

**MAUI PLANNING COMMISSION
REGULAR MEETING
OCTOBER 24, 2006**

A. CALL TO ORDER

The regular meeting of the Maui Planning Commission was called to order by Chairman Wayne Hedani at 9:03 a.m., Tuesday, October 24, 2006, Planning Conference Room, First Floor, Kalana Pakui Building, 250 South High Street, Wailuku, Maui.

A quorum of the Commission was present. (See Record of Attendance.)

Mr. Hedani: Public testimony will be taken on any agenda item in order to accommodate those individuals who cannot be present at the meeting when the agenda items are considered by the commission. Public testimony will also be taken when the agenda item is taken up by the planning commission. Maximum time limit on individual testimony is three minutes. A person testifying at the beginning of the meeting will not be allowed to testify again when the agenda item comes up before the commission unless new or additional information will be offered. Is there any person in the audience that would like to offer testimony at this time? Seeing none, public hearing is closed. Moving onto agenda item B-1.

B. PUBLIC HEARINGS (Action to be taken after each public hearing item.)

- 1. MR. E. THOMAS LEWICKE requesting a Special Management Area Use Permit for the construction of the Lewicke Second Main Dwelling at 917 South Kihei Road, TMK: 3-9-034: 027, Kihei, Island of Maui. (SM1 2006/0009) (L. Callentine)**

Ms. Livit Callentine presented the Maui Planning Department's Report.

Mr. Hedani: Questions from the Commission? Commissioner Starr.

Mr. Starr: Yes, this is more about process. I understand that the 45-day notice requirement was waived because of the fast scheduling. You know, the fast scheduling is good, but I have a concern about whether the neighbors and the public lost their 45-day notice as well as the applicant and whether it's right for us to hear it without the public having the notice requirement.

Ms. Callentine: It's my understanding the public was notified of the application on – not as I understand it, I know this, the public was notified on June 2nd. So they knew there was an application so that's proper notice. The public was properly noticed all the way through on this. The applicant, the only place where we had to waive and the applicant was given a choice there whether to waive his right to 45-days, it was 42 days and he actually then published and mailed the notice, the letter of application – sorry the letter of notification, excuse me, and the location map on September 22nd.

Mr. Starr: How does the public get notified that this is – and the neighbors?

Ms. Callentine: All the people within 500 feet of the boundaries of the property get a letter of notice of public hearing and they get including a location map and then it gives them a contact – it gives them all the contact information and they do contact the Planning Department if they have questions or concerns.

Mr. Starr: Are they supposed to have 45 days or some specific amount of notice?

Ms. Callentine: Can you help on that Mike?

Mr. Foley: Well, they've had since June 2nd, so it's been – so they've had four months.

Mr. Starr: I mean, did they know this was coming up specifically today.

Mr. Foley: Well, it says in the notice that it's going to be going to the planning commission.

Ms. Callentine: Commissioner Starr's point I think is that well, they were noticed on 22nd of September.

Mr. Starr: I mean, I don't think it's specifically an issue. I don't see a crowd of people coming before us with problems but I just want to be sure we're adhering to proper form and I think that they should be getting – you know, have a certain notice, period of notice that it's going to be occurring today. I'd just like to ask Corp. Counsel what the proper procedure just to make sure we're following it.

Mr. Giroux: I would have to look at the rules as far as the specific notice, once the application is deemed ready to go on.

Mr. Starr: That's what you're here for.

Mr. Guard: I have a comment.

Mr. Hedani: Commissioner Guard.

Mr. Guard: It sounds like the September 12th letter is so the applicant can make sure that he's prepared to do his presentation. So if he says he is, he could do it in less than 45 days which is why he waived his right. It didn't have anything to do with the public. I think the public had their opportunity. If that's the only thing that was waived was his right saying I'll be ready in less than 45 days. I'm ready to proceed.

Mr. Starr: I think the ordinance reads that the neighbors also should have notice too, but

I don't know if it's 45 days or less.

Mr. Hedani: Okay, any other questions for the applicant at this point? Commissioner Amorin.

Ms. Amorin: Thank you Chair. I'm not sure if this is so much to the applicant as it would be to the Department of Public Works regarding the storage for the drainage. My question would be, you know, the storage tank that's 20x20x5 feet could you elaborate on that? I don't understand. Is that aboveground, underground?

Mr. Hedani: For the applicant to respond?

Mr. Tom Lewicke: My name's Tom Lewicke. I'm the applicant on this application. Our plan, our thinking was to have a gray water storage tank used for irrigation and there would be enough capacity in it for storm water, the additional storm water due to the house construction.

Mr. Hedani: Mr. Lewicke, is that going to be underground?

Mr. Lewicke: Yeah, probably underground, yeah.

Mr. Hedani: Probably underground.

Mr. Lewicke: It will be underground.

Ms. Amorin: So this a guarantee that no offsite water will run off the property that will be contained in this storage tank?

Mr. Lewicke: Yeah, yeah. It's only about 1,800 cubic feet that will be, and the storm would be produced by the house, so that's what we're going to provide storage for. There's no off site has ever gotten onto our site because it's higher than all the land around.

Ms. Amorin: Okay, thank you very much.

Mr. Hedani: Any other questions for staff or the applicant at this point? I have a couple questions. On the summary report you indicate that the property is zoned, I'm sorry, the property is community planned single family and on page 11 of the report it indicates under paragraph 4, that the Kihei Community Plan designates the subject property as multi family residential. Which is the case?

Ms. Callentine: Oh, I apologize for that. That is an error. I apologize commissioners, I would have to go and actually check the community plan map to verify that.

Mr. Hedani: Okay, and as a followup question to that I guess, I can see if it was multi family you can two residences on one lot. If it's single family can you have two residences on one lot?

Ms. Callentine: Yes, you can. In R-3, I am sure about that zoning, in R-3 you need 10,000 square foot per dwelling. So you see in fact, there are many dwellings – there are many properties where a second main dwelling is constructed, but because it's over the size allowed for the ohana unit, it couldn't be exempted as an ohana unit. It would have gotten a minor but unfortunately the value of the house is \$250,000 therefore, we couldn't process it as a minor permit. That is why it's coming to you as a major, as an SM1 because of the value and because of the size. But the parcel is 40,000 square feet plus and they only need 10,000 per dwelling. So whether or not it's community planned single family or multi family, it is actually allowed.

Mr. Foley: Yeah it actually doesn't matter.

Ms. Callentine: Yeah, it doesn't matter.

Mr. Hedani: Okay. Any other questions for the applicant? Commissioner Starr.

Mr. Starr: Yeah, I'm not really familiar with the process of having a second main dwelling. When that occurs is there still an entitlement for additional ohana units?

Ms. Callentine: Yes, actually there. As I understand it, there is. But that wasn't the matter that I was really considering with this application so I haven't really researched that to its fullest extent. But as long as – essentially this applicant could subdivide if we wanted to I suppose and then he could have two main dwellings and two ohana dwellings. As far as I know that's not his intention. His intention is for the second main dwelling to be for his family and guest to stay in. He could also use it as a long term rental. That would be allowed in that neighborhood as well.

Mr. Hedani: Okay, so your clarification is that on single family lots you can actually have two main dwellings as long as you meet the square foot requirement of 10,000 square feet?

Ms. Callentine: Yes.

Mr. Foley: And it's R-3.

Ms. Callentine: And it's R-3.

Mr. Hedani: Okay, and he can do that without subdividing the lot?

Ms. Callentine: Yes.

Mr. Hedani: Any other questions? Okay, seeing none, thank you very much.

Mr. Starr: Did we get an answer on the notice requirement?

Mr. Giroux: Yeah, it's 30 days and they – the applicant would have to mail out. The 45 days is just to give them that leeway to get their paperwork together and fill out that application and make sure it's accurate.

Mr. Starr: And was the 30-day requirement, was met?

Mr. Callentine: Yes it was. It was mailed out on September 22nd.

Mr. Hedani: Thank you very much. Any other questions for the applicant at this point? No.

a. Public Hearing

Mr. Hedani: Public hearing. Are there any members of the public that would like to offer testimony at this time? Seeing none, the public hearing is closed.

b. Action

Ms. Callentine presented the Recommendation.

Mr. Hedani: Does the applicant have an opposition to those conditions?

The applicant was inaudible due to him speaking from the audience.

Mr. Hedani: The applicant hasn't seen the conditions?

Ms. Callentine: Right. Would you like to take a short five-minute recess to give him a chance to review those conditions?

Mr. Hedani: No, I don't think that's necessary.

Ms. Callentine: All right.

Mr. Hedani: The only comment that I would have is that on the project specific condition no. 20, it states in the condition that it's "if required," and if it's not required then it's not a condition.

Ms. Callentine: Right. Okay, so you're saying you just assume leave it in.

Mr. Hedani: And on condition no. 12 it says, "appropriate filtration measures will be taken," and if it's not appropriate single family it wouldn't apply, right? It's a standard condition because it's a standard condition.

Ms. Callentine: Okay, I think that that's your choice which way you want to go with that commissioners. And I will make sure prior to attaching the report in our electronic form that the community plan designation is clarified.

Mr. Hedani: I'm sorry, I had one clarification on the description of the project on page 8, on the second complete paragraph, the second line, it indicates, "ceramic tine wood," is that ceramic tile and wood? On the flooring of the –

Ms. Callentine: Yes.

Mr. Hedani: So it's ceramic tile and wood?

Ms. Callentine: Ceramic tile, wood frame flooring, so that should be corrected as well. Thank you for catching that.

Mr. Hedani: And on page 11, one correction is that under the land use goal, third line it's "unity of character of Maalaea Kihei" versus "unique character of Maalaea Kihei" I guess is what was intended. Just to let you know I read your report.

Ms. Callentine: Thank you for pointing that out, I will make those corrections.

Mr. Hedani: Commissioners, what's your pleasure? Commissioner Starr.

Mr. Starr: Move to approve with conditions as recommended by staff.

Mr. U'u: Second.

Mr. Hedani: Moved by Commissioner Starr, seconded by Commissioner U'u. Discussion? Ready for the question?

It was moved by Mr. Starr, seconded by Mr. U'u, then

**VOTED: To Accept the Recommendation of Approval of the Special Management Area Use Permit.
(Assenting - J. Starr, B. U'u, J. Guard, J. Amorin, P. Eason)
(Excused - D. Shepherd, S. Freitas, W. Iaconetti)**

Mr. Hedani: Carried. Thank you.

Ms. Callentine: One question from staff. You said move to approve with conditions that were recommended by staff. Did you just vote to leave the conditions the way we recommended them or leave them in their entirety?

Mr. Hedani: As was stated in the green paper.

Ms. Callentine: Okay, thank you.

Mr. Hedani: Also my compliments to the applicant on his sensitivity to the environment in producing the application as well as the design of the structure.

Mr. Foley: We need to take a few minutes. We're a little ahead of schedule, Thorne's on his way.

A recess was called at 9:30 a.m., and the meeting was reconvened at 9:42 a.m.

- 2. MR. MICHAEL W. FOLEY, Planning Director, introducing proposed amendments to the Shoreline Rules of the Maui Planning Commission. The Department proposed to amend Section 12-203-6 "Establishment of shoreline setback lines" to provide the public with a clear, concise understanding of how to calculate the shoreline setback line. The proposed amendment also provides the Director with discretion in unusual circumstances or where safely measuring the shoreline is difficult. (T. Abbott)**

Mr. Foley: Our second item on the agenda is a public hearing related to some modifications to our shoreline rules and they will be presented by Thorne Abbott.

Mr. Thorne Abbott presented the Maui Planning Department's Report.

Mr. Hedani: Questions from the Commission? Commissioner Starr.

Mr. Starr: First question, what is the process for approval or consideration of these? Is this an area that we're final authority or does it need to go to Council?

Mr. Abbott: No, it doesn't. These are your rules. They were passed October 28, 2003. Now if you approve of these they will go to Corp. Counsel for form and legality. Corp. Counsel will then send it to the Mayor for signature. The Mayor will then send it to the County Clerk, the County Clerk will then send it to the Office of Planning and the Coastal Zone Management, State Office and Planning and they'll determine whether these are

consistent with HRS 205A. I suspect that while that will be – take a little bit of time especially given the holidays and current events, I doubt that CZM would find this inconsistent with the rules.

Mr. Starr: And just for clarity sake what public process have and notice has been given to the public regarding these?

Mr. Abbott: As with any rule amendment, the rules were published 30 days in advance of this hearing and the hearing date is noted in there. Any walk-ins or call-ins have the right to get a copy of the rules. We've provided that. Although Mr. Suzuki when I checked my email this morning, and Isaac Hall had wanted a copy. They called this morning about 15 minutes before I got here and I said, well, I'll send you a copy.

The other thing is this particular set of rules was actually advertised – we made a mistake in the advertisement in that we didn't list the commission date for the hearing and that was and that was done two or three weeks before the second advertising of this. So the public's actually had two opportunities to put in – have input.

Mr. Starr: And my final question. I think you mentioned at the beginning of the presentation that there were some additional elements of this that were separated out and will come before us possibly at a separate time, could you explain what those were and why they're separated out of this?

Mr. Abbott: They are separated out because they're basically it's allowing for qualified demolitions. Right now if you have an old dilapidated seawall and you want to tear it down you would have to get a variance which requires an environmental assessment which is very lengthy and expensive and you have to go through the State FONSI process and this commission's FONSI process.

So what we're doing is proposing to allow people to – when people want to move things out of harm's way they can do that. In fact, you approved the hotel project here where they wanted to take down a bunch of structures in the shoreline setback and move the hotel back but they had to get a variance which is very expensive for them and time consuming.

So the qualified demolitions is at Corp. Counsel right now. We're waiting for him to give us comments back. There is a series of definitions and qualified demolition is one of them. As I mentioned, John Rapacz had suggested we define irregularly shaped lot so we did that and we added that to those definitions and there were some other errors like Daren had pointed out there is a reference to code that doesn't exist anymore. Minor kind of housekeeping things. So those have been submitted to Corp. Counsel. I don't know what James' schedule is. I know he's very busy, but hopefully those will be reviewed and as

soon as they are, we'll publish them and 30 days later the commission will get to discuss them.

Mr. Starr: Can we have James give us a status report and a date for those, date certain?

Mr. Giroux: Well, right now we've been looking over them. I have a meeting with Thorne this week to kind of clarify exactly where he's going with these amendments. We've been looking over these amendments for over a year now. So at this point, we're kind of just looking at the ...(inaudible)... of it all. Once we do that, it will probably take about three or four weeks for me to go through our internal review. I've got to go through Brian and once we get his comments from whatever changes Thorne and I make then it will come back to Thorne and then Thorne will go through the publishing process. So I would say safely within the next couple of months.

Mr. Starr: So by end of year they ought to be at least be back to Thorne?

Mr. Giroux: That's what we're hoping for. We're trying to move these along as quickly as we can.

Mr. Starr: Okay, good, you're on it then.

Mr. Hedani: Any other questions for staff? Commissioner Amarin.

Ms. Amarin: Thank you Chair. Just want to get educated. Shoreline setback measuring is done at low tide or high tide?

Mr. Abbott: The State sets where the shoreline is and that's not for property ownership, that's for jurisdictional purposes. The state certified shoreline survey is currently defined as the highest wash of the waves that occurs during the highest tide of the year. Normally evidenced by the vegetation line or debris line. So the State actually sends someone out to look at the shoreline along with the surveyor and determine where the shoreline actually is. Zoe Norcross and myself typically participate in a lot of those especially where there might be some contention about where the shoreline should be set.

That shoreline survey accomplishes three things. The first thing it does is it separates what's the State's jurisdiction and what's ours and what permits you need. The second thing it separates is, if you have an encroachment onto the State's property, which frequently happens here, you have to resolve that. You have maybe a seawall or a house built on somebody else's property and so you have to resolve that. Typically that's done through purchasing an easement. So prior to redeveloping your lot, for example, taking down the typical 1,500 square foot bungalow and putting up, you know, 5,000, 7,000 square foot house, you have to resolve the fact that you built your seawall on the state's

property or built some structure on the state's property. So there the jurisdictional issue, there's the permit issue whether you get a state permit or you get a permit from us and then there's the encroachment issue. If you have something on somebody else's property. And then the last thing it does is it serves as a baseline for us to measure your setback from. So we're basically measuring it from where the state says, the highest wash of the waves or the highest tide of the year, usually the vegetation line or the debris line, you'll see some ...(inaudible)... you can pretty much get a good idea where the shoreline is. And then we measure from there back you know, whatever your setback is.

Ms. Amarin: Great. Great information. Also, you know I can understand doing these amendments and I know people who have properties and being a commissioner for whatever years I've been a commissioner, I've learned a lot through the Planning Department, through getting out there and getting on site and hearing the applicants. And erosion don't happen all the same at all the locations around the island. They differ. Some very greatly. And so based on all of that, I can understand the safety measures that, you know, you want to put in place by doing these amendments. And as far as the state standards, is it all the same or will this be a pilot to help setting a better pace on the shoreline?

Mr. Abbott: I'll respond with several things. First, Maui County clearly is the leader. There's many, a number of states, North Carolina, Rhode Island, New Jersey, all use a coastal and erosion rate-based setback, but they do a beach that's you know, a hundred miles long. Their beaches are very straight and long. So we have very parcel specific erosion rates and that's rare. Really your erosion rate is based on your site because our sites differ. You know, every beach is a little different. Every rocky headlands a little different. So that's very, very innovative. It's really set a precedent and Kauai is looking right now to introducing rules that have erosion-based setbacks. The State DLNR, Office of Conservation and Coastal Lands has just introduced a, I think I'm allowed to say this, a draft, draft, draft, amendment that might change the language of State Law relative to shoreline setbacks to be based on one, erosion rates; and two, the average life span a building. A lot of people do an average life span of the building which only makes sense. A residential building is not going to last as long as a commercial building, it's not going to last as long as an industry. My home state, Pennsylvania, they have 50-year setbacks for residential, 75 for commercial and a 100 for industrial so that's substantial.

Now does this – is this precedent setting? It is. The U.S. Coral Reef Task Force, I'm going to pat myself on the back a little bit here, it's really not me, it's Zoe Norcross and all of you that passed these earlier rules in 2003, and those authors such as Daren Suzuki, but the Coral Reef Task Force has asked me to come and do a presentation on how we're doing these rules. And this is going to be to what's called the All Islands Committee, and that's Guam, Saipan, Commonwealth of the Northern Mariana Islands, Puerto Rico, U.S. Virgin Islands and Hawaii. Hawaii's viewed, you know, we're all federally funded and that funding

is becoming limited and competitive. And to show that we're doing something very innovative with their money, and really cutting edge, makes us look very good and it makes Maui look really good. So, yeah, to answer your question, this is very innovative forethought, ...(inaudible)...

Mr. Hedani: Commissioner Amarin.

Ms. Amarin: I have one more question. As far as making the changes and changing the rules, and I'm sure there's a lot of homes out there that may, you know, this might interfere, are they going to be penalized, do they have to move their structures back or is it going to be grandfathered?

Mr. Abbott: That's an excellent question and Chair Hedani, you also asked that I believe at our last meeting, you suggested that. The difference is they'd become what's called "legal nonconforming" assuming they were legal when they were built. Now, if it's something that was built a long, long time ago is it legal because it exists, you know, before building permits and that kind of thing? So we call that nonconforming or what you might say is grandfathered. You're allowed to remodel as much as you want. You can redesign. You can do anything you want as long as you don't enlarge it, you don't expand it, don't intensify its use and you can't repair it if it's damaged by coastal hazards. So if we have big storm and a big wave comes in and it washes away your house or washes away your land and your house falls in, we don't allow you as the current rules stand, we don't allow you to rebuild on that same footprint. And you know, it's like seatbelt law. You know, we have a responsibility to protect the public from themselves sometimes and if you know that your house has fallen into the ocean, it does not make sense for us to allow them to rebuild in the same place. Move more mauka. Now having said that, you're guaranteed minimal buildable lot of 2,500 square feet. So make that two stories, you got a 5,000 square foot house. I think that's sufficient for most folks.

Mr. Hedani: Commissioner U'u.

Mr. U'u: So why are we letting people build weep holes if that's the case if the impact would differ being they have the weep holes on property?

Mr. Abbott: That was built before you passed these rules. That was built probably in the old days.

Mr. U'u: So it would fall under the criteria of illegal nonconforming?

Mr. Abbott: No, that would just be – if you could prove that that wall today is the way it existed when it was originally built prior to 1970 or it got a permit of some nature between 1970 and 1989, then it would be what's called "legal nonconforming." And you can repair

it, you can upgrade it, no price limitation unless it was damaged by coastal hazards then we don't let you repair it.

Mr. U'u: Is there some slack, I know the illegal beach seawalls, the lands adjacent to it, sometimes get intensified, do they have some slack saying if you're abutting a property with a illegal seawall and you know, for instance, if this guy has a illegal seawall and I don't, and it intensifies my lost of land, because of his illegal seawall, but now these guys stay the same and this guy differs because of his fault, so you're penalizing this guy for his mistake. So what we're doing on that?

Mr. Abbott: Frankly Bruce, I think that's one of the reasons these rules came out was there was a recognition that so many people were armoring the shoreline and that was causing big losses of beach at adjacent sites and unfortunately those were usually public beaches not private beaches which there aren't any really in Hawaii. So we said, hey wait, stop. Before you're going to build a seawall, we want you to look at this very significantly and go through our permitting process and approval actually rests with you folks before a seawall is approved. For the ones that's already exist, you know, a lot of things were – I have a document from 1978 from the Corp of Engineers recommending the seawall is the best management response for coastal erosion. I mean, 20 years ago we just didn't know what we know today.

Mr. U'u: My question would be though, being this guy's setback would differ from these guy's lost of land are they going to be grandfathered in the people who lost the property because of the illegal seawall, are they going to be penalized?

Mr. Abbott: So one person has a illegal seawall if I understand –

Mr. U'u: And it's happening right now in Paia. I saying that because this property is our family land with no illegal seawall. These guys, totally illegal. We followed the rules and we get screwed.

Mr. Abbott: We tend to be a compliance driven enforcement department on the County side. So when they come in to redevelop, that's when we try to bring them into compliance. It may be they have to remove the seawall. It may be that they get an easement for the seawall. What I can say is every situation's very different and when we get these applications, the State DLNR, OCCL guys go out. They have two Sea Grant assistants, Zoe Norcross goes out and I go out. So you can end up with as many coastal manager experts giving you free advice at that site. And basically we sit around and talk story, consider all the alternatives and what's the best recommendation. Sometimes seawalls are okay if you have like a clay scarp and you have reef off shore. You don't want all that clay going out into the ocean. So in a case like that it might be okay to use a seawall or revetment. But if it's a sandy shoreline, the State has zero tolerance and we pretty much

have zero tolerance too.

To answer your question though Bruce, it's neighbor to neighbor and they're penalized but just because you have an old seawall doesn't mean you're going to be able to redevelop your lot. In fact I know of at least case where the person came in, they're going to redevelop the lot on Halama Street and they have a hardening device, the geotextile bags, those are on the State's property and we said until you correct this problem, bring it into compliance you can't redevelop your lot. And that person wasn't allowed to build. They had proposed a 8,000 square foot house and they couldn't build it.

Mr. Foley: I just wanted to add that as Thorne says we deal with these on a case by case basis and the County and the State investigate each of these circumstances individually on the site. We've had situations where seawalls have been required to be removed and we've had other seawalls where they've been allowed to stay and it really depends on the coastal geologist and the coastal specialists like Thorne and Zoe determining what the impacts of the seawalls are. So we've had a lot of – Halama Street in Kihei is one of a – one place where we've had a lot of experience. The other areas are in Paia, Kuau and Spreckelsville where we have a lot of erosion. And in those two areas, we've had numerous investigations in the last several years. And sometimes like Thorne said, sometimes it turns out to be totally a State jurisdiction and sometimes it's totally ours and sometimes we team together and are more effective by having both agencies convince the property owner to do the right thing. But it really is on a case by case basis and we look very carefully at the impacts. There are two pieces of properties that I've inspected with Thorne and Zoe where the water erosion is within 10 feet of the house. So we have – and those are – one's in Spreckelsville and one's in Kuau. So we have situations where buildings are definitely being threatened, well, plus Baldwin Beach. But we very carefully look at those situations and if we haven't looked at that one that you're referring to, you can, you know, put in a request for service to Thorne and we can take a look at it specifically.

Mr. Hedani: Any other questions for staff? I have a couple questions for staff. It's sometimes said that hard cases make for bad law. When you have a very hard, emotional case it ends up with a law that's passed that ends up being bad law. In this particular case, we have a lot of hard cases that occur around the shoreline of the island. But they are to some degree, effects from the laws that we pass that to some degree are not anticipated. Let me give you an example. In the case of North Beach at Kaanapali, you have an HM, six-story maximum density property all zoned Hotel subject to the shoreline guidelines that we passed their setback is a 150 feet. What that does is it protects the beach. What it also does is it pushes the entire building a 150 feet mauka which in this particular case causes a massive six-story building to be butted as close as possible to the street of Honoapiilani Highway. Everybody that I've talked to has criticized the buildings, the height of the buildings, the massiveness of the buildings, the proximity of the buildings to each other, the

blocking of view planes, because of the fact that it's so imposing because it was pushed toward the highway and they were not given the flexibility to work with the site to optimize the site planning for each particular case, so I think to some degree we need to be careful when we pass laws that – and this essentially becomes a law, that we take into account all of the effects of what we do. That's my only concern.

Mr. Abbott: I concur entirely. Thank you for noting that.

Mr. Foley: I just wanted to add that this is definitely in the category of a work in progress. As Thorne said, we're the first county in Hawaii to have these regulations and they're being copied now by Oahu, Kauai and the Big Island who are trying to hire Chip Fletcher to prepare similar regulations for the other three counties. But they're all learning from our experience.

And one of the things that we've learned in the last couple of years is that there are certain circumstances that we didn't anticipate and one of them is the cliff side property that Thorne mentioned. We had a certain situation where a property owner was required to do a shoreline survey but it was extremely hazardous to the health of anybody who would try to survey the shoreline at the bottom of the cliff. And you saw a slide that indicated what that would be like. So that was one of those circumstances that we hadn't originally anticipated because when we started out we were really only addressing beaches. We were addressing sandy shorelines and one of the things we discovered was that some of the setback requests that we got were for sandy beaches and we knew how to handle those and calculate them. But there were a lot of other areas where there were rocky shorelines or they were cliffs or they were kind of hills, I don't know how else to describe them. They weren't cliffs and they weren't beaches and they weren't rocky. They were kind of something else. So we've had to make a lot of modifications as we've gone. And we do always try to keep in mind the unintended consequences that the chairman just mentioned. And we've had a lot of meetings with people that have very large structures like hotels and we've made a lot of progress in working with them early to set the buildings back from the beach but also try to set the buildings back from the highway. So it's definitely a work in progress. We've all learned a great deal and the other three counties are going to benefit from our experience and I would say every month we discover something that, you know, isn't exactly dealt within the rules and we have to have either come up with an interpretation or we have to prepare a modification. So we're definitely on the forefront of this whole issue and we've made a lot of presentations throughout the state and out of the state about how this whole system works and as usual Maui's leading the charge.

Mr. Hedani: Okay, any other discussion from the commission?

a. Public Hearing

Mr. Hedani: Since there's no further discussion, are there any members of the public that would like to offer testimony at this time? Please step to the microphone and state your name for the record. You have three minutes.

Mr. John Rapacz: Thank you Mr. Chairman and Commissioners. My name is John Rapacz and I need to be clear on the record in identifying myself. I'm testifying only on my personal behalf today not on behalf of any client. In fact, some clients may not be thrilled with my testimony, but I'll risk it.

I was on the advisory group or advisory committee that helped develop the major revisions to these rules in 2003. I'm glad to see that today, hopefully, the major loophole on the lots abutting the shoreline will be closed or at least I hope it is when you vote. That was something that a number of us on the committee spoke strongly for but somehow it was not ultimately adopted in 2003.

Secondly, as Thorne mentioned, more of a technical issue, where the director has full authority to determine setbacks on irregularly shaped lots. When you hand over that much authority and discretion, it is a good idea to define it clearly and sounds like James and Thorne are working on that and I appreciate that.

One other matter of clarity and it may be simply because I don't understand the language or the methods. If you have the draft in front of you, in the very first section, entitled "Establishment of Shoreline Setback Lines," the first paragraph, 203-6(a) and the underlined language at the very end of that paragraph, says that "setback line will be the greater of the distances from the shoreline calculated under the methods listed below or the overlay of such distances." I'm not really sure what that means. Distances versus overlay of distances. And if I do understand correctly, I think that you could just end the sentence at "as calculated under the methods listed below." So you would take the "greater of the distances from any of those methods below." Now as I said, maybe I just don't understand it correctly and I look forward to hearing from Thorne or anyone to clarify that. I think that might simplify it or if you do have to have that language in that says overlay of the distances, either explain it or refer to where those overlays are calculated or defined or even where they're set forth below just as a matter of clarity.

And then final comment, this is just a note of information not a criticism and it's not really even an issue in these rules but it did come up in Thorne's explanation, when a land owner has a seawall that encroaches into the state land area I just wanted to point out, right now I have one of those cases for a client. We're going on three years in trying to resolve the issues with that seawall. So, just so you know, there is maybe even excessive protection done by the State, and if nothing else, it's done through delays in the process that can

really setback some landowners, no pun intended. Set them back a few years in the process and that's just for your information. Thank you.

Mr. Hedani: Questions of the testifier? Commissioner Guard.

Mr. Guard: I don't know if you saw this or it was on one of the slides on page 6 on what we have on the handout that explains the overlay? I don't know if that helps to say that as the setback changes depending what formula you're using and you take the greater, the line that's further back right there.

Mr. Rapacz: I did catch that. It doesn't work so well in black and white on the handouts and it was pretty quick up there. Maybe there could be a reference to something like this, some thing to clarify what it's referring to when it says overlay. Thank you.

Mr. Hedani: Any other questions? Commissioner Starr.

Mr. Starr: Yeah, I'd like to – actually I was going to ask Thorne to respond to that and whether we need to further fine tune this.

Mr. Abbott: Yes, I'd be glad to do that and I welcome John's recommendations and comments. Originally if you look at the amendments in the last paragraph originally, we had proposed all lots shall have a shoreline setback line that is the greater of, this is underscored, the distances from the shoreline as calculated under the methods listed below or their overlay was the original, or their overlay was the original proposal. What it says now is or the overlay of such distances.

Now John you made the point of well, when would you ever have or need to say the overlay? And if I may, this green line right here is the average lot depth based. So if we just said the setback is the greater, the distance from the shoreline is calculated in the methods listed below, if it just said the greater of the methods below, in this case you have a green line and on the – lets call this the south end of the property or the bottom of the property, this is the greater obviously. But if you look at the purple, it crosses. So in this case on the top end or the north end, the purple is the greater of the two, and so there's a lot of folks that come in, even the surveyors that get really confused by this. They don't know which is the greater. And so that's why we had proposed saying the overlay of these two. So it would be kind of the purple on the north end and then the green on the south end.

And I concur that James and I have gone back and forth on this many, many times. I believe, and James can correct me if I'm mistaken, but the reason that we said overlay of such distances instead of just their overlay was that Brian Moto I believe felt that we had to say the overlay of such distances. We had to refer to the word distance. If we just said,

the methods listed below or their overlay he felt that it wasn't clear what the overlay was.

Mr. Foley: Thorne, would it be possible to change the word, distances to setbacks? Would that clarify? Because I think part of the problem might be the word, overlay. I mean, that's a word that we commonly use but it's not a word that's used by a lot of other people. I don't know how exactly to suggest this be modified, but it appears to be an overlay of setbacks or setback distances.

Mr. Abbott: So that would read, "all lots shall have a shoreline setback line that is the greater of the distances from the shoreline as calculated under the methods listed below or the overlay of shoreline setback distances."

Mr. Starr: How about –

Ms. Eason: Because I have ...(inaudible)...

Mr. Starr: No, setback distances.

Mr. Hedani: Okay, hold on.

Mr. Abbott: Overlay of setback distances.

Mr. Hedani: Lets only speak one person at a time so our secretary doesn't go berserk. Commissioner Starr.

Mr. Starr: Yeah, can we get rid of the word, "overlay" because I think that's a confusing term both legally and to the lay person and just have, "or below or the setback distances."

Mr. Hedani: What is the intent of the word, "overlay" in this particular case Thorne? Can you show me what the line would be based on that property?

Mr. Abbott: Okay, the red line is the overlay of the green setback and the purple setback.

Mr. Hedani: Come again?

Mr. Abbott: Okay, the green setback is a average lot depth base, the purple is an erosion rate based. See this area right here?

Mr. Hedani: Right.

Mr. Abbott: It's hard to say which is the greater. In the north end, the greater setback is the purple line compared to the green and the south end, the green line is the greater than the

purple. So the overlay is intended to say this red line here.

Mr. Hedani: The definition of overlay in this particular case is the worst case maximized setback for each portion of the lot where every line crosses another line?

Mr. Abbott: Correct.

Mr. Hedani: Wow, can you get the average person on the street to understand that?

Mr. Guard: I think that's probably the best to keep it.

Mr. Hedani: Commissioner Starr.

Mr. Starr: Yeah, in thinking about it, I think the best way to state it would be to say, below or the overlay of setback distances.

Mr. Abbott: The overlay of setback distances.

Mr. Starr: Can we ask John if that works for him?

Mr. Abbott: Works for me. James?

Mr. Giroux: Thorne, I just want to make one comment. You know with your comment about making the setback line a singular, I think by putting setbacks in – replacing such with setbacks is kind of counterproductive to the idea that what we're trying to do is get one setback line. When we're looking at the three – what we're calling them is methods, they're not setbacks. We're looking at three methods to get a distance.

Mr. Guard: ...(inaudible)...

Mr. Giroux: Right, and we're not creating a setback by – we're creating a setback by the final determination of the use of three methods and that's why you proposed that we take away setback lines in the title and so it's just a matter of semantics at this point as far as what we're creating is, one setback which creates the greatest protection for the structure by causing it to be the furthest from the shoreline and that's what we're trying to create here by saying overlay. Meaning the furthest, well, you could say like the furthest mauka or the furthest away from the ocean, but you know, in getting it to match the language that we're using as a concept here, is trying to integrate three methods to get a distance furthest away from the water and it's getting that structure the maximum amount of protection and that's why we're using the term overlay and distances and not setback.

Mr. Foley: Could I suggest that we replace the word, "setback" with "measurement

methods?"

Mr. Abbott: Let me ask Corp. Counsel, may I ask a question Mr. Hedani? If we just removed, "or the overlay of such distances," is it still legally defensible to say that in fact it really is the overlay of those distances?

Mr. Giroux: What's your question Thorne?

Mr. Abbott: I think everybody understands when you say, you know, it's the distances from the shoreline is calculated under the methods listed below period. Everybody understands that.

Mr. Giroux: Yeah, but then you're still going to run into the fact where one applicant will say I want the green line to be the line you always use and you're going to get stuck with the purple line being ignored. Because if you're not overlaying them, you can't all of a sudden when you hit the purple line veer mauka. You're going to have keep going towards the ocean and that's not going to give the structure the maximum amount of protection using this method. Because then you're getting stuck with using one method instead of being able to use all three.

Mr. Abbott: Correct.

Mr. Hedani: Commissioner Amarin.

Ms. Amarin: Thank you Chair. My suggestion, why don't you just put, or the three overlay distances, put an asterisk and show more explanation on the bottom.

Mr. Hedani: Commissioner Guard.

Mr. Abbott: Would you repeat that again please?

Ms. Amarin: My suggestion was why don't you just put, or the three overlay distances, put an asterisk and then show the explanation on the bottom.

Mr. Foley: You mean the sketch?

Mr. Abbott: The graphic.

Mr. Hedani: Commissioner Guard.

Mr. Guard: Yeah, that's what they do with most of the permit applications and that's why they hire all the specialists, whoever's in the room today has the leg up on it.

Mr. Hedani: Commissioner Starr.

Mr. Starr: I think the problem we've having is that the term, "overlay" is sort of an undefined term. And since Corp. Counsel is writing some definitions if we left it as it stands on the board but Corp. Counsel were to define "overlay" when it comes back before us, then I think there'll be clarity. And I think then everyone should be happy.

Mr. Abbott: Okay, may I ask –

Mr. Starr: Except John who's not –

Mr. Rapacz: I might be able to clear it up.

Mr. Hedani: Mr. Rapacz.

Mr. John Rapacz: If I could? Thank you. I think the Chairman hit the nail on the head. The problem with the language is that it doesn't – the overlay is unclear to begin with, but also it doesn't inform the public that what we're really looking at is a combination of segments of different lines. So I think it could be clarified to say, shall have a shoreline setback line that is the greatest of a combination of – greatest of the distance from a combination as calculated under the methods below. So it's clear that you're combining the greatest distance from each of the methods to establish the ultimate line. That's just conceptual.

Mr. Hedani: Thank you. Are we all clear where we are at this time? Commissioner Amarin.

Ms. Amarin: Let me just take one more stab at this, you know, calculated out of the methods listed below or the three overlay distances, put an asterisk and say, look at page 5, see page 5 or whatever it's on.

Mr. Abbott: Here's another recommended language. This begs the point, it's confusing language and it's confusing to the public too. The recommendation is to say under the methods listed below or the maximum distance calculated from the union of the three methods.

Mr. Hedani: Lets not get too fancy or you're going to have to define "union."

Mr. Abbott: Okay. May I ask a question of Corp. Counsel? Can we put a graphic into the rules? I know EPA does that occasionally, because once you see the graphic it would make sense.

Mr. Giroux: I think, you know, we – believe or not, we went through this discussion over about a six-month period. We did have you know, I think this line was about four lines long

kind of going through what John just said. I think the suggestion that we take that language and define "overlay" and just have it in the definitions in what we mean by overlay, it will allow the lay reader to read this once and say okay, we're using three methods and then have a clarification of what we mean by overlay and again, clarifying that you're using all three methods and you're using the greatest distance from the shore using all three methods. I think that's the best way to do it. Otherwise again, we're going to have I think the whole problem, everybody was saying we're using too much legalese or whatever, you're going to look at this paragraph turning into a ten-line paragraph before we even get to the methods. So I think by defining "overlay" in a clear, concise manner in the definitions, I think that would solve the problem.

Mr. Hedani: Commissioner Eason.

Ms. Eason: Well, you didn't answer a question. Could there be a graphic? Because the graphic would be so much easier, you see the picture and you can understand it.

Mr. Giroux: Yeah, I think so. But I think what was raised is that having a graph in black and white didn't help anybody either. We have it in color and when they produce these or they have it on the web or whatever, I mean, I'm just – as a caveat that's something that's already –

Mr. Abbott: I can deal with that, dotted line as opposed to solid.

Mr. Hedani: Commissioner Starr.

Mr. Starr: Yeah, I'm not really excited about having a graphic simply because the real case is going to look completely different. In other words, you know, it's not going to look like this. So then that will create more opportunity for confusion and argument about it. Where I think a definition, you know, a definition of "overlay" will clarify it and I think that this has been mulled around by enough attorney brain power that it probably works legally.

Mr. Hedani: Thorne, in the case of this particular graphic that you're showing us, the overlay line as you've just described it to us, would be the maximum line mauka.

Mr. Abbott: Correct.

Mr. Hedani: How does that, you know, when you see those three structures that are on that particular site, where the center part of the property is protected by rocks essentially. How does taking the mauka line become more beneficial than the first line, the blue line in that particular case? How does it make it safer? Well, it makes it safer because if you have a 100-foot tsunami well the whole thing is going to get wiped out anyway, but – in this particular case, what is the intent or the purpose of the mauka line?

Mr. Abbott: Let me point that out to you. This is, I guess I can legally say this, this is the National Marine Sanctuary, NOAA Sanctuary, and they were kind enough to actually do this for us when they could have just exempted themselves. So good on them. This is a seawall, this goes back to what Bruce was saying and this part of the beach is the north, this is the south. This part is having severe erosion, this part the beach is building up. So based on the green line, they were going to put the building right there, and problem is -- actually what they first came in and argued was they're going to put the building up here and the problem is, if you look at this portion right there, on the actual site plan it's only about 30-foot away and it's placed where we know they're having significant erosion. You look down here, and it's three-foot a year. So it really didn't make sense for us to recommend to NOAA to put their brand new education building 20-foot away from the shoreline which adhered to the current rules when you have a three-foot erosion rate which means seven years from now they'd be in trouble. So, the advantage of having the overlay of these three lines is we push the building all the way back here. Otherwise, it would have been up here. Because they could have argued which line applied to them. Now they were the Feds so they could have exempted themselves but they actually complied with our rules.

Mr. Hedani: Okay.

Mr. Abbott: Does that answer the question?

Mr. Hedani: Yes. Commissioner Starr.

Mr. Starr: Are we ready for a motion?

Mr. Hedani: I'm not sure. Do we have any other members of the public that want to offer testimony at this time? Okay, seeing none, then the public hearing portion is closed.

b. Action

Mr. Hedani: If you're ready for a motion, proceed.

Mr. Starr: I am, but before my motion, I just need -- there was something that Thorne said some specific part required a specific motion. So just in terms of phrasing the motion I need some clarification on that.

Mr. Abbott: Okay, I would like to make two recommendations to the commission. The first is to change what was publicized and use the current as it's shown up here, "all lots" underscored, "shall have a shoreline setback line that is a greater of," underscored, "the distances from the shoreline as calculated under the methods listed below or their overlay," and the overlay will be defined. That's my first recommendation. That seems fairly straight

forward and not too legalese. And I like the recommendation of the defining “overlay.”

The second was a motion to change the title to reflect that there is one overlay. And that is shown here with the current 12-203-6 title saying, “Establishment of the Shoreline Setback Lines.” I recommend that you change that, this was not publicized, “Establishment of the Shoreline Setback Line.” Singular. Thank you very much.

Mr. Giroux: I just have one comment. Thorne, you’re suggesting that the – the way that we have this published for the overlay of such distances, you’re suggesting that they just put a period after overlay, is that correct?

Mr. Abbott: Unless the commission would rather stick with the –

Mr. Giroux: I just have to make a comment because it was my boss, Brian Moto, who came up with the suggestion of this language. So I just want to bring that up as a caveat, you know, with – we did work on this, so I just need to say that. I mean, if this came back up to Brian and it was changed then I’d hate to have to explain that why I sat here and said nothing. So I’m saying something. And I did explain clearly of why we were using distances instead of setbacks because we are looking at these as methods and not as setbacks until they are deemed as setbacks.

Mr. Abbott: Perhaps we could submit both of those as motions and the commission can choose.

Mr. Giroux: Yeah, so I think it has to be very clear that if you are changing what is being – that was published that the change should be done by a motion and what you can do is you can do a motion to approve and then take up the two motions to see if you are going to change specific areas within the rule.

Mr. Abbott: Excellent recommendation. So there’s what’s currently been published. On the right-hand side is what’s 12-203-6(a), lower right-hand side is what’s been published, the title, Establishment of the Shoreline Setback Line is one of the motions proposed. Thank you.

Mr. Starr: Okay, I’d like to move that we approve the changes in – amendments to Chapter 203 as proposed with two exceptions. One is that the title read, Establishment of the Shoreline Setback Line, singular. And the second exception shall be – actually it’s not going to be an exception. I’m not going to recommend a change to the second part, merely as part of the motion that the word, term, “overlay” shall be defined – shall be properly defined.

Mr. U’u: Second.

Mr. Hedani: Okay, It's been moved by Commissioner Starr, and seconded by Commissioner U'u that we make the amendments to Chapter 203 with the exception of the title of that particular provision being singular. Discussion? Commissioner U'u.

Mr. U'u: Could we have copies when you're done with it?

Mr. Abbott: Yes, absolutely.

Mr. Hedani: Commissioner Starr.

Mr. Starr: Yeah, just for discussion, I think that this is something wonderful that this commission has done in the past in approving the first go around in 2003. And part of me wishes that they were even stronger. I am a follower of a fellow by the name of Orin Pilkey who is the Dean of Shoreline Geology in ...(inaudible)... he was Chip Fletcher's teacher and his belief is that all armoring should be removed and retreat is the only long term answer. But you know, in the real world we do need to compromise and find a solution that allows people to live with what we have and to utilize their property. So I think what we have is very good balance. I think that these changes are really in the area of housekeeping to lend clarity and just to slightly improve it and I just want to thank Thorne and Corp. Counsel for the hard work they've put into it and that they'll put into getting the definitions straight in the near future.

Mr. Hedani: Okay, any other discussion? Ready for the question?

It was moved by Mr. Starr, seconded by Mr. U'u, then

**VOTED: To Approve the Amendments to Chapter 203 as Proposed with the Exception that the Title Read, Establishment of the Shoreline Setback Line (singular). That the Term, "Overlay" Shall be Properly Defined
(Assenting - J. Starr, B. U'u, J. Guard, J. Amorin, P. Eason)
(Excused - D. Shepherd, S. Freitas, W. Iaconetti)**

Mr. Hedani: Carried. Thank you.

Mr. Abbott: Mahalo very, very much for all your time and energy. Thanks again and again, these are great rules and very innovative and I think the commission and the County should be proud of what we've doing here. Thanks again. Mahalo

A recess was called at 10:55 a.m., and the meeting was reconvened at 11:10 a.m.

Mr. Foley: The document that was delivered during the break is related to yesterday's field

trip and it is not on today's agenda. It's for your reading pleasure. It's your homework for November 14th. Do not throw that away.

C. COMMUNICATIONS

- 1. DEPARTMENT OF PUBLIC WORKS AND ENVIRONMENTAL MANAGEMENT requesting a Special Management Area Use Permit extension to extend by three years on the period to initiate construction of the Papahawahawa Bridge Replacement and temporary construction bridge project and related improvements at TMK: 1-5-006: 001, 1-5-007: 001 (por.) Muolea, Hana, Island of Maui. (SM1 2001/0015) (D. Shupack)**

Mr. Dan Shupack presented the Maui Planning Department's Report.

Mr. Hedani: Questions? Commissioner Starr.

Mr. Starr: First of all, I'm sorry there's not a new bridge there right now. But, what is the outlook for getting this done and is there going to be a problem in getting it funded or getting any – getting the environmental work done so they can proceed when funding comes through?

Mr. Shupack: To answer that question I'd defer to Mr. Joe Krueger of the Department of Public Works Engineering Division.

Mr. Joe Krueger: Good morning. We anticipate to do it in 2007. We're going to have to redo the Federal STIP Program and that's coming up pretty soon. The environmental process already been completed so we tried to do it in 2005 but we just couldn't get it done.

Mr. Hedani: Any other questions? Thank you. Commissioner Eason.

Ms. Eason: Was it because that person who testified wanted a temporary bridge, is that why it was put back then?

Mr. Krueger: Well, we had to amend the contract to design a temporary bridge. And we amended the contract, made a change order and issued a notice to proceed and the consultant did the work and we got it done by June '05. Then we submitted it to the State for final approval and request to go out to bid which our funds would lapse December 2005. Well, in January 2006, the State gave us their comments. Well, the funds were gone by that time. So I had to go back to Council and get more funds which I started and February 2006, they said well, you're taking too long and they took it off the STIP. So now I have to

start from scratch. So I started reprogramming it and getting it all set up and I'm getting ready to resubmit the final drawings this month. So hopefully 2007 I can start construction.

Ms. Eason: Thank you. I just live two houses away from Papahawahawa and –

Mr. Krueger: Which side?

Ms. Eason: Hana side. Which is good because then the people going past my house will have access to their homes.

Mr. Krueger: Because Paihi Bridge is right down the road.

Ms. Eason: Yes, yes, we do. But it seems like you know, Papahawahawa means hard rock area so good luck if you have to blast got plenty papas there.

Mr. Hedani: Is that why this is taking so long. Commissioner Starr.

Mr. Starr: I live in the community of Kipahulu and all my friends and neighbors are really – their lives have been destroyed this week. I don't think people throughout Maui realize what's occurred with the closing of the Paihi Bridge, but it means that people can't get to work, there's no mail delivery, there's kids can't get to school and all of a sudden people aren't collecting paychecks and aren't able to pay their rent and it's just a complete – can't go to Hana to buy groceries and it's really a terrible dislocation and especially when they're told they can't even walk across that Paihi Bridge. It's just completely destroying the lives of several hundred people. I don't really care about the tourists but the local community. I had spoken to the Public Works Director on Friday and he told me that they were going to keep it open and then Saturday came along and I guess, the FEMA flew in and decided to close it down and then left to whatever. You know, I wanted to ask if you've been out there and what the situation is and if this project is going to create closures that are going to overlap and make it even longer you know, compared to Paihi. How these two projects since they're both right together are going to overlap.

Mr. Krueger: Paihi we have it out to bid. In fact, I think the day of the earthquake was the first day of our advertisement and the bid opening is on November 8th. I have a prebid conference this Thursday. Fortunately it's the only bridge that's going out this year but it's the bridge that's in dire need. So we have the bid opening, I believe November 8th.

Mr. Starr: There used to be a Bailey Bridge that the County used to keep down near Kahului sewage treatment plant, you know, kind of overgrown on the airport side there, but there was an old, I guess, World War II era Bailey Bridge that the County used to maintain and keep and use a couple of times over the decades for emergencies. Is that still around

and is there any possibility of that thing being able to be employed?

Mr. Krueger: I think that's the one we put in Kahakuloa. I'm not sure, but the one in Kahakuloa is a temporary bridge.

Mr. Starr: Oh okay, I bet that is the one.

Mr. Krueger: We're looking for something. We've already contacted the State to see what they had and what we could use. So we're trying to see if we can do something before our bids are let out and contract awarded even for pedestrian. If only for pedestrians, at least something, that somebody can walk over.

Mr. Hedani: Okay, any other questions for the applicant on the subject before us today?
Commissioner Amarin.

Ms. Amarin: Good morning. My question on this temporary bridge that you're going to do, are you going to do it as you're going to construct a new bridge or way prior to and it will it be safe during the whole duration?

Mr. Krueger: It will be prior to us removing the old bridge so there will always be access through the area. That way we won't have any road closures for any long period of time. So we build a temporary bridge and then open that up then we will replace the existing bridge. That way the traffic is continuing.

Ms. Amarin: Okay, thank you very much.

Mr. Hedani: Any other questions for Joe? Okay, thank you. Staff recommendation.

Mr. Starr: Public hearing.

Mr. Hedani: Beg your pardon?

Mr. Starr: Public hearing.

Mr. Hedani: Are there any members of the public that would like to offer testimony on this subject at this time? Seeing none, the public hearing is closed. Thank you. Staff recommendation.

Mr. Shupack presented the Recommendation.

Mr. Hedani: That concludes your recommendation. Commission?

Ms. Amorin: So move.

Ms. Eason: Second.

Mr. Hedani: Moved by Commissioner Amorin, seconded by Commissioner Eason.
Discussion?

It was moved by Ms. Amorin, seconded by Ms. Eason, then

**VOTED: To Accept the Recommendation of Approval of the Time Extension of the Special Management Area Use Permit.
(Assenting - J. Amorin, P. Eason, J. Guard, B. U'u, J. Starr)
(Excused - D. Shepherd, S. Freitas, W. Iaconetti)**

Mr. Hedani: Carried.

2. Commissioner Jonathan Starr requesting the formation of an Infrastructure Subcommittee. Previously discussed at the Maui Planning Commission's September 12, 2006 meeting. The Maui Planning Commission may vote whether or not to form such a subcommittee and who should be members of the subcommittee.

Mr. Hedani: Commissioner Starr.

Mr. Starr: First of all, I want to thank you Mr. Chair for putting this on the agenda today and I hope we cannot delay too much because for once we're on a fairly early schedule. Since I've been on the commission and I am a newcomer here, I've felt really good about the process, but I feel that we're only fulfilling a portion of what we're chartered to do and that in a sense we can divide our duties down into really two segments. One which is more kind of a day to day process and variance type of process and approval process for ongoing process. I guess our role's important with that, but we come in kind of the tail end of everything and are subject to all of the data that's submitted by consultants from the developers and we decide, you know, what changes or whether approval or not of projects is something that will benefit the community. But we do have a larger role in our Charter which is to advise the department and the Council and other agencies as well as the community regarding matters relating to planning. And I feel that we don't have a real mechanism for doing much of that. It's very rare that we get something like we did with the shoreline today where we're actually able to proactively do something useful that will aid in keeping Maui the way that people want it or building it in a way that will be conducive to good living and communities that work.

I'd like to create a mechanism where we can have a greater function and it seems that

infrastructure is an area where every project we look at there is some problem or difficulty of something that is either not concurrent or not funded or you know, it's just gotten behind and I feel that we could serve as the kind of the as the ombudsman, as the advocates for the infrastructure needs that our communities are going to require.

And you know, in terms of roads, I don't really think that there's, you know, any one entity throughout Maui that looks at them as a whole and can help decide what's going to be needed first and what's going to be needed later and what's going to be needed 20 years down the line and work with the Planning Department and with Public Works and with the State and with the Council to advocate for them to work for impact fees and advocate for impact fees and you know, for instance, we've identified that there are no sewage impact fees except in Kihei and there's no one out there who's pushing to get the Council to institute it and they probably won't unless someone does it. We know that there are certain roads that need to get put on the books for planning and sewage projects and so on, water. And I'd really like, you know, in our few years that we serve here to be able to have some positive impact.

And my way of visioning a way of doing it is to create a subcommittee which would be advisory in nature. In other words, you know, the subcommittee couldn't vote to physically do anything but it could make a recommendation to this commission to do an action if that's something under the purview of this commission. And it could also, you know, with consensus and I do think anything that committee does should be brought back to this full commission for consensus then go and advocate to the Council, the administration, to the State Department of Education if it's identification that the community has needs in education area, transportation, whatever, you know, my idea is that after looking that this committee could serve as the vehicle to do site inspections so we really educate ourselves about all the different systems here from different community groups and then go and advocate for. And I know that that would take some more of our time. I know we do put in a lot of time, but I think that it would feel a lot better for really having some impact rather than just putting in the time and, you know, reviewing projects and identifying needs.

So my request to you is to consider that we form a subcommittee. How that's formed and how it meets, you know, I think that's something we should work together on and discuss how we would do that. But I think we can really fulfill our purpose a lot better. So before I make any kind of motion to do anything, I'd like to leave it open for discussion if that is okay with the Chair.

Mr. Hedani: Actually we need a motion before we discuss it.

Mr. Starr: Okay.

Mr. Hedani: I was hoping you'd make a motion.

Mr. Starr: Okay, I'll make a motion which is I move that the Maui Planning Commission form a subcommittee on infrastructure which will look into issues regarding infrastructure and shall be advisory in nature.

Mr. Hedani: Okay, is there a second?

Mr. Guard: Second.

Mr. Hedani: Seconded by Commissioner Guard. Discussion? Commissioner Guard.

Mr. Guard: Is there, I mean, a – I don't really have the time to be on a committee so I think that's going to be the hardest part is this takes up a lot of our time any way. It seems like this may be something that Long Range Planning is supposed to be doing for us to say here's what the needs are that maybe there's a way to be getting better updates from them periodically because we've since – well, Jonathan and I are the newest ones here but we've approved quite a few units that what is the long range plan to have 500,000 people on Maui, 300,000 people on Maui, and even a pie chart saying, okay, this is where we see the needs going and out of 300,000 people is it going to be one out of two is a part-time resident? I mean, that's what it's going to be a major topic on the mayor candidacy is we have this strong economy but there's no way for workers to stay here. So even as a long range planner to say, hey we want single family and residential in this area so we need to improve our sewage and streets and schools here versus if we're only going for resort development, hey we don't need that DOE contribution because we're not looking for people with kids. So I don't know if that's something we could start there with Long Range Planning and get a summary of what our officials think is happening on Maui.

Mr. Foley: Could I respond to that?

Mr. Hedani: Director Foley.

Mr. Foley: First of all, I wanted to acknowledge that the frustration that Jonathan is expressing has been expressed by every planning commission that I've ever served in the last 41 years. All planning commissions feel like they should be spending more time on planning and less time on applications. And frankly that's a frustration felt by every planning department that I've ever worked in too because the planners always feel the same way that they're spending all their time reviewing applications and not spending their time planning.

The good news is that we are a year into the three-year General Plan update and we have a tremendous amount of information that has been accumulated by the Long Range Planning Division and our group of consultants. The process for the General Plan as I think you know is for the data to be collected and to be analyzed by the staff and the consultants

and then a plan prepared and submitted to the General Plan Advisory Committee and then to this Maui Planning Commission. We had a little burp in the process due to a legal opinion but we have now had that resolved by the Council. Last Friday the Council had second reading of a ordinance that modified the General Plan legislation that clarified the process and now we will be restarting the General Plan Advisory Committee meetings in the next few weeks. So we have, and we have made presentations to this commission about that process and about the General Plan update and we have periodic presentations that we make to the Council so that the Council knows the progress.

There are a couple of different ways this can proceed. If it just proceeds the way it is already structured in the legislation, the General Plan Advisory Committee starting about three weeks from now will start their six-month review of the plan and then it will come to the planning commission. I don't know when six months is, but six months from next month, this planning commission will be receiving a tremendous amount of information in the form of maps and reports that we've been preparing for the last year. All of these maps and reports address the issues of the adequacy of existing infrastructure concerning highways, schools, roads, sewage disposal plants, water facilities, housing of all different kinds, the harbor, the airports, every imaginable land use is being analyzed and some of this work is nearly complete. I've mentioned when this came up before that we have two large infrastructure reports being completed, one by Towell and one by Austin, Tsutsumi and we found some inadequacies in those reports so they're not going to be available now for probably two or three weeks, but we do intend to give those reports to the commission when we give them to the General Plan Advisory Committee in mid-November.

One thing that we could do, one alternative to forming a committee because you're going to get this body of information about long range planning for the island as a regular matter of course, after the General Plan Advisory Committee has met, and of course, you are welcome to go to their meetings. But another alternative to having a subcommittee would be for one or two of the commissioners to go to Long Range and have a presentation of several hours as to the status of all the reports and the maps and then report back to the planning commission.

Another alternative would be for us to give you, give the planning commission a kind of a status report like we give to the Council on the condition of all the maps and reports that we've been putting together for the last year. That can't be done quite as fast as having one or two commissioners go over to Long Range next week and having them spend several hours showing you all this data.

So those are a couple of alternatives. One is just to let the General Plan update schedule proceed in which case you'll get this information six months from, six and a half months from now and the other is to have a couple of members go over to Long Range, the third alternative would be to have a schedule a presentation. The problem with scheduling

presentations is that we try to schedule them on days when we don't have a really full agenda and we couldn't do that today because last Saturday we spent all day with our fourth Plan Story event. We had a 106 people show up for our General Plan event. We had a 106 citizens give us advice about where they wanted areas of the island saved and where they wanted housing and where they wanted schools and sewer treatment plants and etc. So we have now completed the public input phase of that process and the next phase is that we'll be giving all this information to the General Plan Advisory Committee in about three weeks.

Mr. Hedani: Okay further discussion? Commissioner Starr.

Mr. Starr: Yeah, I would have no problem with proceeding with it in a fashion that outlined by Mr. Foley if there were only one or two people who were really interested in trying to work through some of this. It possibly could be an ad hoc type of thing where you know, two members at a time which would be the limit allowed by the Sunshine Law were to work together on sort of research projects and then come back and report to the commission.

What I would like to be able to do and it's something that under the current mechanism I don't feel comfortable of doing is to go and act as an advocate and speak on behalf of the commission on something. Even if it's something that, you know, we may all agree on in terms of impact fees or needing schools or something like that, you know, right now I'm very reluctant to go to the Council or go to a State agency and testify for anything no matter innocuous, certainly as a commissioner. Whereas if there were something, you know, either a committee of us or even just a team of two us, you know, after looking at stuff, came back to the commission with and said, you know, we really need to push for whatever it is, a school, high school in Kihei or sewage impact fees or any of that sort of thing and then the commission looks at it and there's support for that. That would create a mechanism to go and be an advocate which to me is an important part of our job. So I would be happy doing it that way if that's an easier mechanism that doesn't require staffing every time we get together. We'd just have to limit it to two commissioners at a time.

Mr. Hedani: Okay, any other discussion? Commissioner Amarin.

Ms. Amarin: Thank you Chair. Just my comments and concerns. Before I became a commissioner, someone asked me do you know what concurrent infrastructure is? I said, no. Well, today I do. We're taking a backseat and I'm sure the whole state is and it's very, very important. Thank you Jonathan Starr for stepping up to the plate and trying to make positive changes, but we have to do it right. I listen to Director Foley and agree the GPAC is out there. Let them do the job. Personally myself, I can't put in more time than I'm doing right now. I try to put in valuable time with the commission, as a commissioner and I respect everybody here for doing the same. But we do have a problem and if you have answers to infrastructure, you know, my best to you. But as far as personally joining forces

to go out there and doing activity to bring positive results with infrastructure, I don't believe I can personally. I know there's great groups out there and they're all fighting the cause, but I will assist as a commissioner when I come in. Thank you very much.

Mr. Hedani: Other discussion? Okay, my only comment on this matter is that I think that as commissioners, you know, it's not – I perceive that my role as a commissioner is not to be an advocate for infrastructure. With infrastructure comes growth. The more infrastructure you have, the more growth you have. It enables growth to happen. I perceive my role and as an admonition I think I think to some degree no individual commissioner outside of the commission can represent the commission before any body. The power of the commissioner comes as a participant in the commission meetings themselves rather than as an individual advocate for the commission or otherwise even before public bodies. And to some degree I think what we need to do is maintain an unbiased and open attitude toward anything that comes before the commission so that you can judge it on the merits of its case. And if infrastructure is a shortage that's identified then it should be identified in the process, you know, that comes before us whether it be for approval or denial because of lack of infrastructure. That's my persona perspective on it. Commissioner Guard.

Mr. Guard: I think on a short term planning that's probably the case. But I think we're going to start seeing more and more long term issues even on – that's why we're trying set buildings back from the beach not because it's in the way right now but because in 30 years that beach has now disappeared just like all of the beaches at Kaanapali that used to have two, three wide volleyball courts on the beach that now it slopes into the ocean ten feet from the sidewalk. Short term, yeah, lets put it up 40 feet but 10, 20 years a lot of these projects I feel like we're voting with our heads in the sand that some more infrastructure updates would be great and even two weeks ago, I don't if – I think there needs to be immediate issues regarding ag lands because a lot of the large companies are selling off chunks of ag land maybe to protect themselves from identifying ...(inaudible)... because I think in the rules it says you can't encumber someone by more than 50%. So the more they can sell off, changes their acreage criteria and these subdivisions going on in areas that we know are B rated or A rated soils we need to start – I mean, Planning Department, department not the commission because we're not going to see very many of them, need to send up the ladder that subdivisions going on now need to either restrict the size of the homes to actually try to get people that want to farm into those homes so that the lots maybe they're cheaper than \$2 million lots with 7,000 foot homes. I don't know, I mean that's something part of the General Plan update but in six months we'll probably see a few more subdivisions going up that whether or not they come through here is going to be case. So that might not be something in the SMA district but I think as a commission it's about the general planning of Maui that some of that needs to be updated sooner.

Mr. Foley: Wayne, if I could just add to what I said before. The issue of advocacy as a

process for the commission is always really tricky and I've heard this debated by numerous other planning commissions. And it's particularly tricky when one member of the planning commission whether it's the chair or not tries to represent what the commission's position is. And in some agencies, the commission chair actually goes to Council meetings and describes what the commission had done about a particular project or answers questions. And it puts that commission chair in an extremely awkward position. So almost all agencies rely on the staff to do that rule rather than the commission chair just to kind of keep him out of trouble. Well, that's one reason.

There is though, an advocacy position that the commission is going to be placed in. When the General Plan comes from the staff to the General Plan Advisory Committee, their role is to review and comment on that plan and the plan is a series – it will be documents, Countywide Policy Plan and a Maui Island Plan that will be – consist of a document significantly more sophisticated and comprehensive than our current General Plan. I mean, there's little – Maui Island Plan will be significantly different than what you've seen. And the maps that are associated with that plan will have not only infrastructure for the next 22 years to the year 2030 but it will also have identification of prime ag land and it also has areas for permanent protection and it has areas, urban growth boundaries which are required by the general plan legislation.

And when the planning commission spends their time reviewing the plan which is I believe eight months, the plan then goes to the Council and at that point the commission will become an advocate for their position on the plan because it would be wonderful if the plan that the staff presents is wholeheartedly endorsed by the General Plan Advisory Committee and then the planning commission and then the Council, but lets be real, that's not going to happen. There are going to be differences the commission and the General Plan Advisory Committee are not going to agree with all of our recommendations whether they're policy recommendations about cruise ships or the harbor or ag land or water distribution or whether their map decisions about urban growth boundaries in relationship to Kahakuloa and Hana and Olowalu. So there's going to be a situation where the commission is going to find that it has a position probably somewhat different than the staff and the General Plan Advisory Committee.

So at that point you are going to become advocates for your recommendations to the Council and then eventually of course, the Council, approximately two years from now is going to be faced with the adoption of the new General Plan which will be a policy plan and then Maui Island Plan and plans for Lanai, Kahoolawe and Molokai. So there will be an advocacy opportunity in that respect.

And the other thing I wanted to mention is that these infrastructure studies that we've been working on for the last year are being done with the various County and State departments. We are meeting with Department of Education, with the Department of Transportation, with

DLNR, with County Water, County Public Works, and County Fire Department and we're working with them on where water tanks should be and where fire stations should be and where schools should be, etc. And you will be getting that information like I said in a few weeks.

What we are doing now is we're trying to figure out the best ways to get that information not only to the General Plan Advisory Committee which is basically scheduled but also how to get it to the commission, this commission and how to get it to the current planning staff so that they can incorporate all that information in the staff reports that they prepare for you because we need the latest information in the staff reports about the condition of roads, about which schools are going to be expanded, where new schools are going to be built, etc., And so, we're at kind of a awkward transition period where that information is being transferred to the Current Planning Division and we have 15 planners there writing staff reports, some of whom have more up to date information than others. So it's really crucial for the big projects and we also have to give this information to the consultants that prepare documents like the one you have before you so that they have the latest information about the status of recycling in this case or the status of the landfills which it turns out are being filled far faster than they were scheduled to be filled. So that's kind of the situation.

We are grappling with the concept of or the challenge of giving you this information and the staff the information and we have to review it and make sure it's accurate before it becomes public. It is only a few weeks away but like I said, we still have several different alternatives about how you want to deal with this issue. You are going to be – your roles are going to be changing pretty drastically in six months when you get the General Plan delivered to you this commission's going to have to figure out how to deal with the General Plan and all the applications before you because what most commissions do in this situation is that they set up a schedule of special meetings and deal with the General Plan only at these special meetings but it is an additional time commitment and it will be an incredible amount of information and you have by law only six or eight months to put your recommendations together with respect to every imaginable issue that I've mentioned, water, schools, highways, solid waste, housing, industry, economic diversity, agricultural protection, shoreline protection and a host of other issues. So it's good that it's after Christmas because you're going to have a nice Christmas experience and then you're going to have – next Spring you're going to have a really extremely large task dropped upon you.

Mr. Hedani: Okay, the General Plan update, Mike, comes how often? Once every 10 years?

Mr. Foley: Yes. It's supposed to be once every 10 years. We're several years behind. It was adopted – the last one was adopted in '91, and because of schedules of various State agencies we've decided that the target date is 2030. So this is a 22-year plan which

significantly complicates matters. It's a little easier plan for five years than it is for 10 and easier for 10 than for 20. And dealing with agencies that don't normally think in terms of 20 years has been a real big challenge, State agencies as well as County agencies. It also – you know, when the General Plan update is approved in approximately two years then the County will be faced with the update of nine community plans and by then it will be time to reevaluate the General Plan because it really needs to be comprehensively examined every 10 years.

Mr. Hedani: Okay, Commissioner Guard.

Mr. Guard: Do we need a lot of time if two people want to go meet with Long Range Planning?

Mr. Foley: I talked to John about, John Summers is the Division Chief for Long Range which has 14 employees, we got hopefully two new ones last week, haven't started yet, but I talked to John about this. They were in a crisis mode for last Saturday's meeting, but basically what he said was that if one or two commissioners want to come over some day next week, they could do a three-hour presentation to kind of bring those commissioners up to date. The alternative to that is a later have a presentation to the whole commission. So it's kind of up to you. You know, we're going to have some real quorum issues in the next couple of months because of Thanksgiving and Christmas. So that's kind of a complication.

Mr. Hedani: Commissioner Guard.

Mr. Guard: So possibly - Maybe it would be easier to defer this subcommittee until, it sounds like we're going to have quite a bit on the table for the next six to eight months to maybe meet with Long Range Planning either have one or two people do that and bring this topic back up for another like mid-2007?

Mr. Hedani: Commissioner Starr.

Mr. Starr: You know, I do feel it is important for us to engage with on a regular basis with these issues. You know, I don't think it's enough for us to passively be the commission on approval on denial or micro manage projects. I think we should be looking ahead. Our primary duty, you know, this is our primary duty on the County Charter is to advise Mayor, Council and Planning Director in matters concerning planning programs. That is what we're supposed to be doing and we do very, very, very little of this. And I'm as busy as many of the other commissioners, you know, I run a business and I have a lot of other nonprofit and other things that I do, but you know, I really feel that I want to use these five years on the commission to really try to make a difference and improve the way we function and I'm willing to give up time from other things to do it if there's a way to engage. I'd rather

engage with the other members of the commission and with the blessing of the commission rather than to have to go around and write viewpoints and do other things attacking the process because it's not good. I don't like to work that way. You know, so if there's a mechanism to start, maybe to start – meet with Long Range and start talking and looking at stuff and bringing that back to the commission, that's fine. That's a good start. That's forward motion, but if it's to be considered swept under the table I feel that we would be reneging on our duty and making a real mistake. I hope that there are at least one or two other commissioners who would have some time to start working on this.

The General Plan, well you know, I think it's great that it's happening. We've been waiting over 15 years. It happens once every 10 or 15 years. What we need to do is have something ongoing because we are - this County is in a state of crisis in terms of infrastructure problems. We know that in terms of roads, in terms of a lot of other facilities. It is at a crisis point and there's no entity work that's actually doing the job that we are supposed to be doing. I, for one, would like to find a way to start and if it's in the favor of the rest of the commissioners, I'd be happy to go with someone if JB or Bruce or anyone else can shake loose some time and talk with Long Range and come back. I think that would be a good start. But I would feel very bad about not doing anything and just ...(inaudible)... passing the buck. So I do ask that we try to find some way of getting this going.

Mr. Hedani: Okay, any further discussion? Commissioner Amarin.

Ms. Amarin: My question is to Jonathan Starr as an advocate, your approach will be upon when you're talking long range, you are you thinking to approach governmental agencies or GPAC? That's not clear in my mind who you want to approach on this infrastructure concerns.

Mr. Starr: Well, first of all the way I would envision it, I wouldn't want to approach anyone unless I knew that there was a consensus of the commission, you know, not just the simple majority but the consensus of all the commissioners that we want to make a statement in this regard. And in that case, then we would have to decide who. As far as who, the Charter says we're supposed to be advising, it says the Mayor, Council and Planning Director. You know whether that can be extended to State agencies you know that's something we could discuss at a later time. But you know, it's – the intent is not to just go off as a loose canon and start to, you know, approach anyone on anything. The idea is to find areas that we can be useful and then get a consensus to where we all agree this is something that we can make a statement about and then find a way to make that comment.

Ms. Amarin: Well thank you for that clarity, I needed that because I was listening to every statement that you had said and at one point earlier that's what I, you know, heard, I thought I heard something like that. Thank you.

Mr. Hedani: Okay, any further discussion? Commissioner Eason.

Ms. Eason: Well, it seems that Commissioner Starr is, you know, willing to do the first step and if he can attend those meetings and report back to us, you know, no decisions would be made, he would just give us an idea as what's happening. And if there is another person who is willing to go also that would be great.

Mr. Hedani: Further discussion? Commissioner Starr.

Mr. Starr: Yeah, would prefer to go with another commissioner so that we can have more of a wider sphere of expertise, but you know, if we do that, I'm not really sure if the motion that's on the floor is really stated the right way where perhaps a – if that is something that the other commissioners would feel would be a good thing, I would then perhaps withdraw that motion and make a different motion if the seconder would –

Mr. Hedani: Are you moving to withdraw?

Mr. Guard: I'll withdraw.

Mr. Starr: Yeah, second is withdrawn, the motion is withdrawn.

Mr. Hedani: Would you like to restate the motion?

Mr. Starr: Yeah, I would like to move that a group of a maximum of two commissioners meet with the Long Range and report back to the commission on matters that they learn from that meeting.

Mr. Foley: What we can do is contact the three commissioners who are missing and see if one of them wants to volunteer.

Mr. Hedani: Is there a second?

Mr. Guard: Second.

Mr. Hedani: Seconded by Commissioner Guard. Any further discussion?

Mr. Giroux: It should probably be made clear who those people are before the meeting happens. I think that's something that needs to be done by the ...(inaudible)...

Mr. Hedani: Volunteers? Commissioner Starr? Commissioner Guard?

Mr. Guard: I'll be gone next week and the following week we have the site visit and then

another day and then the following week we have another site visit, public testimony and the Lahaina School. So I'm definitely out next week, possibly the week I get back.

Ms. Eason: ...(inaudible)... the Chair.

Mr. Hedani: I don't have time for this?

Ms. Eason: I have a suggestion. Could the second person be on a rotating basis? I know he'll make every effort to attend all of the meetings but I don't think, I don't know, but for me personally, I wouldn't be able to attend all of the meetings, but maybe there is a date that could attend. And if he feels that there should be, I feel the same way, should at least be two people, maybe it can be on a rotating basis. I think that would make it easier.

Mr. Starr: If it's two members, first of all we don't need to notice it and it doesn't become an official meeting. I don't really think that we need to make a formal motion.

Mr. Hedani: Commissioner U'u.

Mr. U'u: Pending the date, I would agree to go.

Mr. Starr: Cool. We'll find a time.

Mr. Hedani: Okay, so tentatively we have Commissioner Starr, Commissioner U'u that would serve on this subcommittee which would meet with Long Range Planning and report back to the commission on matters regarding infrastructure.

Mr. Starr: Fine.

Mr. Hedani: Additional discussion? Commissioner Guard.

Mr. Guard: So when we need to report back does that need to be on the agenda so we would have to say we're going to be the agenda in two weeks or in a month or is it a per item basis depending on what other agenda items are on there?

Mr. Foley: Well we can put it on under Communication or Director's Report and some meetings we may not have much time for a report and other meetings we might be able to schedule an actual presentation.

Mr. Guard: So it could be an ongoing item on the agenda. And then if no one's met in the last two weeks it would just pass.

Mr. Foley: Yes.

Mr. Starr: My preference would be that we report back to the commission on a time available basis when we have a slow schedule like today we can take a few minutes, and when we're long then let it go.

Mr. Guard: But if it's on the agenda, then we can bring it up.

Mr. Foley: Yes.

Mr. Hedani: Commissioner Amarin.

Ms. Amarin: Thank you Chair. I agree with the rotating basis and based on that, I will be available should time permits for myself. But I do, thank you very much Jonathan for all your efforts.

Mr. Hedani: Ready for the question?

It was moved by Mr. Starr, seconded by Mr. Guard, then

**VOTED: That a Group of a Maximum of Two Commissioners (Commissioner Starr and Commissioner U'u) Meet with the Long Range Planning Division and Report Back to the Commission on Matters Regarding to Infrastructure.
(Assenting - J. Starr, J. Guard, B. U'u, J. Amarin, P. Eason)
(Excused - D. Shepherd, S. Freitas, W. Iaconetti)**

Mr. Hedani: Carried. Thank you.

D. MINUTES OF THE AUGUST 22, 2006 MEETING

The minutes were accepted as submitted.

E. DIRECTOR'S REPORT

- 1. November 6, 2006 - Site Inspection of the Keaka LLC Site at Makena, Island of Maui. The applicant has submitted a Special Management Area Use Permit application**

Mr. Foley: Remember to bring your EA.

- 2. November 13, 2006 - Afternoon site inspection of Kapalua projects including Kapalua Mauka**

3. November 13, 2006 - Special Meeting at 6:30 p.m., Lahaina Intermediate School Cafeteria on the Kapalua Mauka Phase I project - Public Hearing on Phase 2 Project District and Special Management Area Use Permit applications

Mr. Foley: We have two meetings. One in the afternoon is a site inspection to Kapalua and then there's an evening meeting regarding Kapalua Mauka that same evening November 13th. The question I have for the commission is whether or not any of you want copies of the two volume EIS. I kind of presume Jonathan does. The rest of you should still have them. We can produce a couple of copies, hard copies or we can produce a couple of disk copies, but they are quite voluminous. I don't know whether you have one, John, or not. So can I assume that we will just provide hard copies to the two of you as soon as possible.

Mr. Hedani: You folks want disk copies or hard copies, paper copies. What about the rest of the commissioners?

Mr. Guard: I prefer hard copies, usually. I don't like reading my computer screen.

Mr. Starr: I think in this case I'd like a hard copy if it exists, but in general I'm usually happy with a disk.

Mr. Foley: Well, I'm pretty sure we can ...(inaudible)... two copies for the two of you. Everybody else should have them.

Mr. Hedani: And the report with the recommendation will contain a lot of information that duplicates what's in the EIS.

Mr. Foley: Yeah, that's true. Okay, that's it for the two special events in November and then the regular meeting in November is the next day, November 14th, and this project that you reviewed yesterday will be one of the items on that November 14th agenda.

Mr. Hedani: Do you have a time set for the first item?

Mr. Foley: I don't see anything, so we'll have to let you know.

Mr. Starr: One request when we do site inspections. Can we be sure that we get a cell phone number emailed to us so that, you know, if we're looking where we're going to meet, we can all call someone?

- 4. EA/EIS Report**
- 5. SMA Minor Permit Report**
- 6. SMA Exemptions Report**

No questions or comments on the above reports and were accepted as submitted.

F. NEXT REGULAR MEETING DATE: November 14, 2006

G. ADJOURNMENT

The meeting was adjourned at 12:15 p.m.

Respectfully submitted by,

CAROLYN J. TAKAYAMA-CORDEN
Secretary to Boards and Commissions II

RECORD OF ATTENDANCE

Present

Wayne Hedani, Chairperson
John Guard
Bruce U'u
Johanna Amorin
Patti Eason
Jonathan Starr

Excused

Diane Shepherd, Vice Chairperson
Suzanne Freitas
William Iaconetti

Others

Mike Foley, Planning Department
James Giroux, Department of the Corporation Counsel
Michael Miyamoto, Department of Public Works and Environmental Management