

MAUI PLANNING COMMISSION

COUNTY OF MAUI

SEPTEMBER 23, 2008

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COUNTY OF MAUI
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Date

REGULAR MEETING

Held at the Department of Planning Conference Room, First Floor, Kalana Pakui Building, 250 South High Street, Wailuku Maui, Hawaii, commencing at 9:00 a.m. on September 23, 2008.

REPORTED BY: JEANNETTE W. IWADO, RPR/CSR #135

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ATTENDANCE

MAUI PLANNING COMMISSION

REGULAR MEETING

SEPTEMBER 23, 2008

CHAIRMAN: JONATHAN STARR

COMMISSION MEMBERS: KENT HIRANAGA

BRUCE U'U

WAYNE HEDANI

WARD MARDFIN

WILLIAM IACONETTI

EXCUSED: JOHN GUARD IV

JOAN PAWSAT

DONNA DOMINGO

PLANNING DEPARTMENT: CLAYTON YOSHIDA

ANN CUA

TRISHA KAPUAALA

ROBYN LOUDERMILK

JOE ALUETA

DEPUTY CORPORATION COUNSEL: JAMES GIROUX

PUBLIC WORKS STAFF MICHAEL MIYAMOTO

SECRETARY: CAROLYN TAKAYAMA-CORDAN

VIDEOGRAPHER: KENNY HULTQUIST

1 MAUI PLANNING COMMISSION
2 REGULAR MEETING
3 SEPTEMBER 23, 2008
4 TRANSCRIPT OF PROCEEDINGS
5

6 CHAIRMAN STARR: Good morning one and all. This
7 is the Maui Planning Commission meeting of September 23rd,
8 2008, and I will begin by introducing members present.
9 Starting on the left, Commissioner Kent Hiranaga, followed
10 by Commissioner Bruce U'u, somewhere is Commissioner Ward
11 Mardfin. Not at his chair, but he's around. This is
12 corporate, Corporation Counsel, Counsel for our Commission,
13 James Giroux. I'm Jonathan Starr, Chair. Clayton Yoshida
14 is here representing the Planning Director. And he's --
15 what's your correct title, Clayton?

16 MR. YOSHIDA: Planning Program Administrator for
17 the current planning division.

18 CHAIRMAN STARR: As Planning Program
19 Administrator, he's the one that makes all the stuff work
20 behind the scenes and in front of the scenes. And Dr.
21 William Iaconetti, Commissioner, and Commissioner Wayne
22 Hedani. We also have secretary to the Commission, Carolyn
23 Takayama-Cordan. We have planner extraordinaire and
24 organizer of our great conference last week, Ann Cua. And
25 our other great planner, Robin Loudermilk, is with us as

1 well. And here is Ward Mardfin.

2 We will move along to our agenda. Before we
3 begin, I want to announce that there are three items on our
4 agenda that we will not be able to hear today because of a
5 problem with notification requirements, and in one case an
6 address and notification, also a change in the application.
7 Those are public hearings for items C1 for Iwa Ike LLC, item
8 C2, Pine State Limited, and item C5, Kahana Nui LLC. So we
9 will not be able to hear those items today. They will come
10 back very shortly at another meeting.

11 We will be taking public testimony. Public
12 testimony can be given by any members of the public on any
13 agenda item. Anyone wishing to testify has a choice of
14 either testifying at the beginning of the meeting, which
15 will be just following this, or before the specific agenda
16 item comes up. And we ask that they testify only once, and
17 the testimony be kept as short as possible, in no case more
18 than three minutes.

19 And with that said, we will move along to public
20 testimony. So far I have one sign-up is Greg Kresge.
21 Please come up and introduce yourself for the record.
22 Welcome.

23 DEPUTY DIRECTOR KRESGE: Good morning. My name is
24 Gregg Kresge, I'm the Deputy Director for the Department of
25 Environmental Management. And good morning, Chairperson

1 Starr and Commissioners. I'm here to testify on agenda item
2 number three, which is pertaining to amendment of Title 19
3 to include and to further clarify enforcement,
4 administrative enforcement issues with regards to certain
5 titles.

6 We in particular have -- we would like to not only
7 see that that is -- we're in favor of amending that title,
8 but we would also like to include Title 8 to that, because
9 Title 8 specifically addresses our issues within our
10 department that specifically deal with solid waste. And
11 that currently is not in that resolution right now, but we
12 would like to add it because there were other titles that
13 were included, but Title 8 was not.

14 There are -- and I wanted to just give a couple of
15 examples of why this is so important. Sharla Kuma, the
16 Director on I in our department, we are currently going
17 through looking at our regulations and our administrative
18 rules, and we are trying to pull everything in order to make
19 sure that we have a clear division from the Department of
20 Public Works as well as ourselves which, as you are most
21 likely aware, in November of 2006 the charter was amended to
22 separate the two departments.

23 Currently, the administrative rules and the
24 provisions do not separate us out. So that's part of what
25 this whole thing is to do, is to separate the two

1 departments. And that's very important for us, because we
2 have a lot of things that we -- a lot of issues that we need
3 to enforce, and a lot of administrative rules that need a
4 little bit of tightening.

5 And to improve those enforcements and some of the
6 things I just wanted to mention were, for example, we have
7 -- I'm sure you've heard about the automated refuse
8 collection. We are moving towards possibly doing a curbside
9 collection of recyclables. We need to be able to make sure
10 that these recyclables or even the bins themselves are not
11 stolen. That would be an issue for administrative rules.

12 We also have had a big problem with, for example,
13 drop off of illegal items at recycling centers and
14 convenience centers. We even ended up with couches, and
15 these are supposed to be recyclables, and we end up with
16 these things in our bins. We also end up with things like
17 dead animals which -- in cardboard bins, which obviously
18 they're not cardboard.

19 So we also have commercial use going on of the
20 convenience centers that are specifically meant for
21 residential use. So that is -- there's a lot of room for us
22 to be able to tighten these things up so that we can
23 properly administer these administrative rules.

24 We also have -- we also need to look at the area
25 of abandoned vehicles and how those administrative rules are

1 handled and those regulations are enforced. Currently we're
2 -- we really need to tighten those up, because we don't have
3 a lot of enforcement in the area of people witnessing even
4 abandoned vehicles being dropped off, and then no way to
5 really follow up on that.

6 We also -- we do currently handle administrative
7 enforcement not only in the solid waste area but also in the
8 waste water area and the Waste Water Reclamation Division.
9 Our pre-treatment program with grease traps has been very,
10 very successful. We need to continue that program, and we
11 need to make sure that we have everything in place to make
12 sure that we go forward so that we can protect the community
13 as well as make sure that we follow through with the
14 emphasis of being able to provide these services for the
15 community.

16 Thank you very much, and we're available for
17 questions.

18 CHAIRMAN STARR: Okay, Dr. Iaconetti?

19 COMMISSIONER IACONETTI: What are the regulations
20 pertaining to picking up used and abandoned appliances,
21 washers, dish washers, that sort of thing?

22 DEPUTY DIRECTOR KRESGE: Right now we don't have.
23 Actually, the administrative rules cover -- currently they
24 cover landfills and solid waste activities. The
25 administrative rules are not covered, and we don't have

1 administrative rules for abandoned vehicles. Those are
2 covered under Chapter 20 of the code, which also needs to be
3 tightened, tightened up and made sure that we can follow
4 through with enforcement.

5 Because right now we don't have a lot of, you
6 know, we don't have a lot of means to be able to go forward
7 with searching out these appliances or vehicles, going back
8 to the previous owner, following through with witnesses, you
9 know, things like that.

10 COMMISSIONER IACONETTI: What do you do when you
11 have people depositing these used demolished items on the
12 road?

13 DEPUTY DIRECTOR KRESGE: Well, we have two, a
14 couple of things that we can do. It really depends on where
15 it is. And if it's on, for example, if it's on a state
16 highway then it's the Department of Transportation.
17 Currently we have a contract with -- the county has a
18 contract with SOS Metals Recycling, and we take all the
19 white goods to SOS. They also happen to have our contract
20 for abandoned vehicles, for derelict vehicles.

21 What happens with those, we also have a grant
22 through the Solid Waste Division with the Community Workday
23 Program that's called a Hot Spot program. And any
24 government agency -- and we have a lot of -- Public Works
25 does this a lot, we do it ourselves a lot, which is where

1 Community Workday will go and they will actually pick up
2 appliances that are left on the side of the road. That is
3 at a cost to us because it's a grant.

4 Where this is really prevalent, for example, is on
5 the road out to Hana, Kula up by Hawaiian Home Lands. There
6 are some very typical, you know, there's some hot spots that
7 are used quite often. So that program helps to go, you
8 know, clean up those things.

9 But we don't have, you know, if somebody -- and
10 I'm going to give you my personal example. I witnessed
11 somebody dropping off an abandoned vehicle, and we didn't
12 have anything in place to be able to go after that person.
13 And so we really need to do that, because that's a crime.
14 So we need to have those things in place so we can follow
15 through.

16 COMMISSIONER IACONETTI: Thank you.

17 CHAIRMAN STARR: What would be a mechanism now,
18 say you gave an example where you saw someone abandoning a
19 vehicle. I mean what would, who would enforce and what can
20 you do to gain enforcement now? And if you were able to get
21 this change and do the rule making, then what would the
22 process be?

23 DEPUTY DIRECTOR KRESGE: Well, part of the problem
24 is that like, for example, criminal littering. A lot of
25 this is handled through the Police Department, so it's not

1 just us, we have to get everybody in alignment.
2 Administrative rules would give us a little bit more
3 capability to be able to not necessarily bypass the police
4 process, but be able to levy penalties without having to go
5 through that process.

6 Right now, for example, the abandoned vehicles is
7 completely tied 100 percent to a police report and through
8 police action. And whether that's done through it being
9 called an abandoned vehicle or whether it's done through
10 criminal littering, those are two very different things and
11 they carry very different penalties, but that is a court
12 action and a court issue.

13 If the Prosecutor cannot go forward and doesn't
14 have the right amount of, you know, what he needs to be able
15 to go forward, then we cannot take it to court. And the
16 problem and the idea behind the administrative rules is that
17 these are things where the penalties can be enforced within
18 from the department, rather than having to go to court for
19 those items.

20 CHAIRMAN STARR: Okay, Members. Okay, thank you
21 very much for coming forward.

22 DEPUTY DIRECTOR KRESGE: And we will still be
23 available if you have any questions.

24 CHAIRMAN STARR: Okay, thank you. Anyone else
25 wishing to testify on any item, please make yourself known.

1 Please come forward and identify yourself for the record.

2 MR. FRAMPTON: Good morning, Commission Members.
3 My name is Bill Frampton, and I earlier had possibly
4 considered testifying later in the agenda, however, Chair,
5 if it's okay I'll go ahead and testify now, to help.

6 CHAIRMAN STARR: Yes, please go ahead,
7 Mr. Frampton.

8 MR. FRAMPTON: Okay, thank you.

9 COMMISSIONER IACONETTI: I have a question.

10 CHAIRMAN STARR: Yes, go ahead.

11 COMMISSIONER IACONETTI: Is this presentation
12 going to be limited to three minutes like everyone else's
13 testimony?

14 CHAIRMAN STARR: Yes, it's testimony. So yes, we
15 will let you know after three minutes. We will restart the
16 clock to give you the full benefit of that, but we will
17 notify you.

18 MR. FRAMPTON: Okay. And thank you for that
19 question. Again, good morning. My name is Bill Frampton,
20 and I am here today to testify on item F1 of the Planning
21 Director's update. And I'm here representing Olowalu Ekolu,
22 which is the land owner who owns a 16 acre parcel. It is
23 the only land holdings they have here on the island, and
24 it's identified in your exhibit I just handed out.

25 Olowalu Ekolu has significant concerns regarding

1 the acceptance of the final EA, and more specifically the
2 acceptance of the FONSI, which is the Finding of No
3 Significant Impact, which the Commission addressed recently.

4 The reason we have significant concerns is that
5 fundamentally and procedurally there is really no revised
6 final EA. We have concerns with the idea that an EA has
7 been revised without having public review. We personally
8 have had a chance to review it, however we only got that
9 copy of the EA because we diligently tracked it down and
10 found out it was scheduled for this meeting less than a week
11 ago.

12 The final EA has had an additional at least more
13 than 100 pages added to the document, it's now 600
14 pages-plus long, and we haven't had a chance to review it.
15 However, we have reviewed a good portion of it and found
16 numerous errors and mistakes that are in the so-called
17 revised final EA, including some technical errors, which is
18 listed in the handout.

19 If you look at Table Six we previously noted that
20 the tax map key for our property is incorrectly labeled in
21 terms of land use designation. It shows that the community
22 plan is designated as a parcel of open space, and the State
23 Land Use Commission has designated it as conservation. That
24 is wrong, it's agriculture for both of those designations.

25 An additional concern that we have is that, again,

1 professional studies or reports were not included as part of
2 this EA, including a very important aspect of the financial
3 assessment. The numbers that the project used in this
4 report to determine the liability to the county if it were
5 ever to proceed with trying to condemn the property, they
6 used a value of \$382,000 per acre. That is significantly
7 below the real market value. In fact, a two acre parcel
8 located very close by -- and I identified it in our
9 handout -- was sold for \$4.3 million on September 2nd.
10 That's more than a \$2 million value per acre, and the county
11 used \$382,000.

12 That in using that low number we believe it's very
13 misleading to the public that they could acquire this land
14 for approximately \$17 million, when the reality is there's
15 more than \$80 million at stake here, which is a huge
16 component of the county's overall budget on a yearly basis.

17 Other concerns that we have again goes back to the
18 alternative analysis. The alternative analysis in the EA
19 it's a very fundamental important component of any EA.

20 CHAIRMAN STARR: Please wrap up.

21 MR. FRAMPTON: Yes, will do. The alternative
22 analysis is lacking and was not properly done. And lastly,
23 the segmentation. The project still segmentates the
24 relocation of the highway out of its assessment, which we
25 believe is flawed.

1 And in conclusion, based upon these and other
2 concerns that we have, the owners regrettably are going to
3 have to challenge the final EA if the FONSI is still
4 considered accepted and proceeds forward. And I will wrap
5 up there. Thank you, Chair.

6 CHAIRMAN STARR: Thank you very much. Any
7 questions? Okay, thank you very much.

8 COMMISSIONER HIRANAGA: I have a question.

9 CHAIRMAN STARR: Commissioner Hiranaga.

10 COMMISSIONER HIRANAGA: You mentioned potential
11 value of \$80 million. Is this the 16 acres you're speaking
12 of?

13 MR. FRAMPTON: It is not the 16 acres. That 16
14 acres was actually listed on the market for about \$25
15 million. The \$80 million comes from all of the land. As an
16 example of all of the land in Olowalu, the 49-plus acres
17 that were looked at, the value that the county used was \$17
18 million. That is substantially lower than the reality. And
19 we're very concerned in that we haven't had a chance to work
20 with the county. We've been trying to do so since 2005, and
21 we have been very frustrated in that we haven't been allowed
22 to be part of that process.

23 COMMISSIONER HIRANAGA: So what is the acreage
24 that you estimated the market value of \$80 million, what's
25 the acreage?

1 MR. FRAMPTON: That acreage is based upon
2 approximately 49 acres. And using a recent sale, which was
3 \$4.3 million for that oceanfront property, that comes out to
4 about \$2 plus million per acre. And if you do the math,
5 it's actually probably more than 80, but we just said let's
6 just say 80 for an easy to understand number.

7 COMMISSIONER HIRANAGA: Okay, thank you.

8 MR. FRAMPTON: Does that make sense?

9 CHAIRMAN STARR: Okay, thank you.

10 MR. FRAMPTON: Thank you very much.

11 CHAIRMAN STARR: Any other members of the public
12 wishing to offer testimony on any agenda item, please make
13 yourself known.

14 Not seeing any, public testimony, the initial
15 public testimony portion of the meeting is finished.

16 And with that done, do we have Deputy Corporation
17 Counsel Mary Blaine Johnston, is she here?

18 MR. YOSHIDA: Yes.

19 CHAIRMAN STARR: Okay, why don't you introduce the
20 item.

21 MR. YOSHIDA: Thank you, Mr. Chair, members of the
22 Commission. Under unfinished business, adoption of written
23 Findings of Facts, Conclusions of Law, and Decision and
24 Orders, we have the adoption of the written Decision and
25 Order prepared by Brian Moto, Corporation Counsel, and Mary

1 Blaine Johnston, Deputy Corporation Counsel, on behalf of
2 Jeffrey S. Hunt, Director, Department of Planning,
3 dismissing the appeal by Lance Collins, attorney for William
4 Knowlton and Catherine Knowlton of the Planning Director's
5 decision to grant a Special Management Area exemption to
6 Ludmila Guterman-Reeves for a parking barrier, three storage
7 sheds, and three garden structures on property located at
8 530 North Holokai Place, TMK (2)2-8-011, parcel 7, Peahi,
9 island of Maui.

10 CHAIRMAN STARR: Before we begin, do we have the
11 opposing Counsel, Mr. Collins, or a representative in the
12 house? No?

13 Okay, please continue. Take it away, Miss
14 Johnston.

15 MS. JOHNSTON: Deputy Corporation Counsel Mary
16 Blaine Johnston appearing on behalf of Planning Department
17 Director Jeffrey Hunt. As you may recall, there was a
18 Notice of Appeal filed by the Knowltons. This Commission
19 heard the county's motion to dismiss that appeal on the
20 basis that this Commission doesn't have jurisdiction over
21 the appeal, and the appellant was unable to demonstrate that
22 this Commission did have jurisdiction over the appeal.

23 The hearing date was July 22nd. This Commission
24 voted to make the determination whether it had jurisdiction,
25 rather than having a hearings officer do that. It heard

1 argument from counsel, considered written submissions,
2 voted, agreed that it did not have jurisdiction, and
3 instructed Corporation Counsel to prepare Findings of Fact
4 and Conclusions of Law, which was done, and these were filed
5 on August 13th.

6 Mr. Collins, the attorney for the appellant, filed
7 a two page letter somewhere around August 18th. I did a
8 brief response that was filed on September 17th, and I
9 understand it may not have gotten in your packet. Some of
10 you may not have seen it, but it very briefly addresses some
11 of the points in the letter.

12 So my understanding today is, before you is a
13 proposed Findings of Fact and Conclusions of Law that were
14 submitted on August 13th for your signature. And I'll be
15 happy to answer any questions you may have about the
16 proposed Findings of Fact and Conclusions of Law.

17 CHAIRMAN STARR: Okay. So Members, what's before
18 us is the Findings of Fact, Conclusions of Law relating from
19 the issue regarding a barrier and some other stuff in Peahi,
20 and we can adopt or modify that Decision and Order. An
21 opposition was filed by Mr. Collins, it was answered by
22 Corporation Counsel, and we do have all those documents with
23 us.

24 Members, any questions? Yes, Dr. Iaconetti.

25 COMMISSIONER IACONETTI: What significance do we

1 place on the fact that Mr. Collins is not present today?

2 CHAIRMAN STARR: James?

3 MR. GIROUX: I would just ask staff to confirm
4 that he was given notice of this hearing.

5 MS. KAPUAALA: Trisha Kapuaala, Zoning
6 Administration and Enforcement Division. Mr. Collins was
7 given a certified mailing and notice of this meeting on
8 August 18, 2008 for the September 9, 2008 meeting.

9 CHAIRMAN STARR: Okay. So that was for the last
10 meeting. We deferred it from then until this meeting, and
11 so I guess he's been noticed. Doctor?

12 COMMISSIONER IACONETTI: Well, the question was
13 the significance of the fact that he is not here.

14 MR. GIROUX: Well, I believe he filed a letter, so
15 that's to the extent of, you know, if that influences your
16 thinking about any decision-making, and to the extent that
17 you can read the letter and take from it what you may.

18 COMMISSIONER IACONETTI: Okay, thank you.

19 CHAIRMAN STARR: Commissioner Hedani?

20 COMMISSIONER HEDANI: Move to adopt.

21 COMMISSIONER U'U: Second.

22 CHAIRMAN STARR: Okay. So we have a motion by
23 Commissioner Hedani, seconded by Commissioner U'u. And the
24 motion is -- please state the motion.

25 MR. YOSHIDA: The motion is to adopt the written

1 Findings of Fact, Conclusions of Law, and Decision and Order
2 prepared by Brian Moto, Corporation Counsel, and Mary Blaine
3 Johnston, Deputy Corporation Counsel, on behalf of Jeffrey
4 S. Hunt, Director, Department of Planning, dismissing the
5 appeal.

6 CHAIRMAN STARR: Okay, any discussion or
7 amendments?

8 Seeing none, we will call the question. All in
9 favor of the motion to adopt please raise your hand.

10 (A show of hands)

11 All opposed.

12 (None)

13 What is the count?

14 MR. YOSHIDA: It's unanimous, six votes in favor,
15 three excused.

16 CHAIRMAN STARR: Okay, thank you. Do we have a
17 document to sign? I'm going to call for a short recess to
18 the call of the Chair to give us time to sign.

19 (Whereupon a brief recess was had).

20 CHAIRMAN STARR: The Maui Planning Commission is
21 back in order. Please quiet down, everyone. We're moving
22 along.

23 Items C1 and C2 will not be heard today, as we've
24 mentioned. We will move along to item C3, and to introduce
25 the item I will turn it over to Mr. Yoshida.

1 MR. YOSHIDA: Thank you. Item C3 under public
2 hearings is Mr. Jeffrey S. Hunt, Planning Director,
3 transmitting Council Resolution number 08-55 containing a
4 bill for an ordinance commanding Section 19.530.030, Maui
5 County Code, pertaining to administrative enforcement to
6 Lana'i, Maui, and Moloka'i Planning Commissions. The staff
7 handling this item is our administrative planning officer
8 Joe Alueta.

9 MR. ALUETA: Good morning, Commissioners. As
10 Clayton indicated, I'm your administrative planning officer.
11 I handle all your rule changes and your amendments that come
12 through. Again, there's two methodologies in which we can
13 get and amend ordinances, and that is either by resolution
14 or by director initiated or department initiated changes.

15 This today what you have is what we call a
16 resolution, which is initiated by the County Council. It's
17 kind of a housekeeping matter. That's how I'm trying to
18 sell it to you. It's hopefully straight forward.

19 Basically, back in '96 there was a charter
20 amendment which transferred zoning powers of Title 19 over
21 to the Planning Department. However, we have sections in
22 the code, primarily 19.530, which has to do with
23 administrative enforcement, and it still says the Director
24 of Public Works. So even though the charter changed it over
25 from Public Works to Planning, sections in Title 19 still

1 say Director of Public Works, and this is one of the
2 corrections.

3 And with all good ordinances, other departments
4 want to jump in on it and also be added to the
5 administrative enforcement. Because the 19.530 makes
6 references to several chapters, not just Title 19. As you
7 see, it also pertains to Titles 12, 14, 16, 18, 19 and 20.
8 Planning pretty much deals with only 16 and 19, or sections
9 of 16 for the sign ordinance, and 19 for all of the zoning.

10 So what's being requested, besides the change to
11 adding the Director of Planning, we're also -- there's a
12 request also to add the environmental management, which is
13 solid waste, which you saw Deputy Director Gregg Kresge come
14 up and request for Title 8, I believe it was 8 to be added.
15 Those are all in your letter, your agency comments.

16 On the second agency comment which is, again, the
17 Department of Environmental Management, they're requesting
18 that, one, Director of Environmental Management be added to
19 that, as well as Titles 8.04, which I believe is your solid
20 waste, which he talked about in his testimony earlier this
21 morning.

22 As this was going out, other departments saw that
23 it was a good idea to be added to this, which we got right
24 before I went to Lana'i last week from the Department of
25 Water Supply. They also in their three page letter want to

1 also add the Director of Water Supply.

2 So again, all of the amendments are basically just
3 adding agencies so that they can have the power that's
4 entitled under 19.530. So the department is recommending
5 approval of it with amendments, 1, adding Solid Waste -- or
6 excuse me, Environmental Management, and the Director of
7 Environmental Management, as well as the chapter for Solid
8 Waste, which is Chapter 8.04.

9 Also, we're not opposed to adding the Water
10 Department. Their requested amendment was to add the
11 Director of Water Supply and then add the Water Department
12 in the various sections throughout 19.530, which would grant
13 them also powers of administrative enforcement.

14 Are there any questions at this time?

15 CHAIRMAN STARR: Members? Commissioner Mardfin.

16 COMMISSIONER MARDFIN: Joe, you mentioned Title
17 8.04 -- I'm sorry, you mentioned Title 8.04 you wanted
18 added. Was there more of Title 8 that Water Supply wanted?

19 MR. ALUETA: Not Water Supply, but I believe
20 Environmental Management just whispered in my ear that they
21 want Title 8, all of Title 8.

22 COMMISSIONER MARDFIN: Right. Thank you.

23 CHAIRMAN STARR: I would assume by adding all of
24 Title 8 that would obviate the need to specifically put
25 8.04.

1 MR. ALUETA: That is correct. So we will just put
2 8.

3 COMMISSIONER MARDFIN: Procedurally is the motion
4 before us approving the document that we received in our
5 packet, or is it an amended version that we haven't seen
6 that would add in the first paragraph Title 8, and in
7 sections -- that same paragraph add Director of Water
8 Supply, and in paragraphs C and E add Director of Water
9 Supply?

10 MR. ALUETA: It's the original resolution that's
11 coming down with the proposed amendments that I talked about
12 which were, again, Title 8, as well as adding Director of
13 Water Supply. And in the sections that we added Planning
14 and Environmental Management also in those sections. So
15 those are the proposed changes. So any motion would be to
16 adopt the resolution with those proposed additional
17 amendments.

18 CHAIRMAN STARR: Well, either the motion, if one
19 is made, could include those or it could be for the basic
20 item, and then we could add amendments to it. Either way,
21 when we get to that point in our proceeding.

22 Okay, Commissioner Hedani.

23 COMMISSIONER HEDANI: Joe, I have three comments
24 on what was circulated. The first comment is, if three
25 people are responsible for enforcement, no one is

1 responsible for enforcement. If one person is responsible
2 for enforcement you know who is in charge, who is
3 responsible, who is to blame if something doesn't get
4 enforced. What is the logic behind the change?

5 MR. ALUETA: Because of various titles, Charter
6 One, the charter doesn't give the authority to planning for
7 Title 14 or Title 8. It basically limits us to that.
8 However, so we are responsible as far as the Planning
9 Department would be responsible for the enforcement of Title
10 19, as well as 16, 16 and 13, which is the sign ordinance, I
11 believe. And then the rest of those chapters would be found
12 where applicable.

13 Environmental management would fall in under 8,
14 and as well as where applicable the Water Department would
15 be able to enforce theirs using these procedures outlined in
16 19.530.

17 So it doesn't make any -- we wouldn't go out and
18 try to enforce some kind of water violation or an abandoned
19 vehicle. It wouldn't make sense for us to do it. It's
20 better to have the experts or the department that's really
21 responsible for it, issues the permits for it, to be the one
22 to enforce it. And that's where you had a split in the
23 responsibilities of the various sections.

24 This follows the logic, because prior to this we
25 used to rely on Public Works, their building inspectors, to

1 go out and do our zoning enforcement, and that did not work
2 at all. I mean they were, you know, trying to figure --
3 they knew the spacing for studs and how to build a wall and
4 separation for plumbing, but for us to go and have them, it
5 was like low on the priority.

6 And so that was one of the reasons that Title 19
7 got switched over to us. And to have the enforcement within
8 our department now we have like four zoning inspectors, and
9 all they do is zoning inspection. That has worked out a lot
10 better and it's more effective for the public. I think it's
11 very efficient for the public as well as the county
12 government.

13 COMMISSIONER HEDANI: Okay. So from your
14 perspective, it's an administrative clean-up thing where
15 every department is responsible for its own enforcement?

16 MR. ALUETA: Correct. And also this gives them a
17 little more clarity in the rules and procedures in which
18 they follow that enforcement as far as notice, how you do
19 your notice what's the civil fines, and all of that.

20 COMMISSIONER HEDANI: I have two more questions,
21 but I'll defer to whoever else.

22 CHAIRMAN STARR: Why don't you continue.

23 COMMISSIONER HEDANI: The second question that I
24 had was in my binder I don't have a copy of Titles 12, 14,
25 16, 18 and 20, and so my question was, what are those

1 titles?

2 MR. ALUETA: I'll have to have Public Works help
3 me out on that. We know 8 is Solid Waste, 20 is criminal
4 littering and --

5 CHAIRMAN STARR: I'm going to take a very short
6 recess to the call of the Chair until we figure out what
7 they are.

8 (Whereupon a brief recess was had).

9 CHAIRMAN STARR: Okay, the Maui Planning
10 Commission is back in order. Mr. Alueta will now read us
11 what these different titles are. Something I've never
12 heard.

13 MR. ALUETA: Okay. So starting I guess 12 is your
14 streets, sidewalks and public places, so it deals with, you
15 know, cleaning, maintenance, highways, driveways and so
16 forth. Title 14 is your public services, which is your
17 wastewater, sewage discharge, such as that. 16 is your
18 building and construction code. So again, Public Works
19 dealing with that covers fire, housing, signage, electrical,
20 plumbing, and regular building code.

21 18 is subdivisions, so that deals with your
22 subdivision standards. And then 19 obviously is your zoning
23 for us under Planning, and 20 is your environmental
24 protection.

25 CHAIRMAN STARR: And 8?

1 MR. ALUETA: 8 is health and safety dealing with
2 the refuse collection, landfills, conveyance of swill,
3 handling of gasoline, fireworks, all of those, smoking,
4 liquor, and county parking lots, abandoned ice boxes,
5 nuclear energy, emergency use of private real property, and
6 use of volunteer and privately owned equipment and false
7 alarms.

8 CHAIRMAN STARR: Okay. Commissioner Hedani, any
9 follow up?

10 COMMISSIONER HEDANI: I think that answers my
11 questions.

12 CHAIRMAN STARR: Okay, Members. Commissioner
13 Mardfin.

14 COMMISSIONER MARDFIN: I'd like to move adoption.

15 CHAIRMAN STARR: No, please.

16 COMMISSIONER MARDFIN: Okay, then I'll ask a
17 question or make a suggestion.

18 Joe, you were excellent, I've seen it in past work
19 that you've done, of making a table that illustrates who is
20 responsible for what. And since basically what we're doing
21 is recommending this back to the Council, I would recommend,
22 when it comes to the appropriate time, recommend it back to
23 the Council, but that you develop a spread sheet showing
24 this section, this department, next section, next department
25 very specifically. That will take care of Commissioner

1 Hedani's concern that if everybody is responsible, nobody is
2 responsible.

3 You will have for each section I would think a
4 primary responsibility, and in some cases I could see where
5 there might be a second department that might be also
6 involved. But at least to show the primary department
7 responsible for each section. And I know you're good at
8 making those tables.

9 MR. ALUETA: That is a good idea. I mean, like I
10 say, if it's my ordinance then I will probably do that.
11 But, again, this is a resolution coming from Council, but we
12 can make that recommendation that as far -- and I'll do that
13 to help illustrate to the Council Members where these all
14 lie, so they have a better understanding.

15 I am assuming they have a good understanding since
16 they sent it to us, but to make it easier we will do that.
17 Did you want -- is your recommendation to incorporate that
18 as part of the ordinance?

19 COMMISSIONER MARDFIN: My recommendation would be
20 that they incorporate it as part of the ordinance so that
21 the public is clear about who has responsibility for what.
22 And then if somebody sees oh, they're leaving tires around,
23 they know who to call.

24 MR. ALUETA: Okay.

25 CHAIRMAN STARR: Okay, members, any other?

1 Commissioner Hiranaga.

2 COMMISSIONER HIRANAGA: First, I have one comment.
3 I guess this is to the department. My personal preference
4 is not to receive correspondence or communications prior,
5 immediately prior to the agenda item. I mean are we
6 supposed to be reading this while Joe is giving his
7 presentation? Are we not supposed to read this or when do
8 we read this?

9 I don't appreciate that practice. And as a
10 minimum, I'd like this to be on our desk when we appear in
11 the morning so at least we have an opportunity to look at
12 it.

13 CHAIRMAN STARR: I agree that that would be
14 preferable.

15 COMMISSIONER HIRANAGA: Second of all, are we
16 addressing this letter from the Department of Water Supply,
17 since I did have a chance to read it during the discussion?

18 CHAIRMAN STARR: Well, when it comes time to take
19 action through a motion or amendment we could take into
20 consideration their request to add the Director of Water
21 Supply.

22 COMMISSIONER HIRANAGA: I guess not being familiar
23 with the process, since the resolution from the Council did
24 not include the Department of Water Supply, is this the
25 appropriate process for us to be -- we would just be

1 commenting for or against the inclusion of the Director of
2 Water Supply?

3 MR. GIROUX: We've always recommended to the
4 departments that if a bill is going to be coming down from
5 Council that they want to influence or want to have
6 additions to, that at the Planning Commission level is the
7 earliest possible time for them to get into it. Because
8 what happens is that if it at least is looked at and
9 discussed at this level, if an amendment is made on the
10 floor at the Council level it doesn't have to come back to
11 you again, it's already been discussed. It's not going to
12 be a substantially new bill.

13 We're going to -- Corp Counsel would look at it as
14 being something that was looked at, discussed, and
15 thoroughly analyzed in order that if the Council decides to
16 take the recommendation to add these departments into their
17 bill, they wouldn't have to send it back to you again for
18 another discussion.

19 CHAIRMAN STARR: I'd like to comment. This is a
20 public hearing, and so anything up to and including when we
21 accept public testimony, which will happen in a little
22 while, we can include that in our consideration. In fact,
23 we're here to hear those comments from the public, you know,
24 and we've not even gotten to that yet.

25 COMMISSIONER HIRANAGA: I do have a couple more

1 questions regarding this Department of Water Supply.

2 CHAIRMAN STARR: Please continue.

3 COMMISSIONER HIRANAGA: Later, but I'll wait until
4 after the public testimony.

5 CHAIRMAN STARR: Okay, Members, any other
6 questions at this time?

7 If not, we will move along to public testimony on
8 this item. Any members of the public wishing to give
9 testimony on this item and this item only, please make
10 yourself known. Please come forward, identify yourself for
11 the record. Thank you for coming forth.

12 MR. GALAZIN: Good morning. My name is David
13 Galazin. I'm a Deputy Corporation Counsel with the County
14 of Maui. I represent the Department of Environmental
15 Management, among others, and I was helping them in terms of
16 bringing this forward.

17 The only comment that I have in addition to what
18 everyone else has said about this was in response to the
19 proposal that some kind of matrix be included within an
20 ordinance which kind of delineates who is responsible for
21 what.

22 Part of the problem with doing that would be that
23 the charter sets forth which department is going to be
24 responsible for administering which areas of the County
25 Code. However, there are some gaps which are left open. If

1 you look at the charter, basically for every department it's
2 going to say that the director is responsible for doing X, Y
3 and Z, the Department of Environmental Management taking
4 care of wastewater, et cetera. But there also are listed
5 other duties as may be assigned by the Mayor.

6 So there are situations where there is some
7 fluidity built into the charter where, for example, one
8 department may be handling enforcement of some matter, but
9 it's within the discretion of the Mayor by charter to assign
10 that to somebody else.

11 This is especially prevalent in terms of the split
12 between Public Works and Environmental Management, where
13 there's been some kind of back and forth over who is going
14 to be doing what, now that the change has taken over, and
15 those things haven't entirely been hammered out, to the best
16 of my knowledge.

17 So for the suggestion that a matrix be included in
18 the ordinance, I think -- and I might defer to my esteemed
19 colleague Mr. Giroux on this -- but you might be getting
20 into issues of countering the charter, which takes supremacy
21 over the County Code by trying to codify everybody's duties.

22 I can understand having forth some kind of basic
23 chart that would help you as Commissioners decide, or help
24 the Council Members as a legislative body act on this in a
25 manner where they understand who is taking care of what.

1 But I think the suggestion to include that matrix as part of
2 the ordinance would be a bad idea. So other than that, I
3 agree with everything else that's been brought forth on
4 this.

5 CHAIRMAN STARR: Okay. Members, any questions?
6 Commissioner Hedani.

7 COMMISSIONER HEDANI: David, as I read the
8 ordinance, as I read the ordinance does that mean the
9 Director of Public Works would be responsible for 12, 14,
10 16, 18, 19 and 20?

11 MR. GALAZIN: No. What happens is the Director of
12 Public Works is going to be responsible for whatever duties
13 are assigned by charter. So basically we say okay, we have
14 all these titles and we have these specific directors who
15 are involved in enforcing some of these titles. The way
16 that it's developed putting everything in Title 19 is just
17 sort of the convention that I guess the county has stuck
18 with over the years.

19 One way that it could have gone would be to have a
20 separate administrative enforcement section in every title.
21 That's not how we've done it over time. So what we do is we
22 throw all the titles in there. We throw all the directors
23 in there who are responsible for administrative enforcement.
24 And then the charter dictates which director is going to be
25 responsible for which title. So it doesn't -- the ordinance

1 is not going to give suddenly the Public Works Director
2 authority over something that Public Works doesn't touch.

3 COMMISSIONER HEDANI: Because that's the way it
4 reads when I read it. It says four directors will be
5 responsible for these six titles. So any one director could
6 be responsible for any one of those six titles.

7 MR. GALAZIN: Right. But you still have to
8 remember the that the charter, in terms of the hierarchy,
9 the charter is a higher position. It's supreme in terms of
10 where the authority comes from. So the ordinance can't give
11 the director authority that's not granted by charter. It's
12 limited in that manner.

13 CHAIRMAN STARR: Okay, Members, any other
14 questions? Okay, thank you very much for that
15 clarification.

16 Any other members of the public wishing to give
17 testimony on this, please make yourself known.

18 Okay, public testimony on this item is closed.
19 Mr. Alueta, it looked like you had some comment.

20 MR. ALUETA: Oh, I just wanted to say on
21 Commissioner Hedani's comments, he is correct, but as he
22 said, the charter takes precedent. But I think the fluidity
23 that he was looking for is that should the charter change
24 you don't have to go back and amend the code. If the
25 charter changes and gives the power, power shifts the

1 responsibility in the charter around, then either one of the
2 directors, based on the charter, could then enforce the
3 chapter that they're responsible for.

4 CHAIRMAN STARR: Okay. Members, any questions,
5 comments, motions? Commissioner Hiranaga.

6 COMMISSIONER HIRANAGA: Looking at the September
7 17th letter from the Department of Water Supply, a couple of
8 questions. And maybe this is for Corporation Counsel
9 initially. Jeff Eng states that the BVA currently has
10 jurisdiction over all similar appeals from orders issued by
11 other directors. Is that correct, that if the Planning
12 Director, Public Works Director, or the Director of
13 Environmental Management, someone wants to appeal their
14 order they all go to the BVA?

15 MR. GIROUX: Yes. I also advise the Board of
16 Variances, and we recently have created a Subchapter 10,
17 which specifically deals with what we call Notices of
18 Violation. Any time an administrator gives somebody a
19 ticket that's a Notice of Violation, and that is appealable.
20 The way that the charter works for the BVA is it has two
21 sections, it has variances and then it has appeals.

22 And in the appeals section of the charter it
23 states if it's appeal of your subdivision or of your zoning
24 powers, and that's Planning Director and Public Works
25 Director. So those two automatically by charter go to the

1 BVA. The BVA also has authority, at the end of its tag line
2 it says, "or by any ordinance."

3 So if you look at the County Code and you look at
4 the code and it starts talking about enforcement, there
5 should be a tag line in that code that says if you get a
6 Notice of Violation by this director then you can appeal
7 that to the Board of Variances.

8 And so that's what Jeff is talking about. He's
9 saying that in his section he wants that added, because in
10 other areas of administration, administrative enforcement,
11 those directors have -- the appellate authority goes to the
12 Board of Variances either by charter or by code.

13 COMMISSIONER HIRANAGA: It's my understanding due
14 to the charter change that currently no one really has the
15 authority to hear appeals for the Board of Water Supply or
16 the Department of Water Supply.

17 MR. GIROUX: Well, recently there was -- I believe
18 the County Council did give the Board of Water Supply
19 appellate authority over water issues in that sense. And I
20 wish they were here, but if they could clarify that. But my
21 understanding is for awhile that was silent, it was silent.

22 COMMISSIONER HIRANAGA: My personal opinion is I
23 would prefer to have the right to appeal to the Board of
24 Water Supply, remain unchanged, and not be transferred to
25 the Board of Variances and Appeals, because I think the

1 Board of Water Supply is more familiar with the issues that
2 are before the department. So in this letter from Director
3 Eng I would not be in favor of his request to include or
4 expand the BVA authority over the appeals of the Department
5 of Water Supply.

6 Also, I'm sorry, Joe, but I was reading this while
7 you were talking, naming what these titles were for, but the
8 12, 14, 16, 18, 19 and 20 titles, do those, does any one of
9 those cover water?

10 CHAIRMAN STARR: Do you need a couple of minutes
11 to look that up, Joe?

12 MR. ALUETA: Yes, Because I have to look through
13 all the different subsections. I'm looking at -- the waste
14 public services deal primarily with wastewater.

15 CHAIRMAN STARR: Short recess.

16 MR. ALUETA: Thank you very much.

17 (Whereupon a brief recess was had).

18 CHAIRMAN STARR: Okay, the Maui Planning
19 Commission is back in session. We're still in our
20 deliberation phase regarding item C3, the bill for an
21 ordinance regarding Maui County Code administrative
22 enforcement. And Mr. Eric Nakashima -- Yamashige, I'm
23 sorry, I apologize for that -- is here from the Department
24 of Water Supply, Deputy Director. He can answer our
25 questions regarding enforcement and the request from the

1 Department of Water Supply.

2 Mr. Yamashige, let me -- I'm sorry to kind of
3 spring this on you out of the blue, but thank you for coming
4 down. I'll allow questions after Mr. Yamashige.

5 I think, Commissioner Hiranaga, do you have a
6 specific question? That was up to you.

7 COMMISSIONER HIRANAGA: Maybe Corporation Counsel
8 can explain it clearer.

9 MR. GIROUX: What I understand from Ken was that
10 he was inquiring as far as under what title would the
11 Director of Water Supply give a Notice of Violation. And I
12 guess maybe just a few examples from the department of where
13 the Director would actually give somebody a civil fine.

14 COMMISSIONER HIRANAGA: Of the titles listed in
15 the ordinance.

16 MR. GIROUX: And if you can point to the titles
17 listed in the ordinance.

18 MR. YAMASHIGE: First of all, let me apologize,
19 because this is the first time I've seen this letter. I
20 don't think any of the codes -- and please correct me if I
21 am wrong -- really provides for any penalties. I don't
22 think it's in the ordinance, or fee structure ordinance,
23 either.

24 There is in our current rules a stipulation for a
25 penalty, and I'm not sure if it really applies to this.

1 When I read this letter I think it's trying to put the
2 appeals of the Director's decisions to the Board of
3 Variances for relating to these sections of our code, and
4 not with the Board of Water Supply. That's what I
5 understand this letter to be saying.

6 I'm not sure if that really addresses your
7 question. There is no penalty as far as I know in our rate
8 structure, it's in our current rules.

9 CHAIRMAN STARR: Commissioner Hiranaga.

10 COMMISSIONER HIRANAGA: Yes, just to clarify.

11 Director Eng sent this letter to Director Hunt late on
12 September 17th, which I believe you have a copy. He's
13 requesting inclusion of the Director of Water Supply to the
14 changes in the proposed ordinance.

15 And basically my question was, does the department
16 have any authority under the titles mentioned, 12, 14, 16,
17 18, 19 and 20, to issue notices of violation, because if the
18 department does not, why would we want to include the
19 Director of Water Supply as part of this change?

20 MR. YAMASHIGE: I am not aware of any.

21 COMMISSIONER HIRANAGA: Okay, thank you.

22 CHAIRMAN STARR: I wanted to ask a hypothetical.

23 You know, I'm trying to think of where this would be
24 applicable, because I think most of the places where the
25 Department of Water Supply has a problem, you know, and need

1 to enforce would be with their own customer base.

2 You know, say there's a drought and someone is,
3 you know, overusing or something like that. And right now
4 the recourse is to take away a meter or something like that.
5 And I was trying to think of issues where the department
6 would have an issue, a financial issue with someone who is
7 not a customer.

8 An example of that is say someone is stealing
9 water, you know, a cross connection or whatever. And right
10 now I don't know what the process is and whether that might
11 have entered into the thinking. What happens now when you
12 find out that someone is connected to the system and is
13 using water?

14 MR. YAMASHIGE: I think the only recourse we have
15 is civil, so we would report it to the Police Department and
16 then pursue it that way.

17 CHAIRMAN STARR: Are there any other areas where
18 it would be useful to have enforcement powers?

19 MR. YAMASHIGE: Yes. As we develop our irrigation
20 or conservation ordinance that ordinance will identify some
21 enforcement I guess provisions. Currently we don't have
22 anything.

23 MR. GIROUX: And that would be by ordinance,
24 right? The ordinance would say that if you violate this the
25 Department of Water Supply can give you a civil, it will say

1 something in that.

2 MR. YAMASHIGE: I would expect that.

3 MR. GIROUX: That would give rise to the need for
4 an enforcement section, right?

5 MR. YAMASHIGE: Yes.

6 CHAIRMAN STARR: Okay. Members, any other
7 questions for the deputy director or for staff or anyone
8 else?

9 MR. GIROUX: I have one question. What title
10 would that irrigation be under, that irrigation enforcement?

11 MR. YAMASHIGE: Oh, I just read it. It actually
12 went through the Water Resources Committee I think a week or
13 two ago, so it's coming out before the full Council I guess
14 at the next meeting. The board will be looking at it next
15 week. I can't remember.

16 MR. GIROUX: Would it be Title 14?

17 MR. YAMASHIGE: I would expect it to be there, but
18 I can't remember where it is.

19 MR. GIROUX: So we have Title 14 recognized in the
20 ordinance now.

21 MR. YAMASHIGE: Okay, thank you.

22 CHAIRMAN STARR: Okay, Mr. Alueta, we're trying to
23 confirm the Title 14, which apparently is being -- there's
24 rule making by the Council right now on a water bill
25 regarding irrigation. And I guess the question is whether

1 that would be under Title 14 and as such included in this
2 recommended ordinance.

3 MR. ALUETA: 14 already -- again, 14 is already in
4 there, but because it just says 14 it does cover the water
5 department under 14-1, which is in there. I'm sorry, I was
6 trying to get in touch with the person who drafted this
7 letter¹, which is Cindy Young, to find out what was the
8 rationale behind their request. I mean it's already in
9 there and they just wanted to clarify it. And they felt
10 since it's already in there, just to clarify by adding the
11 Director of Water Supply.

12 So they already have that, but they're not
13 specifically listed. I guess that's the whole point. It's
14 either take them out, exclude them, or put them all the way
15 in. I guess that's it. So in talking with the Director
16 they felt it was appropriate to have them added on, at least
17 to have the Director so he has at least some flexibility for
18 the enforcement of some of their provisions.

19 CHAIRMAN STARR: Okay, thank you. Okay, Members,
20 are we ready for some action here? Commissioner Mardfin.

21 COMMISSIONER MARDFIN: I move the adoption of the
22 original -- I move that we recommend to the Council the
23 adoption of the original bill for an ordinance that we
24 received.

25 CHAIRMAN STARR: Okay, good. That could be then

1 amended. Is there a second to that motion?

2 COMMISSIONER IACONETTI: I'll second it.

3 CHAIRMAN STARR: Okay. We have a motion by
4 Commissioner Mardfin, seconded by Commissioner Iaconetti.
5 And the motion is to --

6 MR. YOSHIDA: Recommend adoption of the bill for
7 an ordinance as presented in the resolution.

8 CHAIRMAN STARR: Okay. Any discussion on that?
9 Okay, any possible amendments? Commissioner Mardfin.

10 COMMISSIONER MARDFIN: I move to amend by adding
11 the Director of the Department of Water Supply in three
12 places. All three of them would follow "or the Planning
13 Director." You would change it to the Director of
14 Environmental Management -- I'm sorry, the Director of
15 Public Works, comma, the Director of Environmental
16 Management, comma, strike or, the Planning Director, comma,
17 or -- is it the Director of Water Supply or the Director of
18 the Department of Water Supply? I guess Director of Water
19 Supply. And that would be in the first paragraph under
20 administrative enforcement. It would also be in item C and
21 it would also be in item E. So it would go in three places
22 to be consistent.

23 CHAIRMAN STARR: Okay. So we have a possible
24 amendment. Is there a second to that amendment?

25 COMMISSIONER IACONETTI: Second.

1 CHAIRMAN STARR: We have a second by Dr. Iaconetti
2 for the amendment which reads --

3 MR. YOSHIDA: The amendment is to add the Director
4 of Water Supply to Sections 19.530.030A, 19.530.030C, and
5 19.530.030E.

6 CHAIRMAN STARR: Okay. Any discussion or
7 amendments? Commissioner Hiranaga.

8 COMMISSIONER HIRANAGA: I'm a little hesitant to
9 vote in favor of the amendment, not that I don't agree or
10 disagree with the merit of the request by the Department of
11 Water Supply, but I feel that the information provided at
12 this time is not adequate for me to be voting in favor of
13 that amendment. They have an opportunity before the
14 Council, I guess, to present their case. So at this time
15 I'll be voting against the amendment.

16 CHAIRMAN STARR: Okay, thank you. Anybody else?
17 Okay, ready to call the question on the amendment. All in
18 favor of the amendment to add Director of Water Supply,
19 please raise your hand.

20 (A show of hands)

21 All opposed, please raise your hand.

22 (A show of hands)

23 MR. YOSHIDA: There were four votes in favor,
24 Commissioner U'u, Mardfin, Chair Starr and Iaconetti. And
25 two votes against, Commissioners Hiranaga and Hedani, and

1 three excused. So the motion doesn't pass.

2 CHAIRMAN STARR: Okay, the motion fails. Do we
3 have any further amendments? Commissioner Mardfin.

4 COMMISSIONER MARDFIN: Seeing that that failed, I
5 won't put all of Title 8 in here, but I would move to amend
6 the first paragraph under administrative enforcement where
7 it says violating any provisions of Title 12, 14, 16 and so
8 forth, that we add Title 8.04. I would have made it 8 if
9 the first amendment had passed, but it didn't, so 8.04.
10 That does deal with other things. 8 is fine. Okay, then I
11 make it all of Title 8 should be added. So the 8 would go
12 before the 12.

13 CHAIRMAN STARR: Is there a second to the
14 amendment?

15 COMMISSIONER U'U: I'll second that.

16 CHAIRMAN STARR: Okay, we have a motion by
17 Commissioner Mardfin, seconded by Commissioner U'u, and that
18 amendment is to --

19 MR. YOSHIDA: To add Title 8.

20 CHAIRMAN STARR: Okay, any discussion? Seeing
21 none, all in favor of the amendment please raise your hand.

22 (A show of hands)

23 All opposed.

24 (None)

25 MR. YOSHIDA: We have six votes in favor, zero

1 against, and three excused, so the motion passes.

2 CHAIRMAN STARR: Okay, we're ready to move on.
3 Commissioner Mardfin.

4 COMMISSIONER MARDFIN: I would move to amend by
5 having -- it's not the wording, but move to amend by having
6 a chart to be prepared by Joe Alueta in coordination with
7 the various Corp Counsels both for the Planning Commission
8 and for the other gentleman that spoke earlier, that they
9 develop a table showing for each particular part of the code
10 who would be the primary and possibly secondary department
11 involved, so it's clear.

12 Whether or not it gets included in the final
13 ordinance or whether it's referred to, the table be
14 maintained. I'll just stop the amendment there.

15 CHAIRMAN STARR: I would take into account the
16 charter as well.

17 COMMISSIONER MARDFIN: And they could look at the
18 thing. I can see the argument for not making an ordinance,
19 because if you make an ordinance you can't do anything.

20 CHAIRMAN STARR: Okay. Do we have a second to
21 this potential amendment?

22 COMMISSIONER IACONETTI: I'll second it.

23 CHAIRMAN STARR: Okay. We have an amendment by
24 Commissioner Mardfin, seconded by Commissioner Iaconetti,
25 and that is --

1 MR. YOSHIDA: The amendment is for the department
2 to prepare a table in conjunction with or Corporation
3 Counsel for the Planning Commission and Deputy Corporation
4 Counsel for the Department of Environmental Management,
5 showing which agencies would have the primary and secondary
6 responsibility.

7 COMMISSIONER MARDFIN: For different parts of the
8 codes.

9 MR. YOSHIDA: For different parts of the code.

10 CHAIRMAN STARR: Okay, any discussion? Okay,
11 Commissioner Mardfin.

12 COMMISSIONER MARDFIN: I want this -- I'm not -- I
13 didn't specify whether it be part of the ordinance or not
14 part of the ordinance, but you need it for clarification. I
15 totally agree with Commissioner Hedani that this needs to be
16 done so that it's clear who is responsible for what. I can
17 see not putting it in the ordinance so that there's more
18 flexibility, as the Corporation Counsel for Environmental
19 Management said.

20 On the other hand, there ought to be -- it ought
21 to be a document that's readily available to the public. So
22 how they ultimately deal with it at the Council we will
23 leave up to them, but I think it ought to get prepared so
24 they can see what's going on.

25 CHAIRMAN STARR: Members, are we ready to vote on

1 the amendment? Okay, all in favor, please raise your hand.

2 (A show of hands)

3 All opposed, please raise your hand.

4 (A show of hands)

5 CHAIRMAN STARR: Okay.

6 MR. YOSHIDA: We have three in favor,
7 Commissioners Mardfin, Iaconetti and Chair Starr. Three
8 against, Commissioners U'u, Hiranaga and Hedani, and three
9 excused. The motion does not pass.

10 CHAIRMAN STARR: Okay, any other amendments to be
11 offered? Seeing none, Commissioner Hedani.

12 COMMISSIONER HEDANI: Will someone explain to me
13 what we're doing actually right now? This is a resolution
14 that's coming from the Council to us for comments, or the
15 Director asking us to recommend approval or disapproval of
16 the resolution?

17 MR. GIROUX: The resolution just sends the draft
18 bill for an ordinance down and for you to make comments on
19 it. Because it's part of Title 19 it's considered a land
20 use ordinance by charter as they come to you for review and
21 comment and such.

22 COMMISSIONER HEDANI: Because it's under Chapter
23 19, Title 19.

24 MR. ALUETA: Yes. All of Title 19 requires all
25 three Planning Commissions to review it.

1 COMMISSIONER HEDANI: Okay. The question that I
2 have is whether or not the Planning -- not the Planning, but
3 if the Public Works Director supports these amendments.

4 CHAIRMAN STARR: Can we ask Mike to respond? The
5 Deputy of Public Works.

6 MR. MIYAMOTO: Thank you, Mr. Chair. He certainly
7 does, yes.

8 CHAIRMAN STARR: Good question. Okay, now we have
9 a motion on the floor, which is to recommend to the Council
10 the approval of these changes to Title 19, Chapter 19. Any
11 more discussion?

12 Seeing none, the main motion as amended, all in
13 favor, please raise your hand.

14 (A show of hands)

15 All opposed.

16 MR. YOSHIDA: We have six in favor and three
17 excused. Motion passes.

18 CHAIRMAN STARR: Thank you very much.

19 Good job, Joe, thank you.

20 CHAIRMAN STARR: Okay, the next item is C4. We
21 will ask Clayton Yoshida to introduce the item.

22 MR. YOSHIDA: Yes, public hearing number four is a
23 joint request from Cingular, Clearwire, MOBI PCS,
24 Sprint/Nextel, T-Mobile, and Verizon Wireless for a
25 conditional permit in order to erect and operate a

1 telecommunication facility at 519 Baldwin Avenue (Paia Mill
2 Site), at TMK 2-5-005, portion of 054, Pa'ia, island of
3 Maui. Staff planner is Robin Loudermilk.

4 MS. LOUDERMILK: Good morning, Mr. Chair. We'd
5 like to request a recess of approximately five minutes to
6 set up our Power Point.

7 CHAIRMAN STARR: Okay, we will be back at about 22
8 minutes after 10.

9 MS. LOUDERMILK: Thank you.

10 (Whereupon a brief recess was had)

11 CHAIRMAN STARR: Maui Planning Commission is back
12 in order. We're ready for our next item, which is regarding
13 the Paia Mill location for cellular telephones.

14 Planner Loudermilk, please take it away.

15 MS. LOUDERMILK: Thank you. Good morning, Members
16 of the Commission. Today we have here for the conditional
17 request for a conditional permit to establish a
18 telecommunication facility on a portion of the former Paia
19 Mill site that is zoned urban reserve and is located in the
20 State Urban District.

21 I'd like to turn over the presentation now to
22 Mr. Kyle Ginoza, who will be doing a Power Point, to provide
23 additional background information on the project.

24 CHAIRMAN STARR: How long will that presentation
25 be?