

**PLANNING COMMITTEE**  
**Council of the County of Maui**

**MINUTES**

**Council Chamber**

**June 19, 2014**

**CONVENE: 9:04 a.m.**

**PRESENT: VOTING MEMBERS:**

Councilmember Donald G. Couch, Jr., Chair  
Councilmember Gladys C. Baisa  
Councilmember Elle Cochran  
Councilmember Stacy Crivello  
Councilmember Don S. Guzman  
Councilmember Mike White

**EXCUSED:** Councilmember Michael P. Victorino, Vice-Chair

**STAFF:** Chancy Hopper, Legislative Attorney  
Pauline Martins, Committee Secretary

Tina Thompson, Executive Assistant to Councilmember Crivello Molokai  
Council Office (via telephone conference bridge)  
Denise Fernandez, Council Aide, Lanai Council Office (via telephone  
conference bridge)  
Dawn Lono, Council Aide, Hana Council Office (via telephone  
conference bridge)

**ADMIN.:** Michael J. Hopper, Deputy Corporation Counsel, Department of the  
Corporation Counsel  
William Spence, Director, Department of Planning  
Michele McLean, Deputy Director, Department of Planning  
Rowena Dagdag-Andaya, Deputy Director, Department of Public Works  
(Item 50)  
Jo Anne Johnson Winer, Director, Department of Transportation (Item 50)  
Joseph Alueta, Administrative Planning Officer, Department of Planning  
(Item 6)

**OTHERS:** Chris McNeil  
Francine Aarona  
Paul Laub  
Martin Brass  
Hugh Starr  
Catherine Clark  
Plus (3) other people

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

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CHAIR COUCH: . . . (*gavel*) . . . Will the Planning Committee meeting of June 19, 2014 please come to order. Before we get started, can I remind everybody in the gallery and in the room to turn off your cell phones or put 'em in silent mode please. 'Cause if your cell phone rings, we'll be sure to mention it to you that it is ringing. All right. First I'd like to, my name is Don Couch, I'm the Chair of this Committee. I'd like to welcome the Committee members that are here. Starting from my left, Councilmember Stacy Crivello.

COUNCILMEMBER CRIVELLO: Good morning, Chair.

CHAIR COUCH: Good morning. Councilmember Elle Cochran.

COUNCILMEMBER COCHRAN: Aloha. Good morning, Chair Couch.

CHAIR COUCH: Good morning. Councilmember Mike White.

COUNCILMEMBER WHITE: Morning, Chair.

CHAIR COUCH: Morning. And Councilmember Don Guzman.

COUNCILMEMBER GUZMAN: Aloha, Chair.

CHAIR COUCH: Good morning. And excused for the moment are the Council Vice-Chair -- oh, no, he's a non-voting Member...is Council Chair Gladys Baisa and -- oh, here she is. Okay, good. And excused for the duration of the meeting is the Committee Vice-Chair Michael Victorino. All right. And we have no non-voting Members here at the moment. For, from the Administration we have a bunch of folks today. We have the Director of the Department of Transportation, Jo Anne Winer Johnson.

MS. WINER: Thank you.

CHAIR COUCH: Good morning. And the Deputy Director of Public Works, we have Rowena Dagdag-Andaya.

MS. DAGDAG-ANDAYA: Aloha and good morning.

CHAIR COUCH: Good morning. And then, also, we have the Director and Deputy Director for Planning, Will Spence and Michelle McLean. Good morning.

MR. SPENCE: Good morning.

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CHAIR COUCH: Oh, look, he could speak up without the microphone. Yes. All right. And of course we have our Committee Staff, Legislative Analyst, Chancy Hopper. Good morning. And Committee Secretary Pauline Martins. Good morning. And of course, I'm sorry, Mr. Hopper, we forgot Corporation Counsel, Michael Hopper. Good morning. All right. Members, we've got four items on our agenda today: PC-6, which is B-1 Neighborhood Business District, PC-7, which is B-3 Central Business District and PC-24, Country Town Business Districts and PC-50, Requirements Imposed on the County for Compliance with Federal Metropolitan Planning Organization Obligations. Today we're gonna take a little bit out of order. We're gonna start with PC-50, but before that we're gonna do public testimony. Public testimony will be accepted in a few minutes. For anybody testifying in the lobby, please sign up in the desk in the back and you'll come up and you'll have three minutes to testify. The light will be green for three minutes, I believe, and then turn yellow for a minute and then when it turns red at the fourth minute, that means you've had four minutes, please wrap up your comments rather quickly because we would like to get the meeting going and actually get some deliberations going. We do want to hear what you have to say, hopefully four minutes is enough. When you testify, please state your name and the name of the organization you're representing and which item you are gonna discuss today. Members, without objection, I'm ready to open public testimony.

COUNCILMEMBER COCHRAN: No objections.

CHAIR COUCH: All right. First up to testify is Chris McNeil, followed by Francine Aarona? Hopefully I pronounced that correctly.

## *... BEGIN PUBLIC TESTIMONY ...*

MR. McNEIL: Good morning. My name is Chris McNeil. I represent myself and my wife. Members of the Planning Committee, I'm here to ask the Planning Committee not allow hotels or transient vacation rentals in the B-CT Zoning District without some kind of public review. The current version of the B-CT District does not allow this use and we do not see why there should be a change. The County adopted detailed and strict regulations for bed and breakfasts and short-term rental homes, and public review is triggered under certain circumstances. It does not make sense to allow hotels without any regulations or criteria. The consequence could be very detrimental to our small towns. Hotels and transient vacation rentals (of any size) in our small towns should be reviewed by the Planning Commission. Larger hotels should be reviewed by the County Council. I am a homeowner in Paia and an immediate neighbor of the Paia Inn. I have witnessed firsthand Paia Inn's growth without regard to any of its surrounding neighbors. Illegal structures built within property setbacks being used as extensions of the Paia Inn are one example of this growth. As our neighbor, Francine Mopsy Aarona, who's gonna speak next, put it in the Paia Community meeting last night, "I'm not against growth in Paia, I am against how that growth has taken place". Thanks.

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CHAIR COUCH: Thank you. Hang on, Mr. McNeil. Thank you for your testimony. Members, any questions of the testifier? Seeing none, okay, just in case we have some testimony. You bet. Next up is Francine Aarona, followed by Paul Lau.

MS. AARONA: Aloha. My name is Francine Kekahuna Aarona and I am here to represent myself and my ohana at the Kekahuna Estate. Dear Members of the Planning Committee, I still remember walking out between the easement where Flatbread is to get to Bersamin Fish Market to get a hotdog and ice pops. That was 58 years ago. We walked to town barefooted with our wet swim clothes. Those days, it was shorts and t-shirts, no bikinis. Our little town has grown, elders have passed on, and some sold their homes and moved out because they were tired of being harassed by greedy businessmen. I am the owner-occupant of the Kekahuna Estate at 37 Ae Lane. Our ohana has gone through many trials with the County. First, putting a sign on a dead-end private road to show beach access years ago. The neighbors of Ae Lane had to fight for resurrection and won. I would have a ten-page letter if I told you of the abuse that we experienced at that time. And here we are again in the heart of another battle. I used to be able to walk out through a gate from my first -- my front yard, but the garage has extended into a room listed under Paia Inn. Two homes in which my aunties and their families lived are joined together to provide rooms listed under Paia Inn. The house on my right side facing the shore is also listed under Paia Inn. When is it going to stop? We have suffered much abuse by the management of Paia Inn, which is operating illegally. Now we are faced with changing the language in the B-CT Zoning to make it possible to be overrun by Paia Inn, allowing more rooms without permit. How can we as a community continue to abide by the rules and laws in which the County has set before us and others seem to feel free that they can do whatever they please to get away with it. I strongly feel that we should not allow hotels or transient vacation rentals in the B-CT Zoning District without community review. The County has strict regulations for bed and breakfasts and short-term rental homes, and public review is triggered under certain circumstances. It doesn't make sense to allow hotels without any regulations. As you enter Paia, the sign says, Welcome to Paia Historical Plantation Town. There was no historical hotel. For that matter, there weren't many of what exist today labeled, Historical. Growth is good if it's done properly and with the community behind it. Mahalo for your time. Respectfully submitted, Francine Kekahuna Aarona and my time is up.

CHAIR COUCH: Thank you, Ms. Aarona. Members, any questions for the testifier? Mr. White.

COUNCILMEMBER WHITE: Thank you, Chair. Not a question, I just want to thank Mopsy for coming here this morning and also for your comments last night at the community meeting.

MS. AARONA: Thank you.

COUNCILMEMBER WHITE: I think there are a number of us in this room who are very familiar with what's taken place with the Inn and it's been a real challenge for the County to deal with it, but we are dealing with it. I think the Planning Department has done an outstanding job and I'd just like to thank you for your perseverance and your patience.

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MS. AARONA: Thank you.

COUNCILMEMBER WHITE: Mahalo.

MS. AARONA: Mahalo.

CHAIR COUCH: Members, any further questions? Seeing none, thank you, Ms. Aarona. Next to speak is Paul Laub, and then, we'll go to the District Offices.

MR. LAUB: Aloha, mai kakou. I'm Paul Laub. And it is widely held that the establishment of business districts is a good tool and use in regulating commerce for the customers, residents and business people. Ostensibly this also helps the red tape down -- keep the red tape down and reduces the need for specific hearings by Planning Commissions for individual approvals. The time of those commissioners is valuable and could best be put to more difficult situations. It is also widely held that experts should be relied upon to help assist planners in this endeavor. Often "experts" are hired, however, like planning commissioners they can also be available as volunteers thru business and residential organizations. The main experts in the business field are business people, many of which are found in organizations like the various Chambers of Commerce. It is strongly recommended that the County submit proposed business legislation to these organizations for their review. Currently we have the Maui Chamber of Commerce, the Filipino Chamber of Commerce and the Maui Native Hawaiian Chamber of Commerce. There are points of confusion in the proposed legislation. Please note that the Country Town legislation, that there are two areas for permitted uses. One I understand is to be eliminated, the other is not and so I don't have a clarity there. Please note that the food markets are not permitted, neither are pet stores in, as it is so written. In legislation for the Central Business District, food markets are also not permitted and a service station cannot legally repair or replace a flat tire on your car, nor change a windshield wiper nor any other small service or repair. In the Neighborhood Business District, the following are not permitted: Electronic computer or cell phone stores, jewelry stores, hobby stores, hula halau, pet shop, general merchandise shop, clothing stores, surfboard stores, bicycle shops, skateboard shops, also no services at your gasoline service station. These are just examples, not the entirety. May I recommend that the Committee take no action until this legislation is first reviewed by an appropriate business organization? Further, there are trade organizations that would like to be informed of matters going to legislation. One example is the Maui Vacation Rental Association was not given notice that B&Bs and STRs were to be discussed at this session. As these two items are their kuleana, it would be great to have a system for notification. Perhaps Council Services can make up a generic notice sheet stating when such and such items are subject to legislation, please advise the \_\_\_\_\_ trade organization at and with a number and then that organization can fill this out for future notice. Please note that this new legislation was not published online prior to this meeting. Please help the public by requiring adequate notice thru online publication of the actual legislation. Thank you very kindly.

CHAIR COUCH: Thank you, Mr. Laub. Members, any questions to the testifier? Seeing none, thank you. Now we'll go to the District Offices. First up, let's...Hana District Office, Dawn Lono?

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MS. LONO: Good morning, Chair. This is Dawn Lono at the Hana Office and there is no one waiting to testify.

CHAIR COUCH: Thank you. Lanai District Office, Denise?

MS. FERNANDEZ: Good morning, Chair. This is Denise Fernandez on Lanai and there is no one waiting to testify.

CHAIR COUCH: Thank you. Molokai District Office, Tina?

MS. THOMPSON: Good morning, Chair, this is Tina Thompson at the Molokai Office and there is no one waiting to testify.

CHAIR COUCH: Thank you, ladies. If there is anybody that comes in to testify, please e-mail Staff and then we'll come back to you; otherwise, we'll see you next time. But hang on until we're done with testimony. All right, next up is Martin Brass, followed by Hugh Starr.

MR. BRASS: Good morning, Chairman Couch and fellow Council members. My name is Martin Brass and I am representing myself. Thank you for allowing me the opportunity to testify before you today. I'm here to address certain hotel use and permitting provisions of the proposed bill to amend Chapter 19.15 of the Maui County Code related to Country Town Business Districts. I commend the efforts of this Committee and those departments and individuals involved in updating the B-CT guidelines. It's not an easy task as the nearly three-year process to bring this proposed bill today...today's final review demonstrates. I stand here before you as a resident of Paia and as a Paia business and property owner. I recognize tourism is a vital part of our economy, how we treat our visitors is as important as how we treat our residents. We cannot lose sight of the impact of this bill's proposed changes on our small town communities. Chapter 19.15 clearly states as its purpose and intent that 1) Country Town Business Districts preserve and maintain the "country town" atmosphere and 2) the Country Town Business District Zoning Ordinance establishes the means to implement the Maui County Community Plans. I have specific issue with the deletion of the restrictions placed on hotel use in these districts. The original language in paragraph 19.15.05 places specific physical requirements on any lot to be considered for hotel use. The original language also requires a potential hotel operator to apply in advance of operation for a conditional permit. The current proposed language deletes both the physical requirements on the lot and the requirement to apply for a conditional permit. As currently written, the proposed bill would enable an owner to convert any existing property into a six-room hotel through no other means than a standard permit application. This drastic easing of restriction risks an unchecked proliferation of hotel and resort-like accommodations that will disrupt the "country town" atmosphere this ordinance is meant to protect. Hotels are 24-hour operations that demand access, parking and services for their guests. They create an intensification of use that can place demands on the host and neighboring properties. Inherently, the Country Town Business Districts mix commercial and residential properties in close, if not adjacent proximity. The public, whether that includes the general public or neighbors within a

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certain radius must have the ability to provide input into whether a 24-hour day, year-round accommodation facility can open next door. Just as the County has adopted detailed and strict regulations for bed and breakfasts and short-term rental homes, the County should do the same for hotels and transient vacation rentals. I am further concerned that the currently proposed language creates a permitted use in direct conflict with the Paia-Haiku Community Plan. The Paia-Haiku Community Plan explicitly forbids hotel use within its boundaries. I don't see how this bill as written can be approved knowing the problems this contradiction immediately creates and the burden this places on the County and related parties to resolve. It's another reason to have hotel use more closely reviewed. At the minimum, all hotel use should be considered a Special Use and subject to either the Planning Commission or the County Council depending on the scope of the project. I respectfully ask each of you to amend hotel use in the B-CT districts from the currently proposed Permitted Use requirement to the more stringent Special Use permit. Thank you for your time and consideration. Aloha.

CHAIR COUCH: Thank you, Mr. Brass. Members, any questions to the testifier? Chair Baisa.

COUNCILMEMBER BAISA: Thank you very much, Chair, and thank you very much, Mr. Brass, for being here this morning. I'm just curious, is this an across the board, we think all of it should be Special Use permit or is there any consideration for the size of any exemption, like ten rooms?

MR. BRASS: You know, my view is, the way the hotels are operating, they can and given the amount of tourists that come to this island, they can create a very large amount of business. And given...my perspective is Paia, you know, it may be different for other small towns. Our density in Paia, you have residents and commercial properties right next door to each other taking, my understanding the way this bill is written, that any property could be converted to a minimum or a maximum of six rooms, that could have a drastic effect on how that property operates and the impact it has on its neighboring...on its neighbors. So to be able to do that, we could find ourselves with a string of hotels being created and some will survive and some will not, and the neighbors surrounding those hotels are gonna be living in a resort environment versus the small town community that they moved to. So I think we have, you know, I recognize that we have housing needs here, particularly the North Shore, tourism is a vital part of our economy. My business benefits from tourism. I think we need to be smart about how we address that and we need to give the people that are most directly affected by that accommodation, by accommodating those visitors and the accommodations themselves to at least have some input into the process.

COUNCILMEMBER BAISA: So then, inclusive of any proposal?

MR. BRASS: Well, if it's a small number of rooms, if it's one or two rooms, then, wouldn't...doesn't the B&B or the Short-Term Rental Housing cover that? Aren't there...don't those properties can't they satisfy that demand? If someone is taking commercial property, I don't think the highest and best use of that commercial property is a one- or two-room hotel or three-room hotel. For those hotel projects that actually be economically viable, they have to have more rooms and

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they have to have, the more rooms they can put on to those properties, the more successful they are.

COUNCILMEMBER BAISA: Of course.

MR. BRASS: And I think that's where we start to bump up against what's practical.

COUNCILMEMBER BAISA: Okay. Thank you very much for being here. It's good to have your testimony. Thank you.

MR. BRASS: Thank you.

CHAIR COUCH: Thank you, Mr. Brass. Members, any further questions? Seeing none, thank you. Hugh Starr, followed by Catherine Clark.

MR. STARR: Good morning, Chair Couch and Members of the Council. Good morning.

CHAIR COUCH: Morning.

MR. STARR: I'm Hugh Starr from Makawao and I'm testifying on PC-24. I wanted to just acknowledge what Martin just said about all the work that's gone on with this PC-24, the B-CT changes over the last three years and reading the Planning Director's transmittal back to the Chair. I notice that this has been an on-going discussion so I have to apologize for coming here at this late hour, 11<sup>th</sup> hour plus, and giving you comments that may run counter to what's being proposed. I've read this on my iPhone, 'cause Martin sent me an e-mail this morning. I read it about 4 o'clock this morning, so I've only seen this on my iPhone and it's an 18-page ordinance and there's a lot of cutting and pasting and deleting, so I may be missing some things, but basically my comments are these. As some of you know, I've been very involved with Makawao Town for, you know, 40 years plus, and I've been...had a restaurant in Paia for about 14 years, own property in Paia, I don't anymore, but I've been very active with the Makawao Community and the Paia Community for many years and I continue to be. And I, actually, when I got this, I was dumbfounded that I hadn't heard anything about this, these amendments to B-CT. We've been at the local level, in Paia and Makawao, been talking a lot internally about getting the design guidelines adopted into ordinance. And so this seems like an opportunity and it seems like...it's addressed in here as a resolution, so I'm...there's some confusion on that. I'm very, I guess, I don't know what the proper word to say is, but I'm very committed to the Country Towns. They're very fragile, very, very fragile and each Country Town's different. Makawao is different from...Waiakoa's different Kaunakakai and on and on. I do not think that cell towers and wind turbines are appropriate in B-CT. When I saw that, I actually could not believe it. Now it's my responsibility, I should have known about this before, but I didn't. B-CT as you may know, is typically a strip of land that runs from the street in, anywhere from 100, 200 feet. And then beyond that, it's usually residential, sometimes it's ag. Cell towers, those things are permitted, as I understand it, in Conversation, Residential, Ag. Why in this narrow strip of historic town, do we need to have wind turbines? So that's probably my biggest concern. I



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could go on and I'm not gonna take your time with the details, but what I'm urging you to do is to send this, these proposed amendments out to the communities. I'm active with the Makawao Community Association. I've...none of us have seen this. I work with the Alliance of Community Associations. This is something that we should be looking at and talking about because many of the towns that participate in that group are small, Waihee, Waikapu, you know, Hana. So anyway, mahalo, thank you for your time.

CHAIR COUCH: Thank you, Mr. Starr. Members, any questions to the testifier? Mr. Starr, I do have a question. Are you under the impression that cell towers and wind turbines are a permitted use?

MR. STARR: I'm sorry, you mean, are they a permitted use right now?

CHAIR COUCH: No, when this bill...if this bill were to get passed and it's...

MR. STARR: That's my understanding. In other words, the way I read it, it says that, if I read it and again, I've only seen this on my iPhone and I've got a cataract in this eye, so I get a little cockeyed after a while, okay, but what I'm reading is they can be no higher than 45 feet and they need their, some setback requirements, so I think one foot back or something like this, but you know, most buildings in B-CT...in fact driving down to go swim in the ocean early this morning, of course, I drove through Makawao and Paia and I looked at Matsui Store, the old Matsui Store in Makawao, lucky if that building's 30 feet high and it's up on, it's about four feet off the the street. Ikeda's in Paia, lucky if that...that's the biggest building in Paia as far as I know, lucky if that building is 25 feet, maybe 28 feet. We have a 35 foot height limit, I take issue with that, but that's existing, so I would like to be able to discuss that, now that we're making changes. It should be 25 feet in Country Towns. Cell towers are 45 feet, that's puka double what most Country Town buildings are and why do we need to put them in that little narrow strip of historic plantation towns just befuddles me, frankly. So I hope I didn't...

CHAIR COUCH: Well, that was close.

MR. STARR: Okay.

CHAIR COUCH: Well, just to let you know, as far as I can see in from my memory, that's a Special Use and it would require discussion.

MR. STARR: I may be wrong, but I had read it as a permitted use.

CHAIR COUCH: Right.

MR. STARR: Maybe the Planning Director could address that question, you know, but -- and I may be wrong.

CHAIR COUCH: Yeah.

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MR. STARR: I just looked at it on the iPhone, so I may be wrong, but it looked like it was a new use, it was not a permitted use previously and it looks to me like it is a permitted use in the new B-CT, those two uses are and so if I, if I'm wrong, I apologize.

CHAIR COUCH: That's okay.

MR. STARR: Okay.

CHAIR COUCH: Members, any further questions? Seeing none, thank you, Mr. Starr. And Catherine Clark is the last person to sign up to testify. Anybody else wants to testify, please feel free to sign up in the back.

MS. CLARK: Good morning, Committee Chair Couch and Council members. My name is Catherine Clark. I'm a Board Member of the MVRA, but I'm actually testifying on my own behalf today. So I just got the ordinance yesterday and in reading through it, the biggest surprise for me, was that a one-bedroom B&B had to be in a lawfully existing dwelling and had to apply for a permit. A TVR, which by definition is, any short-term rental except a B&B STR simply could exist as long as it was six bedrooms or less. So the B&B had to go and get a permit for their one bedroom, the TVR can just go out there and operate. My office is zoned B-CT. It's in downtown Haiku. One side of me is the Hawaiian Tel building. There's an old family home behind me and an old family home that's probably no more than 20, excuse me, 20 feet to my left. So basically, my building could become a TVR. It could have six rooms and if I were to use my daughter, who I think is an amazing person as an example, take her and 23 of her friends and put four to each room, that would be allowed to exist with no permit right next door to those two family homes. And yet, if I turned it into a B&B, one bedroom, it would need a permit. So something with this ordinance really just isn't working. You have a B&B just down the street in Haiku, Sandy Beck of Haiku Plantation wanted to be here today, unfortunately, she could not. She jumped through so many hoops to get her permit that it's almost impossible to believe. And yet two blocks down the street, you could have a small hotel, basically, with six rooms, four people per room and 24 guests. So I really feel that this is not appropriate for our small town centers. I feel that the existing B&B legislation and short-term rental home legislation satisfies the need in these areas and although we might think that the permit process is a little bit burdensome, it is doable and people are getting permits. The Planning Department is doing a great job on it and it's actually working. So we feel that that is the solution to lodging in those areas. Thank you.

CHAIR COUCH: Thank you, Ms. Clark. Members, any questions to the testifier? Seeing none, thank you. Anybody else in the gallery wishing to testify? Seeing none, let's go to the District Offices. Molokai District Office, anybody there?

MS. THOMPSON: Molokai has no one waiting for testify.

CHAIR COUCH: Hana District Office, anybody?

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

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CHAIR COUCH: And Lanai?

MS. FERNANDEZ: There is no one waiting to testify on Lanai.

CHAIR COUCH: Okay. Thank you, ladies.

**... END OF PUBLIC TESTIMONY ...**

CHAIR COUCH: Members, seeing that there is nobody in the gallery or in the District Offices waiting to testify, without objection, we'll close public testimony.

COUNCIL MEMBERS VOICED NO OBJECTIONS.

CHAIR COUCH: Okay. Public testimony is closed. Thank you, ladies.

**PC-50      REQUIREMENTS IMPOSED ON THE COUNTY FOR COMPLIANCE WITH**  
**FEDERAL METROPOLITAN PLANNING ORGANIZATION OBLIGATIONS**  
**(C.C. MISC)**

CHAIR COUCH: All right, Members, as I mentioned before, we're going a little bit out of order in the agenda if you don't mind. I would like to start with Item No. PC-50, which is the Metropolitan Planning Organizations. Just to let everybody know, the Committee is in receipt of a miscellaneous communication dated May 28, 2014, from the County Clerk, referring that the matter relating to the Requirements Imposed on the County for Compliance with Federal Metropolitan Planning Organization Obligations. And they sent it to us because it had the word, planning, in it, I think. But that's all right. We're good. This matter was referred to us from the Budget Session, and today with us we have Department of Public Works and Transportation and Planning in the background. They're joining us for discussion on the MPO requirements and status of compliance efforts. This discussion, we're here to find out whether or not we really want to push the national...our Legislators in the Congress to somehow exempt Maui at least, but places like Maui from this or increase the size, the minimum population size of MPOs so that we're not swept in, a useful organization, but for some reason they included the population of Paia in with Central Maui and they said, oh, we're over 50,000 so now you have to do all this extra red tape and extra work because your population's over 50,000. So what I'd like to do and, remind everybody, too, that Member Hokama is active and gonna be extremely active with the National Association of Counties, and he's gonna be able to have some pull with the whole organization to see whether or not we want to pursue this. But I'd like to discuss it with our departments because there, there's some pluses and minuses of being part of a, an MPO, so first up I would like to have Public Works give their take on it and then we'll talk to Department of Transportation.

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MS. DAGDAG-ANDAYA: Thank you, Chair. You know, I -- actually, I think I want to defer comments to Jo Anne --

CHAIR COUCH: Okay.

MS. DAGDAG-ANDAYA: --with the Department of Transportation first, because they did a lot of extensive research on the MPO structure and have, has had several discussions with the OahuMPO, so Jo Anne has a really good background or good information to share with you this morning. And then following her, then I can give my comments.

CHAIR COUCH: Okay. That's fine. Ms. Winer Johnson.

MS. WINER: Johnson Winer.

CHAIR COUCH: Johnson Winer, sorry.

MS. WINER: That's okay. You're forgiven. Thank you, Members and thank you, Chair. I thought it might be helpful to give a handout, so I've provided you with some basic information and let me just go through the items that are in your handout. We just gave you something in writing listing the pros and cons just from the perspective of transportation as it relates to us and the formation of a Metropolitan Planning Organization. Item A, which is an exhibit shows the financial allocation under Moving Ahead for Progress 21 in several areas of funding, so you'll see that annualized funding for Department of Transportation and these monies are cumulative, so for '13, there was a little over \$1 million, for Fiscal Year '14, slightly over a million, and then there's a summary on the right of a different funding category, so that's Exhibit A. The B Exhibit is a draft agreement. It's not executed. It's just for purposes of reference as to how the Metropolitan Planning Organization funds could possibly be allocated. These are planning funds under 5303 category and they're basically structured in terms of population percentages,, so you can see also, what monies would be available and this is not only available for transportation planning, but also the Planning Department, as well as Public Works, so that's Exhibit B. The other map , that you have, it's not labeled as a specific exhibit, but there is a map which shows in the 2010 Census, the Urbanized Area Reference Map for Kahului. We were puzzled as to why this was such an unusual structure, and somehow I guess, someone, you know, in the Census Bureau thought it might be a better way to really look at where growth may be occurring. What our County did, however, is rather than just look at this designated area in our agreement, we did say no, the whole island of Maui would be our planning area and even though monies that would be allocated or only associated with this area, we felt it would be a little bit easier to be more consistent, and Molokai and Lanai are still deemed to be in the rural category as opposed to the Urban zoned area. So that's that exhibit. And then if you really want to be confused, the very last thing is under Title 49. There is a, I guess, it would be a mirror of this particular Title which is in the CFRs for the Federal Rules and Regulations that is the enabling legislation and the requirement and that would be the compliance aspect. This is as it pertains to transportation, but the Federal Highways Administration document is identical to it except instead of referring to the Federal Transportation Administration, it refers to Federal Highways. So that will basically tell

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you what the requirements are as far as the Code of Federal Regulations is concerned. So those are the exhibits. I'll just go over briefly just the top sheet and then try to give you a quick overview of where we are right now. From Transportation's perspective, the pros as far as we're concerned are the ability to access Federal Funds that are triggered by this Urban Zone Area designation and that is where I showed you Exhibit A. The second pro is the ability for the Maui Department of Transportation to deal directly with the Federal Transportation Administration in accessing funds that are used for bus purchases. Currently, we have to go through the State DOT and this is a very long process, and so it would give us the ability to go straight to as a direct recipient, the FTA. It does give us, which I briefly summarized, the ability to share in the 5303 funds, which would be the planning monies with the City and County of Honolulu, which currently it's the OahuMPO is the only other entity that is designated in the State of Hawaii as a Metropolitan Planning Organization and they're a large entity and we're small. But these could be used for studies to support the Planning Department, Public Works and Transportation. The other plus is the access to additional expertise through the MPO process which would assist Maui Department of Transportation in our National Transportation Database reporting and other Federal requirements, which whether the MPO exists or not, these are requirements that due to our population increase are...they're just requirements and so we have to comply whether we have the MPO or not. The staffing for the Metropolitan Planning Organization as well as all operating expenses are paid through Federal funds at the rate of 80 percent with a 20 percent County match. We can also use in-kind staffing and the way that Oahu's MPO is structured is the State also contributes 10 percent, so our share could be as small as 10 percent. And the Metropolitan Planning Organization staff is usually two, possibly three individuals, so the monies that you allocated in this year's Budget would help us to access those Federal Funds so that if additional staffing through the MPO needed to be put in place, that could be done. And then the final area that would be a pro is that the Metropolitan Planning Organization staff is available to assist with projects that will support goals and objectives of the County Departments of the Planning, Public Works and Transportation. The cons, of course, which was mentioned by the Chair, is the additional paperwork and then the reporting associated with that paperwork. That is not presently required. The other con is the need to enter into agreements with other entities for distribution of funds, which also involves additional paperwork. And then the loss of some of the funds that are now evenly split by Kauai, Big Island and Maui. And this would be only in the Rural category. It would be at this time, and this is the only one that'll say, we're not sure how it's gonna be handled because currently, the OahuMPO gets both, Urban Zone monies and they get Rural monies. Right now, we only get Rural money and so the State Department of Transportation told us previously that if we opt out of doing the Metropolitan Planning Organization, all of the Urban Zone Area money would be still allocated 100 percent to Oahu. We would not get any of it and possibly because of the fact that we're choosing not to take these monies, that they may also still cut our Rural funding, so that was a big concern for us because granted right now we only get about \$525,000 a year, but this is significant and there would also be on the Public Works side loss of funding in the Urban Zone Area. But they know better than that, so I can't really speak for them. Where we are right now is we have gone through the process. We have in our Executive Director, who's acting, is my Deputy Director Marc Takamori and he is off-island, so he was unable to be here, but he is the Executive Director for our Metropolitan Planning Organization. Rowena Dagdag-Andaya, who is Deputy Director for

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Public Works is the second in command, so what we have done is we've basically utilized existing staff to get through this transitional process. We have formulated a tentative operating structure and we formed a policy committee. What we tried to do was just follow in the simplest form possible what is required, and we mirrored the process that is currently used through our budget process and actually through the State participation that we have in their process when we formulate the working group. We've tried to mirror that so that we're not creating additional work. The policy committee currently is composed of a representative of Public Works, Planning, Transportation. There would be a seat at the table and I've already spoken with Council Chair Baisa, there would be a representative from the County Council on that policy committee and then there is the State representative and whoever their designee would be. So that is basically the structure of the policy committee. The policy committee is really what directs all the actions of the Metropolitan Planning Organization staff. They, by themselves have no authority. They're just simply acting on what the policy committee does. The work of the policy committee, there are several areas. I won't go into all of it, but essentially, the reason and the justification for the existence of a Metropolitan Planning Organization is to gather community input, incurred civic engagement and then pass that information through the Metropolitan Planning Organization and to the powers that be so that when the STIP, which is the State Transportation Improvement Program is crafted, they submit prior to that what's called a TIP, and that is the County's equivalent of the State's STIP and that would then become the working plan, although it is fiscally constrained, it would be sent on to the State. Our intent is not to disrupt the current process because we think it is working very well, so what we essentially have done in drafting our setup of our Metropolitan Planning Organization would be to essentially superimpose the structure the policy committee on what already exists through our budgetary process and partner with the State in their actual STIP hearings. So we would still be going out to the community, the benefit as I see it for the MPO staff would be to help facilitate that kind of interaction with the various community organizations. So we have tried to go down to the simplest common denominator. The policy committee must review whatever that ultimate plan is that's approved and then it will be sent forward to the Federal Transportation Administration, Federal Highways Administration, the State and also our Mayor for their approval and concurrence. And then of course, your input would be on the policy committee, whoever that representative is that sits on that board. So we're just in the throes of doing the draft. Once that is completed, then the policy committee will meet and we'll go forward from there. But we're just following the rules the best that we can right now as we understand them and there is just for your information, a Rutgers University class that we've been able to arrange. We complained so heavily, that we felt neglected out here in the middle of the Pacific, that they're coming for an actual National course to Maui and MEO has been kind enough to provide their facilities so August 5th, 6th and 7<sup>th</sup>, we will have a training for MPOs, new MPOs and that will be open, I think we have our staff, you know, from Public Works, Planning and also our Transportation are already gonna be attending, so there are some spaces still open. So that would be --

CHAIR COUCH: Okay.

MS. WINER: --an additional opportunity for the Council members to learn more. Thank you.

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CHAIR COUCH: Thank you. And Ms. Dagdag-Andaya.

MS. DAGDAG-ANDAYA: Okay. So Jo Anne gave a really good, some good information about the MPO structure and I would echo a lot of what she had mentioned. I also wanted to add that the MPO designation, in addition to what Jo Anne said about public involvement, that's one of the requirements and right now we follow the State STIP process. That's one way we engage the public in our transportation planning. We also engage the public through our budget process, but what the MPO would be required to do was provide or develop a public involvement plan and so that, I think, would greatly strengthen our public input process. Another thing that the MPO does is that it gives the County a little bit more clout with the DOT and a stronger role in the decision-making process. So how this MPO structure or how the MPO would make it different is that the County...what happens now in the STIP process is that the County presents our, we, the County, present our needs to the DOT and from there, the State holds several meetings with the public and gets input from them and the State does all the prioritization before presenting the fiscally constrained list. What the MPO would do is that the County or the MPO would provide a ranked list of priorities and then give it to the State and say, State, this is what our priority is, instead of the State making the priorities. So, in a way, we would have a little bit more control over the type of projects that we feel are our priorities. Another pro or advantage to being an MPO and Jo Anne had mentioned this earlier was that we would have opportunities for transportation studies, so these studies would be funded, I guess, through PL, what they call PL Funds. What the MPO would need to do is create a work plan that show how these Federal monies would be used so the work plan would involve that public involvement process, the transportation studies that need to be done and any kind of operational cost associated with running the MPO. Some of the cons or disadvantages that we felt or we thought were disadvantages were the development and adoption of several documents required by Federal statute and I think that Jo Anne had mentioned it earlier, that we would be probably subject to additional paperwork and additional work itself. So things like that public involvement plan that would be another thing that the MPO would need to do. We would now have to take on the responsibility of that Transportation Improvement Plan, the TIP. Right now, the State coordinates that and once the MPO is created, the MPO would have to take on the responsibility of that TIP process. Jo Anne had mentioned the loss of monies for public works and that we have yet to confirm, so we're currently doing our research on that. And we just need to get a greater understanding of what these losses would be, so additional discussion with the State and Federal Highway Administration is underway right now. There's also the reauthorization of MAP-21. It's the existing Federal transportation legislation and concurrently with that, I know the President had also submitted his Grow America Act. So those two are running through Congress right now and that would be a great opportunity to, for us to make any changes through our Congressional Delegation, so maybe some of those changes could be the way any kind of increases in the Federal match. I know that's kind of a long stretch, but there could be that. Even things like increasing the threshold for urbanized areas. Right now it's at 50,000, but I know there's some, been some discussion about raising it to 100,000 to exempt Maui. And overall, I think we are still trying to get a better understanding of how this MPO would affect our operations. In discussions with our staff, you know, they...Engineering Division has indicated

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that there may be just a little bit more work that we need to do, but overall I think one of the benefits of having greater control over our priorities, to us that would be one of the greater benefits of having this MPO in place.

CHAIR COUCH: Okay, thank you. Any...I know Planning doesn't have much about, to say about this. Any thoughts from Corporation Counsel?

MR. HOPPER: None at this time, Mr. Chair. Thank you.

CHAIR COUCH: Okay. Well now I'll open the floor to the Members if you have any questions or comments or concerns. Fire away. Any questions? Chair Baisa.

COUNCILMEMBER BAISA: Thank you very much, Chair. And I'm really glad that we're here discussing this today. This has been in the works for a very long time. This is not something that we heard about today. When I was at MEO and we were dealing with transportation and funding for that system, we were already talking about the possibility of an MPO and when we would reach that eventuality and it appears that it's here. I understand the concerns about, you know, loses of revenues or additional paperwork or whatever this is going to take, but I kind of feel like this is an eventuality that we're going to have to do at some point. Maui is a growing community, I don't think any of us need to be convinced of that, all we have to do is step outside. And it's not going to end, it's going to continue to grow. Our transportation system is going to continue to grow, and while we might defer or deflect or try to figure out how to not get in this, eventually we will be. So I'm kind of leaning towards instead of kicking the can down the road trying to see how we can make it work for us. I think that one of the frustrations that we dealt with and I know the County is dealing with it now is the control on the STIP and, you know, how funds are dealt with and who does what. And having to go through that bureaucracy every time we want to do something is really frustrating. Years go by for decisions to be made and reimbursements to be received and permissions to be granted, and so, you know, we might cut through some of that if we had better control. So somebody's going to have to convince me that we should go after the exemption. Thank you.

CHAIR COUCH: Okay. Any other questions/comments from the Members? Mr. Guzman.

COUNCILMEMBER GUZMAN: Thank you, Chair. Thank you also from the departments for that very thorough explanation. It seems as though there are a lot of advantages. I'm more curious on the, I guess the loss of funding in terms of the Public Works Department. If we could get a little bit more analysis on that part I would feel more comfortable. In terms of being able to I guess focus more on our priorities in regards to STIP and then utilizing TIP. How would that mechanism work? Because my...correct me if I'm wrong, my understanding is if the projects are shovel ready or I guess meet a certain criteria then according to STIP they're placed on priority. So how will we engage our priorities ahead of the State's system? I'm trying to understand how that would work. By utilizing the MPO.

MS. DAGDAG-ANDAYA: That...Chair?



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CHAIR COUCH: Go ahead.

MS. DAGDAG-ANDAYA: The way...this is my understanding of how the MPO would operate is that basically they'd take over the role of what the State currently does in ranking the projects. We would still have that evaluation criteria. We would still engage the public. But we would take away that portion where the State I guess would have that...there would be that additional layer.

UNIDENTIFIED SPEAKER: . . .*(inaudible)*. . .

MS. DAGDAG-ANDAYA: Yeah, exactly. They wouldn't have the final say on what our projects are.

COUNCILMEMBER GUZMAN: Okay.

MS. DAGDAG-ANDAYA: I mean we give them our priorities but they do the ranking, they do the prioritization, and they provide us the fiscally constrained list at the very end. So now what would happen is that the MPO would determine what the priorities are and tell the State this is what it looks like.

COUNCILMEMBER GUZMAN: And that would be at the Federal level, the MPO would direct the State. I mean they would...okay, I'm trying to get a handle on this. So we would submit our priorities, MPO would then categorize our priorities? No?

UNIDENTIFIED SPEAKER: No.

COUNCILMEMBER GUZMAN: Okay. Please clarify.

MS. WINER: Yeah. And because I've been living, breathing this for the last, you know, year. The MPO itself, just think of its two parts. The actual Metropolitan Planning Organization staff is just, you know, it's like Counsel Services' Staff. The policy committee would be equivalent to the County Council. So what you would do is there are other committees involved, there's the citizens advisory, you know, committees, there's the technical advisory committees, and then it goes through presentation to the policy committee. The policy committee as Rowena had said comes up with...and it is with State input too because the State also knows what's ready to go, what's, you know, what may work. So it's not done in a vacuum, we're not just saying to the State this is what you have to do. So the State does have input but what happens is the policy committee drafts what they call the TIP, Transportation Improvement, you know, Plan. So then the TIP automatically once it's transmitted by the MPO staff to the State, the State pretty much already knows what it is because they've had some kind of input, although it's not a majority input. They then get it, and they must put it, it's not an option but they must put it into the STIP. That's the one difference that exists.

COUNCILMEMBER GUZMAN: So --

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MS. WINER: So...

COUNCILMEMBER GUZMAN: --there's specific language that requires the State mandate that they have to put it into the STIP?

MS. WINER: Yes. And that's what when you go through this big convoluted, you know, ordinance --

COUNCILMEMBER GUZMAN: Yeah, right, right, right.

MS. WINER: --or, you know, Federal regulation that's in here, that's what they have to do, they don't have a choice. And that's sometimes where you have a large Urban Zone Area, OahuMPO they're different from our rural MPO because they were formed a long while ago. And many of their policies and their procedures are really not compliant with the Federal regulations even to today. So in our drafting of this we tried to make it as simple, as non-threatening to the State as possible. We want to be partners, we don't want to disrupt that process, but as Rowena had said from the Public Works' perspective, not so much from our perspective on Capital Improvement Projects but, you know, I think more from theirs, the advantage is that maybe the State says oh well gee, you know, this is a priority and we really think this should go first, because we heard it differently from the public than you heard it or maybe some people came out at the very end, testified in the STIP and then swayed a project, and all of a sudden now Public Works is going oh my gosh, no, we're not ready for that. So this way at least the County has the majority rule, because you have the Council member representative and you have the three representatives from the Administration. So now we could move that project forward and that's where I think the advantage is where I believe it exists, at least from my understanding of it as it regards Public Works. Most of the roadway projects, you know, you know how it goes but every once in a while something happens where they have the final say and this is what we want to do, this is where we want our money to be spent. So that's the way the process goes, and that to me would be the clear advantage. I will mention and I don't know if I have mentioned this before to Public Works, we tried to find out early on in the process well what amount of money are you talking about in Public Works --

COUNCILMEMBER GUZMAN: Right.

MS. WINER: --you know as far as roadways. And they never really gave us a definitive answer, it's like pulling teeth, because I think that when we first told the State that we were not going to formulate the MPO, well all of a sudden it was as if, you know, the sky was falling and Chicken Little was running around the room. So we said well we asked you early on what's the downside, and they said oh well, you can either choose to do it or not to do it, and we said well, we're not going to do it, and then that was when we found out, they sent us all this detail at least on the transportation side. Well you're going to lose this and you're going to lose that, but they never did tell us because of the fact that many of our roadways traverse areas that go through those areas, but they're not necessarily projects that are exclusive to those areas. So that's why I think they don't have a number realistically for Public Works 'cause we tried, Marc, myself, even

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a representative in Washington tried to figure out well what amount of money are we talking about here.

COUNCILMEMBER GUZMAN: Right.

MS. WINER: So and, you know, I think the State, they have some misgivings about the formation of this because of as Rowena said control. So we would have a more home rule position, you know, in this particular situation which I'm all for civic engagement but then they have neighborhood boards and we don't so, you know, I think theirs is much more convoluted and complex, but we don't want ours to be that way.

COUNCILMEMBER GUZMAN: Thank you. Thank you, Chair. It seems like on its face ...*(inaudible)*... that it will be more efficient for us to go this route or in terms of the mechanism it sounds as though we're able to...sometimes and a lot of times, Chair, and you know as well as I do we get the short end of the STIP, right? So in terms of the County versus State. But it sounds as though we would be able to engage our priorities in a more efficient manner. I'm a little bit concerned about how much it may cost us to set this up and staff it and...yes.

MS. WINER: And again the, that's where in one of my pros the funding that you put up, the \$100,000 for example, if we use the formula that OahuMPO is using that would be 10 percent, the rest is all Federal funded. So that is why, you know, we're gaining additional staffing which we only have to pay ten cents of every dollar, and they are also not civil servants just so you are aware. They are hired, they serve at the pleasure of the policy committee. They can be hired or fired by the policy committee.

COUNCILMEMBER GUZMAN: Okay, very good. Thank you for that clarification. Thank you, Chair.

CHAIR COUCH: Thank you, Mr. Guzman. I would like to at least ask one question 'cause we're talking about the STIP right now and then I'll get back to the Members. You said that our priorities are put on to the STIP but it doesn't say where on the STIP it goes. So potentially if we say these are our priorities and the State hasn't come to listen to us, they could all be at the bottom of the STIP, is that correct?

MS. WINER: What the STIP does basically is it takes the projects for each county and because of the fact that, you know, just it's dependent on how much money comes down from the Federal perspective, there's never a guarantee. I think it's mostly which projects are ready to go. So to look for any kind of assurance one way or the other, I think pretty much the State through their audit of the Department of Transportation, they have gotten a very poor grade because they fail to expend monies which have been allocated year after year at the Federal level. So they want to move whatever projects are shovel ready. So that's why many times Maui has benefited, it may not always be that way. But to answer your question, I think it would be shooting themselves in the foot if our projects were more shovel ready than other counties and then we get moved to the end of the line. I think the Feds would have very huge concern about that.

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CHAIR COUCH: Okay. And Ms. Dagdag.

MS. DAGDAG-ANDAYA: And additionally too there's an opportunity to amend the STIP, so when we do have opportunities...well when we do find projects that are shelf ready and those that were originally on the STIP, STIP well, needs some more time, we can make those amendments and switch them out.

CHAIR COUCH: Okay. Members, any other questions? I...Ms. Cochran or Mr. White.

COUNCILMEMBER COCHRAN: Chair...

CHAIR COUCH: Ladies first.

COUNCILMEMBER COCHRAN: Okay. Thank you, Chair. And thank you, Department. And thank you, Ms. Winer, for your overview here, it's quite enlightening. And but I want to thank Ms. Baisa for bringing in that this has been discussed and it's not just the other day that, you know, it's been brought to our table, so I'm glad for the historical reference there. And just, you know, highlighting that it's something that it's here, we need to deal with it, and as I see it, it gives us more home rule as she stated, too and more involvement, direct involvement. And hopefully a stronger voice as to what this County truly needs and making sure that the State understands that, you know, what we ask for is truly what we need and when we need it. But looking over your handouts and I think we touched about, touched on it, is the monies, you just stated that sometimes the monies aren't drawn down or used. So how would that on the...so City and County...well Oahu and then how would that affect us I mean in the bigger I guess, you know, pot of money if at all?

MS. WINER: What happens basically is that the monies are allocated. There's certain pots of money. We would be splitting the planning money, it's called 5303 money and that basically we would get our percentage irrespective of whatever Oahu does. We still get our share, and how quickly we spend that down, as long as our work plan and it would be like, I guess the equivalent would be saying that's our budget. The MPO develops a work plan, and that would tell where the monies would be allocated. So as far as the split, once that's done the money comes to the State DOT and we just drawn down our money separately from Oahu. So as far as the other funds, the ones that could be used for bus purchase, that is where again our funds are totally separate. The monies that you see on that sheet, that is what Kahului would be allocated for the Urban Zone Area, and those monies much like Public Works' monies they have a lifespan of four or five years. So we can combine several years worth of money. We could use it for operations. We could use it for other things. And then in those cases that would also...it has to be matched of course, you know, for us to spend that down, but then to me that would also reduce some of the County's burden in terms of financing. So if we're getting 80 percent, 20 percent, or even 10 percent paid by the County, that's a huge advantage to us. So that's why for transportation perspectives and particularly because we're looking at the eventuality of transit hubs, this money may be able to be allocated at least for one of the hubs or for, you know, if by some chance, you

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know, the monies could be allocated even for setting up if we were to be co-domiciled with the transit facility that MEO is working on, if there could be cost savings there. We also may be able to get permission because that serves the Central area within that Urban Zone Area to utilize those monies. But it's all totally irrespective of what Oahu does with their money.

COUNCILMEMBER COCHRAN: Okay, very good. Well 'cause I was looking at this agreement and it's, at the bottom it's stating like if monies are not obligated and it, that'll it go back to the MPO and then I guess it'll be, I'm not sure, redistributed somehow. So it's kind of like if they got the lion's share of it and it wasn't used and we used up all we, like we did, there's monies that could have been spent and so it was just sort of how does that play out, you know, in the end, and if that money is ever lost because of that, because of something occurring, you know, like that. So anyways, just curious about that. And of course, yeah, the potential loss that Mr. Guzman brought up in regards to Public Works' projects would be a nice figure to see if we could come across that. But I guess the initial reason for bringing this to this Committee, Chair, was to figure out the requirements that will be imposed upon us the County in regards to this MPO obligations. And so what...did...is there a list? I know the reporting it looks like we're going to probably need to do more paperwork and reporting that we don't currently do, but, you know, as Ms. Baisa stated also this is something that's been in the works and we need to embrace it and figure out how we're going to work through it and with it and to our advantage I think. So if there's any comments as to where you see probably the compliance issues are.

MS. WINER: As far as the paperwork goes, you know, our Department has basically taken on that duty and responsibility, so it is a little bit more paperwork. What to us has been more onerous is not having to do with the MPO, it's the National Transportation Database reporting. That is where the Council or NACo could really make a difference, because our NTD reporting because we've been thrust into this Urban Zone Area category has now, it's now on a par with Los Angeles, New York. I mean the level of detail, and we have to get this from our vendors. Much of the information on the larger, you know, urban zone areas is gathered through, you know, like web based or automatic data downloading through technology. We are not quite so sophisticated so much of the reporting has to be done manually. But whether we have the MPO or not that is still a requirement, and I did discuss with our, two of our Federal legislators that that was more of a concern to me because it doesn't impact Public Works but it definitely impacts Transportation. And I mean we have a long laundry list of reports, it's horrific, and that is where we really need relief. And our vendors suffer too as a result of it because they have to provide the staffing that just compiles all this data manually. And that's the nightmare. As far as any of the other reporting, we're already doing it through the State Department of Transportation, so with the MPO staff in place that'll actually reduce some of our workload.

COUNCILMEMBER COCHRAN: Okay, all right. Very good. And, Chair, just lastly and Department. So we're...the MPO compliance requirements that are now imposed on us or will be, could be, are, it's doable. I mean it's --

MS. WINER: Yeah.

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COUNCILMEMBER COCHRAN: --easily workable and easily...I mean we can accomplish it?  
...*(inaudible)*...

MS. WINER: Yeah, we can accomplish it --

COUNCILMEMBER COCHRAN: Okay.

MS. WINER: --and I think that it's not beyond our ability to handle.

COUNCILMEMBER COCHRAN: Okay. All right, very good. Thank you, Chair.

CHAIR COUCH: Thank you, Member Cochran. Ms. Crivello.

COUNCILMEMBER CRIVELLO: Yeah, you may have already explained this but just for clarity. So there are requirements for certification in order for us to receive the funding according to the mandates put out by the Feds. So are we required to do the, submit for certification or is this in cooperation with our State or do we do this separately?

MS. WINER: No, we're the ones that basically once everybody agrees that the process that we're using is in compliance with the Federal rules or the intent. They...at first I thought we would have to follow, you know, Oahu's model but that is not a model to follow, so we used in forming ours one that was done in Alaska. But we used a very simplified format, and so we've checked it with most of the major players. And, you know, the Policy Committee will have the final say on it, but just from my limited knowledge, you know, it's almost what...they very rarely turn down anybody's plan as long as it seems reasonable and as long as it will result in some kind of work product at the end that will at least give additional input to the community. And I think the bigger picture is that for so long many projects and you'll see this in rail, you get to the end of the process and all of a sudden people come out of the woodwork and they're not happy and then what do you do? So by this creation of the MPO, my understanding of the whole reason is to avoid that kind of situation where you get to the end and then you go oops, we forgot to let these people know, and these guys don't want it, and then there may be litigation that ensues. So hopefully that will prevent it, and by our structure of this particular MPO I think that meets the goal and objective. It's to gather community input. We have very...as you well know Pukalani Community Association, Makawao Community Association, Kula Community Association, Kihei, you know, all of them, and sometimes when we don't even want their input they're going to give their input. You know but that's part of the process and we have to listen.

COUNCILMEMBER CRIVELLO: So...Chair?

CHAIR COUCH: Yes.

COUNCILMEMBER CRIVELLO: In reference to that, so the secretary I guess of Transportation will review our process or planning. Has it been submitted or are we still in the process?

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MS. WINER: No, we were just having it reviewed. Our attorney, our consultant in Washington, he reviewed it already. We will submit it as to form and legality once the Policy Committee looks at least the structure of it. Then we're going to submit it to our Corporation Counsel for, you know, looking at is it...we copied the legalese but we're not attorneys.

COUNCILMEMBER CRIVELLO: Yeah, I understand that.

MS. WINER: So they...

COUNCILMEMBER CRIVELLO: I'm just wondering what timeframe are . . . *(inaudible)* . . .

MS. WINER: Yeah. Yeah, so we're looking at hopefully by the 1<sup>st</sup> of July, you know, if all of us are here, you know, or certainly not later than the end of July submitting it, you know, 'cause I know right now Corporation Counsel is really busy doing yearend contract. So this is a very complicated one so we didn't want to throw that on their plate, but hopefully by the end of August, you know --

COUNCILMEMBER CRIVELLO: Okay.

MS. WINER: --we'll be doing that. And then we will provide copies to whoever the Chair, you know, designates as the representative, too.

COUNCILMEMBER CRIVELLO: Thank you.

CHAIR COUCH: Thank you, Ms. Crivello. Members...Mr. White.

COUNCILMEMBER WHITE: Thank you, Chair. What is the projected operating cost of this new MPO?

MS. WINER: Well basically it would be the salaries of, you know, and we're anticipating probably two employees for the MPO. And we would be looking at whatever studies or other operating expenses. We haven't put together a budget as yet, but if I look at similarly situated MPOs, even if I look at Oahu's MPO, ours certainly would not be quite as extensive because they have a lot more work to do. But, you know, I'm thinking, you know, overall initially I can't imagine unless there's some expensive study that's included in it, I'd say probably salaries would be commensurate with, you know, for two staff people with County salaries. And then you'd be looking at if they need office space. So I guess if I had to ballpark it it might be somewhere around \$500,000 ultimately, you know, and that's including studies, that's including everything, but I won't know that until the MPO actually forms, develops its budget through the Policy Committee, and then that would have to be approved by the State. But we're not going to be going over whatever the budgetary amount is, there is a fiscal constraint, too, that we have --

COUNCILMEMBER WHITE: Yeah. You only --

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MS. WINER: --that's imposed by the Feds.

COUNCILMEMBER WHITE: --got me a little concerned when you said with the 100,000 that we --

MS. WINER: Oh, no.

COUNCILMEMBER WHITE: --put in you can grow that to a million. I'm thinking...

MS. WINER: No, no, no, no, no. We're not looking at that. But that would be looked at as probably the seed money and so we would be given credit for that, you know, because it'd be far in excess of the 20 percent.

COUNCILMEMBER WHITE: Okay. And then the other question I had was the, there's an existing STIP process and I'm assuming that you're not necessary involved in the current STIP process because it's more for highway and road funding.

MS. WINER: No, we're involved in it.

COUNCILMEMBER WHITE: Oh, you are, okay.

MS. WINER: Yeah. We've participated in that all the way along. Planning also, they've had very, you know, I mean because a lot of times the projects that the State is doing, even County projects, we like to know oh, oops, is that going to go right through our bicycle path or is that going to go through where our bus route is going to be or if there's a new project coming. No, we work directly with the State on that now.

COUNCILMEMBER WHITE: Okay. So, just so that I understand what the new process will be, it sounds as though that will be driven by the MPO as opposed to the State DOT, at least on Maui, and then the same process that's in effect now will continue on Big Island and Kauai. Is that correct?

MS. DAGDAG-ANDAYA: That's correct. Yes.

COUNCILMEMBER WHITE: Okay. Yeah, I think it would be...and I realize you can't give us the answers but, you know, when we go from sharing monies with the other two neighbor islands to getting in the cage with the gorilla on Oahu, it's not real comforting. I, you know, Ms. Baisa has a whole lot more experience with this and you all have a whole lot more experience with this than I do, but it's a little discomfoting to be in a sharing agreement with Oahu as opposed to our neighbor islands. And it's a little uncomfortable not knowing what the net gain or loss may be. And I...is there...do you have any sense of when you might have a little better idea of what that net gain or loss might be in funding overall?



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MS. WINER: I can tell you right now the loss in funding just from the Transportation side would be the fiscal years, it would be roughly \$3.3 million on the, as far as the Map-21 allocations go, because that's Fiscal Year '13, '14, and '15. And then we'd be looking at the planning monies...

COUNCILMEMBER WHITE: Because that's...I'm sorry, just for clarity. That's if we opt out that would be --

MS. WINER: That's --

COUNCILMEMBER WHITE: --the loss.

MS. WINER: --if we opt out, yes.

COUNCILMEMBER WHITE: Okay.

MS. WINER: Yes.

COUNCILMEMBER WHITE: So but how does that 3.3 million compare to what we're getting now?

MS. WINER: We're getting zero.

COUNCILMEMBER WHITE: Okay, so going to an MPO means we're going to have access to new monies that we don't have access to now.

MS. WINER: Exactly. And if I may just to put you at a little bit more ease, Brian Gibson from the Oahu MPO and also his predecessor Mr. Lum have been absolutely wonderful to work with. They totally support us. They actually offered, they said even if there is additional money, planning, because we're new, we're startup, they rarely spend all of the planning money allocated, so they are more than happy to give us the lion's share of that and they're very flexible. So we...they're open to whatever our needs would be.

COUNCILMEMBER WHITE: So how...in looking at your sharing agreement the total funding there is roughly \$1.8 million or I guess the 1.8 plus 400,000. So these numbers are just used as an example?

MS. WINER: Exactly, they're illustrated.

COUNCILMEMBER WHITE: And is that \$3.3 million an annual figure or a multiyear figure?

MS. WINER: No, the 3.3 is just our money irrespective of Oahu. They...I don't know what they get in their pots of money. The...part of the agreement that you have there is only for the planning money, and the 3.3 million is a combination of fiscal year...that would be...let's say for example if we wanted to use it for a Capital Improvement Project in the Central area that's in that Urban Zone Area, we could use it all at once as long as we matched it with 20 percent. And that is three

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fiscal years on the Federal fiscal year. And that money basically it would...I think Oahu told us usually they like you to spend it down within five years but because we're very good at spending down money, we're much more efficient in a lot of ways because we try to push things forward, we'd probably spend that down quite quickly.

COUNCILMEMBER WHITE: Okay. So this agreement--thank you for the clarification--that's just for planning funds?

MS. WINER: Just for planning monies only.

COUNCILMEMBER WHITE: So we have a sense of what the new money would be from a Transportation standpoint but we don't yet have a clear indication as to what the improvement would be from a Public Works' standpoint, is that correct?

MS. DAGDAG-ANDAYA: Yes.

COUNCILMEMBER WHITE: Any idea when that...

MS. DAGDAG-ANDAYA: No. You know and talking with staff yesterday it was...we had...well yeah, we figured it would, the money would still be the same, but we understood early on that there would be some loses but we just couldn't get a clear indication of what that was. So we were told as well that, you know, the monies wouldn't, our share wouldn't change but that, you know, we still need to confirm that.

COUNCILMEMBER WHITE: Yeah. Well you're in a different --

MS. DAGDAG-ANDAYA: Right.

COUNCILMEMBER WHITE: --bailiwick because the Federal Highway Trust Fund is running out of money --

MS. DAGDAG-ANDAYA: Yes.

COUNCILMEMBER WHITE: --if, unless something changes. So okay, thank you. Thank you, Chair.

CHAIR COUCH: Thank you, Mr. White. Ms. Johnson-Winer, you said something that we're not...we're getting zero of the \$3.3 million now which I understand that, but the problem is we are losing money on another, from another bucket of money, is that right? For the buses and whatnot. You had mentioned that in budget session.

MS. WINER: Out of the State right now. Because the split for rural is done equally for the three counties, it'd be Kauai, the Big Island, and Maui. Currently our share out of that is about \$525,000 per year. That would probably drop a little bit. But because we still have majority of our area in rural we came up with a tentative formula, and I'm thinking, you know, because I

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don't have the paper in front of me, I'm thinking that it was maybe ours might drop by 20 percent, 25 percent. And then what we've tried to do is there is no formula, it's just a gentleman's agreement that we have between the three counties. And so they understand that we were not able to access all of the money on the urban zone side because it takes a while for us to do that. So we received no cut whatsoever from Fiscal Year '13, '14, and no projected cut for '15 out of our rural money. So at least for the time being that won't change. It'll stay around...assuming of course which Councilmember White brought up that the Federal Highways Administration money, Highway Fund still becomes solvent. That's what determines how much the State gets overall.

CHAIR COUCH: Okay. And I know Ms. Dagdag-Andaya wants to say something, but do you...have you been able to put a bunch of those numbers together and see whether it's a net gain or net loss with going with the MPO?

MS. WINER: Oh definitely it's a substantial gain for Transportation.

CHAIR COUCH: For Transportation.

MS. WINER: Yes.

CHAIR COUCH: Okay.

MS. WINER: Yes.

CHAIR COUCH: Okay. Ms. Dagdag-Andaya.

MS. DAGDAG-ANDAYA: Well this one...just really short. You know prior to this item being put onto the agenda and prior to my Director's leave for vacation, he and I had talked about some possible amendments or things that we could discuss with our congressional delegation as they move forward with the reauthorization of Map-21. So if...when he comes back from vacation, you know, we're going to start that discussion again and kind of see what currently is in the bill to see if there are any changes to the rules regarding MPOs as it relates to what we need to do in Public Works. And if there are any possible amendments that we could offer up to our congressional delegation that they could consider at the Federal level, we'd like to pursue that.

CHAIR COUCH: Okay. All right. Members, any further questions? I know we've got a much, well hopefully a much clearer view of what's going on but we still need some numbers, we would like it. So and I just want to remind Members that the metropolitan planning organization came about in the, on the mainland is because there was places with a bunch of cities, rural, especially rural areas with a bunch of cities that county or state roads or Federal highways went through and they wanted to make sure everybody got the same whack at the pie or made everything, you know, so that it's all compatible. And we don't have that situation here on Maui or even in the rest of the State. Is...we have State and county and that's it, no cities, there's not a lot of jurisdictional issues here. So that's one of the concerns that I had when I brought it up is that

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why are we throwing on an extra layer because we don't have some of the problems that most of the rest of the country has. So it sounds like we still want some more information a little bit, and also that the Department of Public Works may modify our request. So if you have no...

COUNCILMEMBER COCHRAN: Chair?

CHAIR COUCH: Oh, okay. Ms. Cochran.

COUNCILMEMBER COCHRAN: Real quick. So the urbanized designation map that they've included Paia and all that into this newly populated area, is the monies only allowed to be used within this jurisdiction?

MS. WINER: Yes and no. What ends up happening is if you can justify that that, whatever project it is that you want to move forward with or study, if it has a tie to that area like a transit hub for example, if we chose to do that or let's say a modification, maybe a bikeway. As long as there's a rationale where you could tie it into traversing that area that they designated through the census in that map, you can use it. So it's not constrained completely just to that area, but if it ties in...like if there was an express bus route for example and it originated there but then traveled to other, you know, express routes throughout the County, it could still possibly receive funding.

COUNCILMEMBER COCHRAN: So we could say it's express route to Lahaina --

MS. WINER: Yeah. And --

COUNCILMEMBER COCHRAN: --from Central?

MS. WINER: --studies actually can be done, too, to help justify route expansion.

COUNCILMEMBER COCHRAN: Okay.

MS. WINER: If there's too many demands, you know, that are put some area. So yeah, there's some leeway.

COUNCILMEMBER COCHRAN: Okay.

MS. WINER: As long as we can tie it back into that, and same thing with Public Works.

COUNCILMEMBER COCHRAN: Oh, okay. Just 'cause it's Central and West Maui is way over in West Maui, just wanted to know how we can tie in and tap into the funds, too. Thank you. As you understand, Ms. Winer.

CHAIR COUCH: Okay. Any further questions or comments for the departments? Seeing none, Members, without objection, I think we'll defer this because we've got a couple more things that we want to get from the departments when they have that information.

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## COUNCIL MEMBERS VOICED NO OBJECTIONS.

CHAIR COUCH: All right, this item is deferred.

**ACTION: DEFER.**

CHAIR COUCH: Members, let's take our midmorning break. Ten minutes good enough for everybody? All right, ten minutes to 10:00...or to 11:00. This meeting is in recess. ...*(gavel)*...

**RECESS: 10:37 a.m.**

**RECONVENE: 10:59 a.m.**

CHAIR COUCH: ...*(gavel)*... Will the Planning Committee meeting of June 19, 2014 please come to order.

## PC-6 B-1 NEIGHBORHOOD BUSINESS DISTRICT (C.C. 11-84)

CHAIR COUCH: Members, we're on Item PC-6 which is the B-1 Neighborhood Business District. And to remind you all, we're in receipt of County Communication 11-84 from the Planning Director transmitting a summary of the Lanai, Maui, and Molokai Planning Commission's comments on a proposed bill relating to B-1 Neighborhood Business Districts. We also have a correspondence dated February 20, 2013 from the Planning Director transmitting a "master chart" and an "at-a-glance" chart existing, of existing definitions, proposed definitions, existing permitted uses, and proposed permitted uses for the B-1 Neighborhood Business District. And a correspondence dated April 8, 2014 from the Planning Director transmitting a revised proposed bill entitled a Bill for an Ordinance Amending Chapter 19.6, Maui...16, Maui County Code, Relating to B-1 Neighborhood Business District, and a correspondence dated April 29<sup>th</sup> from me transmitting a request for additional revisions to the revised proposed bill. And, Members if you remember the proposed...the purpose of the revised proposed bill is to amend B-1 Neighborhood Business Districts including establishing accessory uses, special uses, and development standards. We met on August 29, 2011, February...not 2011, I think it was 20...well might have been 2011, the other Planning Committee. February 28, 2013, in March 14, 2013, at the March 14<sup>th</sup> meeting the Committee requested changes to the bill. We discussed it at length I believe. And then the revised proposed bill has been transmitted to us by the Planning Director and we're now ready to consider it. Now they sent us back a bill and we had our crack staff go through and listen to the minutes of that meeting and take a look at what was sent back and found a couple of things missing. So on the April 29, 2014 transmittal to Mr. Spence from me it shows the, some of the minutes that we, where we discussed certain things and those things were added in in this marked up version. So without any objection, I'd like to go off this marked-up version marked, dated April 29, 2014, and we'll...I'll just go through each item that's marked up and...

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COUNCIL MEMBERS: No objections.

CHAIR COUCH: Okay. So if you turn to page, the first page of the bill it notes everything that the Department or that we discussed and wanted to change, and then you go to the third page of the bill and there's some minor changes. Like farmer's markets has...we don't have an apostrophe there so we put that in there. And you go down to where it says "one single-family dwelling per lot" and note that that's marked out. If you go to the next page it's put in under single-family dwelling. The language is the same and everything, it's just because it's alphabetized we took the word "one" out and put in just "single-family dwelling". So without any objections, those two changes are we okay with that?

COUNCIL MEMBERS: No objections.

CHAIR COUCH: Okay. Then if you go further down on Page 4 of the bill where it says "accessory uses" we're going to change that to "A. Accessory uses" and I'll explain why in just a little bit. And we crossed out "one or more dwelling units" and just changed it to "dwelling units" and then put it in the proper position alphabetically. So that should be okay, any objections to that?

COUNCIL MEMBERS: No objections.

CHAIR COUCH: Okay. Now here's the...what was added that was missing before. If you go to on the back of Page 5 there's an insert that says B. The following uses located on nearby lot are also deemed accessory, customary, incidental, usual, and necessary to the permitted uses in the B-1 Neighborhood Business District. And accessory uses, energy systems, small-scale. Provided the system is within the distance of 400 feet of the nearest point of the lot it serves and there will be no detrimental or nuisance effect upon neighbors. Now that was at a specific request I think both on Molokai and Maui that says that you can have a small energy generating system not on your exact lot. If your lot is too small for for instance a parking lot to put a solar panel over you...if the parking lot's offsite you can put the solar panel covering, generate the electricity for your site as long as it's within 400 feet of the property. We had a long discussion about that and I believe that's in the, some of that is in the minutes that are attached to this letter, and we discussed it so it is something that we asked to be put in. If you have any further concerns about that we can discuss that now, otherwise I'd like to put it in as per our discussion last time. And this is in, remember, this is in the B-1 Neighborhood District.

UNIDENTIFIED SPEAKER: Mr. Chair?

CHAIR COUCH: Yes, okay.

MS. McLEAN: I just wanted to comment on the formatting. We don't really feel that it needs to be A and B. In the table right now there's energy systems small-scale with some criteria, we can just add that, the criteria that's noted on the insert as an additional option of criteria. We don't think it needs to be in A and B section 'cause they're both accessory uses.

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CHAIR COUCH: Okay. Let's take a look at that. Accessory uses...

MS. McLEAN: Okay. Okay, one is on the same lot and the other is --

CHAIR COUCH: Yeah, one says --

MS. McLEAN: --on a nearby lot.

CHAIR COUCH: --same lot and then neighboring lot.

MS. McLEAN: Okay.

CHAIR COUCH: That was the issue.

MS. McLEAN: Okay, got it.

CHAIR COUCH: Okay?

MS. McLEAN: Yep.

CHAIR COUCH: Any concerns with that, Members? So everybody remembers the conversation we discussed about? Okay. So those are the marked-up changes, the rest of the changes are what we discussed as well but were included, and basically the reason we waited until now is to just make sure that the mark up is correct. And if anybody has any further questions or concerns on this one it's now is the time to talk about it. Otherwise this is reflective of what we discussed at our previous meeting and we're ready to roll with this if anybody...unless there are concerns. Mr. Guzman.

COUNCILMEMBER GUZMAN: Thank you, Chair. I do remember the discussion in regards to the energy systems small-scale and as it applied to I believe one of the business entities in Molokai and whether they could have a separate lot to establish that. I do remember that. But in listening to some of the testimony today in regards to the definition of small-scale, should we put parameters as to the size of the energy system? I know that we do have limitations as to the distance, the nearest point of the lot to be served as an accessory use to the primary use, let's say business. But should we also include a size limitation on the energy system? I'm not sure but I just wanted to bring that forth as part of the discussion.

CHAIR COUCH: Okay, understood. And remember that the discussion was regarding BCT and not B-1.

COUNCILMEMBER GUZMAN: Oh, okay, okay.

CHAIR COUCH: Okay?

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COUNCILMEMBER GUZMAN: Yeah.

CHAIR COUCH: But that's --

COUNCILMEMBER GUZMAN: Yes, yes.

CHAIR COUCH: --still a good question. I believe there's a definition in 19 point...is it 01.040?

MR. SPENCE: 040.

CHAIR COUCH: 19.04.040. Go ahead.

MR. SPENCE: Okay. Thank you, Mr. Chairman. We do have a definition, it does not list specific sizes, but it is energy systems, small-scale means energy production facilities which are incidental and subordinate to a principal use which is established on the property. These systems include but are not limited to solar, wind, hydrologic, and biomass systems. So so long as it's no specific size but so long as it's subordinate to the principal use. If you have a residence, you know, that your, whatever, PV or your wind system is serving that house, not, you know, a feed-in tariff kind of thing is a different matter.

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

CHAIR COUCH: Yes.

MR. ALUETA: --just to expand. Currently the policy the Planning Department has done is that it has to be the majority of the energy produced on the, from the accessory use has to be used onsite, so 51 percent. So they could still generate and sell into the utility, but if they're generating ten kilowatts then at least a little more than five kilowatts has to be used onsite at any time.

COUNCILMEMBER GUZMAN: Do we...I know that that...is that an admin rule or is that just like a policy that internally?

MR. ALUETA: How we interpret to be subordinate to, so if the majority of the power is going off then it's no longer a subordinate use.

COUNCILMEMBER GUZMAN: Okay.

CHAIR COUCH: Any...

COUNCILMEMBER GUZMAN: Did we want to include that in our ordinance or is it going to be acceptable to keep...*(inaudible)*...

CHAIR COUCH: I guess Mr. Hopper might be able to help answer that.



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MR. HOPPER: If you want to be more specific you can certainly be more specific with your description, it's up to the Council the level of detail you would like to specify as far as an accessory use. You have a definition and now we have an additional criteria for this. If the Council would like to be more specific in any limitations or as it has done, allow it on lots that are not just the same lot but now adjacent lots, the Council is free to do so. It's up to the Council.

COUNCILMEMBER GUZMAN: How does the Department feel about that? I mean at least...you know, Mr. Alueta, you may not be around in, you know, how many years from now, but I definitely would like it to be codified. I mean if that's something that could be useful for the Department.

MR. HOPPER: I'd also say if you get more specific here you should amend the definition and everywhere else it appears as well, and that may be beyond the scope of this current bill. So that may be something to look at. Because what you're doing now is just going to be affecting B-1, and if there's other districts...if that definition's made more specific and it's not made more specific in the other sections then perhaps someone could have a different interpretation there and say well, they meant to exclude it from these other sections. So that's more of a comprehensive look at something. So that's another consideration. Could be looking at changing the definition but of course changing that definition wasn't part of this bill --

CHAIR COUCH: Right.

MR. HOPPER: --so I'm not sure where exactly the Council wants to go there. But I mean I'm not sure how else the interpretation would be as far as what's a subordinate use, because that's, through accessory uses that's always going to be a question of what, you know, what...is something accessory or not. And to get more specific with that it is certainly a universal issue, it's not just in this B-1 section. Just to bring that out.

COUNCILMEMBER GUZMAN: And, Chair, I remember this discussion and I remember adding that language and energy systems, small-scale to connect it up to the, I guess the current definition. So, you know, I don't want to throw a monkey wrench in . . . *(inaudible)* . . .

CHAIR COUCH: Well we can also do a PAF to --

COUNCILMEMBER GUZMAN: Yeah.

CHAIR COUCH: --do that --

COUNCILMEMBER GUZMAN: Yeah.

CHAIR COUCH: --to have a broad look if that's something that is concerning to you.

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COUNCILMEMBER GUZMAN: No, it's something that is it concerning to the Department because I don't want to raise the issue if it's not going to be significant. If it's something very de minimis I don't want to --

CHAIR COUCH: Right.

COUNCILMEMBER GUZMAN: --even go that way.

CHAIR COUCH: My guess is, you know, I know how the Department feels now but when none of us are here in 30 years from now --

COUNCILMEMBER GUZMAN: Right, right.

CHAIR COUCH: --on this floor or in the Department, well Joe might still be there 30 years from now. How would that, how could that be interpreted? Could it be misinterpreted or I don't know, can it be abused?

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

CHAIR COUCH: Sure.

MR. ALUETA: I just, I would...if you want to put a limitation of how we currently do the policy of the 50 percent, I mean it already implies it by the accessory use provision, and so but I would only want to put it into those districts in which you are concerned about having energy systems, small-scale maintained at a 51 percent level being used on the property for those districts. Because rather than amending the definition, we can look at the definition later on, but I think that we may want to have energy systems, small-scale and further defining when it becomes principal uses --

COUNCILMEMBER GUZMAN: Right.

MR. ALUETA: --in some areas. Because there's that energy systems, small-scale, then there's minor utility facility, and then majority utility facilities, and so we should probably look at all of those at the same time. That's all.

CHAIR COUCH: And my other concern would be if for instance a couple of months the whatever use in the B-1 is not using a lot of electricity this time and so they sell actually more than 51 percent because it just happens and it goes back to the electric utility. Are they out of compliance now for that short amount of time? So I would think it would be up to the...I'd rather leave it looser so the Department can have some leeway in there.

COUNCILMEMBER GUZMAN: Okay.

CHAIR COUCH: Okay.

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COUNCILMEMBER GUZMAN: Thank you, Chair.

CHAIR COUCH: Okay. Members, any other questions on the B-1 items that we discussed previously? I think Mr. White may have. Oh, and then we're on Page 5 again. That was the insert we talked about. There's also we took out a word just because...I don't know, it seemed superfluous. We deleted the word "declared" so it says "Special uses. The following are special uses in the B-1" and then put in a semicolon or a colon, I'm sorry. And then that's it. So any concerns? Questions? Mr. White.

COUNCILMEMBER WHITE: Thank you, Chair. Under special uses transient vacation rentals nine to twenty bedrooms; except on Molokai. What is the process through which that would need to be approved under special uses?

CHAIR COUCH: And can you get a little bit closer to your microphone, sir?

COUNCILMEMBER WHITE: Sorry.

CHAIR COUCH: Okay.

MS. McLEAN: A Special Use Permit would have to be issued by the Maui Planning Commission, so an applicant would file an application with the Planning Department. It would involve neighbor notification, the application would get circulated to appropriate agencies, and then the Maui Planning Commission would hold a public hearing and make a final decision on the application. Same would happen if it were on Lanai.

COUNCILMEMBER WHITE: So transient vacation rentals is not the same as STR, correct?

MS. McLEAN: Correct.

COUNCILMEMBER WHITE: And transient vacation rentals could include...could it include a 20-condo unit? Ten condos with two bedrooms each.

MS. McLEAN: Yeah, up to 20 bedrooms is what's listed. Nine to twenty bedrooms is listed as the special use. As an outright permitted use would be one to eight rooms which would just be permitted outright.

CHAIR COUCH: And this is in the B-1 which is a neighborhood district.

MR. SPENCE: Correct.

CHAIR COUCH: Can you give us an example --

COUNCILMEMBER WHITE: Yeah, I was just going to ask --

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CHAIR COUCH: --of what...

COUNCILMEMBER WHITE: --where are all of these --

CHAIR COUCH: Yeah.

COUNCILMEMBER WHITE: --B-1s?

MS. McLEAN: I believe that you were, the Committee was transmitted maps that would be in the binder from an earlier transmittal --

CHAIR COUCH: Oh yeah.

MS. McLEAN: --that showed the different zoning districts.

CHAIR COUCH: I believe it's...it's a color map and it's dated 3/14/13, submitted by Mr. Alueta.

MS. McLEAN: There isn't a great deal of B-1 in the County.

CHAIR COUCH: Sure doesn't look like it.

MR. SPENCE: No.

COUNCILMEMBER COCHRAN: Chair?

CHAIR COUCH: Yes.

COUNCILMEMBER COCHRAN: The salmon-colored shading is real hard to decipher one from the other.

CHAIR COUCH: Determine one from the other.

COUNCILMEMBER COCHRAN: Yeah. It's --

CHAIR COUCH: I was noticing that.

COUNCILMEMBER COCHRAN: --difficult, so if it's not too...not very many places, maybe they can point out. I'm having a hard time. I mean I'm a pretty good color coordinator but this is like way too close to each other in the shading.

MR. SPENCE: Yeah, and it's a little bit --

COUNCILMEMBER COCHRAN: So it's...and it's tiny so.

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MR. SPENCE: --small scale. I did...I am aware that there is B-1 in Pukalani. I believe there's also some in Makawao and perhaps some in Paia. And...

COUNCILMEMBER COCHRAN: West Maui?

MR. SPENCE: I'm sorry?

COUNCILMEMBER COCHRAN: West Maui?

MR. SPENCE: I'm not familiar with, that there is B-1 in West Maui. I know once upon a time a lot of the, you have B-1 in some of the small towns because they were rezoned to B-1 before there was such a thing as Business Country Town. So...

MR. ALUETA: Oh and Lahaina. I think if there is any B-1 it would be on I want to say the parallel street to Front Street between...by Lahainaluna and parallel to Front Street like Wainee Street along there in that area there may have been a few that were zoned B-1. I think a lot of the Business Districts in Lahaina were kind of absorbed into the Lahaina Historic Districts 1 and 2 because it basically allows any of those uses in those commercial districts. So that's how it...'cause if you look at the Historic District it kind of took in all of the commercial uses, hotel...I mean all of those mixed uses.

COUNCILMEMBER COCHRAN: Thank you.

CHAIR COUCH: Any further questions? Concerns? Mr. White.

COUNCILMEMBER WHITE: So if somebody was doing an STR they're going to need to go through a significant permitting process, but to do a TVR up to eight rooms in B-1 there's no process at all?

MR. SPENCE: That would...

COUNCILMEMBER WHITE: That seems a little inconsistent.

CHAIR COUCH: Yeah.

COUNCILMEMBER BAISA: Very, very.

MR. SPENCE: Yeah.

MR. ALUETA: Well one is because it's in the Business District, it's got the zoning for business.

CHAIR COUCH: Oh, right.

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MR. ALUETA: We currently have in the model that this was kind of taken off of was the Wailuku Redevelopment Area in which you can do by right up to 20 bedrooms hotel, and you'll see that with a lot of the, like the Banana Bungalow, North Shore Inn, and all of those where you have had those, some properties convert and do those types of uses. And that was consistent with the community plan. And the first, the history of I guess the B-1, B-2, and B-3 and adding the transient vacation rentals was really kind of a give and take during the original transient vacation bill that came through where we were trying to shift some of the demand for transient vacation rentals to your core town, to your small towns and establish more of a mixed use type of facilities. Because that's, you know, Paia, Makawao, where tourists wanted to stay and there was facilities, coffee shops, restaurants to accommodate them. And prior to that, BCT was through a convoluted Conditional/Special Use Permit that was listed in the BCT District. But we feel that that type of use is appropriate within the commercial districts, especially as an adjunct to an existing business facility. And so but our original proposal was actually for 12 rooms as outright permitted and 20 rooms in some areas. And so...and at the last, during the Planning Commissions' hearings they all were very much supportive of allowing for transient accommodations as an add-on to the business facilities.

CHAIR COUCH: Mr. Spence.

MR. SPENCE: Thank you, Mr. Mr. White's question was so as proposed could you do a transient vacation rental use as of right but can you, but would a bed and breakfast or would a short-term rental home need a permit? And that's the way that the bill is proposed. And also right now the, a bed and breakfast would still need a Bed and Breakfast Permit. So yes, there is a review process for short-term rental homes and for bed and breakfasts but not for a transient vacation rental use.

COUNCILMEMBER WHITE: So if you have a residential structure in B-1 zone to, for it to become an STR you need a permit, for it to become a bed and breakfast you need a permit, but to turn it into up to eight rooms for rental, going from a home to...would it be separately...eight separate bed...oh, obviously the bedrooms are separate but do they need to be...I don't really understand the difference.

CHAIR COUCH: Yeah and to add on to that, Mr. Spence or Mr. Hopper, either one, if somebody were to have a single-family home that had six bedrooms and they said well, I'm just going to make it transient vacation rentals, then I don't have to go through the short-term rental home or I don't have to go through the B&B. I guess my first question is how many single-family homes are in B-1 District?

MR. SPENCE: I can't answer that. There...I'm aware that one home...the...on B-1 property in Pukalani was changed with I believe with a Conditional Permit, at that time was changed to a business use, to a real estate office. So there are...there's at least one that I know of. ...*(inaudible)*...

COUNCILMEMBER WHITE: Yeah, no, I'm just suggesting that we're mildly inconsistent, right?

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MR. SPENCE: Yeah, I would agree it's not consistent.

CHAIR COUCH: And just to note...

COUNCILMEMBER WHITE: You know all I have to do is come down and say well, I want to be a TVR --

CHAIR COUCH: Right.

COUNCILMEMBER WHITE: --not an STR.

CHAIR COUCH: Right.

COUNCILMEMBER WHITE: And not a bed and breakfast. . . .*(inaudible)*. . . --

CHAIR COUCH: And to also note...

COUNCILMEMBER WHITE: --you needed to go through a permit --

CHAIR COUCH: Yeah.

COUNCILMEMBER WHITE: --process.

CHAIR COUCH: To note that STRs aren't even listed here as a permitted use, only B&Bs. Oh, and I see, bed and breakfast and short-term rental. Okay, gotcha. Yeah, we combined 'em. That's right. Sure.

MR. HOPPER: Just as a suggestion I think a good recommendation maybe for the Committee would be to consider what uses it would like to allow in this district and with permits or without, and...or as outright permitted, and to make it consistent if you did want to allow transient vacation rentals or bed and breakfast homes without any permitting that can be added. If you want to allow bed and breakfast and short-term rental homes only with the permits required by 19.64 and 19.65 then you could delete the transient vacation rental reference and that would accomplish that. There is an inconsistency but that can be reconciled either way with some changes to the ordinance. So I think the question for the Committee and for the Department would be what's the desire for the use in the B-1 District. You could write it to have TVRs as a matter of right, bed and breakfast homes as a matter of right or with permits or not allow them at all. Currently in the existing Code only bed and breakfast homes subject to 19.64 of this title and short-term rental homes subject to 19.65 of this title are currently allowed. The transient vacation rentals are new, and it would seem to be consistent with that to delete the permitting requirements if you are going to add the transient vacation rental use as an outright permitted use just to deal with that confusion. So I think the Committee has various options here.

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CHAIR COUCH: One of the...as a result of some of the testimony today...but that, see that was all for BCT but this is similar to BCT so I'm thinking that we want to discuss it anyway today. One of the possibilities would be to remove transient vacation rental as a outright permitted use, make it a...it already is a special use but change it from nine down to six because short-term rental homes and B&Bs are zero to six...one to six rooms. So essentially you'll...it has to be a special permit of some sort, either a Short-Term Rental Home Permit, a Bed and Breakfast Permit or a Special Use Permit. That might be something to do if the body is concerned about just outright use of transient vacation rentals in B-1.

COUNCILMEMBER WHITE: But wouldn't you be authorizing up to six bedrooms without a special...without any review?

CHAIR COUCH: Not if we remove the transient vacation rental from a permitted use. We already have bed and breakfast and short-term rental homes which you have to get a permit for those and that's up to six bedrooms. And then if we leave special uses as transient vacation rentals and change it from, the minimum from nine to six that would say that there has to be some sort of public input for any kind of transient vacation rental in the area whether it's bed and breakfast, short-term rental for up to six rooms. And then from anything from 7 to 20 it needs to have a special permit.

COUNCILMEMBER WHITE: Okay. So you're suggesting then that the transient vacation rental category must exceed six bedrooms?

CHAIR COUCH: That's one way, the other way is go 1 to 20. I'm fine with that, too. One to 20 might be a better way. I don't know that you would have a one- or two-bedroom hotel, essentially.

MR. ALUETA: Mr. Chair?

CHAIR COUCH: Yes.

MR. ALUETA: Just to provide a little clarification --

CHAIR COUCH: Okay.

MR. ALUETA: --or mud, one of the two. Is that B&Bs and STRs are limited to single-family residences where in the B-1 you could have a commercial building that is then converted to a transient vacation rental. That's why you...so going from 1 to 20 --

CHAIR COUCH: One to 20 would be better then?

MR. ALUETA: --would...but...would be better.

CHAIR COUCH: Okay.



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COUNCILMEMBER WHITE: Yeah.

CHAIR COUCH: Concerns? Comments? Members? Ms. Baisa.

COUNCILMEMBER BAISA: I share Member White's concern, and I just don't think it's fair. You know we put people through incredible amounts of paperwork and all kinds of stuff in order to get a B&B or whatever it is that they're trying to get, and I don't think it's fair that somebody gets a pass and somebody else has to go through all that. So I cannot support that.

CHAIR COUCH: Can support the changes we want to make?

COUNCILMEMBER BAISA: No, I cannot support that we give anybody just a free pass.

CHAIR COUCH: Oh.

COUNCILMEMBER BAISA: I think they have to go and get a permit.

CHAIR COUCH: Right. I think that's what we're working on right now. So I guess the suggestion would be to remove transient vacation rentals from an outright permitted use and then change the special use transient vacation rentals, the minimum from nine to one. Any concerns with that?

UNIDENTIFIED SPEAKER: . . . *(sneezes)* . . .

CHAIR COUCH: Bless you. The minimum.

UNIDENTIFIED SPEAKER: . . . *(inaudible)* . . .

CHAIR COUCH: Yeah, the minimum from nine to one. Any objections to that? That way everything will at least get public review.

COUNCILMEMBER BAISA: Right.

CHAIR COUCH: Okay. I don't think we need a motion if we have consensus on that. So essentially we're striking transient vacation rental from the permitted use, and then we already have bed and breakfasts and short-term rentals taken care of. And then under special uses the criteria or limitations for transient vacation rentals, change nine to one, so it allows from 1 to 20 rooms except on Molokai where the maximum number of bedrooms and use shall be determined by the Planning Commission. Any objections?

COUNCIL MEMBERS VOICED NO OBJECTIONS

CHAIR COUCH: Okay. The only...I mean we've made those...I mean I've got those changes made now. The only concern I would have is are we taking anybody out who now has that permitted

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use anywhere? And if, just for the record, so that they can put it in the transcript, can you speak those head moves that you're saying?

MS. McLEAN: Because that's not a use that's a permitted use in the district now it's not eliminating . . . *(inaudible)* . . .

CHAIR COUCH: Okay, so anybody who would be doing that right now would have a Special Use Permit or a Conditional Use Permit?

MS. McLEAN: They would have some type of established --

CHAIR COUCH: Okay.

MS. McLEAN: --method by which they're doing it now, and changing this isn't going to change the status of their existing operation.

CHAIR COUCH: Okay. Members, any other questions or changes on this one?

COUNCILMEMBER COCHRAN: No.

CHAIR COUCH: Seeing none, the Chair will entertain a motion to pass on first reading the revised proposed bill entitled a Bill for an Ordinance Amending Chapter 19.16, Maui County Code, Relating to B-1 Neighborhood Business District; to allow Staff to make nonsubstantive revisions; and the filing of County Communication 11-84.

COUNCILMEMBER WHITE: So moved.

CHAIR COUCH: Thank you, Mr. White. Do I have a second?

COUNCILMEMBER COCHRAN: Second.

CHAIR COUCH: Okay. So it's been moved by Mr. White -- sorry, our Vice-Chair isn't here so -- and seconded by Ms. Cochran for passage of this bill and also filing of the County communications. Any further discussion? Mr. White.

COUNCILMEMBER WHITE: Thank you, Chair. Before we move to pass this, the question comes to mind where does a transient vacation rental become a hotel, at what size?

CHAIR COUCH: I would say one. I mean define hotel.

COUNCILMEMBER BAISA: Yeah, what's a hotel.

CHAIR COUCH: It's any kind of transient vacation rental I would think. Usually I would think it's condos but also Mr. Alueta said it is in the Business District so building, a commercial building

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could be converted into a 1, 2, up to 20 room.

COUNCILMEMBER WHITE: 'Cause I've always thought that transient vacation rentals are generally condos, but is that...I guess they could take any form.

MR. SPENCE: Yeah. On 19.04.040 transient vacation rentals or use means occupancy of a dwelling or lodging unit by transients for any period of less than 180 days, excluding bed and breakfast homes. So basically your, I think your short-term rental home where the owner is not present, that would be considered a transient vacation rental as well as, you know, if you converted, if somebody converted a commercial building or a condominium, you know, it could be a building built like a condominium.

CHAIR COUCH: Go ahead.

MR. HOPPER: And then an additional clarification the definition of a hotel or motel is a transient vacation rental other than a bed and breakfast home containing a lodging or dwelling units.

COUNCILMEMBER WHITE: Same thing.

CHAIR COUCH: Okay. I'm going to have a short recess, one minute. . . .(gavel). . .

**RECESS: 11:35 a.m.**

**RECONVENE: 11:36 a.m.**

CHAIR COUCH: . . .(gavel). . . Will the Planning Committee meeting of June 19<sup>th</sup> please come back to order. Members, there is a concern that I thought I would, should mention is that . . .(coughs). . . excuse me, right now the special use for planning or for transient vacations would go to the Planning Commission, so in essence a 20-room hotel would be decided by the Department and the Planning Commission, is that how that would work?

MR. SPENCE: Yes. The...well not decided by the Department but decided by the Planning Commission.

CHAIR COUCH: Well the Department makes recommendations, right?

MR. SPENCE: Correct.

CHAIR COUCH: And if you got a lot of response from the neighborhood and did your due diligence and found that it just wouldn't be an appropriate use at that place, is that what you guys normally do, you would say we don't recommend the passage of this but the Planning Commission still can go one way or the other?

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MR. SPENCE: Yeah. The...we would look at the criteria laid out in Title 19. We would look at the comments by different County agencies. We would look at whatever testimony comes in as a part of the public hearing, at least what we get before, you know, the time we have to publish the staff report and recommendation, and we would make some kind of recommendation to the Planning Commission. The Planning Commission it's not unusual, they usually follow the Planning Department's recommendation, but it's more and more not unusual for them to vote differently.

CHAIR COUCH: Okay.

MR. SPENCE: They're pretty independent thinkers.

CHAIR COUCH: Then, Members, the question would be on something like a 20-room hotel is that something we want to leave to the Planning Commission or do we think that needs to be a Conditional Use Permit that should come to here in our small B-1 Districts? Mr. White.

COUNCILMEMBER WHITE: Having been through the Planning Commission process, they're more rigorous than we are, and...I think.

MR. SPENCE: Can be.

COUNCILMEMBER WHITE: I don't think it needs to...if it comes here does that mean that it has to go to both?

CHAIR COUCH: Yes.

COUNCILMEMBER WHITE: I'm not sure I would want to do that to anybody unless it was absolutely necessary. That's just me.

CHAIR COUCH: Comments from the Members? Chair Baisa.

COUNCILMEMBER BAISA: Tough one because it's a controversial situation, it has been for a very long time, and when it was originally brought up if I remember correctly when I first arrived here in 2006 and we were discussing B&Bs, there was a proposal to allow this. And there was a tremendous reaction, nobody wanted it, and this was before we had B&Bs and STRs and, you know, the things we have now. Well now we have them and so I think it's even more controversial. I also don't think we're going to get a flood of this. You know we're not going to have lots and lots of people coming in and wanting to build 20-room whatever we want to call them, motels or...so it isn't like it's going to block up the Council's calendar. One of the reasons why we did what we did in giving Planning Commission the awesome responsibility that they have now in dealing with all of these applications was to kind of free up our calendar and help people get things through the system because it takes too long to come to Council. And, you know, we would have been held up here doing all of these permits and, you know, B&Bs and STRs and whatever. I think this would be rare. I think this would be rare. I think it's more

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controversial than the B&Bs and STRs, so I'm kind of conflicted as to whether we should make it a Conditional Permit and have it come here or we can just delegate it. I'm not...my mind's not made up one way or another.

CHAIR COUCH: Mr. White.

COUNCILMEMBER WHITE: Thank you, Chair. My feeling is that right now a B&B...my recollection is that B&Bs and STRs are administratively dealt with unless there's a contest --

CHAIR COUCH: Right.

COUNCILMEMBER WHITE: --then it's got to go to the Planning Commission. My feeling is that that could well be the process here where they are put through a rigorous administrative review and if there's a challenge to it then they go to the Commission. But I'm not feeling like we've got to add another layer of review to that.

CHAIR COUCH: Okay. Just to remind the Members that a special use has to go to Planning Commission, they don't...it's not administrative. It has to go to Planning Commission so.

COUNCILMEMBER WHITE: I'm okay with that.

CHAIR COUCH: So the will of the Members, any other Members want to weigh in on this? Ms. Cochran, you look like you're --

COUNCILMEMBER COCHRAN: Yeah.

CHAIR COUCH: --about ready to...

COUNCILMEMBER COCHRAN: Well I'm just trying to weigh out and hear everyone's points of view and perspectives. I agree that there's not a whole laundry list of people that would be, you know, jamming up the calendar as Ms. Baisa stated in regards to this particular zoning or B-1 areas and this situation we're looking at. But I do understand the, that if it did that people in the community would feel more comfortable if it wasn't just relied upon the Planning Commission but it did come via us if need be, and if it's the conditional use there's an opportunity but if it's not then it just is solely Planning Commission's call, you know, along with Planning Department. So yeah, it's kind of a tough one, but I think, you know, for me I'm always the more review, the more public input and involvement, the better to just vet everything out and get it on the table, air out differences, whatever it is. And that thereby one can make better decisions, you know, in the end. So still trying to figure it out, too, Chair. So your call.

CHAIR COUCH: All right. I'd like to hear from the rest of the Members, too. Ms. Crivello, too, even though there's a provision on Molokai that it goes to the Planning Commission anyway. Your thoughts on --

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COUNCILMEMBER CRIVELLO: Well, I can...

CHAIR COUCH: --for both Maui, Molokai, and Lanai.

COUNCILMEMBER CRIVELLO: Well I think Maui as a whole not 'cause Molokai is, goes through their Planning Commission but I appreciate that because the community process still exists where that's a consideration we can do here. How do we continue the dialogue with the community as far as, you know, what's allowable or what's not allowable in their neighborhood. And I think, you know, I get little bit confused when we talk B&B, TVR, and STRs. The B&B has to go through more stringent process than the TVR or STRs, so that kind of weighs a little bit of concern for me. And I would hope that there is a process that the community can also hear on Maui, go through the respective Planning Commission that's available to continue the dialogue. Thank you.

CHAIR COUCH: Okay. Mr. Guzman.

COUNCILMEMBER GUZMAN: Thank you, Chair. I guess one of my questions would be if the current system as it's set up, the B&Bs and the STRs, they go through a special use permitting process wherein they go through the Planning Commission only. Has there been any challenges in terms of if it was denied where does it go from there? If the Commission denies the applicant does it go to a higher authority to make that call or does it just end at the Planning Commission?

CHAIR COUCH: Mr. Hopper.

MR. HOPPER: Thank you, Mr. Chair. There's an appeal to Circuit Court allowed under Hawaii Revised Statutes, Section 91 for Planning Commission denials of Short-Term Rental Home Permits.

COUNCILMEMBER GUZMAN: So it becomes a judiciary matter?

MR. HOPPER: If they go to the Commission. I understood your question to be if their denial --

COUNCILMEMBER GUZMAN: Yes.

MR. HOPPER: --is by the Commission?

COUNCILMEMBER GUZMAN: Yes.

MR. HOPPER: Yes, then if the denial is by the Commission and they're the final authority on it then those decisions are appealable to the Circuit Court.

COUNCILMEMBER GUZMAN: Okay.

CHAIR COUCH: They're not appealable to the BVA?

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MR. HOPPER: Not if the Planning Commission makes the, is the decision-making body --

CHAIR COUCH: Okay.

MR. HOPPER: --for short-term rental homes...

CHAIR COUCH: B&Bs.

MR. HOPPER: For Bed and Breakfast Home Permits that's a separate issue. I mean those don't all go to the Planning Commission. Ones that go to the Commission, those would be appealable to Circuit Court. If it's administratively determined then there's a different appeal process. I believe those would generally go to the Board of Variances and Appeals, but this is going to be dependent on what the law itself says. There's several different ways to get permitted. If you get a Conditional Permit you can get a bed and breakfast home, you can get a Short-Term Rental Home Permit and there's various places where the appeals could end up, but if they're determined by the Planning Commission itself, they're the final decision maker then there's an appeal process to Circuit Court.

COUNCILMEMBER GUZMAN: Okay. Thank you. Yeah and that being said, now I'm having reservations. I see where there would be a dilemma in terms of an applicant being denied and then having to go hire an attorney and fight it out in court for the appeals process versus if we go administratively a denial would lead to an appeal process through the Board of Variances which would be internal. And you don't need an attorney in the Board of Variances to fight an appeal. Right now, Chair, I...gosh, I'm on the fence on this one because I see how it could be difficult for an applicant and I could see how it could be, you know, equity and fairness could be at odds. You know so right now, Chair, I just I would rather take some time and analyze it further before making a judgment call for a vote.

CHAIR COUCH: Well the question is whether they should go to just the Planning Commission --

COUNCILMEMBER GUZMAN: Right.

CHAIR COUCH: --or come to us. Now...

COUNCILMEMBER GUZMAN: Or there could be a third way which would be administratively. Right?

CHAIR COUCH: I mean that is a third way, I'm not sure that I would want to have that placed on a single individual.

COUNCILMEMBER GUZMAN: Okay, so if it goes to the Council then and we deny it then where do they appeal from there? Is that are we the final body that makes that final decision?

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CHAIR COUCH: Mr. Hopper.

MR. HOPPER: Well we would argue Conditional Permits are a form of legislation and generally those have in the past I think at least in one case have been taken to Circuit Court directly, but they're not contested cases under HRS 91.

COUNCILMEMBER GUZMAN: Okay, good.

MR. HOPPER: So in my opinion they wouldn't be covered under that, but I think for constitutional claims someone would potentially believe they would have, they could consider bringing an action in Circuit Court. But it's certainly not as straight forward as the appeals from a contested case before the Planning Commission for example. So we have had appeals I believe from Council decisions that would go directly to Circuit Court. We've had those before.

COUNCILMEMBER GUZMAN: Okay. That being said, Chair, I would rather it go to the Planning Commission. Thank you.

CHAIR COUCH: Okay. Any further discussion? All right, if there's no further discussion it's time to call for a vote. All those in favor of the passage of the bill, please say "aye".

COUNCIL MEMBERS VOICED AYE.

CHAIR COUCH: All opposed, say "no"?

COUNCILMEMBER BAISA: No.

COUNCILMEMBER COCHRAN: No.

COUNCILMEMBER CRIVELLO: No.

**VOTE: AYES: Chair Couch, Councilmembers Guzman and White.**

**NOES: Councilmembers Baisa, Cochran and Crivello.**

**ABSTAIN: None.**

**ABSENT: None.**

**EXC.: Vice-Chair Victorino.**

**MOTION FAILS.**

CHAIR COUCH: Okay. So I guess --



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COUNCILMEMBER COCHRAN: Amendments.

CHAIR COUCH: --we are not going to...nobody made amendments.

COUNCILMEMBER WHITE: Wait.

COUNCILMEMBER COCHRAN: Wait.

COUNCILMEMBER WHITE: I think they need to understand what the vote was on.

CHAIR COUCH: The vote was on the bill as we've discussed. Now if somebody wanted to make amendments that's why I asked for any further comments. So...

COUNCILMEMBER BAISA: I don't think that any of us are ready to make amendments, we're undecided.

CHAIR COUCH: Okay. Well it...

COUNCILMEMBER BAISA: Based on the information we got today we are not sure.

CHAIR COUCH: Yes, Pauline?

MS. MARTINS: We need a roll-call.

CHAIR COUCH: You want a roll...well I can tell you exactly how it went. It went three ayes, three noes, the noes were Ms. Crivello, Ms. Cochran, and Ms. Baisa, Chair Baisa.

MS. MARTINS: Okay, thank you.

CHAIR COUCH: Okay. So hang on a second. Procedurally the motion failed three to three, again with Ms. Crivello, Ms. Cochran, and Ms. Baisa on the no. So what that means is this item...I'm certainly not going to file it, I'm going to defer it, and we're going to discuss it again at our next meeting. I believe at our next meeting, if not it may have to wait another meeting, but I'm not sure, we'll check with the Staff. That being said, that's the final or not the final, that's the disposition for this item right now it's deferred.

**COUNCIL MEMBERS VOICED NO OBJECTIONS.**

**ACTION: DEFER.**

CHAIR COUCH: Okay, so we'll have to do our homework on that one.

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**PC-24 COUNTRY TOWN BUSINESS DISTRICT (C.C. 11-229)**

CHAIR COUCH: That also means that, Members, I'm going to go to PC-24 and ask to defer that, because this is similar legislation and we're not going to have time to discuss that, 'cause it's going to be the same thing. So without objection, I'm going to defer PC-24.

**COUNCIL MEMBERS VOICED NO OBJECTIONS.**

**ACTION: DEFER.**

CHAIR COUCH: Okay.

**PC-7 B-3 CENTRAL BUSINESS DISTRICT (C.C. 11-85)**

CHAIR COUCH: If...let's take a look at PC-7 real quick. I believe we can get through this one 'cause I don't think we have the same issues. Okay. Again, let's see, on PC-7 this is Central Business District, this is B-3. We're in receipt of County Communication 11-85, from the Planning Director, transmitting the summary of the Planning Commissions; some correspondence from the Planning Director, with the "master chart" and "at-glance" [*sic*]; and correspondence dated April 8<sup>th</sup>, which is the bill changes; and then a correspondence from me, dated April 29<sup>th</sup>, again with some things that the Staff went through and found that were left out and with the appropriate minutes in front of that. So, Members, if you look at the April 29<sup>th</sup> version and go to the bill, if you look at Page 2, "farmers market" it just has an apostrophe, that's nonsubstantial. But if you go to Page 3, there's a thing called Service Business Residential Service Establishments that we added that was just inadvertently left out, and if you look at the minutes it discusses that. So real quickly, Mr. Alueta, what is a Service Business Residential Service Establishment?

MR. ALUETA: If I can borrow the, my boss' Code book here real quick.

CHAIR COUCH: I know we discussed it.

MR. ALUETA: Right. As you remember the SBR District was added and at that time that definition was also inserted into the Maui County Code 19.04. Service Business Establishment means a structure . . .(*clears throat*). . . excuse me, means a structure from which a neighborhood-scale commercial services are provided to the public from a gross floor area not greater than 2,000 square feet, including displays, storage, and accessory areas. SBR Service Establishments may include businesses and professional offices, food and service establishments, retail establishments in which products are sold to the general public for direct consumption, other neighborhood-scale commercial uses that are determined by the Planning Director to be of similar character and use.

CHAIR COUCH: Okay. Members, any questions on that? Okay, without objection, we'll add that in there, 'cause that's what we discussed before.

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COUNCIL MEMBERS: No objections.

CHAIR COUCH: All right. If you go to Page 4, you'll see that dwelling units, again it was one of those "one or more dwelling units" got changed to "dwelling units" so we just changed that alphabetically. Any problems with that? No objections?

COUNCIL MEMBERS: No objections.

CHAIR COUCH: Okay. And the small energy systems, small-scale energy systems was inserted similar to the previous. Any concerns with that? And then there's "declared" was taken out of special uses. Again, it's just language. And if we go down to I believe Page 6 there's a comma inserted and that's not substantial. So with all those changes are there any concerns on this one, Members? Again, we discussed it a long time ago.

COUNCILMEMBER BAISA: Recommendation.

CHAIR COUCH: Okay. In that case...Mr. Hopper.

MR. HOPPER: Just a note, there's the same transient vacation rental --

CHAIR COUCH: Understood.

MR. HOPPER: --use allowances. Okay, just to...

CHAIR COUCH: Yeah. That's a good thing to point out though, Members, the transient vacation rentals not exceeding 20 bedrooms except on Molokai where a Special Use Permit shall be required. This is in B-3 District which is essentially the central district. This allows for...oh, any examples, Mr. Spence?

MR. SPENCE: Oh, no. Thank you, Mr. Chairman. I don't have any examples. I was going to point out later on in the bill under special uses, 21 to 50 bedrooms except on Molokai. So similar to the last structure where...

CHAIR COUCH: Right.

MR. SPENCE: Okay.

CHAIR COUCH: But this one is more of, this is definite commercial area, it's definitely okay to have a hotel or a large condo complex with transient vacation rentals. I don't see any problem with that. Members, do you? No? All right, my recommendation is I'll entertain a motion to recommend passage on first reading of the revised proposed bill entitled a Bill for an Ordinance Amending Chapter 19.20, Maui County Code, Relating to B-3 Central Business District; to allow Staff to make nonsubstantive revisions; and the filing of County Communication 11-85.



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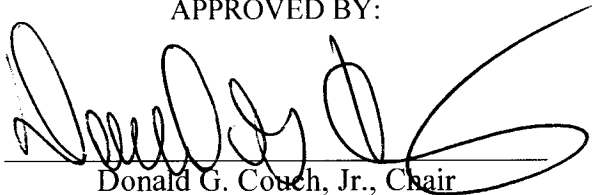
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CHAIR COUCH: Members, we have a little bit of homework to do on those other two items. Let's get your homework done and hopefully we'll bring this up the next time and it should be a healthy discussion and then we'll pass it through we hope. I want to thank the Staff, I want to thank the Administration for speaking with us today. Going against certain directives these days. Staff, thank you very much. And, Members, thank you. And this meeting is adjourned. . . .(gavel). . .

**ADJOURN: 11:59 a.m.**

APPROVED BY:

A handwritten signature in black ink, appearing to read "Donald G. Couch, Jr.", written over a horizontal line.

Donald G. Couch, Jr., Chair  
Planning Committee

pc:min:140619:ds

Transcribed by: Daniel Schoenbeck

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CERTIFICATE

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

DATED the 8<sup>th</sup> day of July, 2014, in Kula, Hawaii



Daniel Schoenbeck