr. Spence: And Commissioner Wakida had another...

Chairperson Lay: Commissioner Wakida?

Ms. Wakida: No, I didn't have another question.

Chairperson Lay: Okay.

Mr. Spence: Okay.

Mr. Alueta: So is there a motion also to send it, your comments to Council?

Mr. Spence: So they're gonna make separate comments.

Mr. Alueta: Okay.

Mr. Spence: Oh, you were gonna summarize the comments.

Mr. Alueta: Yeah, so right now the comments I primarily have a concern on the limitation on the...for non agricultural items to sold within the or lack of limitation on the items. I think you also...you agreed with for the most part on the Department's comments that we have in red with regards to some of that. Hopefully you'll agree with some of additions as well as the concerns with regards to clarity over the definitions. And then the...some concerns over how some of these structures and uses will be determined to be accessory to an existing, like you know, establishing standards for what is accessory to a farming operation.

Comments that you thought that the existing farm stand provision worked and that anything above that should, you know, that you already have a process for Special Use Permits and so you're not sure that this bill may muddy water more than it may...than the current system. And then if you do establish a new subcategory of commercial agricultural structures that it not have a separate subsection of it, so you create a new name for that section.

Ms. Thomson: One additional note from Commissioner Hedani, he was curious about how the taxes, the real property taxes would be assessed and wanted Council to take a look at that.

Chairperson Lay: Maybe there might be a...for us to give...they're saying that 49 percent as far as outside things, retail things being sold at the store if that's all right or are we looking for a more of the produce being taken up the floor size. Right now it's at what, 51 percent. I don't know if we want to touch on that. Commissioner Wakida?

Ms. Wakida: My whole attitude towards this is it should be an accessory to agriculture and that's the whole point of having these stands. So I mean, I would say 10 percent. Are we trying to allow retail, general retail to come into the ag area? So I don't...I mean, maybe that's too severe but that's my thinking. I'd like to keep these agricultural establishments agriculture.

Chairperson Lay: Commissioner Ball?

Vice-Chair Ball: Was there anything, Joe, addressing the structure that is exempt from building permit that converts into one of these uses? You know what I'm saying/

Mr. Alueta: Well, they would. They would be...under the State Law they could file for an exemption and not require any with the Building Permit and build the structure without any building permits provided they don't have electrical or a plumbing permit.

Vice-Chair Ball: And are we okay with that if they then in turn this into a store.

Mr. Alueta: I believe...that's a good point. I think that you know the...that could be one of your comments if you wanted that a...any of these commercial agricultural structures cannot be exempted from the building permit or under the Act 203, I think it's Act 203. That's a tough one because it would be, right. It would still be exempt.

Mr. Spence: Yeah, that's a good... My opinion—

Chairperson Lay: Director?

Mr. Spence: —my opinion, that would...that's a really good question because on the one hand you're talking about a different kind of occupancy. You're talking more of a commercial thing, but then if you're saying it's related to the agriculture that might exempt from getting a building permit, but it would still...one way or another because you have a commercial occupancy and perhaps like you know for a restaurant you would still have to meet all of your Building Codes and all of your Health Codes and you know, electrical, plumbing, et cetera. I don't know...

Vice-Chair Ball: They'd get caught in there somewhere.

Mr. Spence: It's gonna get caught in there somewhere, but it's something that I think should be clarified. The intent of that Act with the State Legislature was for like storage facilities for farms, you know, put your hay in it, put your whatever. You know, I caught it as soon as I...

Vice-Chair Ball: Sounds good.

Mr. Spence: For farm storage, you know—

Vice-Chair Ball: Right.

Mr. Spence: —for tractors and for something like that.

Vice-Chair Ball: Right.

Mr. Spence: I don't think the intent was as a restaurant or logo wear or retail.

Chairperson Lay: Commissioner Hedani?

Mr. Hedani: I would...I move that the Commission recommend to the Council that they recommit this to Committee to consider the Department's comments as well as the comments that we've raised in this meeting.

Mr. Medeiros: Second.

Chairperson Lay: Motion on the floor by Commissioner Hedani, seconded by Commissioner Medeiros. Any discussion on it? Commissioner Medeiros?

Mr. Medeiros: I'm a straight up guy. This is not muddy the water. Okay, this is plain and simple mud. I don't understand it. We have a system that works. Okay, they're trying to make it better but in making it better what's in front of me is mud. Go back to the drawing board. Bring me something clear like the process that is in place right now. The process that is in place right now is clear. You know, so I would support Commissioner Hedani's motion to send it back to Committee.

Chairperson Lay: Commissioner Hedani?

Mr. Hedani: I think from my perspective I think one of the things that this does is it's almost like creating commercial spot zoning for every agricultural lot that we have on the island and I don't know that that's the intent of what they wanted to do or what they wanna accomplish but it seems, it seems like it really needs a lot more consideration.

Chairperson Lay: Any more discussion on the motion? Commissioner Wakida?

Ms. Wakida: Just one last question for Joe. Maybe you told us this at just at the outset but maybe you need to tell me again, what was the motivation for the Council to come up with all this in first place?

Mr. Alueta: It kinda started within the Agricultural Committee. They were trying to...they have an ag working group as Mr. Spence had talked about, Director Spence talked about where it is a wide variety of farmers and landowners. So you have your small, you know a small cabbage farmer in Kula and you have, you know, your Maui coffee growers and then you have your micro growers that are some of them are actually in for B&B or have a vacation rental, so you have a wide variety of people who are trying to get some structures allowed as a permitted use. And so, some of them would like to have this commercial structure so that they can expand their operation whether it be, you know, vodka or rum or it could be where they have a large agricultural product and they are refining it into a finished product and they want to be able to retail that directly. And then you have the again, the ones that have very minute amount of ag, you know, but have these structures that are selling more after-market products that are not necessarily, some of them may be manufactured on site, some of them may be coming from other producers, so it's kind of a coming to head you know. There was kind of a strike of a balance between the two. And so that's where, that's why you got this bill and that's why it's...it has something for everybody I guess you could say. It would take a lot of...from your big producer down to a very small producer. That was kind of the motivation of it.

It's kind of a flashback moment for me with this whole bill. Director Spence will probably remember Hana Gardenland in Hana. And you know, probably I would say 20 years or more 21 years ago when that operation came out and that was, you know, the first certified plant nursery that was allowed to export. There's even a historic sign out in front in Hana on the way in. And it started out as you know a very simple huge greenhouse. They exported plants. And then the original owners had, you know, they did ice cream and soda. You go in and stop, I did as a young kid, and then it was sold. And then the gentleman came in for a Special Use Permit because there was a violation and he was still doing the flowers and the orchids but he had a literally a 2,000 square foot art gallery selling \$3,000 pieces of sculpture and all kinds of stuff. And we were like how is this related to ag? And then there was a pizza shop. There was pizza night in Hana and it was very

popular but their justification was we grow the tomatoes that go on the pizza. And that is, I mean, when I give those examples, these are real world examples that the people who have been here I mean in the Department for a while have dealt within the past and that person we said you had to do a Special Use Permit. But even through a Special Use Permit it was a difficult thing to justify it for the Hana Advisory Committee as well as the Planning Commission that ultimately granted him and the limitation. And so I think that, you know, these are real world concerns that we're gonna have. We've seen them before. And again, it became a very contentious I should say that process. And so you wanna be able to have a more, a clearer black and white and clearer water of what are your standards? Yes, you can do this, if you go over this standard you need a Special Use Permit. And I think for us, it's easy. Black and white is how many square feet or what percentage is accessory. You know, and that's from our aspect. That may not work for, you know, the people who are trying to do certain things. They would rather have a little more flexibility, but again, for our aspect to enforce it and to deal with complaints if they come in is that we would rather be able to say yea or nay relatively quickly. And I think a quick answer is better than a, I don't know and let me think about it and spend years talking about it.

Chairperson Lay: Any more discussion on the motion? Director?

Mr. Spence Just a comment. I do recall Hana Gardenland and I do recall some other projects within the Ag Districts that were similarly related to agriculture that created a whole lot of controversy. And so, I mean times have changed since that and a Special Use Permit it's not as large of a process. It's not just an arduous process as it once was. You know, it's much more of an accepted process with bed and breakfasts and vacation rentals and some other things that this Commission regularly sees. You know, I'm just gonna say perhaps a Special Use Permit would be better for this client if we're gonna talk commercial operations because it's...you know, I think everybody here would like to be able to provide farmers with more flexibility, you know and the ability to keep agriculture alive by being able to make you know some additional dollars on, you know, visitors and the like. I couldn't see something like Hana Gardenland today would not be that difficult to get it all. But it is a case by case kind of application. The circumstances of every location are different. The circumstances of every, you know, type of operations, you know this Commission may well find that certain restaurants in certain locations would be great and in other locations it may not. So perhaps that's something for consideration. The Special Use Permit is just...it's not that arduous anymore.

Chairperson Lay: Commissioner Duvauchelle?

Ms. Duvauchelle: My concern is that it isn't clear and we don't wanna turn around and put the burden on the family farmers that really need this language more than anything.

Mr. Spence: Yes, and that's part of the intent.

Ms. Duvauchelle: Yeah. So I, you know, I'm thinking I would support going back to Committee 'cause I do think it needs a lot of work and I wouldn't be comfortable until I'm sure it covers all of the agricultural uses and farmers.

Chairperson Lay: Commissioners, any more discussion on the motion? If not, can we get the Director to repeat the motion?

Mr. Spence: The motion is to send this...to make a recommendation to the County Council that this go back to Committee for considerable amount of work.

Chairperson Lay: Call for the vote. All those in favor?

Mr. Spence: That's six ayes.

Chairperson Lay: Motion carries.

It was moved by Mr. Hedani, seconded by Mr. Medeiros, then

**VOTED: To Recommend to the Council that This Matter Be Sent Back to Committee to Consider the Commission's Comments and Department's Comments.
(Assenting - W. Hedani, J. Medeiros, K. Ball, S. Duvauchelle,
P. Wakida, R. Higashi)
(Excused - J. Freitas, M. Tsai)**

Mr. Alueta: Thank you.

Chairperson Lay: Yeah, and if you can...

Mr. Spence: Yeah, we would include your comments as part of this transmittal back to Council.

Mr. Alueta: Correct. The motion that I heard was for consider the Planning Commission's...Commission's comments that came out as well as comments that came from the Planning Department. Thank you.

Chairperson Lay: Thank you. At this time Commissioners, gonna take a break. Reconvene at 10:35.

A recess was called at 10:25 a.m., and the meeting was reconvened at approximately 10:35 a.m.

Mr. Spence: We're on the second public hearing item. This is also stemming from a Council Resolution regarding childcare homes within the Agricultural District, and with us again this morning is Mr. Joe Alueta.

2. MR. WILLIAM SPENCE, Planning Director, transmitting Council Resolution No. 14-81 containing a proposed bill entitled "A Bill for an Ordinance to Allow Family Child Care Homes within the Agricultural District". (J. Alueta)

Mr. Joe Alueta: Good Commissioners. This item is primarily to address a change in the State Law that allowed for childcare homes within the Agricultural District. As I summarized, our zoning or the rights of the counties to establish zoning comes from Chapter 346 from the State. They have certain preemptions. One of them was childcare facilities within single-family homes or in the Residential District in which we could not establish restrictions on that in the Residential District if it was licensed by the State.

The State had passed a bill recently and I attached it. It was approved by the Governor on July 5th as Act 210 basically allowing for childcare homes located in a farm dwelling and shall be subject to the same provisions with regards to being licensed by the State. So basically the County Council had sent down a resolution that would allow for the same thing. We consider the resolution moot in the sense that State Law already back basically superseded County Ordinances. However, it does make it clearer and so we do support the bill because it does provide clarity. So if someone does look up into Title 19.30A, they will see that family childcare homes within a farm dwelling is an allowed use provided it's licensed by the State. So you'll see that...they've added under Permitted Uses, family childcare home registered pursuant to Chapter 346, Hawaii Revised Statutes and located within a farm dwelling. So we are supportive of the reso. and your options are to approve, approve with comments, recommend a rejection of it with comments or ask for more information.

Chairperson Lay: At this time, I'm gonna open up to public testimony.

a) Public Hearing

Chairperson Lay: If anyone wishes to testify please step up to the mic, identify yourself and you have three minutes. Seeing no one, closing public testimony. Commissioners, any questions?
Commissioner Wakida?

b) Action

Ms. Wakida: I hope I'm not jumping the gun, but I move to accept the changes as presented by the Planning Department.

Chairperson Lay: Motion by Commissioner Wakida. Do we have a second?

Vice-Chair Ball: Second.

Chairperson Lay: Seconded by Commissioner Ball. Any discussion on the motion?
Commissioner Hedani?

Mr. Hedani: That's a recommendation to Council?

Mr. Spence: Yes.

Chairperson Lay: Yes. Any more discussion on the motion? Seeing none, can the Director repeat the motion?

Mr. Spence: The motion is to recommend approval to the County Council of the ordinance read by...you know, as presented.

Chairperson Lay: Call for the vote. All those in favor?

Mr. Spence: That's six ayes.

Chairperson Lay: Motion carries.

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

**VOTED: To Recommend Approval of the Ordinance to the County Council as Presented by the Department.
(Assenting - P. Wakida, K. Ball, J. Medeiros, W. Hedani,
S. Duvauchelle. R. Higashi)
(Excused - J. Freitas, M. Tsai)**

Mr. Alueta: Thank you very much.

Chairperson Lay: Our next agenda item?

Mr. Spence: Okay, Commissioners we're on item D-1, Communications, Ms. Gwen Hiraga, Project Manager for Munekiyo & Hiraga. This is they're submitting the 2014 Annual Report on the disbursement of funds for the Settlement Agreement with the West Maui Preservation Association on the Special Use Permit, excuse me, SMA Permit. So this is annual WMPA report that the Commission gets. I believe with us today is Colleen Suyama, who will provide...

D. COMMUNICATIONS

- 1. MS. GWEN OHASHI HIRAGA, Project Manager from MUNEKIYO AND HIRAGA on behalf of INTRAWEST submitting the 2014 Annual Report on the disbursement of funds in the Settlement Agreement with the WEST MAUI PRESERVATION ASSOCIATION, INC. (WMPA) on the Special Management Area Use Permit and Step 2 Planned Development Approval for the proposed Honua Kai Resort, North Beach Park, and Related Improvements at TMK: 4-4-014: 006 and 008 and 4-4-001: 010, Kaanapali, Lahaina. Island of Maui. (SM1 2004/0017) (PD2 2004/0005) (C. Thackerson)**

Condition No. 32 reads:

“That an annual report shall be filed with the Maui Planning Commission on the disbursement of the funds in the Settlement Agreements for their information.”

Ms. Colleen Suyama: Good morning. I'm Colleen Suyama with Munekiyo & Hiraga. Gwen is on her way, but I'm doing the presentation to the Commission anyway. As noted, this is in response to February 22, 2005, the Planning Commission acknowledged the withdrawal of Petitions to Intervene and a submittal of a Settlement Agreement that was with the West Maui Preservation Association. And as part of that agreement there was a Condition 32 that was placed on the SMA Permit which states that an annual report shall be filed with the Maui Planning Commission on the disbursement of the funds in the Settlement Agreement for their information.

And in compliance with that condition, we did transmit a letter dated March 25, 2014 which is the

2014 Annual Report to the Commission. And based upon that, there are certain items in the Settlement Agreement that needs to be disclosed to the Commission and the first provisions of the disbursement is that Item 8 which was traffic impact settlement agreement. A total of \$325,000 were set aside for the Lahaina traffic light synchronization. Of this about \$30,000 were remaining. In the first 18 months the traffic signalization, a light sequencing was done and there was a left over about \$30,000. And during the review in 2010, the Commission approved the use of those funds, the remaining \$30,000 to do continued monitoring and adjustments as needed. And the consultant at that time recommended reassessing the reoptimization in 2013. Since the preparation of this report, the assessment has been completed and the assessment recommended signal timing adjustments on three intersections that...along Honoapiilani Highway. And those intersections were at Puukolii Road, Keawe Street, and Hokiokio Place. Those were the three intersections that the traffic consultant recommended readjustments and that work has since been completed by the traffic consultant.

Also, as part of the Settlement Agreement, \$1,535,000 was set aside for the design of the proposed Mill Street extension, traffic studies and road design fees for the section of the road between Keawe Street and Aholo Road. That study has been ongoing with the Department of Public Works. And to date, there's approximately \$550,630 that are still remaining within that fund. For your information, the Department of Public Works is reviewing portions of the Final Environmental Assessment for the project. Once that's completed and accepted then the Final EA for the Mill Street project can be accepted and filed with the Office of Environmental Quality Control.

The third item was that \$250,000 was given toward the Lahaina bypass highway north of Keawe Street. Of that \$250,000, \$200,000 has been disbursed and there's a remaining \$50,000. And just for your information, in 2010, the Commission at the applicant's request authorized the use of the \$250,000 for survey and archaeological pedestrian reconnaissance work for the Lahaina Bypass Highway north of Keawe Street including the designated Kaanapali connector road to provide for proper phase scheduling and implementation of the new bypass highway. In discussions with the State Department of Transportation, the SDOT requested assistance for the funding of archaeological and public outreach work services for Phase 1C which is between Keawe Street extension to the Kaanapali connector road and Phase 1D which is the Kaanapali connector to the north access road for the Lahaina Bypass Highway. The applicant has been working the State Department of Transportation on the remaining phases of Phase 1C and 1D. So that is where the scope of monies have been basically given to the State Department of Transportation to do these studies.

Also, there's ongoing funding to the charitable nonprofit organization from resales of any residential units in the amount of 0.25 percent of the sales price at the close of escrow during the transfer of title. And this is still, the applicant, you know has stated that they have no adequate means to monitor resale of units as these are handled by outsider brokers. The Commission may want to consider requesting the information from the West Maui Preservation Association 'cause that's where the money is going. Okay, thank you. This concludes our presentation.

Chairperson Lay: At this time, I'm gonna open up to public testimony. Does anyone wish to testify at this time? Please step forward, identify yourself and you have three minutes.

Ms. Patricia Nishiyama: Aloha kakahiaka, good morning.

Chairperson Lay: Aloha.

Ms. Nishiyama: Maui County Planning Commissioners. My name is Patricia Nishiyama aka Auntie Patty Nishiyama. Na Kapuna O Maui has serious questions about the Honua Kai West Maui Benefit Fund. Specifically we want to know who is serving on the Board of Directors? According to the conditions of establishment of the funds, directors are to be residents of West Maui with exception of a representative from the Honua Kai Association. West Maui was pleased when the West Maui Preservation Association intervened in the development of the two North Beach developments and two charitable west side funds were formed. Too often, West Maui is left dry with public funds are used for nonprofit in our culture. We thought that the two funds would provide west side nonprofits with an ongoing source of revenue for our community needs.

There are three connected nonprofits, West Maui Preservation Association, the North Beach West Maui Benefit Fund, the Honua Kai West Maui Benefit Fund. This is one...there is one president for all three associations and this is Sharyn Matin. A person does not even live in our community. She has never lived here on a full-time basis. How can she determine the needs of our community with no connection to the aina? There are many of our organizations tried to email, but Sharyn Matin, no response.

When we had board of Honua Kai West Maui Benefit Fund that was representative of our community, she dismissed two of its west side members very well known. Bruno Ariyoshi and Dr. Iaconetti. And replaced them with her appointees. Who are they? We think that the Planning Commission was irresponsible in its appointment of conditions. How is a group accountable for these other matters besides financial? What is in place to actually protect these fund sources for our community? What happens if Sharyn Matin would hala? That means pass away. What are the plans? Who replaces her? How does the Planning Commission ensure that the board is truly representative of long-standing member of our community? We do not think that the current board represents a good cross section of West Maui. We are kept out of the loop. We are not informed. Who is Sharyn Matin, and what why she given such power over the good of our community? Na Kapuna has these questions and lots more, but we think that the Maui Planning Commission is negligent in its oversight of this matter. Consider how many dollars were paying lawyers when funds could be distributed in effective manner with grants awarded to nonprofits of West Maui. Please help us put these funds into the hands of good people of West Maui. We live here and we know what we need. We want the responsibility as was originally intended. Thank you.

Chairperson Lay: Commissioners, any questions for the testifier? Seeing none, thank you very much.

Ms. Nishiyama: Mahalo. Help us, okay? Mahalo.

Chairperson Lay: Commissioners, any questions or comments? Commissioner Wakida?

Ms. Wakida: The workings of the West Maui Preservation has been sort of a mystery to this group for a long time. But it's my understanding that we have very limited jurisdiction over this entity. Our legal responsibility is only that we get this report, but we don't really get to do anything else. Like our testifier said, there are people in charge, they have people on the board that don't seem the requirements of the board. But I'm not sure that there's anything if we wanted to or not there's

anything that we could do about that? Perhaps the Director could comment?

Mr. Spence: My comment is that perhaps Corporation Counsel would like to comment. I'm not familiar with you know, what would be under like the Commission's jurisdiction other than you know what was noted that you get this report every year.

Chairperson Lay: Corp. Counsel?

Ms. Thomson: What I would need to do is take a look at that SMA Permit approval and you know, the condition is noted as just as you said just a report back on the expenditure of funds. But I can take a look at that if you wanted to put that on a future agenda and then we could, you know, revisit it and just see, you could also ask for more information, you know, from West Maui Preservation Association if you'd like. You know, just to flesh out your understanding of this report. So I think that you can ask for more information, whether you can require things that might be, you know, something I'd need to look at. So I'm happy to do that if you'd like to take a look at that in a future agenda item.

Chairperson Lay: Commissioner Wakida?

Ms. Wakida: Yes, I would like to request more information perhaps look at the board members and term limits if any, what their bylaws say about their board if that's appropriate.

Ms. Thomson: I think that that's a reasonable request to make.

Ms. Wakida: Okay.

Chairperson Lay: Commissioners, any more discussion or questions?

Mr. Hedani: Is that a motion?

Chairperson Lay: Yes, you second it? We had a motion on the floor. No more discussion on the motion. Director, can you repeat the motion?

Mr. Spence: Hope so. The motion is to look at the specific conditions of this SMA Permit and put it on a future commission agenda. And do we wanna send WMPA a letter in the meantime for...

Ms. Wakida: Could we get a copy of their bylaws and their board members? I have personally gone online to try and get that information and it was...there was really no information available, so...

Mr. Spence: We can send a...if we can't find it, we can send a request.

Chairperson Lay: Call for the vote. All those in favor?

Mr. Spence: That's six ayes.

Chairperson Lay: Motion carries.

It was moved by Ms. Wakida, W. Hedani, then

**VOTED: To look at the specific conditions of this SMA Permit and put it on a future commission agenda.
(Assenting - P. Wakida, W. Hedani, K. Ball, J. Medeiros, S. Duvauchelle, R. Higashi)
(Excused - J. Freitas, M. Tsai)**

Chairperson Lay: Our next agenda item?

Mr. Spence: Okay, Commissioners we're on Agenda Item E. This is for the Adopt of Written Decisions and Orders. The first one is the Proposed Findings of Fact, Conclusions of Law and Decision and Order denying the request for a Short-Term Rental Home permit by Mr. Robert P. Holland. I believe that's part of your packet.

E. ADOPTION OF WRITTEN DECISION AND ORDERS

- 1. Proposed Findings of Fact, Conclusions of Law and Decision and Order denying the request for a Short-Term Rental Home Permit by MR. ROBERT P. HOLLAND for in order to operate the Tropical Gardens Vacation Short-Term Rental Home, a three (3)-bedroom short-term rental home located on approximately 9,680 sq. ft. of land in the R-2 Residential District at 355 Kamano Place, TMK: 4-6-005: 034, Lahaina, Island of Maui. (STWM T2013/0012) (K. Wollenhaupt) (Action on application taken at the January 14, 2014 meeting.)**

Chairperson Lay: Corp. Counsel?

Ms. Thomson: Thank you. So this is memorialization of a decision that you made previously. So it's the, you know the formal D & O, Decision and Order. So what you're doing today is making sure that this is, the Decision and Order as drafted accurately reflects the action that you took, whether you have any corrections. What I'd ask is that you, you know, be as specific to the part of the record. You know, so if something's stated in the D & O is not correct, if you can kinda provide where in the record that information is found that would be very helpful. So today you could approve it as drafted, make corrections to it and approve it or you could send it back to Staff and our department you know further revisions if necessary.

Chairperson Lay: Director?

Mr. Spence: And Commissioners, you would note on your agenda that you may call an executive session if you so wish in order to consult with your attorney.

Chairperson Lay: Commissioners, any questions?

Mr. Hedani: Question?

Chairperson Lay: Commissioner Hedani?

Mr. Hedani: From Corp. Counsel's perspective does the...does it reflect everything that's necessary for potential actions in the future?

Ms. Thomson: Yes, so our department has reviewed all three of these decisions and order and has reviewed the record and in our opinion it accurately reflects the record.

Mr. Hedani: Move to adopt.

Chairperson Lay: Motion by Commissioner Hedani.

Mr. Medeiros: Second.

Chairperson Lay: Seconded by Commissioner Medeiros. Any discussion on the motion? Commissioner Wakida?

Ms. Wakida: We're just dealing with the first one, correct?

Mr. Spence: Correct.

Chairperson Lay: Yes. At this time, we're gonna have break here and take public testimony. We didn't get a chance and wanna have the opportunity for that. Anyone wishes to testify, you have...identify yourself and you have three minutes. Seeing no...no, you've already testified already.

Ms. Lauren Sharon: ...(inaudible - speaking from the audience)...

Chairperson Lay: At the beginning of the meeting we ran through on what we were, especially for you that what was available to you, and you made the choice to testify at that time, so we're gonna have to stick with that.

The following testimony was received at the beginning of the meeting:

Ms. Lauren Sharon: Good morning. My name is Lauren Sharon. I'm an attorney at the law firm of Cain & Herren. I hope I'm making this comment at the appropriate time, but I have a comment on a Findings of Fact and Conclusions of Law that you plan to deliberate on today. Am I making, am I commenting at the appropriate time?

Chairperson Lay: You can either do it now or when the agenda item comes up. It's up to you. It's up to your discretion.

Ms. Sharon: Okay, I'll go ahead and do it now then. Thank you so much for telling me that. Okay, so I'm here on behalf of Robert Holland. He applied for a Short-Term Housing Permit at 355 Kamano Place in Lahaina. And I just wanted to comment for the record today that his permit was denied at a hearing, at the hearing on January 14, 2014, and then reconsidered and denied on May 13, 2014. And according to Hawaii Statute 91-13.5(c), the Planning Commission shall take action to grant or deny any application within the max period of time or it should be deemed approved. And in fulfilling that statutory requirement the Maui Planning Commission enacted rule

section 12-201-34 which states that the Commission shall review and make decision on applications within 120 days of date application is either complete or at the closing of the public hearing and then if you go back and according to Hawaii Statute 91-13.5(c) that that application should be deemed automatically approved if not made...if no Findings of Fact and Conclusions of Law are served within 120 days. So I just wanted to comment on that that it's been more than 120 days since any hearing or it was more than 120 days even before the draft was served on the Hollands.

Chairperson Lay: Commissioners, you have any questions for the testifier? Seeing none, thank you very much.

This concludes the testimony received at the beginning of the meeting.

Chairperson Lay: Anyone else wish to testify at this time? Seeing no one, public testimony is closed and we're back to the motion on the floor. Any discussion on the motion? Seeing none, can we get the Director to repeat the motion?

Mr. Spence: The motion is to adopt the Decision and Order.

Chairperson Lay: Call for the vote. All those in favor?

Mr. Spence: That's six ayes, seven ayes.

Vice-Chair Ball: Procedural question before we finalize that?

Chairperson Lay: Commissioner Ball?

Vice-Chair Ball: If she's representing the Hollands, she's not a member of the public, right? Do they have the opportunity to present his case here or no?

Ms. Thomson: No, this isn't a chance to rehear any portions of the case, but if they had specific objections to the Decision and Order as drafted they could present that information. So if the applicant or the representative felt that any portion of the D & O did not accurately reflect what happened that hearing day they could present that. What was presented to you earlier was a legal argument regarding the timing of the order and whether or not the Decision and Order reflects a final decision or whether that was the hearing date. So it's more of a legal argument rather than any information that the D & O was incorrect.

Chairperson Lay: Commissioner Higashi?

Mr. Higashi: Just for clarification. I was not privy for this complete case itself. So how you recommend that I can't...

Ms. Thomson: The portion of the Maui Planning Commission's rules that discuss adopt of Decisions and Orders only require that those members who voted in favor of the motion. So in this case it was a motion to deny, so only those commissioners who voted in favor of the motion to deny have to sign. However, on the very last page of the Decision and Order it does state that you were

not...oh, it does not say that. So we can add your name to the...it looks like it inadvertently left off if you weren't here that day.

Mr. Wollenhaupt: Oh no, he wasn't even a member.

Ms. Thomson: Oh, okay. If you weren't a member then you don't have to sign anything.

Mr. Higashi: Yeah, it was Warren Shibuya.

Chairperson Lay: Commissioner Wakida, you got a question?

Ms. Wakida: No, I was just gonna clarify that too.

Chairperson Lay: Okay, any more discussion on the matter? Okay, our next agenda item.

Unidentified Speaker: We didn't vote.

Chairperson Lay: Okay, excuse me. At this time, I'll call for the vote. All those in favor?

Mr. Spence: Yes, we did have six ayes. ...(inaudible)...

Chairperson Lay: Yeah.

Mr. Wollenhaupt: I have the original document here without draft will be sent around to see if we can get the signatures today. We'll be sending around each of them depending on if you approve it as this one is. So if you just sign on the line. And if there's not present, excused, did not vote then you only sign if there is a blank line with no verbiage.

Chairperson Lay: Okay, thank you.

It was moved by Mr. Hedani, seconded by Mr. Medeiros, then

**VOTED: To Adopt the Proposed Findings of Fact, Conclusions of Law, and Decision and Order.
(Assenting - W. Hedani, J. Medeiros, K. Ball, S. Duvauchelle, P. Wakida, I. Lay)
(Excused - J. Freitas, M. Tsai)
(Did not vote - R. Higashi was not a commissioner at the time)**

Chairperson Lay: You guys wanna break or go onto the next one?

Mr. Medeiros: Break.

Chairperson Lay: Let's take a five-minute break.

A recess was called at 11:05 .a.m., and the meeting was reconvened at approximately 11:16 a.m.

Chairperson Lay: Call back to order.

Mr. Spence: Commissioners, we are on Item E-2. This is for the Adoption of Written D & O for an order denying the request for a Short-Term Rental Home Permit by Mr. Alan Zimmerman and our Staff Planner if there's any comments or explanations is Mr. Kurt Wollenhaupt.

- 2. Proposed Findings of Fact, Conclusions of Law and Decision and Order denying the request for a Short-Term Rental Home Permit by MR. ALAN P. ZIMMERMAN of 33 Vallejo Hui, LLC to operate the Napili Kai Hale Short-Term Rental Home, a three (3)-bedroom short-term rental home located on approximately 10,000 sq. ft. of land in the R-3 Residential District at 33 Hui Road E, TMK: 4-3-015: 044, Napili, Island of Maui. (STWM T2013/0014) (K. Wollenhaupt) (Action on application taken at the January 14, 2014. meeting.)**

Mr. Spence: So again, this is just an adoption of your previous actions.

Chairperson Lay: At this time, I'm gonna open up to public testimony. If anyone wishes to testify please step forward, identify yourself and you have three minutes. We've Debbie Mitchell.

Ms. Debbie Mitchell: Yes, good afternoon, Commissioners. Good afternoon, Director Spence. I'm Debbie Mitchell and I represent the Zimmerman party in this action. And I just wanted to take this last opportunity to bring a couple of facts to your attention regarding this permit. At the time that the original permit was filed and application was made, there was another permitted resident in that same area and that has now been sold so that has removed that additional permit in the area. So at this time, the Zimmermans are the only permitted or applicants in that area.

Also, there was much testimony that was brought at that time by Ms. Sandy Carr who is the neighbor who lives permanently there. I'm not here to retry or to reargue any of the case, but just wanted to make the point that we have worked very hard with Ms. Carr and the points that she made that she brought up at that time were significantly in the past. And my husband and I, we have a small company called MMS Maui, and we have put in very strong set of rules in place to protect the neighbors there from all the questions particularly quiet which was very important to Ms. Carr. And all the incidents that were brought up by Ms. Carr were were significantly in the past three to four years in the past. And since we have taken over operation as managers, we have just had one or two comments and have had thanks from Ms. Carr for our quick response and successful response. So we just wanted to bring that to your attention.

The house is currently vacant. They have been trying rent it long-term, but since it doesn't fit into the general affordable housing sort of area it is just sitting vacant, and so therefore, there is a loss of revenue. Certainly you know, they were paying G.E. and T.A taxes so there's a loss of revenue to the County, certainly local trades people myself included, gardeners, housekeepers, you know, local businesses that have loss revenue as well.

Additionally, Mr. Holland who had the other permit denied we have the same issue there with the 120-day notification where that 120 days had passed before we received a final notification. So we just bring that point as well. But just wanted to present those facts to you and just ask that perhaps

you might consider that and hopefully perhaps change your mind about your decision, but thank you very much for listening to me. I appreciate it.

Chairperson Lay: Commissioners, any questions for the testifier? Seeing none, thank you very much.

Ms. Mitchell: Thank you.

Chairperson Lay: Commissioners, any discussion on our matter, this matter? Commissioner Hedani?

Mr. Hedani: Move to adopt the Findings of Fact, Conclusions of Law, Decision and Order.

Ms. Wakida: Second.

Chairperson Lay: Motion by Commissioner Hedani, seconded by Commissioner Wakida. Any discussion on the motion? Seeing none, can we get the Director to repeat the motion.

Mr. Spence: The motion is to adopt the D & O pursuant to your previous actions.

Chairperson Lay: Call for the vote. All those in favor?

Mr. Spence: That's seven ayes.

Chairperson Lay: Motion carries. Our next agenda item. Oh, excuse me, yeah, we're gonna have to take you off the vote. You weren't a commissioner at the time of this. So it's six approved.

Mr. Spence: So, it's six ayes.

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

**VOTED: To Adopt the Proposed Findings of Fact, Conclusions of Law, and Decision and Order.
(Assenting - W. Hedani, P. Wakida, J. Medeiros, K. Ball, S. Duvauchelle, I. Lay)
(Excused - J. Freitas, M. Tsai)
(Did not vote - R. Higashi was not a commissioner at the time)**

Mr. Spence: Okay, the third is the adoption of the Findings of Fact, Conclusion of Law, Decision and Order regarding the denial for a Special Use Permit by an application filed by Mr. Frederick Honig of the Spirit of Aloha Temple, and this is again is Mr. Kurt Wollenhaupt.

- 3. Proposed Findings of Fact, Conclusions of Law and Decision and Order denying the request for a State Land Use Commission Special Use Permit by MR. FREDRICK R. HONIG of the SPIRIT OF ALOHA TEMPLE to operate an agricultural educational classroom and hold Spirit of Aloha Temple Church Services with Church Service Related Events such as Weddings in the State**

and County Agricultural Districts on approximately 11 acres of land located at 800 Haumana Road, TMK: 2-8-004: 032, Haiku, Island of Maui. (SUP2 2012/0032) (K. Wollenhaupt) (Action on the application taken at the March 25, 2014 and April 8, 2014 meetings)

Mr. Kurt Wollenhaupt: There are no further points. This Decision and Order has been reviewed by the Office of Corporation Counsel and our Planning Staff, we feel that it's correctly lists the findings of fact, conclusions of law for adoption today by this Maui Planning Commission.

Chairperson Lay: At this time, open up for public testimony. Does anyone wish to testify at this time? Seeing no one, public testimony is closed. Commissioners, any discussion on the motion, oh discussion on this draft? Seeing none, motion?

Mr. Medeiros: Move to accept.

Mr. Tsai: Second.

Chairperson Lay: Motion by Commissioner Medeiros, seconded by Commissioner Tsai. Any discussion on the motion? Seeing none, can we get the Director to repeat the motion?

Mr. Spence: The motion is to adopt or accept the Decision and Order.

Chairperson Lay: Call for the vote. All those in favor?

Mr. Spence: Commissioner?

Chairperson Lay: Yeah, he was here.

Mr. Higashi: Yeah, I was on that one.

Mr. Spence: So that's seven ayes.

Chairperson Lay: Motion carries.

It was moved by Mr. Medeiros, seconded by Mr. Tsai, then

**VOTED: To Adopt the Proposed Findings of Fact, Conclusions of Law, and Decision and Order.
(Assenting - J. Medeiros, M. Tsai, K. Ball, W. Hedani, S. Duvauchelle,
P. Wakida, R. Higashi)
(Excused - J. Freitas)**

Chairperson Lay: Our next agenda item?

Mr. Spence: Commissioners, we're on Item F, Acceptance of Action Minutes of October 14th, and Regular Minutes of August 12, 2014 and August 26, 2014 meetings.

F. ACCEPTANCE OF THE ACTION MINUTES OF OCTOBER 14, 2014 MEETING AND REGULAR MINUTES OF THE AUGUST 12, 2014 AND AUGUST 26, 2014 MEETINGS

Chairperson Lay: Everybody get a chance to look at that. I need a verbal acknowledgment. All those in favor of acceptance say, aye?

Commission Members: Aye.

Chairperson Lay: Those opposed? Acceptance of our minutes. Our next agenda item?

Mr. Spence: Okay, Commissioners. Director's Report the first item is me, advising you that I plan on extending a SMA Permit condition to initiate construction at the Hoonani Subdivision, 27 residential...27 lot residential subdivision at Hoonani Street, and our Staff Planner is this morning is Mr. Keith Scott.

G. DIRECTOR'S REPORT

- 1. MR. WILLIAM SPENCE, Planning Director, notifying the Maui Planning Commission pursuant to Section 12-202-17(e) of the Maui Planning Commission's SMA Rules of his intent to process the following time extension request administratively:**

MR. RODERICK FONG, General Partner of MAUI WAIOHULI PARTNERS requesting a two (2)-year time extension on the Special Management Area Use Permit condition to initiate construction of the Hoonani Subdivision, a 27 residential lot single family subdivision at Hoonani Street, TMK: 3-9-001: 007, Kihei, Island of Maui. (SM1 2008/0024) (K. Scott)

Mr. Keith Scott: Good morning, Commissioners.

Commission Members: Good morning.

Mr. Scott: The Hoonani Subdivision is located between Piilani Highway and South Kihei Road from east to west, and Kulanihakoi Street and Waipuilani Road north to south. The use permit was approved August of 2009, and a two-year time extension was approved in December of 2012, and the applicant has submitted a request for an additional two years to 2016. There have been no changes in the Special Management Area that would adversely impact anything environmental nor any capacity for any of our infrastructure. Mr. Roderick Fong is a general partner of Waiohuli Partners is here to give you a little short presentation.

Mr. Roderick Fong: Chairman and Members of the Commission, my name is Roderick Fong. I represent this roughly about a 20-member hui since '78 maybe, so over 35 years. And it's a been a long process. It's a 13-acre property and it was bought to do roughly about a 60-lot subdivision. And eventually because of Waipuilani diagonally crossing the property it was decided to do the development on the half of the property which adjacent all the existing homes from Hoonani Street and all the Namaau Subdivision that was built. It's R-2, I believe 7,500 square feet minimum.

So we went through the process and we had a preliminary and we decided to eliminate the preliminary because we were going through SMA and we wanted to find out what SMA was going to produce. We obtained our SMA end of 2009 for about a five-year period and when we got the SMA there was an existing "show me the water" issue so we couldn't move forward. Then the Council passed a amendment to the "show me the water" to allow 100 percent affordable projects to be allowed. So we were able to get a Workforce Housing Agreement in 2012 or by 2012 to proceed as a 100 percent affordable project. But we've been going back and forth with the Water Department if it's truly a 100 percent affordable project. But we finally got a letter last...oh, few weeks ago, a allocation letter that's sent to the Department of Public Works allowing this to move forward as a 100 percent affordable project. So that's the brief history of this project where it stands now. So the five years is up and we're looking for an extension. We expect it will take almost a year to get the plans approved again and start construction the end of 2015 and finish with housing, with about a housing project maybe 2016 at the earliest. If there's questions, I'm free to answer them.

Chairperson Lay: Okay, at this time I'm gonna open up to public testimony if anyone wishes to testify? Seeing no one, Commissioners any questions or comments? Commissioner Wakida?

Ms. Wakida: Yes, Mr. Fong, you originally...this is 27 lots, correct?

Mr. Fong: Yes.

Ms. Wakida: And you were originally gonna be lots only but now it's house and lot you're selling is that correct?

Mr. Fong: Yeah, I guess in the process of the house...Affordable Housing Agreement we went through that process that we need to do it a house and lot project.

Ms. Wakida: Okay. So all of them will be house and lot?

Mr. Fong: Yes.

Ms. Wakida: What's the minimum lot size that you have in your subdivision?

Mr. Fong: Like I said, it's 7,500 square foot minimum lots. Really good size lots and I think you're allowed like a 500-square foot cottage. With the Housing Agreement I think it has to be pushed down like 10 years before the owners can build cottages on the projects. I think that's the latest that's being discussed right now.

Ms. Wakida: And the size of the house approximately?

Mr. Fong: They're telling me, the building contractors is all three and four-bedroom homes probably running about 1,600 to 2,200 square feet.

Chairperson Lay: Commissioners, any more questions or comments? Commissioner Hedani?

Mr. Hedani: Move to waive review.

Vice-Chair Ball: Second.

Chairperson Lay: Motion by Commissioner Hedani, seconded by Commissioner Ball. Any discussion on the motion? Commissioner Hedani?

Mr. Hedani: Any project that's 100 percent affordable deserves all the help they can get and we if can get out of the way that's great.

Chairperson Lay: Commissioner Medeiros?

Mr. Medeiros: I live right next door to this project. As I've stated in previous meetings living next to working class families is a good thing. Start building.

Chairperson Lay: Commissioners, any more discussion on the motion? Seeing none, can we have the Director repeat the motion?

Mr. Spence: The motion is to waive review.

Chairperson Lay: Call for the vote. All those in favor?

Mr. Spence: That's seven ayes.

Chairperson Lay: Motion carries. Congratulations.

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

**VOTED: To Waive Its Review of the Time Extension Request.
(Assenting - W. Hedani, K. Ball, J. Medeiros, M. Tsai, S. Duvauchelle,
P. Wakida, R. Higashi)
(Excused - J. Freitas)**

Chairperson Lay: Next agenda item?

Mr. Spence: Commissioners, still under Item G, number two and three are the SMA Minor Report and the SMA Exemption Reports and this is just to acknowledge receipt of those.

2. SMA Minor Permit Report (Appendix A)

3. SMA Exemption Report (Appendix B)

Chairperson Lay: Any questions on the SMA Minor Report. If we can get a verbal acknowledgment of acceptance? All those in favor?

Commission Members: Aye.

Chairperson Lay: Those opposed? Motion taken. So verbal acknowledgment, okay. Okay, moving onto our next agenda item.

4. Discussion of Future Maui Planning Commission Agendas

a. November 10, 2014 (Monday) meeting agenda items

Mr. Spence: Okay, Commissioners the next is discussion of your future agenda for November 10th. And you'll have two public hearings. One's by Armstrong Development, one by Mr. Glenn Tamura, both of them are SMA Permits. Item B, under New Business, Mr. Gregg Lundberg, General Manager of the Westin requesting a Final Environmental Assessment Determination. That's the very large document in front of you. It's looks like it's gonna be a busy agenda. And then Mr. Henry Spencer on behalf of Paia 2000 LLC doing a Draft Environmental Assessment in support of a Community Plan Amendment for the Paia Courtyard Project, and that Draft EA is also in front of you, and they will be requesting a District Boundary Amendment, Community Plan Amendment, Change in Zoning, SMA at some future point. Under Director's Report we're renotifying you of an Emergency SMA Permit, and actually three emergency permits and those will be explained to you at that time.

Chairperson Lay: Commissioners, any questions? Seeing none, meeting's adjourned.

Vice-Chair Ball: Monday right, we're a having a meeting.

Mr. Spence: Yes, it's a Monday meeting.

Chairperson Lay: Yes.

H. NEXT REGULAR MEETING DATE: NOVEMBER 10, 2014 (Monday)

I. ADJOURNMENT

The meeting was adjourned at approximately 11:30 a.m.

Submitted by,

CAROLYN J. TAKAYAMA-CORDEN
Secretary to Boards and Commissions

RECORD OF ATTENDANCE

Present

Keone Ball, Vice-Chair
Sandy Duvauchelle
Wayne Hedani
Richard Higashi
Ivan Lay, Chair
Jason Medeiros
Max Tsai (in attendance at 10:45 a.m.)
Penny Wakida

Excused

Jack Freitas

Others

William Spence, Director, Planning Department

Richelle Thomson, Deputy Corporation Counsel, Department of the Corporation Counsel

Rowena Dagdag-Andaya, Deputy Director, Department of Public Works