

LAND USE COMMITTEE

Council of the County of Maui

MINUTES

June 20, 2007

Council Chamber

CONVENE: 9:03 a.m.

PRESENT: Councilmember Michael J. Molina, Chair
Councilmember Joseph Pontanilla, Vice-Chair
Councilmember Michelle Anderson, Member (Leave 12:00 p.m.)
Councilmember Gladys C. Baisa, Member
Councilmember Jo Anne Johnson, Member (Arrive 1:33 p.m.)
Councilmember Danny A. Mateo, Member (Arrive 1:33 p.m.)
Councilmember Bill Kauakea Medeiros, Member

EXCUSED: Councilmember G. Riki Hokama, Member
Councilmember Michael P. Victorino, Member

STAFF: Tammy M. Frias, Committee Secretary
Carla M. Nakata, Legislative Attorney
Ken Fukuoka, Director, Office of Council Services

Lei Kihm, Executive Assistant to Councilmember Bill Kauakea Medeiros
Jock Yamaguchi, Executive Assistant to Councilmember Michelle Anderson

ADMIN.: Jeffrey S. Hunt, Director, Department of Planning
Robyn Loudermilk, Planner, Department of Planning
Thorne Abbott, Planner, Department of Planning (Item No. 15)
Ann Cua, Planner, Department of Planning (Item No. 15)
Michael Miyamoto, Deputy Director, Department of Public Works and Environmental Management (Item No. 7)
Tracy Takamine, Chief, Solid Waste Division, Department of Public Works and Environmental Management (Item No. 7)
James A. Giroux, Deputy Corporation Counsel, Department of the Corporation Counsel (Item Nos. 7 and 15)
Michael J. Hopper, Deputy Corporation Counsel, Department of the Corporation Counsel (Item No. 7)

OTHERS: **Item No. 7:** Michael Munekiyo, Munekiyo & Hiraga, Inc.
Eric Matsuda, Project Engineer, SSFM International, Inc.
Jared Chang, Planner, SSFM International, Inc.
Daniel Ornellas, Maui District Land Agent, State Department of Land and Natural Resources

Bruce Mizel, General Manager, SOS Metals Island Recycling

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Jack Freitas, Maui Tow & Transport Co.
Buck Joiner
Lucienne deNaie, Sierra Club - Maui Conservation Committee
Lee Guthrie
Rob Parsons
Irene Bowie, Executive Director, Maui Tomorrow Foundation, Inc.
Tom Cook
Additional attendees (15)

PRESS: Ilima Loomis, *The Maui News*
Akaku--Maui County Community Television, Inc.

CHAIR MOLINA: . . .(*gavel*). . . Land Use Committee meeting for June 20, 2007 is now in session. Good morning, Members, or those of you who are here. For the record we'll, we have in attendance the Vice-Chair of the Committee, Mr. Joseph Pontanilla; along with Members Michelle Anderson; Gladys Baisa; and Bill Medeiros. And thank you very much, Members, for being here because this is normally an off week for the County Council and, as we all know, Council Members have various commitments during their off weeks, and I really appreciate you taking the time to be here.

We have two items to address today. For the morning session, Land Use Item No. 15, which is an Orientation Workshop by the Planning Department, and Land Use Item No. 7, which will be discussed this afternoon when we come back from recess, the District Boundary Amendment, Community Plan Amendment, and Change in Zoning for a County Abandoned Vehicle, Scrap Metal, and White Goods Facility.

But before we proceed with our first item, the Chair will ask the Committee Secretary if we have anyone in, interested in testifying on Land Use Item 15. Has there been any signups?

MS. FRIAS: No, Mr. Chair.

CHAIR MOLINA: No signups for Land Use Item No. 15. At this point. . .seeing no one signed up for the first item, are there any objections to. . .excuse me, to closing testimony on Land Use Item No. 15?

COUNCIL MEMBERS: No objections.

CHAIR MOLINA: Okay. Thank you very much. Committee Secretary, has there been anyone who has signed up for Land Use Item No. 7?

MS. FRIAS: No, Mr. Chair.

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CHAIR MOLINA: Okay, thank you. The Chair will leave testimony for Land Use Item No. 7 open. Any objections to that?

COUNCIL MEMBERS: No objections.

CHAIR MOLINA: Okay. Thank you very much. And speaking of other folks in attendance, we have our Committee Analyst Carla Nakata as well as our Committee Secretary Tammy Diaz [*sic*] Frias, and from the Corporation Counsel's Office we have Mr. James Giroux.

ITEM NO. 15: ORIENTATION WORKSHOP BY THE DEPARTMENT OF PLANNING
(C.C. No. 07-176)

The first item we will address is the first item, Land Use 15, and the Committee is in receipt of County Communication No. 07-176, from your Land Use Chair, yours truly, transmitting a request for an Orientation Workshop to be conducted by the Planning Department. And the, I guess the nexus or rationale for this is because the process is somewhat complicated, it's very complex and I think even Planning Department personnel have expressed to me in the past that it's not an easy topic to thoroughly understand, and I speak of land use zoning issues -- community plan amendments; SMAs, special management area permits and, and the like. So it was the Chair's request to ask our Council Chairman, Mr. Hokama, who by the way I do want to thank for providing this opportunity for us to have this workshop to, I guess, educates all of us. Although some of us are pretty well, understand the process, but there are those of us who could use a little refresher course, as well as members of the general public. 'Cause I've had members of the general public express to me, gee, I wish I could fully understand the process of land use zoning. So that is why we are here today. So, I would like to thank the Planning Department as well for, you know, openly willing to do this workshop for not only the Members but for the general public as well.

So, Members, at this time we're going to take a short break to set the Chambers up for the first presentation which will be done by Planner Robyn Loudermilk, Planning. . . Planning member, Department member Robyn Loudermilk, which has to do with the Planning Framework. So we will take a short recess to set the screen up for our first presentation. Meeting in recess. . . .(*gavel*). . .

RECESS: 9:07 a.m.

RECONVENE: 9:10 a.m.

CHAIR MOLINA: . . .(*gavel*). . . Land Use Committee meeting for June 20, 2007 is now reconvened. Members, we're about to start the presentation on our orientation workshop from the Department of Planning, but before that, the Chair would like to make mention for the record the Council Members that are excused for today's proceedings are. . . or this morning's proceedings, I should say, is Councilmembers Hokama, Johnson, Mateo, and Victorino. The Chair will now turn the

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mike over to Planner Robyn Loudermilk for our first presentation. Good morning, Ms. Loudermilk.

Note: Computer-generated presentation.

MS. LOUDERMILK: Good morning, Mr. Chair. Good morning, Members of the Committee. Today we'll be doing our orientation workshop to provide you with some background information on the Planning Framework and process in Maui County. Our agenda for this morning is that I will start off with the Planning Framework and the Overview. Secondly, we'll have Ann Cua go over the Zoning, Title 19 of Maui County Code, then we'll have Mr. Thorne Abbott of our office go through the Coastal Zone Management Program. Thorne will then go into the Environmental Assessment Process, which is part of the Chapter 343. Then, lastly, Ann Cua will go through the Application Process so you'll have a feel of a project from the beginning, how it comes in, works it way through the existing system prior to it being sent to Council for final action.

So, I'd like to start off with the Framework. I'd like to highlight some of the planning resources that we have available to the County. First of all, I'd like to talk about the planning commissions highlighted in the middle. There are three planning commissions in Maui County: one for the island of Lanai, one for the island of Maui, and one for the island of Molokai. The establishment of these three commissions as well as their duties and responsibilities are set forth in both the Maui County Charter and the Maui County Code, as amended. I'd like to highlight some specific areas of responsibilities of the commission. First, they advise the Mayor, Council, and the Planning Director in matters concerning Planning programs. The commissions review the General Plan and revisions that are prepared by the Planning Director or at the request of Council. The commissions also review other proposed land use ordinance and amendments prepared either by the Planning Director or the Council. Commissions can also prepare and submit to Council appropriate zoning regulations. The respective commissions act as the final authority in all matters relating to the Coastal Zone Management Law and adopt the rules pursuant to these laws. And lastly, they perform other duties as may be provided by law.

The second item that we have up is the Urban Design Review Board, and the Urban Design Review Board reviews and advises the planning commissions as well as the Planning Department on design matters for projects that are located within the Special Management Area as well as projects that are located on lands zoned Business Country Town. As you may or may not be familiar, the Business County Town District is a zoning district which also establishes design guidelines specific to the various regions. For the island of Maui, we have Hana, Paia, and Makawao town. The island of Lanai, we have Lanai City. And for the island of Molokai, we have Kaunakakai town.

Next, we have the Arborist Committee. The Arborist Committee is located within the Department of Parks and Recreation, but there are duties that have been delegated to the Planning Department. Areas, general areas of responsibility for the Arborist Committee include developing and maintaining a County Landscaping Plan, the review of landscape planting plans for public parks and street beautification, they make review and recommendations to bodies such

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as the Planning Department, and they administer the exceptional tree program. The Department's relationship with the Arborist Committee is that the Planning Department reviews and approves landscape planting plans required for the offsite parking, as well as street trees associated with a subdivision of four or more lots. Should applications or planting plans come into the Department that do not meet the criteria of the landscape planting plan, the option is to take it to the Arborist Committee for their review and recommendation on whether this planting plan can go forward or should be amended accordingly. So, to that end, the Committee does review and advise the Planning Department on landscaping proposals that do not meet the criteria for the County planting plan.

Next, we have the Hana Advisory Committee. The Hana Advisory Committee advises the Maui Planning Commission by conducting public hearings and providing recommendations on Planning Department applications that are located in the Hana Community Plan region and that require public hearings. So applications that require public hearings, County applications that require public hearings are held in the Hana region, either in Keanae or at the old Hana School Cafeteria, and the . . . Department provides the report and recommendation to the Hana Advisory Committee. I should note that in order to serve on the Hana Advisory Committee the members have to live in the Hana Community Plan region. Once the public hearings are conducted, the recommendations are then forwarded to the Maui Planning Commission for final review and approval.

Next, we have the Cultural Resources Commission. The Cultural Resources Commission advises and assists Federal, State, and County governmental agencies in carrying out historic preservation functions. The Commission reviews and takes actions on uses and architectural design within the Historic Zoning District of the Maui County Zoning Code. They can also recommend new ordinances establishing special treatment districts and/or archeological districts, and they can also initiate, accept, review, and recommend nominations for inclusion to the Hawaii and National Register of Historic Places.

In Maui County, there are three areas zoned Historic District. Two are located in Lahaina. The first area encompasses the area of the Banyan Tree and Kamehameha III School. The second area encompasses the inner part of Lahaina, including Maria Lanakila Church. And then there is one district here in Wailuku encompassing the Bailey House area.

In addition to these duties, the Commission also provides comments and recommendations on other County permits in which the Department feels that their expertise and comments would greatly assist in the deliberation process.

Lastly, we have a number of various Federal, State, and County agencies that provide recommendations and comments in their area of expertise. . . and in addition to all of these sources being available through the respective planning commissions, they are also available individually to the Council Members. As we have seen in the Council Land Use Committee depending on items and areas that come before this Commission. . . the. . . excuse me, this, the

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Council, that the Council does request representatives from a number of governmental agencies, not only the County.

When we're looking at the framework, we'll start off with the, the State Constitution. It was initially adopted by the people of Hawaii during the November 7, 1950 election, and the State Constitution sets forth the basic framework of government, governance in the State of Hawaii. The last Constitutional Convention was convened by the State in 1978, and the Constitution today was greatly impacted by that Con-Con.

Also in 1978, the Hawaii State Legislature adopted Act 100, the Hawaii State Planning Act, also known as the Hawaii State Plan and codified as Chapter 226, Hawaii Revised Statutes. The Hawaii State Plan is a statewide document identifying the long-range development of the State through goals, objectives, policies, and priority guidelines. In addition to the Hawaii State Plan, we also have the Maui County Charter that provides for the development and adoption of the General Plan as well as community/development plans.

You know at this point I'd like to talk a little bit about the County Charter, as it does set forth the framework for governance in Maui County. As discussed earlier, the Charter established the three planning commissions as well as defining the roles and responsibilities. The Charter also directs the County to adopt the General Plan and other land use ordinances such as the zoning ordinance.

The current General Plan for Maui County, General Plan 1990, was adopted by ordinance and became effective on September 1999. The 1990 General Plan was subsequently amended by ordinance in April of 1993.

In addition to the General Plan 1990 document, the General Plan is comprised of nine community plans within Maui County, and each community plan reflects the unique issues and needs of the community plan regions. We, we have Lanai, Molokai, Kihei-Makena, Wailuku-Kahului, Paia-Haiku, Makawao-Pukalani, West Maui, Hana, and there is also Kahoolawe. The General Plan is currently being updated based upon the passage of Bill 84 in 2004.

At this point in time, the Department is nearing completion on the first component of the update, which is the Countywide Policy document, and that should be going to the respective planning commissions within the next month.

. . .Next, we have the State land use law, known as Chapter 205 and which establishes the State Land Use Commission. Under the State land use law all lands in the State are classified into one of four districts: the Urban District, Agricultural District, Rural District, and the Conservation District. The map that we have up here shows the delineation of these districts. Additionally, Chapter 205 defines the permissible uses within each of these four districts. Though the State land use law does identify permissible uses, it does not preclude the counties from zoning Urban, Rural, and Agricultural lands through its zoning powers granted under Chapter 46, which we will

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talk about later. The only district that the counties have no zoning authority is the State Conservation District which is administered by the Board of Land and Natural Resources.

There are two types of actions that occur under the State land use law. First of all, is the District Boundary Amendment, and a District Boundary Amendment is basically a petition to classify lands from one district to another district. The second action that can be taken is called the spec..., is Special Use Permits. Within Chapter 205 unusual and reasonable uses not identified and permitted in the State Ag and Rural Districts can be permitted should they meet these five criteria. First, the use is not contrary to the objectives of the Chapter. So 205A is the Coastal Zone Management law. Secondly, the use would not adversely affect surrounding property. Three, the use would not unreasonably burden public agencies to provide a number of infrastructures. Four, unusual conditions, trends, and needs have arisen since the district boundaries were established, and the lands upon which the proposed use is sought isn't suited for the uses permitted in the district. These are important in that the State land use law which was initially adopted in 1961 and it originally was adopted with only three categories: Ag, Urban, and Conservation. It wasn't until 1966 that the Rural designation was put in. And the boundaries were permanently established in the 1970s. Though dependent on whether a property owner or government entity had come in to reclassify properties, we have properties that have been designated. . .today that they were designated 46 years ago.

There is a 15-acre threshold which determines who has the final decision-making authority on these two actions. If property. . .the size of the property coming in for reclassification is less than 15 acres. . .excuse me, greater than 15 acres, then the final decision making is with the State Land Use Commission. For the District Boundary Amendment, petitions would go straight to the Land Use Commission, and the County of Maui would be a mandatory party to these proceedings should those lands be located in Maui County.

Special Permits greater than 15 acres, the respective planning commission conducts the public hearing and then transmits the recommendations to the Land Use Commission, and then the Land Use Commission makes the final decision. If it is, the property is less than 15 acres, then the respective planning commissions conduct the public hearing. For the District Boundary Amendment, the final decision would be sent up to the Council. For Special Use Permits, the final decision making is with the respective planning commissions.

Next, we have zoning which is Chapter 40, oh, excuse me, Chapter 46 of the Hawaii Revised Statute as well as Title 19. Chapter 46 allows for the establishment of the zoning as well as planning and traffic commissions, which we now know as the respective planning commissions. Zoning for the County of Maui was first established on August 1, 1958 with the establishment of the Interim Zoning regulations, and the intent of the Interim Zoning regulations was pending a formal adoption of a comprehensive zoning ordinance and map. The Comprehensive Zoning Code was first adopted in 1960 and what it does, it provides for the regulation and utilization of land in a manner that encourages orderly development. And what we have listed are a number of permits and reviews identified in the Comprehensive Zoning Code that the commissions review.

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Next, I'd like to go through the Environmental Framework that we have. We'll start off with the Coastal Zone Management Act, which is Chapter 205A, Hawaii Revised Statutes. The Chapter 205A directs the counties to establish, among other things, special management areas as well as shoreline setback areas and rules to implement the goals, objectives, and policies of the Coastal Zone Management law. In December 1975, the Maui Planning Commission adopted interim special management area rules and regulations and interim special management area maps to implement the component of the Coastal Zone Management law. In 1979, the final maps were adopted by Maui County. Prior to the act, the enactment of the Coastal Zone Management law, Act 136 was established to set forth measures to protect the shoreline, and today we know that as the Shoreline Setback law. The planning commission was designated the authority for administering the shoreline setback area. The initial rules were adopted in 1972, with the most recent amendments to these setback rules occurring in Maui County in 2003. The respective planning commissions are the authority to review and approve the various special management area use permits and/or variances.

Lastly, we have Chapter 343 which is the Environmental Impact Statement law. This was adopted in 1974, and as part of this process the respective planning commissions have been designated the authority to review environmental assessments and environmental impact statements for General Plan, Community Plan Amendments that are not part of a comprehensive update as well as shoreline setback variances with, which affect the shoreline areas. And I'd like to note that the role the environmental impact statement plays in terms of the planning framework, that it does provide the environment to review and is a required component prior to any processing of a special management area permit, a shoreline setback variance, or the processing of the adoptions of the community plans. This 343 process needs to be completed prior to any public hearing or public review being done. And Ann Cua. .no, excuse me, Thorne Abbott will be talking more about the process itself. And that concludes the, the overview. I'd like to turn it over to Ann Cua now.

MS. CUA: Good morning, Members.

COUNCIL MEMBERS: Good morning.

MS. CUA: Today, I'm going to discuss with you the zoning portion of the overall Planning framework. And I, I think as, as we--I don't know if we mentioned this to you already, but just so that we can keep within the timeframe allotted for us today, we're going to go through all our presentations, you do have the handouts to follow along, and we'd ask that you hold your questions till the end and we'll have all of the, the Planners here and we'll be available to you to answer any questions that you may have.

Zoning in all counties is accomplished within the framework of a long-range comprehensive General Plan prepared or being prepared to guide the overall framework or future of the County. Zoning is one of many tools available to the County to put the General Plan into effect in an orderly manner. Zoning is found in Title 19 of the Maui County Code. There are two parts to. . .Title 19 as you see in this slide. The first part is, Article I, which contains the Interim

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Zoning provisions, and the second part, Article II, is the comprehensive zoning provisions. Interim, Interim zoning adopted in 1958 was created for the purpose of providing interim regulations pending the formal adoption of a comprehensive zoning and map. Although created as a temporary measure, as you most of you know we still have Interim zoning in place today, but we're working on that.

The use variance is a process utilized for Interim zoned lands in which the strict enforcement of any provisions in the Interim Zoning Code would involve practical difficulty or unnecessary hardship, and that the desired relief may be granted without being detrimental to the public interest, convenience, and welfare. The Board of Variance and Appeals conducts the public hearing on the request and then forwards the request to the County Council for final action.

Comprehensive Zoning. This was adopted in 1960 and it was created to regulate the utilization of land in a manner that encourages orderly development in accordance with the land use directives of the Hawaii Revised Statutes, the Revised Charter of the County, and the General Plan and community plans of the County. Comprehensive Zoning includes a number of zoning districts, which most of you are familiar with. . . --(*CHANGE OF TAPE, start 1b*)-- Residential, Apartment, Commercial and Industrial Districts. Each of these zoning districts list permitted uses and standards that regulate development. There are various mechanisms in place to administer comprehensive zoning in which you, as Council Members, have direct involvement. And today, I'm going to be discussing a number of permits that the Planning Department, the planning commission, and the Council reviews. And for a number of these permits, the planning commission has the authority to grant or deny, while for other permits the planning commission only serves as a review body making a recommendation to you, the County Council. As we go through these permits, you'll see acronyms which are used to identify various permits. For example, CIZ is a Change in Zoning. You will become much more familiar with these acronyms during your tenure as Council Members.

In preparation for this orientation, you know, I, I did this. . . considered discussing only permits that would come before you, but we felt that it would be much better to give you an overall look at what we do as a Department even if it means you're going to be listening to discussion of permits that you would be directly involved in, but I think you'll have a much better feel for what we do in our role as, as planners.

So the first permit I'm going to discuss with you today is, is the Change in Zoning application. Change in Zoning or CIZ process is found in Chapter 19.510 of the Maui County Code. It allows for the Change in Zoning from one zoning district to the other. For example, if an individual purchases a property that is zoned Residential and they intend to operate a business on the property, they are required to legally establish the use before they can operate. If the community plan for that region designates the site for business use, the applicant is able to file an application to change the zoning from Residential to Business. The planning commission conducts the public hearing on the application and makes the recommendation to the County Council. The County Council is the final authority on Change in Zoning applications. The map that you see in this slide is a typical land zoning map for a property that is being rezoned. The

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map contains such information as location, land area, tax map key number, and the existing and proposed zoning of the property.

Conditional Permits or CP are found in 19.40 of the Maui County Code. The intent of the Conditional Permit is to provide the opportunity to consider establishing uses that are not specifically permitted within a particular zone; where the proposed use is similar, related or compatible to those permitted uses. The planning commission conducts the public hearing on the application and makes a recommendation to the County Council, and as with the Change in Zoning application, you are the authority on Conditional Permit applications. The project in this slide is the West Maui Federal Credit Union, which was granted a Conditional Permit to convert a single-family residence into a business within the Single-Family Residential District. Both the planning commission and the Council found that the business use within an existing single-family residence was compatible with the Residential Zoning District and would not be detrimental to the surrounding neighborhood.

The County Special Use Permit or CUP is found in Chapter 19.510 of Maui County Code. A County Special Use Permit allows for certain special uses in a particular zoning district. The use proposed must comply with the specific criteria established for the permit. This slide illustrates a church that was approved by the planning commission as a County Special Use Permit in the Residential District. Churches are not listed as a permitted use in the Residential District, but they are listed as a special use. A public hearing with the planning commission is required to establish a County special use and the planning commission is the final authority to grant County Special Use Permits.

The Planned Development Process or PD is found in Chapter 19.32 of the Maui County Code. The Planned Development is a mechanism that allows reduction of minimum lot areas, greater building densities and, and mixed land uses in order to encourage desirable design and land use patterns within existing natural environments. Planned Developments are able to achieve overall unit densities while maintaining common open space, recreational, and community facilities. Planned Developments are a three-step process. All steps require review and approval by the planning commission. The first step is a review of the Planned Development concept plan. The second step involves the review of a sketch plan of the development, including drainage, street. . .streets, utilities, grading, landscaping, and open spaces, land uses, et cetera. And the final step involves the review of construction plans. The site in this slide illustrate, illustrates the Puamana Planned Development, which I think many of you are familiar with. It was, it was approved by the planning commission in the early '70s.

Project Districts. The Project District or PH process, as it is referred to, is found in Chapter 19.45 of the Maui County Code. The intent of project districts are to provide for a flexible and creative planning approach rather than specific land use designations. A typical project district will have multiple land uses, such as Residential, Commercial, Open Space, and Public/Quasi-Public. Project Districts are a three-phase process. The first phase establishes land uses and standards for the Project District through an ordinance. The planning commission is required to conduct a public hearing in the affected community plan region. For example, if the

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proposed Project District is in Lahaina, the planning commission must hold a public hearing in West Maui. The commission makes a recommendation to the County Council, and the County Council is the final authority on the Phase I Project District process. An example of this that you're going to be reviewing, I believe, in the near future is the Pulelehua Project District. I think most of you are aware of that. We transmitted that application up to you. . .some time ago, and I believe the Committee's going to be taking that matter up. . .I think within the next couple of months. The Phase II Project District process involves approval of a preliminary site plan for the Project District. This site plan must conform to the standards of development contained in the Project District ordinance. As in Phase I, the planning commission is required to conduct a public hearing in the affected community plan region. The commission is the final authority to grant Phase II Project District approval of the preliminary site plan. The Phase III Project District process involves the review of a final site plan for the project. The Planning Department reviews the final site plan for consistency with the preliminary site plan that was approved by the planning commission. If the Department finds consistency with that preliminary site plan, the Planning Director grants approval of the final site plan. The map in this slide is the Maui Lani Project District map that was adopted as part of the Phase II Project District approval. You can see the multiple land uses within the Project District.

Bed & Breakfast Homes. Regulations on Bed & Breakfast Homes are found in Chapter 19.64 of the Maui County Code. This process allows small, local businesses the opportunity to provide visitor accommodations in a residential neighborhood provided that characters of the residential neighborhoods are retained. There are three types of Bed & Breakfast permits. The Type I Permit is limited to one to two bedrooms. The Planning Director is the final authority to approve Type I B&B Permits. Type II Permits are limited to three to four bedrooms. A public hearing is required and the planning commission is the final authority to approve Type II B&B Permits. The final permit, Type III B&B Permit, is limited to five to six bedrooms. The commission conducts the public hearing and makes a recommendation to the County Council, and you are the authority to approve Type III Bed & Breakfast Permits.

Country Town Business District. This Chapter is found in 19.15 of the Maui County Code and it establishes development standards for businesses in rural communities such as Makawao town, Paia town, Hana town. The Maui Planning Commission approved design guidelines for these Country Town Business areas, and the Planning Department administers these design guidelines and grants approval of projects within these districts. The Department at times refers projects within Country Town Business Districts to the Maui Urban Design Review Board to obtain their recommendation before we grant our approval.

The last permit, the last permits I'm going to cover with you today, first, is Off-Site Parking. Provisions for Off-Site Parking are found in Chapter 19.36 of the Maui County Code. The planning commission has the authority to grant Off-Site Parking approval to allow required parking for a project to be provided on another lot within 400 feet. So, for example, if, if you're familiar with the Lahaina Historic District, it's an old district, you have buildings that were built. . .completely, the floor plan completely covers the entire site; there is no area for parking. When a use changes. . .when it goes from, for example, retail to restaurant, the parking

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requirement intensifies. How are they going to get those additional stalls? They have no place to put them on site. They are able to use this section of the Code to, to obtain Off-Site Parking approval. It has to be within a distance of 400 feet and currently, the planning commission has to grant that approval. If an individual or business is not able to find parking within the 400 feet but they can find parking outside of the 400 feet, they would not be able to use this Off-Site Parking provision. They would have to obtain a variance to get. . .to vary from the requirement to have parking within a 400-foot distance, and they would be able to, if granted, have, provide required parking outside of the 400-foot distance.

Accessory Uses. Accessory Uses are identified in various zoning districts within the County Code. If a use is not identified as an Accessory Use, it may be. . .or if it. . .excuse me, if it's not identified as an Accessory Use, it may be considered for approval by the planning commission--I'm sorry, if it is identified as an Accessory Use. Okay.

At this point, I'd like to turn the presentation over to Thorne, and he's going to talk about the Coastal Zone Management Program and the Special Management Area boundary of the County of Maui. When he concludes his presentation, we believe a break would be in order and then we'd return back to complete the Department's presentation. Thank you.

MR. ABBOTT: Thank you, Ann and Robyn. Aloha and good morning. My name's Thorne Abbot. I'm the Coastal Resources and Shoreline Planner for Maui County, and I want to thank the Chair and esteemed Council Members for allowing us to, to give you this presentation. Today, I'd like to speak about Special Management Area and Shoreline Setback Area Rules.

The Special Management Area begins at the ocean and runs mauka or inland to the nearest State highway, and here it's shown in purple on the island of Maui. Under the State Constitution, the State Legislature passed the Coastal Zone Management Act, Hawaii Revised Statutes Chapter 205A, and that empowered the commissions to pass their own Special Management Rules and Shoreline Setback Area Rules. The commissions review Special Management Area Major Permits, SMIs, and Shoreline Setback Variances.

Now all lands and waters of the State are actually within the designated coastal zone. The law regulates all "development" within the coastal zone through consistency determinations or conditional permits. Plus the law regulatory authority in the Special Management Area to each commission through home rule.

The State Office of Planning issues consistency determinations for any action proposed by a government agency in the coastal zones. So in other words, for the whole island and the waters. However, the commissions issue conditional permits for any proposed actions, whether they'd be private or public, within Special Management Areas. And Maui County's SMA boundaries were adopted in 1979 and subsequently approved by the State and Federal government.

There are ten broad goals and objectives in the Coastal Zone Management Act, and these mirror the Federal Coastal Zone Management Act. For example, we are in..., intended to provide

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coastal recreational opportunities to the public; we're to protect, preserve, and restore Hawaiian and American cultural and historic resources; we're to conserve aquatic natural resources for sustainable development; we're supposed to reduce risk to new structures and enhance public safety; we're intended to protect, preserve, and restore coastal views, open space, and scenery; enhance public beach access and minimize beach loss due to erosion and site hardening; minimize adverse impacts and protect coastal ecosystems; provide and co-locate coastal dependent facilities while minimizing negative impacts; we're to streamline the permitting process and enhance public awareness; as well as to stimulate that public awareness with education and participation.

There are a number of permits that come from the Special Management Area Rules. The first is an SMA Major or SM1. That's for a project that's over 125,000, it involves a public hearing, all owners within 500 feet are notified by certified mail of that public hearing, and the Maui Planning Commission can place conditions on that project to avoid, minimize, or mitigate any adverse impacts.

There are also SMA Minor Projects and those are under \$125,000, no public hearing is involved, and the Planning Director can impose conditions to avoid, minimize, or mitigate any adverse impacts.

An Emergency Permit is for when there's an imminent and substantial harm to public welfare, or to prevent substantial physical harm to persons or property. The Director approves it, but he has to report to the commission at their next, regularly scheduled meeting. The permit expires in 180 days and, again, it can have conditions to avoid, minimize, and mitigate any adverse impacts.

And finally, there are SMA Exemptions. These are items that are defined as "not development" within HRS 205A. For example, building a home, a single-family residence. However, that exemption is only granted after an SMA Assessment is conducted by the Department to determine that there is no adverse impact on drainage; view planes; archaeologic. . . archaeology; any historic, natural, or coastal resources; and we also look at cumulative resources and cumulative impacts.

We can also deny a permit if it's inconsistent with State land use, General Plan, community plan, zoning, flood, or building codes, or if it has an adverse impact on coastal resources.

There is specific Decision-Making Criteria. There can be no adverse environmental or ecological effect based on the 12 criteria listed in the SMA Rules; the proposed use has to be consistent with State land use, General Plan, community plan, and zoning designations; the effects have to be minimized in light of any compelling public interest, such as a public safety or a welfare project; and it has to be consistent with SMA Guidelines.

What are those Guidelines? We have to provide adequate access to publicly owned beaches, recreational areas, wildlife and nature reserves; we have to have adequately and properly located

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public recreational facilities; or to control and manage and minimize impacts of pollution; or to minimize any adverse effects to water resources and scenic, and recreational amenities; and minimize the risk of proposed structures failing as a result of coastal hazards. And we do that through our shoreline setbacks and FEMA regulations.

There is specific criteria for approval. The commission can place reasonable terms and conditions, but they have to seek to minimize, where reasonable: dredging, filling, and altering any coastal areas; reductions in beach size; impediments to public beach and coastal recreation; any loss of coastal view plans; adverse effects to water quality, fisheries, wildlife, and habitat; and any loss of existing or potential agricultural uses.

Now just to clarify, the Director can issue SMA Exemptions, and that can be granted after an SMA Assessment is completed. A number of times the public thinks that because you don't need a building permit or perhaps you don't need a grading permit, you don't need an SMA Assessment. That is not necessarily the case. Particularly for walls and fences in the shoreline setback area people think, oh, I don't need a building permit; therefore, I can do it. Well, you still need an SMA Assessment, and once that assessment is completed, the Director can issue an exemption based on the 12 criteria in the SMA Rules as long as it's consistent with its land use designations; there's no direct, indirect, long or short-term adverse impacts; there's no cumulative impacts; or those impacts are outweighed by some compelling public interest. For example on the Pali, the recently put up metal wire against the cliff line. That may have had an adverse impact, but that was outweighed by a compelling public interest, that is the safety of vehic..., vehicular traffic. It also has to meet the definition of "not development" that it's in the law; and the proposed action has to avoid, minimize, and/or mitigate any potential adverse impact to coastal and natural resources. Any representations, for example, an applicant may represent that they have an approved archaeological monitoring plan that they're going to use to mitigate any potential adverse impacts to cultural resources at the site during excavation. So these are actually written into the Director's approval that they're not "conditions of the permit" because exemptions cannot contain conditions of approval.

Next, I'd like to speak about Maui Planning Commission's Shoreline Setback Rules, and right now we're doing the General Plan update and I think a lot about what Maui's going to look like in year 2030, and personally I certainly hope it doesn't look like this.

A few interesting facts. We have 129,000 visitors, I'm sorry, residents. We have 43,000 visitors a day. We have 120 linear miles of shoreline, 56 miles of that is sandy shoreline; 16 miles of that is already armored by revetments, seawalls, rocks, they were placed by man. That's about 28 percent of our sandy shoreline. We've lost 5 miles of beach in 19..., since 1949. We have 3 miles of road that are threatened by erosion, and on average we lose about 1.1 foot a year to the ocean, and beaches are about 70 percent narrower in front of seawalls.

So we have options. We can protect the land or we can keep the beach. On the right-hand side you see an unstabilized situation where the land's lost but the beach is preserved, and this is coastal erosion. It's a natural process where the shoreline retreats over long periods of time from

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sea level rise, wind and water and wave action. While the shoreline's retreating, the beach width is maintained from sand which is nature..., naturally released from dunes or sand reservoirs. On the left-hand side we have a stabilized situation where the beach is lost but the land's preserved, and as you can see there's a house behind that seawall. And this is beach erosion and that's a loss of sandy beach width. As the reservoirs are depleted, sand transport is hindered or sand reservoirs are impounded by man-made structures, such as seawalls, revetments, or slab-on-grade construction.

You'll see this is Paia. This is a very good example of coastal erosion. 1912 shoreline, you talk to the old-timers, they used to go out there to have their barbecue at that reef offshore. So we've had a great deal of shoreline retreat, but you see we still have a beautiful beach out there 'cause the width has been maintained.

Unbalanced beach erosion is, is accelerated by shoreline armoring and hindering sand transport. This is Baldwin Beach. You see in the circle is the showerhead on the left side and on the right side, August 9th the shoreline was well. . . well makai of the showerhead, but just three weeks later, August 30th, the showerhead's in the ocean.

Our shorelines provide for our economy, our recreation, fishing and food, our quality of life, culture, and tourism. Our shorelines offer great ocean views, picture postcards, an ocean sports recreation, and even beachside seating. Maybe we needed to take a new direction in light of our significant beach losses. We need to be proactive versus reactive.

So the County hired Chip Fletcher of the School of Ocean and Earth Science Technology, University of Hawaii, to study our erosion problems. And he looked at the North Shore, West Maui, and the Kihei Coast; and from that he developed 32 maps and these maps have the historic shoreline position for the entire beach cell and that's overlaid onto an aerial photo. And you see these squiggly lines on the lower picture, well that's, that's where the shoreline's been over time. Based on these maps, the Maui Planning Commission adopted new rules, October 28, 2003, and they regulate the use and activities of land within the shoreline area to protect health, safety, and welfare of the public by providing minimum protection from coastal natural hazards; and ensures public use and enjoyment of the shoreline resources are preserved and protected for future generations. And there's two methods to determine the shoreline setback -- the Annual Erosion Hazard Rate and the Average Lot Depth method.

The Erosion Rate method is based on the maps that Chip developed. And you see these red bars? Those are the erosion rate that transects, that are separated by every 20 meters, basically every 66 feet. So nearly every parcel has its own established erosion rate. To determine your setback, you take the erosion rate from the maps developed by UH, and these are available at our website, you add a buffer for storm surge and high wave events and sea level rise. And so you take 50 years, times the erosion rate, plus 25 feet; that's your setback.

Now, when there's room to move, move mauka, move inland. We know erosion's happening. We know sea level rise is occurring. So we also use an Average Lot Depth method. If your lot is

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less than 100 foot, the setback's 25 feet. If your lot's 100 to 160 feet, the setback's 40 feet, and if your lot's over 160 feet, it's 25 percent of your lot, up to 150 foot maximum. How do you decide Average Lot Depth? Well, you take the left side of the parcel, the right side of the parcel, the center line of the parcel and you add them up, divide by 3, and take 25 percent of that.

Now a question I frequently get is, what's my setback? As you see here, this is National Marine Sanctuary, the Whale Sanctuary down in Kihei, and you see there's four gold lines. Those are the transects with the erosion rates plotted mak..., mauka. On the far left is the ocean and a red line at the bottom of a revet..., revetment, that's the State Certified Shoreline, and we measure the shoreline setback from that point. And it's important to get that State Certified Shoreline Survey for a couple of reasons. One, it serves the baseline to determine where we measure the setback from. Two, it determines if you have any encroachments on to State property. A lot of the old seawalls are actually on the State's property. And three, it defines who has jurisdiction, the State or the County. So the pink line that's inland is the Average Lot Depth setback located laterally from the shoreline, but as you see the shoreline's convex. The blue line is the Average Lot Depth set at parallel to the shoreline, and then the gold line is the setback based on the erosion rate. The final setback is actually the more mauka segments of each of these setback lines as shown in green. Here we are.

There's a couple of different things we do as a Department. We make shoreline setback determinations. This determines the location of the setback; it determines that the setback is properly located; it's valid for one year; it normally requires a State Certified Shoreline Survey; and that decision is made by the Planning Director. There's also shoreline setback approvals. This requires Chapter 343 compliance, that's the Environment Assessment, EIS compliance; and it's for things that are explicitly permitted in the shoreline setback area. Those are actually defined in our rules. There's also approval with conditions. That requires Chapter 343 compliance, and it's something the Director determined to be a minor structure or activity that's permissible within the shoreline setback area. For example, repair of a legal seawall or portable/moveable walkways. Also, you can get a Shoreline Setback Variance, and that's decided by the Maui Planning Commission; it requires Chapter 343 compliance; a public hearing; all abutting landowners are notified; and it requires a State Certified Shoreline Survey. Finally, we can deny an application for something to be built in the setback area if you cannot prove it's nonconforming. For example, you have an illegal seawall or it hardens the shoreline; or it prevents sand transport; or it blocks public access to beaches or recreation; or finally, if it encroaches on State-owned lands, such as the beach reserve. One misconception is that if you do not "abut" the shoreline, the Shoreline Setback Rules do not apply to you. That is not correct. You still need an SMA assessment and a Shoreline Setback Determination to see if you're subject to the rules or not.

There are permissible structures within the setback area. Any minor structure or activity that's under \$125,000 that does not adversely affect beach processes; doesn't artificially fix the shoreline; doesn't interfere with public access; and doesn't block public views. You can build new structures, but they have to be elevated on pilings or columns out of base flood elevation; the County has to be held harmless; and it can't harden the shoreline. And our oceanfront

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property owners should actually be very grateful for these rules because it actually helped reduce their insurance rates.

Also, permissible structures, we're adding structure/activity that was approved since 1989; aquaculture or agricultural activities; public boating or water sports facilities; beach nourishment and restoration projects; existing non-conforming structures; minor structures as defined in the rules; repairs of legal structures up to 50 percent, so long as they don't enlarge, expand, or intensify the use of the structure; and repairs of non-conforming structures, again, so long as it doesn't enlarge, expand, or intensify the use, and assuming it was not damaged by coastal hazards.

If it was damaged by a coastal hazard, you would probably have to pursue a shoreline setback variance, approved by the commission, and there's criteria for that approval: cultivation of crops or aquaculture; landscaping; moving a sand within a beach or dune system; drainage improvements or maintenance; publicly-owned boating or water sports facilities; public facility repairs or improvements or even utilities; private facilities and/or improvements that are clearly in the public interest. For example, some hotels are actually wanting to demolish their. . . --(*CHANGE OF TAPE, start 2a*)-- . . .and upgrade the hotels, and they want to relocate more mauka because it's very important for their business to continue to have a beach. Protection of a legal, legally habitable structure or any public infrastructure; private facilities and/or improvements that don't artificially fix the shoreline; they don't adversely affect beach processes; and it'll result in a hardship if it wasn't approved.

There are mandatory conditions as well. You have to have safe lateral access to and along the shoreline for public use, or you have to compensate for its loss; you have to minimize risk of adverse impacts on beach processes; minimize risk of structures failing; minimize adverse impacts on public views; and it has to comply with flood hazard, erosion control, and sedimentation rules.

In conclusion, the Coastal Zone Management Program has been very effective and the Shoreline Rules have been very well received by the public based on the logical idea of setting things away from the ocean based on historic erosion rates. But we are doing some program enhancements, for example, Federally-mandated performance standards focused on outcomes rather than only outputs of the CZM program; studies that streamline and improve the effectiveness and efficiency of the SMA and Shoreline Setback permitting process; we have a website now to explain the process for SMA and Shoreline Permitting and we have brochures in process; we're looking at new view plane analysis using enhanced protocols and tested methodologies; the Beach Management Plan is being updated by Zoe Norcross-Nu'u right now from the Sea Grant College. She and Dolan Eversole also wrote a guide to Purchasing Coastal Real Estate in Hawaii, which you can download from our website. We have a Shoreline Access Inventory that needs to be updated; we're looking at perhaps resolving a revolving coastal conservation and beach nourishment fund so the fines and penalties from SMA violations or shoreline violations would go back to restoring beaches here on Maui; possibly a beach mitigation bank; and certainly rule amendments to clarify the rules and enhance the public's understanding.

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Thank you very much for your time, and I believe at this point we'll have a break. Is that correct, Chair?

CHAIR MOLINA: Okay. Thank you, Mr. Abbott, and thank you to the Department, and that is correct. There's a lot of information to absorb, but at the same time the Chair really appreciates, you know, condensing this information and making it very. . .much more easier to comprehend. So, Members, at this time it is ten minutes after the hour of 10 o'clock. The Chair will call for a recess. Let us return at 10:25. . .*(gavel)*. . .

RECESS: 10:10 a.m.

RECONVENE: 10:30 a.m.

CHAIR MOLINA: . . .*(gavel)*. . . Land Use Committee meeting for June 20, 2007 is now back in session, and we will continue with our presentation from the Planning Department and Mr. Abbott.

MR. ABBOTT: Thank you, Chair Molina and Council Members, and thank you very much for that break. I'm sure I don't want to hear myself talk that long.

Next, I'd like to speak about Environmental Assessments and the Environmental Impact Statements and the Environmental Process. Chapter 343, Hawaii Revised Statutes, falls under the State Constitution. . .and it was adopted in 1974. It encourages the conservation and natural of nat..., natural resources and enhancement of quality of life. Chapter 343 is the statutory basis for dev..., developing and processing of Environmental Assessments and Environmental Impact Statements, which I'll refer to as EAs and EIS'. Many development projects require the preparation of an EA or EIS. Before these development projects are approved, consideration must be given to environmental, social, and economic consequences. The Chapter 343 process also assures the public the right to participate, and the agency charged with administering Chapter 343 is called the State Office of Environmental Quality Control or OEQC. We certainly love acronyms in Planning. The OEQC publishes, publishes. . .publishes notices of EA or EIS documents in their Environmental Notice, and that's also available on their website.

Now how does Chapter 343 apply to projects? Well, first off not all projects require an EA or EIS. The law has established nine triggers and two types of actions--those proposed by an agency or those provide, proposed by a private applicant. There are also ten exemption classes. The exemptions are actions with minimal or no significant effect on the environment, and there's also several exceptions. These apply when an exemption is normally applicable, but the cumulative impact of that planned action in the same place over time is significant or when a normally insignificant action may impact a particularly sensitive environmental area. The County of Maui has a comprehensive list of exemptions for all departments, and the most recent version of that list was adopted by the Environmental Council in January 2007.

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Now there are nine triggers, as I mentioned: the use of State or County lands or funds; uses within the shoreline area or shoreline setback area; use within a historic site that's designated either in the National or Hawaii Register; amendments to County General Plan; proposed wastewater facilities; waste-to-energy landfills; oil refineries or power generating facilities; use of Conservation District lands or reclassification of Conservation District lands; also helicopters facilities in the Waikiki area of Oahu.

Now, EAs and EIS's are somewhat similar and the process begins with preconsultation. Prior to preparing a draft EA, it's important to consult with government agencies and the community regarding the proposed activity. And the preconsultation process the scope and . . .of the project is developed and is detailed for any potential impacts that are identified. If in the preparation and preconsultation it's found that there are no anticipated significant impacts, then a draft Environmental Assessment is prepared, and this is an informational document prepared by the proposing agency or the private applicant and it's used to evaluate the possible environmental effects of a proposed action and determine if an EIS is actually required. A draft EA includes any anticipated impacts and it's filed with the OEQC. The OEQC publishes the notice of the draft EA and a 30-day public comment period begins. All comments received during the comment period are responded to and both the comment letters and any applicant or agency, I'm sorry, any agency comments are responded to by the applicant and then included in the final EA. If the final EA anticipates no significant impacts, a FONSI or Finding of No Significant Impact is made. They used to refer to this as a Neg. Dec. or a Neg. . . ., Negative Declaration of Impact. The FONSI determination is filed with the OEQC and the 30-day legal challenge period begins. Once that 30-day period ends, permit processing can continue.

Alternatively, if through the preconsultation process significant impacts are anticipated, then an Environmental Impact Statement is filed. An EIS assesses the proposed project through research, discussion, and review. It must at a very bare minimum identify environmental concerns, obtain various relative data, conduct necessary studies, receive public input, evaluate alternatives from proposed measures for minimizing any adverse impacts.

An EIS Prep. Notice is issued and a 30-day public comment period begins. A draft EIS is then prepared and filed with OEQC. The OEQC publishes the notice of the draft EIS. Once filed, a 45-day public comment period begins. All comments received during the comment period are responded to and both the comment letters and the applicant's and agency responses are included in the final EIS. The final EIS document is filed with the OEQC and, if acceptable, a 60-day challenge period begins. Once the 60-day challenge period is over permit processing can begin. However, if it is not acceptable, then there's a 60-day appeal period. And so both with EAs and EIS's, they begin with a draft, agencies and public comment, the applicant responds to those comments, and includes those in the final EA or EIS.

Now, looking at Chapter 343, Review and Eval. . . ., Evaluation, again, EAs and EIS's are similar in structure; however, the EIS is a much more detailed disclosure document which includes a detailed analysis of alternatives and mitigation measures. Both documents must address impacts on the surrounding environment caused by proposed development; both documents must

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consider mitigation measures which are actions used to prevent, lessen, or counteract potential impacts; both EAs and EIS's must identify alternatives for the proposed action. And in the photos you see some examples of what impacts a development may have on wildlife and would be captured by an EA or EIS.

The top photo shows sea life that is entangled in man-made debris. Now an adverse impact of, for example, the fishing industry might be this entanglement, but a mitigation measure might be to conduct additional research that would come up with nets that would allow for escape mechanisms. For example, they have turtle escape mechanisms in a large, long net. . . commercial fishing nets. So it's not to say that there won't be an adverse impact, it's just that that adverse impact can be avoided, minimized or especially mitigated. The photo below shows impacts of sedimentation on coastal waters from inadequate land management methods. So this is also something that should be captured in the EA or EIS.

Now an Environmental Assessment should consider every phase of the proposed action, and it also has to consider all types of impacts. There are four basic types of impacts: primary/secondary, regional/site specific, cumulative, short and long term. In order to determine whether a proposal will have an impact on the environment, potential impacts are evaluated in relation to various significant criteria, and it's important to note that there may be some unresolved issues in, in evaluating a potential impact. For example, we wouldn't close down an entire fishing industry just because it's going to have a negative impact on some wildlife. We might find that is an unresolved issue and require research on different kinds of nets that could be used to minimize that impact.

First, looking at Potential Impacts, we have primary impacts which are effects caused by the proposed action and occur at the same time and place. Next, we have secondary effects which are caused by the proposed action and are later in time or further removed in distance, but still reasonably foreseeable. On the left side, you see as a direct effect this subdivision caused impacts to wildlife habitat. On the right-hand side, you see that a parking lot has been built as a result of this subdivision and that oily runoff from cars would probably enter the ocean and have a negative effect on marine life, coral reefs, and water quality. So that's a secondary impact.

Looking at regional impacts and potential impacts. Regional are those effects caused by the proposed action on a large scale basis. For a site specific effects are those caused by a proposed action in a smaller localized area. An example of a site specific impact is on the right-hand side, for example, limited to say a building addition in which you just look at the impact of that, on that particular parcel. But on the left-hand side if we're going to propose a development on West Maui, a large development, we'd want to look at other developments that are in process and how that might affect regional traffic.

Primary, secondary, cumulative, regional, and site specific impacts can all both have short-term and long-term effects. Short-term impacts occur immediately and long-term impacts occur over a given period of time. For example, here's a golf course. One of the obvious short-term impacts is it's going to increase water usage for the greens, you see a lake there. But over a long

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term the fertilizer that runs off from that golf course could have adverse impacts on coral reefs and nearshore water quality.

Finally, we have to consider cumulative impacts, and that's the impact on the environment resulting from the incremental impact of the action when added to other past, present, or reasonably foreseeable future actions regardless of what agency or person undertakes such actions, and the ideal example of that is traffic congestion.

Now there is significant criteria when you're reviewing any potential impacts if it involves an irrevocable commitment to or loss or destruction of any natural or cultural resource that curtails the range of beneficial uses of the environment; it conflicts with the State's long-term environmental policies or goals and guidelines; it substantially affects the economic or social welfare, the community or State; it substantially affects public health; involves substantial secondary impacts, such as population changes or effects on public facilities; it involves a substantial degradation of environmental quality; is individually limited but cumulatively has considerable effect upon the environment or involves a commitment of larger actions; it substantially affects a rare, threatened, or endangered species, or its habitat; it detrimentally affects air or water quality or ambient noise levels; or it affects or is likely to suffer damage by being located in an environmentally sensitive area such as a wetland or flood plain; or it substantially affects scenic vistas and view planes identified in County or State plans or studies; and finally, if it requires substantial energy consumption.

Now looking at these significant criteria you'll notice some key words as far as measuring those: irrevocable, destruction, conflicts, substantial, considerable, or detrimental. And we can measure these significant criteria, and in some cases, in a quant..., quantified way such as air or water quality which is measured in parts per million, or traffic that can be measured by levels of service, or noise measured by decibels. But there's also qualitative determination, such as scenic vistas or aesthetics.

When looking at mitigation measures, they're meant to prevent, lessen, or counteract potential impacts. Again, it doesn't necessarily mean there won't be an impact, but it does mean that you're going to try to prevent it or lessen or minimize that impact to the best possible ability. So, for example, best management practices for erosion control, turn lanes for level of service, or preservation plans for excavation when you might find some cultural remains. And a lot of times these mitigation measures are identified through the agency comments that come in on the EA or EIS. Likewise, the public frequently is very familiar with a particular site and they may have a greater sensitivity to the pros and cons or benefits and...cost of a particular alternative that's being proposed. And by implementing these different mitigation measures, you can actually reduce the level of significance of the impact to the point where perhaps an EI..., EIS is not necessary and only an EA is.

Finally, in looking at the alternative ana..., analysis you have to consider all the different potential impacts and mitigation measures; you need to have community input; you need to discuss beneficial uses; you also need to discuss the preferred alternative; and this is supposed to

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be the least detrimental effect on the environment, but that's not always the case. You have to consider a list of alternative methods such as using a different site or a different location; or, for example, proposing you're building on a different part of the property. You also have to look at density or intensity of use. For example, rather than having a six-story high rise, perhaps you could have single-story development over a larger period, larger area. You also have to consider redesign and also the "no action" alternative or no project at all. Usually not very popular, but it serves as a baseline.

With that, I'll turn it over to Ann Cua and she's going to talk about the permitting process a bit, and thank you for your time.

MS. CUA: Okay. When we initially met with the Chair of this Committee, one, one item when we were talking about the content of what, what we're going to discuss with you today, one thing that he thought would be extremely helpful is what happens, what happens with these applications that come before us? What happens when it, from the time it comes to the Department to the time it gets to us? And this is something we'd never actually presented to the planning commission before. So you're actually the first to receive this part of our presentation. So, I've made it very brief and, you know, I'm going to be available, as, as will the others, to answer any questions that you may have.

Once the application or once an application is received by the Planning Department, it's assigned to a Planner. The Planner reviews the application for content pursuant to Chapter 19.510 of the Maui County Code. Now the applications that we're talking or discussing specifically today is the Community Plan Amendment and the Change in Zoning because what the Chair had asked was a typical application that comes to you as Council Members.

Okay. When we review the application, we're, we're checking to see if it has all the necessary information that we need for us to process the application. If it does, the application is deemed acceptable and the application is transmitted to governmental agencies for review and comment. If the application is not acceptable, the Planner writes a letter to the applicant indicating any deficiencies with the application and gives the applicant a specific amount of time to resolve any deficiencies. If the applicant is able to resolve the deficiencies, the Planner then accepts the application and transmits it to the applical..., applicable governmental agencies for review and comment. We, we do want to note that we do transmit applications to a number of County, State, and Federal agencies, and at time other agencies, such as the University of Hawaii Sea Grant Extension. And when Robyn was going over her presentation, she also talked about other boards and commissions that we use as resources, like the Urban Design Review Board, the Cultural Resources Commission, the Arborist Committee. There's times where depending on the issue surrounding a particular application we may send an application to a very...or a, a specific board or commission just to get comments, and we make that part of our analysis that we present to the planning commission and, ultimately, to you. If the deficiencies in the application are not able to be resolved, what usually happens is the application is either returned to the applicant, or the applicant withdraws the application.

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When we send an application to governmental agencies, we normally give them 30 days to comment. Because of the number of applications that we process in the Department, we place the responsibility for follow-up with the applicant. Applicants are usually happy to do this because they know that their project will not be scheduled or cannot be scheduled until all agency comments are received. Normally, we do not receive all agency comments within the 30-day time period, you know, agencies face as we do in the County problems with lack of staff or just working on just too many projects at one, one time; and so, therefore, there, there are challenges to, to meet this 30-day review, review period.

What the Planning Department does after the 30-day review period is over and we have not received comments from some of the agencies, is we send them a reminder, a written reminder saying, you know, on such and such a date we asked you to comment on this application and we asked that you commented, that would comment to us by a certain date. Well, this date has passed and we haven't heard from you yet. So if you haven't given us your comments, please do so within the next couple of weeks and if you have, then please disregard this comment.

Okay. If all pertinent agency comments have been received and the Department and all. . .and the, and the Department has resolved all outstanding agency issues, then the Department deems the application to be complete and the matter is scheduled for public hearing with the respective planning commission. If there are agency concerns that need to be resolved, the applicant works directly with the respective agency and notifies the Department when the, the issues have been resolved. If agency concerns cannot be resolved, and that does happen sometimes, the applications are usually withdrawn by the applicant or returned to the applicant by the Department. If agency issues are able to be resolved, then we're back to deeming the application complete and then the project is scheduled for public hearing with the respective planning commission.

At that point, the Department prepares a public hearing notice to the applicant 45 days prior to the public hearing notifying them of the public hearing date with the respective planning commission. The notice of hearing is published in *The Maui News*, and a Molokai paper for Molokai projects, by the Planning Department at least 30 days prior to the public hearing date. The applicant also sends out a notice of hearing with the location map at least 30 days prior to the hearing to the landowners and lessees within a 500-foot radius of the project site. The applicant also publishes the same notice in a paper once a week for three consecutive weeks. The Planner at that point prepares a report which outlines the facts of the applications as well as an analysis pursuant to Chapter 19.510 of the Maui County Code. The Department also prepares a recommendation on the applications. And I want to note at this time that this is the report and recommendation that we send up to you as part of our transmittal to you. So we send up ordinances, we send up zoning maps, and then we send up the planning commission report, recommendation, minutes--all of that is part of our packet to you, but this is, this is the report that, that comes to you.

At that point, the public hearing is conducted by the respective planning commission, and the commission recommends. . .makes a recommendation. If, if the planning commission

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recommends approval of the application, land use maps are prepared and the Corporation Counsel's Office prepares ordinances. Once the maps and ordinances are received by the Planning Department, they're transmitted to the Council, through the Mayor, 90 days for Change in Zoning and 120 days for Community Plan Amendments from the date the Planning Department certifies the application to be complete. And again as I was mentioning, transmitted to you are land use ordinances and maps, the Department's report and recommendation, transcripts of the public hearing, letters received at the public hearing or after the public hearing. We usually have a cutoff date where we include exhibits in our report, and quite a number of times we'll receive a letter from the public after that report has been prepared and signed by the Director. We also receive letters at the meeting itself. So those have not been incorporated as exhibits in our report, but they are part of the, of the written record, and so we include those separately and transmit them up to you. And then we also include in, in your packet the actual applications that came in, copies of the applications, and then any other items or forms that we may feel is, is necessary to send to you in order for you to have adequate information in reviewing these applications. If the commission recommends denial of an application, it's sent directly up to the Council for appropriate action. At that point, the Council and Land Use Committee process begins.

And this basically concludes the, the Department's presentation. On behalf of the Planning Department, I, I do want to thank you for inviting us here. We hope this was not too overwhelming for you. We know it is a lot of information. We, we've tried to make it as concise and clear as, as possible. Our presentation team is still in the Chamber and we will make ourselves available to you for questions. At this point in time, we also have our Planning Director here to support us and also to answer any questions that you may have of him. Thank you.

CHAIR MOLINA: Okay. Thank you, Ms. Cua. Members, we're going to take a short break to put the screen up and then we'll begin the Q&A with the Department. Meeting in recess. . . .(gavel). . .

RECESS: 10:55 a.m.

RECONVENE: 10:58 a.m.

CHAIR MOLINA: . . .(gavel). . . Land Use Committee meeting for June 20th is now back in session. Thank you very much to the Planning Department for that wonderful presentation, and yes, it was a lot of information to absorb, but some very good information and I really appreciate the, for example, the differentiation between an Environmental Assessment and an Environmental Impact Statement. So this is, this serves as a good refresher course for the Members as well as for the general public who would like to get a deeper understanding of what's involved with land use. So at this time, Members, the floor is now open to the Department for any questions related to the presentation that was done for us this morning? Member Baisa:

COUNCILMEMBER BAISA: Yes, Chair, and thank you very much and I'd like to thank the Department for, for coming to talk with us. This is a minefield and particularly as new Council

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Members, it's all very confusing. My question is for clarification. I understand that State law says that government should prepare the Environmental Assessments. Why is it then that the develop..., the developer's consultant actually prepare them?

CHAIR MOLINA: Department?

MR. ABBOTT: If I understand your question correctly, it's why would a government action or... --(CHANGE OF TAPE, start 2b)-- ...to do to prepare their Environmental Assessment, would that be correct?

COUNCILMEMBER BAISA: The developers hire consultants to prepare these EAs, and my understanding is that State law says that *government* is supposed to do them. So it's confusing to me.

MS. CUA: It, it pretty much all boils down to a staffing, a staffing issue. The, the volume of, of EAs that come into the County is, is absolutely enormous, and historically these documents have, have always been prepared...by the consultants. But the Planning Department is *heavily* involved in, in reviewing it. We're, we're charged with reviewing these documents, and there's a number of other governmental agencies, and we went through some of those agencies with you, that take a look at these, these documents. So they're, they're not independent of themselves. I mean they get a lot of review, they get public review, a lot of them go to Cultural Resources Commission for culture issues; like I said, we've taken them to Arborist Committee. For example, the Kahului Town Center project, you know, they, they have majestic monkeypod trees on that site and, and the redevelopment of that site are going to affect some of those trees. Well, we took that several times to the Arborist Committee. So, again, depending on the issue, it goes to various boards and commissions. It...the, the document gets changed significantly from the draft form to the final form.

MR. HUNT: And if I could just follow up on that. The, the way the Environmental Assessment process works is it's an informational gathering process. Anyone can submit a question or a concern or a comment during that process, and the applicant has to respond to that. So it's not like the applicant can simply submit a document and, and that's it.

COUNCILMEMBER BAISA: Thank you.

CHAIR MOLINA: Okay. Thank you, Member Baisa. Member Anderson, followed by Member Medeiros.

COUNCILMEMBER ANDERSON: Yeah. As a former planner for OEQC, Mr. Chairman, I have to follow up on that because the law does state that the *agency* shall prepare the EA or the EIS, and the reasoning behind that is because this informational document is supposed to be unbiased and it's supposed to disclose all aspects of the project, and many times developers don't want all aspects of the project disclosed because the more that's disclosed, the more potential impact could be revealed and then the more they're forced to mitigate the impact. So, I appreciate what

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the Department is saying that they're overwhelmed, but I, I don't really see that as an excuse because, you know, the Department could very well take the lead as the agency, hire a consultant to do the EA or the EIS and charge the applicant for the cost. And so what's the difference? The difference is that the developer is not in charge of the outcome, the agency is. And the agency has the right to, to say whether or not you've fully disclosed this information. And, you know, I myself have reviewed hundreds of EAs and EIS, draft and final form, and I'm here to tell you that it. . . a lot of EAs and EIS's are nothing but smoke and mirrors. They don't fully disclose the information. They hire consultants who will specifically not disclose adequate information so that when it gets to the final decision maker, that informational document isn't worth a whole lot unless somebody, some public agency or public interest group is willing to take it to court and challenge it, and 90 percent of the time the challenges are upheld because the documents are so inadequate, they don't follow the letter of the law. And the content requirement for an EA or an EIS is so very specific. . .um. . .you know, I'll just give you one example. We have Wailea 670 in front of us. They said that there was no significant biological resources in the area. The EA they did 15 years ago said there was no significant biological resources in the area. And it comes to us. . .really the first chance the public has to get involved and we have biologists telling us that 5 percent of a native ecosystem, all that's left in the State, there's only 5 percent of the whole ecosystem left and part of it sits on this property. So that's why I think, you know, nobody's challenged this and that's why they've gotten away with it. But I think it would be to the public's advantage and to the decision maker's advantage if we could have an independent entity such as the Planning Department or whatever agency is promoting the project. . .are, or actually not promoting the project. The agency in, in charge is whatever agency has the primary discretionary authority over processing their permit. So it could even be Public Works or Parks, but primarily it's public, it's Planning Department. And, you know, if you guys were willing to do that, you've gotta oversee it anyway and, you know, sending it out for comments and, and getting their response--unless there's somebody who holds their feet to the fire, the response don't amount to much either, and you guys know that as well as I do because. . .um. . .you know, you can just. . .well, yeah, this and such, we did that, but nobody is, is verifying it, nobody independent of the developer or their consultant is really verifying as to whether or not they have fully disclosed all the information necessary.

So, you know, I'm not hear to battle that out, but I really want to make that point because I think that. . .you know, lack of staff or the fact that so many people have accelerated the permit, the request for permits, that's no excuse to ignore the letter of the law, which is there for a reason. You know, these EIS and, and EAs are, are meant to disclose the impacts and to involve the public in that disclosure. And if the disclosure isn't, isn't. . .if a project isn't fully disclosed in, in all aspects, then you have no way to ask the question, you know, and to get an adequate answer. So, I just wanted to follow up on that because I, I disagree entirely. I think the Department should follow the law, should be the agency who contracts for the EA and the EIS and oversees it with the consulting firm or whoever does it. I'm not saying the. . .the Planning Department or any agency should do it themselves, they're not staffed to do it, but they certainly can supervise it. Thank you.

CHAIR MOLINA: Okay. Thank you, Member Anderson. Member Medeiros?

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COUNCILMEMBER MEDEIROS: Mahalo, Chair. And I'm going to ask a couple questions of the most recent material you presented, and this is on the EA and EIS. And, you know, you may have presented information that answered this question, but I didn't hear it. Normally, an EA and EIS is required when there's an application for some kind of development or change in the property, and my question is, is an EA or EIS ever required when it's not a development? And my example would be if say we have a large agricultural operation in place and then they terminate the operations, the impacts of erosion, flooding, and so forth becomes very evident. Is that ever required?

MR. HUNT: The EA has specific triggers that require it, an EA. So unless it's a, unless it hits one of those triggers--it involves a community plan, involves County land, County funding, it's a historical site, something like that--then an EA isn't required.

COUNCILMEMBER MEDEIROS: So for a large say agricultural operation that no longer operates and the impact on the community is flooding, is dust, is runoff that may go to the ocean, that's never. . .that doesn't trigger an EA or EIS unless somebody brings that to government's attention?

MR. HUNT: Even if they bring it to our attention, there's, there's only certain requirements under the State law that trigger an Environmental Assessment that require an Environmental Assessment. There's a lot of large projects and developments that go on on the island that are, are not subject to the Environmental Assessment process, and maybe they should be, maybe they shouldn't be--that's, that's an argument for a different day.

COUNCILMEMBER MEDEIROS: Uh-huh.

MR. HUNT: The, the Planning Department has to administer the laws as are written.

COUNCILMEMBER MEDEIROS: Okay. I'd be interested to follow up on that and I will. My second question is when the applicant is required to send out notices to property owners within 500 feet of their project, is, are those notices sent by certified mail so there's proof that notices were sent out?

MS. CUA: The Planning Department doesn't sound out notices--

COUNCILMEMBER MEDEIROS: Right.

MS. CUA: --it's the applicant and . . .

COUNCILMEMBER MEDEIROS: Yeah, that's what I asked.

MS. CUA: Oh, I'm sorry.

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COUNCILMEMBER MEDEIROS: Yeah.

MS. CUA: I misunderstood you. They are required to send. . .your questioning was, are they required to send out, yes.

COUNCILMEMBER MEDEIROS: How, how do you know that the applicant sent out notices because we get calls from constituents that oh, we didn't hear about that, nobody notified us, and if it's not by certified mail, how do you prove that the applicant did send out notices?

MS. CUA: It is and they, the applicant has to submit to the Planning Department cop..., copies of the mail receipts, and that way when, when somebody from the public calls and says I didn't receive notice, we can go back to those mail receipts and see if they were notified.

COUNCILMEMBER MEDEIROS: Okay. So there is a re..., requirement to the applicant that it has to be by certified accountable mail service?

MS. CUA: Yes. Yes.

COUNCILMEMBER MEDEIROS: Okay. Thank you, Chair.

CHAIR MOLINA: Thank you, Mr. Medeiros. Mr. Pontanilla.

VICE-CHAIR PONTANILLA: Thank you. The last couple of slides was the most interesting for me, the length it takes from the time the application is submitted to the time when it's submitted to the County Council for approval. On the average, how long does it take for any development from the time they submitted their application to the time that it comes to this Council?

MS. CUA: It depends. That's the short answer.

VICE-CHAIR PONTANILLA: Okay. And, and. . .

MS. CUA: And, and. . .

VICE-CHAIR PONTANILLA: I just want to add one more thing. Let's say, for example, it takes two years by the time it gets to us, updated information, is that a, a requirement by the applicant to provide that at the time that it's submitted to the County Council?

MS. CUA: Okay. If I could step back a little bit--

COUNCILMEMBER PONTANILLA: Sure.

MS. CUA: --to give you. . .a, a range of an answer. A typical application, if there are no major outstanding issues, no major controversial issues, could take four months at the least, I would say, with the public hearing process. Now this is assuming they didn't have to go through an EA

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or EIS process because that adds time. I would say the average maybe, is maybe six to eight months, but we do have applications that take, you know, a year, maybe sometimes two years, and that usually depends on first off when, when we review the application, when the Planning Department reviews the application, we look through everything for content, as I mentioned, and we send the applicant a letter if we find any deficiencies. Sometimes it takes awhile for the applicant to get information back to us. There's times when they get information back to us we still feel it's not adequate, so we have to write a letter--you know, that goes back and forth sometimes for, for quite a while. And then once we get the application able to be transmitted out to governmental agencies, if we get comments that comes back that, that need resolution, that can also take quite a long time because same scenario. The agency makes a comment, let's say they want. . .DOT comes back and says this traffic study is not adequate, we want you to address "x", "y", and "z". So the applicant attempts to address "x", "y", and "z", and we send it back out for agency comment again. The agency, DOT comes back and says you still haven't addressed "x", "y", and "z" and, and, and by the way, we want you to address "m" also. You know, so it's this going back and forth. That takes time. Also, when we finally get the application to where we can schedule it with planning commission, the planning commission may come back and, and say, you know, we have lots of questions, we want you to bring resource people in, we want. . .the Housing Division to be here, we want you to bring Department of Transportation in. So that adds to the process. Also, there might be an intervention filed on an application. That's not applications that would come before you, but there are applications, many applications that, that can be intervened on. That extends the process. So there are a number of situations that can cause a time to be added to an application. That's the long answer.

VICE-CHAIR PONTANILLA: Thank you.

MR. HUNT: Chair, could I follow up on that?

CHAIR MOLINA: Okay. Mr. Director?

MR. HUNT: One of our biggest hurdles is dealing with agencies, and, and I don't want to point at any particular agency, but, for instance Transportation, we will be dependent on the State to submit their comments, and there's two schools of thought is to give them a deadline and to say look, if they haven't submitted by a certain deadline, a reasonable amount, three, six months, let's just act on it. Well, you know, that's expeditious, but then that puts us in the position of approving a permit that could have traffic impacts to an area that we haven't addressed or mitigated. So it, it's a difficult situation to be in. We tend at this point--we don't tend--what we do is we wait for the agency comments, and sometimes it takes a very long time.

VICE-CHAIR PONTANILLA: Thank you. So whatever the planning commission. . .when they review any application, I'm assuming that the application that is presented to the planning commission has the, the most updated information that they have. And, and once they approve it and it comes to us, that's the information, I'm assuming, is the most updated information that will come to the Council?

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MS. CUA: That's, that's correct. Mr. Chair, if I could.

CHAIR MOLINA: Proceed.

MS. CUA: It is very common for an application that we receive--and I'm talking about applications that come before you and applications that do not come before you--it's very common that through the process. . .plans will be updated, you know, refined. Before we go to the planning commission we make sure that we have the most up-to-date plans because when we draft our conditions of approval, our, our standard conditions of approval will require that the project be constructed in accordance with plans dated such and such. So we don't want plans to go to the commission that are not up-to-date. The commission does, would definitely not appreciate that because I mean they, they need to approve what the applicant wants to do and what the Department is supporting. So that needs to be updated and, of course, the applicant doesn't want to have something approved that they don't want to build. So that is, that is, that is very common. Once we complete the application process to the commission level, for the most part those applications are transmitted to you in a timely manner, and so the information that you have is up-to-date. I, I know there's been instances with, with some of these larger projects, like Makena Resort, Wailea 670, you know, the application. . .we, we get it up to you but then for whatever reasons you're not able to hear the application for, for years, three, four, five years. And so in that instance, information does become outdated, but the application has been up here actually for those five years, and I think what you've done in, in the case of Wailea 670 is you have asked for updated information or the applicant I think sometimes just normally submit you if they've done an updated traffic study or if they know they're going to be scheduled--I think this has happened--if they know that you're actually going to schedule them, then they look at what kind of reports they have out there and which ones need to be updated. Obviously an archaeological report probably won't need to be updated; traffic report after five years, that needs to be updated, and I think that's been the practice of this, this body.

VICE-CHAIR PONTANILLA: Thank you. Thank you for that information. Thank you for those answers. The other question that I had is in regards to SMAs, major and minor. Who determines \$125,000 as the, the number that you look at, and how do we prevent people from circumventing the process?

MR. ABBOTT: Thank you, Council Member. The \$125,000 number was stated in the State legislation and they've revisited that a number of times with an escalating construction cost, but the number itself is rather incidental because what we're really concerned about is not whether it's \$124,999. What we're concerned about with is the impacts and are there any adverse impacts. You can have a project that's only \$10, but if it has an adverse impact, then we can regulate that. So normally most of our, we process about 1,000 SMA assessment applications. The vast majority of those are exemptions, and sometimes they run millions of dollars for the project. So, again, the minor/major differentiation that's. . .I, I believe some people promote that that's a, a big deal whether you're major or minor. It really doesn't matter, the numerical part doesn't matter. If, however, we want to verify those numbers, we can send it to DSA.

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VICE-CHAIR PONTANILLA: So if, if . . . if an owner of particular like say condominium or apartment building does renovation and he does renovation apartment by apartment by apartment, rather than take 10 apartments, 20 apartments at one time, you know, that would cause the value of \$125,000 that will create the major SMA. But if he takes it by apartment at a time, it may require only a minor SMA. So how do we prevent, you know, something like that from happening?

MR. ABBOTT: If I may speak to that. First off when we see projects being subdivided into little pieces, we're pretty aware that we also track it through our KIVA Permitting Processing System. It's actually detrimental to the applicant to try to break a project up into little pieces because they're going to have to apply and go through a permitting process and say they had 100 units in their condominium, and whereas if they came in--so that's 100 permits and 100 applications and 100 times they have to wait. Whereas if they just come in for one project, it may be \$1 million, it may be \$10 million. It's very likely we'd exempt it, especially if it's all interior remodeling that's not going to have any adverse impact on those ten objectives of the Coastal Zone Management Act. So we keep an eye on that, but we also work very closely with the applicant so that they don't try to piecemeal that out.

VICE-CHAIR PONTANILLA: Thank you.

CHAIR MOLINA: Thank you, Member Pontanilla.

COUNCILMEMBER PONTANILLA: Thank you.

CHAIR MOLINA: I'm sorry, somebody had another question before I recognize Member Anderson? Member Anderson, I'm going to ask one question, though, then come to you. Just a quick question on the Community Plan Amendment process. It can not only be initiated by, you know, an applicant, an everyday citizen but also an elected official, for example. When is that appropriate? I think if I recall the Ueoka case in Paia was an example I think I, I had approached I think the Land Use Chair at that time, Mr. Nishiki. When is it appropriate for an elected official to consider making a Community Plan Amendment? And I know, I believe also the Planning Director has the right to also initiate a Community Plan Amendment. Can you give us additional clarification on that?

MS. LOUDERMILK: Yeah. Robyn Loudermilk and I happen to work on the Ueoka project. Generally, either the, the Council do the bo..., as a body or an individual with the concurrence of the body can request the comm..., a Community Plan Amendment, and we hope that it is in the public interest when these amendments are brought forth such as, I believe, Kaunakakai Fire Station on Molokai is one of those projects, it's a County project. . .that to assist in expediting the Council would be initiating land use changes. In the Ueoka case, it was a unique situation in which that through the community plan update process in the review of the maps for the Paia-Haiku area it was determined that it was a mapping error that had occurred and that it was a mapping error that occurred by, by the Department, and in that case the Department felt that it was in the public

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interest to initiate the Community Plan Amendment as well as, as other amendments. And . . .the bottom line is usually the, the public interest as seen by the Council or the Administration.

CHAIR MOLINA: Okay. Thank you. Member Anderson?

COUNCILMEMBER ANDERSON: Thank you, Chair, I appreciate the time and I know we're running short so. . .and I have a lot to say and questions to ask, so I'll try to make it brief. I did want to follow up on Member Pontanilla's question. Ms. Cua mentioned the Wailea 670 project and, and how over time things have become outdated, but I want to be very clear. Wailea 670, they came forward with a wholly inadequate im..., traffic impact analysis and, in fact, DOT wrote a three-page letter trashing their traffic report, saying it was totally inadequate. So in my estimate, Planning should never have sent that application forward. It should not have even gone to the planning commission until you had an adequate traffic report. You know, garbage in, garbage out doesn't, just because you got the report doesn't mean it's worth the paper it's written on, and, and that was the problem with Wailea 670 and I think even Mr. Jencks recognized that because two months after the application came to this body, he wrote a letter asking that it be deferred. So the three years it's been held in abeyance was at *his* request in order to get adequate traffic report and other information to us, which still hasn't happened. But back to Ms. Cua's comments about the report in the analysis, you know, I'd like to see that the analysis actually be done by the Planner and not by the developer or their consultant. I have seen too many reports come through where the developer is quoted; the developer indicates that, the developer says such and such. Well, who cares what they say? We want to know what you guys have to say. You're the experts in the field. We want your independent analysis. We don't want to hear what the developer has to say. We want you to check what he's saying to see if what he's saying is accurate. Don't just give us his analysis of it. And the other thing, Ms. Cua, I think you should of added is that an EIS if it's triggered by the project that is eventually coming to the Council whether it's a Change in Zoning, a Community Plan Amendment, for whatever the trigger is that, that was required for an EIS, the EIS should come to the final decision maker. It's not--you know, just because the planning commission has the purview to accept the document is adequate or not. It doesn't mean it ends there. It's an informational document for the decision maker to use, and very often we don't get the EIS, I have to ask for it, and I end up being the only one sitting here with a copy of it and that's not right because the EIS, there's more information in an EIS than there is in any application because they're more thorough, supposed to be. And, and. . .(*cleared throat*). . .excuse me, it would be very helpful for us to have the EIS to check the information in that and also check the information in the application to make sure that things have not changed. In the case of Wailea 670, again their EIS was done 15 years ago. It hardly, it hardly touched, touches on the things that we're concerned with today.

And then the other thing that you did not mention is that when you bring us a Change in Zoning, in that report it actually says in the County Code that the commission shall repair, prepare a report, not the Planning Department, although I know you are staff to the commission. But usually what happens is you prepare a report for them and then you give us their report, but you're supposed to be including, but not limiting, the report to the commission's findings of fact and conclusions of law as well as their recommendations. So I don't, you know, I don't know

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how you can do that if you're sending us a report that was prepared prior to their hearing. Could you respond to that, please?

CHAIR MOLINA: Okay. Mr. Director?

MR. HUNT: Regarding the, the 670 project, I think the intent of today's discussions talk globally and more on a process-wide basis--

COUNCILMEMBER ANDERSON: Yeah, you don't need to address that.

MR. HUNT: Okay.

COUNCILMEMBER ANDERSON: I just used it as an example.

MR. HUNT: Okay. In regards to the report and, and analysis being done by the Planner, not the developer, we are committed to having the Planners do the analysis of, of the. . . --(*CHANGE OF TAPE, start 3a*)-- . . .quite often we have to rely on what the developer tells us. It's, it's their project, it's their proposal. We don't have a way to verify what their project or proposal is. We have to rely on the information that they, they present us. But in terms of analyzing that information, I agree with you, we should be doing that. In regards to getting the Environmental Impact Statements to the decision makers, I think we, we've had this discussion before when we were reviewing the amendments to 19.510, and, and we will commit to try to getting the Council extra copies of the Environmental Assessment or, or Impact Statement. And then in the Change in Zoning, the, the planning commission. . .as the situation is right now, the planning commission adopts the Planning Department's report. So even though they're responsible for preparing a report, the process as it is now is we ask them are you comfortable with the staff report and do you want to adopt it as your report rather than making them go to the extra step of, of writing a separate report. Now if you folks are uncomfortable with that, we can visit that with the planning commission, but it seems to be helpful to them. We haven't heard any objections from them regarding that.

COUNCILMEMBER ANDERSON: And so does that mean, Mr. Hunt, that you guys, you guys make the determination of the findings of facts and conclusions of law prior to the public hearing? Is that included in the report that the commission gets?

MR. HUNT: We recommend and propose and we're prepared, and then once the final decision is made, then they adopt those findings and, and . . .

COUNCILMEMBER ANDERSON: At, at the hearing they adopt it?

MR. HUNT: Yes.

COUNCILMEMBER ANDERSON: And then you add it in or, or it's already in the report and you just keep it in unless there's any change?

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MR. HUNT: I'm being informed it's, it's already in unless there's changes that they're uncomfortable with.

COUNCILMEMBER ANDERSON: Okay. Thank you. And then I wanted to speak a little bit about the Special Management Area because, you know, I can remember six years ago sending a request to the Planning Department to increase the boundaries of the SMA and there, you know, have been promises over the years that the Director was going to initiate that with the commission. I've also heard comments that a study was being done during Foley, Mike Foley's tenure. But the reason it's a, a real concern to me is because, you know, when the SMA boundaries were originally drawn, they were drawn--and, and I'm going to read to you what, what the criteria was. The criteria for establishing the Special Management Area boundary was to reasonably determine--and each county set their own boundaries--was to reasonably determine whether land area is located in excess of 100 yards from the bodies of water to be protected, where land areas the uses of which would have a direct and significant impact on such bodies of water; if not, those. . .and land areas should not have been included, notwithstanding their significant environmental value. And the, the law says that the boundaries can be changed by the planning commission at the request of the Director. The Director initiates the request; the planning commission adopts it or doesn't adopt it. And the reason I'm concerned is because back when these boundaries were laid--and you can see there's only really two areas on our map where the shoreline is really not protected by the Special Management Area boundaries, and that is the face of Maui, Olowalu, Launiupoko, Ukumehame area. The reason that boundary was set along the road is because when the boundaries were set, all this land mauka was in sugar cane, and nobody in their, in their right mind ever dreamed it would go into development, and now it has. . .with no protection, and the same thing with Hana. There is all that ag land in Hana that is totally unprotected with large-scale subdivision potential and, you know, of two places that really need protection because the waters in Hana, let's keep them pristine as they are now and not allow their reef systems to be degraded like South Maui and West Maui from development and give them that protective covenant. And as a matter of fact, the Hana Community Association has been asking for over ten years to increase their SMA boundary, and nothing's been done. And, and the reef along Olowalu used to be the most pristine reef. Studies have shown, you know, that prior to the development out there that was one of the most pristine reefs left on that side of Maui, and it's being degraded because of the mauka development and because there is no Shoreline Management Area protection for that area.

So, I'm asking you, Mr. Hunt. . .you don't need to do an extensive study, you don't need to make a big deal out of it, you know. . .either, you know, you make the decision to give that area protection or you don't. But I'm asking you to consider it seriously because why is it that these two areas don't deserve the same protective covenant that the rest of Maui has given the, given the threat of development?

CHAIR MOLINA: Mr. Director?

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MR. HUNT: Member Anderson, we share your concerns on preserving the coastal resources. The County or the Planning Department is going to be going through a Comprehensive Zoning Amendment process where we're going to be taking a look at our whole zoning ordinance. We want to be sure--we're also going to be looking at the SMA boundaries, and we want to be sure that the reason for increasing the SMA boundaries is to address the marine resources and the coastal resources. Right now what, there's a lot of pressure to increase SMA boundaries because of the lack of adequate zoning. For instance in Lahaina, the Cannery Mall is, is within the SMA, and right across the highway there's a large commercial development going in that is regulated very little. And so there's, there's a push, there's a, there's a struggle, there's a desperation of the public to, to use the SMA to regulate what should be regulated with just normal zoning. Now that's not to say that we don't support the SMA, and I'm going to turn it over to Thorne in a minute and he'll explain the process that we're going into right now to look at changing the SMA. I understand your comment about we don't need another study and, and the, the dire situation, we want to move it along, but we will be doing a thorough analysis before we, we do something as important as, as affecting the SMA boundaries.

COUNCILMEMBER ANDERSON: Well, I can appreciate that, Mr. Hunt, because I heard from Mr. Foley last term that the reason they wanted to do a study is they thought that the, the SMA boundary in South Maui was too extensive and they needed to diminish it, you know. But, you know, anything you want to do comprehensively that's fine, but that takes a long time to do. I'm talking about, you know, in two months you could protect these areas, you could bring forward an amendment to increase the boundary inland on both of these critical areas without doing a study--you don't need a study for that--and then go ahead and do your study about maybe decreasing it or increasing it in other areas, but these are two areas that are totally unprotected. And, you know, as far as something mauka of the highway in Lahaina like that Cannery Mall extension mauka, you know, if we had really in-depth analysis in our Change in Zoning requirement, you could give the same protective covenants because, you know, what do we have, some 25 criteria in the application and, yeah, it's not going to give you the same thing as an SMA, granted, and, and if you want to extend it, fine. But I, I can guarantee you you're going to have trouble extending the boundary in those areas already developed that have traditionally been bounded, you know, by where the boundary is at the highway. But when you have the highway right up against the ocean along Ukumehame to Puamana with no SMA protection for anything that happens just on the other side of the highway, you know, that's a glaring oversight, and same thing with Hana.

CHAIR MOLINA: Mr. Director?

MR. HUNT: The . . . specifically in Lahaina that, the development mauka of the highway doesn't require a Change in Zoning, and I was just using that as an example of, of some of the misguided pressure we're getting to change the SMA boundary and, therefore, our conclusion is that we need to do a thorough analysis. That was my only reason bringing that example up.

COUNCILMEMBER ANDERSON: Yeah. Well, I mean--

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MR. HUNT: Let me turn it over to Thorne Abbott--

COUNCILMEMBER ANDERSON: --but I'm giving you specifics. I'm not talking about the whole--I mean I think you should leave everything just the way it is, except extend it where there's no protection.

MR. HUNT: And, and believe me, we share your concerns about preserving the coastal resources. And if I could turn it over to Thorne Abbott briefly, he'll explain our current process on, on the boundary amendment.

CHAIR MOLINA: Mr. Abbott.

MR. ABBOTT: Thank you. Thorne Abbott. Councilmember Anderson, again we respect your opinion and concur that we definitely want to protect our coastal resources. First off, the whole island is in the coastal zone and is regulated by the Hawaii Coastal Zone Management Act. The Special Management Area delegates that regulatory authority to the local island commissions. Prior to . . . I might also add that it's not meant to be a land use tool, such as zoning or community plan, it's meant to protect coastal resources based on those ten objectives. And, unfortunately, as Director Hunt has expressed, there is a frustration and regulating development due to a lack of perhaps comprehensive zoning, and so there is an impetus to use SMA to achieve that, but that may not necessarily be the right tool. Currently, we're conducting a study, we're looking at the SMA boundaries and whether thing, they should be moved mauka or makai or whether the process should be changed, and a study is required to rationalize whether what your decision is is statistically valid. Because while the Director can initiate a request or the commission can initiate a request, it still has to be submitted to the State Office of Planning. They have to review that and determine that it is consistent with the Hawaii Coastal Zone Management Act, if it's inconsistent, for example, if we're going to regulate bed and breakfast through the Coastal Zone Management Act, they'd find that inconsistent, that's not the point of the Act. As a consequence, a study does have to be done and that has to be statistically defensible. The other reason it has to be done is if you want to contract the borders at any place or make them, move them more makai, then you have to show the State that you can achieve all the protections of the Coastal Zone Management Act through your current regulatory program such as zoning and community plan designation. That is then subsequently sent to the Federal government who supplies the funding for our program, and the Federal government also has to find it to be consistent. So it is *very* imperative to have a scientifically-based study so that your decisions are based on good and sound science, incorporate precautionary measures, and precautionary planning. I hope that answers . . .

COUNCILMEMBER ANDERSON: Well, I mean if you want to, if you want to review the whole County and make adjustments here, there, and everywhere, then I agree with you, but not for these two specific areas that are totally unprotected. How long of a study is it going to take to . . .um. . .ascertain that these areas are not getting the same protection as all the other areas? I don't think it's going to take a long time. But nonetheless, that's all in your guy's purview. So, I'm not here to debate it with you. I'm just saying we've been asking for this for over six years

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and we've been told that there was studies being done for six years, and still nothing's been done. So . . .

MR. ABBOTT: I . . .

COUNCILMEMBER ANDERSON: And, you know, we're the ones that hear it. So, I hope you can appreciate that.

MR. ABBOTT: . . .(*inaudible*) . . .

COUNCILMEMBER ANDERSON: The one thing, other thing I wanted to address on the Special Management Area is . . .you know, we are mandated by State Constitution and the Coastal Zone Management Act, and in fact I think one of their first priorities in their guidelines is to provide shoreline access. Shorelines belong to everybody. And the other day I saw . . .you know, I guess I'm a government junky because I watch Akaku at home--

COUNCIL MEMBERS: . . .(*chuckle*) . . .

COUNCILMEMBER ANDERSON: --just like everybody else and try to see meetings that I haven't been to, and one was a planning commission meeting where you folks were discussing the Kapalua Trail. And there is one point in the trail where they go out to the highway--this is supposed to be a shoreline access trail, a lateral shoreline trail where they actually go out to the highway and then I think even cross the highway and then go back down, and many of the commissioners were questioning that. And I didn't hear anybody from your Department step forward and say. . .and, and the reason they--let me premise that--the reason they said they had to go out to the highway is because the land fronting or the land abutting the shoreline where they were going mauka to the highway was private property. But you know what, so what it's private property. You still have to give people lateral access, you know. You want to go down and look at Makena Surf? They've got lateral access all along that rocky shoreline. . .required in their SMA permit. And, you know, so even if it has to be below the high wash of the waves, and so it can't be something that isn't, you know, compatible, and as a matter of fact I couldn't tell from the map, but it pretty much looked to me like it was a rocky shoreline anyway. So, you know, that's access for fishermen, folks, and if you allow them to, you know. . .here you're going along the shore and oh, we got some private property people that don't want to participate with us, so. . .(*screech sound*). . .we're going to around like this. You know what you're doing? You're cutting the public off from the access that they have by directing the trail otherwise and blocking off that shoreline area.

CHAIR MOLINA: Mr. Director, you want to comment, respond to Member Anderson's. . .?

MR. HUNT: Again, Member Anderson, we agree with you wholeheartedly on shoreline access and acquiring it. Our current process is as development comes in we work with the developers and require that they provide that access and we've been doing that piecemeal, and sometimes it's not easy because there's no connections and the, the developers will say you're asking me to put in a

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trail on my shoreline but there's nothing to connect it to. And we explain that, well, eventually we'll ask the neighboring developers and eventually we'll have a trail. Now to . . . that's how that we're doing it presently. To take it to another step and actually go to a private property owner who has not applied for any development and, and say, you know, we're ask, we're requiring you to put a trail through your property, I'm not sure we can do that. We can explore that idea, but the, usually the triggering mechanism is the developer comes for some kind of permit and then through that permitting process we get exaction.

COUNCILMEMBER ANDERSON: Yeah. I realize that, Mr. Hunt, but here you have an opportunity and, you know, these, these property owners, they are mandated by State law to give lateral access. And so you can just tell them, you know, here Kapalua's putting in this shoreline trail and, you know, in order to keep it contiguous we're going to have to front your property and, you know, let them fight you over it because you guys are here not representing the developers or the property owners, you're dev. . . ., you're representing the public and the public trust interest. And so I, I brought that up because I just want to underscore how important it is, I think you have every right to mandate that that lateral access be included in the trail, and I would hope you'd be proactive on it and myself and my staff would be help, help. . . happy to help you with whatever kind of, you know, legal back, backing you need. It's in Chapter 46, HRS, it's in the State Constitution. . . it's all over the place. . . so. . . and, and it's also many Supreme Court decisions. So you, you know, my concern is that right now people can freely access that shoreline, but the way they're privatizing that, that area with private residences, no longer a hotel. You know, when you're a hotel, the public is welcome to come and go as they please, you know, to the shoreline through your hotel because it's, you know, general public access. But when you shutdown the hotel and you turn it into multi-million dollar private homes along the shoreline and then you take what was curr. . . ., you know, previously free and easy access, lateral access along the shoreline and you put in a constructed trail that goes all the way around that point, you're, in essence, facilitating them to privatize that point.

So, I've taken up enough time, Chair. Thank you.

CHAIR MOLINA: Thank you, Member Anderson, and we know you're very well versed in shoreline issues. The Chair would get to get in one quick question before I recognize Member Medeiros, and we're getting a little short on time here. My question was relating to the SMA boundaries that was discussed earlier. The final, I guess, approving authority for that. . . was that rests, I guess, maybe it comes from a recommendation from the planning commission and then would that be DLNR to approve the boundaries, for example? Can you explain that, clarify that for us?

MR. ABBOTT: Yes, the final approving authority is the planning commission. However, that has to be determined to be consistent with State law and Federal law. That consistency determine. . . ., determination is made by the State Office of Planning and if it needs Federal consistency determination, it could be sent to Washington D.C. which is NOAA, National Oceanic Atmospheric Administration.

CHAIR MOLINA: So it's home rule in, in effect then in terms of determining the boundaries?

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MR. ABBOTT: It is home rule if it's found to be consistent. Yeah. So it, it can end up being a very lengthy process.

CHAIR MOLINA: Okay. Thank you, Mr. Abbott. Mr. Medeiros?

COUNCILMEMBER MEDEIROS: Thank you, Chair. Just quickly, you know, on the short time I've been here on this Council which is almost like six months, we get calls of the right hand of government not being consistent with the left hand of government, and in couple of the projects the applicants are concerned that with the Planning Department their application was approved. An example was that their project was in the community plan that didn't require sidewalks, curbs, and gutters, and your Planning Department concurred with that. Then when it went to another reviewing agency, they said no, you gotta put these in. So, I'm asking you, is there some way this legislative body can be, can make it more consistent between reviewing agencies?

CHAIR MOLINA: Department? Sounds like a very loaded question from Member Medeiros.

COUNCIL MEMBERS: . . .(chuckle). . .

MR. HUNT: It's the goal of us to cooperate with our other agencies and other departments. There's, there's a whole myriad of plans and you, you just saw the presentation just on the regulations that apply to the Planning Department.

COUNCILMEMBER MEDEIROS: Right.

MR. HUNT: I imagine other departments have other PowerPoint presentations that could go on for hours, too. So you have community plans, you have administrative rules, you have zoning ordinances, development standards and, and sometimes they don't necessarily mesh as, as well as they should. Our goal is, is to try and make them mesh and for government to be seamless and provide good customer service. It's, it's a lofty goal.

COUNCILMEMBER MEDEIROS: Okay. And, and my, my other question related to that is that in Historic Zoning Districts there is requirements for building the kind of building materials that are used and the architecture and so forth. My question is on the very same street where the applicant is applying to put in certain kind of materials, he's been denied to do that, but other properties that have recently renovated have been allowed to use that. So how would we rectify something like that?

CHAIR MOLINA: Department?

MS. CUA: Are you talking about . . .

COUNCILMEMBER MEDEIROS: Because the CRC come under your purview--

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MS. CUA: Yes.

COUNCILMEMBER MEDEIROS: --and overview? Okay.

MS. CUA: Yes, it does. Yes, it does. It. . .may I ask what particular area, then maybe my . . .

COUNCILMEMBER MEDEIROS: Okay.

MS. CUA: Is it in the Lahaina. . .?

COUNCILMEMBER MEDEIROS: This will be in the Lahaina Historic District and the applicant, all they wanted to do was change their windows from the old sash-type windows to vinyl windows, which to me would be something better for the County because it would resist termite and further damage to that kind of building and it doesn't change the look of that building, but they were denied to use that material. Now there's very little, you know, availability in sash windows nowadays and the maintenance of them, you know, with the cords and the weights and, and if the cords break, the window can come down on somebody. It just seemed to be beneficial for the County to allow that particular applicant to use the vinyl windows, and that's what I'm asking.

MS. CUA: In the Historic District --

COUNCILMEMBER MEDEIROS: Uh-huh.

MS. CUA: --which doesn't go all the way up to the highway, it actually goes in, into the water, it goes 100 feet into the water and then it goes up to Luakini Street and then there's certain specific sites that are, are older sites, like churches, that are in Historic District 1.

COUNCILMEMBER MEDEIROS: Well, this applicant was within the Historic District.

MS. CUA: Okay. We have design guidelines within the Historic District and, and we do require things like, you know, wood, wood-framed windows and paneled doors and, and those guidelines were created to pro..., preserve and protect the historic character of that Historic District. We, we even go so far as to request--we, we cannot require--parcels that may be right outside the district, they're still in the National Historic Landmark District Boundary and sometimes that gets confusing. For example, properties that are right along the highway on Lahainaluna Road, that's not in the Lahaina Historic District, but it's within the National Historic Landmark District Boundary. As we approach, getting closer to the, the Lahaina Historic District we have asked projects, you know, you're, you're bordering the district, can you please consider complying with the architectural design guidelines. And that's why if you look at Dickenson Square --

COUNCILMEMBER MEDEIROS: Uh-huh.

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MS. CUA: --that project is not within the Historic District, but they applied the character of the district into their architecture, and we, we do ask applicants to do that and, and normally we do get positive response from applicants.

COUNCILMEMBER MEDEIROS: And who determines the architectural guidelines or requirements?

MS. CUA: The, they, they have to be adopted by the Cultural Resources Commission. The Architectural Stylebook for Lahaina, I don't know what the date of that is. I mean that was adopted a long--

COUNCILMEMBER MEDEIROS: . . .*(inaudible)*. . .

MS. CUA: --time ago and really. . .

COUNCILMEMBER MEDEIROS: Probably before vinyl windows.

MS. CUA: Oh, definitely before vinyl. Definitely, definitely.

COUNCILMEMBER MEDEIROS: Okay. Well, thank you for that information. Thank you, Chair.

CHAIR MOLINA: Thank you, Mr. Medeiros. Members, it is about high noon. The Chair will conclude this afternoon's or--

MR. HUNT: Chair.

CHAIR MOLINA: --our proceedings on this matter. Mr. Director?

MR. HUNT: Can I make one more comment?

CHAIR MOLINA: Go ahead.

MR. HUNT: Early on one of the Members or actually a couple Members spoke to the Environmental Assessments and EIS's being prepared by consultants, and I just want to make it clear that that's a legitimate issue, we've heard it before, and we will look into that and, and do some analysis. I can't promise what the outcome will, will be, but we will commit to looking at it.

CHAIR MOLINA: Okay. Thank you, Mr. Director. And I want to thank you and your Department for doing this orientation program. I found it very helpful. Thank you for this hard copy document. I feel it'll be very helpful reference point for those of us who every now and then would like to review how the process is done as it relates to Community Plan Amendments, SMAs, you name it--the total alphabet soup here. But, you know, it's interesting to note that a newly-elected State officials, Federal officials, and newly-appointed planning commissioners go through an orientation. Am I correct with that?

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MR. HUNT: Yes.

CHAIR MOLINA: And yet we have no formal orientation program for newly-elected County officials. So, I'm hoping this will plant the seed for future, you know, councils or I guess policies driven by whoever is the Council Chair in the future that they orient newly-elected Council Members as well as returning Members to give them a refresher course in the very complex issues of land use as well as budget matters. These are the two topics that Council Members deal with the most because I think it not only benefits the elected officials, it also benefits the public who they can feel comfortable that they have representatives in elected office that, you know, have a good idea as to what's going on with regard to land use and budget issues and other matters. So with that being said, I want to thank you, once again, for taking the time to spend with us and we heard that, well, we are very well aware that you are shorthanded, so we do want to let you get back to work. So--

COUNCILMEMBER BAISA: Chair.

CHAIR MOLINA: --any announcements?

COUNCILMEMBER BAISA: Just one brief comment. I wanted to thank you for scheduling this workshop for today. It was very enlightening. I wish it could have been part of our earlier orientation because, you know, we sit here and we're kind of in a fog 'cause there's so much and we learn it as we go, and this is very, very helpful. Thank you.

CHAIR MOLINA: Thank you, Member Baisa. The Chair appreciates that comment. And the Chair's going to make a recommendation. We'll entertain a motion, if there are no objections, to file the communication.

VICE-CHAIR PONTANILLA: So moved.

COUNCILMEMBER MEDEIROS: Second.

CHAIR MOLINA: Okay. It's been moved by Member Pontanilla, seconded by Member Medeiros. Any discussion? Seeing none, all those in favor signify by saying aye.

COUNCIL MEMBERS: Aye.

CHAIR MOLINA: All those opposed? Chair will mark it five ayes and four excusals, Member Ho..., Members Hokama, Johnson, Victorino, and Mateo.

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VOTE: **AYES:** **Councilmembers Anderson, Baisa, Medeiros,
Vice-Chair Pontanilla, and Chair Molina.**

NOES: **None.**

EXC.: **Councilmembers Hokama, Johnson, Mateo, and Victorino.**

ABSENT: **None.**

ABSTAIN: **None.**

MOTION CARRIED

ACTION: **Recommending FILING of communication.**

CHAIR MOLINA: It is 12 o'clock, Members. This meeting will be in recess. We shall come back at 1:30 to address Land Use Item No. 7. Meeting in recess till 1:30. . . .(gavel). . .

RECESS: **12:00 p.m.**

RECONVENE: **1:33 p.m.**

CHAIR MOLINA: . . .(gavel). . . Land Use Committee meeting for June 20, 2007 is now back in session.

**ITEM NO. 7: DISTRICT BOUNDARY AMENDMENT, COMMUNITY PLAN
AMENDMENT, AND CHANGE IN ZONING FOR A COUNTY ABANDONED
VEHICLE, SCRAP METAL, AND WHITE GOODS FACILITY (PUUNENE)
(C.C. No. 07-91)**

CHAIR MOLINA: Members, we have one more item to discuss on our agenda today, and that is Land Use Item No. 7 which deals with a District Boundary Amendment proposal as well as a Community Plan Amendment and Change in Zoning for a County Abandoned Vehicle, Scrap Metal, and White Goods Facility. . . .--(CHANGE OF TAPE, start 3b)-- . . .but before we do that the Chair would like recognize the Members in attendance today. We have Committee Vice-Chair Joe Pontanilla, Committee Members Bill Medeiros, Gladys Baisa, Danny Mateo, and Jo Anne Johnson; and from Staff we have the Legislative Analyst [sic] Carla Nakata and Committee Secretary Tammy Frias Diaz [sic]. And we do have a presentation that will be done for us by the applicant's representative. So before the Chair entertains public testimony, the Chair would like to have the presentation done first and then afterwards we will do public testimony. Any objections to proceeding in that manner?

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COUNCIL MEMBERS: No objections.

CHAIR MOLINA: Okay. Thank you. Seeing no objections, we will take a short recess to set up the Chambers for the presentation. Land Use Committee meeting in recess. . . .(*gavel*). . .

RECESS: 1:34 p.m.

RECONVENE: 1:35 p.m.

CHAIR MOLINA: . . .(*gavel*). . . Land Use Committee meeting for June 20, 2007 is now back in session. We have for us to do a PowerPoint presentation the applicant's representative, Mr. Mike Munekiyo. Mr. Munekiyo?

Note: Computer-generated presentation.

MR. MUNEKIYO: Thank you, Chair. Members of the Committee, my name is Mike Munekiyo and I'd like to provide a brief overview through this PowerPoint presentation of the proposed action that's before the Committee today.

First of all, as the Committee recognizes, this is an application brought forth by the Department of Public Works and Environmental Management, and representing the Department today is Deputy Director Mike Miyamoto and head of the Solid Waste Division Tracy Takamine. The prime consultant for the studies that were done in connection with the entitlements action is SSFM International, and they were responsible for the preparation of the Environmental Assessment. We are assisting SSM, SSSM. . . FM as a subconsultant on the entitlements processing portion of the overall process.

There are several components of this afternoon's presentation, and I'll go through this on a point-by-point basis. We'll start with. . . we went through the introductions. We'll talk a little bit about the entitlements being sought, the project background, the project needs and objectives, and project description.

First of all, this is a County proposal to accommodate a, an abandoned vehicle, scrap metal, and white goods facility project. The property is located at the old Puunene Airport. It encompasses approximately 14.8 acres in size. The underlying purpose, of course, for today's meeting is the entitlements action which would allow this facility to be implemented, and the new processing facility in this context would include the ability to receive, store, and auction abandoned vehicles as well as breakdown scrap metal and white goods for shipping to market.

This is the project site here and just for orientation purposes, Mokulele Highway running towards Kihei, this is the old Puunene Airport. . . the, the drag strip, and that area highlighted in yellow is the 14.8 acre project site. For further reference, this is the Hawaii National Guard Amory location.

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As I mentioned, we are before the Committee to request the Committee's recommendation for approval on a number of land use entitlements. Number one, the County of Maui is seeking a Community Plan Amendment from Project District 10 to Heavy Industrial. The parcel is currently within the State Agricultural District, and so that designation needs to be reclassified to the State Urban District. The parcel is less than 15 acres and thus falls within the purview of the County of Maui. And finally, the County is seeking a Change in Zoning from the County Agricultural District to the Heavy Industrial District (M-2). And these entitlements, Committee Members, would permit for the implementation of the processing facility. These are, the processing facility, as described, is an M-2 use.

The Community Plan Amendment, just to provide some context, Project District 10 and again imbedded within Project District 10 is that 14.8-acre site. Again, Mokulele Highway running here and this portion of Project District 10 identified on the community plan then would be amended to the Heavy Industrial land use designation.

Just a slight reorientation of the parcel. Mokulele Highway runs in this direction and this is the 14.8-acre site here, and we are seeking a State Land Use Reclassification to the State Urban District. And finally, same orientation, Mokulele Highway running in this direction here, the area surrounding is in the County Agricultural District, and this 14.8-acre site then would be rezoned to the Heavy Industrial (M-2) Zoning designation.

Just a little bit about the, the genesis for this request, and I'll just post everything up first. First of all, this is a facility that would accommodate or allow the County to meet its obligation to address abandoned and derelict vehicles on County roadways. It would also allow for the processing of white goods. And I think we all recall some of the difficulties the County endured not too long ago when the previous company that was processing these vehicles and metals were found to be in noncompliance and, therefore, we did experience accumulation of both abandoned vehicles and the white goods in the public areas.

So what this project does then, assuming that the Committee recommends approval for these land use requests, it does provide for a long-term solution for accommodating abandoned vehicles and processing of white goods, scrap metal. It establishes a basis for a permanent facility. Importantly, it allows the County to have an area that is properly zoned, and again the M-2 zoning is a requirement for a, a facility of this type. It is, of course, centrally located. The 14.8 acres proposed provides for the area to meet current needs and allows for accommodation of future needs as well.

So just to recap. The facility envisioned would allow for the processing for abandoned and derelict vehicles, allow for the processing of scrap metal and white goods and, of course, allow these metals to be processed to market. There are, of course, supporting facilities that would be required, and all of these would meet State Department of Health permit requirements.

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The property as shown on the earlier slide is part of a larger State-owned property, approximately 1,600 acres. It's identified as parcel 3-8-08: portion of parcel 1. The County has a jurisdiction of approximately 222.6 acres, and that is granted by Executive Order 4024 which provides for the County's use of the area for recreational and public use.

Just a little bit about the site conditions. This is a part of the former Naval Air Station in Puunene. It's currently undeveloped, unused. Access is from that road. . .which intersects Mokulele Highway at the main road into the Puunene Airport area. The topography is quite flat, less than 2 percent; elevation about 80 feet.

Just a few photos. This is ground level panoramic looking southwest of the property. As you can see, it's fairly flat. Again, no really vertical construction; it is vacant. This photo in the lower left is the access road to the site. Again, just some other photos of the area. It gives the Committee an idea of the general existing character of the surrounding area or the property itself.

The site plan, and I'll go through the components. Access. . .this is the main access road from Mokulele Highway and within the property itself there would be an internal service road. Again, this is a conceptual plan only. It was intended to ensure that the functions could be accommodated on the property. Of course, when the County gets into detailed design, they will need to consider specific functions more, more carefully. However, at least from a spatial configuration standpoint we know that the site works for the intended purpose. There are various functional areas laid out on the property. Storage areas. . .we have storage areas for derelict vehicles, refrigerated goods, auction vehicles. This area here is really the, the. . .processing, primary processing area. There is, I might note, an archaeological site or historic site, and that's located right here. And the inner oval represents the site limit itself. The outer oval represents the 50-foot buffer and the project has been laid out so as to avoid encroaching into the 50-foot buffer and there, therefore, actually avoiding the site. This is the site itself. It is a World War II remnant of the Naval Air Station in Puunene. It is a ramp. This is a foundation for what could have been a light structure for, for the facility, but again it was a military structure and that is being left in place. And, of course, the reviews for the maintenance of that particular site has been approved by the State Historic Preservation Division.

Specifically, I mentioned this being the main processing area. There is a slab for the baling functions. The office trailer would probably be near the entry to accommodate visitors. Again, this is a conceptual plan only, but I think from a, an overall layout standpoint it kind of reflects what the site options are. There is a steel building which we show at this location right here, and that steel building is part of the storage functions in connection with the baling and containing of the abandoned vehicles that need to be moved offsite. What I show here is just a conceptual plan of what a building of this nature might look like. It would be a steel building, but again very conceptual, more to give an indication of what the facility character might look like once implemented. And, again, design of the facility would need to occur as a future task. There will be perimeter fencing; security gate; fire hydrants or fire, fire protection system; of course, landscaping to provide a required buffer along the access road or from the access road.

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That is the end of the presentation, Mr. Chairman. I'd just like to just close by saying that the entitlements we seek will allow the County to proceed with this action, and I think we, we'll have representatives from the SSFM and, of course, Public Works Department to respond to any questions that the Committee may have. Thank you.

CHAIR MOLINA: Okay. Alright, thank you very much, Mr. Munekiyo. Members, we shall recess this meeting, put up the screen, and then return to LU-7. Meeting in recess. . . .(gavel). . .

RECESS: 1:47 p.m.

RECONVENE: 1:49 p.m.

CHAIR MOLINA: . . .(gavel). . . Land Use Committee meeting for June 20, 2007 is now back in session. Members, we are on Land Use Item No. 7. At this point, the Chair will open it up for public testimony at this time. A couple of ground rules before we open up the floor for testimony. You'll be given three minutes to testify with a minute to conclude. Please state your name and any organization that you may represent. So let us begin first with Bruce Mizel, to be followed by Jack Freitas. And for the Committee's information, attendance-wise today we have excusals for Members Anderson, Hokama, and Victorino.

. . .BEGIN PUBLIC TESTIMONY. . .

MR. MIZEL: Good afternoon, Chair, Chairman and Council. . .Council Members. I appreciate you giving me the, the time to speak here. My name is Bruce Mizel, I am General Manager for SOS Metals Island Recycling, and I have made some copies of a transcript of the proceedings of the Planning Commission's meeting, hearing which was held on November 14, 2006 at the Planning Department Conference Room. And I would ask you folks to please turn to page 28, which is the second sheet, and you see I've highlighted an area and this is a, a statement that, that was provided by SSFM, the consultants: Basically, the project was initiated because County experienced an extended period where there were not enough facilities in operation to process abandoned vehicles. You folks remember it resulted in an accumulation of vehicles along the roadways, also of white goods at, at storage yards and also scrap along the roadways. So as a result of some operational issue with the operators due to economic reasons and permit compliance issues, therefore, the project need for it is to provide a long-term solution for the County to establish a permanent facility, properly zoned, centrally located with sufficient acreage to accommodate their operations, and to also meet the County's needs for the next 20 years or longer.

I fully agree with that statement had it been stated three to five years prior to current. SOS Metals Island Recycling is in a position where we are willing to go ahead and offer to the County first refusal in the event that we fail, whether it be per a permit violation that were so major or, you know, deciding to up and leave. So, I believe that. . .that, that portion of should be covered just in that one statement.

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Then if we turn over to the next page, page 36, you'll see an arrow and an asterisk [sic] where Chairperson Hed..., Hedina [sic]. . .

COUNCILMEMBER JOHNSON: Hedani.

MR. MIZEL: I'm sorry?

COUNCILMEMBER BAISA: Hedani.

COUNCILMEMBER JOHNSON: Hedani.

MR. MIZEL: Okay, Hedani. And what, what he states here is right, right in front of you: How does the County operate in competition? How does the County operate without putting the other operators out of business? Let me back up. Back in 1990, I gave the County Council a book called "Cutting Back City Hall". It was written by Robert Poole. And in that book, he said that the County budget of a normal County can be cut back anywhere from 30 to 40 percent if you follow a couple of recommendations. One of them was private, privatization of government functions --

MS. NAKATA: Three minutes.

MR. MIZEL: --privatization of government functions, thinking smarter, charging users' fees were the recommended ideas that have been done across the country in order to reduce the total budget by 30 percent. Imagine what you could do with 30 percent without firing anybody.

And on the last page Chairman or Commissioner U'u: The question I have for you is it seems a day late and a dollar short. That's what, what it seems. . .what I see. I mean, I see it's under control right now, and you guys are coming up with this project. And it seems to be now that it's not a bad, as bad as it was, so the people are doing a good job.

Also, inclusive in the paperwork that I handed out is a letter from the State Department of Health which basically congratulates SOS Metals Island Recycling in being 100 percent compliant with all of their hazardous waste handling, removal, and manifesting. I also--

MS. NAKATA: Four minutes.

MR. MIZEL: --I also have a graph chart here that shows all of our products since we've been in operation; we've put off the island more than 14 ½ million pounds.

CHAIR MOLINA: Mr. Mizel, you need to wrap up real soon.

MR. MIZEL: Okay. And I feel that in the best interest for the private sector, folks that have put up a lot of effort and money to. . .and, and very proud of what, what we're doing out there, to be basically put out of business is, is, is totally unjust and unfair. Again, this is something that

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should've been acted on years ago, and this is why the Shadrows came in to, to Maui to do this. Thank you very much.

CHAIR MOLINA: Thank you, Mr. Mizel. Committee Members, questions for the testifier? Member Johnson?

COUNCILMEMBER JOHNSON: Yes, Mr. Mizel. Thank you very much for providing the information. In the first handout that you were referencing, which the comments of Chair Hedani were stated, the sense that I'm getting from reading this is that he believes it will create a detrimental situation to the private sector if the public sector goes essentially into competition with you. How do you--and I mean we have to obviously make the decision? Do you think this will negatively impact and to what extent would this impact your particular business?

MR. MIZEL: Yes, our business is derived, a large portion of it via contract, and we feel that if we are not awarded a contract with the County, that's fine with us because it's done through a fair means of competition bidding. And basically, all that we're asking is to be able to leave the private sector in business. I think it's a plus, and not, not that I think, I know it's a plus for the County and its citizens to be able to basically bid against. . .and each other and welcome any other bidders. Our primary here is to get the products off the island in an environmentally sound manner and to keep the costs down, and an example is what we bid this on based against our competitor's bid, which was way. . .much. . .I mean to the tune of \$1.2 million. And, and that's a sizeable amount, not to mention that we've been in business now for more than 30 years and, and it shows in our workmanship and our handling of the hazardous materials, and the State has recognized us as the finest facility in the State. And it's kind of interesting, too, because when I saw the, the presentation of the facility, it looks just like our facility, right up to the trailer as you enter on to the facility. So, I. . .for the life of me I don't understand, but hopefully we can work through this and the decision made will be in the, in the proper interest of the, the citizens.

COUNCILMEMBER JOHNSON: But, but you do believe that this will harm your operation because essentially there's a duplication of services that I gather not only you, but another, at least one other provider are, are providing at this point. Is that correct?

MR. MIZEL: Yes, that is correct. I'm sorry for not making myself clear on that point. But yes, you are 100 percent correct that this would have a major impact on our whole outlook of our operation.

COUNCILMEMBER JOHNSON: Okay. And I, I'm not sure. . .if it's in here, I apologize, in your materials. But when I look at the cost let's say for processing an abandoned vehicle, do you have any idea what the. . .and I mean I have no idea what the government--I guess we'll ask what their cost are going to be from Public Works--but what is your cost to process a vehicle, for example?

MR. MIZEL: Well, our, our cost, I didn't provide that, that particular graph. The graphs that I provided are the different products in which we have taken and processed, where they came from, and the total, the total weight. . .currently up-to-date. And I don't have the exact number; it kind of varies based on price of metals --

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COUNCILMEMBER JOHNSON: Uh-huh.

MR. MIZEL: --and so forth, yeah. But typically, generally speaking, you know, on the mainland if you turn a vehicle in, you can bring it in to a processing facility, they'll pay you \$50 or so. That's on the mainland where they have a facility that can easily go ahead and, and process to, to the next level. Whereas over here, of course, we have the high cost of shipping involved. So that \$50 fee. . .you know, it costs us more than \$50 to process a vehicle, and we're currently on contract at \$108.08 per vehicle is what we're charging in comparison to the former con..., contractor who was charging \$305.

COUNCILMEMBER JOHNSON: Okay, that gives me a much better idea. And I. . .the graph that I'm looking at, this basically, from my understanding then, is where you get the vehicles, where they're derived from, and then the total weight from those various sources. Is that correct?

MR. MIZEL: Yeah. But then if you, if, if you look over. . .if you look over on the third page which is yard vehicles and then the fourth page which is also yard vehicles, it's kind of. . .kind of a light blue color --

COUNCILMEMBER JOHNSON: Uh-huh.

MR. MIZEL: --yeah, the yard vehicles are the vehicles that have been stored at the, the auction yard, the holding yard. Okay.

COUNCILMEMBER JOHNSON: Uh-huh.

MR. MIZEL: Everything else is pretty self-explanatory because it, it tells you who, you know, who brought 'em in and inclusive is State of Hawaii and Community Work Day. What is not on there are different organizational groups, such as Hawaiian Home Lands where we bring in their vehicles at no charge to those folks, and we do a lot of that type of, that type of benefit for nonprofit and charitable organizations.

COUNCILMEMBER JOHNSON: That's, that's really great. And just one final question, and that would be in regard to, I guess, the cost of setting up like your operation. . .because that's since we're kind of looking at a duplication of something that's already been established, do you have any idea just off the top of your head what it cost you to actually set up your entire operation?

MR. MIZEL: Yes. We're just a little bit shy of \$3 million, inclusive is equipment of which, as I speak, we have more equipment being shipped over on the ocean.

COUNCILMEMBER JOHNSON: Okay. And, and you're, we're all caught up or you're all caught up as far as what the abandoned vehicles coming into you are being processed?

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MR. MIZEL: That's correct. We can process up to 65 vehicles safely, environmentally soundly in, in one day.

COUNCILMEMBER JOHNSON: Okay. Thank you very much for your information.

MR. MIZEL: You're welcome. I have one final thing and, again, I would like to invite . . .

CHAIR MOLINA: Hang on. Mr. Mizel--

MR. MIZEL: Yes.

CHAIR MOLINA: --sorry, I'm going to have to open the floor up to questions from other Members.

COUNCILMEMBER JOHNSON: There may be more questions.

MR. MIZEL: Oh, I'm sorry.

COUNCILMEMBER JOHNSON: This is just for us to ask you questions.

MR. MIZEL: Oh, okay. Sorry.

COUNCILMEMBER JOHNSON: . . .*(chuckle)*. . .

CHAIR MOLINA: Committee Members, any other questions for Mr. Mizel? Member Baisa?

COUNCILMEMBER BAISA: Good afternoon, Mr. Mizel. Thank you for being here. I have a couple of questions, pretty straightforward. How many employees do you have?

MR. MIZEL: There are a total of ten of us.

COUNCILMEMBER BAISA: And they're all full time?

MR. MIZEL: Yes.

COUNCILMEMBER BAISA: And if we were likely to end our contract with you, they would probably lose their jobs?

MR. MIZEL: Yes, that is correct.

COUNCILMEMBER BAISA: Okay. Another question is I was very interested in perusing this report from the State of Hawaii Department of Health, EPA. I . . .if I remember correctly, at the time that you came in, this was not the situation, that we had all kinds of troubles with fines and, and penalties and things hanging over our head that we needed to deal with. We don't have any more of those?

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MR. MIZEL: No, we do not and evidence of that is in this inspection report. We were given the very first time 100 percent compliance in our handling of all hazardous materials, and this letter points that out.

COUNCILMEMBER BAISA: Well, congratulations. I'm sure that's not easy to do. Anytime you're dealing with the Department of Health and EPA it's always dicey. Member Johnson asked my cost questions. You know during the budget, you kind of talked about this and it's very interesting, of great interest to me. Member Victorino and I had talked about possibly doing some kind of a rewards program where we could get people to bring their stuff in instead of throwing it out on the highway and give them a little bit of a, a gratuity or a reward or something for doing it, to help with the problem, and we didn't have enough time during that process and we didn't have enough information really to, to pursue it, and that's of great interest to me. I was happy to hear you talk about you doing some of this for nonprofits or for special circumstances. Is that something you'd like to expand?

MR. MIZEL: Yes. Actually, I've had many discussions with Mr. Shadrow, one of the two brothers that have financed this particular facility, and the idea is that we have going around now is to include several companies, see if their willingness is as willing as ours, and that is to create an amnesty island-wide that will enable any citizen to go ahead and bring their vehicles in to us at no charge, and then the monies that would normally have been collected for the processing would then be given back to nonprofit organizations and charitable organizations. And we plan on doing this on a, you know, not. . .I wouldn't say every month, but certainly on, you know, a couple of times a year because there. . .lots of folks that, you know, would really like to do the right thing and there's been a lot of misconception on their behalf or just from past history of how much it cost to, to have these vehicles brought in to 'em. And it would be wonderful if, if you folks could come up with some sort of program that would also be able to work with us to, to get these polluting things off the island and keep our, our delicate island the way it should be.

COUNCILMEMBER BAISA: Thank you very much. You know, a lot of us local people have a tendency to collect monuments in our yards because we might need the parts.

MR. MIZEL: Exactly.

COUNCILMEMBER BAISA: And before you know it, you know, you got all these things that need to be dealt with, and that's not good. My last question is the, the site that you are on, does that have any regulatory concerns attached to it? Is it zoned properly, is the lease in order?

MR. MIZEL: Yeah. Well, to, to answer your first question the. . .the property that we're on now is M-1 zoned and it's going to be coming in front of Council. Mr. Stoner, Earl Stoner who is our landlord who leases, I guess is the leasor [sic] from Alexander & Baldwin, A&B. . . --(*CHANGE OF TAPE, start 4a*)-- . . .submitted a request to put the property in certain aspects of that Central Baseyard to M-2 zoning, which is inclusive on the site where we're at. So we are operating on a Special Use Permit and we're operating on just a little bit under 3 acres, and we're looking to

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expand. We have the option in July, and we are also in. . .going to be negotiating with S&F Land Company to extend our 10-year lease an additional 5 years to make it a 15-year lease. And, you know, again we, I will produce for you folks a guarantee in a legal document form with S&F's signature on it that in the event that we fail in any which way, manner of shape or form, that the County of Maui would have first right of refusal to our completed facility and, therefore, you know, no need, no need to go and spend more money on something that we already have. And we certainly would never have put forth the effort and energy to get where we're at today had this facility been in place when it was really needed. But as you look around our roads, we don't have the problems that we had had before, and I think that is what really scared everyone or at least it did myself and from the comments I've heard from, from you folks, you know, and it, and it was--and I'll use that as past tense--it was a major problem. But, you know, we're obviously taking care of the problem right now, we're doing it in a better manner than the State has ever seen.

COUNCILMEMBER BAISA: Thank you very much. Thank you, Chair.

CHAIR MOLINA: Okay. Thank you, Member Baisa. Committee Members, any other questions? Member Pontanilla?

VICE-CHAIR PONTANILLA: Thank you, Chair. Thank you, Mr. Mizel, for being here. You know, I hate to see government compete with the private industry, but in this case here I think the intent is to ensure that we have M-2 zoning to handle abandoned vehicles. Right now in Maui County, I don't think we have any M-2 zoning, just one. . .and, and, you know, that's what happened the last time because of the zoning we couldn't store vehicles. So this application, the way I understand it, is to create M-2 zoning for this particular site. And I'll be asking the question to Corporation Counsel if we do go ahead with this zoning approval, if this will allow the County to put up such facility--you know, reading this thing here, you know, it's to allow--so I'll be asking Corporation Counsel, if we do approve this, is that automatic that we create this facility? So, again, thank you for being here.

MR. MIZEL: Yes, thank you for your comment and, you know, if I may just kind of elaborate a little bit on that. I believe the whole purpose. . .or not the whole purpose, but a good portion of the purpose of us all being here today is to open up land to M-2 zoning, but let's open it up to the private sector. Let's not open it up solely to the, to the government. Let's keep, you know, private, privatization and competition and efficiency working. Let's continue, continue that momentum. And as one last statement, I would like to invite all of you folks to come out and take a look at our, our modern state-of-the-art facility and see for yourselves what, what we have out there and how we go about processing. I think you'll be very, very pleased. I know Councilman Bill Medeiros was just out a couple of weeks ago.

CHAIR MOLINA: Okay. Thank you, Mr. Mizel. Any other questions for the testifier? Mr. Medeiros?

COUNCILMEMBER MEDEIROS: Thank you, Mr. Mizel, for your testimony. I'm of the same immediate notion as Councilmember Pontanilla, that my feelings are about the rezoning to M-2

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which, which would make the land or the property available for this kind of facility. I think that's the important part I think we're focusing on right now, and I understand what you said that be good to have other properties zoned M-2 for private operations. So the County right now under contract pays SOS \$108 to process a vehicle?

MR. MIZEL: Yes, \$108.08 per vehicle.

COUNCILMEMBER MEDEIROS: Okay. Okay. And. . .in looking--I think one of the problems the County had with abandoned and derelict vehicles was that the County didn't have any land to store the vehicles when the vehicles were going to be available for auction, instead of, you know, smashing it up and shipping it off. Does your property have areas available to store vehicles that the County may contemplate auctioning off?

MR. MIZEL: Well, as it currently stands, that particular portion of the contract is not with the processor. That's with a separate entity that has a storage facility that receives the, the abandoned vehicles and then monthly they're auctioned for, for the public. We do have the ability to lease a lot of property directly and, you know, in front of our facility. That's all vacant land which is up for M-2 rezoning.

COUNCILMEMBER MEDEIROS: I see. Okay. And according to your charts, within a year's time, I'm assuming from June '06 to June '07 the total shipments were 4.5 [*sic*] million pounds according to your chart.

MR. MIZEL: I'm sorry what, which page are you on?

COUNCILMEMBER MEDEIROS: In your charts, that would be the number one, the first page.

MR. MIZEL: Number. . .okay, and. . .

COUNCILMEMBER MEDEIROS: Okay. You show shipments during period of being 4.5 [*sic*] million pounds at the top of your chart there.

MR. MIZEL: That's 14, 14. . . .

COUNCILMEMBER MEDEIROS: Five million. Is that correct?

MR. MIZEL: Yes.

COUNCILMEMBER MEDEIROS: Okay.

MR. MIZEL: That is correct.

COUNCILMEMBER MEDEIROS: So the County pays 108 for you to process the vehicle. What's your return on that 14.5 million?

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MR. MIZEL: Well, we have quite a large, you know, investment initially and as we currently stand, we are showing no profit as, as--

COUNCILMEMBER MEDEIROS: No, but--

MR. MIZEL: --of today.

COUNCILMEMBER MEDEIROS: --what do you sell the metal for per pound?

MR. MIZEL: The metal that's sold is based on a contract with another firm in Hawaii, Schnitzer Steel, and that's based on a three-month contractual agreement between both parties, and it takes into consideration several mainland city pricings on it which protects both ourselves and Schnitzer Steel. I can tell you that by the time we're done handling all the fluids, it's \$5.75 per gallon to dispose radiator fluid and it becomes quite costly. Our main goal here is not so much financing or, you know, making big money. Our long, our, our goal here is to be long term and after many years of operating we should be able to show a profit, and that again depends on where the metal markets sit. All indicators are that, you know, metals will continue to rise for the next few years, but it's like trying to predict the stock market. So basically, our primary function here is to be able to keep the island clean. We're very fortunate to have this situation where both the Shadrows have successful metal recycling facilities worldwide and they do not rely on this particular facility to make, make them rich.

COUNCILMEMBER MEDEIROS: Okay. So you can't give me a ballpark figure on a quarterly . . .

MR. MIZEL: No, I don't have those figures right handy with me exactly--

COUNCILMEMBER MEDEIROS: Okay.

MR. MIZEL: --what our financial, you know--

COUNCILMEMBER MEDEIROS: Uh-huh. Okay.

MR. MIZEL: --structure is.

COUNCILMEMBER MEDEIROS: My final question is what percentage of the, your business, your operations right now derive totally from County vehicles and appliances?

MR. MIZEL: Approximately 68 percent.

COUNCILMEMBER MEDEIROS: Sixty-eight percent?

MR. MIZEL: Yes.

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COUNCILMEMBER MEDEIROS: Okay. Thank you, sir. Thank, thank you, Chair.

CHAIR MOLINA: Thank you, Mr. Medeiros. Committee Members, any other questions for Mr. Mizel?
Mr. Mateo?

COUNCILMEMBER MATEO: Chairman, thank you very much. Mr. Mizel, good aft..., good
afternoon. The, the current Special Use Permit that you have right now to continue the
operation --

MR. MIZEL: Uh-huh.

COUNCILMEMBER MATEO: --does that have a sunset date?

MR. MIZEL: Yes, it's the end of September '07.

COUNCILMEMBER MATEO: So in a couple of more months?

MR. MIZEL: Yes.

COUNCILMEMBER MATEO: And the application that you referenced that is either submitted to the
County already or will be submitted for the Change in Zoning that has . . .

MR. MIZEL: Yes. According to Mr. Earl Stoner, our landlord, he has submitted all necessary
paperwork for portions of the Central Baseyard to be rezoned M-2.

COUNCILMEMBER MATEO: Okay. And that application had already been submitted to the County?

MR. MIZEL: That's correct. I believe you folks are going to vote on that or hear on it the first of
August. I think it was deferred for a month or so.

COUNCILMEMBER MATEO: Okay.

MR. MIZEL: Originally it was July.

COUNCILMEMBER MATEO: Then. . .at. . .I guess you're currently then initiating some negotiation
with S&F for a long-term lease --

MR. MIZEL: Yes, that's correct.

COUNCILMEMBER MATEO: --at your current property?

MR. MIZEL: That's correct.

COUNCILMEMBER MATEO: You currently have what, 3. something?

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MR. MIZEL: Well, no, we currently have just a little under 3 acres that we're operating. We have a 22,500 square foot concrete processing slab.

COUNCILMEMBER MATEO: Okay. And you, you'll be looking for a longer term lease you, you mentioned, yeah. So that longer term lease, you're looking at a minimum of 15 years?

MR. MIZEL: That is correct. And the reason that it's only 15 years is that it's very difficult for S&F Land Company to project what the rent would be, anything beyond 10 years. And we're willing to not worry about the . . . what the rent would be after the 10 years to ensure the, the operation to continue for a minimum of 15 years at that location. It's not to stop us from pursuing our own property, providing that the County opens up some M-2 zoned land.

COUNCILMEMBER MATEO: Okay. And, and my last question, can you tell me what SOS invested in your operation to date?

MR. MIZEL: Yes. They. . . just a little under \$3 million to far to date, and I've got more equipment, as I mentioned earlier, on the ocean due here in a week.

COUNCILMEMBER MATEO: Okay. So with the, with the extension of your lease, then apparently that'll be, that'll also include the extension of your operation in terms of expanded machinery that you'll be . . . *(inaudible due to interruption)*

MR. MIZEL: Yes, exactly. Yes.

COUNCILMEMBER MATEO: Thank you. Thank you, Chairman.

MR. MIZEL: You're welcome.

CHAIR MOLINA: Thank you, Mr. Mateo. Mr. Mizel, the Chair has a question for you, actually more of a clarification. So as I try to read or interpret your comments or your concerns, you seem to be agreeable to the fact that the County--and I know, I understand you were a former County employee yourself, too, in the Public Works Department.

MR. MIZEL: Correct.

CHAIR MOLINA: You, you acknowledge that there is a need for additional M-2 zoned land for. . . I guess we could call it solid waste purposes, but the concern you have is, again, the competition, the potential competition it could have on your business should we create a separate facility? Am I correct?

MR. MIZEL: Yes, you are correct.

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CHAIR MOLINA: Okay. Now, today, we're just here to discuss the zoning of the land. When and if the Department decides, should this matter pass--we don't know for sure--should this matter pass where the property is zoned, then this Depart..., the Department if they want to still to continue to pursue a facility will have to come back to us, and we're talking finances and maybe big, big money, and that is where we will, I'm sure, we will have some very interesting discussions. So...and I would, I would believe when that day comes, you know, that would also be an interesting time for you to come out and, you know, give your thoughts on that. So just to set the record straight, you know, if, if the zoning passes today, it doesn't necessarily an aban..., an abandoned vehicle facility put out by the County will go up tomorrow. So we are far from that today. So, but I...it would seem, as I hear the comments, we apparently need some type of additional land for M-2 zoning for whatever purposes. So, I just wanted to let the public know that we are far from approving any, any facility at this point from the County...so... 'cause there's a lot of money we're talking about and we don't know what kind of efficiency it, it will provide for the County with regards to this issue. So anyway, I want thank you, Mr. Mizel, for your comments. I know we kept you up here for a little while, so appreciate your comments.

MR. MIZEL: Okay. Sure.

CHAIR MOLINA: Thank you.

MR. MIZEL: Okay, thank you. Thank everyone.

CHAIR MOLINA: Thank you. Next to testify, we have Jack Freitas, to be followed Buck Joiner.

MR. FREITAS: Jack Freitas, Maui Tow. Mr. Chair, Council Members, thank you for having me. I have been involved in the abandoned vehicle program for seven years. I have picked up literally tens of thousands of vehicles from the roads, all the way from Lahaina, now to Hana. I strongly believe that we do need more M-2 land. We need M-2 land for the private sector. Right now, I could not go and rent M-2 land. I'd like to put a facility in, but there is no land available. On the...there was, there was quite a few questions asked that I would have liked to...I, I'd like to address. One is on the vehicles that are taken from, from the roadways. The last barge that came in I put over 200 vehicles on the barge myself and nobody...looking at me as a processor. These are vehicles that we, we tow off of the private sector, these are what they call abandoned...not...abandoned vehicles on supermarkets, people's property. And so we, we put these on. This barge alone that...you folks may not be aware of. We have already, I believe, SOS not just in what you call...um...automobiles, they, they will have over 2,000 tons to put on. I know there is over 3,000 tons already processed to go on this next barge next month. We have couple hot spots left on the island. We have one up in Kaupakalua; we have one in Haiku that have a lot of vehicles to, to be removed. The vehicles are getting less and less on private property. I'm fortunate that I have a friend, that we fly over the, the island with a helicopter and, and you can see all of these hot spots is, is being diminished. If you look on the roads today, you don't see people driving old, junk cars. What you see people are driving, newer cars. So the, the, the Maui Cruisers and whatever is getting less and less. The cars that we're picking up are less and less. I believe the way the program is being run now is excellent. I have a vested

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interest in this. I rent the yard to the County that holds the abandoned vehicles for the auction, and also I'm a contractor that, that do the tows. Mr. Kitagawa has an excellent facility.

MS. NAKATA: Three minutes.

MR. FREITAS: He, he processes cars. SOS has an excellent facility. Both of them asked me if there was cars available so that they could process. They are running out of vehicles actually to keep their, their employees going. Mike Kitagawa had a, had a--and I may be speaking out of turn--but he had a, what you call, a contract to fill and he was short of vehicles. He, he could not fill it because there's, they're, they're being picked up from, from the roads. I'm *totally, totally* against the County getting into the, what you call, abandoned vehicle program, either processing it or storing it or in any way. What the County's role is in the. . .abandoned vehicle program right now, I believe, is excellent, they're doing an excellent job with what they're doing, and I think it should stay status quo.

MS. NAKATA: Four minutes.

CHAIR MOLINA: All right. Thank you, Mr. Freitas. Committee Members, questions for the testifier? Mr. Pontanilla?

VICE-CHAIR PONTANILLA: Thank you. Thank you, Mr. Freitas, for being here. You mentioned that you, you pickup vehicles and you bring 'em to the barge.

MR. FREITAS: Yes.

VICE-CHAIR PONTANILLA: Those vehicles, do you remove the tires, the liquids, the batteries?

MR. FREITAS: Yes, I do.

VICE-CHAIR PONTANILLA: You do?

MR. FREITAS: Yes, I do.

VICE-CHAIR PONTANILLA: Okay.

MR. FREITAS: And, and the, the way, the way the law is stated, if you store or process under 25 vehicles, you don't need a solid waste permit and that's--and, and the reason why I have to do that is because there is no M-2 land available for the private sector. There is none right now that any of us can go and rent.

VICE-CHAIR PONTANILLA: So what happens to the tires, the liquids, and the battery?

MR. FREITAS: The tires, liquids, and batteries I, what you call, pay just like SOS, just like Mr. Kitagawa to dispose of 'em. My cost to process a vehicle is \$110 per vehicle, that's my cost.

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Now, you asked the cost of what do we derive from. . .um. . .selling the metal. I think that's Mr. Medeiros asked the cost. It's anywhere from \$40 to \$100 a ton. It all depends when, when it happens and what have you. Now, this does not taking in hauling, hauling the vehicle to the, to the barge which when we do that, the barge comes in, we work 24 hours around the clock, we hire private truckers, and we pay them time and a half.

VICE-CHAIR PONTANILLA: Thank you. Thank you, Chair.

CHAIR MOLINA: Okay. Thank you, Mr. Pontanilla. Any other questions for the testifier? Seeing none, thank you Mr. Freitas.

MR. FREITAS: You're welcome.

CHAIR MOLINA: Next to testify, we have Buck Joiner, followed by Lucienne deNaie.

MR. JOINER: Aloha kakou. Buck Joiner speaking as an individual. I'm not in the junk business, except for like Gladys, what I get in my yard already. . .

COUNCIL MEMBERS: . . .(*chuckle*). . .

MR. JOINER: . . .which is plenty. Public Works is, has identified a problem by the Apana, Apana Scrap Metals as a reason for the need for this project. The need has been known for five, six, seven years now. Apana was in trouble a long time before they actually went out of business, and the County is still looking for a solution. However, there are at least two private companies already in operation for a couple of years addressing this, this problem. So my question is, is this proposal a joke? Public Works appears to be getting ready to start thinking about the possibility of considering maybe looking at options. We know that, that the government is the ultimate in inefficiency, ultimate in slow response. There are no figures on this for the cost or the time involved in developing it. The County has screwed up on that situation before. You need that information before you move forward on this. Who's going to operate this facility? Is this going to be done by the County to put private business *out* of business, or is the County going to subcontract this to somebody's relatives or friends? So on the face of it, I'm pretty much opposed to this.

However, I could fully support this if it is for catastrophic emergency use such as recovery from a hurricane or a tsunami. I was on Kauai as a Red Cross disaster volunteer after Iniki and I witnessed the problem of dealing with mountains of trash, and I mean incomprehensible amounts that came in by truckload, after truckload, after truckload. . .just continuous. . .uh. . .and what the hell are you going to do with it? *Extremely* difficult problem. I'm not even sure that these 14 acres with nothing on it is enough to, to be able to address that. But if you had that available, we would be quantum levels ahead on preparation for a disaster. So, I could support that.

If the intent is for the government to replace or displace private business, I'm opposed to it. It doesn't make any difference whether it's the City, County, State, or Federal government--the

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deficiencies are always there. And, of course, the ultimate question you have to ask is are you willing to grant M-2 zoning to yourself while denying it to the public and private business? It's a very serious question. Thank you.

CHAIR MOLINA: Thank you, Mr. Joiner. Committee Members, any questions for the testifier? Seeing none, thank you.

MR. JOINER: Oh. . .um. . .if I could have just one moment. Remember that we bought the Kihei Regional Park without doing the cost analysis and then--this is the part mauka of the highway--and then decided that we couldn't develop it. Might be in the same situation. You need those numbers. Thank you.

CHAIR MOLINA: Okay. Thank you, Mr. Joiner. Next to testify, we have Lucienne deNaie, followed by Lee Guthrie.

MS. deNAIE: Aloha, Committee Members and Chairman Molina. Nice to be here. My name is Lucienne deNaie. I'm testifying today on behalf of the Sierra Club, Maui Group as a member of its Conservation Committee. I attended the planning commission hearing where the rezoning was discussed and. . .the, the. . .the essence is the Sierra Club supports the need for M-2 zoning in our County for both public and private use. Mr. Joiner's points are well taken and those by others that have testified. However, it is confusing to see something structured specifically for a purpose that's already duplicating efforts, when what we really, really need is something that Sierra Club and many others have advocated for years, if you're going to spend money, we need a materials recovery facility. And a materials recovery facility allows things that are still useful to be reused because there's a place to put them and a place where they can be properly sorted. I've actually been at several materials recovery facilities in other parts of the mainland and they are boon to a community. On an island community that's aiming for sustainability in all of our documents, this is a no-brainer. How can you be sustainable if you take useful things and put them in your dump? It's not, doesn't work. I have a lot of personal experience in the old abandoned car and appliance arena here.

First of all, I have to confess my dad owned a wrecking yard and recycling facility out in the high desert, and I'm ashamed to admit that it could've qualified as a superfund site because this was before the EPA had any rules, and we used to just dump oil on the ground and whatever. So, I grew up around a junkyard. So, I'm very familiar with junkyards.

When SOS first established themselves, they invited members of the community that were involved in removing abandoned vehicles and appliances and old batteries like Sierra Club, like Community Work Day, and they brought us together and said, you know, how can, how can we help the problem here? What can we do to make it better? I was impressed. They offered us all a tour of their facility. I went. Man, this was nothing like my dad's junkyard. This place was run neat as a pin; really well, efficiently managed. I was very impressed. So don't make it hard for a good thing.

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If you approve the zoning, which I think that we need more M-2 zoning and I think the County should be prepared, hear the pleas. Look at additional M-2 zoning request for the private sector because we, we need the private sector here. Also, look at using this facility for the purpose--that I believe even Mayor Apana spoke to this at one of our meetings--that this would be the ideal site for materials recovery facility. Actually, there'd be enough room for the County to store vehicles there for auction and have a material recovery facility. And I believe Ms. Guthrie is going to talk a little bit more about this 'cause this was her passion for years, and I served on several committees with her when I was on the Haiku Community Association. But--

MS. NAKATA: Three minutes.

MS. deNAIE: --we really need to envision a place for this in the future, this is a central location, and as we approve the zoning, I would hate to see it come as an ordinance with the attachment that the County is just going to use it to process and metals and appliances that's already being done. Thank you very much.

CHAIR MOLINA: Thank you, Ms. deNaie. Committee Members, questions for the testifier? Seeing none, thank you. Next, we have Lee Guthrie to testify, followed by Rob Parsons.

MS. GUTHRIE: Good afternoon, everyone. Hello, Chairman.

CHAIR MOLINA: Good afternoon.

MS. GUTHRIE: Glad to see you all again. As Lucienne said, you all know what my agenda is, and my agenda is to make this island sustainable and to be able to sort our castoffs and be able to utilize them. And when I see that the County has dropped their plans for the MRF and have started this new project that is actually counterproductive to our private citizens, it, it really. . .it, it hurts my heart because one of the things that could happen out there on that 14.48 acres at M-2 is, just like she said, we could do the storage for the auction, but also a MRF, an ideal MRF has. . .area around it that other businesses can set up and do things with the stuff that's coming out of there. So you make a product an added value product that stays on the island and gets shipped out and gets sold all over the world, such as paper and different things. I, I. . .years and years and years ago I submitted to the Council--I can't even remember, it's been so long--but it was like a diagram, it showed you how the MRF would work, how it could, the product could flow out, and that, that picture that they showed up on the wall, the rendition of what they saw as a scrap metal place for the County is perfect for a MRF. And now they have MRFs, the prices are going down, the technologies are going up. I mean it does, it almost does everything, it almost washes your hands for you. I mean there's just so many advances in the, in the science, and for us to have dropped something that the County said that they want, the Council Members said they were for, put money aside for, and then drop because of lease issues. . .couldn't get a lease straightened out, and then to just drop it, go out and pay hundreds of thousands of dollars for someone to do a feasibility study of, of. . .a. . .of something that private concerns are already doing, it really hurts. Because I'm telling you, I'm doing a summary of taxes in just in June that I am paying, I'm stunned, and then when I turn around and see that this money is being spent in this manner--I

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mean you say, oh, it's only 400,000 or only it's like 600,000, that's a heck of a lot of money, that's a heck of a lot of money. That could've built the MRF by now. Seriously, you could've built the MRF with this money. So, I would really say definitely rezone this property M-2 and when it comes up time, I'll be back here to testify, and when it comes up time, I want you guys to be thinking about the, the feasibility of a MRF on this property and nix this idea of the metal scrapping yard. Thank you very much for hearing me today.

CHAIR MOLINA: Thank you, Ms. Guthrie. Committee Members, questions for the testifier? Seeing none, thank you. Next to testify, we have Rob Parsons, to be followed by Irene Bowie.

MR. PARSONS: Good afternoon. Aloha, Chair, Council Members. I'm Rob Parsons, I live in Haiku. I think my testimony may sound a little bit like the previous testifiers. I am in favor of establishing M-2 zoning in this location. I think Project District 10 was conceived in the Kihei-Makena Community Plan to accommodate industrial uses and recreational uses, and we have recreational uses out there already and I think that this is a good, compatible area for this kind of industrial use. However, I, I would encourage you as previous testimony...testifiers have done to allow flexibility in what we're talking about here. The, the agenda item title specifically is earmarking County abandoned vehicle, scrap metal and white goods, and I do think that a materials recovery facility is a much better option for, for this area. It comes back to, is there a need for what's being asked for here? And as Councilmember Johnson said, it appears that this is duplication of service. . . --(CHANGE OF TAPE, start 4b)-- . . .by the consultant earlier said that this, the overriding need for this is, is a time a few years ago when there were not enough facilities and there were operational issues. I don't think this is the case now. I think that the reaction to go down this road of designating a County facility is modeled after what Kauai did. Kauai has County property that they prepared a, a site and, and brought in a contractor to process vehicles and appliances on that site. We have, I think after the closing of Maui Scrap Metal, made a number of enlightening decisions on what's really needed to handle this massive problem that existed a few years ago and that we're beginning to get a handle on, although there's much more that still needs to be done, and the County taxpayers are still paying a heck of a lot of money to mop up from what happened a few years ago. But I think that it's safe to say that we've entered a new era with SOS Metals here with the County contract and. . . I think that we do need to consider what would be the cost and preparation of such a facility. I think it would come at great expense for what would amount to an insurance policy that I'm not sure we need. It seems that the private sector is finally stepping up and handling this quite admirably. There, there is a solid waste characterization study that's being undertaken right now and I think that we may have some, some light shed on overall solid waste needs when that is prepared and, and brought to you for recommendations and action.

So, I, I think the taxpayers have already paid too much over the past few years for appliance and vehicle processing. . .over some unfortunate decisions and some unfortunate circumstances.

MS. NAKATA: Three minutes.

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MR. PARSONS: Thank you. I, I just think there's a misplaced emphasis in this request that this land be designated just for vehicle processing. The, the last time the, the County was in the business of having the vehicle storage yard--it was adjacent to the Kahului Wastewater Treatment--and I think that people can tell you that there were a number of break-ins and the fence had to be repaired time and time again. And if we put this facility with that usage out in the middle of the Mokulele Highway, the County's going to be in security business and, and have an ongoing maintenance budget for fence repair and such things like that. So, perhaps that is something that is better contracted to the private sector. Thank you very much.

CHAIR MOLINA: Okay. Thank you, Mr. Parsons. Members, questions for the testifier? Seeing none, thank you. Next to testify, we have Irene Bowie, followed by Tom Cook.

MS. BOWIE: Good afternoon. I'm Irene Bowie. I'm the Executive Director for Maui Tomorrow Foundation, and Maui Tomorrow is in support of having sufficient lands in the M-2 zone to allow needed heavy industrial types of operations. Maui Tomorrow would like to urge this Council to make sure they have sufficient information regarding this site and its purpose to make a wise long-range decision regarding the rezoning. What needs to be especially clear is whether this site will be intended for a much needed materials, materials recovery facility or MRF. This facility has been discussed for over a decade. Maui Tomorrow has come before many past councils in support of this important component in our efforts to plan for a more sustainable future. Our landfill is growing daily and is outstripping its space. If you visit the landfill, you'll observe large proportions of items that could be reused and they're adding to the landfill's burden everyday. Maui citizens are counting on this Committee and the Council to make sure that we provide the facilities that are really needed and not duplicate services that are already available. To be specific, setting up this site as a County-run metal salvage operation would appear to be a duplication of existing services and a lack of planning for desperately needed solid waste services. Maui already has two such operations that are getting this job done. Both are on land that is correctly zoned and has needed permits or are in the process of securing those permits. The County needs to let the private sector do what it does best and make sure that valuable public resources are used to fulfill real needs, such as the materials recovery facility. On a personal note, I'd just like to say that about a year ago my husband's very old car died and I was in the situation of figuring out what to do. I called the County--didn't find anything in the phone book--called the County, got a couple of gee, I don't know what to tell you from different departments, and called the past Administration's Environmental Coordinator. He gave me the contact information that I needed. I called both those services, compared prices, and SOS and Maui Towing were excellent, was very cost effective, it was easy, it was a pleasure. I'd like to do everything possible to keep them in business in doing well. And in closing, I'd just like to thank you for your time, ask you to consider the M-2 zoning and also consider the MRF. Thank you.

CHAIR MOLINA: Thank you, Ms. Bowie. Committee Members, questions for the testifier? Seeing none, thank you very much. Next, we have Tom Cook to testify, and Mr. Cook is the last person to have signed up. The Chair will give one last opportunity for anybody in the gallery who would like to sign up on our agenda item today. Mr. Cook.

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MR. COOK: Good afternoon, my name is Thomas Cook. I'm here as an individual and the owner of a construction company. I'd like to encourage you to zone this property for M-2. I'd like to encourage you to zone a couple of hundred acres more. You can. . .this, this project, you've got great consultants. Somebody stated earlier this is a prime example of how slow government operates, and I don't mean that to be insulting or derogatory. You are discussing an issue that was an acute problem 18 months ago. It is being satisfied fabulously now. If you're worried about the precariousness of the lease for the existing businesses, that can be rectified by providing M-2 land that can be purchased. They will buy it and they will stay put. I was the general contractor for SOS Metals. I did it at a good-guy rate. The Shadrows have. . .and, and Mr. Mizel have earned my respect. I am humbled and in awe at what they have accomplished. They are not talking; it's the real deal. Simply allow them to do business. While you guys are talking about entitlements and rezoning, okay, let's solve the affordable housing issue. Give us land to build on. Let's solve the stranglehold that lease that landowners have on small businesses on this land. Entitle property that we can purchase, own, and prosper. Okay. You guys *have* the power. Do not go in competition with private sector. There's not a single government agency that functions--I mean great people, it doesn't work. Okay. You guys talk about you can't hire people, you can't compete with wages, you can't house 'em. Please don't think about actually having Public Works do this. Entitle the property, it's fine. Okay. Don't spend five cents of my money recycling cars 'cause you're not any good at it and you're not going to learn. So, I don't mean to be respectful. I feel very passionate. My, my heart was just beating through this presentation. I'm like, come on, guys. . .simply enable us to do what we do. Okay. *Provide services*. Every component of the business community can and will solve our problems. Assist us and enable us and kind of. . .get out of the way. Thank you.

CHAIR MOLINA: Thank you, Mr. Cook. Committee Members, questions for the testifier? Seeing none, thank you, Mr. Cook. Committee Secretary, have we had any additional signups for testimony today?

MS. FRIAS: No, Mr. Chair.

CHAIR MOLINA: Okay. Thank you. Since there have been no additional signups, with no objections, Members, the Chair will close public testimony on Land Use Item No. 7.

COUNCIL MEMBERS: No objections.

...END OF PUBLIC TESTIMONY...

CHAIR MOLINA: Okay. Thank you very much. Alrighty, Members, let us get right into the meat of things. The Committee is considering today County Communication No. 07-91, from the Planning Director, transmitting a request from the Department of Public Works and Environmental Management for a District Boundary Amendment from Agricultural to Urban, a Community Plan Amendment from Project District 10 to Heavy Industrial, and a Change in Zoning from Agricultural District to M-2 Heavy Industrial District to allow for the establishment

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of an abandoned vehicle, scrap metal, and white goods facility on approximately 14.802 acres in Puunene, Maui, along with proposed bills to accommodate this request; an additional correspondence dated June 8, 2007, from the Department of the Corporation Counsel, transmitting the following: a revised proposed bill entitled "A BILL FOR AN ORDINANCE TO AMEND THE STATE LAND USE DISTRICT CLASSIFICATION FROM AGRICULTURAL TO URBAN FOR PROPERTY SITUATED AT PUUNENE, MAUI, HAWAII"; along with a revised proposed bill entitled A BILL FOR AN ORDINANCE TO AMEND THE KIHEI-MAKENA COMMUNITY PLAN AND LAND USE MAP FROM PROJECT DISTRICT 10 TO HEAVY INDUSTRIAL FOR PROPERTY SITUATED, again, AT PUUNENE, MAUI; and a revised proposed bill entitled "A BILL FOR AN ORDINANCE TO CHANGE ZONING FROM AGRICULTURAL DISTRICT TO M-2 HEAVY INDUSTRIAL DISTRICT (CONDITIONAL ZONING) FOR PROPERTY SITUATED AT PUUNENE, MAUI, HAWAII".

And we have additional resources to . . .at your perusal, Members. We have from the Planning Department, the Director of Planning Mr. Jeff Hunt, along with Planner Robyn Loudermilk. From the Department of Public Works, we have Deputy Director Mr. Michael Miyamoto; and from the Corporation Council's Office we have Mr. Michael Hopper; and from the Department of Land and Natural Resources, the Maui District Land Agent, Mr. Daniel Ornellas is also available here. The property is actually executive ordered to the County so we, in essence, do not own the subject property at this point. Okay.

And so with that being said, Members, I will ask first for Director Hunt to give us a, just a brief overview on the matter, to be followed by Deputy Director Miyamoto for additional comments and an overview.

MR. HUNT: Thank you, Chair. I'll defer to the project Planner, Robyn Loudermilk.

CHAIR MOLINA: Okay. Thank you.

MS. LOUDERMILK: Good afternoon, Mr. Chair and Members of the Committee. As indicated, the County of Maui is coming in for a number of land use entitlements. . .and as you heard, that there are a number of concerns that were expressed. These similar concerns were also expressed at the Planning Commission: concerns on the role of the government in private industry; in the matter of processing, not only abandoned vehicles, but services in general. There was discussion on what are we really reviewing and recommending to the Council at this project; is it the zoning for the land, M-2, or is it the operation itself. And it was clearly indicated to the Commission, and so I would like to clearly indicate to the Council that. . .these entitlements will allow for any solid waste type of operation to occur in the M-2 Zoning District. There was some testimony that it may be only limited to abandoned vehicle facility. That is not necessarily true. That, that is the proposal and that is part of the analysis done in terms of the types of activities that can occur in the M-2 Zoning District. However, it would allow for other types of industrial uses or solid waste uses or other types of uses that the County of Maui, through the Administration and through this Council, feel fit should they choose to rezone the property to M-2. So we are not limiting what can be done with the particular property in the M-2 Zoning District.

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The Maui Planning Commission recommended approval for all three changes, and this was unanimous. And again, this was after a similar type of conversation that you folks had regarding operations and uses. And, yes, we talk about government coming late into the game, 2005 the private sector failed for a number of reasons, and we were fortunate enough to be able to have Members of the private sector come step up to the plate, help provide the facilities in areas that they're allowed. For example, Mike Kitagawa. . .his property is the only one zoned M-2. . .*(chuckle)*. . . SOS, their property is currently zoned State Ag, County Ag; however, they do have a County Special Use Permit, and their property will be part of a larger project coming before you in the future for rezoning to M-2 to allow for that, for the type of use. And then through our General Plan Update project we'd be able to further identify areas that can be community planned, and then the challenge would be who will be initiating the various land use designations or entitlements to allow those properties to be utilized. So we, we're trying to be forward thinking. Even if the. . .discussions focus on operations, I'd like to have us focus back on the zoning itself. We've just recently cleared abandoned vehicles also on the Puunene air site that were allowed to be stored there through emergency declaration by the Governor to bypass all the existing zoning and State land use laws. I do not think the County would want us to be in that situation again. In order just to store these abandoned vehicles the appropriate zoning designation is M-2, nothing less, and even if we just want to utilize it for that, this is the appropriate designation.

The Commission wanted to provide the County with the flexibility to utilize the property that would be in the best public interest at that site with the M-2 zoning, and to that end. . .for the Change in Zoning the Commission has recommended three conditions.

The first condition is to ensure that the property use shall be industrial in nature, or that any accessory or principal industrial use, such as an office or a baseyard, is associated with the industrial activity. We don't want to have any big boxes or that type of operations going there. We want to make sure that it stays industrial in nature.

Secondly, from the location it is setback somewhat from Mokulele Highway, but we would rather have an area developed similar to Campbell Industrial Park on Oahu with nice landscaping, nice and clean, versus a Sand Island. And to that end, we would. . .recommending landscape planting plans to address visual buffers, view buffers and. . .it. . .these buffers will also help to mitigate any potential dust that might, may emit from the facility. We wanted to be a nice, a nice looking facility.

And that lastly, that no building or structures nor the enlargement of any building or structure shall be erected or maintained to exceed 4 stories or 48 feet in height provided, however, that the height of such building or structure shall not exceed one and one-half times the width of the widest street which it fronts. This is a standard for the M-1 zoning that has been recommended on this project to keep the scale in line with the, with the particular area. We don't want the County to go into the hotel business or, you know, those types of facilities and that we do realize

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that some of the equipment, depending on the ending, end use may, may exceed; however, we wanted to make that clear.

And lastly, I just want to reite..., reiterate that the Commission is very supportive of the M-2 zoning, that there is a need, and that the distinction of who owned the property or who would operate. . .more so the operation was less of an issue than the availability of the M-2 zoned land to be made available in the future should another 2005 event occur. And that concludes the Department's presentation.

CHAIR MOLINA: Okay. Thank, thank you, Ms. Loudermilk. Quick question for Corporation Counsel before we move on and get comments from Public Works. Mr. Hopper, it was mentioned by Ms. Loudermilk that there is flexibility in the bill should the Committee or the Council consider something else besides an abandoned vehicle, scrap metal, and white goods facility. As I look at the agenda item, it seems to just--at least just on face value--indicate that the support of this proposal would only, would seem to restrict us to just that. Do we need to incorporate any specific language that would give us the flexibility according, you know, as, as suggested to us from Ms. Loudermilk? I know verbally it's been stated that we have the flexibility, but I want to make sure that we have it in writing as well. Do we need to. . .do you need more time to respond to that Mr. . .

MR. HOPPER: Well, my only concern is with the actual title of the item, Mr. Chair. If the, if the, the change was granted with these conditions, the use would be in the. . .all the uses allowed by the M-2 District subject to the conditions that the Council would impose, you could limit those uses, as well as an EA was done and if the use was inconsistent with the use proposed in the EA, then there may have to be modifications to that EA since the EA was obviously required for one of the triggers that is, is required before coming forward with the, the zoning change. However, the, the actual title of the item is a, is a bit of a concern as far as the Council's. . .the, the action that Council would take at this point. It may be proper to amend that. But as far as everything else, the, the. . .the way that the M-2 District allows and the way that the conditions are currently recommended, it's brought enough to allow uses other than of, of just the baseyard, and the EA again would have to be supplemented or amended if the uses were inconsistent with the EA that was already accepted.

CHAIR MOLINA: Thank you, Mr. Hopper, and you hit the nail on my head, the title of the bill or proposed bills, it, it would just seem on face value that we're just restricting ourselves only to these particular uses. So, I guess at a later point you maybe you could recommend some type of language that we could incorporate into the title. That can be discussed at a later point. Members, what I'm going to do now, I'm going to ask Public Works to just give a brief overview and then we're going to take a recess, and then we'll come back and I'll open the floor for questions. Okay. Mr. Director? . . .So you're on the hot seat today, huh? . . .*(chuckle)*. . .

MR. MIYAMOTO: Thank you, Mr. Chair. As, as Planner Loudermilk had stated, this proposed action is primarily to get the entitlements of the land, to make sure that we have land that is properly zoned State Boundary, with the Community Plan and, you know, so that we can go ahead and

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have some use of this land for heavy industrial. The title of the, the proposal came from based on what was urgent at the time that we had made this proposal, and that's what it's based on. And as one of the testifiers had stated, you know, it was. . .you know, the hot item 18 months ago, and that's about when this project actually started once we started looking at it in the previous Administration. We started looking at it at the time it was. . .abandoned vehicles and white goods were all over the place. So we had to designate a use for this proposal so that it would have some idea when we did our Environmental Assessment as to what we were going to propose there and what potential impacts were there. So that's where we came from when we got the title. You know, we have do have the Integrated Solid Waste Master Plan that's currently in, in process. That process could also identify that, as other testifiers said, maybe a MRF would be a nice thing to have at this location; the M-2 zoning does permit it. We would then have to go ahead and modify the Environmental Assessment to, to try to accommodate the change in use within that, that property. So we're rather flexible, but, you know, we just want to make sure that, you know, that there is M-2 land available. As far as trying to compete with private sector, that wasn't our intent. Our intent was to ensure for the betterment of the public that we would have a location that was properly zoned, that should something happen to any of these other providers we would have this piece of land that we could put in a service and be compliant and, you know, serve the people of the County of Maui.

CHAIR MOLINA: Okay. Thank you, Mr. Director. Members, it's 3 o'clock. The Chair will call for a brief recess and then we'll have a Q&A session afterwards. Land Use Committee meeting for June 20, 2007 is now in recess. We shall reconvene at 3:10. . . .(*gavel*). . .

RECESS: 3:00 p.m.

RECONVENE: 3:14 p.m.

CHAIR MOLINA: . . .(*gavel*). . . Land Use Committee meeting for January, excuse me, June 20, 2007 is now back in session. Members, when we last left off, we heard comments from the Public Works Department, and we also have here, also, from the State Department of Land and Natural Resources, Mr. Daniel Ornellas. Now, I know he has a very tight schedule. So if you'll allow the Chair to have Mr. Ornellas to give comments with regards to the property that is currently conveyed to the County from the State, and then after Mr. Ornellas gives his comments, then we will open up the floor for questions. So, Mr. Ornellas.

MR. ORNELLAS: Good afternoon. Daniel Ornellas, District Land Agent for the Department of Land and Natural Resources, and I believe it was mentioned earlier that the property, 222 acres, has been EO'd or executive ordered through the County of Maui for public and recreational purposes. So, I've been asked to comment on how we define that and, basically, it's what's the benefit that's going to be purveyed to the community. It's clear that what's been proposed is similar to what the private sector can offer. So, I need to better understand how the ben..., the public would benefit directly. For uses that do not benefit the public, the State would withdraw the properties out of the Executive Order and take on that responsibility itself. If we can demonstrate some sort of public benefit, then it would be merely a submittal to the Board of

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Land and Natural Resources for clarification and consent within the existing executive order. So in other words to make it simple, if it's a money-making venture, the State would take the lead on it. If it's for a public benefit, we would allow the County to continue.

CHAIR MOLINA: Okay. Thank you, Mr. Ornellas. Okay. Committee Members, the floor is now open for questions for all of our resource personnel. Shall we go ahead and start. I know, Member Johnson, during a recess had a question regarding the National Guard and several proposals that's being considered in the community. Member Johnson, if you will.

COUNCILMEMBER JOHNSON: Yes. Yes. Thank you very much for being here. Obviously, through Executive Order, you know, we're, we're there basically or we're able to use this for public purpose at the graces of the Governor or at least the DLNR. That can be taken back at any time, is that correct?

MR. ORNELLAS: For uses that are not consistent with the original intent, yes, we can withdraw properties.

COUNCILMEMBER JOHNSON: Okay. And the other question...because there has been public meetings very recently with the National Guard actually talking about bringing over an entire division or expanding an entire division here on Maui, what conversations have you had with the National Guard and their plans for expansion in that area?

MR. ORNELLAS: None in relationship to the Puunene properties. But it doesn't mean that they would have to expand mauka into the County EO. We do have State properties adjacent on either side of National, Army National Guard that they could inquire about expanding into.

COUNCILMEMBER JOHNSON: Right, and because I don't know what the size of the division, what the land use would be required because it might require additional buildings, it might require training, it could require--and, and I'm assuming because the Superferry is coming over that the movement of military vehicles will be much easier, you know, to accomplish in this area. Do you have any idea of what their plans are so we know what the scope is?

MR. ORNELLAS: None has been shared with me at this point in time.

COUNCILMEMBER JOHNSON: Okay. And, and that, Mr. Chair, is one of my biggest concerns because I don't know what their plans are. This just...I was listening on the radio and there have been public scoping meetings asking I guess for public input about this expansion. So, I'm really concerned about that because if there is going to be expansion, I want to make sure that whatever we do in the zoning in that area is completely compatible with whatever their purpose and intent is, 'cause I don't want to be putting whether it's County workers or, you know, if, if people are going to be on site and there's going to be training going on--I don't know if they're going to be doing live fire training--who knows what their plans are. So that would be one of my concerns.

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CHAIR MOLINA: Okay. Thank you, Member Johnson. Mr. Ornellas?

MR. ORNELLAS: To follow up with that, one thing that has been brought to my attention is request for a right-of-entry to do some cleanup by the Army National Guard, but this is on the areas Kihei side of the existing proposed area for the white goods facility. So as far as I know, it's just a cleanup effort. I have not been made aware of expansion of developed areas.

COUNCILMEMBER JOHNSON: Yeah. And, and it's only because of what I have heard that has come out in the public media recently about this request for expansion, because I think this has just been a recent development and, I don't know, it's perhaps associated with, you know, some of the problems that they've had over on Oahu and maybe the need, because we do have a lot of guardsmen here, the need to keep I guess many of those people as close to home as they possibly can be. So, I just would like to, Mr. Chair, find out if the National Guard has any plans and what those plans would be.

CHAIR MOLINA: Okay. Thank you, Member Johnson. The Chair will, maybe through Staff, we could maybe send out a transmittal and inquire about that matter. Members, before we continue with the Q&A, the Chair regretfully would like to let you know that we have to adjourn today's session at 4 o'clock, we will be losing quorum. We already have a skeleton crew. This, of course, being an off-meeting week, Members have prior commitments. So those of you who are here who are able to make it this far, the Chair very much appreciates that. Mr. Pontanilla?

VICE-CHAIR PONTANILLA: Thank you. Mr. Ornellas, at one time the State of Hawaii was talking about the possibility of moving MCCC to a property adjacent to the National Guard. Is that still viable?

MR. ORNELLAS: My understanding is there was groundswell of activity because funding was on the line. They came to the Department and they had these plans for a 30-acre site, doing one prison facility, they was doing all kind studies, but it just. . .kind of disappeared. They never did follow up with any kind of reports to the Board or asking for withdrawals out of the County EO. . . --(CHANGE OF TAPE, start 5a)-- . . .so was a lot of conceptual stuff, but it didn't last longer than a month and then no follow up.

VICE-CHAIR PONTANILLA: Thank you. You, you know, the 220 plus acres that is EO'd to the County of Maui, does the State require a master plan regarding the property use for that 220 acres?

MR. ORNELLAS: My understanding is when the area was originally requested from the State, it was based on a master plan that was developed in the late '90s, early 2000s. So that provided the justification to transfer the lands to the County for public use. In 2005, I was made aware of another planned. . .use of the area that didn't include what was originally intended. So, to me, that is a justification to go to the Board to reclarify these changes in intent just to make sure that there is that public benefit component and that we're not losing sight of the overall purpose. So it's not a requirement to have a plan, per se, but we need to be in line and consistent.

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VICE-CHAIR PONTANILLA: Thank you. Thank you for that piece of information because several years back I think--not I think--the Administration came to this Council and part of the . . .request that we made was that a master plan, an updated master plan be done for the entire 220 plus acres, and you're right, there is a master plan that was drawn up, I don't know, back in the 1990s and some of those plans have already. . .you know, the request is up and gone. So, yeah, the need of an updated master plan for the area, you know, should, would be good for the County of Maui to present to the State. So at this time does the Department have any problem in regards to a facility, rezoning this particular parcel to M-2?

MR. ORNELLAS: Again, we wouldn't object as long as it's in compliance with this public benefit provision of the original executive order. If we can demonstrate that clearly, the State wouldn't have a problem; however, we still would want to consent to the intended use 'cause it is not consistent with what was talked about in the original Board submittal for the Executive Order. Whether or not it would. . .a need for an amendment to the existing Executive Order to just make it very clear that it's going to be an industrial use so you can call it public, recreational, and industrial use for the public benefit or something like that, that might be prudent. And also, I wanted to mention that the plan that was developed by the County in 2005 excluded one of the provisions of the Executive Order, which was to set aside 4 acres to the Department of Land and Natural Resources. I would just need to remind the County that we need to not forget that.

VICE-CHAIR PONTANILLA: . . .*(chuckle)*. . . Thank you for that reminder.

COUNCIL MEMBERS: . . .*(chuckle)*. . .

VICE-CHAIR PONTANILLA: Thank you, Mr. Ornellas. Thank you, Chair.

CHAIR MOLINA: Thank you, Mr. Pontanilla. Mr. Medeiros, followed by Mr. Mateo.

COUNCILMEMBER MEDEIROS: Mahalo, Chair. Mr. Ornellas, for us new Council Members, would you give us a brief summary of what the original intent or intended use of the EO was on behalf of the County?

MR. ORNELLAS: Yes, and I'll read verbatim out of Executive Order No. 4024. It stated in a broad way: for public and recreational site.

COUNCILMEMBER MEDEIROS: Okay. Okay. Because I know part of the master plan that was conveyed to us in the Department of Public Works when I used to work there was that we was going to have a central baseyard there for Highways and, and other agencies. So in this request by the Department of Public Works for M-2 zoning, you're saying that if it doesn't comply or coincide with the intended use, the State may have a problem with approving or continuing the Executive Order. So in that regard, did the Department of Public Works or their consultant consult with you folks before bringing this to the Council whether the State would accept that reason or purpose?

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MR. ORNELLAS: The means of consultation was via this. . .this document that was submitted to the Department of Land and Natural Resources for comment --

COUNCILMEMBER MEDEIROS: Uh-huh.

MR. ORNELLAS: --and I'd have to check our files on whether or not we responded in writing, but I, I clearly remember calling somebody and explaining that there may be some concerns with the. . .*(chuckle)*. . .consistency with the Executive Order.

COUNCILMEMBER MEDEIROS: Uh-huh. So was that--maybe not on your part, but maybe since Planning raised their hand--was that conveyed to the Department that there may be a challenge to the intended rezoning and use?

MS. LOUDERMILK: At that period in time, no because it was the directive of a previous Administration to go forward with this.

COUNCILMEMBER MEDEIROS: And under the previous Administration was that consulted with the DLNR to see what their response would be or did they have a response to that? Seems like we have the cart before the horse here if there's a challenge by the State whether we can use this for that kind of zoning or that intended use, and I'm just wondering why that wasn't completed prior to bringing it to the Council?

MS. LOUDERMILK: No. I believe the public use, the phrase "the public use" was interpreted to include a facility by the County that would be utilized for the public good. In this case the proposal was an abandoned vehicle facility but, again, in related to some sort of public good associated with the property.

COUNCILMEMBER MEDEIROS: Right. But according to Mr. Ornellas, it seems like industrial use wasn't part of that original agreement or Executive Order.

MR. ORNELLAS: Again, the nature of the types of uses that the County has traditionally done is in line with industrial, 'cause as you can see when you go down to the airport you see all the baseyards, Board of Water Supply, Forestry, those are all under Executive Order from the State to these different agencies. So a baseyard would be consistent, but if it's going to be something that's going to be subleased out to a concessionaire and a, a fee is going to be assessed to the community for the use of that area, you're starting to, to me, cross over the line into something that is more of a, a private venture that the State normally takes on as a function, not the County.

COUNCILMEMBER MEDEIROS: Okay. So my final question, Chair, is so would DLNR or the State have problems with allowing the rezoning without first determining what the County will do, whether it'll be contracted out for the operations and so forth? I'm just trying to see if we're doing this in the right sequence.

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MR. ORNELLAS: Normally when applications go in for rezoning, they try to get the consent of the landowner. So if we can make clear at least, you know, what the overall intent is going to be and get that approval from the Board of Land and Natural Resources, I wouldn't see a problem with moving ahead with a request to rezone, and the Board would obviously reserve rights to look at whatever is going to come out in the future and make that determination at that point in time when plans are more solidified.

COUNCILMEMBER MEDEIROS: Okay. But it seems like we need the rezoning before we can do the facility, so, I'm, I'm just not understanding the sequence of events or processes we're going through, seem like we're kind of ahead on one over the other. But if, if DLNR is alright with that then, you know, you're, you're the landowner so. . .and the landlord. Thank you, Chair.

CHAIR MOLINA: Thank you, Mr. Medeiros. Committee Members, any questions for our other resource personnel, aside from Mr. Ornellas, at this time?

VICE-CHAIR PONTANILLA: Yeah. Fast question.

CHAIR MOLINA: Okay. Mr. Pontanilla?

VICE-CHAIR PONTANILLA: Thank you. Mr. Ornellas, you mentioned that if this is, if this property was used for profit, then the State would take a look at this?

MR. ORNELLAS: Yeah.

VICE-CHAIR PONTANILLA: So in, in other words let's say we go ahead with some kind of facility, either a MRF or an abandoned vehicle facility or something else that we lease to probably some organization or some company for the use of the property. . .um. . .what is the State. . .

MS. LOUDERMILK: How you define property?

VICE-CHAIR PONTANILLA: . . .*(chuckle)*. . . Yeah. Would the State be in objection to something like that, you know, the property is EO'd to us and then we lease the property to a nonprofit or some company to do work for the County?

MR. ORNELLAS: The, the State would prefer that. . .especially in industrial uses, that the State be the entity that leases the property and that monies be reinvested back into either the General Fund and/or the Special Fund which is under the direct purview of the Land Division of the Department of Land and Natural Resources. My understanding, and this is more on a theoretical level, that the County receives revenues from property tax, from properties that they own in fee and lease out as necessary or from lobbying the Legislature. So to use public lands to generate revenue, in my opinion, is not consistent with the overall philosophy of the relationship between County and State.

VICE-CHAIR PONTANILLA: Thank you.

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CHAIR MOLINA: Okay. Thank you, Mr. Pontanilla.

COUNCILMEMBER PONTANILLA: Thank you, Chair.

CHAIR MOLINA: Mr. Mateo? I'm sorry, I, I bypassed you, Mr. Mateo, earlier.

COUNCILMEMBER MATEO: No, that, that's perfectly alright, Chairman. I, I just needed to throw in my two cents, too, because I'm a little, I'm a little disturbed that the Department had spent a considerable amount of money for consultation work in providing a plan to us that is fairly thorough in its intent, and yet, they apparently did not have this discussion with DLNR and we could have avoided this meeting because we are definitely, as Mr. Medeiros nicely put it, putting the cart before the horse. This is insane. This is why we get screwed time and time again. Because if we go through the process now and we rezone and DLNR will look at it: one, it does not meet the original intent of the use of the properties; two, when you look at the concept that's been prepared for us, there is an intention to perhaps have an outside entity run this particular business. So we are in conflict with, with the State in terms of utilization of this land. So what we doing? You know, and to Corporation Counsel, you know--and it's not you because it was, you know, another individual from the other Administration--but, but it kind of saddens me that terms of the E..., of this EO was really not looked at thoroughly enough and we have, one, we have lost money; two, we're wasting our time; and, three, we bring somebody over from Honolulu to tell us what we should've known in the first place. So, I'm a little disturbed, you know, and, and, I guess, number four, we've got people in the back here who want the same kind of answers, and we not able to answer them because nobody did the work to provide us the answers and we're asked, we're being asked for some kind of a, a determination this afternoon. So, I don't think I'm ready. I think this is so premature. I think I need another year to age before I can come back and, and take this issue on again. And let's deal with the real issue that's pending, you know, that'll address this problem, which is another item existing in Land Use, it's Land Use No. 8. So, I think at this point, I think this is premature at this point because we don't have all the answers at this point. Thank you.

CHAIR MOLINA: Okay. Thank you, Mr. Mateo. Department, any response, any concerns. . .or, Mr. Ornellas? Okay. Oh, Mr. Corporation Counsel.

MR. HOPPER: I, I just wanted to also address that before any conditions could be imposed on the property through a. . .the, the recording of a unilateral agreement, that the, the County would need to get the consent of the, of the State as well as far as filing the unilateral agreement which contains those conditions. So, I, I believe that would need to be done before the conditions could be imposed as well. So that'd be another step that would need to be taken with the State in order to. . .along with the consent to rezone, that would also have to be obtained.

CHAIR MOLINA: Okay. Thank you, Mr. Hopper. Member Johnson?

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COUNCILMEMBER JOHNSON: Yes. . .and because I understand some of the concern that it seems we've gone to all of this extent without establishing some kind of a memorandum of understanding with the State. And that would be the direction that personally, Mr. Chair, I would prefer to go, is get an agreement of where we're going, what tentative uses, and then have that spelled out very clearly that the State at least as, as the landowner or the entity that controls that whole area, that at least we're doing something that would be consistent with the purpose and intent of the original Executive Order. This is the question now, I guess, for the Planning Department because I know that the General Plan Advisory Committee is actually looking at land use planning and different project--well, not specifically community plan--but location of critical infrastructure or critical types of facilities. Has there been any discussion with the General Plan or any recommendations made with regard to this area?

MR. HUNT: The General Plan process right now is reviewing the Policy Plan, the Countywide Policy Plan and it was actually just recently completed. The Policy Plan isn't the appropriate document to get into specific land uses or mapping. It, it's more policy oriented as, as the name indicates. The next step will be the Maui Island Plan and during that process there will be specific analysis of land uses and acreages and appropriate infrastructure and where intended development should, should go. So in the next step which is starting this summer --

COUNCILMEMBER JOHNSON: Uh-huh.

MR. HUNT: --that type of analysis will occur.

COUNCILMEMBER JOHNSON: Okay. And when would you anticipate that there would be some type of, I guess, review of this specific area so that we would kind of have a sense of. . .what is planned? I realize they're not going to do the master plan for this area, but so that we would have a better idea of if there's something that's radically different from what's in either the community plan or what has been spoken about for that area?

MR. HUNT: The analysis is actually ongoing right now, it's just that it's behind--poor use of terms--but behind closed doors. It's just with staff; we haven't released it to the public. So that analysis has been ongoing. It will be released to the public sometime this summer. At that point it's just a draft.

COUNCILMEMBER JOHNSON: Uh-huh.

MR. HUNT: And the, the GPACs will make their comments, then it goes to the planning commission, and then it goes to you.

COUNCILMEMBER JOHNSON: To us.

MR. HUNT: So it's a long process still.

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COUNCILMEMBER JOHNSON: Yeah. And, and that's where I think because this item, Mr. Chair, was in our Parks and Economic Development Committee before because we had an issue with the Puunene, I guess, the acceptance of the land dedication through our Committee. We were always anticipating that we would get this great-looking master plan so we would have as a body a better concept of what was going to be located where, and that's why for me, Mr. Chair, it is kind of frustrating and I realize time changes things and the needs are sometimes. . .continuously changing. So, I always look forward, though, to some type of a master plan for this area and especially when we were looking at a lot of our regional parks issues, because in the open space and the park master plan for South Maui I can't recall if there was anything designated for this particular area with regard to recreational opportunities. So I, too, Mr. Chair, think that we just need to get some more questions answered and know a little bit better where we're going. So, I would be all in favor of at least deferring this until we get some of the information. Thank you.

CHAIR MOLINA: So noted, Member Johnson. Member Baisa?

COUNCILMEMBER BAISA: I'd just like to say I second all of the comments of my colleagues, but I also would like to offer an apology to all the testifiers I know who scrambled really hard in the last four, five days to be here today. In fact, I had quite a few phone calls about, what, you expect me there, to be there; we only had four or five days to get our stuff together. But, you know, I think it's all to the good that we do a little bit more research and do a better job before we do anything and then have to undo it. It's never a good idea. Thank you.

CHAIR MOLINA: Thank you, Member Baisa. Member Pontanilla, followed by Member Medeiros.

VICE-CHAIR PONTANILLA: Thank you, Chair. Yeah. I, I would go along with deferment on this particular issue here. We, we need some answers from the State of Hawaii in regards to the uses as well as what Corporation Counsel had mentioned in regards to a unilateral agreement. But for me, you know. . .work for the Maui, County of Maui. . .um. . .a piece of property like this, 14 acres designated as M-2, to me, is a great asset for the County of Maui. 'Cause I hate to be stuck, I hate to be stuck if we don't approve any M-1 or M-2 zoning request. So, I think this is a good discussion that we're having this afternoon. I'd like to see this issue come back to us again in a near future. For me, Chair, you know, I feel real comfortable, you know, having an M-2 zoning piece of property for the County of Maui so that, you know, like. . .shit happens. . .

ALL: . . .(chuckle). . .

VICE-CHAIR PONTANILLA: . . .and we'd like to be prepared for it. So thank you, Chair.

CHAIR MOLINA: Yeah. Well, however you express it, Mr. Pontanilla, it's appreciated. We know you mean it from the heart, spoken from the heart. Mr. Ornellas.

MR. ORNELLAS: Well, the State does recognize the need for the business community to have opportunities, other opportunities to rent and lease land. One of the primary functions of the land division is to make available industrial type activities. We do have almost a thousand acres at

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Puunene. We do want to closely participate in the planning process. You know, we manage the land, you plan for the land--that's your jurisdiction, you have the land use authority. For years we've been trying to do something down there, but we just don't have the entitlements and we, we just get caught up with other things. If the County can assist us in working towards getting those entitlements set, I think it's a win-win. Not to mention right across the street by the animal shelter, Hawaiian Home Lands has just awarded an RFP for 80 acres to Fong Construction. So they're right down the pike as far as providing opportunity as well.

VICE-CHAIR PONTANILLA: Thank you.

CHAIR MOLINA: Thank you, Mr. Ornellas. Mr. Medeiros?

COUNCILMEMBER MEDEIROS: Mahalo, Chair. I just want to ask our Department of Public Works, Mr. Miyamoto, do you have anybody available in the gallery that can enlighten us on the process they took, whether it's from Solid Waste or the consultant, about why there wasn't more clarification with the State about going forward with this on the request for rezoning with the proposal of, the original proposal of this vehicle, abandoned vehicle and appliances facility?

CHAIR MOLINA: Mr. Director.

MR. MIYAMOTO: As Planner Loudermilk had, had indicated, the previous Administration was, you know, given the time at which this was started, we were really in a, somewhat of a crisis situation, and if you look at the comments within the final environmental document, they were done June and July of 2006. That's before the current provider, SOS Metals, was even onboard with the County. So you can imagine the situation we were having out there. So at the time the, the directive the then-Mayor was to go ahead and get this done and move it along as fast as we can and, you know, the property had just been EO'd to the County and at that point we, you know, in our haste to get it moving we went through the normal process and to get this along, and the determination was made internally, you know, the Administration's part that the public interest was, you know, was met by providing something that wasn't available at the time that we started this process. So that was the main focus that there was not, you know, the . . . something that was, that we could depend on and count on that, you know, that we could, that could provide the service to the public. Back about the comment time, when the comments were made, you know, the current provider was just getting on, just getting started, you know, they had just got the contract for in July of '06 for the, the current year. You know, so it was, it was still occurring, and so we had started the process prior to that and we went along that lines, and having it be pointed out today, yes, we, maybe we should defer and then contact with the DLNR and get those approvals and agreements.

COUNCILMEMBER MEDEIROS: So, yeah, I can understand the urgency of going through, you know, the process from the previous Administration and, you know, pretty much our existing Department of Public Works was part of the previous Administration and . . . when we hire consultants, you know, we think our money is spent so that the right process is accomplished. And I just don't understand how it wasn't clarified with the State about their concerns that we

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hear today. To me, that would have been a natural inquiry with the State to say this is our plans, do you foresee any concerns or challenges from the State about going forth with this, that our plan is to rezone or request rezoning to M-2 because we want to build this facility, possibly we're going to contract it out which will mean that the County will earn money which may make the State consider whether they want to do this or not. . .because if anybody is going to make money, the State wants to make money on their land. So, I just cannot understand why that. . .to me--I'm not a consultant or I would've asked that. I would have clarified that with the State first being that they're the landowner. I'm just concerned why we didn't go through that process.

MR. MIYAMOTO: Mr. Chair.

CHAIR MOLINA: Mr. Director.

MR. MIYAMOTO: It was never our intent to, to lease this land to make a profit. Our intent was that given that these entitlements were received by the County, that would affect the bidding process for providing that service.

COUNCILMEMBER MEDEIROS: Right.

MR. MIYAMOTO: You know, it should provide a cheaper service for the people of Maui, and that was our full intent. So there was no profit minded, mindset when we were looking this to do this entitlement. So, you know, we weren't, you know, we wouldn't be violating their requirement, but we're not looking to make profit on it. And so, you know, the question that I guess, you know, one of. . .somebody brought up regarding if it's profit by the people that lease the land, now is that also a concern? And that's a question now that we'll have to discuss with DLNR, and that hadn't entered into our mind at that point. We, we felt that by providing these entitlements and the land, the building, making sure it was properly zoned and, you know, so it's that much easier for the service provider, it would then result in a cheaper price for the people.

COUNCILMEMBER MEDEIROS: Yeah. I understand your goals on, on that, but I just don't understand that the effect of the State agreeing to this is determined by what you're going to put on the property and how you're going to operate that facility. It seemed like that wasn't asked, you know, in order to gain the State's blessings on that.

CHAIR MOLINA: Ms. Loudermilk from the Planning Department.

MS. LOUDERMILK: Yeah. I would just like to respond to that as part of the environmental review process in that, as Mr. Ornellas indicated, they were provided with documents. We do not have written, we did not receive any written response highlighting and addressing these concerns. These, these concerns were not raised until well after the documents were completed and, rightly or wrongly, we're addressing them now, and we just wanted to. . .share that with you folks that, you know, based upon what we talked about this morning about the permit processing and agency comments or non-comments, this is one of those unintended consequences in that. . .it. . .parties within the County were under the impression that doing, they were doing the

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right thing and that. . .um. . .everything was fairly lined up in terms of procedurally and. . .now we know that's not the case.

COUNCILMEMBER MEDEIROS: Okay.

MS. LOUDERMILK: So it was never--those are, those are excellent questions that we really now at this point in time do need to address. I don't think there any intent to try to circumvent any regulatory or authority process with, with the State, and I think this is a very good learning experience in that in the future that all of us can, can learn from in terms of, okay, this is executive ordered land, oh, okay, what we gotta do; okay, Daniel. . .get him on the bat line, you know, so that this doesn't occur in the future.

COUNCILMEMBER MEDEIROS: Yeah. Okay. Thank you for those comments. And, and my final comment to that is we have other County facilities on executive ordered land in Maui County, and I'm just thinking this isn't the first experience with executive ordered land that we're trying to put a facility on. So, I'm, I'm just wondering if, you know, we had the correct checklist when we did this project. And that would my final comments. And, Chair, yeah, thank you for the time. And at this point because there's, there's uncertainty of whether we did this correctly or not, I, I would, you know, also ask for your deferral on this so we can get more information and discuss it more. Thank you, Chair.

CHAIR MOLINA: Okay. Thank you, Medeiros. The Chair hears all of you very loud and clear. Before the Chair makes his recommendation, just one question for Mr. Ornellas. You mentioned earlier that with regards to the EO and the potential uses of the property that you would recommend getting a response from the Board of Land and Natural Resources. How often to they meet because, well, the Chair's recommendation already is a deferral. I basically would like to know when they meet, when this matter could be presented before them. We will, I guess, send a. . .a. . .I guess a request letter to them to get a response. What's their meeting schedules and you have any--

MR. ORNELLAS: The Board of Land and Natural Resources meets every second and fourth Friday of each month. Most meetings are held on the island of Oahu at the Kalanimoku Building. So the procedure would be is send a letter to the Chairperson, currently Allan Smith or the Department of Land and Natural Resources, and it would filter down to me, a submittal would be put together with a recommendation that would be addressed a forthcoming meeting.

CHAIR MOLINA: Okay. I would ask, you know, through your help if there's any way to get the, the matter heard soon, if possible, because of the need for Maui County needing property to be zoned M-2. So I, I would just ask for that consideration.

MR. ORNELLAS: Sure.

CHAIR MOLINA: So, Members, with that being said and if there's no questions, the Chair's recommendation is a deferral and based on a couple of points on your. . .with, with regards not

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only the concerns you've expressed. I would like to get comments from the Board of Land and Natural Resources as it relates to the EO. And as far as the, the bill itself, I guess the way it was titled it might have sounded an alarm for many. . . --(*CHANGE OF TAPE, start 5b*)-- . . . I think it's been clarified that there is flexibility in the bill to consider other alternatives besides an abandoned vehicle or scrap metal facility because, as I had mentioned earlier in the meeting, if it's the Department's intent to construct a new facility, they're going to have to come back to us, and now we're talking turkey, talking a lot of money, and then, of course, talking about the need and if the cost, the benefit, the need or meets the needs. So, I believe the appropriate thing to do at this point is to . . . defer, and as soon as we get a response from the Board of Land and Natural Resources, then I think only then we will bring this matter back to Committee. So are there any other considerations for the Chair or for Staff? Member Johnson?

COUNCILMEMBER JOHNSON: I take it that you'll also be checking with the National Guard as well?

CHAIR MOLINA: That's true, yeah.

COUNCILMEMBER JOHNSON: And one other thing would be that maybe to re-title and make it a more broad subject so that when the posting goes out, we are not constrained. 'Cause that's the other thing that I felt a little uncomfortable about and you raised a very good issue, Mr. Chair, is that when we post things and then we take action on it, it really leaves the wrong impression if we're not going to do what was actually up for consideration. Thank you.

CHAIR MOLINA: Yeah. Thank you, Member Johnson. And. . . I. . . since we have--yeah, I want to, first of all, thank Mr. Mizel for coming out and give his, his input as well as Mr. Freitas. This morning driving down Haleakala Highway I saw two more cars there.

ALL: . . . (*chuckle*). . .

CHAIR MOLINA: I know, you know, since you're here I thought I'd let you know. So, I believe they have yellow tags on 'em, so I think they're going to pick up, if they haven't been picked up already, real soon. So. . . um. . . and in fairness to the Public Works Department, I, I know I think about 18 months, maybe 2 years ago, why all of these cars were being left out of the road was due to the lack of M-2 property for storage as well. So, I think that was also part of the concern as well as to why the cars weren't being picked up as fast as they are now.

Anyway, I want to thank the Department and. . . both departments, Planning and Public Works, as well Mr. Ornellas from the State to come down and have a full discussion on this issue. So if there are no objections, once again, the Chair will defer the matter and we will hear this very important matter at a later date. Any announcements, Members?

VICE-CHAIR PONTANILLA: Chair.

CHAIR MOLINA: Mr. Pontanilla.

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VICE-CHAIR PONTANILLA: I'd just like to make a quick comment. Yeah. When we had the crisis as far as abandoned vehicle, I know the Department worked really hard with the State of Hawaii trying to get a place to store the vehicles and we stored it at this particular site. So, I just want to say thank you, State, for allowing us to do that on a temporary basis. And, you know, right now we're going, we're going forth to have a more permanent M-2 requirement.

CHAIR MOLINA: Yeah. Thank you, Mr. Pontanilla. And as Mr. Mateo, you know, to make reference to Mr. Mateo's comments, I think we need to put the cart before the horse rather than--or is it the, is it the--

COUNCILMEMBER MATEO: Horse.

CHAIR MOLINA: --the horse before the cart, I should say. There we go. . . .*(chuckle)*. . .

COUNCIL MEMBERS: . . .*(chuckle)*. . .

COUNCILMEMBER MATEO: Chairman.

CHAIR MOLINA: Or was it Member Baisa?

COUNCILMEMBER BAISA: No, was . . .

CHAIR MOLINA: Mr. Mateo?

COUNCILMEMBER MATEO: Chairman, it was Mr. Medeiros.

COUNCIL MEMBERS: . . .*(laughter)*. . .

CHAIR MOLINA: . . .*(chuckle)*. . .

COUNCILMEMBER MATEO: However, Chairman, just, just real briefly. One, thank you for, you know, scheduling this for Committee discussion. You know, I, I think it's really timely, and even though the Committee Members still have a lot of questions that arose from the discussion, I think it still highlights the urgency for this County to continue to look at how to zone or get M-2 zoning lands available, and this just highlights it. But in order for us to do that, we've got to be sure that all the pieces are in place. And I, I do know that through your leadership this item will be brought forward again soon so we are able to address the need for our County being able to get the kind of zoned properties that is solely lacking right now. So thank you very much, Chairman.

CHAIR MOLINA: Okay. Thank you very much, Mr. Mateo. Any other announcements? Okay. Seeing none, the item is deferred, and this Land Use Committee meeting for June 20, 2007 is now adjourned. . . .*(gavel)*. . .

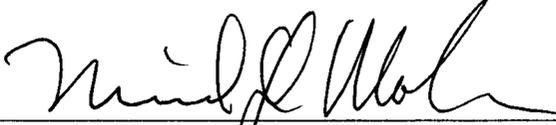
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ACTION: DEFER pending further discussion.

ADJOURN: 3:55 p.m.

APPROVED:



MICHAEL J. MOLINA, Chair
Land Use Committee

lu:min:070620

Transcribed by: Tammy M. Frias