

1 now we're being asked for a change in zoning. But
2 ultimately --

3 CHAIRMAN STARR: No, we're not.

4 COMMISSIONER MARDFIN: We're making comments on
5 an EA in anticipation of a change in zoning that would come
6 to us, I believe. What I want to know is what is our role.
7 If water is not available, does the Commission typically
8 approve changes in zoning, or do we say that water has to be
9 available before we approve it?

10 CHAIRMAN STARR: Director? That's above my pay
11 grade.

12 DIRECTOR HUNT: I don't think you have been in a
13 position where you have said the water has to be available
14 before you will approve the zoning. The development will
15 have to be predicated on the water being available.

16 COMMISSIONER MARDFIN: Would the subdivision have
17 to be predicated on it?

18 DIRECTOR HUNT: Yes.

19 COMMISSIONER MARDFIN: So we could approve an EA.

20 DIRECTOR HUNT: Let me retract. In my mind you
21 should talk to -- you should probably ask that question to
22 Mike Miyamoto, since he works for Public Works and they
23 handle subdivisions.

24 COMMISSIONER MARDFIN: Okay, Mike?

25 CHAIRMAN STARR: Mike, the fellow here has a hot

1 potato.

2 MR. MIYAMOTO: The water availability is in that
3 process, but until they come in for that development, I mean
4 the subdivision process would stop. I think until they go
5 to, you know, if they go into construction -- or we can't
6 review the plans until we get a letter from the Water
7 Department.

8 COMMISSIONER MARDFIN: The letter saying that
9 they have water?

10 MR. MIYAMOTO: That there is either a private
11 source or a county source available for the property.

12 COMMISSIONER MARDFIN: I agree with what my fellow
13 Commissioner said about I don't think we ought to lump this
14 as if it's one project. I do think that's a little unfair.
15 On the other hand, I don't think it's unfair ask for the
16 information that would be needed were either one alone a
17 larger project.

18 CHAIRMAN STARR: That's what we're doing, is just
19 asking for information.

20 COMMISSIONER MARDFIN: I don't think we should --
21 I don't think we should phrase it as if they're together.
22 They're not together. But I think we can ask for the same
23 information if Iwa Ike was a six unit subdivision or if Ke
24 Kani Kai was a six unit subdivision. Don't combine them.
25 They're not combined, they're separate. But I think that

1 the informational content is worth asking for.

2 CHAIRMAN STARR: I believe that's what we're
3 doing. We're saying that if this were a six unit then what
4 would those impacts be. Am I correct, Commissioner Hedani?

5 COMMISSIONER HEDANI: Yes.

6 CHAIRMAN STARR: So that's what, so that's what
7 we're doing.

8 COMMISSIONER MARDFIN: We're not joining these
9 two?

10 CHAIRMAN STARR: No. We're dealing only with Iwa
11 Ike.

12 MR. PRUTCH: Just to let you know, that Mike just
13 ran out. He's going to go find out the answer for the water
14 question. He's going over to Subdivisions right now to ask.

15 CHAIRMAN STARR: Okay.

16 MR. PRUTCH: When he comes back he should have an
17 answer for you.

18 CHAIRMAN STARR: Okay, Director?

19 DIRECTOR HUNT: Was the comment that processional
20 pathways, traditional paths, et cetera, was that addressed?

21 MR. PRUTCH: Yeah, that was in the first one on
22 providing clear mapping of archeological sites, including
23 heiaus, fish shrines, processional pathways, mentioned
24 there, clearly identified on the map.

25 CHAIRMAN STARR: Commissioner Pawsat.

1 COMMISSIONER PAWSAT: Does the county know of any
2 projects that are right in the tunnel in the same area that
3 are going to come up soon, because I mean we're talking
4 about placing too many demands on information on somebody.
5 I understand the point, but this information needs to be
6 gathered at some point, and at some point someone is going
7 to have to pay for the information, and someone is going to
8 have to pay for the open space. And if you come at the
9 beginning or you come at the end you're going to pay some
10 sort of price.

11 So I mean if there's any, if there's some sort of
12 unfairness construed from the fact that we're asking all
13 this information from this developer then, you know, the
14 only compromise would be that he be in contact with other
15 developers in the area who have their projects in the
16 pipeline, because they're going to contribute to that
17 information. But that's the only thing I can suggest. But,
18 you know.

19 CHAIRMAN STARR: Okay, Mr. Director, what have you
20 got that's in the neighborhood?

21 DIRECTOR HUNT: I can't tell you all the projects
22 that are that neighborhood off the top of my head. It would
23 require more of any analysis. But the environmental
24 assessment process does allow you to ask for cumulative
25 impacts. I think that's a reasonable request. And like I

1 said earlier, really the sky is the limit on your request
2 for information, as long as it's pertinent to this project.

3 I think the comments that were also made were that
4 we need to be cognizant of the fact that any request you put
5 on the applicant costs money, so it's a balance. And I
6 guess that's all I can give you. There's no fine line on
7 when you step over it.

8 When you get to the application we will have
9 concerns if you do start to combine this with another
10 application by another owner, but that's another issue. All
11 you're asking for is information at this point.

12 CHAIRMAN STARR: Commissioner Pawsat, was that an
13 additional comment, that looking for what's going on and
14 what other projects?

15 COMMISSIONER PAWSAT: Well, I'm just addressing
16 some of the comments, you know, that this might be an unfair
17 burden upon this developer. But I just want to say that it
18 doesn't matter, it's going to be a burden on someone,
19 whether it's the public or the developers, so it's
20 information that has to be had.

21 And, you know, I don't know who its up to, you
22 know, for the developer just to supply all of it or if the
23 onus is on him to contact other developers in the area and
24 ask them to contribute to the process. But it just seems
25 like this area is kind of in a pickle, and it needs to be

1 resolved.

2 CHAIRMAN STARR: Commissioner Hedani.

3 COMMISSIONER HEDANI: The applicant made a comment
4 that this is part of an area that's already been approved
5 for development in the larger Seibu development, and what
6 I'd like to see is if it's already approved as a larger
7 Seibu development, how that development relates to the
8 parcel.

9 CHAIRMAN STARR: Okay, Joe?

10 MR. PRUTCH: Please repeat, I had a hard time
11 hearing.

12 CHAIRMAN STARR: You'd better move the mic back
13 in.

14 COMMISSIONER HEDANI: Okay. The question is how
15 the development fits into the master plan of the surrounding
16 area. I guess that would be the best way to phrase it.

17 MR. PRUTCH: It's a question or a comment?

18 COMMISSIONER HEDANI: A question.

19 CHAIRMAN STARR: Okay. Hold on a second. Mike,
20 you're up.

21 MR. MIYAMOTO: Regarding the water issue, we spoke
22 with our subdivision section and we are subject to the Water
23 Availability Bill. The only -- I think our one exemption is
24 if it's a family subdivision there is a different process
25 that falls under that. In the Water Availability Bill, the

1 Water Department makes the determination whether the water
2 is available for the subdivision.

3 There are certain exemptions that are within that
4 Water Availability Bill that the Water Department Director
5 has to make a determination on. And whether this parcel
6 falls into those exemptions it's unknown at this point, the
7 Director would have to do that.

8 CHAIRMAN STARR: Question, Commissioner Mardfin.

9 COMMISSIONER MARDFIN: Joe, I was going to ask
10 the Director raised the issue about it would take more
11 research to find out what was in the pipeline. If some of
12 that information can be developed within, you know, we are
13 doing our one mile radius, find out what's already in the
14 pipeline so we know what's coming on, or potentially at
15 least, and that would be harder information.

16 I mean Mr. Kaufman earlier said what do you do
17 about stuff that's still single family devel -- single
18 family zoned. Well, if something is in the pipeline we
19 should have a harder -- that should be nailed down a little
20 bit more clearly as to what's coming along.

21 CHAIRMAN STARR: So it's a listing of projects in
22 the pipeline entitlement stage for a one mile radius. Okay,
23 so is that it, can we put this one to rest? Okay, Joe.

24 MR. KAUFMAN: Can I ask one question?

25 CHAIRMAN STARR: Please be brief.

1 MR. KAUFMAN: The issue is removing the fluff in
2 regard the archeological inventory survey report. That
3 report has been written and accepted by the state. We just
4 supplied it as is. I understand it's long. Are you asking
5 that the preamble of that report be removed from this in the
6 future? Because it's been accepted by SHPD and by OHA, and
7 everyone has read it. So it is what it is, as they say.

8 CHAIRMAN STARR: Commissioner Pawsat, is that
9 okay with you, if they just add the additional information
10 without removing stuff?

11 COMMISSIONER PAWSAT: Yeah, I suppose. It's just,
12 you know, I mean it's just worthless information. I don't
13 care if OHA or the State Historic Preservation has approved
14 whatever. You know, for the little time I've lived here,
15 the one thing that's clear to me is that OHA has problems
16 which they one admit, but then certainly the State Historic
17 Preservation Society has big problems, and they do admit it
18 and they do admit they're understaffed. So I don't know
19 what really to say.

20 CHAIRMAN STARR: Okay, to answer the question,
21 just add the additional information we asked for.

22 Okay, Joe, what is your recommended wording for
23 our action at this point? You don't have to reread that
24 list.

25 MR. PRUTCH: I'm not going to read everything. I

1 think we got through it all. The last few you added was an
2 analysis of the work force housing policy as if these were
3 one lot subdivided into six lots. A map showing or somehow
4 showing how this development -- or a question showing how
5 this development fits into the surrounding area, and a map
6 showing any other projects pending within the one mile
7 radius of the project site, if any.

8 CHAIRMAN STARR: Okay, good.

9 MR. PRUTCH: Those are the comments that I will
10 put forward in a letter and ship off to Greg Kaufman.

11 CHAIRMAN STARR: Okay. Corp Counsel, is there
12 additional action we should take at this point, or is that
13 it? I forget if there's something we usually do.

14 MR. GIROUX: No, I think at this point -- did the
15 Planning already file a concurrence with FONSI, a draft?

16 CHAIRMAN STARR: I don't think so.

17 DIRECTOR HUNT: We would be asking the Planning
18 Commission to provide a concurrence on a FONSI.

19 CHAIRMAN STARR: You might want to do that. Okay,
20 so if someone wanted to make a motion that we foresee a
21 finding of no significant impact pending the additional
22 comments, then they could be free to do so at this time. I
23 think that's what we usually do. Did I get the wording
24 right, James?

25 MR. GIROUX: Procedurally, just so everybody

1 understands, it's just so that when that's filed you don't
2 -- you are not necessarily automatically sending it off to
3 go get an EIS. This is part of the process of getting an EA
4 instead of an EIS. But that doesn't preclude you, when you
5 get the further information before you get the final, of
6 changing your mind.

7 CHAIRMAN STARR: I actually don't see why we need
8 to do that at this point, since we're dealing with a draft
9 and not the final document.

10 MR. GIROUX: It's an action that the Planning
11 Department is doing on your behalf. They're asking, did we
12 do -- it needs to be done, it's been done. It should be
13 done by you. It's being done by the Planning Department.
14 So it is in a sense an action of the Commission.

15 CHAIRMAN STARR: Okay, Director.

16 DIRECTOR HUNT: We've got two actions here. One
17 is to provide comments on the EA, and once we get those
18 comments we will publish it with OEQC. Along with that, we
19 have to notice people that there is an anticipated FONSI, so
20 that's part of the action. So we're telling the public we
21 anticipate a FONSI. So in order for us to order that OEQC,
22 we need the approval by this board.

23 CHAIRMAN STARR: Okay, happy days are here again.
24 Yes, Commissioner Mardfin.

25 COMMISSIONER MARDFIN: Is the reason to notify

1 that we anticipate a FONSI so that anybody that objects can
2 have fair warning?

3 DIRECTOR HUNT: I would assume so. It's just part
4 of the public sunshine process.

5 CHAIRMAN STARR: I never really liked this, I
6 never really liked this process. In fact, in the past I've
7 objected to it, feeling that there was likely impact. In
8 fact, there's definitely cumulative impact from every one of
9 these projects. But I'm willing to entertain that, if
10 that's what anyone wants to do, which I don't see right now.
11 Director, go ahead.

12 DIRECTOR HUNT: Just to help you out again, what
13 we're going down is a path on an environmental assessment.
14 And eventually you will come up with a final environmental
15 assessment with a FONSI, a finding of no significant impact.
16 It's not saying no impacts at all. No significant impact.

17 The alternative is to say no, there are
18 significant impacts and we want a full Environmental Impact
19 Statement, which involves a lot more analysis, a lot more
20 time and money. If you folks believe this project warrants
21 that because of significant impacts, then so be it. But
22 that's your choice.

23 CHAIRMAN STARR: Dr. Iaconetti?

24 COMMISSIONER IACONETTI: I have a hard time
25 stating that the likelihood is that there will be no

1 significant impact until we have the information that we've
2 asked for today. How can you say that? We don't know what
3 the answers to the questions we've been asking will be, so
4 how can we say there will be no significant impact?

5 CHAIRMAN STARR: I think there's merit to that.
6 Commissioner Hedani.

7 COMMISSIONER HEDANI: I was going to suggest to
8 the Commissioners that it feels like we're overburdening the
9 property with information requests. Let's move for a
10 finding of FONSI and forward it to the OEQC.

11 CHAIRMAN STARR: I missed that, I'm sorry. Oh,
12 okay.

13 COMMISSIONER HEDANI: I so move.

14 CHAIRMAN STARR: Okay. Is there a second?

15 COMMISSIONER MARDFIN: I'll second it. I'm
16 feeling badly about it, but I'll second it.

17 CHAIRMAN STARR: Okay, we have a motion by
18 Commissioner Hedani, seconded by Commissioner Mardfin, and
19 the motion reads --

20 DIRECTOR HUNT: That the Planning Commission
21 anticipates issuing a FONSI. You are not issuing it at this
22 date, you are anticipating issuing one in the future.

23 COMMISSIONER MARDFIN: Subject to the answers to
24 the questions that we posed today.

25 DIRECTOR HUNT: And when that information comes

1 back you can change your mind and say, wait a minute, there
2 are significant impacts.

3 COMMISSIONER HEDANI: Call for the question.

4 CHAIRMAN STARR: Okay, do you have the motion down
5 there, Joe? Subject to. Okay, all those in favor signify
6 by raising your hand.

7 (Commissioners Hedani, Mardfin, Hiranaga, Guard,
8 Iaconetti and Starr)

9 All those opposed?

10 (Commissioner Pawsat).

11 (Commissioners U'u and Domingo excused).

12 Okay, we have six to one. With reservations.

13 Moving right along. Do we need a few minutes?

14 Kekanikai. Okay, don't go anywhere, Mr. Kaufman, we've just
15 done with the one.

16 Paul, why don't you tell us where we're at. Oh,
17 okay, we're going to turn it over first to the Director, who
18 is going to introduce the next item, which is totally
19 separate from the last.

20 DIRECTOR HUNT: Just to be proper, your next item
21 involves Mr. Greg Kaufman on behalf of Pine State Limited
22 requesting comments on the Draft Environmental Assessment
23 determination prepared in support of the Community Plan
24 Amendment from single-family to rural, RU.5, for the
25 Kekanikai Subdivision a two lot rural subdivision.

1 CHAIRMAN STARR: Director, we're going to take a
2 break, a one minute recess.

3 (Whereupon a brief recess was had)

4 CHAIRMAN STARR: Okay, the Maui Planning
5 Commission session of July 8th is back in session.
6 Director, please introduce our next item.

7 DIRECTOR HUNT: Your next item involves Mr. Greg
8 Kaufman on behalf of Pine State Limited requesting comments
9 on the draft environmental assessment determination prepared
10 in support of the Community Plan Amendment from
11 single-family to rural RU.5 for the Kekanikai subdivision, a
12 two lot rural subdivision, and associated infrastructural
13 improvements at lot three Makena, Kenolio Road, TMK: 2-1-5,
14 lot 117, Makena. The file numbers are EA 2000715, CPA
15 200076, dba 200078, CIZ 2-7-15 and SM12007/18, and Paul Fasi
16 is the planner assigned to this.

17 CHAIRMAN STARR: Take it away, Mr. Fasi.

18 MR. FASI: Thank you, and good afternoon,
19 Commissioners. Transmitted at the April 22, 2008 meeting of
20 this body was the Draft Environmental Assessment for this
21 project. It was prepared by Mr. Greg Kaufman on behalf of
22 Pine State, Limited.

23 The proposed action involves the following
24 transitions. A change in zoning from interim to RU.5 rural,
25 Community Plan Amendment from single-family to rural, State

1 Land Use Commission District Boundary Amendment from ag to
2 rural. It is in the Special Management Area and they are
3 awaiting final subdivision approval. The trigger for the
4 Chapter 343 is the request for the Community Plan Amendment.
5 If you want me to, I will go into the details of the
6 property. If not, I won't.

7 CHAIRMAN STARR: I have reason to believe that
8 it's very similar to a previous item we've handled, so why
9 don't you tell us the areas where it differs.

10 MR. FASI: The property is 1.385 acres. It's for
11 a two lot subdivision, as opposed to the item you just
12 reviewed, which is a four lot subdivision. This is a down
13 zoning of the property, meaning that the zoning that they're
14 coming from and going into is less dense than the maximum
15 potential build-out.

16 The draft EA was submitted to the Planning
17 Department on November 9th, 2007. The OEQC publication date
18 for the draft EA was January 23rd, 2008. The 30-day public
19 comment deadline expired on February 22nd, 2008. The
20 Planning Department has reviewed the draft EA document and
21 finds that pursuant to OEQC the document meets the
22 requirements for a draft EA.

23 The department is requesting concurrence by the
24 Maui Planning Commission on filing draft EA and anticipated
25 FONSI, finding of no significant impact determination, at

1 today's meeting. So at today's meeting the department is
2 requesting comments on the draft EA, which will be
3 incorporated into the final EA.

4 I would like to bring to the Commission's
5 attention that this particular piece of property is directly
6 adjacent to the property that you just reviewed. Thank you.

7 CHAIRMAN STARR: Okay. Mr. Kaufman, anything
8 briefly on why -- on specific items related to this
9 particular project as opposed to the previous one?

10 MR. KAUFMAN: No. This was the one I showed you
11 the Power Point on, so just for clarification. Thank you.

12 CHAIRMAN STARR: Okay. Commissioner Mardfin?

13 COMMISSIONER MARDFIN: I'd like to -- you're
14 asking for areas of information questions we have, and I'd
15 like to say that everything that we gave on the previous --

16 CHAIRMAN STARR: Wait, wait, we are not ready to
17 take -- to discuss a particular request for information yet.

18 COMMISSIONER MARDFIN: Sorry.

19 CHAIRMAN STARR: But we're at a point where we're
20 asking for any additional areas of information, and then
21 we'll have public testimony, if any, and then we will go and
22 deal with specific requests for information. So at this
23 point are there any additional questions? Commissioner
24 Hedani.

25 COMMISSIONER HEDANI: Question for staff. The

1 comment was that it's a down zoning from single-family to
2 rural. Isn't it an up zoning from ag to rural?

3 MR. FASI: No, sir, that is incorrect. It's going
4 from interim. The County zoning is interim right now. The
5 community plan zoning is single-family. So in the
6 single-family zoning you can actually take I believe the
7 entire lot and subdivide it into several, numerous 6,000
8 square foot lots. Whereas what the applicant is proposing
9 is two half-acre lots.

10 COMMISSIONER HEDANI: Right, but you're down
11 zoning or you're down densitying it in the community plan
12 but you're upping it from ag to urban, right?

13 MR. FASI: We can put it in those terms.

14 CHAIRMAN STARR: Okay. Not seeing any more
15 questions, I'd like to open the floor. If there are any
16 members of the public who would like to give us any
17 testimony on this, please make yourself known.

18 Not seeing any, the opportunity for the public
19 comment is closed on this. Members who are ready for
20 comments regarding the EA on this item, and Mr. Fasi, do you
21 have a comment?

22 MR. FASI: Well, I don't think we're at that point
23 yet. I was just going to make a suggestion before you make
24 the motion.

25 CHAIRMAN STARR: Okay. Commissioner Mardfin.

1 COMMISSIONER MARDFIN: I was going to, and I am
2 now, reques -- saying that the information that we asked for
3 of the previous applicant, all those questions we want to
4 have answers to, I would not have a problem in the interest
5 of saving trees of having -- instead of having it duplicated
6 and get two copies of the same thing, I have no problem with
7 getting one copy. But I don't know how the, if the rest of
8 the members concur or not.

9 MR. FASI: That may be a little awkward only
10 because of the fact that we have two separate owners.

11 COMMISSIONER MARDFIN: Kill the trees.

12 MR. FASI: Well, what we're going to do is we are
13 going to reduce the front pitch size from 12 to 11.

14 COMMISSIONER MARDFIN: Thank you very much.

15 CHAIRMAN STARR: Anyway, I seem to hear an intent
16 in there that maybe some of the comments we have made
17 regarding the other project could be included in this.
18 Perhaps, Doc?

19 COMMISSIONER IACONETTI: That's exactly how I
20 feel, yes.

21 CHAIRMAN STARR: Okay. So the first comment is
22 that we include all the comments we made on the other
23 project.

24 COMMISSIONER IACONETTI: Right.

25 CHAIRMAN STARR: So, Joe -- Paul, can you just do

1 that? Our one comment was that you include all the comments
2 made on the other similar project.

3 MR. FASI: Exactly. So noted and accepted and
4 agreed to by the department.

5 CHAIRMAN STARR: Is there any additional comments
6 that anyone would like to make? Commissioner Pawsat.

7 COMMISSIONER PAWSAT: I think I might have
8 forgotten this. In the last one I brought it up, but I
9 don't know if it was included, about the contribution these
10 projects are making to restoring the original dry land
11 forest habitat that was there, if they're going to make an
12 effort, and how so are they going to make an effort in
13 restoring that.

14 CHAIRMAN STARR: Okay. So an additional comment
15 is what efforts are being made to help restore the dry land
16 forest habitat.

17 MR. FASI: So noted.

18 CHAIRMAN STARR: Any others, Members? Okay, not
19 seeing any, you have your comments now and we're open to
20 that wonderful motion that we all love so much. If anyone
21 wishes to make it, they can do so now, the one about a
22 potential finding.

23 Okay, not seeing any, we will consider this item
24 as done.

25 MR. FASI: Thank you.

1 CHAIRMAN STARR: Okay. Thank you, Mr. Kaufman,
2 and good luck with your project.

3 MR. KAUFMAN: Thank you.

4 CHAIRMAN STARR: We will see you back with a
5 finished document.

6 Is everyone here for this next one, the Maui Lu?

7 MS. CUA: Paul Mancini is here. I don't see Mr.
8 Haywood. Ann Cua from the Planning Department. I don't see
9 Mr. Haywood, but I do believe you have his intervenor's
10 objections that was passed out for you, and then you did
11 hear his testimony this morning.

12 CHAIRMAN STARR: All right. Director, why don't
13 you introduce the next item here.

14 DIRECTOR HUNT: Your next item involves adoption
15 of written Findings of Fact, Conclusions of Law, and
16 Decision and Order. The first item is Chris Hart and
17 Partners on behalf of Genesee Capital requesting a Special
18 Management Area Use Permit for the Maui Lu redevelopment
19 project consisting of the demolition of existing structures
20 and the redevelopment of the Maui Lu Resort into a 400 unit
21 time share complex with lock-off units, recreational
22 amenities, landscaping, beach nourishment, and related
23 improvements on approximately 27.2 acres of land at 575
24 South Kihei Road, TMK: 3-9-001, lots 83, 86 and 120, in
25 Kihei. The file number is SM1 2003/0021. Ann Cua is in

1 charge of this project on behalf of Joe Alueta.

2 MS. CUA: Mr. Chair, members of the Commission.
3 Just to briefly bring you up to speed, on January -- earlier
4 this year in January this body was presented with the
5 Hearing Officer's report, a proposed Findings of Fact,
6 Conclusions of Law, and Decision and Order for this project,
7 and at that meeting the Commission decided to defer action
8 on the Hearing Officer's report as well as the Special
9 Management Area Use Permit to receive additional evidence
10 into the record.

11 And you scheduled an additional meeting on March
12 11th, 2008, and you convened for the purpose of receiving a
13 report and recommendation from the Department of Planning,
14 which you did. Also a presentation by the applicant.
15 Further testimony from the applicant's consultants,
16 testimony and response to questions by the Commission from
17 the Hearing Officer, and the testimony of the Planning
18 Department staff.

19 On March 17th you reopened the hearing and you
20 continued discussions and received evidence as part of that
21 hearing. Again, as mentioned, you also heard testimony from
22 Planning Department staff and from the applicant's
23 witnesses. And at that meeting you voted to approve the
24 project with 31 conditions.

25 And so basically what the department did was

1 incorporated the conditions, the additional conditions that
2 you imposed into the -- into your proposed Findings of Fact,
3 Conclusions of Law, and Decision and Order. We also
4 expanded on the procedural portion, which included
5 discussion of what happened on the March 11th meeting, and
6 who testified. Remember Thorne Abbott testified from the
7 department, so all that is in there. We expanded on the
8 shoreline discussion.

9 The proposed Findings of Fact, Conclusions of Law,
10 and Decision and Order also references the changes made to
11 the project by the Commission by virtue of its conditions,
12 which is to remove -- one of the conditions was to remove
13 two of the buildings on the makai portion of the property.
14 Also, the applicant had agreed to some voluntary conditions.

15 And so there were findings put in the report to
16 support that, and those conditions included that the
17 buildings be LEED certified, and that in addition to the
18 project-related storm runoff, the applicant would retain
19 on-site runoff no less than 40 percent of the existing
20 runoff. A solid waste management plan for demolition
21 materials would be submitted to the Department of
22 Environmental Management.

23 So the facts to support all of the conditions that
24 the applicant had agreed to, the additional conditions that
25 you had recommended, are all included in what is before you

1 now as your proposed Findings of Fact, Conclusions of Law,
2 and Decision and Order.

3 The department was advised by Corporation Counsel
4 to place this matter as an agendaed item on your agenda.

5 And this, I think this is a little different from how we've
6 done things procedurally before. Some of you may recall

7 when we do have Decision and Orders we would just bring it
8 before you at a break and you'd sign it because you have

9 already rendered your decision. We have been advised by

10 Corp Counsel to handle it procedurally this way, and that's

11 why you see two matters on your agenda today. So this is

12 the first of your two Decision and Orders before you today.

13 And I don't know if, Corp Counsel, did I say everything that
14 I needed to?

15 MR. GIROUX: I guess what I wanted to do is just
16 to add to what Ann said is that, you know, because this went
17 to a Hearings Officer and the docket was reopened, it kind
18 of put a kind of cloud on our procedures as far as how do we
19 get to a final Findings of Facts, Conclusions of Law,

20 Decisions and Order, because once we get that document and
21 it's served on the parties, or whatever, it triggers an
22 appeal period that they have 30 days to get that.

23 So that document basically has to be something
24 that the board is confident that it reflects not only your
25 decision, but it reflects the facts that you reviewed and

1 also the Conclusions of Law as you understood them when you
2 reviewed not only the additional testimony but the prior
3 testimony that you weren't present.

4 So as far as reviewing the case, making sure that
5 all of the facts are accurate and all of the facts that you
6 base your conclusions of law are in the record, and that's
7 what this procedure is for.

8 There was an additional procedure that I'm a
9 little disappointed that I did request that this -- you've
10 served on the intervenor in a fashion that he would be able
11 to at least do his objections. He's filed this intervenor's
12 objection saying that he hasn't had adequate time, and that
13 bothers me, because under Chapter 91 because these were
14 proposed Findings of Facts the opposing party should be
15 given a chance to submit written objections to the Findings
16 of Facts and Conclusions of Law. And both parties should at
17 least be given one final chance as far as to clarify those
18 facts before it's adopted by the Chair. Or not the Chair,
19 but by the body.

20 And the reason why this is getting complicated as
21 far as procedure is because, number one, there was an
22 Intervenor involved. And whenever there's an Intervenor all
23 of a sudden there's a lot more procedural safeguards that we
24 have to take to make sure that your decisions are supported,
25 and if they're challenged in the courts that they're

1 confident that we did everything we needed to do to
2 safeguard everybody's rights, and also to make sure that we
3 have an accurate documentation of the decision that we made.
4 So that's the purpose for putting it back on the agenda.

5 And as far as in the future, I think that we are
6 going to be looking more closely at our Findings of Facts,
7 Conclusions of Law, and making sure that they're legally
8 supportable, because what we're finding is that we are
9 getting into a more litigious environment. And basically
10 what my job is to make sure that you guys look good when
11 things are appealed from here, because our litigators then
12 take it from there, and they have to defend your positions.
13 So it is very important that you understand that these
14 documents are basically your findings and your Conclusions
15 of Law.

16 CHAIRMAN STARR: I'd like to, first of all, thank
17 Corp Counsel for doing that and making sure it's done
18 properly because, as he said, these are our findings and
19 they're issued in our name, and this is the right process to
20 go through.

21 And I would like to disclose in this case that
22 earlier in the meeting that Mr. Haywood approached me and
23 asked whether he'd be able to comment later. And I told him
24 that since he is representing the Intervenor he would be
25 able to comment. But he's not here now, so I'm not sure

1 what that does with the process. And I want to be sure from
2 Council Giroux that he's comfortable with proceeding on this
3 in light of his filing but without the comments of the
4 Intervenor.

5 MR. GIROUX: I mean this puts us in a precarious
6 position. I would like to see what the opposing Counsel
7 thinks about this. Because ultimately I think it's their
8 client who is going to be affected if this does go on appeal
9 for some reason, and especially if it's a reason based on
10 some procedural matter, that he didn't get a chance to
11 adequately address the proposed Findings of Fact. So I
12 would like that on the record from Genesee Capital's
13 representative.

14 MS. CUA: Could I just add one thing before we
15 call Mr. Mancini up? In the second paragraph of the
16 Intervenor's objections it states that these objections are
17 intended as a substitution for oral testimony, which cannot
18 be offered due to unavailability.

19 CHAIRMAN STARR: Okay. Commissioner Mardfin?

20 COMMISSIONER MARDFIN: I'd like to ask the
21 Corporation Counsel what the appropriate time frame is for
22 Mr. Haywood to get the findings of fact, and what this time
23 period is that would be procedurally appropriate for him to
24 be able to respond.

25 MR. GIROUX: You know, because we are in this no

1 where land of procedure, the only things that I can look at
2 is in our rules where we have motions that need be responded
3 to, that they're given 10 days. If somebody files a motion,
4 somebody can do a motion in opposition, and they're given
5 about 10 days. So I'm only looking at the rules in its
6 totality. And if we give somebody in that position, and
7 motions are critical parts of a hearing and we're giving
8 somebody 10 days to respond or to get back, you know, to
9 this body with objections, I believe that that's the minimum
10 we should at least give an Intervenor who is going to object
11 to proposed Findings of Fact.

12 COMMISSIONER MARDFIN: So if we deferred this
13 until the next meeting, that would be sufficient time for
14 procedural objections to be dealt with?

15 MR. GIROUX: I think it would clear the air and
16 put us on firm ground, and we won't have to worry about this
17 coming back on some strange procedural objection.

18 CHAIRMAN STARR: We have to decide whether to
19 follow that path. But at this time I'd like to offer the
20 honorable Mr. Mancini to address us as per his wishes.

21 MR. MANCINI: Thank you. Good afternoon. I'll be
22 brief. I did read Mr. Haywood's objections, and I did hear
23 his testimony this morning. First of all, I thought we knew
24 this was going to be on the agenda for some time from the
25 staff, which in my mind I guess I've known for weeks and

1 weeks that it was going to be on the agenda today, and I
2 assume Mr. Haywood did also.

3 I take a little different perspective of the
4 procedures here than your Counsel did. On March 17th you
5 voted to make a decision, and you made a decision and you
6 rendered conditions and that was in the transcript. I did
7 read the transcripts, and I believe their findings are
8 consistent with the transcripts.

9 To me, the next step after that under your rule
10 1220181 is to just issue the decision. I don't believe you
11 had to submit proposed findings, you already made your
12 decision. It was your decision to make at that time. The
13 only criteria under the 1220182 is, one, the form of the
14 order in paragraph A. And 2, under paragraph A to issue it
15 within 60 days of oral, final oral argument.

16 Mr. Haywood and myself waived the oral argument on
17 March 17th. The Chairman asked at that time whether we
18 needed to speak further, and she asked whether we had any
19 objections to the procedures. And flipping to that page, on
20 page 83 I waive my oral argument in that transcript on lines
21 19 through 20, and Mr. Haywood did on lines 22 and 23. So I
22 believe we waived it, and the 60 days came into play,
23 obviously the past 60 days.

24 I take what he has written here as objections to
25 some degree saying he's taking exception for the few

1 findings in there. Most of the findings he took exception.
2 Those finding are filed in the Hearings Officer's report
3 going back to last year, and that hasn't changed over that
4 time.

5 So I believe you can go ahead and sign the
6 document and move it on. Under the rules he's got a right
7 to file a Motion For Reconsideration within 10 days under
8 1220184, if he wants it to be reconsidered for any reason.
9 That's my position.

10 CHAIRMAN STARR: Okay. Questions for Mr. Mancini?
11 Not seeing any. Okay, Commissioner Mardfin.

12 COMMISSIONER MARDFIN: From what you say, you'd
13 prefer us to vote on this today, rather than defer it to the
14 next meeting?

15 MR. MANCINI: You've already voted on this.
16 You've already made your decision, and it was voted at that
17 time. The issue is you have got a document before you which
18 embodies that decision you made. The next step is to sign
19 that document and serve on the parties under your rule, and
20 that starts the procedure for either repeal or a Motion For
21 Reconsideration. To me, it's very clear.

22 I think it was a bit miscast to put this down, his
23 proposed findings. This is your document. I think staff
24 and Counsel wanted to not do it other than an open manner,
25 and sent it on to everyone so they could see it. And if

1 they wanted to present something, they could present it, and
2 I don't think there's any timeline. Mr. Haywood did present
3 something and he filed his objections here.

4 COMMISSIONER MARDFIN: The reason I ask is
5 because it will probably be you and your client who will
6 bear the cost if this ties it up for another length, another
7 go-round. But if you are willing to take that chance.

8 CHAIRMAN STARR: Dr. Iaconetti?

9 COMMISSIONER IACONETTI: The key word here is
10 "proposed." I'd like to ask our legal Counsel if he feels
11 that all of the information was clear the first time we
12 voted on this, and if there's anything new in the findings
13 and conclusions that had not been proposed before.

14 MR. GIROUX: I think the, well, the reason it says
15 "proposed" is because when you voted you made a decision.
16 You didn't have a clean document that lists the facts, and
17 you didn't have a clean document that lists the conclusion.
18 You had a conglomerate of documents.

19 You had a report from the department, you had a
20 proposed Findings of Fact, Conclusions of Law from a
21 Hearings Officer that did not include additional
22 information. And then you had an additional report from the
23 department that -- I don't believe that report also included
24 additional testimony, because then after that report was
25 made then there was additional testimony.

1 So what you're taking is you're taking all of
2 these documents and you're taking all of those facts,
3 because we're incorporating the first hearing, the hearing
4 that took place outside of your venue. It was at the
5 Hearings Officer's office or whatever. And all of that
6 information was -- testimony was taken down and a report was
7 made of that. So what Ann did was she took some of that,
8 she updated it, and then we had additional testimony, and
9 then we had to add additional facts from the additional
10 testimony.

11 So that's why it's called "proposed," because if
12 there's something before you today that even though you
13 voted in favor of granting the SMA, but you see a fact that
14 you see that is substantially wrong from the facts that you
15 heard, this is your opportunity to say hey, this is not --
16 I didn't agree with this. I may have voted in favor of the
17 SMA, but it wasn't based on this fact.

18 This fact is erroneous or it wasn't based on this
19 Conclusion of Law, because I'm not finding a fact to support
20 that Conclusion of Law. So this is about getting the
21 accuracy of your document and getting everybody, even though
22 everybody voted in favor of the SMA, that's just a decision.

23 Now, to get nine people to agree on the facts and
24 law, well, this is our attempt to do that, is to produce a
25 proposed document that we believe encompasses the nature of

1 the hearing. Basically listing a litany of facts that we
2 believe that you accepted in order to get to the conclusion
3 that you accepted your SMA.

4 So basically I mean for every SMA hearing you are
5 going to get different facts, different Conclusions of Law.
6 So what we're doing is we're showing you this is the product
7 of all of these hours and hours and hours of testimony
8 condensed into a document that's going to be sufficiently
9 legally defensible to uphold the decision that you make.

10 COMMISSIONER IACONETTI: May I? Is there anything
11 new in the findings and conclusions that were not given to
12 us before? I understand what you said.

13 MR. GIROUX: Is there anything in the document
14 that was not incorporated into evidence? Mr. Mancini and I
15 looked over the document that was prepared, and line by line
16 there was, as far as their facts and conclusions, we could
17 point to places within the record that this information was
18 taken from, if that's what you're asking. So if there's
19 anything new, no, there's nothing new outside of what you
20 heard or what is in the record.

21 COMMISSIONER IACONETTI: So I'm hearing two
22 things. First of all, that Mr. Haywood has every right to
23 say, "I haven't had enough time to go over the proposed
24 findings." But on the other hand, there's nothing new, no
25 new proposed findings that are being given to us or him.

1 So --

2 MR. GIROUX: Well, except for this document. I
3 mean if you go and look at the proposed Findings of Facts of
4 the Hearings Officer and you compare that to this document,
5 yeah, there may be differences. But as far as his
6 participation in front of the Hearings Officer, you were
7 there to see his participation at the hearing that was in
8 front of you, so you're an eyewitness to that.

9 So you can look at the document and say, oh, was
10 that fact established at the hearing. People can see the
11 same thing and, you know, be looking at a different aspect
12 of it and disagree. And that's all the opportunity to
13 object is for, is to say, "I didn't see it that way. This
14 fact that you have here, I didn't see it that way."

15 CHAIRMAN STARR: Okay. Miss Cua?

16 MS. CUA: I just wanted to hopefully provide a
17 little bit of clarity. There's two things that, two dates
18 that happened in March. On March 11th you received a report
19 from the Planning Department, and that's the report where
20 you said, you know, Where is the report that looks like all
21 the other reports that we have. You know, we have a Hearing
22 Officer's report, but it doesn't look like any of the other
23 reports that we have, you know, with all the agency comments
24 and all the recommendations.

25 So you asked for that back in January. We

1 provided you that on March 11th. So you received that, you
2 discussed that, you heard from the applicant's consultants,
3 you heard from the Planning Department, but you didn't
4 finish your discussion on March 11th. On March 11th you
5 recessed your meeting because you wanted to further question
6 the department, and so that was recessed until March 17th.

7 So on March 17th we came to you again, we had
8 further discussion based on -- not with new report, based on
9 that same report that was prepared for your March 11th
10 meeting. And on March 17th we had further discussions, and
11 that's when you came up with all those, you know, with those
12 additional conditions, and that's when you made your
13 decision.

14 And I believe what James is saying is that this
15 proposed findings that is before you incorporates everything
16 that happened, including what happened on March 17th that
17 wasn't part of your March 11th report, but it was all --
18 it's all found in your transcripts, and that's all this is.
19 So there's nothing new in here. Everything that is part of
20 the record, which was accepted into evidence by the Hearing
21 Officer.

22 You also accepted some additional exhibits if you
23 recall at one of your meetings. All the testimony that was
24 put forth by the applicant, by the Planning Department, all
25 that is part of the record on which you made your decision

1 on March 17th. So it's all here, but this is the first
2 document that incorporates everything from beginning to end.
3 Does that make sense?

4 CHAIRMAN STARR: Yes. First Commissioner Mardfin,
5 then Dr. Iaconetti.

6 COMMISSIONER MARDFIN: I'd like to ask Corp
7 Counsel. I made -- I'm going to make a statement first. I
8 earlier asked Mr. Mancini if he and his client would prefer
9 just to go ahead today, and he said he would, even though
10 they may or may not bear some cost on that. We also bear
11 some cost, probably not financial, but in terms of
12 aggravation having to revisit this, all sorts of other
13 things.

14 And earlier I asked you if we deferred it one
15 meeting would that reduce the probability of this coming
16 back to bite us. And now you've heard Mr. Mancini's
17 response. I'd like to ask you again if you think it would
18 be a wise thing for us to do to defer it by one meeting.

19 MR. GIROUX: I can see as an advocate that you
20 want to move this forward. But as an arbiter, you really
21 just want to make sure that your process does not have any
22 reason to jump up and bite you in the butt. I mean you're
23 just trying to clean this thing up, you know.

24 And what I told Ann is, yeah, this thing went
25 sideways on us. You know, we went down a track where we had

1 to basically look at our procedures because we jumped track.
2 Although our rules allow us to do this, we did not have a
3 template that says, yeah, you are on the right track.

4 What it said was, yeah, you can open it up and
5 then we look in our rules and find out okay, then what?
6 Okay, now we can take testimony. Okay, then what? Well,
7 then we need the Findings of Fact, Conclusions of Law. And
8 then now there's all kinds of questions, oh, didn't we
9 already do that. And now we have additional information.

10 And then how does Chapter 91 interface with our procedures.

11 So knowing that, knowing that we're going on this
12 track of just making sure that the process is fair, open,
13 that everybody can rely on the fact that we did our job and
14 we did it in a clean fashion, we did it letting both
15 sides having fair participation, opportunity to be heard,
16 opportunity to make a case. Giving each other fair notice
17 of what was going on, yada, yada, yada.

18 Well, all of that is not in our rules, it's
19 incorporated in the spirit of our rules. So the last and
20 final hurdle is, okay, is everybody happy with the Findings
21 of Facts, Conclusions of Law, and then we're done. And then
22 they can go and take it to Circuit Court if they want to.

23 But, you know, being that this is our last hurdle,
24 I don't think we are going to be afoul of our 60 day rule if
25 we kick it for another two weeks. It would eliminate us

1 worrying about if somebody is going to file a
2 reconsideration, if they're going to file an appeal based on
3 their ability to comment, if we failed to follow Chapter
4 91-4, whatever. Whatever anybody out there can say you guys
5 failed to do, if we can clean it up and say no, we didn't
6 fail to do it, we gave everybody ample process.

7 So if they did appeal it, it would look really,
8 really silly in Circuit Court, because we're supposed to be
9 given deference. I mean this body is the expert in the
10 field. And also you are given wide leeway in interpreting
11 your own rules. As long as you don't run afoul of due
12 process, which means you shut somebody down, you don't --
13 you give them a chance to say what they need to say and then
14 you just railroad them.

15 So you have got to be clear that you're trying.
16 I'm not saying that's what's going on, but you want to avoid
17 any objection to that, you know, to that taint. And I know
18 Mr. Mancini is glad to go forward, but that's his risk. He
19 carries his own malpractice insurance, he carries his own
20 billable hours. He carries whatever he needs to carry to do
21 is job.

22 But what I'm telling you as your attorney is that
23 if you can avoid future litigation based on somebody
24 accusing you, this body, of not following a procedure, and
25 you can clean that up and you are not going to run afoul of

1 your own rules, then why not do it.

2 CHAIRMAN STARR: All right, Dr. Iaconetti.

3 COMMISSIONER IACONETTI: So that if we defer this
4 to a definite point, like to the next meeting, and approve
5 the present Findings of Fact and Conclusions of Law, would
6 the Intervenors have any other course to intervene again?

7 MR. GIROUX: No. What the procedure would be is
8 you would defer this to the next hearing with the
9 understanding that the Intervenor will be given notice and
10 he will be told that he can file any objections that he
11 feels need to be filed, and we will be making a decision at
12 the next meeting. This is going to be the final time that
13 this issue comes on our docket. We're going to be done with
14 it.

15 COMMISSIONER IACONETTI: In other words, he can't
16 object to our proving everything as it now stands, if he's
17 given another opportunity to object to the Findings of Fact
18 and Conclusions of Law.

19 MR. GIROUX: Right. One final, well, I wouldn't
20 say that you would approve it now, you wait until he shows
21 you what his objections are, you look at them, and then you
22 proceed accordingly.

23 CHAIRMAN STARR: Mr. Mancini had a quick comment.

24 MR. MANCINI: Just to comment on Dr. Iaconetti's
25 question. Mr. Haywood's complaint, as I read his objection,

1 is that he hasn't had time basically to respond. That's
2 what he's saying. So I would expect that he wants time to
3 object. So giving him time he will object, that's what he
4 wants.

5 He did state a number of objections in his written
6 testimony today on it. I won't comment on these. No matter
7 what, hopefully this thing will be signed at some date, and
8 once it's signed it will be served on the parties. And once
9 served, the appeal time and the motion for reconsideration
10 will then be triggered. Until it's signed, that doesn't
11 happen. And obviously we've been into this for a long time,
12 and I could say that he was a bit unfair. But maybe that's
13 unfair, because he's not here, so I don't want to say that.

14 I'd say I'd like to move it on. If your position
15 is to follow Counsel, what I would ask you to do is put it
16 on -- if this is not being overly arrogant, to place it
17 maybe the first thing on the agenda on the 22nd to deal with
18 the matter, if that's possible.

19 CHAIRMAN STARR: Commissioner Hedani?

20 COMMISSIONER HEDANI: Jim, for the open meetings
21 law and posting of agendas, don't we have to go 30 days?

22 MR. GIROUX: No. This is part of your
23 adjudicatory functions, and so it would merely be this is
24 between the parties and you. But you can put it on the
25 agenda in order that it -- so that you know that it's on the

1 next agenda.

2 CHAIRMAN STARR: Commissioner Hedani, did you have
3 a follow-up?

4 COMMISSIONER HEDANI: If it's appropriate, I was
5 going go ahead and move that we defer this item.

6 CHAIRMAN STARR: Before we do that, Dr.
7 Iaconetti.

8 COMMISSIONER IACONETTI: I was going to make the
9 motion that we defer it to a time definite.

10 CHAIRMAN STARR: Hold on a second. Yeah, Ann, go
11 ahead.

12 MS. CUA: This is also a selfish request. I just
13 wanted to let you know that I think the next meeting date is
14 the 21st. I'm actually on vacation, but I'm willing to
15 drive out from Lahaina to be here. It would be nice if I
16 could kind of know when, if that's even possible.

17 CHAIRMAN STARR: I hate to do that to you. Is Joe
18 going to be back?

19 MS. CUA: I don't know. No, I would prefer to be
20 here. I'll drive out, it's not a problem, but it would be
21 great if I could not come and stay the whole day here.

22 DIRECTOR HUNT: It's actually the 22nd, if that
23 makes any difference.

24 MS. CUA: No, I'm off the 21st and the 22nd.

25 CHAIRMAN STARR: Okay. What -- you know, although

1 frankly, the Chair feels that a reasonable man standard
2 would be that the clock ran out on this back in March or
3 sometime. You know, I do agree with Counsel that it's
4 probably best to go one step above and beyond to make sure
5 we're -- we're doing everything right. And so perhaps
6 deferring it is good.

7 I'd prefer not to put it as the first thing on the
8 agenda, because we're trying to schedule items where a lot
9 of public testimony for the 8:30 and 1:00 pm slot, but I'd
10 be very happy to schedule it for a time certain. You know,
11 I would suggest maybe 11:00 am, or something like that.

12 MR. MANCINI: Let's say right after the lunch
13 break. Because my experience is once you get into something
14 in the morning you never know when it's over, and if you
15 break for lunch then you can hold the parade back awhile and
16 let us come in and get it over with.

17 CHAIRMAN STARR: Would 1:00 pm work for you, Ann?
18 That way you can have a good brunch and go swimming and play
19 tennis and stuff like that.

20 Okay, we had a motion. Commissioner Hedani or
21 Doc, Dr. Iaconetti.

22 COMMISSIONER IACONETTI: I move that we defer this
23 to a time certain at our next meeting.

24 CHAIRMAN STARR: Do we have a second?

25 COMMISSIONER HEDANI: Second.

1 CHAIRMAN STARR: And so we have a motion by Dr.
2 Iaconetti, seconded by Commissioner Hedani, that we defer to
3 a time certain. That time certain shall be 1:00 pm at the
4 next meeting. Is that the 21st? The 22nd of July.

5 MR. GIROUX: And not to beat a dead horse, but
6 Mr. Mancini, do you have a preference of these objections
7 being filed with you? I think that the staff should give
8 some definite instructions to the Intervenor as far as when
9 they should file their exceptions and --

10 MR. MANCINI: I believe you should just notify the
11 Intervenor in this matter, because his objection has been
12 placed on the agenda at 1:00 at that time, period.

13 MR. GIROUX: And that he should have filed
14 something by then.

15 MR. MANCINI: He may do what he may want to do.

16 CHAIRMAN STARR: Okay. So we have a motion to
17 defer.

18 MR. GIROUX: I concur.

19 CHAIRMAN STARR: A motion to defer to a time
20 certain. We're calling the question on that. All in favor
21 please raise their hand.

22 (A unanimous show of hands)

23 Any opposed place raise your hand.

24 (None).

25 We have unanimous consent to defer to 1 pm on the

1 22nd. Thank you, and I apologize.

2 MR. MANCINI: Once again, I thank you for your
3 time. It's a long day. Thanks.

4 CHAIRMAN STARR: Thank you. Okay, and sorry to do
5 that to you.

6 (Addressing Ms. Cua) Can we buy you lunch that
7 day?

8 MS. CUA: That's okay.

9 Chairman Starr: Let's see. Director?

10 DIRECTOR HUNT: Your next item again is adoption
11 of written Findings of Facts, Conclusions of Law, and
12 Decision and Order. This one involves Kai Holu Association,
13 Inc., requesting an amendment to Condition number 23 of the
14 Special Management Area Use Permit for the Kai Holu
15 Subdivision, formerly known as Kaunoa II Subdivision, to
16 permit two farm dwellings per lot when currently only one
17 farm dwelling is allowed for lands located in the County
18 Agricultural District at TMK: 3-8-002, lots 101 to 117,
19 Spreckelsville.

20 One of the two farm dwellings per lot shall not
21 exceed 1,000 square feet of developable area. The current
22 Condition Number 23 restricts the number of farm dwellings
23 to one per lot. The subdivision is developed with 17 lots
24 on 39.7 acres of land. The file number is 95/SM1 1,000, and
25 Paul Fasi is the planner assigned to this.

1 MR. FASI: Good afternoon, Commissioners. This
2 application arises from an Application for an Amendment to
3 Permit Terms, Conditions and Time Stipulation filed on April
4 25, 2006. As the Director said, the purpose of the
5 application was to amend Condition Number 23 of their SMA
6 permit to allow a second habitable dwelling under 1,000
7 square feet.

8 On April 8, 2008 this body held a hearing on the
9 subject item, and after due deliberation this body denied
10 the applicant's request. And so before you we have the
11 Findings of Fact, Conclusions of Law, and Decision and Order
12 to be reviewed, and the department is asking for your
13 concurrence on this so we can thus go forward procedurally
14 with it.

15 CHAIRMAN STARR: Okay, Members, any questions on
16 this? Commissioner Hiranaga.

17 COMMISSIONER HIRANAGA: I was not present at this
18 meeting, and I don't agree with the decision that was
19 rendered. I'm just wondering if I'm required to sign.

20 CHAIRMAN STARR: Good question.

21 MR. GIROUX: I don't think you're required to
22 sign.

23 COMMISSIONER HIRANAGA: Thank you.

24 CHAIRMAN STARR: Okay, Members, anything?
25 Although it's not part of the process, and in fact we should

1 not be taking any external information as something that
2 would change or affect our signing on this just before we
3 act, I'd like to allow any member of the public that wants
4 to comment to comment, though it's not part of the process
5 and it's not usually done. But I will allow anyone who
6 wants to give comment on this to do so.

7 COMMISSIONER IACONETTI: Point of order. This was
8 voted upon by this body, decided upon by this body, and I
9 don't know why we should have to have any more testimony
10 concerning it. I think we made a decision at the meeting, I
11 think it was in April, and I think giving any further
12 testimony at this point is irrelevant and out of order.

13 CHAIRMAN STARR: Well, I agree that it would
14 probably be irrelevant, but I do feel it would be in order.
15 If someone wants to say something I would allow it. And so
16 if there are members of the public.

17 Not seeing any, that opportunity is closed. And I
18 do appreciate that comment. I did just want to give that
19 opportunity if anyone comes down here for that.

20 And seeing none, I don't think we actually will be
21 taking action, just signing this, is that correct?

22 MR. GIROUX: If there's no objections to the
23 Findings of Fact and Conclusions of Law you can do it by
24 consensus and then just sign it.

25 CHAIRMAN STARR: Okay. Well, rather than

1 consensus, we should just vote, we should just vote on it
2 then. Okay, so the Chair would entertain a motion to accept
3 these Conclusions of Law and Findings of Fact as our own.

4 COMMISSIONER HEDANI: So moved.

5 COMMISSIONER IACONETTI: Second.

6 CHAIRMAN STARR: Okay, so we have a motion by
7 Commissioner Hedani, seconded by Commissioner Iaconetti to
8 accept these as our Conclusions of Law and Decision and
9 Order. Commissioner Hiranaga?

10 COMMISSIONER HIRANAGA: So am I able to recuse
11 myself since I was not in attendance during this meeting?

12 MR. GIROUX: Yeah, that's fine.

13 CHAIRMAN STARR: Would recuse be the right term?

14 MR. GIROUX: He just -- I guess, well, you can
15 vote on adopting it, but your question was whether or not
16 you need to sign it, right?

17 COMMISSIONER HIRANAGA: Well, recusal is a no
18 vote, right?

19 CHAIRMAN STARR: Why don't you just vote no?

20 COMMISSIONER HIRANAGA: No, because I wasn't
21 present.

22 CHAIRMAN STARR: But then you wouldn't have
23 knowledge that that's what happened. Whatever you want to
24 do is fine.

25 MR. GIROUX: As long as the five people vote.

1 CHAIRMAN STARR: Commissioner Hedani?

2 COMMISSIONER HEDANI: I'd like to hear
3 Commissioner Hiranaga's concerns about the position.

4 CHAIRMAN STARR: Okay. Commissioner Hiranaga, do
5 you want to share anything more?

6 COMMISSIONER HIRANAGA: How much time have you
7 got? No, I don't think that's important. Just, you know, I
8 wasn't in attendance and so I didn't vote on the decision,
9 so I shouldn't be on record as signing the decision into
10 completeness.

11 COMMISSIONER HEDANI: Alternately what you can do
12 is sign it and put "Do not concur" if you don't concur.

13 CHAIRMAN STARR: Commissioner Mardfin?

14 COMMISSIONER MARDFIN: I just want to be clear why
15 we're taking this vote. I mean I think we passed it when we
16 passed it. Is it that we're just -- we're voting to accept
17 this particular document that solidifies what we orally
18 stated?

19 CHAIRMAN STARR: My understanding is we're not
20 saying that we necessarily agree with this position, but
21 just that it is a true representation of what occurred.

22 COMMISSIONER MARDFIN: So this is like approval
23 of minutes in effect, I mean it's that nature of things?

24 CHAIRMAN STARR: Yes. It's that this is what
25 occurred. Director?

1 DIRECTOR HUNT: Yeah, I think that's the track you
2 should be thinking of. If there's something in here that
3 you believe does not reflect the record, this is your
4 opportunity to correct that. And another option is, even if
5 you voted originally against the motion, you are not voting
6 on that motion again. What you're doing is voting on
7 whether this reflects that record. So you could conceivably
8 have voted against that motion, but vote affirmatively in
9 this case saying that this reflects the record, even though
10 I didn't agree with that decision.

11 Chairman Starr: Or vice versa.

12 DIRECTOR HUNT: Or vice versa.

13 CHAIRMAN STARR: Anyway, whatever you choose, you
14 know, choose to do, if you want to abstain or whatever,
15 that's fine, or vote yea or nay. Anyway, let's call the
16 question. All those in favor of the motion to accept this
17 as ours, please raise your hand.

18 (Commissioners Hedani, Iaconetti, Guard, Mardfin,
19 Pawsat, Starr)

20 All those opposed?

21 (None)

22 Okay, and all those abstaining?

23 (None)

24 And all those recusing?

25 (Commissioner Hiranaga)

1 (Commissioners U'u and Domingo excused)

2 So we have six in favor and one recuse. And as
3 such, do we need to sign it? Do we sign one and pass it
4 around, what do we do?

5 Okay. While we're moving that document around, we
6 have some minutes and action minutes to approve. And before
7 we do that, Director, with these does this mean that all the
8 action minutes are up to date?

9 DIRECTOR HUNT: According to our clerical, yes,
10 the action minutes are up to date.

11 CHAIRMAN STARR: Okay. And I would just like to
12 make a statement and compliment the staff, because this is
13 the first time in a while that we're actually up to date and
14 in proper conformance with having our action minutes, which
15 are the relevant documents for, according to law, up to date
16 and filed in a timely manner. So I just want to thank staff
17 for doing that.

18 And with that being said, the Chair would
19 entertain either correction or a motion on the minutes. I
20 did see one place Commissioner Mardfin's name was misspelled
21 in one of these.

22 COMMISSIONER MARDFIN: That was on the one that we
23 deferred.

24 CHAIRMAN STARR: Oh, is that where it was?

25 COMMISSIONER MARDFIN: It was on the --

1 CHAIRMAN STARR: The Maui Lu. Okay, I take that
2 back. His name is misspelled on that. So dealing with
3 these minutes and action minutes, do we have a motion or
4 comments or corrections? Okay, Commissioner Mardfin.

5 COMMISSIONER MARDFIN: On the May 13 minutes I'm
6 going to recuse myself because I wasn't at the meeting.

7 CHAIRMAN STARR: Okay. Do we have a motion
8 regarding May -- these minutes and action minutes as per the
9 agenda?

10 COMMISSIONER IACONETTI: I've got a comment. I
11 can't find it now, darn it, and I didn't mark it, but there
12 was one place here where there were enough people either
13 excused or absent that you only had four votes, and it
14 approved. And I can't find it right now, but I looked at it
15 and couldn't believe it. But I guess that's the end of my
16 comment, since I can't find it.

17 CHAIRMAN STARR: Well, could it have been an
18 abstention that was an affirmative vote?

19 COMMISSIONER IACONETTI: No. Well, forget it. It
20 obviously got passed by a lot of people.

21 COMMISSIONER HEDANI: Move to approve.

22 CHAIRMAN STARR: Okay. Do we have a second?

23 COMMISSIONER HIRANAGA: Second.

24 CHAIRMAN STARR: Okay. We have a motion by
25 Commissioner Hedani, seconded by Commissioner Hiranaga to

1 approve the minutes of the May 13th meeting, and the action
2 minutes of the April 22nd, May 13th and May 27th, June 10th,
3 and June 24th, 2008 meetings. Was that the intent of the
4 motion, Mr. Maker?

5 COMMISSIONER HEDANI: Yes.

6 CHAIRMAN STARR: Okay. So before we vote on that,
7 any other questions on this? Okay. All in favor please
8 raise your hand.

9 (Commissioners Hedani, Pawsat, Hiranaga, Guard,
10 Iaconetti, Starr)

11 All opposed?

12 (None)

13 And we have one -- I think you have to abstain.

14 COMMISSIONER MARDFIN: No, abstain is a yes.

15 (Commissioner Mardfin recused)

16 (Commissioners U'u and Domingo excused)

17 CHAIRMAN STARR: Okay. We have six in favor and
18 one recusal. Okay, moving right along.

19 COMMISSIONER MARDFIN: Mr. Chair, I don't know
20 whether I need to announce this or not. I know on the May
21 13th meeting you dealt with the Williams' property in Hana,
22 and at the request of the Williams' today I wrote a letter
23 in support of their project, because I do support the
24 project, and I sent that to Gladys Baisa, the Chair of the
25 Planning Committee.

1 CHAIRMAN STARR: Okay. That's fine. Did we
2 approve the project or not?

3 COMMISSIONER MARDFIN: Yes, with conditions.

4 CHAIRMAN STARR: So you actually concurred with
5 us?

6 COMMISSIONER MARDFIN: Yes, I concurred. It would
7 have been 7-0 instead of 6-0.

8 CHAIRMAN STARR: Okay, fine. Anyway, thank you
9 for that. We have the Director's Report, and for that we
10 will call on the Director.

11 DIRECTOR HUNT: The first items is a follow-up
12 from June 24th, and I don't believe there was anything to
13 follow up on. Correct me if I am wrong. The second one is
14 Planning Commission projects and issues, and this is your
15 opportunity to bring forth concerns or projects that you
16 would like to discuss or perhaps put on future agendas, et
17 cetera.

18 CHAIRMAN STARR: Commissioner Mardfin?

19 COMMISSIONER MARDFIN: Earlier during a break I
20 spoke to the Director about a particular project that
21 Jeffrey Dack has, and he suggested that I contact him
22 directly, and I will do that. But I don't know if there's a
23 deadline past which we can't object to things. I would hope
24 that mentioning this will allow me to, you know, if I find
25 out something from Jeffrey that I may want to talk about at

1 the next meeting, I'll let the Director know.

2 DIRECTOR HUNT: I believe that list of exemptions
3 is a list of actions that has been taken, so it allows you
4 to keep abreast of those actions and allows you to ask
5 questions about what happened.

6 COMMISSIONER MARDFIN: It says the status is open.
7 I don't know what that means. It means a decision has been
8 made or a decision hasn't been made?

9 DIRECTOR HUNT: I'll clarify that. That's a good
10 question.

11 CHAIRMAN STARR: Okay. I know in working on
12 agendas I'm having meetings on Thursday mornings following
13 our meetings with Clayton of the department, and if anyone
14 else wants to participate in that, any other one member,
15 they're welcome to contact me. We are trying to find ways
16 to move faster and get through backlog so we can work on
17 more policy items, and I'm open to more suggestions on how
18 we can do the thing better. Commissioner Hedani?

19 COMMISSIONER HEDANI: My suggestion would be to
20 make sure that every meeting has enough items on it so that
21 we don't short the meeting, you know, with a backlog of
22 projects.

23 CHAIRMAN STARR: Yes, and I thank you for that.
24 And actually I tried to do that for this meeting, and
25 because Clayton had been away and that was kind of the first

1 meeting after we discussed it, he didn't have anything ready
2 in hand in time to file. But the next meeting we will have
3 several items, in fact, probably several items more than we
4 will be able to handle, with the knowledge that we won't
5 feel guilty for deferring that which we can't get to.

6 Even if it's still early and we feel like taking a
7 break, we should feel free since we are knowingly going to
8 be trying to put more on our plate than we can finish. That
9 way if we do have to defer an item or whatever, we will have
10 a full agenda. Commissioner Hiranaga.

11 COMMISSIONER HIRANAGA: I brought this up at a
12 previous meeting, but the Director was not present. And I
13 made this request to the deputy, but since she's no longer
14 with the county, I thought I'd bring it up again.

15 This is with regards to the General Plan Update.
16 When it is presented to us I would like to see a map with an
17 overlay of the current land designations, what's proposed by
18 the department, and what was recommended by the GPAC, so we
19 can see what's been added, what's been taken out, where the
20 Planning Department may differ from the GPAC as far as where
21 they think growth should or should not be.

22 Also, I'd like to see who the major landowners are
23 on the proposed plan. And I guess this urban growth
24 boundary concept is based on smart growth, is that correct?

25 DIRECTOR HUNT: It's one of the concepts, yes.

1 COMMISSIONER HIRANAGA: I've heard this word a
2 lot, and I'm not that familiar. I thought it might be
3 useful if we had some type of a workshop in the future,
4 because I'm not sure if all the Commissioners are familiar
5 with the concepts of smart growth.

6 I've been to some conferences where it's been
7 brought up, but I don't know if there's various versions of
8 smart growth, there's just one accepted smart growth
9 methodology. So it would be useful for me, I'm not sure
10 about the other Commissioners.

11 DIRECTOR HUNT: We can certainly include the
12 different maps showing what the existing land use
13 designation is, what the department proposed, and then what
14 the GPAC proposed. There will probably be a third, well,
15 there may be a third one, what the department proposes now
16 after listening to GPAC. We may not agree across the board
17 with the GPAC recommendations. I don't think it will be a
18 problem to get a major landowner list.

19 Regarding the urban growth boundaries and the
20 smart growth, before each element of the general plan, staff
21 does a presentation. So for instance population, we go into
22 the background and the information that led up to the
23 conclusions and recommendations. We would do the same thing
24 for the urban growth boundaries. So I don't think you need
25 to request a specific presentation, it will be as part of

1 the General Plan review or, pardon me, the Maui Island Plan
2 review. We will give you an overview of the urban growth
3 boundaries.

4 CHAIRMAN STARR: I actually like the suggestion
5 that you made very much, and I'd like to look forward to an
6 opportunity to have a presentation on some of the current
7 thinking in the planning world regarding smart growth and
8 other concepts that are current and are being discussed. So
9 we will look for an opportunity for that, and let you know
10 in advance when it's going to be.

11 COMMISSIONER HIRANAGA: An explanation of the
12 underlying assumptions that you use to create your proposal.

13 DIRECTOR HUNT: It will be very detailed, you can
14 count on that.

15 COMMISSIONER HIRANAGA: Thank you.

16 CHAIRMAN STARR: Okay. And I'd like to ask the
17 Director for the two minute version of what Planning
18 Department projects are going on that we don't see. Just
19 can you give us a two minute version of what exciting is
20 happening in planning?

21 DIRECTOR HUNT: Projects that we're proposing, or
22 I don't understand.

23 CHAIRMAN STARR: What is going on in the Planning
24 Department that we are not seeing here in the Commission, or
25 even beyond the GPAC.

1 DIRECTOR HUNT: Oh, a lot of hard work and
2 over-worked bodies.

3 CHAIRMAN STARR: Is there any policy stuff coming
4 up? That's what I'm asking about.

5 DIRECTOR HUNT: I can make a presentation at the
6 next meeting, if that's what you'd like.

7 CHAIRMAN STARR: Yes, I'd be interested in seeing
8 what else is going on that we're not seeing. Dr. Iaconetti?

9 COMMISSIONER IACONETTI: I'd just like to
10 congratulate the Chairman for getting us over the elongated
11 agenda today in a very fast manner and complete manner.
12 Thank you.

13 CHAIRMAN STARR: Thank you, Doc, but I'm still
14 stressed that we deferred an item.

15 COMMISSIONER IACONETTI: And I'm stressing the
16 fact that I suggested you take your shoes off too.

17 CHAIRMAN STARR: Next time I'll come in flip
18 flops, but thanks for that. Anyway, we have items that will
19 be on the agenda for the next meeting, if anyone has any
20 comment. There will be a bunch of other items on there.
21 And once again, we will be trying to put major items at the
22 beginning of the meeting and just after lunch after the Maui
23 Lu.

24 We have some items that will be on the agenda
25 here. We are trying to give an overview of what will be at

1 the next meeting at each previous meeting. Commissioner
2 Mardfin has something to give us.

3 COMMISSIONER MARDFIN: I saw an article in the
4 Maui News a couple of weeks ago, a poster that was developed
5 on the reefs they're intending to put in the schools and
6 publicize throughout the county. I asked them if they could
7 get me a few copies, and I got more than I needed. So if
8 anyone would like a copy of this, you're free to take one.

9 CHAIRMAN STARR: All right. I'll take two. In
10 fact, if you have got more I'll put them up in the Boys and
11 Girls Clubhouses.

12 COMMISSIONER GUARD: I'll take one for the canoe
13 club.

14 COMMISSIONER MARDFIN: The Director wanted one.

15 CHAIRMAN STARR: I'll hold one up for the camera
16 guy (indicating).

17 Okay. While we're doing that, does anyone have
18 questions or comments on these reports? Not seeing any,
19 okay, next regular meeting is July 22nd. I wish everyone
20 health, wealth and happiness in the meantime. Director?

21 DIRECTOR HUNT: Is anyone not going to be here on
22 the 22nd? Thank you.

23 CHAIRMAN STARR: Okay. And thank you, everyone,
24 good meeting.

25 (The proceedings were concluded at 4:10 p.m.)

C E R T I F I C A T I O N

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I, JEANNETTE W. IWADO, Notary Public for the State of Hawaii, certify:

That the proceedings contained herein were taken by me in machine shorthand and were thereafter reduced to print under my supervision by means of computer-aided transcription; that the foregoing represents, to the best of my ability, a true and accurate transcript of the proceedings had in the foregoing matter.

Dated the 31 day of July, 2008



NOTARY PUBLIC, State of Hawaii

My commission expires 2/5/2012