

# PLANNING COMMITTEE

Council of the County of Maui

## MINUTES

September 30, 2008

Council Chamber

**CONVENE:** 9:07 a.m.

**PRESENT:** VOTING MEMBERS:  
Councilmember Gladys C. Baisa, Chair  
Councilmember Jo Anne Johnson, Vice-Chair  
Councilmember G. Riki Hokama (in 9:15 a.m.)  
Councilmember Michael J. Molina

NON-VOTING MEMBERS:  
Councilmember Michael P. Victorino (out 11:01 a.m.)

**EXCUSED:** Councilmember Bill Kauakea Medeiros

**STAFF:** David Raatz, Legislative Attorney  
Clarita Balala, Committee Secretary

**ADMIN.:** John Summers, Planning Program Administrator, Long Range Planning  
Division, Department of Planning  
David Michaelson, Planner, Department of Planning  
Michael Hopper, Deputy Corporation Counsel, Department of the Corporation  
Counsel

*Seated in the gallery:*

Joseph Alueta, Administrative Planning Officer, Department of Planning  
Scott Teruya, Acting Administrator, Real Property Tax Division,  
Department of Finance  
Roy Silva, Executive Assistant, Office of the Mayor

**OTHERS:** Susan Moikeha (Item No. 50)  
Jocelyn Perreira, Executive Director, Wailuku Main Street Association/Tri-Isle  
Main Street Resource Center (Item No. 50)  
Warren Shibuya (Item Nos. 50 & 40)  
Heidi Bigelow, Project Coordinator, West Maui Land Company, Inc. (Item  
No. 50)  
Charles Jencks (Item No. 50)  
Dick Mayer (Item Nos. 50 & 40)  
Pamela Tumpap, Maui Chamber of Commerce (Item No. 50)  
Henry Spencer (Item No. 50)  
Mercer "Chubby" Vicens (Item No. 50)  
Stan Franco (Item No. 50)

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Tom Cannon, Chair, Maui General Plan Advisory Committee (Item No. 50)  
Vincent Mina, Maui Aloha Aina Association (Item No. 50)  
Pete Martin (Item No. 50)  
Rory Frampton (Item No. 50)  
Gordon C. Cockett, Maui Unite (Item No. 40)  
Warren Watanabe, Executive Director, Maui County Farm Bureau (Item No. 40)  
(11) additional attendees

**PRESS:** *Akaku: Maui Community Television, Inc.*  
*Chris Hamilton, The Maui News*

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CHAIR BAISA: . . .*(gavel)*. . . The Planning Committee of the Maui County Council will please come to order. Today is September 30, 2008, and we are approximately at 9:05 in the morning. And my name is Gladys Baisa. I'm the Chair of the Planning Committee. I'm your Upcountry Council Member. And I'm very excited to let you know we have a quorum present this morning. But before we do anything else, I would like to ask those of you who are in the audience or any of the Members who might have cell phones or pagers or anything else that might go off, if you could please put them on the silent mode so we will not be interrupted.

I'd like to introduce this morning my Committee Members that are here. Voting Members, I have Jo Anne Johnson, my Vice-Chair.

VICE-CHAIR JOHNSON: Aloha.

CHAIR BAISA: Good morning, Jo Anne, and thank you for coming all the way out from Lahaina on time, my goodness. And we have Mike Molina, another voting Member of our Committee.

COUNCILMEMBER MOLINA: Good morning, Madam Chair.

CHAIR BAISA: Good morning, Mike. Isn't that cruise down the hill great now?

COUNCILMEMBER MOLINA: I love it.

CHAIR BAISA: *(Chuckles)* Yes, me too. And we also have with us a non-voting Committee Member and that is Mike Victorino.

COUNCILMEMBER VICTORINO: Good morning, Madam Chair.

CHAIR BAISA: Hi, Mike. Thanks for being here with us today. Excused this morning are Committee Members G. Riki Hokama and Bill Kauakea Medeiros. From the Department of Corporation Counsel this morning, we have Michael Hopper, our Deputy Corporation Counsel. Morning, Mike. Mike is loyal. He's always here with us. And from the

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Planning Department this morning are Executive...Branch representatives, we have...John Summers, the Chief of Long Range Planning.

MR. SUMMER: Good morning.

CHAIR BAISA: Morning, John. Thank you for coming. And also we have Dave Michaelson, the Supervisor of the Planning Section.

MR. MICHAELSON: Good morning, Gladys.

CHAIR BAISA: Good morning, Dave. Also with us this...this morning is my regular Committee Staff. I have David Raatz, our Legislative Attorney, and Clarita Balala, our Committee Secretary.

We will be accepting public testimony starting in a few minutes. Those wishing to testify, would you please sign up with the Committee Staff up here? Your testimony will be limited to three minutes. And testifiers are requested to state their name for the record before you begin and to indicate who you are representing. Members, today we have two items on our agenda, PC-50, Extension of the Maui General Plan Advisory Committee Deadline for the Maui Island Plan, and PC-40, Transient Vacation Rentals Legislation.

Our first item is a resolution proposed by the Maui GPAC to extend its deadline for working on the Maui Island Plan from October 21, 2008 to January 31, 2009. This resolution is similar to two resolutions the Council adopted last year to extend the review deadlines for the Maui and Lanai GPACs on the Countywide Policy Plan. I have been attending many of the Maui GPAC meetings, and I know that the members and the Planning Department staff are working through many difficult issues relating to the Maui Island Plan. I also note that the Maui Island Plan is a critical component of the General Plan.

To prepare for this item, I have asked the Planning Department to provide updated information on the General Plan Update. After public testimony, I will ask the Department to review the correspondence that we received yesterday in response to my questions. I will also ask the Planning Department to provide a general overview of this item. First, we will now accept public testimony on this item. We will also...accept testimony on PC-40 from anyone who is unable to wait for us to get to that item. Without objections, the Committee will now accept public testimony. Without objections, we will proceed.

COUNCILMEMBER MOLINA: No objections.

CHAIR BAISA: Thank you. We have a number of people signed up to testify this morning. And we'd like to thank people very much for coming to the meeting and for testifying and participating. Our first testifier today is Susan Moikeha. And Susan will be followed by Gordon Cockett. Good morning, Susan.

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

MS. MOIKEHA: Good morning, Madam Chair, and thank you for this opportunity. Also good morning to the Committee Members. For the record, my name is Susan Moikeha. I am a Maui GPAC member and have been for almost three, three and a half years now. And I am speaking on my own behalf and not representing the entire group. Basically, I just wanted to let you know that I do support this extension. And I believe the Department does, too. And they made that known to us on September 25<sup>th</sup> meeting that they are in support of the extension. And at this point in time, we're asking for this Committee to support it and recommend to the full Council that we...that we go ahead and have this extension.

There have been many misconceptions, some of it printed in the papers, maybe things that you've heard. And I'd like to clear those up. The delay is not caused by the GPAC members wanting to re-write the plan. Back in October of '07, this is what the consultants gave to the Department, this was the draft plan. You can see it's pretty thick. And the response from the Department, particularly the Director Jeff Hunt, was that we needed to downsize this. You can refer to minutes of October 2007 for his exact wording. But it was an awesome task to undertake for the Department between October and January. And they went to work on it. They did produce, finally, a draft after many, many months and years of delay, a Maui Island Plan draft, which we received in January of '08. The time starts clicking...starts as soon as we reconvened after receiving it, and that was in April...3<sup>rd</sup> of '07.

Just to give you an idea, there were 18 meetings since April till October spanning the time of our...review period. And if you approximate five hours long for each meeting, half of that time is for public testimony, half for GPAC review or decision-making. The first three meetings were about the process we were gonna go into. And the last two were housekeeping. So we had 13 meetings, approximately 33 hours of review time to...to go through what we did.

The reason why we're delayed it's the bill, okay, and everything connected with it, from the number of members that we have, 25, to the fact that there was some circumstances beyond the Department's control to the fact that you bifurcated...the Maui County Policy Plan as well as the Maui Island Plan. All of those things contributed to the delay. IRCs were created to help us review this, and it was a recommendation of the Department that we do that. And an IRC I passed out...handout and it has all the...members that are part of those IRCs. And then it has the schedule from now until December. Everything in bold that says IRC involves us. Everything else involves the Department, Planning, to prepare for the IRCs as well as compiling the reports afterwards.

This is so important because without it, we have nothing to finally review and vote on, which is what we're intending to do in January, given the extension. We followed the process because this was what was recommended. I had continual conversations with the

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Department back in June. I don't think we're gonna finish, what do you think? On the record, off the record. They assured us all along we would finish by October but they never began the IRC process. The schedule wasn't disseminated to the group and the public till September 18<sup>th</sup>, and that is the schedule you have in your hands now.

Basically, I'm saying to you if this is a critical component, then please let us finish our work. The delays were due to things beyond the GPAC's control and obviously beyond the Department's control. So at this time I'm saying, like, let's just finish the work and get it done. Thank you.

CHAIR BAISA: Thank you very much, Ms. Moikeha. Members, questions for our testifier? If not, thank you very much. Our next testifier will be Gordon Cockett and Mr. Cockett will be followed by Joycelyn...Jocelyn Perreira.

MR. COCKETT: Begging your pardon, Madam Chair. I was to speak on the...PC-40.

CHAIR BAISA: Thank you very much. We'll...we'll save that. You can wait. Thank you very much. So we'll have Joycelyn [*sic*] Perreira and she'll be followed by Warren Shibuya.

MS. PERREIRA: Good morning, Madam Chair, --

CHAIR BAISA: Good morning.

MS. PERREIRA: --Members of the Council. My name is Jocelyn Perreira. I'm the Executive Director and the Tri-Isle Main Street Program Coordinator for the Wailuku Main Street Association, Inc./Tri-Isle Main Street Resource Center. I'm here today to humbly ask you to grant the requested extension on the General Plan Advisory process that's taking place. The general public, and my organization in particular, has followed this process from the...from its inception, nearly three years. Our community has been engaged and has given many, many volunteer hours in time and effort. And unlike the prior speaker said, you cannot blame the general public for...delaying the process. The general public has had three minutes per person to put across their opinions and thoughts and it is a very necessary part of the process. They have provided information, recommendations and expressed concerns at key junctures.

A synopsis of Chapter 2.08B of the General Plan and Community Plans says, to provide plans that identify provisions intended to have the force and effect of law. In order to do that, developing consensus is critical. Engaging citizenry is critical. Current conditions and responding to the challenges of changing times that's changing all the time is also critical. It also notes that to increase public and community participation in the planning process. All of this is very, very important. The General Plan *shall* be developed with the participation and use of public opinions, surveys, community design charettes, public hearings, so on and so forth. And developed after input from the general public.

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We have concerns about the Investigative Review Committees. We know that now they're entering another critical stage and that is great because we are moving along, slowly but surely. And I think you have to move methodically [*sic*] but carefully when you're crafting a plan of this importance. However, we do need to have the public be an observer in a transparent process. And that is keenly important. Also, executive summaries should be put across when all these sessions that happen behind closed doors to ensure...to ensure that there is broad-based representation on the IRCs.

Now, if you look at the members on there. Some of the...some of the members of the GPAC are sitting in as many as five of the committees. Some have one committee. Some are sitting on *no* committees. The 25-member group was selected to represent the total community and not all...that is not always the case on the IRC committees. So we ask you for some oversight with that. We thank you *so* much for making this possible for us to participate in the process. We are grateful to the Planning Department for their guidance and assistance. And we are very happy to work together with the general GPAC members and to bring eventually some of the thoughts and...opinions of the communities directly to you. Thank you for this opportunity.

CHAIR BAISA: Members, questions for our testifier? Member Molina.

COUNCILMEMBER MOLINA: Thank you, Madam Chair. Good morning, Ms. Perreira.

MS. PERREIRA: Good morning.

COUNCILMEMBER MOLINA: I just wanted some clarification. First, I wanna thank Ms. Moikeha for providing us with the...the IRC and the members who make up the...who sit on these various committees. So are you telling us that the...there's no opportunity for the public to observe what's gonna go on with the IRC? Because I know we talk about transparency in government and can you clarify that for me and who made that decision to keep these IRC meetings behind closed doors, if you will?

MS. PERREIRA: I...I don't know who made the decision. I know that Corp. Counsel said that they lawfully can have Investigative Research Committees. So I don't believe anybody is, you know, trying to break the Sunshine Law or anything like that. But, I do know that there is a concern because these committees are involving a lot of the work, especially work that has been done up to this point, up to three years. And we're getting to the point of decision-making. And I think it is very prudent and important to make sure that we have a silent observation taking place by whatever members of the public that are wanting, expressing, desiring, needing to observe the process because...if you do allow that, you are engaging the citizenry. It becomes their plan and they will buy into the plan and support the process.

COUNCILMEMBER MOLINA: Uh-huh. Well, for me it's caused some concern now. We all talk about transparency in government, you know. The process being open. And if this is being closed to the public—I mean, I...I have no problems with the public sitting in as

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an observer but if they wanna come in and offer input in terms of maybe possibly interfering with the process, then I would have a concern about that. But I see nothing wrong with allowing any member from the general public to sit in on these IRC meetings just as an observer, because at every one of the GPAC meetings...the public is given the opportunity to testify and share their mana'o. But now if we're starting to close these meetings here, even though these are...I guess I would interpret these...these as sub-committees, then I definitely have a concern. So, I'll have more questions for the Department and maybe get an opinion from Corp. Counsel to this as well. Thank you for bringing this to light, Ms. Perreira. Thank you, Madam Chair.

MS. PERREIRA: Thank you.

CHAIR BAISA: Thank you, Member Molina. Before we move on, the Chair would like to note that Chair Riki Hokama has joined us and he's a voting Member of this Committee. Good morning, Chair. Member Johnson.

VICE-CHAIR JOHNSON: Yes. Thank you so much, you know, for bringing this up. I...I was able to observe one of the sessions where they had a breakout session. And to, I guess, clarify further the committees, are they working outside of the meeting setting doing this work? Or are they doing it within the meeting setting and then they simply break up into these working groups during the process?

MS. PERREIRA: They ran a series of community participation workshops and charettes. And that was all in the light of day, all in the same room. The GPAC members worked very hard in their separate groups. They...the Planning Department provided for public participation with public groups also doing...the...parallel efforts on some of this work. My understanding of the in...the Investigative Review Committees is that they're going to meet separately from the general public. And I know it's...it's an attempt to try to be expedient and to get the work accomplished, because it's very hard and difficult to work with 25 and it's easier to work in smaller groups. I totally understand that. But the only problem is then, and we are requesting, that there be an opportunity for public observation of that particular process that needs to take place independently.

VICE-CHAIR JOHNSON: Okay, so this is beyond the scope of the workshop type setting --

MS. PERREIRA: Yes.

VICE-CHAIR JOHNSON: --and the charettes that were done where each one of the, I guess, working groups had different members of the public come to them.

MS. PERREIRA: Yes.

VICE-CHAIR JOHNSON: Okay. Thank you.

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CHAIR BAISA: Thank you, Member Johnson. Any...additional questions for our testifier? If not, Ms. Perreira, thank you for coming and thank you for all the time you've put in to attending GPAC. When I go, I see you there every time. Thank you.

MS. PERREIRA: Thank you very much. Aloha.

CHAIR BAISA: Our next testifier, of course, is Warren Shibuya. And Mr. Shibuya will be followed by Heidi Bigelow. Good morning, Warren.

MR. SHIBUYA: Good morning, Chairman...Baisa and Council Members. Thank you for this opportunity to share my mana'o. I wanna carry over from what Susan Moikeha mentioned and as well as Jocelyn Perreira. I'll be talking briefly on the extension for the GPAC. And here I am representing one of the members, just myself, as a GPAC member requesting for this extension.

But there are actually, in the Outreach Program, there are two different types of outreaches. One that each individual GPAC member reached out to the community and made presentations to inform the...the communities or community groups. I know I did it for the seniors and some Kula areas, and Dave Michaelson helped me in a couple of'em there.

I do want to note that the Sunshine Law prohibits more than two GPAC members gathering at the same meeting. So there's some problem there in terms of having the information shared with the community as well as GPAC members hearing the same thing. There's also the other fact that GPAC members scheduled an outreach program where we had charettes. This is where we had the public and the GPAC members together, as a whole, work together. So these are two different types of outreaching programs.

The other fact that we have a normal GPAC meetings and here we have members listening to the public getting their testimonies. We felt that at this time we needed to somehow work away from this so that we could...summarize many of our thoughts that we've gathered. And here we've come down to a deadline and we're dictated by the deadline. We're trying to get the product completed. And we are now in the problem situation where we're faced with this deadline. If we don't get an extension, then we're not completed. We would then...Corporation Counsel allowed us to have this independent review committee and we were holding these sessions in the Long Range Planning Department's conference room. So outside members of the GPAC were not allowed to be participants here because you would have more than the quorum involved and that would be...constitute a...meeting. And that's...this is *not* a meeting of the GPAC. So we...we're caught in between in trying to work and come up with a summary and yet this is not a meeting. We're gonna report back to the GPAC members what we've summarized. So this is a little problem here.

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As an individual now, I just wanna mention that on PC-40 which is the TVRs and bed and breakfasts, I would like to ask the Committee to allow for some way of funding these business activities. We either re-zone it and we also designate these areas as business areas or business concerns. It's gonna be a spot zoning, even though it's temporary. It needs to be done so that we can collect some fees to ensure the public safety and welfare along these infrastructures. These are musts. They use water. They use the highways, the roadways. And the safety of these...below standard type of infrastructures are dangerous and not...not good for the public welfare and safety. Thank you.

CHAIR BAISA: Thank you, Mr. Shibuya. Members, questions for our testifier? Member Johnson.

VICE-CHAIR JOHNSON: Thank you very much, Warren, for coming and explaining a little bit more about why the Investigative Review Committees were formed. From what you stated, it appears that the information that you've gathered from the public is what you're working on trying to come up with a...consolidation of the data that was gathered. And then take that and forward that information in the form of a report to the main body. Is that correct?

MR. SHIBUYA: That is correct. Basically, that was...is my effort. I can only speak for myself and that's what I have been trying to do. In the meantime, I'm still having outside contact with the various groups in the...communities, the seniors, various ones that don't even exist. They exist on paper but they are not functioning. So I just go and make myself available to them.

VICE-CHAIR JOHNSON: Okay. So that, it's not just then exclusive to the data that you gathered at the charettes. What you're also bringing to that Investigative Review Committee is the comments for, perhaps, people that were unable to attend or people that you've done outreach to, either as a group or independently, who then are sharing those comments and they relate to the specific subjects that you're dealing with.

MR. SHIBUYA: That is correct.

VICE-CHAIR JOHNSON: Okay. Thank you very much.

MR. SHIBUYA: And these are subjects on various topics, infrastructure, land use, things of this nature.

VICE-CHAIR JOHNSON: Thank you, Warren. I appreciate it.

MR. SHIBUYA: Thank you.

CHAIR BAISA: Any other questions? Member Molina.

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COUNCILMEMBER MOLINA: Thank you, Madam Chair. Good morning, Mr. Shibuya. And first of all, thank you for all your hard work as well as all the other members' work on the GPAC 'cause I know you've had to deal with some very difficult circumstances.

MR. SHIBUYA: You're welcome.

COUNCILMEMBER MOLINA: Following up on the IRC, have these meet...these meetings, I presume, have been noticed to the public as well and...and...and forgive me if I didn't hear you. The meetings are taking place on the site where the normal GPAC meetings occur as well?

MR. SHIBUYA: No, these IRCs, Independent Review Committees, are actually held in the Long Range Planning conference room. And they're separate and they're not noticed to the public, that I know of. Other than the fact that they—we've discussed it in the GPAC meetings as to who will be on it and when these IRCs are gonna be held.

COUNCILMEMBER MOLINA: Okay. Thank you. Thank you, Madam Chair.

CHAIR BAISA: Thank you very much, Member Molina. Any other questions for our testifier? If not, Mr. Shibuya, thank you very much for coming.

MR. SHIBUYA: Thank you.

CHAIR BAISA: And our next testifier will be Heidi Bigelow and Ms. Bigelow will be followed by Charlie Jencks. Good morning.

MS. BIGELOW: Good morning, Chair Baisa and Members of the Planning Committee. My name is Heidi Bigelow. I'm a Project Coordinator with West Maui Land Company. I've been tracking the General Plan process from inception through today. I've provided an updated timeline. Unfortunately, I didn't provide the...prerequisite 15 copies so you'll be getting that later. But it provides an overview of the General Plan timeline including related excerpts from Planning Committee transcripts, news articles and memos from the Planning Department.

Originally, the General Plan was projected to be adopted in March of 2007. Taking into account, today's three-month extension request, the Maui Island Plan will actually be adopted around August 2010, almost three and a half years behind schedule. The members of the GPAC volunteered in January of 2006 to work on the General Plan for a six-month period. They have now served for nearly three years.

As much as we would all like to see the General Plan adopted as soon as possible, I feel we almost owe an extension to these GPAC members who have worked tirelessly over the last...over the past few years. The three-month extension would give the GPAC time to complete their comprehensive review and allow Planning time to respond to GPAC's

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comments, ultimately giving the GPAC an opportunity to transmit a plan that reflects their efforts over the last three years.

That being said, I am concerned about the GPAC's schedule over the next four months. This past Thursday was the last scheduled public meeting of the GPAC as a whole until January 2009. The GPAC members have formed six subcommittees called the Investigative Review Committee which will meet privately over the next three months to review comments and make...recommendations to the draft Maui Island Plan. The IRCs comments will be packaged and presented to the GPAC as a whole in January 2009. The GPAC will then have less than one month to review the IRCs...recommendations to the Maui Island Plan. I fear that may be too ambitious, especially with the 25-member committee reviewing the plan.

Another option may be for the entire GPAC to continue to meet over the next three months to review the IRCs recommendations as they become available versus pushing this critical review process to the last month of the GPAC's three year commitment. By reviewing the IRCs recommendations over the next three months with the GPAC, the final revisions could be made to the Maui Island Plan chapters allowing for a comprehensive review of the final product in January to ensure the Maui Island Plan works as a whole. Thank you for allowing me to...the opportunity to testify today.

CHAIR BAISA: Thank you very much, Ms. Bigelow. Members, questions for our testifier? If not, thank you very much for coming. Our next testifier will be Charlie Jencks and Mr. Jencks will be followed by Dick Mayer. Good morning, Charlie.

MR. JENCKS: Good morning, Madam Chair, Members of the Committee. It's a pleasure to be here once again. Good seeing you. Few comments, first of all, I would like to say that I...I support the time extension for the GPAC and getting the job done, mostly in support of those that...that sit on the GPAC and have worked very hard. But with some reservations and conditions that I would suggest you put on that time extension.

Number one, I think it's time to ask for a date certain on when they're gonna deliver the plan, the date certain when they're gonna deliver.

Number two, I think the Council and the public deserve an accurate accounting of the cost to date. I was looking at a response from the Planning Department to the Chair on the cost to date. We are in this about 610,000 on consulting fees. And I noted with interesting...with interest that the top category the...Planning Department's category for cost was "N/A", not applicable. Well, personally I think that is a significant issue. I...I would imagine we're probably somewhere in the...the ballpark of a million dollars with regard to consulting fees and staff time on this process today. I think there needs to be a good accounting of the...of the total cost to date on this process.

I also suggest that you require the Department to include in the plan, rural growth boundaries. If you refer to Section 2.80B.030(G)(b) of the bill that was passed for

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this...this document, it requires rural growth boundaries be included. They're not included in the plan. I mean, I can't find them anywhere. And there's discussion about the impact of that loss within the community. So I...I think you need to condition this extension with a requirement that they actually include rural growth boundaries in the context of the plan, not just urban growth boundaries.

Number two, with regard to the Independent Review Committees, I think you should condition the Department to hold the meetings available, agendaize them, post them so the public can attend. Not participate and provide testimony 'cause I understand the process and the discussion that has to take place, but I think the public has the right to review the proceedings and understand what's going on. The public has the right to know.

Number three, I would suggest that you admonish the Department to restructure the agendaizing of the meetings and make the meetings specific to a specific task and discussion item so that the GPAC members can focus on a specific item only. Now, that takes leadership from the chair of the committee and also the Department. But I think that would facilitate the discussion and conclusion of discussion on specific items of discussion within the...the GPAC process.

Number...and last I would...also like to ask that you condition the Department to provide full disclosure on all assumptions made in the context of...*(change tape, start 1B)*... this General Plan. I'll give you an example. There's discussion in the current draft plan...about a 25 percent reduction in non-resident housing for Maui County. Where does that 25 percent come from? What's the basis of it? What are the tax ramifications? What are the housing ramifications? If they're gonna make assumptions that go into this plan that guide the plan in the context of their discussions with GPAC, we should all know what those assumptions are and the basis of those assumptions and the impact of those assumptions.

So, Madam Chair, Members of the Committee, those are my recommendations. I think you should extend this but condition the extension on those suggestions. Thank you.

CHAIR BAISA: Thank you very much, Mr. Jencks. Members, questions for Mr. Jencks? If not, thank you very much. Our next testifier will be Mr. Dick Mayer and Mr. Mayer will be followed by Pamela Tumpap. Good morning, Dick.

MR. MAYER: Thank you, Madam Chair, Members. First, I'm Dick Mayer. I'm Vice-Chair of the GPAC and I'm speaking on my own behalf today, not in...necessarily representing the body. First, I want to say that the reason this is on your agenda is because the GPAC did pass a motion asking that an extension be granted until January 30<sup>th</sup>. So this is a formal request that we have been...are making to you.

One of the problems and it's...it's already been mentioned by several of the previous speakers, deals with the Sunshine Law. The Sunshine Law is a wonderful law which opens up the process. It...it creates transparency, allows the public to see what's going

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on which is exactly what should happen. The problem is that...the job that we're given on the GPAC is that we have 25 members. And it's a very cumbersome group to allow everybody to speak, to allow the public to speak. It creates a number of problems.

One of the problems we have is that we have to post the agenda as you...as you do for your meetings. And then allow the public to testify at each of our meetings which you do as well. And that creates problems when we wanna get down and really discuss things within the time limit. In most of the cases that you pass ordinances, sometimes you take a year, two years to pass an ordinance. And there is no time limit until you're...you're actually done with the thing. We have...have a time limit. We're supposed to look at all elements of the County, everything from transportation to housing to budget to the financial plan, lots of maps, loads of issues for 25 people to...to get their hands around. All those issues takes a lot of time.

And one of the reasons that we've formed these IRCs is to try to create a more efficient process. The Corp...the Counsel...Corporation Counsel Offices told us that this is something that we can do within the Sunshine Law. That we can form a committee as long as it's not made up of more than half of the members in the...in the group. We've gone ahead and done this. And hopefully over the next three months these IRCs will be able to effectively wrestle with the issues and come up with a...set of recommendations that will go to the full body in January. And it'll be a much more efficient process of doing it.

There is a question that came...that has come up already today. And that is the fact that these are meeting behind closed doors. I would love to see these open to the public. But as soon as we agendize them, we immediately have to have public testimony again at each of these meetings. And that's the problem. I would love to put a camera in the room and let the public see exactly what's going on. But we are really struck by if these meetings, these IRCs meetings, were to be conducted in the...in the way that has been suggested that they be open to the public and the public come in, immediately the public is...is required under the Sunshine Law to be able to give public testimony and that would further delay the whole process.

So this is an attempt to try to get a compromise between what the public should...should be able to see and do and trying to get the job done within the time...straint of the...of the law. And it's a...it's a...it's a compromise in that situation and I'm sure your attorney here will be able to clarify some of those issues.

I would like to say that—and this is not on the agenda—but I would like to say that I hope after we get through some of this process that you'll be able to look at the present law and be able to make some revisions, because I think we're gonna run into some of the same problems when it comes to the Community Plans. You have nine Community Plans ahead of you. And I think there's some things that can make that process more efficient and transparent and...and make it a better thing. So I hope that the Planning Committee will take a look at the law and...and before you actually launch into the nine

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Community Plans that you begin...looking at revisions in that law. And I urge you to pass this resolution and give us the time to complete the job.

CHAIR BAISA: Thank you very much, Mr. Mayer. Members, questions for our testifier? Member Molina, and then Member Johnson, please.

COUNCILMEMBER MOLINA: Thank you, Madam Chair. Good morning, Mr. Mayer, and thank you --

MR. MAYER: Thank you.

COUNCILMEMBER MOLINA: --for your testimony as well. Can you share with us, I guess, we had heard from an earlier testifier about some GPAC members serving on more than one IRC.

MR. MAYER: Yeah.

COUNCILMEMBER MOLINA: How was that determined?

MR. MAYER: These committees, we're working very many hours. And some of...of the 25 members we have in a group, some are full-time employees still working, some for government, some for private sector. Some are retired. Some of them have more time on their hands. And so a request was made to ask members who would like to volunteer to work on these committees. And certain people had more time. I'm on several of them. Mr. Shibuya, I know is on several of these committees. Both of us are retired. We have the time because these will be meeting for four, five hours at a time, going through all the maps, the diagrams, the charettes, and all the information, trying to put that together. And...and sometimes even the normal process of parliamentary procedure doesn't allow for an efficient way of handling material, this allows us to go back and forth quickly and get things done. But as...as I said, I would love to have a camera in the room so the public can see what a...what a great job the people are doing in these committees. And it's not like secret deals. It's...it's an attempt to try to get the job done efficiently. But it really should be a open process. But the Sunshine Law in this case actually works against us doing it, because it would allow us—it would have to necessitate long, long public testimonies on each of the items we are taking up.

COUNCILMEMBER MOLINA: Okay. And for each of these committees you have, I guess, a...a facilitator or a chairperson for each of these subcommittees?

MR. MAYER: No, we don't. We don't have a chair. We don't have a vice-chair. We...we are sitting around with the Planning staff. The Planning staff usually has two or three members of the Planning staff and the committee members who are going through the material item by item by item. And the...the committee, then, will make its formal report back to the whole group. And that's why the group itself is made up of less than half of the membership so they cannot, you know, finalize everything. It would go back as

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a...as a recommendation to the whole group. And...and...and the whole group then will have public testimony, will have a whole public meeting on the...on the item that was discussed by IRC. So we'll be totally available to the public, for public testimony at that stage.

COUNCILMEMBER MOLINA: Will there be someone in each of these groups taking, for example, summary minutes of what was discussed, to your knowledge?

MR. MAYER: Not...not the minutes in the...in the traditional sense of...of...of every item that...but all the recommendations that the group was making will all be put together in the final report, yes.

COUNCILMEMBER MOLINA: Okay. All right. Thank you. Thank you, Madam Chair.

CHAIR BAISA: Thank you, Mr....Member Molina. Ms. Johnson.

VICE-CHAIR JOHNSON: Yes, Dick, and...and from the way that you're explaining this, this is in no way a decision-making subcommittee. It's basically an information consolidation committee that will then, I guess, get as much information and as many recommendations as have been gathered by the public to the larger committee. So it's...you're just trying to put that forward. Is that correct?

MR. MAYER: It's...it's more than that. It is actually...they will be making recommendations to the full body. They will put—they will give a report...for example, take any part of the island, they may say the urban growth boundary should be here or there. The Directed Growth subcommittee, for example, will be actually making recommendations given all the information coming in. This would be a likely scenario to take care of the number of housing needed, commercial space, et cetera. That would be the line. And so they will make...but then it will be totally open to the public to comment on that.

VICE-CHAIR JOHNSON: Uh-huh.

MR. MAYER: And for the members of the whole GPAC to have the...totally open discussion. But it's very difficult to...to draw those lines and have those things with a group of 25 people sitting around in a room, each one having comments. And it would be a very inefficient process. It's a...it's a compromise. It's...as I said, I would love to have it held in this chamber. Let the group meet in this room and have cameras sitting there. Let the general public watch it over *Akaku*. I have no...no problem with it being done. It's just not an efficient thing to constantly having the public giving testimony while we're trying to get the job done. That's why the...the time problems.

VICE-CHAIR JOHNSON: Let me...let me just ask another question, too, because I wanna make sure in my mind that I kind of have my, you know, head around what, you know, what this body is doing. So when the staff from Planning Department is observing and are they also giving input? Are they giving you some, I guess, practical --

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MR. MAYER: They give us professional advice.

VICE-CHAIR JOHNSON: --considerations. And so, while they're not steering it, they're basically telling you, okay, this may be a problem in this area. So they're almost like an information resource.

MR. MAYER: Exactly. They're professionals and...a suggestion to us, this is...would...would not be consistent with a State law. Or this would be this. And so they're trying...they're...they're keeping us on track to make sure that the recommendations are proper.

VICE-CHAIR JOHNSON: Okay. And the recommendations that are made are, as Mr. Shibuya described them, being gathered from public testimony, being gathered from the data that you've received from all the various studies just from your own personal experiences and then from the charettes as well as Planning?

MR. MAYER: Correct.

VICE-CHAIR JOHNSON: Okay. Thank you very much.

CHAIR BAISA: Thank you, Member Johnson. Members, any additional questions for our testifier? If not, thank you very much, Dick.

MR. MAYER: Thank you very much.

CHAIR BAISA: And our next testifier will be Pamela Tumpap and she'll be followed by Henry Spencer. Good morning, Pam.

MS. TUMPAP: Good morning, Chair Baisa and Members of the Committee. Aloha, I'm Pamela Tumpap, President of the Maui Chamber of Commerce. And I am here in support of the resolution. While the Chamber has no formal position on an extension, because there are mixed feelings on both sides given the length of the process thus far, our inclination is to support the GPAC volunteers who have served for several years and really just want to finish the job and do a good job at that.

However, with the time extension, we feel a few requirements should be put in place. Some of the reports have been noted as being outdated, some of the technical reports. And they've been noted for a couple of years as being outdated so as the IRCs move forward with their work, we feel there should be a review of that and maybe look at updating some of the technical reports.

We feel that the inclusion of rural growth boundaries should be made. We understand that the Planning Department has proposed these closed door meetings for the IRCs that you've heard about. And since the IRCs are addressing the critical components of the

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Maui Island Plan, they're talking about heritage, housing, population, which people have concerns about how the population has been derived and how those numbers are being used. Economic development, infrastructure, long-range implementation plan, monitoring and evaluation, land use and directed growth, all of these components that the IRCs are going to be addressing are critical elements that are being reviewed and that the public is interested in hearing about.

A key tenement [*sic*] of the General Plan has been public participation. And at a time when the public is concerned about government operations and transparency, I think it's important to find a way to allow the government to view this process. I heard Dick's testimony talking about how, in this case, the Sunshine Law may work against us. And I think he came up with maybe an excellent idea. I don't know that video can't be used in those meetings. And if video's used, do we still have to do the public notification? I'm not sure.

But I think the...the key thing is openness. And I think full minutes should be taken of these IRC meetings because when they come back in January with all of the information, Jo Anne asked about all of the materials that they'll be digesting in those meetings. To come back with reviews and information in January and expect the public to quickly digest that? I don't think it's fair. So I think we have to involve and include them along the way and that means open meetings and full minutes. Thank you.

CHAIR BAISA: Thank you very much, Ms. Tumpap. Members, questions for the testifier? Seeing none, thank you very much.

MS. TUMPAP: Thank you. Aloha.

CHAIR BAISA: Our next testifier will be Henry Spencer and Mr. Spencer will be followed by Mercer "Chubby" Vicens. Good morning, Henry.

MR. SPENCER: Good morning, Madam Chair. Good morning, Committee Members. Good morning, Councilmember Victorino. My name is Henry Spencer. I'm testifying on my own behalf. I've attended many of the GPAC meetings and have observed certain patterns and watched this process unfold. Reluctantly, I do support an extension for the GPAC. I think it's necessary. Too many people have put too much blood, sweat, and tears into this. And the GPAC members deserve the opportunity to see their six months that grew to three years that's going to grow even more to see it to fruition.

I...I'm deeply disturbed by one particular component of this process that has evolved. And that is this Investigative Review Committees. I...I listened to Dick Mayer testify and I...I have nothing personally against Dick Mayer. But I...I'm listening to his testimony here and all the reasons that he gave for not opening these Investigative Review Committees open to the public, I kind of see as the reasons why we wanna open it to the public. Mr. Mayer is, by his own admission, is a member on six of the committees. He's the Vice-Chair of the GPAC. I've watched him in the meetings speak

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in a disproportionate amount on all issues. And it's almost like it's becoming a "Dick Mayer's Excellent General Plan". And I...I'm just kind of disturbed by that. I don't think one person should have so much influence over this.

And so, at the very least, at the very least, we have to have the public being able to watch these committees go through their process. And if, as Dick says, that it's against the Sunshine Law or, or the Sunshine Law creates the need or the obligation for the public to be able to speak, well then let's disband these committees, take it back to the 25-member General Plan Advisory Committee and get the process done. Because if...if it...if you can't have the public at least observing, it doesn't work. These...these summary reports, history and my experience...tells me and...and has...has shown me that they allow for certain things to be left out, certain other things to be added. And summary...summary reports are not a...an exact record of...of what took place. And I'm...I'm not in favor of those.

You know, the whole thing, whether or not the Sunshine Law does allow this or doesn't, transparency to the...nth degree is critical. We've gone through it to this point in the process. And to have as we reach...these...this...this... critical mass and this moment of truth on the real serious issues, to take it away from the public and to debate these issues and come up with who knows how...who's having the most influence on how these recommendations come out. But we all know that when these recommendations do come out, the committee is...is...might massage them a little bit. The General Plan Advisory Committee might've massaged them a little bit. But on the most part, they're gonna accept these recommendations. And for the public not to be involved in that process, at least as a...as an observer, I think is...is almost criminal. So that's my two cents worth and, thanks.

CHAIR BAISA: Thank you very much, Mr. Spencer. Questions for our testifier? Member Victorino.

COUNCILMEMBER VICTORINO: Thank you, Madam Chair.

CHAIR BAISA: *(Clears throat)* I'm sorry. I'm losing my voice again.

COUNCILMEMBER VICTORINO: Yeah, yeah. Please take care of yourself. First of all, I...I would just like to make one correction for you, Mr. Spencer. And I appreciate your...your testimony. But Mr. Mayer is only on four of the six committees. So just to clarify it so that there's no misnomers. I...I like accuracy when someone says something so just a correction. Thank you.

MR. SPENCER: I...I heard the figure six.

COUNCILMEMBER VICTORINO: No, four.

MR. SPENCER: Yeah.

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CHAIR BAISA: Uh. . .

COUNCILMEMBER VICTORINO: Anyhow, okay. Anyhow, let's not debate that. My question to you on this open...process that you're referring to. If somehow that this can be done, what...would you still be in favor of public testimony at every one of these meetings or just open meetings so that the public can digest what is going on with these various Investigative Review Committees?

MR. SPENCER: The latter. I...I'm...I'm not...I do not support the public testimony. As a matter of fact, I think that's one of the reasons that the GPAC is in trouble to begin with is that...not seeing themselves as an advisory committee and seeing themselves as the one that are...ones that are actually writing the General Plan. I think there was going to be...there's going to be plenty of opportunity after this process for the public to be involved in a Planning Commission, at Council. And I...I think the...the...the public testimony part of it, part of the General Plan Advisory Committee has taken up too much time to begin with. So I just want them to be there to observe. And...that's satisfactory to me.

COUNCILMEMBER VICTORINO: Thank you, Madam Chair.

CHAIR BAISA: Thank you, Member Victorino. And thank you, Mr. Spencer. The Chair will ask Corporation Counsel when we have completed testimony to address the issues that have been raised as to whether it's required and, you know, all of the legal assertions that we've heard this morning. Thank you very much.

MR. SPENCER: Thank you. Thank you, Gladys.

CHAIR BAISA: Members, all done? Thank you. Our next testifier will be Mercer "Chubby" Vicens and Mr. Vicens will be followed by Stan Franco. Good morning.

MR. VICENS: Good morning, Madam Chair, Members of the Committee. My name is Mercer "Chubby" Vicens. I am a member of the 25-member GPAC committee but I am speaking on my own behalf today. I am in favor of the extension. However, I don't believe, and it was my recommendation to the committee, that we take it at least another month longer, till February. My rationale was that you start Budget in...in March, so therefore you're gonna take that all the way through May. So no matter what we do, if we try to short span this thing and not allow the staff to do the...the recommendations and put everything in proper perspective, we will again, one, be rushing, trying to accomplish what I believe is unaccomplishable in this period of time. So my recommendation was the end of February, at least.

The...and my...my reasons are is that we have 25 members. You...you were given a...a copy of the breakdown of the list. There's six different components of the Island Plan that are being discussed. I am on three committees, Population, Housing and the...the

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Land Use, because these are the areas that I felt I could contribute the most to based on my...my previous experiences. Now these were volunteered. So you notice we go anywhere from five to ten members depending on the...on the committee. And the reason we did Investigative Review Committees to report back recommendations to the full body was because with 25 members and at least 50 percent of the time spent at our meetings in testimony—almost 50 percent is in testimony. Twenty five, thirty, thirty-five people show up all the time.

So in order to accomplish some work, we decided to break this thing in six pieces. Concentrate only for my...it's my...my group—we took population, for instance. We've met twice and we've come up with a series of recommendations based on conversation going back and forth between us and the professional staff, telling us this is what we can do and what we can't do. Because we did not believe that the numbers given us in the Island Plan were accurate and correct. That's the dispute. Six of these areas are being disputed because we don't believe that after the consultants charged us \$600,000 we were left with an incomplete document. That's why we're there.

So my...my reason for showing up this morning is to tell you that while I support the...the...extension, give us more time. Let us do a good job of getting it done and we will give you a document that will make Maui proud. But we would not gonna do it by the end of January. And I would be embarrassed to come back before this body and you rightfully should turn us down at that particular time because we ought to have our heads examined. So that's my recommendation is...is that you give us an extension but allow us more time. Thank you very much for listening to me. Mahalo.

CHAIR BAISA: Thank...thank you very much, Mr. Vicens. Members, questions for our testifier? Member Johnson.

VICE-CHAIR JOHNSON: Chubby, I...I thank you for bringing a little common sense and practicality to the issue of completion of things. And if you were given sufficient time—let's say even if it were to the end of March, because as you state, we're gonna be going into Budget. So we're not going to be able physically to focus and...and this is gonna be a tough Budget year coming up. So do you think that would help? And from your working within these Investigative Committees, do you think that that would give you enough time to meet, because we've got the holidays coming up? We have some people that I'm sure will be off-island for protracted periods of time. So would it be better, then, to even look at perhaps March, end of March?

MR. VICENS: Well, Member Johnson, I would...I would ask for any time that you would give us. The more time you give us—you've...you've got the...the listing of the people. Did you have also the calendar that shows how many Investigative Committees? Now, if you look at October alone, it's almost wall-to-wall meetings for the members. I sit on three committees, like I say, so I will be meeting on four, five hour bites many, many times in October. And I'm saying, you know, even...even...even if we resolve to get it completed, give us the proper allowance of time so that we can do a good job.

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To answer it in a different way, you have the Island Policy Plan. The Council's had it for a year. You haven't brought it forward so, I guess, my take is, what is the rush of trying to complete a document in a...in a shorter time span that may be not quite as full of quality as we...as we want. I want a document that you can be proud of. And I think we need more time to accomplish that.

VICE-CHAIR JOHNSON: Okay. Thank...thank you very much. And...and I know that we'll be discussing that. Thank you.

MR. VICENS: Thank...thank you so much.

CHAIR BAISA: Any additional questions for our testifier? If not, I have a question.

MR. VICENS: Yes, ma'am.

CHAIR BAISA: I'm intrigued with your idea of possibly giving this a little more time because, you know, having observed much of this process, I'm very much aware of that time and energy and discussion and, you know, the money that's been involved in the process up until now. So I am very much in favor of giving the GPAC time to complete its work. But because there are so much...there's so much concern about the IRCs and the process that you going into. And you just pointed out a calendar that looks like a Herculean task of everybody meeting doing different things...just about everyday of the week. Perhaps, as an alternative, could the full GPAC maybe meet once a week instead of all these committees meeting on all days of the week so that we would take away this idea of...of people saying, well, you know, they're part there, they're not part there. They're not able to come. I...I'm just trying to find a way to accommodate the concerns of the public.

MR. VICENS: Madam Chair, may...may I answer this, okay?

CHAIR BAISA: Yes.

MR. VICENS: We're in a process that we thought would take 18 months. We're into it for three years. So that should give you at least a inkling of how difficult it is to manage and make decisions with a 25-member body. Extremely difficult. We have five members sitting on the Population. And in four hours, we were able to pick up the second half of what we were trying to accomplish, got it done. And now we're...we're strictly a recommendation body. We're gonna take it back to the full committee and they're gonna hammer into this thing. And the public's gonna...gonna have participation.

So the document that we're giving back is...I think it's gonna be a better document than was in the Island Plan. But it's not, in my view, the final document. That'll be determined by the 25-member group and recommend...make...will make recommendations. And the input from the public. The public has been very, very...vocal and they've been listened to. The rural...the rural designation is...is an area

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that has gotten much...scrutiny and comment. So my...my feeling is that if we start with a 25-member committee to design a horse, guess what we end up with?

CHAIR BAISA: Yeah, we've heard you have a camel.

MR. VICENS: Thank you very much.

CHAIR BAISA: The other thing that I...I'd like to also kick around with you is the idea of if we were to stick with the plan the way it is now, but then it was brought up that maybe that last month being used for the full GPAC to review the work of the IRCs might not be enough. So if we were to tack the additional time onto that, like in January and February, you would all need to...to, you know, have public meetings and discuss the recommendations of the IRCs. Instead of just a month, give you two months, or three months, or whatever. That might also help too. Do you think that it'd help?

MR. VICENS: I'm sure, I think any additional time you can give us and not rush the process and allow us to deliberate thoroughly will be appreciated by—not only myself but—the staff. The staff is just breaking their pick trying to make this thing happen. The 25-member group that I'm...that I'm privileged to be a party of are working very, very hard. It's just that we started off with a bad document, I believe. My own personal opinion. We started out with a document that was either faulted or...wrong in areas and now we're trying to make that correction after paying the consultant 600,000 bucks. Yes, it's costing us a lot of money and staff time. But the 25 people that belong to this community that have already given us three years, do not take that responsibility away from 'em of delivering to this body a Plan that we can live with for the next 20 years.

CHAIR BAISA: I certainly appreciate the efforts of the GPAC having watched much of the process and seeing all of the energy and time that's been...you know, given. And, you know, I...I'm a great supporter of GPAC as you know. I made sure you all have dinner.  
*(Chuckles)*

MR. VICENS: Thank...thank you so much.

CHAIR BAISA: No, it's because, you know, when you sit there and you see how hard it is to sit there, hour after hour after hour. Just the listening and trying to digest what everyone is telling you. It's a major effort. So I want us to have a good outcome. And I really want to thank you and everyone else who has come today to share their mana'o.

MR. VICENS: Thank you very much.

CHAIR BAISA: Members, any other questions for our testifier? Member Hokama.

COUNCILMEMBER HOKAMA: Mr. Vicens, thank you. Like the weather, my mood has gone dark and very cold although my temperature is very hot this morning. So you know I'm

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not happy. Is it the GPAC's intention to try and give us the perfect document? And thinking that Council will not review and revise it?

MR. VICENS: No, but I think that we are charged with giving you a document that has value. The document we were given after almost two years of delays is not a valued document. So we wanna give you what we believe represents what we think the community has given us through input and...and our best efforts. No, it is not a perfect document. It will not be a perfect document. The Commission will attack it because people will come there and testify. So it'll be changed a little bit, my guess. And then finally it'll be a document that comes to the Council that I...I would pray and hope that gets massaged so that *it* becomes the correct document for this community. But we take pride in our work, Mr. Hokama, and...as...as you do. And all we're trying to do is to say that we're going to try and give you . . . *(change tape, start 2A)*. . . the best document we can, based on our limited experiences.

COUNCILMEMBER HOKAMA: I...I appreciate your...your...your position and your comments, Mr. Vicens. I do not doubt the sincerity of the 25 members. Thank...thank you very much.

MR. VICENS: Thank you, appreciate it.

CHAIR BAISA: Thank you...

COUNCILMEMBER HOKAMA: Chair, I am anxiously awaiting opportunity with the Department and Corp. Counsel.

CHAIR BAISA: Thank you very much, Member...Chair Hokama. Thank you, Mr. Vicens.

MR. VICENS: Thank you, Madam Chair.

CHAIR BAISA: Thank you for coming. Our next testifier today will be Stan Franco, and Mr. Franco will be followed by Tom Cannon. Good morning, Stan.

MR. FRANCO: Good morning, Madam Chair, Members of the Committee. A lot has been said and basically wanna follow up on two things that I wanted to emphasize. First, the discussion of the extension in the GPAC. The Department suggested we end this process in December. And in the discussion as you heard Chubby say...say that there was a request to extend it to February by...Chubby. And the GPAC as a...as a group compromised between December and February and came out with January. So I think that, from my perspective, was why we came up with January. I am very much in line with what Chubby says. I think we need to have time to...do a good product. And the reason for that is that all of us are citizens of this community and want to have a pride of document that we pass on to the Planning Commission and to...and to the Council.

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We...we are gonna be asked and I hope—I'm raising a 12-year-old grandson right now—and he'll ask me when he's 20, why did you pass that document, Grandpa, when, you know, you created some problems for us...for our future generation. I don't want to hear that. You, the Council and the Mayor decided on the membership for this committee. And I...I can tell you that we're anxious to get a document to you, because we hear the concerns about, maybe, projects being held up or whatever it might be because the document is not in your hands. But we want to create a document that we all can be proud of. And we are giving as...as...as been mentioned many, many hours of study, for all the materials that we get. And I...I...I can assure you that as citizens—the 25 citizens on this committee—that we...we take this very seriously. And we've done a lot of work and we want...we want to continue working to get a final product that is, as Chubby said, valued. I just wanna make those points. Thank you.

CHAIR BAISA: Thank you very much, Mr. Franco. Members, questions for Mr. Franco? If not, thank you very much, Stan. Our next testifier will be Tom Cannon and he is the last testifier who has signed up to testify on PC-50. If there are others, would you please come forward and sign up. Good morning, Mr. Cannon.

MR. CANNON: Good morning, Chairman Baisa and Members of the Committee. I'm Tom Cannon, Chair of the Maui Island General Plan Advisory Committee, or GPAC. Maui GPAC is asking for a small time extension so that we can provide you with an independent community-based General Plan envisioned in Bill 53. The 25 members of GPAC volunteered to represent the community and work on this extremely important General Plan to chart Maui's future for the next 20 plus years.

The process was supposed to last a year or so but there have been delays. None of these delays were caused by the Maui...GPAC. Our members have had to adjust and re-adjust business and personal schedules to accommodate attendance at the many, many GPAC meetings. But we have stuck it out because what happens on Maui now and in the future matters. The details of the General Plan matter. And making sure that local knowledge is utilized effectively in all aspects of the plan takes time.

There are many reasons for the delays. All were beyond GPAC control. We could go into the reasons or we could just move forward and get the job done. GPAC just needs a few more months with Christmas to design the final details of our plan. We ask you to please give us the time so...the plan will keep Maui no ka oi. Thank you.

CHAIR BAISA: Thank you very much, Chair Cannon. You've had a hard job heading the GPAC and thank you very much for that.

MR. CANNON: Thank you very much, Chair, for your being there so many times that we appreciate that.

CHAIR BAISA: Thank you. Any questions for our testifier? Member Molina.

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COUNCILMEMBER MOLINA: Thank you, Madam Chair. Good...good morning, Mr. Cannon, and thank you for your service as...you'll still be a Chair...Chairperson of the GPAC as of this moment. You mentioned to us that you're somewhat close to completion of this. Can I get a little bit more clarification in terms of how close you think the GPAC is to the ultimate, you know, finish of this plan?

MR. CANNON: We're close. I personally...the GPAC has decided that the end of January would be ample time. I tend to agree personally with...with Chubby's request for a little more time than that so that we're not really scrambling in the month of January which we will be doing anyway to get it all done. They say God's in the details and...and that's very true in this case. The details matter a lot. And one of the reasons for forming this 25-member committee was to get the local knowledge. And this committee represents centuries of...of knowledge in terms of the...the...the time that the families involved with these committees have been in Hawaii or been in...been in Maui. So I hope that answers your question.

COUNCILMEMBER MOLINA: Okay. So...so you're close. One more question, Madam Chair. So you're close as far as some of the sticking points between GPAC members? You're close to finding some sort of resolution?

MR. CANNON: I think that'll...it'll all come flush out in the...in the Investigative Committees. Yeah, we're close. We're getting closer, I should say.

COUNCILMEMBER MOLINA: Okay. Thank you. Thank you, Madam Chair.

CHAIR BAISA: Any additional questions for the Chair? If not, Mr. Cannon, thank you very much --

MR. CANNON: Thank you.

CHAIR BAISA: --for coming today.

MR. CANNON: Thank you, too.

CHAIR BAISA: Our next testifier on PC-50 will be Vincent Mina and he'll be followed by Peter Martin. Good morning, Mr. Mina.

MR. MINA: Good morning, good morning. Aloha, everybody. I was just here dropping off invitations to all you folks for our upcoming conference. And I heard that this...that meeting was on the GPAC. So I just wanted to elicit support for the extension of GPAC. I feel that it's—I personally...I haven't been able to get to one of the meetings yet, unfortunately. Although I was a board member of the Farm Bureau and have been working on the implementation of...of agricultural practices that would support Maui County in the future, yeah. And I'd like to encourage you to be able to rally around what it means for our agricultural development in the future to support initiatives that

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will...support practices that basically, you know—personally as a farmer, I'm in relationship with the realm that all our bodies are going back to one day, the minerals, water and...and metals of the earth. So I don't wanna go to war with that realm. I wanna have a relationship with it. And so that's why I'd really like to encourage a plan that's gonna be built around supporting the biological viability of our...of our agricultural development here. And so thank you for your support for our organization, appreciate it. Because we have a...a wonderful message and I hope you can make it to our conference. Thank you.

CHAIR BAISA: Thank you, Mr. Mina. Any questions for Mr. Mina? If not, thank you very much. Our next testifier, of course, will be Peter Martin. And Mr. Martin will be followed by Rory Frampton. Again, Chair invites anyone who has not signed up to please do so. Good morning.

MR. MARTIN: Good morning, Councilwoman Baisa and Council Members. My name is Peter Martin. I'm testifying as a citizen and a landowner. Number one, I support the extension...for a number of reasons. I have gone to many of the meetings. I do not make it the whole time. It's—and I really respect the members that do and I know I've seen...Councilwoman Baisa there a number of times. And it is a...I respect all you folks for doing that. And I—especially that they just suck it up, stay there and patiently go through this process. My reason for speaking is only on the second item, the Investigative Report Committees.

The people in the office say whatever I testify, people vote against. So this will be interesting so that's why I wasn't gonna say anything...but I really had to. We've been watching this for three and a half years and even before. And now I feel like if they're done in this closed door session. Now they're just saying we're shut out. And it's just hard to...to be shut out in...in what I think will be the decisive moments in these smaller groups. And I'm not asking to participate. I...I don't participate or testify much or slow the process down. I do agree that public testimony has slowed these down. And I agree with Dick Mayer that...that can be very frustrating. I...I do think that they could be stronger with the public testimony, maybe make it only a minute or shorter.

And I think you should respect that Maui citizens will understand that this is not the time to do the public testimony. And I believe—sure, you can't make that a rule but I...I believe you can respect our citizens. I bet you'd be surprised if you said, we need to work in groups, folks. Sure, we...we respect you wanting to testify but why don't we hold it to get this done. And...and if the Chair takes a strong—I know they're organized a little different. But if that's the only reason because public testimony is gonna bog it down, I...I just would ask you to try it. And...and have a couple meetings. And...yeah, I don't think the citizens will do that. So, anyway, that's all I had to say. Don't shut us out.

CHAIR BAISA: Thank you very much, Mr. Martin. Members, questions for Mr. Martin? If not, thank you very much for coming. Our last testifier signed up to speak on PC-50 is

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Rory Frampton. If there's anyone else, would you please come forward? Good morning, Mr. Frampton.

MR. FRAMPTON: Good morning. Thank you, Chair and Members of the Committee. I'll try to keep this quick as most of the points I was planning on saying have been said. But, people, I...we...I'm supporting the resolution. I think the process is years behind schedule, not just months. And adding a couple of months for the GPAC to finish the work should be supported.

Just a couple of observations. As was noted many times already, the 25-member committee is very cumbersome and it's proven difficult to make decisions in this group. And as such, the...the process now is gonna be forming these IRCs to...to do most of the...bulk of the work behind...the closed doors of the Planning Department. I do support the noticing of these meetings. And I...I do actually—the comment I was gonna make was just made by Peter Martin that I think the general understanding amongst the people that have been following these groups or this process, is that now is the time for these guys to sit down and really do their work. And I think the people that do understand that certainly won't be getting up there and flooding the floor with testimony. And I do think that the general public of Maui can understand that. So I would give the general public some...some...some credit.

Just couple of other observations in terms of the...this process. The size and the amount of information in the Policy Plan and the Island Plan is...is humongous. I mean, they're very lengthy...documents. And just due to the pure bulk, it's been very difficult for the GPAC to get through it all. The...these groups have met over 50 times. If you count from the Policy meetings to the Island Plan meetings, they met over 50 times.

However, the part of this plan that most of us think are pretty critical, the Land Use Policy map, the growth strategy for the island, they've met for half a meeting to discuss the maps. And...and...and I think there's a disproportionate amount of time that's been spent on the policies versus the actual growth strategy for the island. So in...in...in response to some comments made earlier, there's gonna be a lot of work that's gonna be done in these...IRCS and some significant discussions and deliberations on the growth strategy that have not taken place in public. The Planning Department has yet to really detail out their growth strategy. It is in writing but there hasn't been a full discussion and a debate amongst...amongst the—about the various options, the various alternative growth strategies that this island can pursue. And that's gonna all be done behind closed doors.

I, for one, am just interested in the whole thought process or the rationale that's gonna go into recommending the various growth strategies. So I'd like to listen. I'm not gonna testify. We...everybody's—I think everybody's had their chance and opportunity to do that. And they certainly will have their chance at the Planning Commission, at the Council or at the tail end of the GPAC process when they meet back as a group. So I'm just supporting the noticing. If it means there's gotta be public testimony, I don't think

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we should be fearful of that. And...and...and I would like to note that the majority of the GPAC meetings—I've been to meetings where there's been only two or three testifiers. But the testimony has gone on for almost an hour. And it's not because of the testifiers. They've been...they presented their three minutes of testimony. But much of it is the question and answering that goes on and on and on of these individual members. So I think with an understanding of the IRCs and the general public that it is workable if we notice these meetings.

Lastly, one of the things that's been a problem and has led to additional delays and public testimony has been the fact that there's some serious deficiencies or omissions in the draft plan. This was brought up earlier. There's no rural boundaries and...and...and more importantly, the Island Plan didn't recognize or identify Maui small towns and many of the existing community plan designations that exist Upcountry. So that's just my last observation. Thank you.

CHAIR BAISA: Thank you very much, Mr. Frampton. Members, questions for Mr. Frampton? If not, thank you very much.

MR. FRAMPTON: Thank you.

CHAIR BAISA: Is there anyone else out there who would like to testify on PC-50? Seeing no one approaching the front of the chamber, Members, without objections the Chair would like to close testimony on PC-50.

COUNCILMEMBER MOLINA: No objections.

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

CHAIR BAISA: Testimony is closed on PC-50. Looking at our clock, folks, I think it's an...opportune time for us to take our morning break. We will be on break for...until 20 minutes to 11:00. Meeting is in recess. ...*(gavel)*...

**RECESS:                    10:25 a.m.**

**RECONVENE:            10:40 a.m.**

CHAIR BAISA: ...*(gavel)*... The Planning Committee will come back to order. Members and the public, thank you for that little break. I think it was good for all of us.

The Chair would like to...to let you know how we're gonna proceed here. The Chair has three testifiers on PC-40 and she would like to take that testimony so that we can close public testimony for today. I do not want to miss the testifiers who came here to speak and I have a feeling that once we get into discussing PC-50 that the clock will be gone. So Mr. Gordon Cockett will our first testifier on PC-40 and he'll be followed by Dick Mayer. Good morning.

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

MR. COCKETT: Good morning, Madam Chair, Members of the Maui County Planning Commission. Thank you for allowing me to speak this morning. My name is Gordon C. Cockett, sometimes called Kupuna, Vice-President of Maui Unite, and lifetime resident of Maui. I have now lived in Lahaina for 25 years.

Ladies and gentlemen, my concern this morning is TVRs. A wiser man than me sitting in this room today recently stated that his mother taught him to get all the facts and keep an open mind. Or was it keep an open mind and get all the facts? Whichever it is, I have kept quiet on this issue and trying to absorb all the publicity on it while keeping an open mind. However, the time has come for me to speak up.

Yesterday's newspapers featured a front page story about an unpermitted TVR in Kihei whose owner lives in Kihei. I'm sorry—whose owner lives in California. This owner also owns permitted TVRs on Maui and the Big Island so there is no doubt that she knew what the rules were but chose to ignore them. After being warned by our officials, she continued to rent out this property in Kihei, saying she was providing a place for her friends and relatives. This was a cheap trick as research by our officials proved this was an outright lie as the renters stated that they did not know her. This TVR was operated in violation of the subdivision's covenants and restrictions against TVRs. So I'm sure she was aware of what these were but chose to ignore them too.

TVRs don't belong in residential subdivisions, period. This seems to be a common attitude of TVR owners from off-island who look at us as easy game and gives slap-on-the-wrist type punishment when caught. By the way, \$35,000 settlement was a slap on the wrist here, although it was the highest ever for Maui County. She made a couple hundred while in operation. A friend of mine told me about noisy parties at 1:30 in the morning at another TVR in a residential area.

It's time to get serious about this, ladies and gentlemen. It's time to bring this behavior to a screeching halt. Bring out that resolution stuck in this Committee for months now in regards to a temporary moratorium on...on ag lands. Or better yet, don't stop at ag lands, make it Countywide. It's time to let these off-island violators realize that you've got the guts to stop them or close them down in spite of their pleading for mercy because they were conned into illegal operations by unmerciful realtors. There is a lot of greed involved here, ladies and gentlemen, more than we've ever seen from our local people. These are off-island owners. The same label as those causing problems for us in other areas.

Would any of you want to make a bet with me about water usage here? If your rules and regulations need updating, do it quickly with the moratorium in place while you're doing it. Mahalo.

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CHAIR BAISA: Thank you very much. Members, questions for our testifier? If not, Gordon, thank you very much for coming. Our next testifier will be Dick Mayer and Mr. Mayer will be followed by Warren Watanabe. Good morning again, Mr. Mayer.

MR. MAYER: Good morning again. And I'll be very short. About...at the last meeting I was...I made some comments regarding the General Plan as it applies to TVRs. I subsequently sent to you all a copy of the relevant sections. And I'm hoping that your Staff will go through the...this ordinance as well as all the others dealing with the TVR and bed and breakfast issue to make sure they're consistent with the present General Plan, because there are some statements in there which I think may make the...some of the legislation you're considering invalid since one of the laws of the County is that the General Plan, all laws have to comply with the General Plan. So make sure as you go through it, that the Staff checks over and makes sure that all aspects do comply with the GP.

CHAIR BAISA: Thank you very much.

MR. MAYER: Thank you.

CHAIR BAISA: Questions for our testifier? If not, Mr. Mayer, thank you again. And our next testifier, and the last person who has signed up to testify on PC-40, is Warren Watanabe. Anybody else, please come forward so we know that you'd like to speak. Good morning, Warren.

MR. WATANABE: Good morning, Chair Baisa, Members of the Committee. My name is Warren Watanabe, Executive Director, Maui County Farm Bureau. I just wanted to make some, a few comments. First off, the Farm Bureau does support Councilmember Johnson's amendments, proposed amendments, to the bill. For...further clarification, I know that Planning Director Jeff Hunt did mention it, but the \$2,500 that we had...Farm Bureau had suggested, it was just a starting point. And we recognize that there are some issues...regarding that figure. But again, the point is it was just a point...a number that we put in there that we felt as a committee that was, again, a starting point to be put out on the table.

You did get...testimony from the Department of Agriculture regarding some of their concerns they have. And, again, we wanna emphasize that...there's other uses other than...direct agriculture. It's supposed to be an accessory use. And you need to keep that in mind. The income from this accessory use should not exceed the income from the farm. You've heard comments, Farm Bureau also does support re...re-zoning. You know, these smaller ag lots, two-acre lots, into the rural...rural...into a rural...rural designation.

And, finally, I think we...we brought it many up...brought it up many times about an ag definition. And even on the State level, you know, we are looking at this. I think we...the County really needs to look at getting an ag definition on the books. I know it

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would help not only the Water Department. I did talk to Water Director Jeff Eng. It's something that even previous Water Directors have expressed support of. And I'm sure, you know, other Departments like the Planning Department, Public Works will also...would like something similar.

And one final comment, I know you've all been waiting for the opinion from the Attorney General regarding the State statute. I have been in correspondence with the Office of State Planning and the State Department of Agriculture. And...my...much to my dismay, we still haven't gotten it. Thank you.

CHAIR BAISA: Thank you very much, Mr. Watanabe. Why are we not surprised? *(Chuckles)* You know, we don't get very quick responses from OIP, but we're all anxiously waiting and thank you for giving us a progress report because I personally, you know, had not checked if one was coming. Thank you very much. Members, questions? Member Johnson.

VICE-CHAIR JOHNSON: Yes, Warren, you said that we got a response, I believe, from the...I...did you say the...State Department of Agriculture? Was it a written response?

MR. WATANABE: It was a written...testimony from Department of Ag Chair, Sandy Kunimoto. I believe it was submitted several meetings ago.

CHAIR BAISA: A while back.

VICE-CHAIR JOHNSON: Okay. All right. I just thought that there had been a subsequent submittal that it was more recent. Okay, thanks very much, Warren. I appreciate it.

MR. WATANABE: Thank you.

CHAIR BAISA: Any other questions for Mr. Watanabe? If not, also, Mr. Watanabe, I just want you to know that the Chair has not forgotten about the ag definition. If I can invent more hours in the day, I'll do my best to get to it because I agree with you. I think it's a critical piece. Thank you so much.

MR. WATANABE: Thank you.

CHAIR BAISA: Are there any other testifiers who would like to testify on PC-40? Seeing none approaching the front here, the Chair would like to, without objections, close public testimony on PC-40 and that will be the end of public testimony for this morning.

COUNCILMEMBER MOLINA: No objections.

CHAIR BAISA: Thank you very much. Public testimony is closed today.

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

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CHAIR BAISA: Members, I would now request that the Planning Department review with us the Director's correspondence dated September 26, 2008. And since we don't have the Planning Director, we have Mr. Summers. Thank you, John.

**ITEM NO. 50      EXTENSION OF MAUI GENERAL PLAN ADVISORY COMMITTEE  
DEADLINE FOR MAUI ISLAND PLAN (C.C. No. 08-213)**

MR. SUMMERS: Thank you, Committee Chair Baisa, Members of the Planning Committee, and the public. I have a few—before we get into that correspondence, I'd like to make a few points based on some of the public testimony we heard this morning. Obviously, this project has not been a picnic at the beach. It's been a lot of heavy lifting, both by the GPAC members and my staff. The GPAC members themselves have shown great resolve throughout this. As all of you know, challenging public policy is not always...easy. And as...as was pointed out by many of the members, I think one of the root causes of...of some of the challenges that we've had is...is the size of the committee. Close your eyes for a minute and imagine some of the most difficult policy discussions this body's had. And imagine having three times the number of members that sit on the County Council. That would be three rows of members trying to reach a consensus on...on some of these tough challenges. So it's...it's a difficult environment that the members are operating in. I think they've...they've worked real hard to overcome it.

I do believe there is a second structural issue with the process that needs to be looked at for future efforts. One of the most fundamental principles in the planning profession is that you try to get buy-in early in the process. And as you know the GPAC is the first of large community-based body that's looking at the product. And I think one of the changes that was made in the process was that the...essentially the...the Department develops a plan and provides it directly to this body. And I think going forward, we should look seriously at making some...adjustments in 2.80B to allow greater participation by the body in the formulation of the plan. I think that would allow a lot better buy-in from the start and expedite the process in the long run.

That being said, I believe that we all understand the...the importance of this project. We simply cannot afford to let this thing go south. And I think one of the most important measures of success down the road will be whether or not we have a broad base of support when the document comes to the County Council. And if that's not achieved, the review process here at Council will be much more difficult, much longer and...require a lot more resolve by, by you Members. So I think one of the major benefits of this extension will be the opportunity for the Advisory Committee members and the Department to get on the same page with this. And that should smooth the process going forward.

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Despite the challenges that I noted, I...I do believe that we've made significant progress in the last few months achieving that. When I...when I mean "that", I mean getting everybody on the same page. And...and as noted, the extra time I think gives us a real opportunity to achieve that. As painful as it's been, I...I think what we're experiencing from the input that's coming in from the committee, and...and there's been some excellent input, is that they're looking for a document that's comprehensive and specific that will resolve real world challenges. And there is a trade-off when...when you...when you move in that direction, the...the product tends to get a little more complex. It requires a little more time for review. But that seems to be...what we're hearing, not only from the GPAC members but from the public.

As noted in the testimony, I don't believe the extension will have a real effect on the ultimate adoption of the plan. ...*(change tape, start 2B)*... As all of you know, the General Plan is adopted in phases. We start with the Countywide Policy Plan. As noted, that'll probably occur in the next calendar year and that would be followed by the Maui Island Plan. So what's being requested today should not ultimately result in a...in a delay in terms of the adoption of the Maui Island Plan by the County Council.

The Department did convey concerns when this resolution was before the Advisory Committee about any extension beyond January 31<sup>st</sup>. I think it's important if we look at changing some of the process that we have to ensure that this is a meaningful and realistic deadline. We talk about a drop-dead deadline. That was gonna be January 31<sup>st</sup>. If we add additional workload, you know, that needs to be looked at in relation to this January 31<sup>st</sup> deadline. It sounds like with the IRC committees, if there is...sort of a consensus to hold those meetings in more of a public forum that's something that can be achieved. It will require more staff time. If you look at the calendar before you, it's a pretty aggressive calendar. I don't think I can work my staff any harder than what they are working with this calendar. So you might have to make some adjustments if we add some of these other provisions that requires more work by...by our staff.

We did transmit to you a...a response to some of the questions that were raised in the correspondence sent down from the Planning Committee. I'll briefly go through that for you. The first question relates to the...to the schedule for the project. And essentially it looked at the original milestones for the project and the current benchmarks. So that's laid out to...before you in Attachment A. And essentially what we're...we're looking at the left hand side is the major work task or products prepared throughout the process. And then the bar charts and some of the notes indicate some of the issues that we've had to overcome throughout the process. I would like to note that the original deadlines for the project were extremely aggressive. And I'll just leave it at that. And it's noted the circumstances for those original deadlines.

The second set of more realistic deadlines...are identified at the bottom of the schedule with a deadline for product delivery in the summer of 2007. And we did have some slippage on that particular deadline and it's explained in the schedule itself. We also had a—if you look at the far end of the calendar, you'll...you'll note the schedule and the

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deadlines in anticipation of the January 31<sup>st</sup> deadline for GPAC review. And we've got the Planning Commission review. That is a six month review process from the date of the first public hearing. And then there is a one year review by the County Council.

If we look at the second attachment, the table that breaks down the costs for the project. These are...cost-related to the development of work product...for consultant services. And that's spelled out in the table. I would like to note that the cost for consultant services to date, directly related to the Maui Island Plan update, has been roughly \$610,000. And I note that from a national perspective in 2003, a study was done by the State Office of Planning in California to look at the average cost of a General Plan update in California in 2003 dollars. That cost came to 845,000. So the cost for the project to date for product development is not out of norm with other planning efforts.

I would like to note that the products that have been prepared, all of the technical studies are on the Department's website so feel free to check 'em out. And we've had very good input from the public and GPAC members related to the technical studies and some of the other work product that's been prepared.

Again, the Department does support the extension and we feel that it will translate into efficiencies further in the process if we can get everybody on the same page. And I'd also like to underscore that we've received some excellent feedback from the Advisory Committee members. And I think it's very important that we respect the process and make sure that they have an opportunity for meaningful input.

CHAIR BAISA: Thank you very much, Mr. Summers. Before I open the floor so that we can get a motion, a second and discussion on all of this, Chair would like to ask our Corporation Counsel if he has any remarks that he'd like to provide.

MR. HOPPER: I would be happy to address any specific questions, Madam Chair, when they're asked. I...I've heard the issues during testimony and I'm prepared to respond on what I believe may be the questions but I don't want to presume what the questions would be. So I'd...I'd like to wait and see if there's any questions from the body.

CHAIR BAISA: Okay. Thank you very much. Fair enough, we'll...we'll wait. Okay, Chair would like to have a motion which we can amend later which is to accept the resolution that is on today's agenda and filing of the communication.

VICE-CHAIR JOHNSON: So moved.

COUNCILMEMBER MOLINA: Second.

CHAIR BAISA: Thank you very much. We have a...a motion and a second to adopt the resolution and filing of the communication that is...it's the resolution that's before us. Any discussion? Member Johnson.

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VICE-CHAIR JOHNSON: I just had a question of staff. And it was one of the questions that had been, I guess, asked by a member of the public. On the Countywide Policy Plan cost for departmental internal costs for your hours and, you know, time. Even if it's, you know, it's part of your regular salary. Obviously your time is worth something. So do you track whatever participation each one of the members of your staff has and what kind of dollar amounts we would be looking at with regard to the contributions made by the Planning Department or other supportive departments?

MR. SUMMERS: Yes. I've got...I got some ballpark numbers I can give you in order of magnitude estimate. The—and our...our departmental budget is aggregated. It's a departmental budget. It's not broken down by division. And there...there are a number of things. So I—this is a real order of magnitude ballpark estimate. And I think when you look at the Countywide Policy Plan, one of the major differences between that product and the Maui Island Plan is that the Countywide document was a revision of an existing plan. So it was an existing update of our 1990 General Plan, whereas the Maui Island Plan is essentially a new product, something we've never had. So it's far more challenging, far more complex. The Countywide Plan essentially took about 1.5 full-time equivalents, roughly six months to prepare. So that would be a...a Planner V, and then another Planner V working about half-time for about five or six months on that product.

VICE-CHAIR JOHNSON: Okay. So...and I guess we could just look at what the cost for those individuals were.

MR. SUMMERS: Yeah, it's roughly 55, 55 to 60,000. That doesn't include the benefits.

VICE-CHAIR JOHNSON: Okay.

MR. SUMMER: The cost of benefits.

VICE-CHAIR JOHNSON: Okay. But...but let's...let's say ballparking it at \$60,000, thereabouts.

MR. SUMMERS: That's a fair estimate, yeah.

VICE-CHAIR JOHNSON: Okay. In regard to the, I guess, the conversation that we've been having back and forth about the extension and length of time, you know, I know that your department particularly because you're working on so many other things and you have your normal workload. Is it better, as Mr...Vicens had asked to give, perhaps, an additional month? Would that serve any purpose in your view as to, I guess, enabling the Investigative Committees or the General Committee to complete its work so that if we gave either till the end of February or even the end of March, does that make any difference for you or does that throw your timeline all off?

MR. SUMMERS: I think that there are two issues to consider when we look at that. The first is if you wanna make the...the meetings, the IRC meetings more public that's going to

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require some...some additional staff time which might extend the IRC process a bit. The second issue is—and it was brought up in the testimony that the IRCs are not decision-making bodies. They compile reports. They present those reports to the GPAC under the proposed schedule. The committee has the month of January to review that as a body. If...if there were concerns expressed about that period of review and so if it was desirable to have more opportunities for public testimony during that process, then that would work. I think...I think the Department has made a position...has stated its position that January 31<sup>st</sup> was the deadline that we would support. But given some of the concerns that have been expressed and certainly if workload is shifted our direction, then I think it's better to be more realistic and adjust the calendar accordingly.

VICE-CHAIR JOHNSON: Okay. And with regards to filming or taping or—I guess this would be a question for Mr. Hopper. If—let's say, it's determined that the mechanism that's being used is still able to be used, there's no legal challenge or whatever under Sunshine Law—if something is filmed for public information or something is taped just for, I guess, to memorialize what took place at a particular meeting, is that then going to be subject to the Open Meetings Law and Sunshine Law?

MR. HOPPER: The section that allows for an investigative group, *allows* a group to close the meeting to the public. It's just not required necessarily that that group close that investigative group's meeting to the public. So that could be made open to the public and still not subject to the Open Meetings Law provided that...the...the investigative group strictly follows the exception to the Sunshine Law that allows this group meetings. I can provide that exception here. I have it in front of me. But they could, for example, decide to have the meeting completely closed to the public. They could decide to have that meeting open to the public but not take public testimony. Or they could decide to have the meeting closed to the public but videotape that meeting and make it available.

There are strict controls that the Sunshine Law places on those...these types of meetings that's provided in HRS 92-2.5. It's one of the permitted interactions of members. Would you like me to...to read that to you?

VICE-CHAIR JOHNSON: If you could, please.

MR. HOPPER: Okay. That...that section states that two or more members of a board, but less than the number of members which would constitute a quorum for the board may be assigned to: (1) Investigate a matter relating to the official business of their board; provided that: (A) The scope of the investigation and the scope of each member's authority are defined at...at a meeting of the board—that's the full board, full GPAC; (B) All resulting findings and recommendations are presented to the board—that's the full board—at a meeting of the board; and (C) Deliberation and decision-making on the matter investigated, if any, occurs only at a duly noticed meeting of the board held subsequent to the meeting at which the findings and recommendations of the investigation are presented to the board.

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This...this basically creates a three-step process. First, the group needs to be assigned a specific task and the members need to be assigned to their roles. They...they could all have the same roles, for example. The next step is the...the...the group meets and then has to report back to the full board. They report all of the findings that they made as a group back to the full board at a duly noticed meeting that is open to the public. And then, there can be no deliberation or decision-making of the full board at that meeting. They need to wait until another meeting in order to do any deliberation and decision-making.

So the purpose of the presentation on...on the investigative group's work is strictly to present. We...we've read that to mean that GPAC members cannot even ask questions on the investigation. They have to wait until the next meeting. I...I believe that's...that gives an opportunity for everyone, including the public, to digest in order to wait until the next meeting, although, you know, the intent is subject to, you know, interpretation. But it does require that once that's presented to the full GPAC, that the GPAC needs to wait until their next meeting in order to deliberate or make any decisions on the investigative group's work. And that investigative group's work does not constitute a decision, because it's subject to complete review by the GPAC as it would be by any full board in this situation. It could be scrapped completely. It could be adopted. It could be amended. But that work done by the investigative group is *not* considered a final product by any means, unless...or until it's adopted by the full GPAC. And once it comes back to the GPAC, you need to follow all the Sunshine Law procedures which include public testimony, notice and agenda.

And I would also want to say that...the...the...a lot of the decisions with this investigative group, legally there...there's a lot that's permitted. Legally, they could have meetings closed to the public entirely. There are...there are policy decisions above the legal ones that can dictate exactly how those meetings are held and...and what happens. And...and that's...that's up to the discretion of the GPAC as long as they're within the scope of the Sunshine Law.

However, the Sunshine Law with respect to—if...if this policy or this procedure is followed strictly, does give broad discretion to these investigative groups on how they conduct their meetings. They could, for example, you could have a meeting of...of two members assigned to investigate something. They can go around and talk to people, compile information, you know, from people, go on site visits, things like that. And I believe that's the intent of the Investigative Committee. And...and as long as they make sure that no decisions are made until it gets back to the full board and everybody has a chance to digest the information given to them, that's permissible legally. However, there's also policy issues that...that surround that, that go beyond the legal issues.

VICE-CHAIR JOHNSON: So if I understand what you're saying, is...when the Investigative Committee is charged with whatever responsibility the General Plan Advisory Committee has given it, it just can't deviate from that at all. Or, you're saying, you know—'cause on the one hand, you're saying they specify what the goal and objective is and what they're

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charged with. But they can't just go hog wild and, you know, gather information, you know, from whatever source and then present it as fact. Or, if they do, do they have to disclose where that information came from?

MR. HOPPER: Well, the scope of the investigation needs to be defined. So, for example, I see in these...these review groups, Housing is one of the groups. The Housing group could not discuss in their Housing group investigative reviews something other than the Housing section of the...of the General Plan Advisory Committee. And I would recommend that the...I would say that I'm not the legal advisor to the GPAC. I am the legal advisor for the Planning Department and today I'm the legal advisor for this Committee only. But the...the...the committee I would recommend...I would recommend anyone using this exception to try as closely as possible to find exactly what those groups are going to be doing. Let everyone from the public know what the scope of their investigation is, what they'll be investigating and, to the extent possible, *how* they'll be investigating it.

So, in this case, Housing, for example, just stick to Housing and not to go to on to other subjects, unless assigned by that full board at a subsequent meeting or at a meeting.

VICE-CHAIR JOHNSON: Yeah. And...and am I to understand that when these meetings are taking place, Planning staff is there and is a member of Corporation Counsel there to make sure that whatever conduct, you know, or whatever, I guess, the scope of the discussion is that it stays within those parameters?

MR. HOPPER: I'm not...I would have to defer that one to the Planning Department. And...and I'm not sure if any of these meetings that we're talking about specifically have occurred yet. But I...I...I have not attended any of those meetings. I'm not...not typically the advisor to the General Plan Advisory Committee. I have filled in from time to time. But I haven't been present at those meetings.

VICE-CHAIR JOHNSON: Okay.

CHAIR BAISA: Mr. Summers.

MR. SUMMERS: Yes, I mean, essentially what the committees do is they take the feedback coming from the larger body. They consolidate that and they help to ensure that policy crafted to address their concerns is done in...in a manner that reflects accurately the input received by the committee. So essentially it's...it's taking the flip charts that we gather, consolidating, eliminating redundancies and...and developing policy to reflect those comments.

VICE-CHAIR JOHNSON: And...and so there's no, in your determination, there's no need for a Corporation Counsel to be there, because you know what the responsibility is that they're charged with and someone from your Department is overseeing each one of these committees. Is that correct?

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MR. SUMMERS: I don't think it's necessary to have a Corporation Counsel in those meetings. However, it's important to have Corporation Counsel at some point in the process review the work product to ensure that we don't have legal issues.

VICE-CHAIR JOHNSON: Yeah, and...and that, Madam Chair, is, I think, where we're getting. You know, some of the concerns from the public is, you know, as expressed. So, I'll let other Members ask questions. Thank you.

CHAIR BAISA: Thank you very much. Let's try to give everybody a chance. Member...Member Hokama.

COUNCILMEMBER HOKAMA: Thank you, Chair. First, I don't need the Department to make excuses for Council on why we may have difficulty reviewing the process. Neither do I need to have excuses why the Department cannot perform...we are now on a timetable to be three and a half years later than the process required. So it's interesting, the comment from the Department, respect the process. I am very displeased with the work of the Department. I'm tired of who is to blame for the delay, whether it's the GPAC or the Department. I can tell you, private sector, neither would Council Services tolerate excuses of staff reduction or losses, about a year. Lead consultant...health issues, 15 months. Staff illness, three months. Preparation for a...draft document, nine months. They'd be fired if they worked for us. And to tell this Committee that they cannot give us the cost that they're expending on this assignment is ridiculous. And we shouldn't be the ones trying to figure out what is the cost. You better come up with that number for us, Department. You're the one that assigned the employees. You're the one that authorize the premium pay. You're the one every two weeks authorizing the payroll. How can you tell us you don't know the cost? I will say we need to require a full audit of this whole assignment. I'm very, very unhappy with the proposal.

And for Lanai, Chair, I can tell you. Our community is very frustrated because the longer it takes, things keep going under the old plan the community had worked hard to put revisions on so that we can make appropriate adjustments on what is happening on Lanai in 2008. We've been to Molokai. We've heard the same frustration. Now we are looking at middle or late 2000...or early 2009 possibly for start work on the Lanai Community Plan?

You know, my question to the Department today is why can't you give us? You folks make the budget. You turn it in to your Director. You go to the Budget Director. Don't tell me you guys have a lump sum and you don't know how you reached that lump sum figure.

CHAIR BAISA: Mr. Summers.

MR. SUMMERS: It's not...it's not a matter of not being able to do it. It's a matter of...we had very, very, very little time to prepare the response that was transmitted to us.

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COUNCILMEMBER HOKAMA: You come to us five weeks before the deadline asking for an extension.

MR. SUMMERS: I'm just giving you the facts. We...we received this notice on the 26<sup>th</sup> of September and the information can be collected but yet it's gonna require a fair amount of research. In the...in the amount of time that was provided, we were able to identify all the direct costs related to...to product development. But it gets a lot more time-consuming to do the research and we're looking at court reporting costs, travel costs, all of the costs that are aggregated at the departmental level. So it's...it's not a question of not being able to come up with an estimate. It's a question of the time allotted to do that.

COUNCILMEMBER HOKAMA: Okay, Mr. Summers. You know one of the things that I am curious about is if the Committee needed, can the Department forward to the Committee, the dates and the meetings that had set up that the potential Investigative Review Committees? The meeting that structured the parameters of what is to be investigated? Because if I were you, I better...you better put one Corp. Counsel in that meeting 'cause—I hope you know we're currently in a lawsuit regarding the Sunshine Law, this County of Maui. I don't need the Department to make it more difficult for this County when we go to court on our legal issues to now and try defend something...opposite of what the intent of the State statute was. You are well aware of this lawsuit that the County is facing? Mr. Hopper has advised your...the Department of this issue and how this closing of meetings may impact our position?

MR. SUMMERS: Yes.

COUNCILMEMBER HOKAMA: 'Cause I have zero tolerance for this kind of stuff right now. Chairman, I am happy to allow Mr. Molina his opportunity. I have additional questions later. Thank you.

CHAIR BAISA: Thank you, Mr. Hokama. Mr. Molina.

COUNCILMEMBER MOLINA: Thank you, Madam Chair. Staying along the same lines of the...of the IRCs, so—I guess, maybe if I can start first with Mr. Summers—so who initiated the formation of these committees? Was it driven more by the Department or members of the GPAC? Can you share that information with us?

MR. SUMMERS: The Department recommended...the formation of small groups which is a typical process used and it's best practice, if you will. So we recommended it, ran it through Corporation Counsel. I think the GPAC was getting frustrated with the process that...that they were in. So we were looking for ways that are more proven in terms of getting meaningful input.

COUNCILMEMBER MOLINA: And it's been mentioned that it's...it's been taking three and a half years so...only now it's taking the Department now to realize that maybe we

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should've gone into these groups 'cause I...I believe members of the GPAC had expressed concerns before about the process taking so long, at least a year ago I would think. So, I guess,...why only now has the Department realized that, you know, the process has been stalled? It's been slowed and maybe, I guess, in hindsight the idea wasn't thought of.

MR. SUMMERS: Well, no, actually it was. At the inception of the project—in fact, before the GPAC actually started its review of the Countywide Policy Plan during the initial orientation meetings, the Department had contracted a paid facilitator, professional facilitator, with the idea of...of organizing small breakout sessions. And there were a number of reasons why that ended up essentially not happening. But that is the standard best practice to do it this way. And we have had during the Countywide Policy Plan process, we did utilize the investigative review process as well.

COUNCILMEMBER MOLINA: Okay. And the subject of minutes, someone—was...was that ever discussed and if not, why...why is somebody not being assigned to take minutes, if that's the case? And, for me, I personally would like to see minutes are taken verbatim rather than just summary minutes because in the event that if it does go back to the full GPAC, people would wanna know the full details of the discussion itself. Can...can you comment? Is this related to staff and cost as to why, maybe, hiring someone to take minutes would not be feasible?

MR. SUMMERS: Yes, it's related to cost.

COUNCILMEMBER MOLINA: The issue of not having a County attorney or someone there to maintain the, I guess, the integrity of the meeting to make sure the IRC members stay on task, if you will, with the subject along with it being closed—or at least the...the committee having the option to close their meetings, Mr. Summers, you know, causes me some concerns. I can see it opening the door for some potential litigation against the County with regards to the Sunshine Law.

If I could ask a question of Corporation Counsel with regards to giving the public the opportunity to testify, is it a requirement under the Sunshine Law? I...I see these IRCs as more...as a sort of breakout committees from the normal regularly scheduled meetings. Is that sort of the intent here? A lot like a...a committee meeting or Council meeting that's been recessed to another day, so to speak. Is that somewhat along that same lines because you don't want to allow testimony? And in some ways I agree. Testimony can hold up the progress. So and maybe that is why what the original intent was with the formation of the . . .*(change tape, start 3A)*. . . IRCs is to let the IRCs deliberate, sort of like when the Council, we have our Committee meetings. We do the testimonial phase and then the Committee goes into deliberation. But in still full view of the public. And this where I see a big difference. The IRCs, while I respect the intent of expediting matters, but if you're gonna close them, I can see some concerns from the community with regards to the Sunshine Law. Can...can you provide further clarification, Mr. Hopper?

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MR. HOPPER: The exception which the committees are...is the GPAC is forming these groups under—it's just that. It's an exception to the Sunshine Law. By definition, it requires that there be a number less than quorum. So by definition, it's not a meeting of the board. And it does not operate pursuant to the Sunshine Law. That's why it has the...the...the very strict controls over what can be investigated, how it's investigated. And I think, in fact most importantly, how that information gets to the full board and how the full board acts on that. I think that's the most important thing because actually what's discussed in the...in the committees...in the groups is...is given some amount of leeway. How...how that is then formulated back to the full board is not, that's very strict on how that's supposed to happen. But this is...this is an exception to the Sunshine Law which is why it's...it's strictly construed and you have to be careful how it's used.

We have, through this process, been in contact with OIP, asking them about how this would apply. It was used before. I know I was at a meeting where a...during the Countywide Policy Plan, this exception was used. One of the, perhaps, criticisms of the...of the using the exception is that it...it does take a substantial amount of time after the work of those groups are performed to make a decision, because you have to assign the groups at one meeting, hear from the groups at another meeting, and then act on the decisions of the group. Deliberate and act on the decisions of the group at another meeting. It takes three meetings. And the full board has to have a majority vote to take any action on the issue anyway. So it...it can take some additional time in order to comply with this, the...the safeguards I would call them, in place for this exception. And it can...be complicated how this...how...how this is...how these groups are formed.

And I believe the Department has...we've been in extensive discussions with the Department and I did not personally attend those meetings. I believe we did have a Corporation Counsel attend those meetings. I was not there. But the advice we gave them, we confirmed with OIP on how they formed these groups. Again, it's an exception to the Sunshine Law. It's not like your—for example, this Planning Committee which is a...a standing committee of the Full Council that has existed traditionally for a...a long time and is subject to—you post agendas, you take public testimony. But with this exception to the Sunshine Law, you would not have to take public testimony. You would not have to have the meeting in public. And, in fact, because you have a number less than quorum at the meeting—that's actually a requirement—it is not a meeting of the GPAC by definition. Other GPAC members that are not assigned in the committee, for example, cannot attend the committee meetings, cannot attend these group meetings even as members of the public.

COUNCILMEMBER MOLINA: Can you share with us who gave you—you...you mentioned you've been consulting with OIP. Have they provided you something in writing?

MR. HOPPER: They have not provided us anything in writing. Written opinions hold a lot more weight than oral opinions. We have not asked them for a written opinion on this particular issue. We have discussed this issue at length. They have attorneys there that

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we discuss with. Frankly, though their written opinions are given some amount of weight in...in...in court. The, you know, a court in the end decides exactly how, you know, this law is to be construed. We believe that we have...we have correctly read this law, have correctly advised the Department on how to conduct these meetings. And that the...the information is there for them to conduct these meetings properly. And that the GPAC has been advised very clearly how these meetings need to be conducted. And has taken the steps, as I understand it, has taken the steps to be extremely careful in having these meetings, knowing that they are not subject to the Sunshine Law. I mean, anytime you deal with an exception to the Sunshine Law, you have to be very careful, because those...those exceptions are strictly construed. So the decision to do that comes with the...the safeguards involved in making that...in...in conducting those meetings.

**COUNCILMEMBER MOLINA:** With regards to agendizing these meetings, comments on that? Do you...so you, at this point, do you feel there's a no need to have these meetings agendized? Or because at, I guess, prior GPAC meetings it will be notified to the public that these meetings will be held on such and such date, that will cover the issue of maybe not agendizing these particular IRC meetings?

**MR. HOPPER:** Such would be permitted. Again, these are meetings that are not subject to the Sunshine Law. The Sunshine Law does not apply to these groups' meetings or their activities. That's why these safeguards are in place. I do not believe there would be anything restricting those groups to agendizing their meetings, allowing the public to attend, or videotaping those meetings, but not...not allowing the public to testify if that's the issue. Because to me, logically, if they could exclude the public entirely from the meeting, there'd be no restrictions for them to decide to post an agenda for the meeting.

**COUNCILMEMBER MOLINA:** Okay. Thank you for your comments, Mr. Hopper, but, you know, for me I'd really like to get some type of written opinion. And, you know, OIP has shown in the past when this County's subjected to some type litigation, they suddenly stay out of it, you know. So, I don't know, Madam Chair. I really, for my level of comfort, I'd...I'd like to see their comments that from...to Mr. Hopper to reassure that if we're gonna allow these IRCs to close their doors, that, you know, the Sunshine Law does not apply. And...and I respect Mr. Hopper's opinion but I also wanna see it here or read it in writing from OIP 'cause there's nothing like palapala seeing it in black and white, not just, you know, verbal. So, anyway, thank you, Mr. Hopper. Thank you, Madam Chair.

**CHAIR BAISA:** Thank you very much, Mr. Molina. Chair has received many comments about the idea of the IRCs not being open to the public and not having minutes taken. Really not so much about not being able to testify. But I think the public wanting to be able to observe and at least having a written record of what the proceedings are at the meetings. Chair would like to ask Mr. Hopper a question and then I'll go back to the rest of the Members. What are our limits today? My understanding is that the Committee can either pass this resolution and amend the date, which is what is before us today, but that we cannot necessarily define the scope of how this work is done. Is that correct?

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MR. HOPPER: My understanding, Madam Chair, reading the...the County Code Section 2.80B which provides the...this Committee—well, not the Committee—the full Council to act by resolution and not by ordinance in order to grant a time extension does not provide for the issuance of...of legally binding conditions on that...on that time extension. Nothing, obviously, would prevent the Council from expressing a will, giving a recommendation or very strong language short to the Department or to the GPAC on how it would conduct the meetings.

The ordinance itself does give a fair amount of discretion to the GPAC themselves on how they conduct the meetings. It...it, for example, requires them to adopt...administrative rules which they're currently...they're currently performing under. And also, since they're subject to the Sunshine Law, the exceptions in the Sunshine Law would currently apply if the committees decide if they wanted to take advantage of them. That could possibly be subject to change with a...an amendment of the ordinance. However, my concern would be how any "conditions" would be enforced if placed on this time extension which is to be made by resolution. That's my...that's my understanding of this provision of the...of 2.80B.

CHAIR BAISA: Thank you very much. I just wanted us to be very clear about the parameters that we're operating under. Member Johnson.

VICE-CHAIR JOHNSON: Yes. So if I understand what you're saying, Mr. Hopper, if we...we could perhaps put it within the resolution or send it along with our recommendation that we believe some—not necessarily that testimony be, you know, allowed during these things—but at least there be access either to a tape, videotape, or some type of minutes, or if people want to attend, is that possible?

MR. HOPPER: You can certainly express that, yes. As your...as your intention or have strong language in your resolution. Would that be legally binding?

VICE-CHAIR JOHNSON: Yes.

MR. HOPPER: That, to me, is a very difficult question. I do not believe that it would. Obviously, I...I imagine the GPAC and the Department would...would take that advice very seriously if...if...if given. And certainly you would have the authority to amend the ordinance to, you know, provide for more specific, more structured procedures for the GPAC to conduct their meetings.

VICE-CHAIR JOHNSON: Yeah. And, Madam Chair, you know, because they're in the midst of this, I think going back to an ordinance, I just think from a time perspective, enough already. We've added so much time. I think when we go back to re-visit at a future date some possible suggestions as to how we could improve the bill that created the General Plan review process. I think that's where it's meaningful. But I am in full support of granting the extension, perhaps, beyond what was requested, because as part of my

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personal feeling, I would like to see at least have the meetings open to the public for those members of the public who wish to attend. I think it would be expensive to require videotaping. I think it would be expensive to require that, you know, other, I guess, mechanisms be employed.

But I think that if the meetings just could be posted in the paper. And then just say anyone from the public is invited to attend. And just say no public testimony. I mean, to me that's...it's kind of a working group. So I'm in full support of that. Because I think when—and...and you can correct me if I'm wrong, Mr. Summers—but when you were actually, I guess, consolidating and condensing the giant report that you'd received from your consultant, you didn't have members of the public observing what you were doing. Is that correct?

MR. SUMMERS: Yes. That's correct.

VICE-CHAIR JOHNSON: Okay. So, I...I...I look at it as it's a work in progress. And sometimes even just thinking about things or as Mr. Shibuya pointed out, his interaction with members of the public is very important, because he is trying to get a sense of what the public expects of the General Plan Advisory Committee. And, you know, if the figures—particularly for population, I think I heard a number of comments—was the de facto population for visitors included, were other things done. So, I am in support of that, Madam Chair. And I'd be happy at some point to make an amendment if you so choose. Thank you.

CHAIR BAISA: Thank you very much. Any additional comments? Member Hokama.

COUNCILMEMBER HOKAMA: Madam Chair, thank you. Just some additional questions. But I appreciate the question you asked because I, you know, we post the agendas so that we can make or not make revisions to the proposal. And the Charter is very clear without limitation of the foregoing grant or other powers given by the Charter. Without limitation, Members. That's what the Charter gives the power to Council. So I would say it's the...the Council's choice and what's wrong with a conditional extension? Right now we—you know, this is my third General Plan process I'm going through. And we, you know, we've been going through...we...we made revisions after the second one because of the length it took. This was supposed to be on target or even shorter than this three and a half years extension that we're gonna go through regardless. So obviously, there's many components of the process that didn't get the message from the public which was shorten the time it takes for review and approval.

But my question to Corp. Counsel is what does the IRC, the Investigative Review Committee, send to the full Advisory Committee? Everything that...that was discussed in...in its meeting? Or would they just forward a recommendation of what they investigated? And then present everything to the full committee?

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MR. HOPPER: The Sunshine Law is very vague on this point. It states, all resulting findings and recommendations are presented to the board at a meeting of the board. Exactly what's presented to them is going to be within the discretion of that...that committee provided that they can look at the law and state and point out where they have presented their resulting findings and recommendations. The full board can't act on anything except for those...

COUNCILMEMBER HOKAMA: I...I'm more concerned about the Investigative Committee, Mr. Hopper.

MR. HOPPER: Yes. They...they would have to present all of their findings and recommendations to the full GPAC. What's exactly happening in this case, I...I believe that they're being transmitted the...the documents that they have worked on and the changes being made. I would...I would defer that to Planning as far as...because they...they've been more closely involved with the...the exact process. I don't believe many of these meetings have—I'm not sure if any of these particular groups have actually reported back. But the plan would be for them to transmit their findings and recommendations, I believe, in...in paper form. They would have to do that at the meeting, state that here is our presentation, transmitting to you these documents. Those documents would have to be made available to the public. They would be able to see all of the changes. And also importantly at the meeting at which they're presented, there can be no deliberation. There has to be...

COUNCILMEMBER HOKAMA: To the full committee?

MR. HOPPER: Yes, to the full committee.

COUNCILMEMBER HOKAMA: Okay. I'm...no, I'm just more concerned about how the Investigative Committee is being proposed to work. So, Mr. Summers, is...did Mr. Hopper give a clear and quite accurate explanation to this Committee about how the investigative component is to work?

MR. MICHAELSON: Mr. Councilman, let me try to...sort of clear up...

COUNCILMEMBER HOKAMA: Who are you?

MR. MICHAELSON: I'm sorry. I'm Dave Michaelson. I'm with Long Range Planning. The IRCs, when they're formed, they have all the comments that we've derived from all these public meetings, all the GPAC to date, all the breakout sessions and the charette. And that's their starting point. And then they go through a process where they've...they identify the commonalities that have come out. And frankly, the...the public comments have run on a pretty common stream, if you will. And at that point, they suggest policy changes to the draft that we presented them in April. So the full report will essentially represent sort of a connect-the-dots report, if you will. They'll have all the public comments that the IRCs started with. They'll have their suggested policy changes. And

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we're footnoting 'em pretty extensively, frankly, in terms of why that policy recommendation is worded like it is or did we move a comment to another element. So we're trying to be as transparent as we can.

So what the report will represent is not so much the sort of verbatim debate that went back and forth because, frankly, I...I'm not sure that's all that important. I think what's really important is what conclusions have these folks made and why? And I want to hit one point about—I'm sorry.

COUNCILMEMBER HOKAMA: So...so if...if...if we...this Committee understands what you shared with us right now, my, you know...my understanding is that the Investigative Committee will take all of the...the information that you just shared with us that will be presented, come up with a recommendation to the full committee after it digests and goes through all of that input. Is that a good understanding on our part?

MR. MICHAELSON: That is.

COUNCILMEMBER HOKAMA: So, Mr. Hopper, if they're making a recommendation, they're taking positions and must've had a vote to be able to whittle down and make a recommendation to the full committee. That's decision-making.

MR. HOPPER: They're permitted to make decisions. The decision-making...

COUNCILMEMBER HOKAMA: In a closed meeting?

MR. HOPPER: Yes. For that committee. The issue is with deliberation and decision-making on the matter investigated is of the full board that's referenced. You see, if...if there's a decision made by that committee...

COUNCILMEMBER HOKAMA: But isn't there a State law that says two members cannot make...get that...that decision made prior to that full meeting? Because this Investigative...members are taking positions prior to the full board's meeting by making a recommendation.

MR. HOPPER: They're...they're making a recommendation to the full board but in...in this situation, they...they are not making a commitment to vote on the full proposal at the very end. That's the prohibition in the Sunshine Law. They cannot make a commitment to vote a certain way on a particular...on a particular matter. Now, the recommendations could come to the full board. And there can be a lot of other deliberations, decision-makings before that final vote finally takes place.

But in this situation, for an Investigative Committee to make any findings and recommendations as is permitted by this Investigative Committee exception to the Sunshine Law, they would have to come to some sort of agreement on what recommendations they want to give on to the full board. Otherwise, the Investigative

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Committee that's permitted by this exception, there'd be no way for them to function. So what the Sunshine Law here, gives the permission for this committee to do is to make findings and recommendations to the full board. If they can't do that, then this section in the Sunshine Law is meaningless. Because there'd be no way for them to make findings and recommendations. So to me, in order to make a finding, they're well within their rights as provided by this exception to the Sunshine Law to make that.

And...and actually what I should've said at the beginning, and most the important, is that this is a specific exception to the Sunshine Law. So there are other prohibitions on the Sunshine Law that talk about two members getting together to make a commitment to vote. This is actually an exception to that. So that's another important thing that I should've said at the outset, is that this is a specific exception to permitted interactions of members. This is an interaction that is permitted between two members of the board.

COUNCILMEMBER HOKAMA: I've been in a lot of...I've been named in many lawsuits. And I can tell you, this one sounds like it's going to go to a lawsuit. *(Pause)* My...my...may I have another question, Madam Chair?

CHAIR BAISA: Absolutely.

COUNCILMEMBER HOKAMA: Thank you. My understanding is that we already have, Madam Chair—and correct me if I'm wrong—we already have the Countywide Policy Plan?

CHAIR BAISA: Yes.

COUNCILMEMBER HOKAMA: And that...are we required to have a decision made regarding adoption within one year of receipt of this plan?

CHAIR BAISA: Yes, Chair Hokama. At the present time the deadline for us to complete our review is February. It's obvious that we're gonna have difficulty just like the GPAC in meeting our deadline unless we work through the holiday.

*(Pause)*

COUNCILMEMBER HOKAMA: You know if I had my own magic wand, I tell you I'd push the time back and start all over because this is not working, Chair.

CHAIR BAISA: Thank you very much, Chair. I'm beginning to feel the same way. However, we're where we are and we're trying to find a solution to try to salvage all the work that's been done. And the Chair is certainly open to an amendment to the motion that was made to adopt the resolution as it is. Member Johnson.

VICE-CHAIR JOHNSON: Yes. Was that all that you had, Mr. Chair? I...I don't want to interrupt him because I don't know if you're pau.

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COUNCILMEMBER HOKAMA: No, no, thank you, Ms. Johnson. What I would want to say is not permitted on the floor at this time.

CHAIR BAISA: Thank you for your discretion, Chair Hokama. Member Johnson.

VICE-CHAIR JOHNSON: I think the minutes could reflect "inaudible". You know, sometimes...

CHAIR BAISA: Sometimes the body language is lost on the...on the audio.

VICE-CHAIR JOHNSON: Yes. Yes. Anyway, Madam Chair, I move to amend the resolution before us. In the be it resolved clause to state as follows, that "The Maui General Plan Advisory Committee be granted until March 1, 2009 to complete its review of the draft Maui Island Plan provided that any Investigative Review Committee legally formed by the General Plan Advisory Committee conducts such meetings in full view of the public".

COUNCILMEMBER MOLINA: Second.

CHAIR BAISA: We have a motion and a second. And Member Johnson, would you like to comment?

VICE-CHAIR JOHNSON: Yes, I was gonna water it down and say make every effort but, you know, I just think that, you know, we're giving them an extension. I think in response to the comments from the public that really asked that they keep these meetings open to the public. We're not determining how they do that. I don't know if Mr. Hopper has any comments to make about this but I...I can water it down if he feels that we can't compel them to do this. So...

CHAIR BAISA: Okay. Comments from Corp. Counsel, please?

MR. HOPPER: I...I believe I explained my thoughts on that issue previously.

VICE-CHAIR JOHNSON: Okay.

CHAIR BAISA: Thank you. How about Member Molina? I'm sorry, Member Johnson. Did you...

VICE-CHAIR JOHNSON: No, that's fine.

COUNCILMEMBER MOLINA: Yeah, I...thank you, Madam Chair. I mean, I...I...I support the amendment. Just...if...if I could ask Mr. Hopper a general question?

CHAIR BAISA: Absolutely.

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COUNCILMEMBER MOLINA: So as you mentioned earlier, something like this with us putting in a broad amendment like this to ask that the IRCs have their meetings open, what if an IRC, I guess—does the resolution carry any weight? What if one particular committee decides not to, then...then what? Are we then opening ourselves to a legal challenge? Even though we had it in the reso...the Council supported a resolution that recommended the IRCs be open to the public. And one of the subcommittees chooses not to. What, what then? What are we looking at?

CHAIR BAISA: Mr. Hopper.

MR. HOPPER: As I explained previously, I...I simply...I...because of the language in 2.80B which does not provide for conditions for this resolution, I...I simply do not see how your condition would have a legally binding effect on the...on the committees to hold their meetings. That it would somehow retroactively nullify the extension. I...I would not see that. You can certainly vote against the time extension if you do not believe it's prudent. But at this point dictating to the GPAC exactly how to have its meeting, I...I...I simply don't see how that condition could carry the force and effect of law. Enforcing it would be, to me, extremely difficult.

COUNCILMEMBER MOLINA: Okay. This is a tough nut to crack, Madam Chair, this issue, so...

CHAIR BAISA: The Chair would ask Planning Department if they'd like to comment? Mr. Summers.

MR. SUMMERS: After hearing all the conversation this morning, we would be in support of...of this concept.

COUNCILMEMBER MOLINA: Madam Chair, if I could just add a comment.

CHAIR BAISA: Yes.

COUNCILMEMBER MOLINA: I don't know if it's required to be put in the resolution but I'd also like to ask the various IRC subcommittees be allowed to take written testimony at the very least. You know, not only with allowing the public to participate but at least accept written testimony. Because I can understand why the IRCs were formed in the first place because public testimony sometimes takes...takes a while. Then you have GPAC committee members who will ask testifiers a bunch of questions which, you know, as we all know, can sometimes take up the whole meeting. So I just wanted to make that comment for the record, Madam Chair. Thank you.

CHAIR BAISA: Okay. We'll see how we'll handle that. Any additional comments? Chair Hokama.

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COUNCILMEMBER HOKAMA: I would just ask you if you feel comfortable or, and if not, I'm more than happy to send it from the Chairman's office 'cause I would like to know what is the projected cost of all of these extensions.

CHAIR BAISA: I have no...I have no objection or no concerns about making such a request, Chair.

COUNCILMEMBER HOKAMA: Great. And I would ask that the deadline be before Council meeting because I'll determine whether or not it gets posted. And to the Department, before we vote on this motion on the floor, if your time extension does not get approved, what will you be submitting to Council on October 21<sup>st</sup>?

CHAIR BAISA: Department.

MR. SUMMERS: Thank you, Madam Chair. The ordinance requires us to submit the GPAC comments to the Planning Department...to the Planning Commission. So we would basically adjust accordingly and work with the GPAC to try to consolidate and get whatever comments they got to the Planning Commission.

COUNCILMEMBER HOKAMA: And it goes to three Planning Commissions, Mr. Summers?

MR. SUMMERS: No.

COUNCILMEMBER HOKAMA: Just the Maui Planning Commissions on Maui?

MR. SUMMERS: Yeah. Just...just the Maui Planning Commission.

COUNCILMEMBER HOKAMA: Okay. Thank you for that response. Thank you, Chair.

CHAIR BAISA: Yes. We have an amendment on the floor. And that is to amend the date. And we also have a friendly amendment from Member Molina to include that the...that the IRCs accept written testimony. Is that something we need to...to fix? Member Johnson.

VICE-CHAIR JOHNSON: Chair, what I did was I not only made a...a motion to amend the date but that I put in a provision.

CHAIR BAISA: Right.

VICE-CHAIR JOHNSON: And I believe that any—and...and Staff can correct me if I'm wrong—but I believe written testimony can be submitted at any time whether it's to an individual who would then turn it in at a GPAC meeting. Isn't it permissible for any member of the public to turn in testimony?

MR. SUMMERS: That would be my understanding.

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VICE-CHAIR JOHNSON: Yeah, yeah. So...so...

CHAIR BAISA: So not necessary.

VICE-CHAIR JOHNSON: So I think that what Member Molina's concern is, you know, I mean they can do it. Anybody can give us a letter, an e-mail, whatever it is and we can turn it in and then disseminate to the larger body. So my...my provision, though, stated and if...

CHAIR BAISA: Could you please restate your amendment?

VICE-CHAIR JOHNSON: I will...I will restate it. It says, that "The Maui General Plan Advisory Committee be granted until March 1<sup>st</sup>, 2009"—that's kinda awkward. "Be granted to March 1<sup>st</sup>, 2009 to complete its review of the draft Maui Island Plan provided that any Investigative Review Committee legally formed by the General Plan Advisory Committee conduct such meetings in full view of the public", and however they accomplish that. So if it's taped, I'm gonna leave that up to them. I'll leave it up because some people may just wanna say we're having this Investigative Review Committee meeting. Any member of the public is welcome to attend. And I'm...I'm not gonna specify because I think that would get into directing the actions and I think that's where Mr. Hopper was going. So it's unenforceable, I realize, but I think that . . . *(change tape, start 3B)*. . . with the concerns expressed by public, we're making the best attempt to say, we're giving you this extension with the hope and understanding that you will do your best to comply.

CHAIR BAISA: I think the message is very clear. Member Molina as the seconder, any more comments?

COUNCILMEMBER MOLINA: Not on the amendment. I'm fine with it.

CHAIR BAISA: Okay. All those in favor of the amendment, please say aye.

COUNCILMEMBER MOLINA: Aye.

VICE-CHAIR JOHNSON: Aye.

CHAIR BAISA: Chair heard three ayes. Those against the amendment, please vote no.

COUNCILMEMBER HOKAMA: No.

CHAIR BAISA: So that will be three ayes. That's Baisa, Johnson, and Molina; and one no, Member Molina and Member Medeiros...I'm sorry, Member Hokama, and Member Medeiros is excused. Got it straight? Okay.

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**VOTE:       AYES:    Councilmember Molina, Vice-Chair Johnson, and Chair Baisa.**

**NOES:       Councilmember Hokama.**

**ABSTAIN:   None.**

**ABSENT:     None.**

**EXC.:       Councilmember Medeiros.**

**MOTION CARRIED.**

**ACTION:     Recommending APPROVAL of amendment.**

**CHAIR BAISA:** Now back to the main motion. We have the main motion on the floor. Member...Mr. Ratz, if you could please read the main motion as amended.

**MR. RAATZ:** Thank you, Madam Chair. The main motion as amended is just to adopt the resolution under PC-50 that's on today's agenda as amended, and to file the communication.

**CHAIR BAISA:** Okay. Any more discussion? I'm sure that we have some final comments. Chair Hokama.

**COUNCILMEMBER HOKAMA:** Madam Chair, I am very understanding of the testimony and comments we received from the members of the Maui Island GPAC. And I can also sense their dedication, their willingness, the efforts they've already put in and their desire to complete the assignment. But I will not support the extension. And it's more on philosophy. And what was the intention of Bill 84? We know what was the full intention. It was to get it done ahead or on time within the budgetary parameters that we have set forth through the Budget process.

And for me, it's more about my island's frustration from not being able to move on. And here we are in the second pass, the current plan. Once Lanai got done, it took the County five years to finally take up the Lanai proposal. Five years after they completed their task. And here we are. They've completed their task. Now they're being told they're gonna have to wait another...potentially, three and a half years before we take up their considerations. I have a problem with that. I'm not gonna...point fingers at this time regarding why or who we need to point it at.

But I think the Council, after this process is done, needs to re-evaluate and audit appropriate things to find out why it took so long and what was the final cost to get it through this lengthy period of time. Because I think that our people need to know those answers to those two questions. Why it took so long and why did it cost whatever it's gonna end up costing?

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But cost shouldn't be the factor of making this final decision, Madam Chair. We are concerned with the work product. Tell us that the cost should be considerate so that we don't need to... 'cause we don't wanna pay for this or pay for that. We should not interrupt the need of public participation. We can adjust. We can take something from another... division of Planning and transfer it to where it needs to be if that's what it takes. We can take it from the Administration budget, we can take it from current zoning, or whatever they want, and we can shift their money to give this component the appropriate financial resources. But I would expect a full accounting of what was expended. Thank you, Madam Chair.

CHAIR BAISA: Thank you very much. And the Chair will follow up and request that information. Member Johnson.

VICE-CHAIR JOHNSON: Yes. And I...I share the frustration. I...I can't blame anyone because we...we've done so many things and we thought our affordable housing policy was great and it was gonna work. And we thought Bill 84, you know, philosophically was great, but in implementation we never anticipated some of the things that came down. So I'm not gonna go there, though. We're here. This is the here and now. I respect the people that have devoted their time and I hope that their hours and their time is actually considered as what I...what I would say, in kind. Because I think that the calculation of their time is really immeasurable, at least in my book. So, you know, hours expended. I think that they should be recognized for...for that. And I don't know whether you keep track of that or not, but it's really important to recognize the devotion that these people had and the time they've given up. And so, out of respect for the members, the staff, everybody who's contributed to this, I say if you need more time to produce a product that is what you feel proud to produce and you're willing to put your name on, I say it might not be desirable but it's where we are. And that's why I'm supporting this. Thank you.

CHAIR BAISA: Thank you very much, Vice-Chair Johnson. I appreciate your comments. Member Molina.

COUNCILMEMBER MOLINA: Thank you, Madam Chair. I will be supporting the resolution although I've expressed my concerns, but my support for this is somewhat similar along the lines of Member Johnson. It's about respecting the work of these 25 brave souls, if you will, who had to endure a lot. I...I...I can't even imagine how many hours they have all put in and to stop the process now, I think would be in some ways an injustice to them. And we were told today by the GPAC Chair, Mr. Cannon, that they are close to coming up with a finished product. And in...in addition to what the Chair told us as well as the amendment made by Member Johnson to extend the deadline, I'm hopeful that we will reach that goal, of course, with the help of the Planning Department.

And I would also like to again emphasize and encourage the various IRCs to make sure they keep these meetings open or at least provide an opportunity for the public to, at the

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very least, observe. Or if they wanna come in and videotape, take their own minutes. Because this is all about maintaining the integrity of the process of government and keeping it open. Because whenever the issue of closed doors come up and making some recommendations—and I...I concur with what was said earlier about a recommendation can be interpreted as a decision. So we have to very mindful of that. So if a, recommendations do come from these committees, then by all means leave the doors open for the public to observe it. So it's all about maintaining the integrity and openness for government, Madam Chair. So that is all I have to say for now. I'm sure there will be more discussion should this matter reach the full Council. Thank you, Madam Chair.

CHAIR BAISA: Thank you, Member Molina. The Chair also will be supporting the resolution, the amended resolution. And for me, it's the same kind of feelings that both of the Members that are supporting it have. I am very respectful and very personally knowledgeable of the time and energy and effort that the GPAC has put into this. Also, the Planning Department has worked very hard in trying to work with the GPAC and get things done. You know, hindsight is 20/20. And I agree also that when we're...all is said and done, we certainly need to go back and maybe re-look at this process and see if we can come up with something that's better. And I'm sure after this experience, we should all be better able to do that. So the Chair would like to call for the vote on the amended resolution, the main motion. All those in favor, please say aye.

VICE-CHAIR JOHNSON: Aye.

COUNCILMEMBER MOLINA: Aye.

CHAIR BAISA: Opposed, no?

COUNCILMEMBER HOKAMA: No.

CHAIR BAISA: The Chair will mark it ayes, Chair, Member Johnson, and Member Molina; and no, Member Hokama; and note the excuse of Member Medeiros. So the motion carries.

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**VOTE:       AYES:   Councilmember Molina, Vice-Chair Johnson, and Chair Baisa.**

**NOES:       Councilmember Hokama.**

**ABSTAIN:   None.**

**ABSENT:    None.**

**EXC.:       Councilmember Medeiros.**

**MOTION CARRIED.**

**ACTION:     Recommending ADOPTION of revised resolution and FILING of communication.**

CHAIR BAISA: Members, I am sorry, but we will not be able to get to our second item today. My apologies to anybody who came today to participate in PC-40. We will have to carry that forward.

**ITEM NO. 40    TRANSIENT VACATION RENTALS LEGISLATION (C.C. No. 08-61)**

CHAIR BAISA: My thanks to the Staff and my thanks to my Members. This was a very difficult issue that we talked about today, and again, my thanks to the testifiers and to the public. The meeting is now...

COUNCILMEMBER MOLINA: Madam Chair, Madam Chair?

CHAIR BAISA: Yes.

COUNCILMEMBER MOLINA: I'm sorry. I apologize. Before you officially adjourn --

CHAIR BAISA: Yeah. Go ahead.

COUNCILMEMBER MOLINA: --regarding the TVR matter, so will you officially make a recommendation to defer?

CHAIR BAISA: Yes. Thank you.

COUNCILMEMBER MOLINA: Alright. Thank you. Just wanted to make sure.

CHAIR BAISA: Thank you very much. I'm so glad that...you know, like I said, the Planning Committee rocks. Thank you.

COUNCILMEMBER MOLINA: No objections to deferral.

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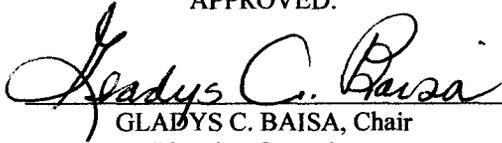
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**ACTION: DEFER – NO DISCUSSION.**

CHAIR BAISA: Thank you very, very much. . . .(gavel). . .

**ADJOURN:** 12:06 p.m.

APPROVED:



GLADYS C. BAISA, Chair  
Planning Committee

pc:min:080930

Transcribed by: Reinette Kutz

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CERTIFICATE

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

DATED this 28th day of October 2008, in Wailuku, Hawaii.

  
Reinette L. Kutz