

**MAUI PLANNING COMMISSION
REGULAR MINUTES
FEBRUARY 23, 2010**

Approved: 4/27/10

A. CALL TO ORDER

The regular meeting of the Maui Planning Commission was called to order by Chairperson Wayne Hedani at approximately 9:02 a.m., Tuesday, February 23, 2010, 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: The planning commission of February 23rd will come to order. We'll go ahead and take public testimony at this time in order to accommodate individuals who can't be present when the agenda items are taken up by the commission. Public testimony taken up on any agenda item has a maximum time limit of three minutes. A person testifying at this time will not be allowed to testify again when the agenda item comes up before the commission unless new or additional information will be offered. Are there any members of the public that would like to offer testimony at this time? Okay, seeing none, we'll go ahead with the first order of business.

To the commissioners because Mr. Kurt has specifically professionalized himself for today's meeting please ensure that your questions to him are highly professional. Clayton.

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

- 1. MAUI MEMORIAL PARK, LLC requesting a State Land Use Commission Special Use Permit in order to expand the existing Maui Memorial Park on 10.936 acres of land in the State Agricultural District at Waiinu Road, TMK: 3-8-046: 043, Wailuku, Island of Maui. (SUP2 2009/0005) (P. Fasi)**

Mr. Clayton Yoshida: Thank you Mr. Chairman, we had scheduled this Maui Memorial Park LLC public hearing regarding their State Land Use Commission Special Use Permit request to expand the existing Maui Memorial Park at Waiinu Road. However, the applicant did not fulfill the notification requirements so this matter will be scheduled for public hearing within the next two to three months depending on the commission's schedule regarding some pending contested case proceedings.

So with that lets move to under New Business from Ms. Marcia Lucas requesting comments on the draft Environmental Assessment prepared in support of the Shoreline Setback Variance for the 11 Hale Malia Place Slope repair project to construct a structurally engineered sloped retaining system at 11 Hale Malia Place, TMK 4-3-003: 096, Napili, Island of Maui. The staff planner is Kurt Wollenhaupt. The EA triggers the shoreline setback variance. The commission may take action to be the accepting authority of the environmental assessment and to provide its comments on the draft Environmental Assessment.

C. NEW BUSINESS

1. **MS. MARCIA LUCAS requesting comments on the Draft Environmental Assessment prepared in support of the Shoreline Setback Variance for the 11 Hale Malia Place Slope Repair Project in order to construct a structurally engineered slope retaining system at 11 Hale Malia Place, TMK: 4-3-003: 096, Napili, Island of Maui. (EA 2009/0008) (SM1 2009/0018) (SSV 2009/0005) (K. Wollenhaupt)**

The EA trigger is the Shoreline Setback Variance.

The project needs a Special Management Area Use Permit. The public hearing on these applications will be conducted by the Maui Planning Commission after the Chapter 343 process has been completed.

Mr. Kurt Wollenhaupt: Good morning Members of the Maui Planning Commission, as indicated previously today's item is a draft environmental assessment the purpose of which is to at the beginning of this 30-day comment period that starts today to elicit your responses to the draft EA which was handed out approximately a month ago and which you've had time to look at and also to confirm that the planning commission will be the accepting authority for this draft EA. I prepared that was handed out in about a month ago just the two-page memorandum that outlines the overall issue involved and also we have Mr. Jason Medema and Mr. Matt Slepik who are representing Chris Hart and Partners to provide a power point presentation that will illuminate this in greater detail. Also, the engineer or the architect for the project Mr. John Edwards is here today to answer your questions.

As indicated by Mr. Yoshida, after this draft Environmental Assessment is reviewed today there'll be a 30-day period for which different agencies that would Federal, State, local including DLNR, the Office of Coastal and Conservation Lands will be given a point to comment. Those comments will be incorporated into the final environmental assessment which will come back to this body for review. At that time, if it is deemed appropriate the Planning Department at this time believes that probably a finding of no significant impact will be issued. That is to be again determined by this body. It will then go back to the Office of Environmental Quality Control for a final review period. If that all passes correctly then this body will look at this project under the conditions of a major Special Management Area Permit and also a Shoreline Setback Variance as this project does occur in the shoreline setback area.

It is important to note that this project however is mauka of the shoreline itself. So this does not actually involve work outside of that shoreline but it is in the shoreline setback variance.

Just briefly and I won't go because I'm sure you've read this document, the house was constructed in 2000. There was a severe storm both from the Pacific Ocean and high rains in December of 2007 that causes essentially the collapse of the bluff nearly a catastrophic event. This was an unstable condition that was deemed to be an emergency condition.

In February of 2008, there was a group that was convened this included our former Coastal Planner Mr. Abbott from the Department of Planning. It included our Sea Grant representative, Mrs. Zoe Norcross. It included Mr. Dolan Eversol of the Office of Coastal and Conservation Lands and

subsequently these three individuals who are very well qualified to review this felt that the issuance of a SMA emergency permit would be appropriate. They also reviewed this and reviewed a number of alternatives including temporary gunite, a number of different alternatives for a seawall and they felt that the SMA emergency permit should be concurrent with the permanent shoreline protection program that would be what has been done is the cast in place concrete wall. This was to prevent further erosion of the bank, undermining of neighborhood shoreline structures and removing the public hazard along with this unstable bluff. As any of you who most likely have been out there, the adjacent property to the south the Kahana Sunset is facing a similar situation and I believe will be subject later on today for a special management area emergency permit.

Consequently, the purpose of today's review is to elicit your input just by administrative, the state land use on this is urban, the community plan is single family, the county zoning is residential district and it is in the SMA area.

Procedural matters the draft EA was submitted on November 30, 2009. The Office of Environmental Quality Control publication date is today. The 30-day public comment period will end on March 25th and the department has reviewed the draft EA and has sent that to the Office of Environmental Quality Control and at this time if there's no other questions of me I can have the partners at Chris Hart and Partners give their presentation.

Mr. Hedani: Any questions for Kurt? Commissioner Starr.

Mr. Starr: I do, but I think I'd like to hear the presentation.

Mr. Hedani: Okay Kurt lets go ahead and get the presentation.

Mr. Jason Madema: Good morning Mr. Chair, Members of the Planning Commission. My name is Jason Madema. I am a planner with the firm of Chris Hart and Partners and I'll be running through a presentation of proposed or rather the project. With me today are members of the project team including Mr. John Edwards who is the owner's representation as well as the architect, Mr. Kirk Tanaka of Tanaka Engineer who did the civil engineering and drainage design as well as the shoreline survey. Mr. Paul Weber of Meta Engineering who is the geotechnical engineer and the designer for the wall system that's constructed on the property.

As Kurt alluded to you in his ...(inaudible)... staff report is there's basically four major purpose and need items for this project. This was a catastrophic collapse of an existing and it appears unpermitted seawall constructed by a prior owner. This was necessary to prevent further collapse of the bank and damage to the existing residence. At the collapse of the prior previously existing wall, the home and adjacent pool structure would both be ...(inaudible - speaking very softly)...

The second reason given was to prevent potential undermining of neighboring shoreline protection structures and associated damage to the neighboring properties. There was a significant public safety hazard associated with the unstable bluff it's about 29 feet high and was ...(inaudible)... corrode and collapse. And then of course the soils in this area are silty clay and this is seen as a way to prevent earthen soils eroding into the water and silting up the reef.

The project is located on Keonenui Bay in Napili north Lahaina approximately a mile and a half south of Kapalua and they're adjacent to the Alaeloa Subdivision.

The structures on the site include an existing home. It was constructed in 2000 along with a swimming pool. The home was constructed by the previous owner.

The bluff is 75 feet in length, the shoreline frontage of the property is 75 feet, 29 feet above sea level. The bluff had been protected by a rock and concrete veneer. It wasn't an engineered structure by any means and as far as we're able to tell it was constructed some time in the '80's this is through anecdotal evidence given by a neighbor.

This is a picture of the site in February of 2008. This is approximately two months after the collapse. You can see this is the ...(inaudible)... edge of the pool structure, the yard had come out to approximately there and at this nearest point was approximately 12 feet ...(inaudible - speaking softly)...

This is a photo from below. ...(inaudible - speaking softly)... couple more photos of the collapse from below.

The solution to this collapse was permitted under a SMA emergency permit and initially and what it is is a structural engineered ...(inaudible)... in place concrete facing so it's actually involves less cut and fill than a typical retaining wall would and it's tied into bedrock with tiles that are sunk into the bank through this facing so it essentially hugs up against the bank. Requires minimal cut and fill and it's very sound. More of a sound structural solution than a traditional gravity retaining wall.

There's also, there's significant drainage issues on the property which it's believed contributed to the collapse but there was no real drainage mitigation prior. So all this storm water would sheetflow through the makai portion of the property and the on and over the wall and through the wall. So the wall collapse was believed to have been caused by both inundation of the yard from above and by high surf from below. There was a couple of subsurface retention basins installed as part of this project designed to retain a 50-year, one-hour storm runoff volume. In addition, there was high drainage fill material placed immediately behind the structure against the bank to improve drainage in the yard area and also weep holes in the yard.

And to summarize the required permits, the project was originally permitted under a SMA emergency permit. We're here to speak to you about the draft environmental assessment that was ultimately required Special Management Area major, Shoreline Setback Variance, final Environmental Assessment ...(inaudible)...

This is a photo of what the structural solution would involve. Concrete, the rock facing designed to somewhat blend in with the existing surrounding ...(inaudible - speaking softly)... this is preexisting naupaka hedge ...(inaudible- speaking softly)...

This is a picture of the site. This is the edge of the existing residence.

Mr. Hedani: Jason, can you pull the microphone a little closer please?

Mr. Madema: So this would be the wall at the makai limit of the property. ...(inaudible).. yard area and then the existing residence and pool. So the project area is limited to this immediate makai area of the property.

Kurt ran through this time line a little bit with you so I'll just kind of breeze through it. This December 5 as was mentioned during those enormous Kona storms we had that week the seawall collapsed, the bluff collapsed along with it and then in February that following year there was a site meeting including representative of Office of Coastal and Conservation Lands, the Maui Planning Department and Sea Grant. During that site visit it was determined by all parties involved that this was indeed an emergency situation and given the unstable conditions it was determined that there wasn't a really a temporary structural solution that would adequate and therefore, we should proceed with applying for an SMA emergency permit to actually make the permanent solution, install the permanent solution as the emergency solution but then proceed with the standard EA, shoreline setback variance, etc. to create a legally permitted structure.

The SMA emergency permit was approved by the Maui County Planning Department on May 30, 2008, and the building permit application was filed a little over two months later. The building permit process as you may know is somewhat rigorous and was still ongoing as of December 10, 2008, so a revised SMA emergency permit approval and time extension was granted at that time. February 4, 2009 the building permit was issued.

The purpose of this draft environmental assessment that's before you know is to analyze the impacts related to the construction of these permanent erosion control and ...(inaudible)... stabilization structures. The state and county as I mentioned recommended that the near term measures in fact be the permanent measure and the alternatives that were considered in the draft EA that's in front of you that you've all been – that's been distributed to all of you, actually were included in the SMA emergency permit. So the preferred alternative as given and the SMA emergency permit was in fact, were directed by the Planning Department within the context of the SMA emergency permit to proceed with that alternative.

The alternatives considered included relocation of the existing residence which was deemed to be infeasible the lot is really too small to move this structure on the lot and then obviously finding a suitable alternative location was cost prohibitive.

The alternative protection measures for the face of the bluff included first a gunite or shot-crete facing, sprayed on concrete and Gabion baskets or Dura-Block which is essentially a caged riprap piled up against the bank. The gunite was – well, both of these alternatives it was determined they didn't possess either significant, you know, sufficient structural integrity or longevity giving the coastal hazard for potential high surf in the area. The Gabion baskets themselves are not a structural solution at all. Gunite is a little bit more structural but you lose the ability to create good drainage I guess it's not an engineered solution and also, it tends to crumble after a while, it's like ...(inaudible)...

That concludes our presentation Mr. Chair. I'll turn it over to you and the commission for questions.

Mr. Hedani: Questions for the applicant? Commissioner Starr.

Mr. Starr: Yeah, I have a questions in a number of areas, I guess they'll lead to comments for the draft. The first and you know to me a somewhat egregious issue is that in the report testimony was received that there was a cave though is actually underneath this property. It looks like it's covered up with naupaka and part of it probably was in the area that eroded and previous owner of the property Joan McKelvey said that they saw that there were burials that there were iwi in that cave and yet, this was neither referred to Hinano Rodrigues nor to the Burial Council and it definitely should have gone to them before coming to us for comments because they're the experts and we should be dealing with their comments. I'd like to ask how come you never went to them particularly since you gave us testimony that there are bones underneath the structure and apparently they were either excavated away or dealt with when you did the work.

Mr. Medema: Thank you Commissioner, Mr. Chair what Commissioner Starr is referring to is in the cultural impact assessment by Jill Engledow, she interviewed a prior owner of the property and actually there were not – it's not stated that there was a cave and there were iwi in it, if you were to look through the cultural impact assessment, this is anecdotal from a prior landowner who said they thought that there may have been bones. They cemented up this cave, the prior landowner which we figure probably was further covered over by the existing wall because during excavation there was no cave uncovered. There was the SCS Archaeology went out and they visited the site. Even after some excavation had occurred and looking in the soil ...(inaudible)... they said that you know it's basically indicative of several cut and fill events. While it may or may not be true it's not an absolute but it's rather a matter of conjecture that there in fact was a cave with bones.

Mr. Hedani: Commissioner Starr.

Mr. Starr: Yeah, you didn't answer my question which is how come you did not go to the proper authorities regarding that. How come you did not go to SHPD and how come you didn't go to the Burial Council and will you go to them now?

Mr. Medema: We actually did consult with the State Historic Preservation Division and also nothing was found and so would you go to the Burial Council if nothing is found? I don't know, I mean, I suppose we could address that further in the final environmental assessment.

Mr. Starr: Well, that's certainly a comment that I'd like to include that they should go to SHPD and they should go to Burial Council and present them with the fact that there is testimony that there were bone cemented up underneath here.

Mr. Hedani: Commissioner Hiranaga.

Mr. Hiranaga: During your presentation you showed a picture of a wall that was constructed. It appeared there was another wall below it. Is that also part of a new wall?

Mr. Medema: That was – Yeah, it's kind of terraced up. What happened is the wall is kind of constructed above an existing bench, so this is actually a more or less a naturally hardened rocky shoreline and then this wall is constructed up above and behind the preexisting bench. I can't speak

with a great deal of expertise of the wall design itself but I could probably call – Paul would you care to address why the shape of the structure is – Paul Weber of Meta Engineering.

Mr. Paul Weber: Good morning Commission. I'm the civil engineer and I was – I'm Paul Weber, I'm a civil engineer, I was invited into this project by the structural engineer who knew about some high tech technology that my son and I had introduced to Hawaii in the year 2000 and it appeared to be appropriate to this project. The bench that you see in that photograph was the preexisting undisturbed ground that underlay the earth movement. It's actually the top of the basalt bedrock.

In creating the drainage system behind this wall there's an elaborate and large drainage system, 48-inch diameter pipes, 100 yards of gravel and the bench then was layered with the rock riprap, mortared rock riprap and an edge was created so that the drainage would flow directly off into the sea so what you see there is a natural feature that preexisted our construction and was leveled off and mortared in with the rocks to give it a good drainage system. Any other questions about that?

Mr. Hedani: Commissioner Hiranaga.

Mr. Hiranaga: So that's just the preexisting shoreline is what you're saying?

Mr. Weber: Yes, there was some concrete revetment, some concrete treatment of the shoreline before we started our project.

Mr. Hiranaga: So that bench is reinforced with concrete?

Mr. Weber: Yes it is.

Mr. Hiranaga: How?

Mr. Weber: Somebody else before.

Mr. Hiranaga: No, how, how is it reinforced? I can't really see because it's –

Mr. Weber: It's a shot-crete facing.

Mr. Hiranaga: Could you rephrase your answer?

Mr. Weber: The structure is complex but the bench itself was fortified by grout injecting. We pumped grout into the basalt – as you know basalt has fissures, cracks, voids, so we injected in that to solidify it but what you see in the photograph is surface treatment of the seawall that existed before we started our work.

Mr. Hiranaga: So is that the natural shoreline?

Mr. Weber: That was the natural shoreline, yes sir.

Mr. Hiranaga: Okay, thank you.

Mr. Hedani: Commissioner Shibuya.

Mr. Shibuya: I'd like to find out a little bit more. The problem, can you review or go over the problem that created this problem here. What were some of the factors that added to this problem?

Mr. Weber: Well, –

Mr. Shibuya: I know you mentioned there's a storm, I know there's runoff, but where did the runoff come from, how do you control that, have you controlled that?

Mr. Weber: The runoff was coming from the mauka portion of the property into the makai yard of the property and literally just ponding or pooling and inundating that yard area. And so there was no drainage mitigation per se prior to this project. That drainage problem was exacerbated by the fact that the prior landowner had just taken it upon themselves to pile some rocks and concrete as essentially a veneer and not really a structural wall against the face. So that inundation combined with the high surf activity from below is what ...(inaudible)... everybody's best guess what caused the collapse of both those, the two forces together. There has been a significant amount of work done to mitigate the storm water issues and if you'd like I can call Kirk Tanaka up, he's our civil engineer, he did the drainage design essentially through various – the addition of large subsurface pipes, high drainage fill area drains throughout the yard and weep holes in the wall, that that system was designed to retain a 50-year, one-hour storm.

Mr. Shibuya: Yes, I would like to see that.

Mr. Kirk Tanaka: Good morning Mr. Chair, Members of the Maui Planning Commission, my name is Kirk Tanaka and we are the civil engineers who designed the drainage system for the project.

Mr. Hedani: Questions for Kirk? Commissioner Shibuya.

Mr. Shibuya: I was – can you review what caused – some of the causes or factors that lead to this problem and then how did you mitigate it or area you planning to divert the water or how are you going to redirect the water?

Mr. Tanaka: My understanding was that it was a combination of two things. One was high surf and heavy rainfall. So the combination of the surf beating on the bank and also a heavy rainfall event, what had happened was, my understanding, personally I didn't witness it, but what it looked like was the runoff from the site and some small watershed above it came through the property, ponded on the property and then overtopped the bank. Okay which tended to erode it from the top and also the wave action from the bottom tended to erode the bottom and that's my understanding of what lead to this catastrophic event.

Mr. Shibuya: And so now the water if we can at least, you know, in terms of the wave problem from underneath, you've now hardened that area, but on the top part where the water is running down how are you mitigating that?

Mr. Tanaka: Sure I can describe what was designed and what was installed.

Mr. Shibuya: Because in one of your photos here, it shows the entry to the project driveway at mauka property boundary and it looks like it's all hardened. It's all impermeable type of material there.

Mr. Tanaka: Coming off of the roadway, off of Hale Malia Place it is all driveway, it is all hardened and so the landscaping will be on the two side yard and then the back, the rear yard as you probably see in your photos. What we've done to mitigate the drainage, see before what used to happen was the water would come down, it would go along the sides of the houses, along the side of the house excuse me and it would flow towards the ocean, basically pond a little bit in the back yard and then overtop. There was also a pipe I believe that protruded out of the face of the bank that used to collect water from I'm not exactly sure where but probably from the down spouts and some of the yard and would just throw the water into the ocean. Okay, what we did was we eliminated that pipe and behind the wall was installed subsurface detention combination of 24 and 40-inch pipe that is buried in a rock envelope and the rock envelope is surrounded by geotextile fabric and what that acts to do is that acts to take the runoff, the 50-year storm water and it detains it in underground in a subsurface chamber, well two subsurface chambers actually and lets it out slowly through a rock envelope and through the geotextile fabric before it gets into the underlying soil.

Mr. Shibuya: I'm still not convinced that you know you have this water runoff, you have almost like a swale type design of an impermeable type of driveway that adds like funnels that water all the way to through the gate and into the backyard. We haven't really addressed mitigating the amount of water that's coming through or diverting it someplace else or capturing it and redirecting it.

Mr. Tanaka: Generally that's what we were doing. We're capturing the runoff coming through the site and that which is generated on the site and putting it into this subsurface detention basin so we're capturing it. Now if there is a storm frequency above the 50-year interval then, yeah, these pipes – these pipes are designed to take care of a 50-year storm. So if you get a – lets say for example you get a 75 or 100-year storm there will be – there is a potential for these basins filling up and not being able to empty quick enough and so you would have, you would have some ponding in the back yard.

Mr. Shibuya: Yeah, my line of questioning is related with I don't want this problem to happen again. I'm just trying to minimize it happening again or else we're going to go through the pilikia again.

Mr. Tanaka: Hopefully not.

Mr. Shibuya: Yeah, yeah, hopefully not. But if we can divert much of that water or by designing it in such a way that we can minimize this and the amount of water that comes through the property that would be helpful. But I don't see that. But when you look at the topographical maps you got a whole mountain side of water that's coming down and I know you can't solve world hunger, you know you're just solving your one problem so you need to somehow divert that huge amount of water coming down from the mountain side somehow. We all gotta work together on this.

Mr. Tanaka: Certainly I don't believe that the watershed is as large as you're maybe suggesting that contributes flow into the property. But yeah, I mean, I understand what you're saying. What we've attempted to do is to take care of the 50-year storm that is being generated by this property. Now again if we have a higher frequency storm theoretically, we may have a concern.

Mr. Hedani: Commissioner U'u.

Mr. U'u: My question, is that the maximum or minimum amount of runoff the 50-year storm?

Mr. Tanaka: The reason why the 50-year storm was chosen was because that's what the County Department of Public Works requires in the drainage standards.

Mr. U'u: Okay.

Mr. Hedani: Commissioner Tagorda.

Mr. Tagorda: I'm going to go back to that archaeological monitoring thing that I read in my packet, my EA that it is troublesome to me because this field inspection conducted by Mr. David Perzinski on April 14, 2009 it says that when he arrived in that area at the residence the makai portion of the parcel had undergone extensive grading and excavation for the new emergency seawall was nearly complete and he said the client had indeed commenced and completed excavation work without conducting SCS to implement the recommended onsite monitoring. That to me is very troublesome and he says here the excavation for the new seawall and anchor points was approximately 95% done can't see anything. So I don't know what actions those different agencies have taken. What consequences from the owner, applicant is going to, you know, so this is troublesome to me. I had eight inches to dig around my area. I need to wait for the DLNR to get approval and review of my permit. And this when all the way 20 feet below sea level. Please give me some answers here.

Mr. Madema: Thank you Mr. Commissioner. Yes, it's an unfortunately incident of various agencies either wires crossed or wires not connected and the genesis of that issue was that there was initially a pedestrian survey done at the site. It's in the document some time in 2008 they anticipated that there would be no findings and a monitoring plan was put together. Because of the emergency nature of the project and the fact that both the construction, conceptually the construction of the project as well as the building permits for the project were approved under an emergency permit. The grading plan check was such that there was no – the trigger essentially for archaeological monitoring was not triggered and so excavation was initiated without you know, basically communication from the county, hey you guys are from the state, hey you guys have to get your ...(inaudible)...

Mr. Tagorda: Mr. Chair.

Mr. Hedani: Commissioner Tagorda.

Mr. Tagorda: I would like to follow up the question. I like to find out what actions these different agencies of the government have against the owner, applicant for not complying with the conditions with the Planning Department had set probably on that old emergency special permit.

Mr. Hedani: I think what the response was that the permit was approved and the approved permit did require a monitoring program.

Mr. Madema: And so the letter from David Perzinski that you have dated September 2009,

Mr. Tagorda: April 2009.

Mr. Madema: April 2009 was a procedurally what their next level of recourse to SHPD is what I understand and so he essentially went back and he was able – you know if there is a plus side to that he was able to inspect the various soil horizons that had been exposed to – you know, had been exposed by the excavation. Keep in mind this is the type of construction that requires minimal cut relative to similar structures so there wasn't a whole lot removed from the side of the bank. They couldn't really remove a lot from the side of that bank because they were both ...(inaudible)... from the existing structure. And so you know, the best I can answer is that that letter from David Perzinski in April of 2009 was what, you know, their next recourse of due diligence to perform. So excavation stopped until David was able to go in and look at what had – and essentially if they had done trenching you know would have been obviously evasive but you know similar –

Mr. Tagorda: The thing I have – my concern here is the project is already completed. We cannot undo any thing any more although I don't know what – this is a question for our Corporation Counsel, have we have in the past did grant the application for SMA and variance something like that and went to court for it? If we don't grant their applicant for SMA Use Permit and their application for Shoreline Setback Variance what are the things that we might encounter as a planning commissioner because this is not the thing that I might choose not to grant their application for SMA permit and variance it's not in the topic now but just have comments on the review but I go on and read the EA I see a lot of funny things going on in this project. I believe there's a slight encroachment too that's not mentioned specifically what is it. I think the pool is an encroachment to the shoreline.

Mr. Madema: The pool was actually permitted in 2003 as an SMA Exemption, an alteration to an existing permitted structure. At that point in time the pool structure was outside of the shoreline setback area. Based on number one, changes to the Shoreline Setback Rules and number two, the fact that there's less yard area there now because it collapsed the pool now does encroach upon the shoreline setback area. However as a permitted structure at the time it was constructed outside of the shoreline setback at the time it was constructed it qualified as existing nonconforming structure in the shoreline setback area.

Mr. Tagorda: And also –

Mr. Hedani: Hold on Commissioner Tagorda. Jim you have any comments that you wanted to offer?

Mr. Giroux: At this stage where we're doing the environmental review I'd hate to get too deep into that. We are going to have some training in the future about what the board's requirements are for reviewing permits that are viewed as entitlements and entitlements processes. So I don't want to go too far into that, but I'll assure the commissioner we will get into what your duties are as far as

reviewing permits.

Mr. Hedani: As I understand it today what we're being asked to do is to accept the EA and then offer comments on the EA if we have additional information we'd like to get.

Mr. Starr: Excuse me Mr. Chair?

Mr. Hedani: Commissioner Starr.

Mr. Starr: We are not being asked to accept the EA.

Mr. Hedani: I'm sorry, can you correct me please.

Mr. Starr: Yeah, where this is a – as understand it it's a draft we're being asked for comments on the EA.

Mr. Hedani: Right we're being asked to –

Mr. Starr: Can we have Mr. Yoshida state what we're doing here?

Mr. Hedani: Clayton.

Mr. Yoshida: Yes, Mr. Chair, the commission is being asked to be the accepting authority of the EA and to provide comments on the draft EA document so that they can incorporate that into the final EA which the commission will accept or not accept.

Mr. Hedani: I thought that was what I said, we were being asked to be the accepting authority on the EA and to provide comments and any requests for additional information that we might want. Commissioner Mardfin.

Mr. Mardfin: We went on a little too fast for me on the speaker, I'm sorry I didn't get your name sir, the one gentleman with the beard back there that was talking about the seawall.

Mr. Madema: Paul.

Mr. Mardfin: Can he come back up because I have a couple more questions? This is following up on Commissioner Hiranaga's question because I wasn't sure what the answers were.

Mr. Weber: Yes sir.

Mr. Mardfin: Can we go back to that photo that you referred to? I heard two different things about that lower part. One thing I thought you said was it's a natural feature that is – it's part of the lava that came out of the volcano, West Maui Mountains. Then I heard somebody say that no this is manmade, it's a seawall that was manmade. Which is the case.

Mr. Weber: Well there's a shell of protection it's a combination of shotcrete and rock masonry that

preexisted our work.

Mr. Mardfin: I understand it preexisted your work but it's manmade. That whole structure there at the base is manmade that isn't the lava coming out.

Mr. Weber: No right underneath that is the lava.

Mr. Mardfin: Underneath it.

Mr. Weber: That's a shell. So if you broke a foot or two of that out you'd find the basement basalt.

Mr. Mardfin: Okay, so that's one factual question I wanted to get right. This is a manmade structure. Did you deal with it all in the construction?

Mr. Weber: Yes sir. We created the lip so that the drainage would be uniform off of the –

Mr. Mardfin: That's on the top.

Mr. Weber: That's correct.

Mr. Mardfin: Did you do anything at the bottom?

Mr. Weber: No, nothing at the bottom.

Mr. Mardfin: Wasn't touched.

Mr. Weber: That was not touched sir.

Mr. Hedani: Commissioner Shibuya.

Mr. Shibuya: To help the visual presentation here. Can you look at Figure 3.2, photo number 10 and you'll see that it looks like there is a rock shell. There looks like there's concrete laid in there and there's also a concrete abutment constructed right next to it. Maybe you can confirm that or –

Mr. Hedani: Mr. Weber.

Mr. Weber: I think that is an accurate description of the situation before we began construction. There was some masonry, there was some shotcrete along that vertical face that you see at the bottom and it was altered to give it – you see it's a straight line now. From the bench up it's a straight line across that was created by us to make the drainage flow freely off of that.

Mr. Hedani: Commissioner U'u.

Mr. U'u: Question is how far is the top part, six-feet, eight-feet, the existing wall what is the actual height of what you claim to the existing wall? How much did you add onto the existing wall and how did you make it structural to withstand the pounding of the surf. I understand that you said you left

it alone you added a lip. But having said that, that would be your weakest point on your wall. So I'm saying –

Mr. Weber: It's a very good question. To be sure that we corrected any damage to the underlying rock structure we injected cement grout, high strength cement grout in 30 places on that bench which is about nine feet wide at its widest point. If you were standing up on that bench you'd have about a nine-foot wide surface to stand on. So we consolidated and grouted together the existing "broken basalt mass." So that stabilized that. Above it, the high wall is anchored into the bedrock with micropiles they're grout injected into the rock and very, very securely fixed to the hard rock.

Mr. U'u: So the answer would be yes, you did work to the existing bottom of the wall by injecting that type of grout concrete, correct?

Mr. Weber: Yes sir.

Mr. U'u: How much added height did you increase what was shown in this picture, grant it it's sloped how much higher did you come up? It looks about two feet or three feet at its lowest point of the wall and the height of the wall is, what is the height of the wall of the lower wall, nine feet you said?

Mr. Weber: About nine feet sir. I'd say you're – that's fairly accurate. There's a rock layer in there that might be a foot thick or so.

Mr. U'u: Thank you.

Mr. Weber: Commissioner Mardfin.

Mr. Mardfin: Yeah, you said you injected concrete behind that lower seawall. How deep did you inject the concrete?

Mr. Weber: About 10 feet sir.

Mr. Mardfin: So you went basically down to the bedrock underneath is that correct?

Mr. Weber: Correct and it consists of bedrock. The reason why that bench is there is because the slide, the earth moved all above that, it didn't move on that part. That stayed intact during the landslide.

Mr. Mardfin: Okay, I want to ask a different set of questions but I think you're the person I should be asking so let me go ahead.

Mr. Weber: Please.

Mr. Mardfin: Is the weight of the pool a significant weight?

Mr. Weber: Very much sir.

Mr. Mardfin: If that were removed would that reduce the stress on future potential disasters?

Mr. Weber: The answer is yes, except that we ...(inaudible)... the pool to transfer its load down to the bedrock. The pool is no longer exerting a force on the ground or on the wall.

Mr. Mardfin: If the pool had been removed would that have significantly changed the scope of the project or the impact of the project?

Mr. Weber: No sir. The bank protection would still have been required regardless of the pool.

Mr. Mardfin: I understand that, but you wouldn't have needed the additional structural things to support the weight of the pool if the pool was removed – had been removed.

Mr. Weber: Not if the pool was removed no sir.

Mr. Mardfin: Did anybody consider removing the pool?

Mr. Weber: Not that I know of. I wasn't asked to consider it.

Mr. Mardfin: Okay, thank you.

Mr. Hedani: Commissioner Tagorda.

Mr. Tagorda: Sir, since you still standing up there might as well I follow up with the same questions for that –

Mr. Hedani: Orlando if you can use the mike.

Mr. Weber: Sir.

Mr. Tagorda: I see in that site photograph that's the makai side where all this construction happened.

Mr. Weber: Yes sir.

Mr. Tagorda: But my question is since nobody was kind of looking at – looking at number 10, the picture on my draft EA it looks like there's some grout too on all the way to the property line next – if you just go move that thing was it that – is it a line from property line to property line where this construction happen or just 40% makai side of that fence?

Mr. Weber: The high wall is as you see it in the photograph. We continued the wall on to the – more or less undisturbed portion all the way from one property line to –

Mr. Tagorda: I know I notice that one it went all the way – I don't know if that's the end of the property line.

Mr. Weber: Well, we ended at the stairs that goes down. So it's a few feet short of the property line, but on the south side it goes completely to the property line of the adjacent –

Mr. Tagorda: Again, my concern is the adjacent property doing all this seawall, rockwall do you guarantee that the neighboring properties will not be affected by all this construction?

Mr. Weber: Sir I'm sure you understand – I'm sure you understand the limitations of liability in professional practice but within the realm of the protections that an engineer has in designing a project yes sir it is secure.

Mr. Hedani: Additional questions? Commissioner Starr.

Mr. Starr: I have a number of questions. First, one question for Mr. Tanaka, the way that the drainage system is built and the retention and the way the water is eventually released, is that done in such a way that it will tend to filter and minimize the say lawn chemicals and any other pollutants that enter into it from above ground from getting into the shoreline?

Mr. Tanaka: More so if in this case then it would be if the water just sheetflowed over the property picked up the chemicals say fertilizers for instance and then just shot over the – it goes into the subsurface basin, it gets filtered out – it's perforated pipe is basically what it is, yeah. The water drains through a perforated rock envelope which then permeates through a geotextile fabric and then into the surround earth. So it has to get filtered through that surrounding earth before it gets –

Mr. Tanaka: Into the ocean?

Mr. Starr: Yeah.

Mr. Tanaka: Yes.

Mr. Hedani: Additional questions? Commissioner Starr.

Mr. Starr: Yeah, next question for Mr. Wollenhaupt. How – did you research the previous permits on when this was built and whether it was built as a permitted function including the swimming pool and the original retaining wall and original house?

Mr. Wollenhaupt: I'm probably the third person on this, so I was handed the EA. I was under the assumption that the house would have been built according to all permits, but I didn't physically go to the Building Department to see that specific building permit but it would appear that it would have been built under all required permits.

Mr. Starr: Can we hear from Chris Hart and Partners? I really feel like we're getting some kind of shell game with this I don't know. I have real problem. Can we hear about the original permits?

Mr. Hedani: Jason can you state your name for the record?

Mr. Madema: I'm sorry Mr. Chair, Jason Madema, Chris Hart and Partners, thank you, the home was permitted and constructed in 2000. There was a existing home on the property that was demolished. The pool was constructed in 2003. It was permitted as an SMA Exemption as an alteration to an existing structure occurring outside of the shoreline setback area.

Mr. Hedani: Commissioner Mardfin.

Mr. Mardfin: I want to follow up, and I hope we'll get back to Commissioner Starr because I was concerned about the same thing. The house that was built in 2000, was that the same footprint as the preexisting house?

Mr. Madema: I can't answer that.

Mr. Mardfin: This is a draft EA, on the final EA you ought to have the footprint of the original house pre 2000, the new 2000, the 2003 pool additional and you should deal with, this is recommendations for the final EA my view, was to rebuild the house in 2000 was an SMA required?

Mr. Madema: A single family residence by statute anyway is no, I understand the policy has changed recently but still by statute qualified for an SMA exemption. So it may have gone through an SMA, it may not have.

Mr. Mardfin: But it would have had to go through an SMA exemption at least?

Mr. Madema: I would say –

Mr. Mardfin: The SMA law was in effect so they would have applied for an SMA –

Mr. Madema: ...(inaudible – two persons speaking at the same time)... of exemption, yeah.

Mr. Mardfin: So they would have applied for an SMA exemption and presumably they got it because nobody raised questions about why are you building a huge house and a huge pool this close to the ocean. Okay, thank you.

Mr. Hedani: Additional questions? Commissioner Starr.

Mr. Starr: Yeah, thank you for letting me continue my questions. This – you know, I too would like to see the complete history of this including the envelope of the original house and the envelope of the pool compared to what there is now. Now we know that at one time there was a beach at this location and it was by the hardening of this property as well as Kahana Sunset and several others that caused a lack of a beach and now what we're doing is we're – we have an owner who bought something that frankly should have been buy beware because it was in an eroding situation and then they added a swimming pool and now we're doing these kind of actions and we're ignoring kind of the process and the burial issue and all of this, you know, in an emergency to save the swimming pool. And if this didn't exist, if the swimming pool didn't exist but it was dealt with in a different way there would be a beach down below. So as an alternative I want to see what would have to be done to restore the beach and whether it means removing the swimming pool, whether

it means removing the house, I mean, frankly I think a lesson should be made that when people purchase something like this they should do their due diligence and see what they're buying and it is buyers beware and that this whole process kind of being fudged, you know, it's Chris Hart is now doing – to fudge it again and to build this permanent solution on an emergency temporary permit I just feel is wrong so I definitely want to see a real complete alternate which is looking at restoring the original shoreline. I think you know, whether we do that which is probably rather extreme to demand that but I think we should have that option to look at in terms of restoring original sandy shoreline and how far back it would have to be pushed to gain that.

Mr. Madema: Thank you Commissioner. My understanding in reading through at the cultural impact assessment it refers to Yabui Beach which seems to be the beach fronting the Kahana Sunset. One thing to understand is this entire bay is armored with shoreline hardening structure the entire bay and so first of all to insinuate that this particular project has a stand alone affect on the beach is I think a little lets say excessive, I don't want to say excessive but perhaps not considering the whole picture.

The other thing to consider is that there is not a sandy soil substrate underlying this structure it's silty clay, therefore, there is no source for replenishment of beach sand. Also, the emergency was not the swimming pool. The emergency was the existing residential structure that the pool is attached to the structure. If the pool goes, the house goes. If there hadn't been a pool, 12 feet more of erosion, 15 feet more of erosion then the house is ...(inaudible)... adjacent shoreline armoring structures are endangering his liability relative to adjacent properties. There's a public safety hazard from a collapsing bluff and there is a environmental hazard, silty clay soils degrading the reef as the soil types similar to what's going on all along the fringing reef on the south end of Molokai as well as off Maalaea, similar silty clay soil types have been implicated and both loss of oxygen and sunlight for the reef.

Mr. Starr: Are you saying you're not willing to do that alternative study the way I'm asking for it?

Mr. Madema: I'm not saying I'm not willing and I appreciate the comment, I'm just providing clarifying comments of my own.

Mr. Starr: Okay, will you do that alternative analysis?

Mr. Madema: We'll consider that within the context of the final EA Commissioner.

Mr. Starr: Thank you.

Mr. Hedani: Commissioner Hiranaga.

Mr. Hiranaga: I have a couple of questions. I did not see an annual erosion rate map in the EA is there a reason?

Mr. Madema: The annual erosion rate is basically zero because the shoreline is hardened.

Mr. Hiranaga: Is that stated somewhere in the document?

Mr. Madema: It should be within the shoreline setback determination and if it was omitted then it will be included.

Mr. Hiranaga: I guess it would be good to just have the map in there. If it's zero then show it's zero.

Mr. Madema: Well the annual erosion hazard rate as computed along Keonenui Bay does vary because you have you know, the underlying substrates vary from say sand in front of Kahana Sunset to lava in other areas. So the transects by themselves vary but that's altered by the fact that all the properties are hardened along there. And so within the shoreline setback determination rules you have one where you have basically engineered structure where you can show the interface with the shoreline then the determination defaults to the average lot depth ...(inaudible)... rather than ...(inaudible)... but if it's not clear I'll definitely take a look at that and make it clear within the shoreline setback determination that's provided in the EA.

Mr. Hiranaga: There is a map.

Mr. Madema: There is a map.

Mr. Hiranaga: So you could provide a copy of it in the report.

Mr. Madema: Yes.

Mr. Hiranaga: One more question.

Mr. Hedani: Commissioner Hiranaga.

Mr. Hiranaga: So I looked at the shoreline map certification, the entire structure is outside of the shoreline?

Mr. Madema: Yes.

Mr. Hiranaga: What was the little erosion indentions in the map?

Mr. Madema: Oh yeah there's – do we have photos of it? There's some – a little bit of undermining caves at the north end of the property not really even caves so much it's just indentions areas of less resistant rock but that's in this – what you're talking about – you can see the certified shoreline kind of juts in and out below this protruding area with the naupaka hedge. That's an area that did not collapse during the initial bluff collapse and yeah, and then it just follows the contour of the existing rock. The wall itself goes way behind there.

Mr. Hiranaga: So again, the entire structure is outside of the shoreline?

Mr. Madema: Yes sir, that's correct.

Mr. Hiranaga: That's the improved preexisting structure and the new structure both?

Mr. Madema: Yes sir.

Mr. Hiranaga: I guess the reason I wanted the erosion map is to see if there is future potential for that wall due to erosion to start being involved with the high wash of the waves. Are you saying the high wash of the waves does not touch that wall at this point?

Mr. Madema: The high wash of the waves does not touch this wall?

Mr. Hiranaga: Yeah – no the one that you fixed up. The one closest to the water.

Mr. Madema: Down there. At the very base it's tough – I mean, I've been out there during high tide. I can only provide you know, my personal experience, but it washes up on these rocks here.

Mr. Hiranaga: But to be out of the shoreline wouldn't it have to be outside of the high wash of the waves?

Mr. Madema: I mean that's – yes, they certified the shoreline during I think the actual certification took place – it wasn't after the whole thing was built but it was after the base ...(inaudible)... after construction had been initiated, the shoreline was certified at that point in time.

Mr. Hiranaga: So it's outside of the high wash of the waves?

Mr. Madema: According to DLNR, yes.

Mr. Hiranaga: Okay, thank you.

Mr. Hedani: Commissioner Mardfin.

Mr. Mardfin: In Appendix B, the engineer's submittal I see page 3 of 8.

Mr. Madema: Are you looking the Appendix that is the emergency permit?

Mr. Mardfin: Probably. Because it's near the end.

Mr. Madema: Yeah, okay. Appendix D, Appendix B?

Mr. Mardfin: I'm looking at a March 18, 2008 fax from the Edwards Design Group.

Mr. Madema: Yes sir.

Mr. Mardfin: And on page 3 of 8, it shows the slope with failure existing. It shows the former bank. It shows existing overhang. Can you explain what that is? Maybe Paul can.

Mr. Madema: I will defer to our project engineer.

Mr. Mardfin: Okay, and then, but I want to keep going with this and you may be – well, let Paul

answer that one first if you would.

Mr. Weber: Paul Weber again. The collapse partially removed a property line rock wall between Kahana Sunset and this property. That removal left the rock wall which is a masonry wall overhanging so that you could put your hand underneath it. The soil and the rock material had collapsed out from underneath that. Ultimately we resupported that rock wall and you can see that at the end of wall on the right-hand side.

Mr. Mardfin: This bulge here is that - you can look it right there, is that dirt or is that rock?

Mr. Weber: The top of it is the existing rock wall that was partially undermined by the landslide and there is some dirt underneath it that we later moved that.

Mr. Mardfin: Where it says existing overhang. Oh, you removed that.

Mr. Weber: We removed that and put a heavy structure underneath it like a column of concrete reinforcement.

Mr. Mardfin: Okay, now I think I'm back to Jason. On the following page 5, it's labeled roman numeral I and this shows the option where you have I believe gunnite facing.

Mr. Madema: Yes.

Mr. Mardfin: And 3 on page 7 shows the option where you have gabions.

Mr. Madema: Yes.

Mr. Mardfin: And both those are about 10 feet mauka of where the former bank was. Option 2 which is what you chose as the preferred alternative goes straight up and gets about 10 feet more yard for this property. Did the fact that the Option 2 gave you 10 feet more approximately yard have anything to do with the decision to change to decide on Option 2 as opposed to 1 and 3? Was it a factor?

Mr. Madema: Short answer no, but what you're looking at is the conceptual decision. I don't think ultimately it was constructed that way either. I mean you can see where this did not collapse this protruding area and the yard was more out there. The factors in choosing this particular solution were one, structural integrity, two, structural longevity, three, improvement in drainage and four it was the preferred alternative that we directed by the county to proceed with.

Mr. Mardfin: And you're testifying though that the fact that it got them 10 extra feet of backyard had zero impact on the choice.

Mr. Hedani: Commissioner Starr.

Mr. Starr: Yeah, I'd like to see as an alternative removal of those hardened structures, I believe it's a portion of the swimming pool and deck that is inside shoreline setback area.

Mr. Hedani: Any additional questions? Commissioner U'u. Hold on Bruce, Commissioner Shibuya.

Mr. Shibuya: No, Mr. U'u first.

Mr. Hedani: Commissioner U'u.

Mr. U'u: I just want to follow up on what some of the fellow commissioners brought up. I'm looking at the archaeological monitoring plan which was prepared in March of 2009, it was reviewed April 9, 2009 which is pretty impressive actually because I understand the permit process is long. The client contacts SCC April 13th to notify them that they are able to come and inspect the project. The next day he shows and it's 95% complete. That's the only problem I got with this project. That is a big problem for me. Granted it can be frustrating going through the process but it is still part of the process. So it shows that you guys was working on the project prior to you guys contacting SCS because no way you can do it in a day. I'm impressed that they showed up the next day first of all. If he showed up a month later I wouldn't have a gripe and that's normal for them you know, wow they show up the next day and it's 95% complete, I got a problem. It shows no respect to me what you guys did by doing it the next day. And I take that as an insult to the Hawaiians and that's insulting that you have a plan, a monitoring plan and you disregarded the plan and went ahead anyway. That's a big issue for me, so you going be expecting some answers. Hopefully I get some answers. And you know maybe it wasn't anything. That's the possibility. It could have had nothing there but now how I going know? How I going satisfy myself by accepting this now when it comes back in the SMA? Could have nothing there and I would have been fine. If he would have said nothing was found, next, to the next guy would have been the case for me.

Mr. Madema: I understand Commissioner and I appreciate the comment. I guess you know, I have to answer the only way I can answer is that this was not a matter of negligence or deliberate disregard on the part of the applicant but rather it was something that got lost in the process between the emergency permit, building permit. There was a disconnect and the trigger for the archaeological monitoring was not triggered, it was not set so the construction proceeded because they had the building permits. They had their SMA permit and as you see, you know, the monitor – we got the monitoring plan approved, right across my desk and I was like oh, called the archaeologist and he was out there the next day because it was you know, it was seen as a matter of this is an urgent issue. I'm sorry I don't have a better answer than that, but it was a procedural wires getting crossed in the permitting process. I guess whatever we can do to take that into more consideration through the ...(inaudible)...

Mr. U'u: That's all I'm asking.

Mr. Hedani: Commissioner Shibuya.

Mr. Shibuya: I am looking at the problem and seeing possible solutions. We talked about the problem of the water draining in that area. There was some mitigation being done. Then we talked about the problem about the erosion from below this ocean level and that's caused the wall to collapse. What other alternatives, you know, I'm not a surfer, so I'm leaning towards putting petrapods outside the – minimize the energy coming into shore. You have reefs there, that's fine, but if you put it outside of that, you will absorb or redirect that energy some place else. Okay, so

now next time you have a problem of high waves the waves would not be as high and will not be as strong and you would minimize the erosion problem and the destruction of the wall.

Mr. Hedani: Commissioner Mardfin.

Mr. Mardfin: Jason, I accept the things that you've said about when you were answering Commissioner U'u's question, but you said something I basically disagree. I'm going to follow up with a different question but you said it wasn't intentional to do this and you said it wasn't negligent I believe it was negligent whether it was intentional or not, I don't know, but it was – I would judge at least negligent not to have gone ahead with a study. But my question basically now is, State DLNR, Office of Conservation and Coastal Lands had a letter under Appendix C, Summary of Public and Agency Consultation, dated March 4th, and they have two items in here. Number 5 says, "future planning documents include a section on coastal hazards as it relate to the proposed activities. The discussion might include a description of historical events in special engineering design to adapt or accommodate extreme coastal hazards such as hurricane or tsunami inundation." Your response to that was "the draft application will include a discussion of coastal hazards." I'm not sure I saw that clearly in your draft EA.

The next Item No. 6 on the letter is "it may useful to briefly discuss the impact of the proposed activities on lateral public shoreline access at the base of the cliff," and you said, "a paved public shoreline access exists Hui— The impact to the proposed project on lateral public shoreline access will be further discussed and – it could have been there but I didn't see it, so I think both of those should be addressed in the final EA.

Mr. Hedani: Additional questions? Commissioner Starr?

Mr. Starr: Yes, I'd like to ask a – I'd like you to go on record to tell me whether during the course of this project any bones or other archaeological artifacts were unearthed or discovered and this is a serious matter. Can you go on record and tell me whether there were or there were not.

Mr. Madema: I understand. Personally to my knowledge, no. Paul.

Mr. Hedani: Mr. Weber.

Mr. Weber: Paul Weber again. I spent a considerable amount of time during the construction process as – carrying out my duties as observation of construction. I, in way qualified with respect to iwi, Hawaiian artifacts, bones, however, I observed nothing but soil and soil materials at any time during the course of the project.

Mr. Hedani: Paul, I have a question. In the inspection of the area there was reference to a cave, did you see any cave or any covered up cave or cemented in cave? What about the cave?

Mr. Weber: I did not Sir.

Mr. Hedani: You did not.

Mr. Weber: No cave.

Mr. Hedani: Commissioner Mardfin.

Mr. Mardfin: I don't think this is for Paul, though he might have a comment later. Jason, the time line of this, let me get this clear in my mind. This happened in December –

Mr. Madema: 2007.

Mr. Mardfin: 2007. And you got the building permit in?

Mr. Madema: February of 2009.

Mr. Mardfin: And what was done in this one year and three-month period?

Mr. Madema: Not much, hope and pray that the rest of thing doesn't collapse.

Mr. Mardfin: Was earth being –

Mr. Madema: I'm sorry, go ahead.

Mr. Mardfin: Was earth being eroded into the ocean?

Mr. Madema: I noticed some turbidity upon various site visits out there. Myself again, you know, I have a degree in Environmental Science, I'm not a soil scientist per se, but you know, you do notice this in this area because of the soil type. During that intervening time period what was going on is there were compliance items related to the SMA emergency permit that we were required to fulfill before the applicant was able to get the building permit. So that's why there was that length of time.

Mr. Mardfin: No, I understand that. I just wanted to be assured that no construction was taking place before you actually got the building permit.

Mr. Madema: None at all, the only thing we did was, again, in compliance with the emergency permit, the area was roped off and then there were some gas lines that had gone to tiki torches previously that were removed and then there were some irrigation lines and electrical conduit that was removed. You may have seen that in some of those photos of the collapse, other than that nothing.

Mr. Mardfin: Okay, thank you.

Mr. Hedani: Any additional questions? Commissioner Shibuya.

Mr. Shibuya: This is for the staff. Clayton or anybody else can tell me when was this archaeological review of any excavation or any soils that were laid bare, when was this a requirement to have SHPD or the burial ground investigation for inspection be done? Was it at that time? Was it in

effect at that time? That whenever you excavated or you have a plan to do some large excavation that you would have an observer.

Mr. Hedani: Clayton?

Mr. Yoshida: Commissioner Shibuya, I don't know if in the context of the building permit application if it was reviewed by SHPD and they provided their comments.

Mr. Hedani: Clayton, a little louder into the mike.

Mr. Shibuya: I was looking in terms of was there a requirement for such a inspection? Anytime you have exposed dirt or you're doing some excavation that you would need to have some kind of inspection by SHPD or the Burial Council?

Mr. Yoshida: Typically Commissioner Shibuya SHPD would determine whether there should be some kind of monitor, archaeological monitor there while they do excavation or not. They would comment relative to the plans that were presented.

Mr. Hedani: Any additional questions? Commissioner Mardfin.

Mr. Mardfin: I want to ask Jason something but he's busy right now. Maybe I'll ask Kurt since Jason seems to be busy. Was this house insured?

Mr. Wollenhaupt: I don't know about the insurance on the house.

Mr. Hedani: Kurt into the microphone.

Mr. Wollenhaupt: I'm not aware of an insurance policy on the house. Maybe the owner's representative might be a good one to ask.

Mr. Mardfin: Okay.

Mr. John Edwards: Hi, I'm John Edwards. I'm the owner's rep and architect. I haven't seen the insurance policy. I'm certain that the house is insured.

Mr. Mardfin: So had this event been even more catastrophic, had the house collapsed, they'd have been covered?

Mr. Edwards: Yes.

Mr. Mardfin: There's another small question. This was listed on the application as \$644,000 project but since this was done late is that the actual cost?

Mr. Edwards: Yeah, that is the –

Mr. Mardfin: That's the actual. You don't have to estimate it once you've paid for it, right?

Mr. Edwards: Right.

Mr. Hedani: Additional questions? Commissioner Starr.

Mr. Starr: Do the applicants live in this house?

Mr. Edwards: No, they don't.

Mr. Starr: Do they live on Maui?

Mr. Edwards: She has lived in Maui. She used to live in Maui for a long period of time. She lives in San Francisco ...(inaudible)... is here primary residence. She's planning on trying to get this covered. She'd actually like many people I have to say would like to come back to Maui and live ...(inaudible)...

Mr. Starr: Okay, thank you. As part of the final document or the next document I would like the preparer to contact all of the contractors who worked on this project and have them definitively say whether any bones or other archaeological items were found by them. I would like them to be on record because I, too, as Commissioner U'u states find this kind of fishy that construction was ongoing and all of a sudden they call the archaeological guys to rush in on the next day. Usually that happens when someone finds some bones. So in case it ends up being you know, something happens later, I would like every contractor who worked on this to make an assertion as to whether they found any bones or other archaeological items on this project.

Mr. Hedani: Mr. Tagorda.

Mr. Tagorda: I don't know if you can answer this for me. I'm looking at page 12, on a shoreline setback determination. I have this computation here would you please educate me how you folks arrived to this 25 feet too. I know you add all the areas divide it by three, come up to 25 feet too. But would you educate me a little bit.

Mr. Kirk Tanaka: Good morning again Members of the Maui Planning Commission this is Kirk Tanaka. There is a way to determine the shoreline setback requirement as I believe it's contained in the Maui Planning Commission Rules. Clayton can you?

Mr. Tagorda: Yes, I have it here.

Mr. Tanaka: Can you clarify for me?

Mr. Yoshida: Yes, Commissioner Tagorda, under the shoreline area rules of the Maui Planning Commission and we'll have training like Mr. Giroux said at your first meeting in April. There's two ways of determining where the shoreline setback line is. One is through the average lot depth method where you take the boundary depth and then the boundary from the mid point and then you add that together and you divide by three. That's up to 150 feet. 25% of that, you take 25% of that and that's a maximum of a 150 feet.

The other method is using the coastal erosion rate map and determining say for 50 years what would be the erosion and add 25 feet to that and that would establish your line. So it would be the more conservative, the greater of the two would be where the shoreline setback line is.

Mr. Tagorda: The reason I ask that is I like make up my – before I make up my decision I might even recommend a 25 feet too is not a good setback rule, setback for this project because it says right here the pool and the lanai encroach slightly into the current shoreline setback. So there is an admission here that it was encroaching.

Mr. Tanaka: My understanding is that the pool was legally permitted under the previous – what the shoreline setback determination was back when it was permitted. But that's my understanding.

Mr. Tagorda: Can I continue Mr. Chair?

Mr. Hedani: Commissioner Tagorda, what they're doing I think in this particular case is because the boundary line had shifted due to the erosion they're requesting a variance to the shoreline setback because the line moved and now they're not in compliance so they're asking for permission to allow that within the setback.

Mr. Tagorda: I agree, I understand Mr. Chair, but I might recommend to the Planning Department Planning Director to go to a maximum of a 150 feet as per our ordinance, 25 to 150-foot max. Can they comply with that recommendation?

Mr. Hedani: No, it would be on the other side of the house. Commissioner Mardfin.

Mr. Mardfin: I want to get a clarification because what you said conflicts with what I thought the situation was Mr. Chairman. I thought it wasn't – the reason it was encroaching wasn't because the shoreline – the property line came back – I thought it was encroaching because the rules had changed.

Mr. Madema: Both actually, it's a combination of the two. Either way, if I may just for clarification I mean, the house is kind of ancillary to what the issue is here as I see it, as we see it, the issue is the wall which indisputably is within the shoreline setback. Whether the shoreline setback is 25 feet, whether the shoreline setback is 150 feet we're still in it. The same thing with the under pool...(inaudible)... they're in what is now the shoreline setback and therefore we have to comply with the rules of the shoreline setback and the shoreline setback variance. To some extent, you know, in terms in the interest of being correct it's important to provide a correction computation of the setback, but regardless of what it is, you know –

Mr. Mardfin: And I would argue you need to have a good – for the final EA since this is a question that's being asked you need to have a really clear map of where that shoreline setback is and – you said slightly, I don't know what slightly means. I don't know if that means two inches or that means five feet.

Mr. Madema: It should be –

Mr. Mardfin: Is it in there?

Mr. Madema: It should be in there. Short answer is, it's a couple of feet, it's a few feet because – basically you know, those jagged kind of ...(inaudible)... edges the pool structure –

Mr. Mardfin: I want to ask another question that was alluded to, if the owners aren't living there now who does the – does anybody live there or is it an empty structure?

Mr. Madema: Well the owner lives there part of the time.

Mr. Mardfin: Is it rented out in any fashion?

Mr. Madema: I don't believe so.

Mr. Edwards: The owner does have a, you know, maintenance management company but she doesn't rent it out. It's only friends and family stay there.

Mr. Mardfin: No short term rentals of any sort?

Mr. Edwards: No, not at all.

Mr. Mardfin: And no long term rentals?

Mr. Edwards: No.

Mr. Hedani: Commissioner Starr.

Mr. Starr: In the next version of this document I'd like to see the various mosaic maps that are available on the ...(inaudible)...site. There's the 49, 97, 75, 87, 88 and so on maps and I actually have – I have them on my computer if any commissioners would like to see them. There was a sandy beach in front of this property at least up till 1988. There was a really nice beach there even though Kahana Sunset had been built well before that.

Mr. Hedani: Any additional questions? Commissioner Hiranaga.

Mr. Hiranaga: This may be a question for Kurt. Just kind of wondering between this situation and the situation that's occurring in Kuau where they also have a collapse of a cliff face. They did not come in for a – excuse me, may we have order? Thank you.

Mr. Hedani: Commissioner Hiranaga.

Mr. Hiranaga: They have a collapsing cliff face in Kuau but they did not come in for an emergency shoreline. –

Mr. Wollenhaupt: There was a special management area emergency permit and that's what this – long before I got to Hawaii that's what the department granted. Now I'm not sure of the property

– is that the one Jim Buika is working on?

Mr. Hiranaga: Near the blue tile roof.

Mr. Wollenhaupt: Oh, right, right. I did go out there with him. Again, I don't probably want to comment necessarily because I'm not on that project but I think that most of those issues are outside of their property line that's what's becoming a bit more difficult with that project. This all occurred mauka of the shoreline line and I think that project is occurring both makai and mauka on the shoreline and so now you get lots of departments involved. And I think Jim will be here this afternoon because he's going to talking about Kahana Sunset on another SMA emergency permit.

Mr. Hiranaga: Actually he's here but that's okay, I don't want to digress.

Mr. Hedani: Kurt, in your Appendix H on the SMA or on the SMA report there's a couple of photographs that show a sandy beach and it's dated in April of '09 the question that I have is do you have any photographs that current depict the condition of that area after the wall was built or the existing conditions as they occur today?

Mr. Wollenhaupt: You're addressing to me?

Mr. Hedani: Anybody.

Mr. Wollenhaupt: All the photographs that I have that I was given the file from the past they're all in this booklet so I don't have any additional photographs in our files. Now the consultant may have access to –

Mr. Hedani: Okay, maybe I can ask the question in a different way then. If you look at Appendix H it shows some sand on the edge of the property in April of '09 and I was wondering if we can provide or if the applicant can provide photographs of the current conditions or as current as you can get on after the improvements have been put in place.

Mr. Madema: Jason Madema of Chris Hart and Partners, we will Mr. Chair.

Mr. Hedani: Thank you. Commissioner Mardfin.

Mr. Mardfin: I just wanted to, I know we've been giving you guys a hard time today but I wanted to say one really positive thing, this cultural impact statement by Jill Engledow, I'm impressed by it I think it has a lot of very valuable information and I think she did a very good job in comparison with other ones I've seen from other places so I commend you on using her. She did a good job at least on this one.

Mr. Madema: We've been very happy with her. And incidently Commissioner Mardfin, Figure 9 of the EA, the conceptual landscape site plan does show the shoreline setback line and you'll see that there's a basically a couple of points of the full structure –

Mr. Hedani: Commissioner Shibuya.

Mr. Mardfin: Thank you.

Mr. Shibuya: I'm not trying to be argumentative or anything, I'm just going to read on page 25, I don't know if you mentioned this or not the West Maui Community Plan has a goal for the environment, a clean and attractive physical, natural and marine environment in which manmade developments on or alterations to the natural and marine environment are based on sound environmental and ecological practices and important scenic and open space resources are preserved and protected for public use and enjoyment. Under the objectives and policies, Policy No. 2, "prohibit the construction of vertical seawalls and revetments except as may be permitted by rules adopted by the Maui Planning Commission governing the issuance of shoreline area management SMA emergency permits and encourage beach nourishment by building dunes and adding sand as a sustainable alternative." I just wanted to see how we can work this out. Thank you.

Mr. Hedani: Any additional questions? Commissioner Starr.

Mr. Starr: Yeah, there should be comment regarding lateral shoreline access and the effect of this hardening on lateral shoreline access.

Mr. Hedani: Commissioner Mardfin.

Mr. Mardfin: Yeah, that's sort of what I had mentioned earlier. I have another one. On page 31 of Section 5, project assessment report, it refers to coastal hazards and near the bottom of that section it says, "since the subject area is prone to storm wave action, the project's impact on a potential evacuation there should be considered." I would add another concern, since the subject area is prone to storm wave action I think you need to deal with how this will effect nearby beaches. I know you said that there's no beach directly in front but if by building a seawall you're diverting as Commissioner Shibuya said you're diverting energy. I think you need to examine how this is going to effect surrounding beaches.

Mr. Madema: Okay.

Mr. Mardfin: And reefs if there are any.

Mr. Hedani: Any additional questions? Commissioner Starr.

Mr. Starr: Yeah, if someone wants to visit what's left of the shoreline how do they do that and is that in this document, it should be.

Mr. Madema: Well, you can't really get to the beach per se from the property very easily. There's a ladder, there's a cliff, there's a public shoreline access at Hui Road E which is south of the project and you can basically get a view of the entire bay.

Mr. Starr: That should be in the document about how the shoreline can be accessed.

Mr. Madema: I believe it is but I'll take a better look.

Mr. Hedani: That's the same question that I had.

Mr. Starr: Yeah, can you show us if it's in here?

Mr. Hedani: Yeah, if you could just for the final document from my perspective if you could identify where the closest beach accesses are and identify how far away those are. I noted in one of the comments that was provided in the report that lateral access along the shoreline was not impeded according to I think it was DLNR that made that comment>

Mr. Madema: It's not impeded, in other words this project hasn't changed the existing condition. There's not a whole lot of if you go along the whole beach again I mean it's intermittent, basically rocky shoreline and it's sort of a dynamic beach environment. You'll have a little bit come in and a little go out. It's basically a wet beach so at various different times –

Mr. Hedani: If you look at your Appendix B, Jason, if you could also provide in the future, also provide current photographs of what those perspectives look like after the wall was put in place.

Mr. Madema: Sure.

Mr. Hedani: I think your Appendix B shows June of 2009 as the date of the photographs that were taken.

Mr. Madema: Okay.

Mr. Hedani: Commissioner Mardfin.

Mr. Mardfin: I mentioned it earlier but I'll repeat. I think one of the alternatives you need to at least lay out here is the alternative of removing the pool. I know you didn't do that, you probably aren't going to do it at this point but you ought to at least consider – explain why that wasn't considered as a possibility if you're not going to consider it.

Mr. Hedani: Commissioner Starr.

Mr. Starr: Yeah, just as a final thing you know, I have concerns and want more information in a number of areas regarding archaeological and the fact that the a beach has been lost I do want to say the actual nuts and bolts engineering I think on this is really good. I do want to compliment the nuts and bolts engineering on it but you know, I'd be happy to see the other areas addressed.

Mr. Hedani: Any additional questions or comments on the statement? Commissioner Mardfin.

Mr. Mardfin: Yeah, I'd just like to echo what Commissioner said. I'm not generally in favor of beach hardening. Shore hardening. I think they're in general a bad thing but this does look pretty good and it looks like it's actually helped the ocean processes and the reefs or whatever is out there and so I think – I'm not horribly offended by what was happening. We have concerns, but you did a good job of engineering it.

Mr. Hedani: Any additional questions or comments? One comment that I had Jason was I thought that the wall was executed in a very attractive manner when viewed from the ocean side. It's not, you know just a bare concrete revetment basically and it was adequately treated from my perspective. I also appreciate the fact that the prevention of clay going into the bay and effecting the ocean quality of the water was a positive step and I'd also like to commend the applicants for going through the gyrations of producing something this thick and this expensive for government to review and approve a project that occurred over a year ago and that government in itself took over a year to respond in some cases while an emergency and a safety condition existed that could have jeopardized the public safety. I appreciate the work that they went through. Commissioner Mardfin.

Mr. Mardfin: Wasn't going to do this till we're in the discussion phase, but let me, in light of some of the things you said I want to express this, this whole thing strikes me in the nature of ready, fire, aim. I understand why it was done because of the emergency but it seems to me that this almost a farce meeting like this because the project's done. I mean, what if we said you know tear up the house or something, it's not going to happen, it's done, it's done. So it's a little strange having it come before us and we be the accepting authority but I presume that's legally required which is why it's happening.

Mr. Hedani: Any additional comments? Chris.

Mr. Christopher Hart: Thank you Mr. Chair. Chris Hart, Chris Hart and Partners. I just like to say that you know I appreciate the commission's frustration with this and also appreciate the comments that have just been made in summation. You know the fact the subdivision that created the lots was done many, many years ago probably back in the – before the 1950's and the fact is that the house was built in accordance with the county zoning and in compliance with the shoreline setback law as it's evolved over time and our Maui County Shoreline Setback Rules and the actual creation in 1976 of the Coastal Zone Management Act, the interim Coastal Zone Management Act this whole process has evolved and you know, when a person has made an investment and suffers a catastrophic event like what occurred, you know, it is a challenge for consultants like us to basically look at the project and say where do we go from here, how do we basically bring about some sort of rational solution to this project or this problem and you know, I credit my staff and all the people that have been involved as consultants in doing a very good job with this challenging project and I appreciate your positive comments this morning. Thank you.

Mr. Hedani: Commissioner Mardfin.

Mr. Mardfin: Thank you Chris. I think – I appreciate what you've done and I take your point that if somebody's already invested – if a house is already built and it was in accordance with the laws that existed at the particular time that's one thing. I think however maybe the Planning Department and certainly the planning commission should consider going forward whether, I'm presuming this got an SMA exempt at the time that it was done –

Mr. Hart: Can I just say that the house was built in the year 2000. In 2001 the State Legislature created the SMA assessment process. Up until 2000, up until 2001 one single family residence not part of a larger development was exempt and there was no SMA assessment process. You have

to understand that.

Mr. Mardfin: Yeah, okay.

Mr. Hart: That how I talked about in terms of the evolution of laws.

Mr. Mardfin: Yeah, and my point is going forward on places that don't already have an existing house if it appears as if an SMA – if it appears as if a structure might have difficulty in the future because of ocean processes we ought to be very careful about giving SMA exempts when – because we don't want to – this building was already built in the '50's or the start of it was built in the '50's, we don't want to be faced – I don't want the commission 20 years from now to oh we messed up, we let people get SMA exempts for structures that then become subject to catastrophic failure.

Mr. Hart: I think in the evolution of – you know, the administration again, I think each year the Planning Department is becoming more conservative with regards to residences built on shoreline properties and that you'll probably see that most of them will require SMA major permits.

Mr. Mardfin: Thank you. I hope so.

Mr. Hedani: Additional comments? Commissioner Starr?

Mr. Starr: Yeah, Chris while you're up here you know, congratulating the guys on their work could you explain to me why you didn't go out to the archaeologist till construction was already ongoing?

Mr. Hart: I would like to clarify with Clayton, I thought you know Clayton that there was a review by SHPD in the context of the issuance of the building permit. I think that –

Mr. Yoshida: Again, Mr. Miyamoto is here and he can speak to building permits.

Mr. Hart: I mean, when a building permit is issued there is a review by –

Mr. Yoshida: That's what I said.

Mr. Hart: Yes, that's what I thought. And you know, so from that perspective you know, I think there was an understanding that Department of Land and Natural Resources had you know at least been aware of the project.

Mr. Hedani: Any additional questions? Commissioner Starr.

Mr. Starr: Yeah so then why did you call the archaeologist if it wasn't necessary but only after you're ready – you had already concreted up where the bones might have been?

Mr. Hedani: Your name for the record.

Mr. Madema: Thank you Mr. Chair, Jason Madema, Chris Hart and Partners. We called the

archaeologist because I got an approved monitoring plan from SHPD and found out that construction or rather excavation had been initiated and so obviously it was necessary to get them out there to look at it pronto. My understanding is that it was possibly part of the grading plan check. There was glitch associated with the SMA emergency permit and the building permit or the grading permit. It was a grading permit check and because that do not occur, was not required to occur as part of the – you know to get from the SMA emergency phase to building permit phase the trigger was not triggered. We had already initiated the process. We already had a pedestrian survey done of the site by a licensed archaeologist had already initiated the process with them preparing a monitoring plan, the monitoring plan with SHPD and was approved. The survey of the soil, you know, the excavated soil by the archaeologist that it occur, that letter was sent to SHPD, was reviewed SHPD did not have any comment on it. It's certainly not an ideal situation. But there is a sort of a mechanism ...(inaudible)... you know, there's a reason why that happened.

Mr. Hedani: Mike did you have any comment to offer on this? Regarding archaeological assessments for comments for notice to SHPD – the building permit process.

Mr. Mike Miyamoto: Thank you Mr. Chair. In checking with staff, I have a listing of all the permits that are inventoried for this process. This is not just this particular event but also the buildings and everything else and it does show that we went through the process, we followed our procedures in getting these permits approved and reviewed and approved and it does look like it was approved and issued in August I guess. It was applied for in August and issued in February of '09. So it went through the process, the check list, check off.

Mr. Starr: The construction –

Mr. Hedani: Commissioner Starr.

Mr. Starr: The construction was done in '08, in April of '08.

Mr. Miyamoto: I'm looking at the wrong permit number.

Mr. Madema: Construction was done in 2009.

Mr. Miyamoto: 2009 I think it says because it was over a year, year and three months after the event which was in December of 2007. So a year and three months would put it probably in around February of –

Mr. Starr: Yeah, okay.

Mr. Hedani: Any additional questions or comments? Okay, seeing none, thank you very much.

Mr. Mardfin: Mr. Chairman.

Mr. Hedani: Commissioner Mardfin.

Mr. Mardfin: We're going to presumably. They've gotten our comments. Do we have to officially

agree to be the accepting agency?

Mr. Hedani: The commission may take action to be the accepting authority of the environmental assessment and provide its comments on the draft environmental assessment.

Mr. Mardfin: And the second related question is, when the final comes back are they going to provide the whole thing or are they just going to provide additional – I'm trying to decide whether to save this or to dump it because I'm going to get a new one is where I am. I'm trying to figure out what to do.

Mr. Hedani: You should be getting a final environmental assessment once it's gone through the –

Mr. Mardfin: So we'll get a whole –

Mr. Matt Slepín: This is Matt Slepín from Chris Hart and Partners. We've done it both ways and usually we've sort of listened to whatever fashion the commission preferred to get it. Our preference is to produce a whole new document so that you're not shuffling pages in and out.

Mr. Mardfin: Okay.

Mr. Slepín: So that's how I would do it unless you have a preference otherwise.

Mr. Mardfin: So I can dump this one?

Mr. Slepín: You can do whatever, you want to mulch it I suppose.

Mr. Hedani: You can dump it or you can return it them so they can update it and recycle it. Commissioners what's your pleasure? Commissioner Mardfin. I'm sorry, are there any members of the public that would like to offer testimony on this item? If so, please step to the microphone. Seeing none, public testimony is closed. Commissioner Mardfin.

Mr. Mardfin: Having given comments on this, I move that we agree to become the accepting the authority for the final EA.

Mr. Hedani: Is there a second?

Mr. Shibuya: Second.

Mr. Hedani: Moved by Commissioner Mardfin, seconded by Commissioner Shibuya that the commission be the accepting authority of the environmental assessment. Additional comments Commissioner Starr.

Mr. Starr: Yeah, I'm not sure if it's for Mr. Giroux or Mr. Yoshida. I mean aren't we automatically the accepting agency on this?

Mr. Yoshida: I think typically if it's a private action and the trigger is the shoreline setback, work within the shoreline setback that the commission – that would be the EA trigger and the commission is the authority on the shoreline setback variance. But I guess formally they would declare themselves to be the accepting authority.

Mr. Hedani: Any discussion? Ready for the question? All those in favor signify by saying aye. Opposed nay.

It was moved by Mr. Mardfin, seconded by Mr. Tagorda, then

VOTED: To be the accepting authority of the Environmental Assessment. The commission provided their comments on the Draft Environmental Assessment.
(Assenting - W. Mardfin, O. Tagorda, K. Hiranaga, B. U'u, D. Domingo, W. Shibuya, J. Starr)
(Excused - L. Sablas)

Mr. Hedani: Carried. Thank you. Thank you very much for the applicant and for your patience in providing us with the information on our information request. Lets go ahead and take a 10-minute recess.

A recess was called at 10:56 a.m., and the meeting was reconvened at 11:08 a.m.

D. APPROVAL OF ACTION MINUTES OF THE FEBRUARY 9, 2010 MEETING

Mr. Hedani: We're on Item D, approval of action minutes of the February 9, 2010 meeting. Are there any additions, corrections to the minutes? If not, then the minutes will stand accepted as circulated. Director's Report, Clayton.

E. DIRECTOR'S REPORT

Mr. Yoshida: Thank you Mr. Chair, under Item 1, we have the Planning Director notifying the commission pursuant to Section 12-202-17(e) of your SMA rules of his intent to issue time extensions on the following requests. The first one is from Ke Alii Villas Inc., for a two-year time extension on the period to complete construction of the Ke Alii Villas per the condition of the SMA. This permit for property situated at 2385 South Kihei Road, TMK 3-9-020: 020, Kihei, Island of Maui. The commission is asked to acknowledge receipt of the request and they may decide whether to waive its review or review the time extension request at a future meeting and the staff planner is Gina Flammer.

- 1. Planning Director notifying the Maui Planning Commission pursuant to Section 12-202-17(e) of the Maui Planning Commission's SMA Rules of his intent to issue time extensions on the following requests:**

- a. **KE ALII VILLAS, INC. requesting a 2-year time extension on the period to complete construction of the Ke Alii Villas per the condition of the Special Management Area Use Permit for property situated at 2385 South Kihei Road, TMK: 3-9-020: 020, Kihei, Island of Maui. (SM1 2002/0023) (G. Flammer)**

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

Mr. Hiranaga: I have a question could staff or the applicant brief us on the drainage plan.

Ms. Gina Flammer: I'm going to tell you what's in the staff report and then have Karlynn come up and explain the system. The pre/post development was 17.5 cubic feet per second. The post was 44.73. I'll let Karlynn fill in the details from there.

Ms. Karlynn Fukuda: Thank you Commissioner Hiranaga. Karlynn Fukuda of Munekiyo and Hiraga, Inc. There was a 1.33 acre foot detention basin that was constructed on the site to retain the increase of the runoff that was generated by the post development conditions.

Mr. Hiranaga: Is the delta 37?

Ms. Fukuda: It's 27.2 cfs.

Mr. Hiranaga: Oh, pardon my math.

Mr. Hedani: Commissioner Hiranaga.

Mr. Hiranaga: Would the applicant be able to increase their retention to retain the predevelopment runoff?

Ms. Fukuda: The basin is already constructed and I believe there are 11 buildings that are the total build out of the project and nine of the 11 buildings have been completed. One is currently in construction – I'm sorry that's not right. I'm not doing math right, right now. So I think there are 11 total buildings and are three to be constructed. So that means that eight have been constructed. One is currently under construction. As I mentioned, the 1.33 acre basin has been constructed already as well as the drainage improvements as part of the overall master development of the project.

In speaking with the civil engineer there are topographical concerns with the potential of expanding the basin because of the site conditions. So it would be a little difficult to expand the basin at this point.

Mr. Hedani: Commissioner Hiranaga.

Mr. Hiranaga: A follow up. How about deepening it? It's probably grassed right?

Ms. Fukuda: Yes, I believe it is a grassed basin. I, you know, I can't say for sure if it's possible to

deepen it whether there are water table concerns or not, I'm not sure that would be something that we would need to have the civil engineer take a look at.

Mr. Hiranaga: Who's the CE?

Ms. Fukuda: It's Warren Unemori Engineering, Darren Unemori.

Mr. Hiranaga: He's not available obviously.

Ms. Fukuda: No, not today.

Mr. Hedani: Commissioner Mardfin.

Mr. Mardfin: This is more a technical issue. I've got a couple – three concerns but a technical issue. In the November 9th letter it says a copy of the SMA use permit approval letter dated September 16, 2004 is attached. It wasn't attached to my copy. Did that go to other people and not the commissioners?

Ms. Fukuda: Just to I guess provide further clarification, this was the document that we filed with the document and within that there was exhibits which included the September 16, 2004 approval letter.

Mr. Mardfin: You got it there? Is it long?

Ms. Fukuda: It's eight pages long.

Mr. Mardfin: I'm going to come up and read that in a minute, but let me get to my other two things. On page 2 of your November 9th, of your November 9th letter to the director you requested a three-year I gather from later reading that you're really asking for a two-year time extension.

Ms. Fukuda: That's correct.

Mr. Mardfin: And it says, you give the following reasons are offered as justification for the time extension request. My reading of it is you haven't given any reasons, what you've done is said why they want it not why it's delayed. Can you tell me why it's not completed?

Ms. Fukuda: It due to market conditions that the entire project wasn't completed within the five-year time frame. There was a slow down at a point in the construction of the project, for both projects actually where the demand was not there. It has since picked up and that's why the applicant is continuing to construct and ideally would like to complete the project and have it just be a complete you know 144 units.

Mr. Mardfin: When did they slow down?

Ms. Fukuda: I am not certain. I have Chris Lau from Towne Development, the applicant for the project.

Mr. Christopher Lau: The slow down was approximately 2007, at that point in time I believe we had four or five buildings under construction that was not sold we completed construction and worked our way through the sales of those units. And we've been able to sell those units. As Karlynn mentioned the three buildings remain to be completed and we have 33 units and one building is under construction. We're hoping to start the other two buildings this summer.

Mr. Mardfin: So if it's 2007 it wasn't because of the economic, the national economic downturn.

Mr. Lau: Well, what I'm saying is that the buildings were in construction and then we just didn't have sales at that point.

Mr. Mardfin: So it wasn't national economic slowdown or lack of capital, it was you weren't selling them.

Mr. Lau: Exactly.

Mr. Hedani: Commissioner Starr.

Mr. Starr: This was I believe before a lot of us were on the commission when this went through and I notice there is an increase in runoff. Where does it go and how does it cross South Kihei Road and is there going to be any concern with the culverts and does it just get dumped across the beach and into the shoreline. Maybe Mr. Miyamoto can help us.

Mr. Hedani: Mike.

Mr. Mike Miyamoto: Thank you Mr. Chair. In looking at the site grading plan it looks like, it is the adjacent Ke Alii Alanui Roadway that has a county approved drainage system in it and there is a county parking lot on the corner. I would assume that that's the – it would continue on into the county system and then go out to the system that we have for outfall into the ocean at that point.

Mr. Hedani: Commissioner Starr.

Mr. Starr: Okay, I don't like it but honestly I don't know what we can do it about it at this point. I would tend to leave it with the director.

Mr. Hedani: I think the question before the commission now is whether or not you want to review the extension or whether you want to waive. That's the only question before the commission.

Mr. Starr: After all the questions and the public I'd be willing to make a motion.

Mr. Hedani: Commissioner Hiranaga.

Mr. Hiranaga: Karlynn since you have a applicant's representative maybe he could answer my questions since you are not able to.

Mr. Hedani: Mr. Lau, if you could just state your name for the record please?

Mr. Lau: It's Christopher Lau.

Mr. Hiranaga: You want me to repeat the question?

Mr. Lau: Yes, please.

Mr. Hiranaga: The predevelopment surface runoff of 17.5 cfs is the applicant willing to retain that on site?

Mr. Lau: Mr. Hiranaga. I really don't know. I'm not qualified to answer that question. We relied on Unemori Engineering to design the drainage system to meet with the county's requirements. My understanding is that they have done so. As far as whether we could do more I don't know.

Mr. Hiranaga: You realize this project lays mauka Kamaole 1 Beach Park.

Mr. Lau: Yes.

Mr. Hedani: Commissioner Mardfin.

Mr. Mardfin: Probably Karlynn this is probably for you. Your third reason, it's not a reason, the third comment under time extension request. The applicant is in substantial compliance with all conditions. Substantial doesn't mean all, what do you mean by substantial and what is not in compliance.

Ms. Fukuda: Well, I guess it just means that some of the conditions haven't been completed yet because construction hasn't been completed. For example, one of the conditions of the SMA approval was that the applicant pay for and construction the portion of the north-south collector road and so they did the environmental assessment, some of the members on this commission may have been present when the SMA for that approval for the construction of the road came before the commission, that got approval and a portion of that north-south collector road has been constructed but in speaking with Mr. Lau and the Department of Public Works it's our understanding that there are three portions of that road because it would stretch from Ke Alii Alanui all the way to Keonekai Road. There are three portions that are not owned by the applicant and the county has proceeded with condemnation action to get the right of ways to finish construction of that roadway. In the meantime, the applicant has posted a bond for the construction of the improvements and upon receipt of the lands in order to complete the road, Towne will complete the north-south collector road.

Mr. Mardfin: So for the purposes of everybody else, the condition is – should the SMA permit not be approved for the north-south collector road the applicant shall then have no further obligation but that didn't happen since the SMA permit was approved.

Ms. Fukuda: Correct.

Mr. Mardfin: Said north-south collector road shall be constructed prior to issuance of the first certificate of occupancy unless the improvements are bonded by the applicant. So they've bonded

it.

Ms. Fukuda: Correct.

Mr. Mardfin: So that makes them in compliance with that since they've already bonded it.

Ms. Fukuda: That's true. I wasn't sure if –

Mr. Mardfin: Technically.

Ms. Fukuda: Technically it's true. I guess you know, I wasn't sure if anyone would think that the construction of the road had to be completed in order to be in full compliance.

Mr. Mardfin: Well, it gives you ...(inaudible)...

Mr. Hedani: Any additional questions? Commissioner Shibuya.

Mr. Shibuya: This question is for Karlynn. Can you tell me Karlynn what changes have occurred within the special management area since the granting of the permit.

Ms. Fukuda: It's our opinion that there hasn't been changes in the special management area in the vicinity of this project since the permit was approved. I believe I noted that as far as residential projects in the area there was only one to our knowledge that was under construction and that's the Kai Nani Village. It's actually a mixed use residential project. But other than that, I don't know if the department has further information but I don't believe that there are other residential projects that have been constructed.

Mr. Hedani: Any additional questions? If not, what's your pleasure? Commissioner Starr.

Mr. Starr: As I said, I don't really like that it's sending untreated runoff right across one of our best beaches. At the same time, I don't really think it's fair to go and change it after the thing is mostly built on an SMA that was approved by a previous commission. So I – frankly I'm going to make a motion to waive our review of it and leave it up to the director's wisdom.

Mr. Hedani: Motion by Commissioner Starr. Is there a second?

Mr. Tagorda: I second.

Mr. Hedani: Seconded by Commissioner Tagorda. Discussion? Commissioner Hiranaga.

Mr. Hiranaga: I'll be voting against the motion. It's not that I would have required them to increase the retention but the fact that they did not have to me an adequate response by failure to having their consultants available to explain the drainage plan, explain the challenges of increasing the retention I feel is not an adequate answer for me, so therefore I'll be voting against the motion. And basically if this motion fails and there's a motion for review doesn't mean we're doing anything to the project, we're just bringing it back for review. So I feel that there have been past developers

who have come before us with extensions and I think the majority of them have agreed to increase the retention and just a failure to have an answer is to me is not a adequate justification so I'll be voting against the motion.

Mr. Hedani: Additional discussion? Commissioner Mardfin.

Mr. Mardfin: I'm just curious, did the motion include the acknowledging receipt of the request or is that just sort of implied because technically we're being asked to acknowledge receipt and to – direct motion was to waive review, is acknowledging receipt included in that?

Mr. Hedani: I would assume so. Commissioner Starr.

Mr. Starr: Yeah, I would assume it did and also you know, I have a lot of sympathy for what Commissioner Hiranaga just stated and I'm kind of half way leaning that way myself if there's other support for Commissioner Hiranaga's position I would be willing to go that way as well though. So I'm kind of on the fence here.

Mr. Hedani: Any further discussion? Commissioner Shibuya.

Mr. Shibuya: I just want to go on record that this is our kuleana and this commission has a responsibility to review for SMA elements and I think that we'd be remiss if we did not do this. I'm not going to throw it over the fence to the director. I will do it if given that chance. Thank you.

Mr. Hedani: Any further discussion? Commissioner Mardfin.

Mr. Mardfin: Given the way this discussion is now gone, I am tempted to vote this motion down if I was reasonably convinced that the following motion would not be to accept it but to defer it to give the applicants an opportunity to get their engineer in here. At that point we could waive review and give it – if we were satisfied with what they said we could waive review and give it to the director. So I guess in light of the discussion I'll vote against the main motion and hope that there's a motion to defer.

Mr. Hedani: Karlynn.

Ms. Fukuda: I just wanted to add clarification that there were filtration measures that were installed into the drainage system similar to what's now become a standard comment for the commission, but to separate the petroleum products and other contaminants so that that's not unfiltered drainage. So I just wanted to clarify that for the commission.

Mr. Hedani: Any additional discussion? Commissioner Hiranaga.

Mr. Hiranaga: From a procedural perspective, I'm not opposed if this motion fails to defer it to the end of this – to the end of the agenda of this meeting to provide opportunity for the applicant to request his consultant's presence.

Mr. Hedani: Karlynn, will your consultants be able to be here say this afternoon?

Ms. Fukuda: I would need to call and check and make sure. We'd be happy to have that deferred to the end of the meeting and see if that's possible.

Mr. Hedani: Thank you. Any further discussion? Motion on the floor is to waive review, acknowledge receipt of the request and to waive review. All those in favor, signify by raising your hand. Opposed same sign.

It was moved by Mr. Starr, seconded by Mr. Tagorda, and

**The motion to Acknowledge Receipt of the Request and to Waive Review was Lost.
(Assenting - O. Tagorda, D. Domingo)
(Dissenting - K. Hiranaga, B. U'u, W. Mardfin, W. Shibuya, J. Starr)
(Excused - L. Sablas)**

Mr. Hedani: Motion is lost. Commissioner Mardfin.

Mr. Mardfin: I move to defer this action until we can hear from the consultant be that the end of today's meeting or at some subsequent meeting.

Mr. Starr: Second.

Mr. Hedani: Moved by Commissioner Mardfin, seconded by Commissioner Starr to defer the item till either the end of the meeting or whenever the consultants are available. Any further discussion? Would this be for both items A and B or just A?

Mr. Mardfin: We're dealing with Item A. I'll make a similar motion for Item B.

Mr. Hedani: Okay, all those in favor signify by raising your hand. Opposed same sign.

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

**VOTED: To Defer the Matter to Either the End of the Meeting or to When the
Consultants are Available in the Future.
(Assenting - W. Mardfin, J. Starr, K. Hiranaga, B. U'u, D. Domingo,
W. Shibuya)
(Dissenting - O. Tagorda)
(Excused - L. Sablas)**

Mr. Hedani: Motion is carried. Clayton.

Mr. Yoshida: Under Item B we have a request from Ke Alii Kai II, LLC for a two-year time extension on the period to complete construction to the Special Management Area Use Permit condition for the Ke Alii Kai II Subdivision also known Moana Estates at Kananui Road, TMK 3-9-019: 004, Kihei, Island of Maui. The staff planner is Gina Flammer. Again, the commission is asked to acknowledge receipt of the request and to decide whether to waive its review or review the time

extension request at a future meeting.

- b. KE ALII KAI II, LLC requesting a 2-year time extension on the period to complete construction to the Special Management Area Use Permit condition for the Ke Alii Kai II Subdivision (a.k.a. Moana Estates) at Kananakui Road, TMK: 3-9-019: 004, Kihei, island of Maui. (SM1 2003/0013) (G. Flammer)**

Mr. Hedani: Gina do you have any comments to offer?

Ms. Gina Flammer: I'm available to answer questions if there are any.

Mr. Hedani: Commissioner Mardfin.

Mr. Mardfin: Are the answers to my question about why the – what caused the delay the same? There was a slow down in sales and you just slowed down because you weren't selling them all.

Mr. Christopher Lau: Correct.

Mr. Hedani: Any further discussion? Any further questions?

Ms. Karlynn Fukuda: If I may?

Mr. Hedani: Karlynn.

Ms. Fukuda: I'd just like to point out on the Ke Alii II Subdivision or Moana Estates there is a five – it's a five acre foot size drainage basin. The predevelopment runoff was 27.4 cubic feet per second and with the drainage improvements the onsite runoff diverted from the downstream from the site was decreased by 21 cubic feet per second. So there was a actually a decrease of runoff from the Ke Alii Kai Subdivision or the Moana Estates Subdivision in terms of drainage. So just to address the comments from the previous.

Mr. Hedani: Any further questions from the Commission? Thank you. Commissioners what's your pleasure? Don't all speak up at once. Commissioner Mardfin.

Mr. Mardfin: I don't know whether to make what kind of a motion to make because I don't know whether my fellow commissioners want to speak to the engineer on this one or not.

Mr. Hedani: Would you like to defer the matter in a similar manner to Item A? Commissioner Hiranaga.

Mr. Hiranaga: Is it the same engineering consultant?

Ms. Fukuda: Yes it is.

Mr. Hedani: Commissioner Mardfin.

Mr. Mardfin: Okay, I'll bite the bullet. I move we defer action on this item until we can hear from the consultant whether it be at the end of this meeting or in some subsequent meeting.

Mr. Shibuya: Second.

Mr. Hedani: Moved by Commissioner Mardfin. Seconded by Commissioner Shibuya. Any discussion? All those in favor signify by saying aye. Opposed nay.

It was moved by Mr. Mardfin, seconded by Mr. Shibuya, then

VOTED: To Defer the Matter to Either the End of the Meeting or to When the Consultants are Available in the Future.
(Assenting - W. Mardfin, W. Shibuya, K. Hiranaga, B. U'u, O. Tagorda, D. Domingo, J. Starr)
(Excused - L. Sablas)

Mr. Hedani: Carried.

Mr. Yoshida: Mr. Chairman, under Item 2 we're notifying the commission of an issuance of a Special Management Area Emergency Permit pursuant to your SMA Rules. This is by letter dated February 4, 2010 to Ms. Laura Valenzuela, General Manager of the Kahana Sunset AOO complete temporary emergency protective measures and repairs to Building A foundation and adjacent seawall at the Kahana Sunset property at 4909 Lower Honoapiilani Road, TMK 4-3-003:015, Kahana, Lahaina, Island of Maui. The staff planner is Jim Buika.

2. Notification of issuance of a Special Management Area Emergency Permit by pursuant to the Special Management Area Rules of the Maui Planning Commission:

Special Management Area Emergency Permit by letter dated February 4, 2010 to MS. LAURA VALENZUELA, General Manager of the KAHANA SUNSET AOO to complete temporary emergency protective measures and repairs to the Building "A" foundation and adjacent seawall at the Kahana Sunset, 4909 Lower Honoapiilani Highway, TMK: 4-3-003: 015, Lahaina, Island of Maui. (SM3 2010/0001)(J. Buika)

Mr. Jim Buika: Good morning Chairman Hedani and Commissioners, my name is Jim Buika with the Planning Department. According to the SMA Rules of the Maui Planning Commission the department is required to forward out to the commission on all SMA Emergency permits issued by the department.

There is no action required today of the commission at this time. I do not have a representative from the Kahana Sunset AOO here today. The engineer is unavailable because of a death in the family and I can answer any questions you do have on it but just to go over the facts. On January 28, 2010 the department issued a verbal approval for the temporary protective measure. The SMA

Emergency permit is to complete temporary emergency protective measures for Building A as represented in the Attachment 2 that you have there by Dr. Kiumars Siah, the consultant engineer on the project. The project is required in order to protect the building foundation from further undermining and potential collapse. It is a rather large structure that is in a precarious state of affairs.

The threatened building is on a shoreline property within the shoreline setback area for which the existing sand substrate behind the seawall which protects the building has been fairly substantially undermined by the big waves. Again, the same event that occurred in early December has undermined the seawall and potentially threatened the building. It's really impossible to fully analyze the situation there without getting behind the seawall, doing some excavation but the department does believe and the engineer does believe that the entire structure is manmade and has fill behind it that is supporting the structure now it's being undermined as you can see in some of the pictures there. The Building A, most of the residents were evacuated, not all of them but the people on the most makai apartments there have been evacuated since December 3rd. So nobody is there. I have been out to the site twice and I did not feel comfortable at all standing underneath that structure because it potentially can collapse. So that's why we issued the permit.

As you will recall, this is the second emergency permit for the same Kahana Sunset. Early I came on January 26th to report out Building F which is on the southern extreme of the property, this is on the northern extreme of the property and it's directly adjacent to the property that you talked about this morning, the 11 Hale Malia Place, ...(inaudible)... Lucas property so it's contiguous with that property. So it's the first big building next to that building. So I'll leave at that if there are any questions?

Mr. Hedani: Commissioner Mardfin.

Mr. Mardfin: When was the building built?

Mr. Buika: I do not know the reason being it is a – it's an older 19– lets see it was early 19 – actually – the AOA papers were transmitted in 1971.

Mr. Mardfin: So well before SMA conditions existed?

Mr. Buika: Yes. And actually I think 1970 is the cutoff for the nonconforming structures legally permitted nonconforming structures. So I'm just assuming that the buildings were built '69, 1970 and the deeds were turned over to the property owners in 1971. I have evidence of that. So it's an older structure. I have anecdotally that the beach out there, the beach that we've been talking about all morning was at least a quarter mile to a half mile in length out in front of it throughout that bay. So obviously they've had extreme erosion in that entire bay. These buildings were built on a sub – on a sand substrate with very little reinforcement in the concrete if any rebar. So it's just an older construction not built well but the beach was you know way out there. So the erosion over the last 40 years has been extensive in this area here.

Mr. Hedani: Commissioner Starr.

Mr. Starr: Yeah, first of all I'd like to congratulate Mr. Buika for becoming our shoreline planner.

Mr. Buika: Thank you.

Mr. Starr: He's got big flip flops to fill and now all of these problems become his fault. This, you know, I don't want to do any destructive action here regarding this issue because you know I understand it's going through the proper process but it is a really useful and important illustration about the beach and shoreline process and you know, I've been sitting here as we went through the earlier item and looking at the pictures are available on ...(inaudible)... website for beach going back through 1949, and I wish I could connect up with the projector because it's interesting this is a perfect example of a place where there was a good sandy beach and lateral shoreline access and quite a lot of use as a sandy beach for fisherman and for other users until this project was built. You know, it was built a long time ago before people were thinking too much about this, but this and then the houses which built seawalls and kind of hardened that slope was a much more gradual slope as the pictures attest caused a situation where there's no more beach and there's no more lateral access and you know, at some point as we lose these beaches and we've lost about a third of them since 1950, you know we have to decide when does it become more valuable to have a beach than to have the structures there. I do think that this you know a discussion that since we're the agency responsible we should have – I know that I guess as the shoreline planner Mr. Buika will providing us a presentation on a lot of these shoreline issues in several meetings from now and this might be a good one to use using the – you know, several generations of photos and showing you know what happens and we might whether we do it in the next year or future commission might want to take it into account in the SMA Rules which we are tasked with drafting with the department. So you know, this does create food for thought, you know, when does a building become more valuable than a beach.

Mr. Buika: I agree just to comment that we are reaching that point. We are reaching that point to make some hard decisions. I don't think we've had to yet. We're armoring structures at this point and it's having consequences no doubt about it. So I appreciate your comments and we will be giving a presentation on April 13th with the full commission.

Mr. Hedani: Any additional questions, comments? Commissioner Shibuya.

Mr. Shibuya: My comment is dealing with the rising level of the ocean and with this in mind you want – this is a request to place a band aid on a situation that's perhaps going to be made worse and over time and I'd hate to have the owners subjected to additional band aiding and additional expenses when we know that these are the trends and if you can show these trends in photographs then that be very helpful because then it will be very visual and very apparent that you know it's very unfortunate that we may have to do the worse case scenario. Thank you.

Mr. Buika: I do have a comment to that. Commissioner Shibuya, you were not here I do believe when I presented the other one. You were absent from that meeting. Commissioner Starr did ask about for this Kahana Sunset AOA property what is the long term strategic solution to this property here so as one of the conditions here is for the emergency permit, for every emergency permit the applicant is required to put in a SMA assessment ...(inaudible)... and so from that we'll do an SMA assessment to look at if it requires an SMA major permit to come before you. Also a shoreline

setback variance which it will and will trigger an EA. So we will be able to revisit this property completely in the future over this next year. So that's due within a 180 days from this property. So we will be dealing with this a long term ...(inaudible)... solution.

Mr. Hedani: Commissioner Mardfin.

Mr. Mardfin: On page 4 of the report, Item 12, it says Kahana Sunset AOA submits an SMA Assessment application within 10 days of receipt of the letter, blah, blah, blah ... For the SMA Assessment application the department will complete an environmental assessment. It's the department that completes it.

Mr. Buika: I meant, that's an incorrect word, it's should be an SMA Assessment right there but we kind of talk about it in terms of a Special Management Area Assessment.

Mr. Mardfin: Okay, who pays for that? The applicant pays for that?

Mr. Buika: I think we're mixing and matching apples and oranges. It's not a environmental assessment – yes, eventually the environmental assessment will be paid by the applicant. The applicant has hired Chris Hart and Partners to manage this entire project. They understand that there are issues with the property and they are required to submit an application here.

Mr. Mardfin: Okay, and on page 5 you have Item 14 that Kahana Sunset works with DLNR to resolve any existing shoreline variations. I presume that will be in great detail when you come back to us.

Mr. Buika: Shoreline violations yes. They're working on that as we speak. There are some identified. There's a wall out in front that most likely will be removed and this goes to the heart of Commissioner Starr's comments last time to you know, what is the long term solution. We're going to try to return part of the seawalled areas back to the beach area at least as partly for quid pro quo for the emergency assessment going on or the emergency work going on. And this is a safety issue but have you talked to any engineers if – it sounds like in this building that you've evaluated people right above it but if it's tied together wouldn't – if the front part, the makai part of the building collapses wouldn't it all collapse or is it not tied together like that?

Mr. Buika: I have talked to the engineer. He's a very good engineer and I believe he'll take every safety precaution with respect to this project. It's a larger building that extends backwards. I have no idea how the building would collapse but it is supported up front by some of these concrete columns there onto a concrete slab that is cracking and most likely there's just sand filled underneath that, so it is very vulnerable. It's hard – it's impossible for me to stand –

Mr. Mardfin: I'm just picturing dominos and –

Mr. Hedani: Any additional questions? Commissioner Mardfin.

Mr. Buika: We'll have the engineer–

Mr. Mardfin: Now my question I think is probably for James or possibly Clayton. Actually probably James. I just want to understand – I want somebody to explain to us under what circumstances we just abandon building – you know, what do they call it strategic retreat, are any actions except any and all actions acceptable to save it. It seems to me we need to have some consideration of just abandonment but I don't know what the legal requirements are, I don't know whether their insurance would cover it, I don't know whether the county would be liable for some of the expenses, there's just a whole series of questions and I don't need answers today I think I need answers when it comes back to us but I'm kind of alerting you that I'm going to be asking a whole series of things about that.

Mr. Buika: Just one comment Chair if I may, I would – I'll make sure that that's put in if we determine an environmental assessment will be done then I'll insure that that is one of the alternatives.

Mr. Mardfin: Thank you very much.

Mr. Buika: Both for Building A and Building F.

Mr. Hedani: Jim you want to offer any comments at this point? Mr. Giroux you want to offer any comments?

Mr. Giroux: I think it's very good comments. We've had it from two commissioners already and I think yeah we should do that in a concerted effort to be able to address that issue fully with a full research full possibly power point just really integrate that into your guys training because you guys deserve that because part of your duties and obligations in the totality of 205A and all of its policies and objectives I think that it's a very important question that get answered.

Mr. Hedani: Commissioner Shibuya.

Mr. Shibuya: That it includes the not only abandonment but the clean up. Okay, thank you.

Mr. Hedani: My personal comment Jim is that if the commission or anybody else in the county is going to require the abandonment of the building then you've just bought the building. It's private property they have the right to self-help, you know, preserve the value of the building and in the ultimate analysis you know, you cannot just take property without adequate compensation. That's my personal perspective. Since I'm not going to be here when you guys take it up.

Mr. Buika: Thank you.

Mr. U'u: I'm with you.

Mr. Hedani: Clayton.

Mr. Yoshida: That concludes things for this item. I guess we return to Item 3 which is the briefing and contested case meeting schedule on the SMA appeal where the planning commission is the hearings body. This is from Mr. Gary Stice of Hana Beachfront Associates appealing the Planning

Director's decision requiring a special management area major permit on the SMA assessment for a proposed residential structures at Haneo Road, Koki Beach, Hana, Island of Maui.

The commission did previously deal with this on January 26th and February 9th, and we're back to determining the date of this hearing because on January 26th the commission said that it wanted to – it was going to be the hearings body. You wanted to do a site inspection, you wanted to hear from the community and conduct the contested case hearing in Hana before the commissioners got off the commission on March 31st. Then on February 9th, the commissioners said well we clarified the site inspection is a Chapter 91 contested case proceeding so it's only going to be the parties and the staff and the commission and that's it. And that whether the public testimony will be part of the Chapter 91 proceedings was debatable and the commission wanted to have that after the commission – the new commissioners came on board. So we're still grappling for a date to have this on so we can work backwards. But the parties are here and Trisha is the staff planner.

3. The briefing and contested case meeting schedule on the following SMA appeal where the Maui Planning Commission is the hearings body:

MR. GARY STICE of HANA BEACHFRONT ASSOCIATES appealing the Planning Director's decision requiring a Special Management Area Major Permit on the Special Management Area Assessment for proposed residential structures at Haneo Road, Koki Beach, Hana, Island of Maui. (APPL 2008/0004) (T. Kapuaala) (The Commission was notified of the SMA Appeal as an agenda item on its February 24, 2009 agenda.) (Previously discussed at the Jan. 26 and the Feb. 9 meetings.)

Mr. Hedani: Does the department have a recommendation as for the date for this future meeting?

Mr. Yoshida: I did circulate a memo with a potential schedule which would call for because it takes about two hours to get there. A 1:00 p.m. site inspection, a 2:30 p.m. convening of the meeting where you would accept, receive public testimony and afterwards initiate your contested case proceeding with a recess for dinner at 5:30 p.m., reconvening at 6:30 p.m. and then working to 8:00 p.m. when it will take for a majority two hours to get back to this side. Helene Hall has been reserved for the proceedings on either April 27th or May 11th. The commission again, because it's the hearings body must maintain a quorum throughout the proceedings. If the contested case proceedings has not concluded at the end of the day in Hana the commission can continue the proceeding here on another date.

Mr. Hedani: So would you like the commission to move on an action date for the hearing?

Mr. Yoshida: I think you should hear from the parties as to you know their availability. Again, on April 13th, your April 13th meeting we anticipate having the two new commissioners on board. We anticipate during the orientation, annual orientation training so that would be the next regular meeting date after April 13th.

Mr. Hedani: Trisha.

Ms. Trisha Kapuaala: We can hear the parties, the department's recommendation is as noted on the –

Mr. Hedani: So your recommendation would be either the 27th of April or on May 11th?

Ms. Kapuaala: Yes.

Mr. Hedani: Do the parties have any comments to offer at this time? Please step to the microphone and state your name for the record.

Mr. Gary Stice: Yes, I'm Gary Stice, this is my wife Apolonia and I really appreciate all the effort going into our appeal and for fair consideration of our case. I know it's a lot of extra trouble. Sincerely appreciate your desire to give us justice and the proposed times sound fine with us. Again, we appreciate all your effort on it.

Mr. Hedani: Thank you. Counsel.

Ms. Mary Blaine Johnston: Deputy Corporation Counsel Mary Blaine Johnston on behalf of the director. Either of those dates sounds okay. I confirmed it with ...(inaudible)... April 27th he is available on that date so us the schedule seems fine.

Mr. Hedani: Thank you very much. Commissioners. Commissioner Mardfin.

Mr. Mardfin: First I'd like to congratulate Clayton on coming up with a much better schedule during the day, but I would like to ask for clarification on one thing. You have public testimony at 2:30 in the afternoon when most people in Hana are working and you have a continuation at 6:30 – 1830 hours would we be allowed public testimony then when people are off of work?

Mr. Yoshida: Well, I think well it depends on the commission but again we have – the appeal is a contested case so as the Corp. Counsel had you advised you before we have to keep the record very clean because that's what anybody can appeal from the record. So you know, the contested case is a Chapter 91 proceeding which supercedes Chapter 92 which is the Sunshine Law.

Mr. Giroux: Yeah, I'd like to just address this again. I strongly advise against starting the contested case and then allowing public testimony anywhere in the middle of it anywhere. I mean, it's just – it's not going to work for me. If we're going to start the contested case, we should have dealt with the public testimony on a separate day prior and even dealing with it on that day puts the litigants at a disadvantage as to how useful that public testimony is because they're not really going to be prepared to address the issues raised by the public. And so, it's real concern to me that you want to go even further and start the public testimony after the contested case has started. I'm going to strongly advise against that. Okay. So that's where I'm at.

Mr. Hedani: Thank you James. Mr. Stice. If you could step to the microphone please.

Mr. Stice: What if we had sort of a compromise? Before it was suggested that we were going to video tape testimony from the community and bring it up here and have the commission look at it,

... (inaudible)... advised that we should have the on-site inspection which is you know, of course, better, what if we had some of that testimony for those who would be at work in Hana unavailable, what if we went the night before and took testimony from, you know, 4:00 to 6:00 or whatever time we would want to set and then video tape that, present that at the time of the testimony at the normal hour. Would that?

Mr. Hedani: Thank you for your suggestion. Mary do you have any comment?

Mr. Johnston: I would just suggest take the schedule and thank you Clayton for working on this.

Mr. Hedani: Mary can you use the microphone please.

Mr. Johnston: Thank you Clayton for working on this, this is tricky but how about doing the site inspection maybe moving it off a little later, taking public testimony at the time after work time 5:30 or 6:30 and then just come back and just do the complete contested case hearing here. That makes a nice break on a subsequent day.

Mr. Hedani: Commissioners? Commissioner Shibuya.

Mr. Shibuya: As a former hearings officer I am fully in support of our counsel. He has recommended that we not have public testimony before we start the contested case and I agree. Do the applicants or the defendant and/or appellants would all need adequate time to do due diligence to all of their points. And so I would like to give them that time. So if we do take testimony it should be on a separate day earlier perhaps and allow for this time that's agreeable to both Mr. Stice as well as the counsel office. Thank you.

Mr. Hedani: Commissioner Starr.

Mr. Starr: First of all I don't think what we're going for should be called public testimony. I believe it's comment and it's really an informal process and not a formal testimony process. I do think that it is a right thing to do for the commission to travel there and to hear what people have to say about it, but I also understand that in the contested case process that does not become the kind of primary thing that we'll be deciding on since we are in a judicial role. I do kind of appreciate the idea of separating them so that there's no possible way of intermingling it because it would conceivably be damaging if we were to use the public comment as part of the process where we were being advised against doing so. So perhaps the best thing to do would be to follow that recommendation which is something we discussed at the last meeting which would be to go out there, see the site, listen to what the community has to say not as testimony but just as public comment and then come back here on another day and do the process without creating any confusion. So that would be my recommendation that we would travel out there and maybe meet in Hana at say 3:00 and come back after hearing public comment which would start, you know, could start at whatever 5:00 or maybe even could be a little bit earlier.

Mr. Giroux: Yes, Chair, I strongly concur with that. I think that would bring a lot of clarity to this public testimony versus contested case issue.

Mr. Hedani: Is that a motion Commissioner Starr?

Mr. Starr: Yeah, my motion is that we travel to Hana in the afternoon, see the site and take public comment starting at 5:00 p.m. – and take public comment at 5:00 p.m. then close that meeting when the public comment is done and do the contested case here in this room at a subsequent date. The date of that trip to Hana would be April 27th.

Mr. Hedani: Is there a second?

Mr. Shibuya: Second.

Mr. Hedani: Moved by Commissioner Starr, seconded by Commissioner Shibuya to set the date for the site visit and receiving public comment on April 27th at 3:00 p.m. to 5:00 p.m. Discussion? Commissioner Hiranaga.

Mr. Hiranaga: My only comment is since we're now broken the contested case portion of the schedule out that we not use one of the two Tuesdays per month that the planning commission conducts official business that that site inspection, field trip be done on a different day versus the second and fourth Tuesday.

Mr. Hedani: Additional discussion? Clayton.

Mr. Yoshida: Again, we would have to check on the availability of the meeting facility. Thus far we have reserved Helene Hall for April 27th or May 11th. If you choose to have the meeting in off week then we would again have to check with the East Maui Parks Department to see if the facility is available.

Mr. Hedani: Commissioner Starr.

Mr. Starr: If our plate was full and we had a lot of things lined up for us to hear I would agree with that but I am starting to suspect that maybe we don't have so much of a backlog now, could we hear from Mr. Yoshida whether we could skip a meeting and not get behind?

Mr. Yoshida: Well, we don't have as much permit activity but again there is another appeal, the DIRE Coalition, Save Kahului Harbor and I guess the commission has to determine who the hearings body will be on that. If they select themselves to be the hearings body then you will have two contested cases.

Mr. Hedani: Any further discussion? Commissioner Hiranaga.

Mr. Hiranaga: Just to do a step back. So the contested case, the appeal is appealing the director's decision to require a major SMA permit for the proposed development and the applicant is appealing that determination?

Mr. Yoshida: That's correct.

Mr. Hiranaga: So the contested case would determine whether the director's decision was correct or not?

Mr. Yoshida: Yes, I believe that's correct. Whether they should approve the appeal and say the director's decision was wrong or deny the appeal and say the director's decision was correct.

Mr. Hiranaga: So if you deny the appeal then the applicant would come before us for a major SMA permit. If you grant the appeal then he would get a single family homeowner's –

Mr. Yoshida: Or I guess he could appeal that appeal to the courts.

Mr. Hiranaga: But if he doesn't then either have a major SMA or SMA Exemption.

Mr. Yoshida: Yeah, if the determination of the commission is to uphold the director's decision then he would have to apply for an SMA Major.

Mr. Hedani: Any further discussion? Okay, the motion on the floor is to have a meeting on April 27th 3:00 to 5:00 basically to do a site inspection and do public comment from Hana. Commissioner Starr.

Mr. Starr: Yeah, to do a site inspection at 3:00 p.m., to take the public comments at subsequent to 5:00 p.m.

Mr. Hedani: Right. Discussion? Additional discussion? Commissioner Mardfin.

Mr. Mardfin: I just privately conferred with our esteemed attorney and if it's bifurcated like this then he doesn't have a problem – I'm putting words in his mouth and he can correct me if I did it incorrectly then he doesn't have a problem with us having a more extensive site visit of Hana so the new commissioners can see Paani Mai Park, can see the Hana Landfill and can see maybe the wharf area where a new wharf and a road going in so they'll be aware of all the issues that are going on in Hana that are likely to come before us. That would argue for a slightly earlier site visit maybe 2:00 or 1:00.

Mr. ...(inaudible)... me.

Mr. Hedani: Additional discussion? Commissioner Hiranaga.

Mr. Hiranaga: At what point in time do you need a commitment from the commissioners that they will be attending to insure you'll have quorum?

Mr. Yoshida: Well, I guess at the last meeting we had five or more members who said they would be attending.

Mr. Hiranaga: Excluding the two coming off, since the dates are now in April.

Mr. Yoshida: I believe so.

Mr. Hedani: Commissioner Starr.

Mr. Starr: Can we do a straw poll who – about who could make it from the current commissioners.

Mr. Hedani: Okay, all the commissioners that can make April 27th as the day, raise your hand. May 11th same question. Okay, so April 27th is preferred to May 11th by one vote. Commissioner Hiranaga.

Mr. Hiranaga: At some point you need a commitment date so the county does not spend resources traveling out there and you don't have a quorum. So figure out when you need that –

Mr. Yoshida: The other point I brought up was the 45-day notice for the public hearings. We schedule our public hearings and we give the applicant 45-day notice ahead of time of the public hearing so they can send out their notices to the people within the 500-foot radius. So for April 27th, you know in a couple weeks we'll be coming up on that 45-day notice.

Mr. Hedani: Okay, ladies and gentleman the only decision we need to make today is when you're going to meet. Commissioner Starr.

Mr. Starr: Yeah, I'd like to make a very minor modification to the motion which is that the department will fine tune the starting time and the schedule and work with Commissioner Mardfin on that.

Mr. Mardfin: In order to accommodate other site visits, to consolidate all the Hana site visits together.

Mr. Yoshida: My understanding again is still – the site inspection of this site is a Chapter 91 proceeding and it's restricted to the parties, commission and staff.

Mr. Hedani: Any additional discussion? Ready for the question? I don't want to repeat the question at this point. But the date is April 27th. Commissioner Mardfin.

Mr. Mardfin: In response to Clayton's position. I think that's right. I think you ought to – this could be discussed between you and Corp. Counsel but you could even bifurcate the site visit where we visited first or second. You know, one way or the other visit the other – probably first you visit Paani Mai, landfill, wharf and then you can change the nature of who attends for the last site visit to Hamoa.

Mr. Starr: Okay, lets vote.

Mr. Giroux: I would also just further suggest that staff not put the site visit of the contested case on the same agenda. The notice just needs to go to the parties that that's where the site visit is, time and place of the site visit and then we can have a regular agenda out in Hana for – and we have to follow the Sunshine Law for the rest.

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

Mr. Mardfin: I have just one last technical question and here's my technical question. This is listed for Mauka Hanaoo Road. What is Mauka Hanaoo Road because the property is makai of Hanaoo Road. There is no mauka Hanaoo Road to the best of my knowledge.

Mr. Stice: We've asked that ...(inaudible)...

Mr. Mardfin: So it's incorrect. It should be Hanaoo Road not mauka Hanaoo Road. I hope the department will take notice of that.

Mr. Hedani: Any further discussion? Motion on the floor is to set April 27th as the meeting date for the site visit, site visit for other areas in the Hana for orientation for new commissioners and to conduct a public meeting to take comments from the Hana public and that to be determined between staff and Commissioner Mardfin. All those in favor signify by raising your hand. Opposed same sign.

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

**VOTED: To Conduct the Site Visit at 3:00 p.m., then Public Comment Portion at 5:00 p.m. at the Helene Hall and to Conduct the Contested Case on Another Date. Also, to have the Other Site Visits Prior to the Contested Case Site Visit.
(Assenting - J. Starr, W. Shibuya, W. Mardfin, O. Tagorda, D. Domingo, B. U'u, K. Hiranaga)
(Excused - L. Sablas)**

Mr. Hedani: Motion is carried. Thank you.

Mr. Yoshida: I guess Mr. Chair it still brings up the issue of when are we going to have the contested case hearing.

Mr. Hedani: Does the staff have a recommendation?

Mr. Yoshida: I guess the commission and together with the parties could select some dates and we could try to find meeting space.

Mr. Hedani: Well, that would be something that we would schedule for our regular –

Mr. Yoshida: This room is used by the Board of Variances and Appeals, various – Board of Ethics – but various boards and commissions use this room –

Mr. Hedani: Commissioner Starr.

Ms. Kapuaala: Excuse me Clayton, we wouldn't want to schedule it on a regular planning commission meeting date?

Mr. Hedani: Commissioner Starr.

Mr. Starr: Yeah, I was going to suggest that it be at a regular meeting date possibly maybe starting at 1:00 p.m. and I was going to ask the parties whether they – how much time was needed between the Hana visit and the contested case if any. My feeling was maybe not the next meeting after the Hana site visit but the one maybe – I guess that would be the second meeting in May.

Mr. Hedani: Any additional discussion? Any comments from staff? Trisha.

Ms. Kapuaala: I see no problem with having it on a regular commission meeting date and I do believe that it can be – it's a simple enough matter to be able to be taken cared of in one day.

Mr. Hedani: Okay, thank you. So the actual contested case hearing can be something that the department would consider in a normal course of its agenda. Commissioner Starr.

Mr. Starr: Yeah, I move that the contested case be held in this room on May 25th at 1:00 p.m.

Mr. Shibuya: Second.

Mr. Hedani: Moved and seconded to conduct the contested case on May 25th at 1:00 p.m. Moved by Commissioner Starr, seconded by Commissioner Shibuya. Discussion? Commissioner Hiranaga.

Mr. Hiranaga: I'm just curious why the 1:00 start instead of 9:00 since public testimony is not going to be allowed. I'm just wondering why we're starting at 1:00.

Mr. Hedani: Commissioner Starr.

Mr. Starr: Yeah, my thinking was that that would allow us to have some regular items starting at 9:00 a.m. with testimony in a normal meeting that would by nature have to end before 12:00 noon for lunch.

Mr. Hedani: Additional discussion? Commissioner Hiranaga. Clayton.

Mr. Yoshida: I think you might want to hear from the parties regarding their schedules. You know they might have court appearances or what have you.

Mr. Hedani: Mr. Stice, Corp. Counsel.

Mr. Stice: I have no problem.

Mr. Hedani: Thank you. Corp. Counsel.

Ms. Johnston: ...(inaudible)...

Mr. Hedani: Thank you.

Ms. Kapuaala: I would also recommend having a 9:00 start time, but this is a contested case that Mr. Stice appealed back in 2008. He has a right to an expedited process.

Mr. Hedani: Did someone say that the wheels of government turn slowly? Commissioner Mardfin.

Mr. Mardfin: I don't – I think the difference between 9:00 a.m. and 1:00 p.m. is very small in light of the thing. The second issue is we often allow people that work to make testimony here at 9:00 a.m. on our other items and to require them to come in at 1:00, not allow it at 9:00 I think upsets the normal order of things. So I would argue for a 1:00 p.m. start time for the contested case.

Mr. Hedani: Commissioner Hiranaga.

Mr. Hiranaga: Unless the other commissioners know more than I do I can't see how you can gauge how long this proceeding will take. So why take the risk of starting at 1:00 and end up either losing quorum at 5:00 or going on 6:00 or 7:00, why not make it the first item for business at 9:00 a.m. so we're almost assured that we'll get through the process. I don't understand. There will be no public testimony regarding that agenda item. So why a 1:00 p.m. start? I don't understand.

Mr. Hedani: Any further discussion? Commissioner Starr.

Mr. Starr: My belief is that four hours and one day a contested case is probably sufficient and if we can't finish it in that we should probably defer it, but I may – maybe we can handle eight hours of it.

Mr. Hedani: Any additional discussion? My only comment to offer to the commission is that Mr. Stice has been very patient in terms of applying for the permit going through the procedures asking for consideration and this is the third time this has been on our agenda and I think what the commission needs to do is make up its mind, go ahead and have the meeting and make a decision as expeditiously as possible in the interest of his concerns. Any further discussion? Okay, May 25th at 1:00 was the motion. All those in favor signify by raising your hand. Two, three, four, five. Opposed same sign. Two opposed.

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

**VOTED: To Hold the Contested Case Hearing at the May 25, 2010 Meeting to Begin at 1:00 p.m.
(Assenting - J. Starr, W. Shibuya, W. Mardfin, O. Tagorda, B. U'u)
(Dissenting - K. Hiranaga, D. Domingo)
(Excused - L. Sablas)**

Mr. Hedani: Motion is carried. Thank you. Clayton.

Mr. Yoshida: Thank you Mr. Chair. It's 12:17 now I guess we could move back to Item E, 1a and Item E, 1b as I believe the applicant has their engineering consultant present.

Mr. Hedani: Commissioner Hiranaga.

Mr. Hiranaga: Can we just have a short recess not a lunch recess, but a 10-minute recess and maybe we can wrap up business before lunch.

Mr. Hedani: Okay, if you want to take a five-minute recess at this point? Okay, why don't we take a five-minute recess.

A recess was called at 12:19 p.m., and the meeting was reconvened at 12:26 p.m.

Mr. Hedani: Planning Commission of February 23rd is reconvened. Clayton.

E. DIRECTOR'S REPORT

- 1. Planning Director notifying the Maui Planning Commission pursuant to Section 12-202-17(e) of the Maui Planning Commission's SMA Rules of his intent to issue time extensions on the following requests:**
 - a. KE ALII VILLAS, INC. requesting a 2-year time extension on the period to complete construction of the Ke Alii Villas per the condition of the Special Management Area Use Permit for property situated at 2385 South Kihei Road, TMK: 3-9-020: 020, Kihei, Island of Maui. (SM1 2002/0023) (G. Flammer)**
 - b. KE ALII KAI II, LLC requesting a 2-year time extension on the period to complete construction to the Special Management Area Use Permit condition for the Ke Alii Kai II Subdivision (a.k.a. Moana Estates) at Kananui Road, TMK: 3-9-019: 004, Kihei, island of Maui. (SM1 2003/0013) (G. Flammer)**

Mr. Yoshida: Yes, Mr. Chairman, I guess we're back to Items E-1a and E1b which are the requests from the Ke Alii Villas LLC and Ke Alii Kai II LLC for time extensions on their period to complete construction. I guess I'll turn it back to Gina. I believe there's an entity from the public that wants to – that may want to testify as well as I believe the applicant has brought their engineer here to answer your questions.

Mr. Hedani: Why don't we go ahead and take public testimony at this time. Please step to the microphone and state your name for the record.

Mr. Gary Wolk: Good afternoon, my name is Gary Wolk. I am a resident of 14 Lei Anihi Lane, Unit 203 which is a part of the applicant's development that this SMA concerns. My wife and I are joint tenants in the entirety in this particular units that we own the unit. The reason that I come before you today is to request that you not waive the review of this extension of the SMA and also to delay the review of the extension to a future meeting.

The reason that I ask this of you is actually quite short notice but because I've only had a chance to look at the documents yesterday but Condition 11 of the Special Management Area Use Permit basically requires the applicant to comply with the representations made to this commission and discussed by the Planning Department in order to obtain this permit and I believe and I have a particularly close example that one of those recommendations or one of the items that the applicant submitted was that this would be a purely residential development that time rentals vacation rentals and time shares would not be allowed and in fact, within the condominium property regime that the applicant filed with the Bureau of Conveyances, I won't read you the paragraph but it specifically states that no one shall sell a time share.

In conflict with that statement the unit directly above us in this development was sold to seven different owners all of whom are foreign nationals and my experience personally that I can speak to directly is that most of Calgary Alberta has been through that unit in the last three months. I find it very difficult to accept that the applicant's sales staff could not have been somehow cognizant of the fact that selling a unit to seven different tenants, to seven different joint owners would not in some way raise a red flag.

So ultimately my goal would be and I have to obviously do a lot more legwork would be to have the commission use its influence in whatever way possible first of all to try and clarify a very important issue because this parcel is zoned HM and H-2 and yet everyone all agreed this would be a residential development. Obviously for realtors and for buyers this is a point of confusion and in order to clarify the record, one thing I would ask from the commission is to have the applicant apply to rezone the property as in fact apartment.

The second thing that I would ask the commission to do would be to require the applicant because I can present as evidence at some later date the actual purchase and sales agreement which the applicant does in fact talk about rental properties and how they're not responsible for renting your unit etc., to make it clear within the P and S that TVRs and time shares are explicitly prohibited and that the owner would be subject to enforcement action by both the county and by the association.

And finally, if possible to actually have similar language put into the apartment deed rather than have this language buried in the condominium property regime. So that is the purpose of my appearing before you today. I appreciate your time and I hope that you get a chance to have some lunch. Thank you.

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

Mr. Mardfin: You gave a single example of where you believe there's a problem. Do you any anecdotal evidence that it's in more than one unit?

Mr. Wolk: I do. There was a request for service that was put forth by both a resident and by the vice president of the association. The association is very new and it's whole other discussion because the association at the moment is somewhat dysfunctional. The applicant does have three members on the board at the moment and a great deal of influence but back in January or February of last year there was a TVR. Another resident actually found – once again it was sold to multiple owners. One of the residents actually found I guess the TVR on the Maui whatever, time vacation rental site

presented evidence and filed a request for service. Unfortunately because there is no special project condition, I believe that the Planning Department when they looked at it said this is an AOA matter, it's not necessarily an enforcement issue and I respectfully disagree. I think that Condition 11 basically states that the applicant has an obligation to not simply try to sell units to whoever they can sell units to but to try and make sure that in fact they're selling units to people who intend in some way to reside in that unit or to use it as an investment where they could actually rent the unit for six months or more. So those are the two examples. My example and this example, I do know that the board is investigating other instances. I mean, I'm aware of another instance where rentals less than six months are taking place.

Mr. Hedani: I'm sorry can you restate your name for the record?

Mr. Wolk: Gary Wolk, W O L K.

Mr. Hedani: Commissioner Starr.

Mr. Starr: Mr. Wolk thank you for bringing this to our attention. Some years ago I was president of Palms of Wailea Phase 1 and I was on the board of Phase 2 and there there were two similar developments one of them Phase 1 which did allow short term rentals and there was you know, actually a rental pool and then Phase 2 which didn't. And when they were built and permitted the county asked for you know, different – there were different entitlements and you know, I know that it was quite complicated and it was – it would have been a very difficult path for Phase 2 which was only for six months or more rental to be converted to short term and while I was involved that was when the first of this what you're describing started to happen there unit by unit because you know all of a sudden there were being short term rentals and we looked and there was no mechanism really to deal with it. You know, and the association was really kind of in a fix because it – you know there was illegal activity happening but there was almost nothing to do. You know, I've kind of forgotten about it for several years, but I do think it's something that really should be looked at and you know, I think that I don't know what the tools and mechanism are and I also know that it may be a little bit difficult to document the use, but you know, perhaps this is something if it is part of our conditions this is something that should be looked at and the public should be invited in which is what the process is when this body does look at it. So thank you.

Mr. Hedani: Any further questions from the commission? Mr. Wolk do you know for a fact that it's a time share this unit that is above you or is it seven joint tenants?

Mr. Wolk: There are seven tenants who are sharing the use of the unit.

Mr. Hedani: It's seven owners.

Mr. Wolk: Seven owners who are –

Mr. Hedani: So it's a joint tenancy.

Mr. Wolk: Who are families that are basically not necessarily – I mean the first people that we met, the day that we closed – we closed on August 5th and we moved in that day. We met two of the

children of one of the owners and they said their parents would be here the following week and we met them and since then we have actually stopped meeting people because I mean, I can hopefully provide other testimony from other tenants within our building but I did ask a neighbor if he had any idea how many people had gone through there and he said it was impossible to tell. So it's not only a question of the nature of the fact that people are going through at a constant rate, it's a fact that these people are coming to Maui and it's nice that they're coming to Maui to vacation but they're vacationing in a residential development which the builder represented would be sold as a residential development. So we have all of the issues associated with a TVR. We have people who are noisy, how are out smoking the building, they have no idea what the smoking laws are in State of Hawaii. It has been generally distressing to us and to several of our neighbors. And my purpose here today is to put on the applicant the responsibility of due diligence in terms of making sure that when someone signs a sales contract with them that they have done due diligence to make them aware of the fact that this is not a vacation rental community, this is not a time sharing community, the intention is for full time Hawaii residents or to use it as an investment to rent at least six months at a time.

Mr. Hedani: Okay, thank you very much. Any questions, further questions from the commission? Are there any other members of the public that would like to offer testimony? Seeing none, public testimony is closed. Commissioners you had some questions that you wanted to direct to the consultants of the applicant? Commissioner Hiranaga.

Mr. Hiranaga: If we can start with agenda E-1a, Ke Alii Villas Inc., and the question was is the applicant willing to retain predevelopment storm runoff on site?

Ms. Karlynn Fukuda: Thank you Commissioner Hiranaga. We do have Darren Unemori here from Warren Unemori Engineering. He is the civil on the project.

Mr. Darren Unemori: Good morning Mr. Chairman, Members of the Commission. Mr. Hiranaga your question was whether it could be done or whether the applicant is willing to do it?

Mr. Hiranaga: Whether they're willing, the applicant is willing to do it. Because I know it could be done.

Mr. Unemori: Okay.

Ms. Fukuda: If I may, I would like to have Mr. Unemori explain to the commission the constraints that are involved in proposing the additional retention of runoff.

Mr. Hedani: I thought that was okay, you agreed to go ahead and take the additional runoff? That was okay, you understand the question.

Mr. Unemori: I apologize, I'm just coming up to speed on the questions and the context that they are being asked from this morning's discussion. Well, to begin with, in the case with Ke Alii Villas particularly, we're dealing with a very constrained situation now so expanding the basins is not really feasible at this point. To do so, if it could be done would be extremely expensive because it's a small area, it's a narrow area. It's already pretty much fully improved site wise. So you know,

in the context of your question, it would be quite a challenge to come up with a feasible way to do it. In fact, I don't see a feasible way of doing it.

Mr. Hedani: Commissioner Hiranaga.

Mr. Hiranaga: Taking away the financial perspective, just looking at it from a physical perspective, project site, built out, is the retention system, is that a grass basin or some type of other retention system?

Mr. Unemori: It's a grassed basin and I if could maybe make a comment on the terminology. Ke Alii Villas is set up with a detention type of basin. It's basically there to impound water to reduce to the peak flow exiting the site in conformance with the county's drainage rules. So it's objective was of course to keep the post development peak flow below the predevelopment peak flow. It's just a detention type of situation. I'm sorry – your question?

Mr. Hiranaga: Since I did not have access to the entire SMA permit, I don't even know what the system looks like. We don't have a copy of the drainage report. So we're kind of you know, walking in the dark right now if you could shed some light.

Mr. Unemori: Certainly, certainly. The drainage system itself is fairly conventional by today's standards. What you have is a underground storm sewer system that basically collects runoff from the parking lot, the building and areas that conveys it to the basin that's in the lowest part of the site. That basin serving a detention function has a small outlet that connects to the storm sewer system in the Ke Alii Alanui roadway addition so into the county storm sewer system and that bleeds off water from the detention basin at a rate not exceeding the predevelopment flow. So it's fairly conventional by today's standard.

Mr. Hiranaga: I don't mean to dominate the floor but I'll open it up to other commissioners.

Mr. Hedani: Any other questions? Commissioner Shibuya.

Mr. Shibuya: Can you tell me what's the elevation of this retention basin? And what's the elevation of the water table that you know of?

Mr. Unemori: Well, lets see, unfortunately I came over here kind of suddenly this morning. I didn't have a chance to take a look at the plans. I don't have the floor elevation of basin. What I do recall from the soils report though is that there was no groundwater encountered in the borings which went down as far as I think the deepest portion of the basin of the portions of the site to be excavated. So we haven't detected where the groundwater table is under the site.

Mr. Shibuya: And if you wanted to increase the absorption rate lets say you drill some holes into the basin area and filled it with gravel would that help contain or increase your basin capacity?

Mr. Unemori: If you were to excavate and create voids, you could probably gain some capacity basically a fraction of whatever you excavated and replaced.

Mr. Shibuya: I'm just trying to come up with alternate solution for what Commissioner Hiranaga is probably alluding to it.

Mr. Unemori: Oh, I see. I guess maybe I can make a comment that the current detention basin is about half the size it would be if it were a full retention basin. I think the capacity provided is about 1.3 acre feet. For full retention you'd need about twice that, 2.6 acre feet. So if you're making small increments of gain, I think an approach like that would work. But if you're trying to capture the entire volume of runoff that's coming off the site, you'd need a much larger basin. So it would be a much larger step up lets put it that way.

Mr. Hedani: Commissioner Hiranaga.

Mr. Hiranaga: I guess what some of the commissioners and I'm not speaking for the commission, but we're basically looking at corporate citizens to come forward and go beyond what the minimum requirements of County Code requires and in the past, when entities come before us for extensions I would say the vast majority of them have agreed to redesign their project to capture predevelopment and post development surface runoff. Of course, it to have cost more money but it's going to help the near shores recover from the impact of population growth. And so when you say well it's going to cost money, that's obvious it's going to cost money. You gotta dig a hole to send someone out if you pay \$10.00 an hour it's going to cost you money for him to dig the hole. What we're trying to see is if this applicant is willing to step forward and do something more than just what the bare minimum as required by County Code and that's all I'm looking for and I can't speak for the other commissioners.

Ms. Fukuda: Thank you Commissioner Hiranaga. During the break while we were trying to get Mr. Unemori to the meeting it did come to our attention that there may be some legal ramifications as well in doing improvements to an already existing drainage basin which would then be turned over to the homeowner's association. So at this point in time the applicant would have to say no, that they cannot increase the size of the drainage basin because of the site constraints as well as the potential legal ramifications that they face with increasing the size of the basin.

Mr. Hedani: Any additional questions?

Ms. Fukuda: If I may, Mr. Lau would like to respond further to that.

Mr. Hedani: Mr. Lau.

Mr. Lau: Thank you Mr. Chair, Members of the Commission. The legal ramifications that have come up or that I foresee would be that we have submitted this project to a condominium property regime. We've represented to the owners via the public report via the filings with the State that the project will consist of so many units, the infrastructure will look like as we represented which included the drainage basin. And so increasing the size of the drainage basin or increasing the depth of the drainage basin could be construed as a material change which would open us up to liability which we are very hesitant to assume. If this was early on in the project, if this was a – we're talking predevelopment and we knew that we had to retain all water on site yes, we would have maintained all water on site. Here we have a project where we're constructed 111 units

including the two buildings that are very close to the detention basin and I believe that by doing any work to the detention basin widening or deepening it may be a material change to the condominium.

Mr. Hedani: How many of your units have been sold at this point?

Mr. Lau: Mr. Chair, I believe 110. I think we have one that's still in escrow. It might have closed.

Mr. Hedani: You have a 110 owners at this point that are on site.

Mr. Lau: Yes.

Mr. Hedani: Any additional questions? Commissioner Shibuya.

Mr. Shibuya: I just want to clarify, clear up what my suggestion was. It is a compromise. Rather than increasing the size and the area acreage or increasing the depth of this basin I'm saying lets drill into it and increase the absorbibility of this water, retaining more water by putting in perhaps maybe 10-inch or 20-inch type of tubes into the ground or drilling that hole and filling it up with gravel increasing the capacity of it.

Mr. Lau: We would be willing to do that. I don't know if tubes would be the answer perhaps it's just a matter of drilling down and putting gravel like very similar to a French drain only thing vertically.

Mr. Shibuya: That's correct. That was a compromise.

Mr. Hedani: Any additional comments, questions? Commissioner Starr.

Mr. Starr: Yeah, and the item before us really is whether to pass this on or for us to look at it and I think some of the other commissioners have some concerns and so when you're ready I'm frankly willing to make another motion different from my first one.

Mr. Hedani: Commissioner Starr.

Mr. Starr: Okay. I move that we schedule this and hear this extension when the department can accommodate it.

Mr. Hedani: Is there a second?

Mr. Mardfin: Is this on Item A?

Mr. Hedani: Commissioner Starr.

Mr. Starr: If I can do A and B at the same time I would. Yes, I'll make it A and B.

Mr. Hedani: Is there a second?

Mr. Shibuya: I'll second it.

Mr. Hedani: Moved by Commissioner Starr, seconded by Commissioner Shibuya that the commission do the review of the time extension request. Any discussion? Commissioner Hiranaga.

Mr. Hiranaga: I guess the argument that you would expose yourself to legal liability. You could amend the public report. That's not an option? You would have to have a majority vote being the sold units have a vote, unsold units you have the vote. Whatever happens. But there is a process.

Mr. Lau: There is a process. I would be willing to put it up for a vote, but I can't guarantee you that the vote will be one way or the other, but we'd be willing to have a vote.

Mr. Hiranaga: Yeah, but to say to make a change would – of course if you made the change without going through the process yeah, I agree you might be exposing yourself to litigation but there is a process.

Mr. Lau: There is a process. Well, if the planning commission said we should do something and we went ahead and did it and the owners came back and we didn't get owner approval, we're certainly behind an eight ball.

Mr. Hiranaga: And I don't know if you have the majority of – currently or not. You said a 110 units but it could be a 300 unit project.

Mr. Lau: No, it's a 144 units. Yeah, we do have the majority.

Mr. Hedani: Commissioner Mardfin.

Mr. Mardfin: When Mr. Wolk was speaking which property did that refer to A or B?

Mr. Lau: A.

Mr. Mardfin: A?

Mr. Lau: Yes.

Mr. Mardfin: And when you're talking about the difficulty in changing the retention is that A or B?

Mr. Lau: A.

Mr. Hedani: Chris, the 110 people that have already bought units if you changed the project do they have the option of opting out of the sale?

Mr. Lau: I don't know. I don't know.

Mr. Hedani: So you might have to redo those sales.

Mr. Lau: Well, I believe because they closed I think they have a vote to make changes to the

common elements.

Mr. Hedani: Commissioner Hiranaga.

Mr. Hiranaga: Yeah, my personal intent is not to require a change that would violate you know, real property laws. If we say we'd like to hear from the owners and they have a vote and they say no don't want to do it, that's pretty much the end of it, but I think we should handle A and B separately because A is a condominium and B is a subdivision, fee simple subdivision. I think there's different issues. B has a larger retention area, five acres.

Mr. Hedani: Commissioner Starr.

Mr. Starr: Yeah, I'm willing to separate them. Let's make the current motion on A.

Mr. Hedani: Okay. Consent of the second?

Mr. Shibuya: Second.

Mr. Hedani: Okay, Commissioner Hiranaga.

Mr. Hiranaga: I don't really want to revisit the project but it appears either the applicant's not prepared adequately to answer questions or unwilling to give me the questions I'm looking. I'm kind of on the fence as to bring this back to us or not, but I think my feeling is the inadequate answers not necessarily the wrong answers but inability to provide to me a convincing enough answers. If we brought it back does that require public hearing notice, blah, blah, blah?

Mr. Yoshida: No, I believe that we've waived the public hearing requirement and there was an intervention filed originally when this was dealt with but the intervenor had waived the public hearing. It would just be a communication item listed on the agenda.

Mr. Hedani: Clayton you said there was an intervention on the project and it was something that was denied?

Mr. Yoshida: I'm not sure what happened with the intervention request.

Mr. Hedani: Mr. Lau.

Mr. Yoshida: But according to your rules if the intervening party has to waive the public hearing if the public hearing is to be waived.

Mr. Hedani: Mr. Lau.

Mr. Lau: Mr. Chair. The time that the commission considered the original SMA application there was an intervention. There was a compromise and settlement that was entered with the intervenors that enabled us to go forward and obtain the SMA permits. What Clayton is referring to is that recently the intervenors waived public hearing or waived their right to attend this particular

application.

Mr. Hedani: I see. Commissioner Starr.

Mr. Starr: I've come a 180 degrees on this. My feeling is that if it did return to us and maybe even if it didn't but it goes to the director I'm sure he becomes privy to our discussion, that the applicant might come back with some innovative solutions that do not cause them major grief but will help in giving us the confidence that everything that's possible without going to heroic means is being done to keep excess runoff and especially pollutants off of the shoreline, out of the nearshore waters and also some ways to deal with the problem that is not solely related to this project but others where a condominium regime intended for long term residents is being abused for short term tenancy and it's adding not only to burden to the infrastructure not designed for it but to the life style of those living there. So you know, to me if it came back to us and we saw that I would not want to create any further burden, but I would like – I think these issues have been raised and I, for one, would like to see it come back to us so that we can see the innovative ways that they find to deal with these two issues.

Mr. Lau: I'd be happy to address the issue of the number of owners above Mr. Wolk's unit. I did pull the apartment deed when we sold the property and Mr. Wolk is correct that there were seven owners. Of those seven owners three were couples. Each of those couples had a one-fourth interest in the property. There was a fourth person, a single person who had a fourth interest. So while there were seven owners on title three of them were couple and then the fourth was a single person. Subsequent to that, the single person deeded his interest to three couples so presently you have three couples on title each owning a third of the unit and I have copies of the deeds if the commission would like those.

Mr. Hedani: Can you answer the question that was posed that was brought up of time share involvement on the project?

Mr. Lau: Yes, time share is prohibited. It's in our declaration and our sales people know that the time share is not allowed and also rent – transient vacation rentals are not allowed. The minimum rental period is a 180 days.

Mr. Hedani: So those prohibitions are included in the CC&Rs and the horizontal property regime for the condominium.

Mr. Lau: In the declaration, yes.

Mr. Hedani: In the declaration.

Mr. Lau: Yes.

Mr. Hedani: Thank you. Commissioner Hiranaga.

Mr. Hiranaga: Yeah, regarding the multiple interests. You know time share, that word should not be used loosely there is a specific definition for time share as is TVR. When you have four people

owning a quarter of a unit we called it hui, people get together and pull money and there's nothing illegal with that. But as a suggestion to rather than bringing the SMA back to us maybe we defer this request for extension to a later date allow them to address our concerns.

Mr. Hedani: Commissioner Starr.

Mr. Starr: I feel uncomfortable to the depth we've already gone into this the way it's agendaed which is you know, purely about whether we're going to give it over to the director or not. If it's going to come back to us, I'd rather have it come back to us as a review and not in this way because I think we're already kind of overstepping the agenda item.

Mr. Hedani: Any further discussion? Okay, the motion on the floor – you want to restate the motion on the floor?

Mr. Starr: Motion on the floor is for us to do the review and it's been separated so we're dealing with A.

Mr. Hedani: Motion on the floor is to have the commission decide on the time extension request for Item A, Ke Alii Villas, Inc. Any further discussion? All those in favor signify by raising your hand. Opposed same sign.

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

VOTED: That the Commission Review the Time Extension for the Ke Alii Villas Matter at a Future Meeting.
(Assenting - J. Starr, W. Shibuya, K. Hiranaga, B. U'u, O. Tagorda, W. Mardfin, D. Domingo)
(Dissenting - W. Hedani)
(Excused - L. Sablas)

Mr. Hedani: One opposed. Motion is carried. Clayton.

Mr. Yoshida: There's still Item B regarding the request from the Ke Alii Kai II for the two-year time extension.

Mr. Hedani: Commissioner Starr.

Mr. Starr: Motion that B also come before us.

Mr. Hedani: Is there a second?

Mr. Shibuya: Second.

Mr. Hedani: Seconded by Commissioner Shibuya. Discussion? Commissioner Hiranaga.

Mr. Hiranaga: My primary concern is retention of predevelopment surface runoff and I think the applicant stated that their current system retains beyond the post development surface runoff generated and what was residual amount that's not being captured?

Ms. Fukuda: I believe it was 6 cfs that is not being captured but there is a retention of 21 cfs above the requirement.

Mr. Hiranaga: So is it possible that the applicant could retain the balance of that without ripping out the two-acre retention basin and starting all over.

Mr. Fukuda: Actually it's a five-acre basin.

Mr. Hiranaga: Yeah. For the Moana Estates Subdivision. I'll have Darren Unemori respond to the constraints for the Moana Estates Subdivision.

Mr. Darren Unemori: The situation with Moana Estates is somewhat different from the Ke Alii Villas situation. The Moana Estates site has two features that you should be aware of. One it has a retention basin, a five-acre foot retention basin. It also has a natural gully that runs through the site. The subdivision's drainage system is basically configured to collect whatever runoff it can and put it into the retention basin. So in the case of Moana Estates we hold everything we can. The part that we cannot catch is basically related to that gully that runs through the site. The gully that runs through the site drains a significant amount of land up above Piilani Highway. We needed to pass that through the site and so that represents most of the area that we cannot deal with. The other areas are slopes and things that fall into the gulch and you know are not feasible for the capture so it's a very small percentage related to things we couldn't possibly catch. The balance of the site, we collect everything we can, send it into the retention basin, we hold it there in the five-acre retention basin. So it's – aside from what we cannot capture because of the existing gully on site it's pretty much the kind of system that the Commissioner Hiranaga prefers.

Mr. Hedani: Commissioner Hiranaga.

Mr. Hiranaga: Yeah, I'm fairly familiar with that project and it is a fairly substantial gully, hundred yards from top of gully to the other top of gully. It's pretty wide. Personally, I'm satisfied with the existing drainage system.

Mr. Hedani: Any further discussion? Motion on the floor is to have the commission do the review of the project. Commissioner Mardfin.

Mr. Mardfin: I just want to ask if anybody knows whether the issues that Mr. Wolk was discussing have arisen with respect to this project?

Mr. Hedani: Mr. Lau.

Mr. Lau: I'm not aware of any issues similar to this project.

Mr. Mardfin: These houses aren't being sold on a time share basis?

Mr. Lau: Absolutely not.

Mr. Mardfin: And no short term rentals.

Mr. Lau: Absolutely not.

Mr. Mardfin: No, bed and breakfast.

Mr. Lau: Not, no. I don't know what owners are doing with the property after we sell them, but the sales documents and the CC&Rs prohibit those things.

Mr. Mardfin: Thank you. Any further discussion? Ready for the question. Motion on the floor is to have the commission do the review of the time extension request. All those in favor signify by raising your hand, two, three. Opposed same sign, two, three, four, five.

It was moved by Mr. Starr, seconded by Mr. Shibuya, and

**The Motion to Have the Commission Review the Time Extension Request was Lost.
(Assenting - J. Starr, W. Shibuya, W. Mardfin)
(Dissenting - K. Hiranaga, B. U'u, O. Tagorda, D. Domingo, W. Hedani)
(Excused - L. Sablas)**

Mr. Hedani: Motion is lost. What's your pleasure? Commissioner Hiranaga.

Mr. Hiranaga: I'll make a motion to waive the review by the planning commission.

Mr. Hedani: For Item B?

Mr. Hiranaga: Yes.

Mr. U'u: Second.

Mr. Starr: I'll second it.

Mr. Hedani: Moved by Commissioner Hiranaga, seconded by Commissioner U'u. Discussion? All those in favor signify by raising your hand. Opposed same sign.

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

**VOTED: That the Commission Acknowledge Receipt and Waive Review of the
Time Extension for the Ke Alii Kai II.
(Assenting - K. Hiranaga, B. U'u, O. Tagorda, W. Mardfin, D. Domingo,
J. Starr)
(Dissenting - W. Shibuya)
(Excused - L. Sablas)**

Mr. Hedani: One opposed. Motion is carried. So the review of Ke Alii Kai II is waived and Ke Alii Villas Inc on the A will be coming back to the commission.

Ms. Fukuda: Yes, that's our understanding.

Mr. Hedani: Thank you very much.

Ms. Fukuda: Thank you.

Mr. Hedani: Clayton, now will you feed us?

Mr. Yoshida: Moving forward Mr. Chair, we're on Item 4 under the Director's Report, Planning Commission Projects and Issues.

4. Planning Commission Projects/Issues

Mr. U'u: None.

Mr. Hedani: Next item.

Mr. Yoshida: The next item is the future commission agendas. You know it is fairly light for the March 9th agenda but we do have a special meeting on the St. Patrick's Day, March 17th in Kula on the Kula Lodge Phase 2 Project District Approval.

5. Discussion of Future Maui Planning Commission Agendas

a. March 9, 2010 meeting agenda items

Mr. Hedani: Okay, any questions on the March 9th meeting agenda items? Any questions on the Kula meeting?

Mr. Starr: What's the time?

Mr. Yoshida: For the Kula meeting it's 6:00 p.m.

Mr. U'u: It starts at 6:00 p.m.

Mr. Yoshida: Yes, I believe the Commission wanted to start earlier so that they're not working later in the evening, too late in the evening.

Mr. Hedani: Commissioner Mardfin.

Mr. Mardfin: Where is this going to occur?

Mr. Hedani: Kula Community Center.

Mr. Mardfin: I presume somebody will tell me where that is.

Mr. Yoshida: We can provide a map.

Mr. Mardfin: And is there something we should see in advance of this like a site visit?

Mr. Yoshida: There will be a staff report and a recommendation memorandum.

Mr. Mardfin: The reason for doing this up there is so that we have adequate community input?

Mr. Yoshida: I don't think like there's been any like site inspection scheduled.

Mr. Hedani: It's to give the Kula community an opportunity to testify.

Mr. Mardfin: I think that's an appropriate thing to do.

Mr. Hiranaga: Mr. Chair? It's my understanding because it is a project district that's why the meeting is being held in Kula it's not just because we want to go up there.

Mr. Yoshida: No, because if you go back to the annual orientation training, for project districts the hearing has to be held in the community plan area. That's why we go out to Lahaina for Kapalua project district.

Mr. Hedani: Thank you very much Clayton.

Mr. Yoshida: Moving quickly through. We've circulated our EA/EIS, SMA Minor Permit and SMA Exemption Reports.

- 6. EA/EIS Report**
- 7. SMA Minor Permit Report**
- 8. SMA Exemptions Report**

Mr. Hedani: Any questions on either of those items? Commissioner Starr.

Mr. Starr: First of all, I notice there's an increase on the number of exemptions. We've never had these many exemptions in one month before. I hope this is not a trend. But I do have some that I would like more information on. The ones I'm interested in hearing more about at a later date are Repair Stone Seawall, Maui Kai AOA . I'd like to know about the Doyle Betsill Boulder Stockpile where that is. I'd like to know about Maui Ocean Club Exemption. I'd like to know about the on grade concrete slab and pool that's being exempted. I'd like to know about the Maui Land and Pineapple, nothing more than the fact it's Maui Land and Pineapple SMA Exemption and the construct ag ohana and farm office, I'd like to know about that one as well and I'm willing to – if no one else has any more, I'm willing to make a motion to accept the rest of them with the exclusion of those.

Mr. Hedani: If there's no objection we'll go ahead and approve the balance of those with those items. Are there any other items that commissioners want have reviewed? Commissioner Shibuya.

Mr. Shibuya: I just want to take a look at the Hookipa parking lot project, that's the expansion improvement of the parking lot.

Mr. Starr: Where is that?

Mr. Shibuya: It's on page 2, half way down, page 2 of 11.

Mr. Starr: Okay, that's a 2006 one.

Mr. Shibuya: Long time ago.

Mr. Hedani: Commissioner Mardfin.

Mr. Mardfin: Clayton I'm confused about something. Didn't we just decide we were going to do the site visit in Hana on April 27th and I see that on our agenda for today the Maui Memorial Park public hearing was rescheduled to April 27th?

Mr. Yoshida: That notice hasn't been finalized and as I stated in my prefacing comments, the next two or three months depending on when you're going to schedule these contested cases.

Mr. Mardfin: Okay so the Maui Memorial Park will get deferred or something.

Mr. Yoshida: Defer to another date.

Mr. Mardfin: Okay, thank you. I just caught that.

Mr. Hedani: Okay, Commissioner Shibuya.

Mr. Shibuya: I have just another one. That's the Lahaina Harbor, long time ago or is it just recent, Lahaina Small Boat Harbor project with the State of Hawaii, DLNR.

Mr. Hedani: Additional information requested.

Mr. Shibuya: Yes, additional.

Mr. Hedani: This is what happens when our agenda is light. Okay, if there's no other items of concern then we'll go and adjourn our meeting until our next regular meeting date of March 9th.

F. NEXT REGULAR MEETING DATE: March 9, 2010

G. ADJOURNMENT

The meeting was adjourned at 1:11 p.m.

Submitted by,

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

RECORD OF ATTENDANCE

Present

Wayne Hedani, Chairperson
Bruce U'u, Vice Chairperson
Donna Domingo
Kent Hiranaga
Ward Mardfin
Orlando Tagorda
Warren Shibuya
Jonathan Starr

Excused

Lori Sablas

Others

Clayton Yoshida, Planning Department
James Giroux, Department of the Corporation Counsel
Mike Miyamoto, Department of Public Works