

**MAUI PLANNING COMMISSION  
REGULAR MINUTES  
APRIL 13, 2010**

**Approved: 7/13/10**

**A. CALL TO ORDER**

The regular meeting of the Maui Planning Commission was called to order by Planning Director Jeff Hunt at approximately 9:20 a.m., Tuesday, April 13, 2010, Planning Conference Room, First Floor, Kalana Pakui Building, 250 South High Street, Wailuku, Maui.

**B. INTRODUCTION OF NEW MEMBER - JACK FREITAS**

Mr. Hunt: ... Mr. Jack Freitas. Jack this is your opportunity to give a little sound bite, your moment of fame.

Mr. Jack Freitas: Well, I was born and raised here. I'm 71 years old and I am very concerned on what goes on in the community and how development is done. I am a businessman. I benefit from development so that everybody understands that point, but I will not put my benefit to jeopardize the future of the community.

Mr. Hunt: Thank you and welcome. At this point we would like to open the meeting to public testimony. This is an opportunity for the public to testify on any agenda item if you're not able to stay for that agenda item later on. If you testify now, you won't be allowed to testify at the specific agenda item. Alternatively, you can wait for that specific agenda item to come up and we will take public testimony at that point. So hearing that, is there anyone in the audience who would like to give their public testimony now? Seeing none, we'll close public testimony and again, we'll allow public testimony later on at the individual agenda item.

The next agenda item is the election of Chair Officers. Does the commission want to wait for Mr. Mardfin? So should we go into the orientation and then we can come back to the election.

Mr. Starr: Yeah, why don't we take the first module.

Mr. Hunt: Okay, we'll go to agenda Item D, Orientation Workshop. This is the orientation for the planning commission that the staff puts on every year to educate them and also help staff. Sometimes we invite our new members. We also believe it helps the public if they're interested.

The first item is the Director's comments and I'll make a few opening comments.

**D. ORIENTATION WORKSHOP**

**1. Director's Comments**

Mr. Hunt: Again, we wanted to welcome the new member Mr. Freitas, but also we wanted to thank all the members for volunteering your time. We know you're all busy with careers and family or surfing or whatever you do for fun. Many people in the community depend on your efforts. The planners rely on your decisions. The Council certainly relies on your recommendations and particularly the citizens in the community rely on your decision.

Ward, we're just starting out orientation so you haven't missed the election.

Mr. Mardfin: Okay.

Mr. Hunt: In my 20 years of professional experience as a community planner I've worked with a lot of commissions and it's funny, they always seem to meet on Tuesdays I don't know why that is. Some unwritten rule. My experience is the best relationship between a board and a staff is one of mutual respect what bring to the table and one of the roles, the major roles that this board has is to review environmental documents. You can be a commenting agency where you provide comments on somebody else's environmental document or sometimes you're an accepting agency where you accept the document itself, but you need to remember that during that process it's an informational document. You can ask for more information as long as its germane but you shouldn't be making conclusions about the project itself.

Alternatively, one of your biggest roles is the review of development permits and most of the bigger items in our community go to the planning commission where there's hearings, public hearings, notices, etc. The more mundane permits are usually handled by the department. That's traditional in all planning departments.

A lot of these are controversial projects. We encourage you to listen to both sides of the arguments. Perhaps budge a little in order to get a decision by the board. Quite often there's a split and if one of you will say, you know, with one more condition I could vote whatever way the majority seems to be going. Because it's better to get a decision out of this board rather than a split or keep deferring it forever.

Another role that play is one of appeals. Sometimes the decisions made by the department are appealed to you and this is your role as a check and balance on the administration of the laws. You need to look at the laws and say, was the decision in error, was it arbitrary or was it an abuse of discretion. In any case, what I'd remind the commission is that you should rely on the laws, the rules, the codes that are written in making your decisions whether we all agree with the law or not. And that's the same as the staff. We make recommendations sometimes that frankly we don't necessarily like but if that's what the rule or the law says, that's what we have to do and the alternative of course is to change the law or the rule and we have been working with you on that.

And that leads me to your next major role and that is review of legislation that comes before. And your role there is to comment on bills proposed by the department or the Council. This role has less restrictions than the roles that we just talked about. You're fine to make your own opinion, to express your opinion. You're fine to talk to people in the community where these development review projects you really shouldn't be talking to anyone else except for the information that's provided right here at this forum. But under legislation again you can talk to community people, you can voice your opinion. We would remind that you're final recommendation should be consistent with policy guidelines that have been adopted. For instance, the Countywide Policy Plan, the Maui Island Plan, etc.

I'll just wrap it up. I believe that the staff and the planning commission, this planning commission have a really good positive working relationship and the department looks forward to working with you and managing the development, growth in our community. So again, I'd like to thank everyone for their time and don't forget to have a little fun while you're here. And with that, we can either

continue on with the orientation or we can go back and do elections? How about elections as long as everyone's here.

**C. ELECTION OF OFFICERS FOR THE 2010-2011 YEAR - CHAIRPERSON AND VICE-CHAIRPERSON**

**Chairperson**

Mr. Hunt: What we usually do is staff usually just opens it up for nominations and as soon as we get a chairperson they take over the meeting and then they get the vice-chair elected. So are there any nominations for Chair? Commissioner Mardfin.

Mr. Mardfin: I'll nominate Jonathan Starr.

Mr. Shibuya: Second.

Mr. Hunt: So we have a nomination for Jonathan Starr, it was seconded. Any other nominations?

Mr. Freitas: Move nominations be closed.

Mr. Hunt: Hearing no more nominations, all those in favor of Mr. Starr. Anybody opposed? We'll make that unanimous. So Mr. Starr is the new Chair. And your first order is to continue on with the election of a Vice-Chair.

Mr. Starr: Okay, my first order is to thank everyone and express appreciation for Director because I am someone who supports the department and thinks they really try with sometimes not all the resources they'd like to have.

**Vice Chairperson**

Mr. Starr: So I'd like to open the nominations for Vice Chair. Do we have any nominations?

Ms. Domingo: Mr. Chair, I want to nominate Commissioner Kent Hiranaga, Vice Chair.

Mr. Shibuya: Second.

Mr. Starr: Okay, do we have any other nominations?

Ms. Sablas: I'd like to nominate Mr. Mardfin.

Mr. Starr: I have a nomination for Commissioner Mardfin.

Mr. Shibuya: Second.

Mr. Starr: Okay, any other nominations for Vice Chair.

Mr. Tagorda: I move nomination be closed.

Mr. Starr: Okay, nominations for Vice Chair are closed. We have nominated Commissioner Mardfin and Commissioner Hiranaga. Would you like to take a minute to say anything? Go ahead Commissioner Hiranaga.

Mr. Hiranaga: I would welcome the position as Vice Chair. I have been a member of this commission for over three years and if elected when called upon conduct myself in a efficient and fair and official fashion to expedite the process in a efficient way. Thank you.

Mr. Starr: Commissioner Mardfin. You have the floor.

Mr. Mardfin: Hi, I've been on, because I came on a little late I've been on for about two and a quarter years but this is going into my fourth year out of five. I think I've got some experience now under my belt. I understand the way things run fairly well. I also would stress fairness and efficiency in the way we operate. I think we really need to hear from all people about all things and I would attempt to be very fair in handling that. Thank you very much.

Mr. Starr: Okay, we ready to vote on the position of Vice Chair? All in favor of Commissioner Hiranaga serving as Vice Chair please raise your hand, and the vote?

Mr. Hunt: Four.

Mr. Starr: Okay all those in favor of Commissioner Mardfin, please raise your hand.

Mr. Hunt: Four- four.

Mr. Starr: We have a four-four vote. There are – yes, the Chair voted. Well, we can do one of several things. One is if anyone is interested in changing their vote they could do that and if so let it, I guess let it be known, we could have a revote. Another would be to defer the matter. I mean, it may be split again in the future but – Director go ahead.

Mr. Hunt: Eventually you should get a ninth member. So the Vice Chair, unless the Chair is absent doesn't play a real strong role. In this case, though I don't like deferrals, perhaps in this case a deferral isn't all that bad.

Mr. Starr: Would someone wish to make a motion to defer unless anyone wants to change their vote that's our option.

Mr. Mardfin: I move to defer.

Mr. Shibuya: Second.

Mr. Starr: Okay, it's been moved and seconded to defer the vote on Vice Chair. All those in favor please raise your hand.

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

**VOTED: To Defer the Election of Vice Chairperson Until a Ninth Member Has Been Appointed to the Commission.  
(Assenting - W. Mardfin, W. Shibuya, K. Hiranaga, J. Freitas, O. Tagorda,  
D. Domingo, L. Sablas, J. Starr)**

Mr. Starr: Okay, unanimous vote. We will defer that and I do want to thank both for stepping forward and either one would make a great vice chair. They're both men of experience and service. I also just want to welcome Commissioner Freitas. I've known him for maybe 20 years and he's someone who's worked really hard in the community and is honest and honorable. Glad to have him aboard. Director, I'd like to ask please proceed.

Mr. Hunt: We left off with Item D-1. So next Item is D-2. This is under the Orientation Workshop. This particular item is a the County Policy Against Discrimination and Ann is it yours or can you help us out?

**D. ORIENTATION WORKSHOP**

1. **Director's Comments**
2. **County Policy Against Discrimination**
3. **Powers and Duties**
4. **Meeting Schedule**
5. **Rules of Practice and Procedures**
6. **Land Use Regulatory Framework in Maui County**
7. **Zoning**
8. **Special Management Area Rules**
9. **Shoreline Area Rules**
10. **Presentation by Sea Grant Agent Tara Miller on Sea Level Rise**
11. **Country Town Business Design Guidelines - Paia-Haiku, Makawao-Pukalani-Kula, and Hana Community**
12. **Chapter 343, HRS, The EA/EIS Process**
13. **Flood Hazard Districts**
14. **The Sunshine Law**
15. **Ex parte Communications**
16. **Discussion of Boards and Commissions Booklet Distributed by the Office of the Corporation Counsel**
17. **Ethics**
18. **Recent U.S. Supreme Court decisions on takings issues.**
19. **Public Access Shoreline Hawaii (PASH) v. Hawaii County Planning Commission**
20. **Hawaii Supreme Court Decision regarding the Topliss case (SMA)**
21. **Other Relevant Hawaii Supreme Court Cases**

Ms. Cua: Yeah, actually what we'd like to do is use the agenda that we have on the screen. Just want to give you a very quick overview of what's going to happen today. We had the Planning

Director make his opening remarks. We're going to have different planners from different divisions handling your orientation workshop today. We're going to discuss issues like the planning framework, update of the General Plan, zoning, country town business design guidelines and at that point, we'd like to try and take a break and then we're going to take the CZM including shoreline setback rules, sea level rise, Hawaii Revised Statutes, then we're going to take a break and then we'll finish up.

One thing we'd like to ask is that you hold your questions till the end of the presenter's presentation. So we're not asking you to hold it till the end of the day because that's unreasonable but if we could not be asking questions throughout and then we'll take your questions at the end.

Just to keep some time frames in mind, you have public hearings starting at 1:00 p.m. today. You have to take a lunch so we're figuring around 12:00 p.m. So we got two and a half hours to get through quite a bit of training. So without further ado I'd like to introduce Jeffrey Dack and he's going to be talking about the planning framework.

Mr. Jeffrey Dack: Yes, good morning Commissioners. This morning I'd like to go over the various components that comprise the planning framework in the State of Hawaii and the County of Maui in particular. The first slide identifies these components.

The components are the Hawaii State Constitution, the Hawaii State Planning Act, the State Land Use Commission, County zoning, Environmental Impact Statements and the Coastal Zone Management Program.

In our next slide I'll go into detail about the various resources available to the department and the commission. The commission will be in the middle of these slides. The first is the Urban Design Review Board. It's advisory and makes recommendations on design related to projects located within the Special Management Area. Further the board makes recommendations on other areas related to design such as comprehensive signage plans, design guidelines for the country business town zoning district and other areas the department deems necessary for input. The board's comprised of nine members and four alternates with four members having an interest in design and the remaining members being design professionals for example, architects, landscape architects, civil engineers. Additionally, the board is required to have members from the islands of Molokai and Lanai. The board is staffed by the Planning Department.

The Arborist Committee is advisory and makes recommendations relating to trees within subdivisions and landscaping for parks and other public places for example, right of ways. They nominate exceptional trees for protection such as the banyan tree in Lahaina. The board is comprised of nine members and is staffed by the Department of Parks and Recreation.

The Hana Advisory Committee is also of course, advisory. All Planning Department applications located in the Hana Community Plan area may be referred to the committee by the Maui Planning Commission to conduct a public hearing and make a recommendation to the commission. The committee is comprised of seven members who reside in the Hana Community Plan region and is staffed by the Planning Department.

The Cultural Resources Commission has final decision making authority within Historic Zoning Districts 1, 2 and 3. This includes approval of uses and architectural design. The CRC also provides advisory comments and recommendations to the appropriate planning commissions, other boards and commissions, departments, county council and mayor related to cultural resources. The CRC may also prepare nominations to the Hawaii or National Register of Historic Places. The committee is comprised of nine members with disciplines of archaeology, planning, architecture, architectural history, Hawaiian culture and ethnic history. Additionally the CRC is required to have members from the islands of Molokai and Lanai and is staffed by the Planning Department.

Other Federal, State and County agencies provide comments to the department regarding their specific function. For example, the Department of Health provides comments on individual wastewater systems. In our next slide lets take a look at the laws and regulations providing the planning framework.

The Hawaii State Constitution sets forth the structure of governance in the State of Hawaii. The Constitution among other things provides for the workings of both state and county governments and the enactment of state laws by the Hawaii State Legislature known as the Hawaii Revised Statutes.

The Hawaii State Planning Act, Chapter 226, HRS was adopted in 1978 to establish a statewide planning system. Chapter 226 was also provides the enabling legislation for the Countywide Policy Plan and the respective development or community plans that we have today. The Hawaii State Planning Act sets forth required elements such as desired population and physical development patterns, unique problems and needs, land use transportation system, implementation priorities, etc.

Chapter 2.80B of the Maui County Code entitled, the County General Plan and Community Plans establishes the County's process to update the County's General Plan. The General Plan includes the Countywide Policy Plan adopted in 2010 and the nine community plans which were adopted following the last broad policy level General Plan from 1990.

The cover of the Countywide Policy Plan is shown along with a map delineating the seven community plan regions within the purview of the Maui Planning Commission. These are the Kihei-Makena, Wailuku-Kahului, Paia-Haiku, Makawao-Pukalani-Kula, West Maui, Hana and Kahoolawe Community Plans.

The Maui County Charter was amended in 2002 to provide further guidance on the General Plan update. Additionally Bill 84 which composes most of the present 2.80B was passed by the Maui County Council to provide further guidance on the current General Plan update process and clarify the role of the completed documents in county governance.

The Maui Planning Commission conducts a public hearing and then provides recommendations to the Maui County Council for Community Plan Amendments within the purview of the Maui Planning Commission.

The State Land Use Commission is a subject of Chapter 205, HRS, more commonly known as the State Land Use Law, Chapter 205 was adopted in 1961 by Act 187. All lands in the State of Hawaii are designated into one of four categories, agricultural, conservation, rural and urban. These designations are shown on the map on the slide.

The County has jurisdiction over lands located in the agricultural, rural and urban districts. Lands located in the conservation district are under the jurisdiction of the State Department of Land and Natural Resources.

There are two types of action that can occur under the State Land Use Law. The first type of action is known as a Land Use District Boundary Amendment the reclassification of land from district to another. For example, agricultural district to urban.

The second type of action known as a Special Use Permit allows for the establishment of a use that is not permitted within the state agricultural or rural district. This use must be deemed and unusual and reasonable based upon five criteria listed.

The State Land Use District Boundary Amendments that are greater than 15 acres are processed by the State Land Use Commission. The Maui Planning Department is a mandatory party to any district boundary amendment involving lands located in Maui County.

Land Use Commission Special Use Permit greater than 15 acres require approval from the State Land Use Commission, however the processing is done by the Maui Planning Department. The commission conducts the public hearing and then provides a recommendation to the State Land Use Commission.

The State Land Use District Boundary Amendment if they're less than 15 acres are processed by the respective county. The Maui Planning Commission conducts the public hearing and then provides recommendations to the Maui County Council for district boundary amendments located on the Island of Maui. Processing of district boundary amendments in Maui County is governed by Chapter 19.68 of the Maui County Code.

Land Use Commissioner Special Permits less than 15 acres located on Maui are acted upon by the Maui Planning Commission after conducting a public hearing.

Zoning is covered by Chapter 46 of the Hawaii Revised Statutes. That's the enabling legislation that allows the zoning at the county level. The Chapter 46 also allows for the creation of planning and traffic commissions. Title 19 of the Maui County Code is the zoning code for Maui.

There are two parts to Title 19, Article 1 is Interim Zoning, and Article 2 is Comprehensive zoning. Paul Fasi will go into greater detail on zoning in a few minutes.

Next is the Coastal Zone Management Program, Chapter 205A, Hawaii Revised Statutes and it was adopted in 1978. This chapter comprises the laws for the Special Management Area, Shoreline Setback Area and the overall Coastal Zone Management Program and is supplemented by the Special Management Area and Shoreline Setback Rules of the Maui Planning Commission. Jim



Buika will cover this section in greater detail later on in today's presentation.

The last major component is Chapter 343, HRS which is entitled Environmental Impact Statements. This was adopted in 1974 by Act 246 and provides a means of information, disclosure to a system of environmental review that will insure that environmental concerns are given appropriate consideration and decision making along with economic and technical considerations. The director mentioned this in his opening comments.

The commission considered environmental review documents before it can act upon community plan amendments, shoreline setback approval and sometimes other permits. Ann Cua will cover this section in greater detail later on in this presentation.

And now I'd like to turn it over to Simone Bosco, who will brief the activities of the Long Range Division including the General Plan update unless you have any questions first. Thank you.

Mr. Starr: Members, any questions? Okay, excellent presentation Mr. Dack, thank you.

Mr. Dack: Thank you.

Mr. Starr: Ms. Bosco, it's all yours.

Ms. Simone Bosco: Good morning, I see some friendly faces I used to work with about, what a year ago. Nice to have the new members. My name is Simone Bosco and I'm with the Long Range Division and I'm going to give about a 10-minute, 15-minute presentation. Who knows what the Long Division Range is here? We're kind of a quiet group. Long Range Division is responsible for community planning, comprehensive planning and also you will every so often be reviewing our legislation, our proposed legislation. Often times it goes on to the County Council. And we also have basically two sections within our division. We have planners and we also have a GIS section and I'm just going to go into that a little bit, but before I do I wanted to just introduce who we are.

We've got the Planning Program Administrator, John Summers who heads the division and we also have two supervisors, one for the planners in our section and we also have a GIS supervisor. We have several clerical people and we also have what you see here is equally divided amongst the six planners and six GIS staff.

So the key functions of the Long Range Division are to basically prepare and implement the General Plan. The General Plan is composed of 13 separate comprehensive planning documents. The first of the entire packet of documents is the Countywide Policy Plan which was just adopted on March 24<sup>th</sup>. We also complete technical studies which support a lot of our work that we do and we do a number of special planning projects as well.

We also facilitate a lot of public outreach events to basically garner consensus and public opinion with the community, with the various boards and commissions that we work with and also of course, the County Council. So sometimes we'll go out and we'll do various public outreach events whether they're small, large. Sometimes they take the form of public, officially public agendaed meetings and sometimes they're more specific to – the project we're working on and trying to gather just

general public opinion on what the community really values and feels.

We also do a lot of coordination with the other agencies at the State level and also at the County level and the GIS section analyzes land development data and prepares digital maps.

This I don't expect you to read. I just wanted to give an example of the kind of technical studies that we complete and I actually have to refer to my packet here, I'll be handing out a copy of the power point a little bit later and so what you see here are at the top, socio economic forecast, that was done in June 2006. We have land use forecast a technical study that we've completed. We do housing issues studies, agricultural resource technical studies, we do just various special planning projects designed to basically build our projects upon.

So this is an example of some of the special projects we do. Right now we're engaged in a mitigation impact fee study. That's going to be looking at how to actually develop an impact fee to fund the public facilities and services and some of the infrastructure that we need to build for the county. So we're looking at how to mitigate the impact of development. So that will be coming towards this body to look at much later on, probably next year but we're doing the groundwork right now.

We also have a transportation planning model for assessing traffic impact fees. That's another project to help establish a traffic impact fee for the roadways, when a developer comes in there may be a impact fee associated with this project.

We have another project, we have conservation subdivision design program project and there's other projects that we're engaged and I won't go into a lot of detail. This is just to give you an example we have other projects besides the General Plan update that we're engaged in.

Of course, we do have the General Plan update that's a enormous part of our work. The Countywide Policy Plan was just adopted so we're going to be looking at doing perhaps a workshop to orient the agencies and this body on how to use the Countywide Policy Plan. It's a very broad visionary document and it provides a framework for the development of the subsequent plans which are the Maui Island Plan and other outlying island plans which are community plans of Molokai, Lanai and then the other seven community plans which pertain Maui and Kahoolawe.

We also have the guiding legislation which guides how we do the General Plan update. Maui County Code 2.80B you should take a look at that in your spare time. Basically it defines how we go through the process of updating the General Plan and that helps us to – what that does is it tells us that the required components of when we update the General Plan what we're required to do, it establishes advisory committees, it discusses the role of the committees, the role the Planning Director and Planning Department, the role of the commissions and the council.

It also establishes the exact process for amending the plans and it identifies what's required to be in the plans. So a little bit about the key General Plan elements. All of them must have a vision statement. They all have goals, objectives, policies and action statements. The Countywide Policy Plan does not have a directed growth plan, but the Maui Island Plan does and that's the subject of a discussion now with Council. We also have action plans in the island plans and community plans

and that's more of a specific – that's providing specific direction on what we have to do to achieve our objectives and we have a implementation program in the island plans and community plans and then also we have benchmarks and of course, there's a requirement for status reports, annual status reports especially in the Maui Island Plan which basically once it's adopted that requires of the agencies that they report back on how they're achieving meeting the objectives and goals of the General Plan as it pertains to their agency and their jurisdiction and that's at the county level.

And a little bit about how each chapter of a comprehensive plan is organized. Again, there's a background section, there's a usually a challenges and opportunities section which explains what the issues, problems and needs are pertaining to that particular chapter. We have the goals and objectives and policies section and action plan section and then there's in the island plans and community plans there are maps. There are no maps in the Countywide Policy Plan that was just adopted. And so this kind of provides the entire framework, the 13 documents I mentioned earlier if you want to look at that longer I can, but it's basically the 13 plans that our division works on at various periods.

What makes a great plan comprehensive? It's internally consistent which means its parts work together. We don't want the policies to basically not be able to work together so we look a lot at how each section of a plan works together, is consistent and also between the plans if they're consistent. So as you drill down to the community plan level we want to make sure that the community plan is drawing from – if it's Maui Island, community – from the Maui Island Plan and then that is supporting the Countywide. So it's hierarchical arrangement between the plans.

We want the policies and implementation measures to be very clear and specific and measurable so that we can actually figure out how to fund each action, how to fund – how to get these policies executed and implemented so we try and achieve policies that are realistic, we try and draft policies that are realistic, can be done within a certain framework and the framework by the way for a community plan and for the General Plan is 20 years with 10-year updates.

The policy implications are normally articulated within the plan so there's always a background section that explains a little bit about the context of each policy, why it's created and what it's designed to do and we also include in the planning process a very transparent public debate. So we want to come to these boards and commissions and public meetings and allow feedback, you know, discussion and so forth.

In our efforts here we're really striving to be bold and vigorous in our plan making so some of the tougher issues we want to try and tackle, we want to be visionary about it. At the same time, we want to use the best practices that are out there in the planning profession in our planning process. So we're both looking at what is the best professional practices in the planning field that we can bring into the process but as well we want to try and go beyond that and really do something that is groundbreaking in our plans. So that's something we – when we bring something to this body, we're looking for you to see okay, we're really striving far to try and do something visionary at the same time we want to try and be realistic and bounce it off this body and other bodies and say okay, well what's the way of the land really and can we do this? We also want to respect the community so we do want a mixture. There's always a public outreach process involved.

Sustainability is a major theme through all of our plans and you probably heard this term means a lot of different things to a lot of different people. Basically it's the ability to provide for the needs of people of this county and the future populations, the future generations of this county without damaging the future generation we want to provide for current needs and future needs. So seven generations is looking way down the line. We want to try and look way down the line as much as possible not just look at the current generations needs. So anyway, I'll go on. Also, in setting objectives there's a acronym called smart, I don't know if you've heard of that, basically setting smart objectives within plans which we strive and do. What that means is that each objective carries these components that they're specific, measurable, achievable, realistic and timely. So when we're setting objectives in a plan which is what the policies are based upon we want to try and look – well, does each objective meet this criteria and then we also try and incorporate smart growth principals. That's been a very popular term over the last decade. I won't go too much into that but basically it's a popular approach to planning to right now. Maybe you can Google it, look into it but there's 10 key principals that cover a vast number of areas.

In General Plan processes there's a lot of issue interplay, environmental, social, economic, urban design, a lot of different issues and they all – actually I'd like to look at planning as a holistic process. It's not just emphasizing land use. It's also emphasizing social needs, environmental needs, economic needs, all of it works together and so we can't always just go look narrowly at one issue. You also have to consider the other aspects of the community. So when you're looking at the process when we bring something to you, we want to try and encourage for example this body to look comprehensively at oh, well, how would this policy affect another part of the community. There's a lot of issue interplay.

I mentioned public engagement earlier. We do a lot of that. One example was Walk Story that was done for during the Countywide Policy Plan and we had – it was a huge event. It was an island wide event. We had six stations set up with different games and designed to try and assess what the community feels about different issues, housing issues, economic issues, things like that.

I won't go into this too much but basically this is what goes into creating a plan. We have on the left the technical studies that are the foundation. Then we have after the technical studies are developed we have the events of a plan that are drafted and then that creates the basically, the chapters of a plan and it ranges from history to natural resources, cultural resources, agriculture, infrastructure, housing and so on and then following that in the island plans and community plans we have growth, a growth section that talks about directed growth.

I just threw this slide in there just to give a sense of why we're called long range planning because everything we do is very long range. Every project we do tends to cover the span of maybe one or two years. When we bring the community plans to you which is coming up soon this body will have six months to basically act on a community plan itself. So you'll see a – we'll schedule meetings with this body and we'll be discussing the parts of the plan but it will take a six-month period and then you will have a deadline of six months but that's just one component of the long range process. Before that even happens we have the technical studies, we have the community plan advisory committees then we come to you then we go to Council. So it's a very long process which is why we're called long range.

Again, very briefly, the Countywide Policy Plan was adopted March 24<sup>th</sup>. It's online and encourage you all to look at it, the planners will be using the policies from this plan to analyze the projects that come before you and it's also going to be guiding the development of the Maui Island Plan and the future plans. It's a very broad policy document.

And the Maui Island Plan is currently is up at Council and we're looking at – we're right in the middle of the process actually with Council. This body already did its work on the Maui Island Plan so we have brought those recommendations to the County Council and we're looking at kind of actually complete and adopt the Maui Island Plan hopefully within the deadline which is in October but there's a lot of work still before us with that document. So that's also online for you to look at.

And then, I'm going to leave this alone just for the sake of timing. You can look at the island plan online and see what it's really all about, but this slide describes what it really does. And it does have maps which provide visual graphical depiction of existing conditions and then also maps that are designed to implement the policies within the plan. So there's two sets of maps within the island plan.

And the community plans are coming up as well. We have the Molokai, Lanai, West Maui and Hana Community Plan that we are starting on now. We're just in the very beginning phases so we're looking at some public outreach events now for the outer islands and we'll be also starting the other two, the Maui Community Plans, Hana and West Maui. And those also have a number of elements that they're covering. Basically we're looking at the existing community plans and looking to amend those and bring those up to date and those are typically a 10-year, it's a 10-year update with most community plans just so you know.

And ultimately we try and just protect a sense of place that the county has. This is my last slide. Just wanted to remind everyone that ultimately we want to try and keep what's special about Maui County special. There's a lot of different issues but that's our, we try and keep that, you know, way up there in our priority list when we're doing the process and what that sense of place means is those characteristics that make a place special or unique as well as those that foster a sense of authentic human attachment and belonging. So what makes a place special to you we want to try and protect. And that's it. Hope that wasn't too long.

Mr. Starr: No, it was very good. Members, any questions for Ms. Bosco? Commissioner Shibuya.

Mr. Shibuya: Thank you Simone. I just had questions in terms of throughout your presentation and I noticed and I really wanted the need here for the public to use this information so it would be an educational aim or focus. You've been talking about various processes but hopefully we can have some kind of outreach program to share some of the technical report data, recommendations, concerns and challenges. We have the term such as conservation subdivision. In my mind that's kind of contradictory. So it needs to be clarified and discussed and we need to not only keep it in books which we place on shelves but we need to bring it out to the public and maybe through some outreach programs, maybe through Akaku maybe these – this type of planning type of words, concepts can be brought out to the public because in the final analysis they are the ones that gonna come out with the manao and share with us how they would like to have their alternatives considered and if you don't provide this information to them then it's very difficult, it's going to be

an emotional type of dialogue in the various communities and that's what I would like to mitigate by giving information. Are you, I know you don't speak for your department, is there any effort towards outreaching and educating the public?

Ms. Bosco: Thank you Warren and that's an excellent point and yes, when we do begin a project we typically bring it out to the public and there's always an educational component to, you know, to introducing each project or plan and so forth, any of the planning projects we have we try and introduce it with background information and an explanation but yes, I think that's a very good point, well point taken. Thank you.

Mr. Shibuya: Also in my experiences so far in this long range planning effort, I notice that the public does not really understand fiscal planning and attaching plans and realistic monies to it. They don't understand the cost of money, they don't understand the color money. These concepts need to be shared with the public. Color of money of course is from different sources. The cost of money is when you make the plan in a specific year and as you go into the future that money increases and inflates in value and so that cost has to be added in if we're going to do infrastructure lets say for the new sewer treatment plant. This is the kind of cost it would be as we plan for 2010. That 2010 money now in 2020 is going to cost 10 years times the inflation factor and so this is the kind of concept I would like to have you share with the people because the plans now are pie in the sky, they're fairytales and we need to be sure that we can keep feet grounded to reality.

Ms. Bosco: Yes, thank you. Excellent point. And it's a subject of much discussion with the Council now. So thank you. I'm going to hand out the –

Mr. Starr: Okay, before you go any other questions for members? I have one for you Ms. Bosco and just as an aside we will be doing some more education here to this body as the year progresses and we can talk about how we can best accomplish that. Is there a rough timetable for the community plans and the other island plans?

Ms. Bosco: Rough timetable, this year, the very rough timetable is we are going out to the communities of Lanai and Molokai now and trying to – we're doing some ground truthing or discussing – we're in conversations with some of the important members of each community and then we're going to be establishing a community outreach event or series of events for the outer islands. Roughly some time within I would say the next six months we'll probably have a community outreach event for those outer islands. I'm not controlling the timing of that, so I don't know exactly what the date is. I can provide that – we'll probably provide that for you as the time nears.

Mr. Starr: Director.

Mr. Hunt: The tentative schedule for the Molokai and Lanai plans are three years from about today, so if you go backwards, a year for Council review, the planning commission should see that in approximately a year and a half to two years.

Mr. Starr: So five years. Oh, a year and a half from now and then completion in three years?

Mr. Hunt: The timeline is completion in three years.

Mr. Starr: And how about the other community plans and what's the order?

Mr. Hunt: The order at this point is Molokai and Lanai and then West Maui and Hana and then after that, we're not exactly sure. West Maui and Hana should not take as long as Lanai and Molokai because Lanai and Molokai are even though they're community plans they're kind of Island Plans also. So those will take a little bit longer. So hopefully the community plans won't take the three years that ...(inaudible)...

Ms. Bosco: And just to give you guys a sense of timing. Once we begin the process with the community plan advisory committees for the community plans they have six months and we come back, the Planning Department has a month to turn it around then it's your turn and then you will have six months to review that plan. So at least, a minimum of six months to another year I would say before you see a community plan.

Mr. Starr: And I have one last question. The traffic impact assessment study does that take into account other forms of multi modal transit such as pedestrian and bicycle as well?

Ms. Bosco: Yes, that's one of the key aspects of that project is to include multi modal transportation.

Mr. Starr: Commissioner Shibuya.

Mr. Shibuya: On the transportation that study does that include the identification or at least studying the alternate routes or possible routes for mass transit?

Ms. Bosco: Yes, yes, as proposed in the Maui Island Plan.

Mr. Shibuya: Yes.

Ms. Bosco: Yes it does.

Mr. Shibuya: Thank you.

Mr. Starr: Thank you very much. Excellent presentation. Director please continue.

Mr. Hunt: Ann can you take us, or introduce the next one?

Ms. Cua: Paul Fasi will be coming up next to talk about zoning, but what I had forgotten to remind you is that we did make copies of the power point presentation so that you can follow. There's several copies. Obviously like Simone's one was separate from the overall packet. So you can kind of just follow along, but Paul is going to be covering zoning and that actually starts on page 4 and there's a section where you can write notes if you want if you have some questions on a particular slide that you can come back with.

Mr. Starr: Okay, and thank you for the good documentation. Mr. Fasi, and then we'll take our

midmorning break.

Mr. Fasi: Good morning Commissioners and congratulations again, Commissioner Starr. Look forward to working with you. You know the Long Range works in a very objective world as opposed to the Current Planning Division we work in a very subjective environment and we are tasked with interpreting the Maui Code Chapter 19 and also the various community plans, the seven community plans, the six that we actively work with, with exception of Kahoolawe for obvious reasons. And then we try and overlay that into the various applications that we analyze here before you.

Just to give you an idea, if you haven't seen this book, this is the Maui County Code. Title 19 is the second largest chapter in this book next to buildings and construction which is very detailed. It's a heavily detailed document, Chapter 19. It's a 105 pages of very detailed facts and figures and so analyzing that and overlaying it again with community plans tends to be a very daunting sometimes experience depending on the complexity of the application and the project that we're dealing with. Sometimes the project has several applications that we have to analyze and so therefore, the working relationship between the Current Planning Division and this commission has to be like teamwork and we have to work together to get to end up as the final result and get the final correct decision that we make before you and together.

I'm going to give you just the flavor for some of the zoning provisions here. We're not going to do all of them. We'll just do some of the more common ones that will be coming before you. We can't go through them all, we'd be here for two days.

As I said, Title 19 is Maui County Code that's primarily where the Current Planning Division lives and works. It allows – the change in zoning is the first one we're going to look at and it allows for the change from one zoning designation to another. We see a lot of that here before us. The example they give is going from B-2 Business to R-3 Residential. The planning commission is the – holds the public hearing and makes a recommendation to the County Council and the County Council would be the final decision making authority on this particular ordinance.

Another common application that we bring before you is the Conditional Permit. The intent of the conditional permit is to provide the opportunity to consider establishing uses not specifically permitted within a given use. The use has to be similar, related or compatible to the listed permitted uses. The planning commission again you hold the public hearing and the recommendation is made to the Council, the Council is the final authority on conditional permits.

Another common one you see before you is the County Special Use Permit. You do have the final decision making authority on this and some of the requirements of the county special use permit there's three particular and these are identical to the change in zoning and very briefly that the proposed request has to meet the intent of the Maui Island Plan objectives and policies. The request has to be consistent with the applicable community plan and the request has to meet the intent and purposes of the affected district.

Planned Development, you don't see this too often. These projects are very large and they're rare and the purpose of a planned development is as the slide says, to encourage desirable design and land use patterns within the existing natural environments. I believe one of the last and largest



ones we have is the Puamana project development on the west side which still has not been built yet. It's unusual that this particular zoning requirement here is no public hearing required.

The Project Districts, we just went through a very controversial project district application with the Kula Lodge and that's a perfect example of the project district. Another example of a project district would be Koele on Lanai, Project District 2 and Manele, Project District 1 and the purposes of the project district is to allow flexible and creative planning in a specific area such as Kula for the Kula Lodge. It is reviewed in three phases, Phase 1, 2 and 3. The final Phase 3, – the first two are reviewed by this commission, the final, Phase 3 is department approval.

Bed and Breakfast Ordinance was recently updated and I believe the ordinance was passed late last year and it's the regulation of the bed and breakfasts here in Maui County. Basically they allow short term rental within the residences up to six bedrooms total between a total of two dwellings. The owner must live in one of the two dwellings. There are some requirements in the ag district where it's unique to the ag district the \$35,000 ag income. Hopefully we have in the not too distant future a TVR ordinance that kind of hopefully will piggy back off of some of these requirements here to make it consistent and easy to manage.

Country Town Business Districts are 19.15 and they establish development standards for businesses in the rural communities. Country town as you know is commonly, you know, Makawao, Paia and Hana. Maui Planning Commission approves the design guidelines and the department administers the guidelines. Hana and Lanai City are also subject to the County Town Business Design Guidelines.

Off-Site Parking this is something that certain developments where they have like for example a warehouse and the code says well, you need a hundred spaces for a warehouse and realistically they don't need a hundred spaces so they get a parking waiver there and we kind of make amends for that to match the use with the actual requirements. But the Off-Site Parking is designed to make sure that the developments have adequate parking for their project.

Accessory Use Permit this is not too common but this is something that it's defined in the proper zoning district, per district, it requires planning commission approval and will be bringing an accessory use permit before you at the next planning commission meeting.

That concludes kind of a brief overview of zoning. Any questions?

Mr. Starr: Commissioners, questions? Director.

Mr. Hunt: Just a little a clarification on the Planned Development, Puamana is built out. Another example of a planned development is Wailea and the difference between a planned development and a project district is the planned development gives you flexibility with the existing base zone. The project district is you're almost creating the zoned. It's a customized zoning for that spot right there. So that's the difference between those two.

On the Bed and Breakfast Permit the \$35,000 income test is only if the lot is five acres or larger. So if it's less than that then we can approve that without the income test.

Mr. Starr: Members, any other questions? Just the project district and planned development I've always been confused between the two. My understanding from this is that a project district tends to be smaller and a planned development tends to be larger?

Mr. Hunt: Not necessarily. Ann do you know by history if that's the case?

Mr. Cua: Actually no. Project districts are usually larger. Some project districts include Wailea 670. Kula Lodge that Paul talked about is very, it's relatively very small project district. Pulelehua that came before that is still before Council that's a project district, it's very large. Kapalua Mauka. A planned development tend to be smaller. Puamana which was approved as a planned development back in the '70's you know it's quite large but it's not very large, it's not hundreds and hundreds of acres. Wailea though on the other hand is about the largest planned development. The entire Wailea Resort is in the planned development but a single parcel could use the planned development process to be able to gain additional densities and so, that is a very interesting process but again, project districts tend to be larger and they are reflected in the community plan and they actually get their own zoning ordinance that has to go through Council whereas planned developments tend to take the underlying zoning and request density bonuses.

Mr. Starr: Okay, thank you. Is the next module a short one or a more like –

Ms. Cua: Yes, the next module is a short one. It's Business Country Town Design Guidelines and Erin Wade was the planner that was going to be presenting this but I believe Gina Flammer is going to present on her behalf.

Mr. Starr: Okay, can we take one more before our break?

Ms. Cua: Thank you.

Mr. Starr: Please go ahead.

Ms. Gina Flammer: Good morning, I'm Gina Flammer, I'm stepping in for Erin Wade today. Erin's an excellent planner, she's a second generation planner. You guys will get to meet her in a couple of months when she brings a SMA major to you.

So I'm going to talk about Country Town Business Districts today. The purpose and intent is to establish development standards for businesses in rural communities and it's to preserve and maintain the unique urban design character and country town atmosphere. It's generally to incorporate the communities of Makawao Town, Paia Town, Hana Town, Lanai City and Kaunakakai. I'll show you what the design guidelines look like. I've brought two of them for you and I'll pass them around. You guys can take a closer look. I want to let you know how it's going to – how your commission interacts with these design guidelines.

Generally when there's a SMA major which would then put it in Paia or in Hana or if there's a special use permit in those districts. I'll explain a little later what other process it goes through.

So basically the design guidelines all work shall be done in a similar or compatible architectural

design character with that of the surrounding commercial building. The design guidelines are rules and regulations of the planning commission and as you heard Paul just say it was your body that did adopt them. They're not updated very often. They're historic in nature so there's not much need.

So the country town business items they're referred to the Urban Design Review Board which Jeffrey did talk a little bit about and that is staffed by professionals. So in the cases where you have permits like an SMA major that will come to you it will get referred first to the Urban Design Review Board who will look at those guidelines and then they will have some recommendations that will get sent to you and it will be on staff report. You guys see those with your other SMA majors.

The typical elements of a design guidelines are listed up there and for those of you going through the books you can kind of take a look and see what kind of detail they go into. There's also site design guidelines. And then street utility design guidelines, that can include power poles. It also looks at landscape planting. They really try to take in the whole picture of an area to preserve the area.

So the process for country town business review is the Planning Department which would be our small town planner, Erin, would review the application for completeness just like we do with all our other applications. She then forwards the application to the Wailuku Main Street Association, Tri-Isle Main Street Resource Center to their Structure and Design Committee. They would meet and discuss it, they would provide their comments to her. If the application is not coming to this body she would then approve it administratively. If it is a structure that's over 50 years old she will refer it to the State Historic Preservation Division with DLNR. They will review it and give her some recommendations. A determination will be made whether the application is consistent with the design guidelines then they'll either have the administrative approval or it will get referred to Urban Design Review Board. That's the end. Is there any questions?

Mr. Starr: Commissioner Mardfin.

Mr. Mardfin: In particular, I just want to find out what the latest story is under street utility design guidelines for Hana it typically says sidewalks aren't needed nor wanted yet Hasegawa General Store can't be built without sidewalks because the Department of Public Works won't sign off on building permits and so there seems to be a conflict between what the design – the plan, design guidelines and what the Building Department will agree to.

Mr. Starr: We'll ask Mr. Fasi to answer. I think he was the planner on that.

Mr. Fasi: Yeah, I was the planner on the store development. A lot of times there is conflicting values. Another example would be the Hanzawa Store in Haiku. But the Hasegawa Store where the community plan does not call for sidewalks I believe will be the precedent and sometimes, you know, Public Works will require that we put the sidewalks in but I believe that under the special management area rules of this body you have the authority to make that call according to the recommendations of the community plan.

Mr. Mardfin: But how do you get them to – the Director of Public Works – I'll let Jeff speak.

Mr. Hunt: The problem is that Title 18, Subdivisions and other titles in the County Code have specific requirements and Public Works is uncomfortable ignoring what they consider a code mandate based on a community plan design standard. So the solution is to change the code to refer to the community standards, the design standards.

Mr. Mardfin: Is the department planning to introduce legislation to that effect?

Mr. Hunt: We have been discussing with Public Works what's the best approach on that.

Mr. Mardfin: Thank you.

Mr. Starr: I'd like to ask that that be something we can discuss at a future meeting as an agenda item.

Mr. Hunt: Sure.

Mr. Starr: Okay, members? Okay, Ms. Flammer.

Ms. Flammer: To further address your question there is a band aid approach which is the Board of Variances and Appeals for those type of issues.

Mr. Starr: Okay members we'll take a 10-minute recess and then come back and finish up the morning's business. Thank you.

A recess was called at 10:30 a.m., and the meeting was reconvened at 10:42 a.m.

Mr. Starr: Next up, Director.

Mr. Hunt: We're still on D-1 on your agenda, Orientation, Item D, pardon me, Orientation and the next one is the SMA provisions within our code and this is Jim Buika.

Mr. Jim Buika: Good morning Chairman Starr and Commissioners. My name is Jim Buika, I'm the Coastal Resource Planner and I'll be talking today about the Coastal Zone Management Act, HRS 205A, the Maui Planning Commission roles under the Special Management Area Rules for the Maui Planning Commission, the Shoreline Rules for the Maui Planning Commission and then close with a few remarks, but first I'd like to thank each of you for your contributions, time, expertise to the people of Maui by serving on this board. It's a huge time commitment and thank you so much for your commitment.

To begin, the Hawaii Coastal Zone Management Statute was enacted and codified as HRS 205A in 1977 and approved in 1978 by the Department of Commerce. It is the State's Environmental Resource Management Policy umbrella. The CZM Law manages all the Hawaiian Islands. The coastal zone is defined as from the top of Haleakala down to the shoreline so it does have environmental resource management implications for all of our islands and it allows for a special management area permit system and setback shoreline variance which the Maui Planning Commission is involved with and I'll focus on those today.

So back to the planning framework. Under the State Constitution the State Coastal Zone Management Program Chapter 205A of Hawaii Revised Statutes delegate authorities of the Special Management Area Rules and the Shoreline Rules to the Maui Planning Commission. Those are guidelines that have been written and are followed in the Maui Planning Commission proceedings. Under those rules are – you review the Special Management Area permits and Shoreline Setback Variances.

The Special Management Area that I'm speaking of is a subset of the coastal zone delineated by the county authority. In 1977 we defined our SMA boundaries and it is by this yellow-green boundary. Here you can see Honoapiilani Highway and South Maui around Kealia Pond, it becomes very narrow along Olowalu up to Lahaina. There is some in Kaanapali, Kapalua area, on the backside, east side of Maui, through Kahului and then along the Hana Highway out into Hana so it's a very defined coastal zone here and that over time can be – boundaries can be changed by the Maui Planning Commission.

The Coastal Zone Management Act authorizes counties to develop and administer SMA Rules and the Shoreline Rules as I stated.

The purpose and goal of the SMA Rules as a management tool the SMA Rules purpose is to set special controls through a permitting process to assure that allowable developments are designed and carried out in a manner consistent with the coastal zone management objectives and policies and the SMA guidelines and I'll go into the objectives and the SMA guidelines shortly. The goal of the SMA Rules is to further the policy of the State through the CZM Program to preserve, protect and where possible restore the natural resources of the coastal zone. So there are objectives and there are SMA guidelines that are delineated by the Coastal Zone Management Act and the Coastal Zone Management Act recognizes that there are impacted resources by the development and there are 10 of these. Going down the list, recreational, historical and cultural, scenic and open space, coastal eco systems, economic uses, coastal hazards, managing development through a permit process, public participation, beach protection and access, and marine resources.

So for these impacted resources there are objectives and these are to provide coastal recreational opportunities accessible to the public, protect, preserve and restore natural and manmade Hawaiian and American cultural and historical resources, protect, preserve and restore coastal views, open space and scenery, minimize adverse impacts and protect coastal eco system, provide and co-locate coastal development dependent facilities while minimizing negative impacts, reduce risks to new structures and enhance public safety, streamline the permitting process with communication and public participation and the management of coastal resources and hazards, stimulate public awareness, education and participation, enhance public beach access and minimize beach loss, beach erosion and site hardening and to conserve aquatic natural resources for sustainable development. So these are the overarching broad objectives of the Coastal Zone Management Program.

As the SMA Rules for the Maui Planning Commission Chapter 12-202, the SMA Rules provide authorities to the commission and the director any proposed action within the SMA boundaries in here requires an assessment by the authority. The commission is authority for SMA Major Use Permits normally over the course of the year you may see 20 to 30 major SMA permits come before

you and then the director also authority for minor permits, emergency permits and SMA exemptions. So not everything in the SMA by a long shot comes to you just the major permits.

So what is the Maui Planning Commission's role in the SMA permitting process? First is to assess whether a proposed activity in the SMA is defined under development. Most everything is development, anything you do really is development, grading or developing any structure. However, it would be onerous for this commission to review everything that is development in the SMA so there are a number of exempted categories from the definition of development in the Coastal Zone Management Act. There are 16 exempted categories of not development regardless of the project value. So you do not see the exempted project. If a project is deemed a development and evaluation is greater than \$125,000 then the Maui Planning Commission authorizes it via the public hearing process. If a project is deemed a development and it's less than a \$125,000 then the director through his staff, Planning staff, authorizes no public hearing for the staff assesses it and the director approves minor permits, that's called a minor permit.

So the SMA Rules for the Maui Planning Commission provide for an assessment and evaluation criteria and there are 12 criteria listed in the SMA Rules to evaluate any proposed action and these assessment criteria are brought before you, are evaluated by the Planning staff and our recommendation comes to you. If a project, every development project has some adverse effects that may exist but we attempt to minimize the adverse effects in light of compelling public interest such as public health and safety as well as economic development interest. So we can't stop all development for environmental reasons but what we do is look to minimize the impact. And also every proposed activity must be consistent with the SMA guidelines under the SMA Rules.

So I'll refer two slides here to the SMA guidelines that are in the Coastal Zone Management Act and the SMA Rules from the Maui Planning Commission have accepted these SMA guidelines as their guidelines in the SMA Rules. That we have adequate access to publicly owned beaches, recreational areas, wildlife and natural reserves, adequate and properly located public recreation areas adequately controlled, managed and minimized impact from pollution and runoff, minimize adverse effects for water resources, scenic resources and recreational amenities and minimize risk to proposed structures from coastal hazards. You'll note that I've underlined adequate and minimize again with the caveat and the emphasis on there can be adequate resources for the public and also minimizing impacts, the effects to the environment.

And then also, these SMA guidelines seek to minimize dredging, filling, altering coastal areas, reduction in beach size, impediments to public beach access and coastal recreation, loss of coastal view plains, adverse effects to water quality, fisheries, wildlife and habitat, loss of existing or potential agricultural uses in the SMA area and the bottom line is that the Coastal Zone Management Act through the SMA guidelines and our Maui Planning Commission SMA Rules seeks to minimize where reasonable adverse impacts to the environment. So that's like in my concluding statement also there. That through these processes here we seek to minimize where reasonable adverse impacts to the environment.

These are the SMA Rule criteria. I would like to read them because they're important, they're in front of you in the handout but these are the criteria that we go through on every project whether it's exempted, whether it's minor, major, exempted, that we look to see – any proposed action may

have a significant effect on the environment and any of these triggers are met if it involves an irrevocable loss of natural or cultural resources, significantly curtails the range of beneficial uses of the environment, conflicts with the state or county's long-term environmental policies and goals, substantially effects the economic and social welfare of the community, involves substantial secondary impacts, it's part of the cumulative effect for a longer action, substantially effects a rare, threatened, endangered species, animal, plant or habitat, is contrary to state plans, general plan, community plan, zoning or subdivision ordinances, detrimentally effects air or water quality or ambient noise levels, effects environmentally sensitive areas such as flood plains, shorelines, tsunami, erosion prone coastal areas, coastal waters, fresh waters, substantially alters natural land forms and existing public views to and along the shoreline and is contrary to the objectives and policies of the Coastal Zone Management Act.

So in our SMA Rules we go through these criteria and then catch all down here is that we also look to see if any of whatever this proposed action is, is contrary to the objectives of the Coastal Zone Management Act and I went through those a little earlier the 10 different categories.

So there are three types of permits under the SMA Rules. There is the major permit which is over a \$125,000, requires a public hearing, requires notification by certified mail for owners within 500 feet and these major permits contain conditions to avoid minimize and mitigate the impact and this is the Maui Planning Commission is the authority. Minor permit again, I alluded to, same thing under a \$125,000, no public hearing, conditions to avoid, minimize and mitigate impacts. And emergency permit is when we have eminent and substantial harm to public welfare or to prevent substantial physical harm to persons or property. The director may give oral approval to go ahead with an emergency permit but submit a report to the commission upon final determination. There's a conditional permit that exists only for a 180 days and this is a determination by the Planning Director but we do bring it as a communication item to you.

This is one example of a recent, December emergency permit that we issued because life, safety was at stake at the Kahana Sunset up in Napili area where the entire – this is a beach area here, this shoreline seawall got undermined. This thing was built in the '70's. It's sitting on a substrate of just sand. The concrete here, the lanai and the concrete foundation were collapsing off of this building. You can see here there was no rebar in the foundation, there's no pilings, so it's eminent life danger, folks were evacuated and so they're temporarily trying to strengthen and protect this facility. So this is kind of climate warming, sea level rise some 40 years ago that we're experiencing now. So we have examples of – one example very quickly.

So besides the major permit, minor permit and emergency permits there are two other actions on permit applications under the SMA Rules, these are an exemption category which is any project that's defined as not development, one of these 16 exemptions, such as a single family residence, it can be exempted by the Planning Director. However, it's not just exempted because it's a single family home. The Current Division staff we do an SMA assessment, it's completed and the proposed action is determined to have no adverse impacts on the environment or minimize adverse impacts on the environment such as drainage, view plains, archaeology, historic, natural and coastal resources including cumulative impacts. So we do do an assessment and we do often build in mitigation actions and activities into an exempted project before we exempt it. So it's not just a straightforward exemption want to make that clear.

And then there are projects that get denied. Sometimes any project that is inconsistent with state land use, general plan, community plan and/or zoning or a project that has adverse impacts on coastal resources both the Maui Planning Commission and the Planning Director can deny those.

So just like to make it clear that all minor permits and emergency permits as well as exemptions are reported to the commission at the next regularly scheduled meeting. An applicant can contest or other parties can file an appeal with the commission within 10 days after the director's decision and those come up from time to time.

Just very quickly again to emphasize the difference between an exemption versus a permit. A SMA exemption cannot have conditions because it is exempted from the SMA permit application process. It's not actually exempted from the application process, it is part of the application process but it becomes exempt from an SMA application. So there can be no conditions put on that project.

Sixteen categories of exemption, again, I think the next slide talks about those. So a proposed action may be exempted if it includes measures to mitigate avoid and minimize adverse impacts such as if we have a vacant lot we're developing a new single family residence, we don't know what the conditions are of that land, we would require an approval from the State Historic Preservation Division for an archaeological monitoring during all ground altering activities.

In contrast, an SMA Use permit may contain formal conditions to avoid, mitigate and minimize adverse impacts on coastal resources and these are standard project conditions or project specific conditions that can vary.

Some common exemptions, these are defined by the Coastal Zone Management Act again, single family residence not part of a larger action, structural and nonstructural improvements to single family residences, repair and maintenance of roads and highways, routine dredging of streams as maintenance, repair and maintenance of underground utilities and repair and maintenance of existing structures and demolition of some structures which are not deemed historic in nature. So I think this is 6, 7 of the 16 categories. Some of them are more esoteric and I'll spare you the rest of those.

So that's it on the SMA Rules. I'm going to shift to the Shoreline Rules for the Maui Planning Commission. I apologize this is 12-203 rather than 202.

So under the Shoreline objectives defined by Coastal zone Management Act there are three that we look at coastal ecosystems, coastal hazards and the beach protection access. Again, the goal of the Shoreline Rules is to regulate development so that the shorelines are protected, beach resources are conserved, visual and physical accessed preserved and landowners do not incur unnecessary risk for shoreline hardening expenses. So through the shoreline setback rules we have what's called the shoreline setback variance and I'll quickly go through that.

There are four shoreline setback objectives. We want to move structures out of harms way, plan the obsolescence of structures in the shoreline setback the older ones ...(inaudible)..., insure shoreline access and limit the types of structures and activities in the shoreline area.



The shoreline setback variance the one that the planning commission deals with has conditions, it requires compliance with Chapter 343, the EA/EIS the Environmental Impact State Law. It requires a public hearing and all abutting landowners are notified and it requires a state certified shoreline.

There are permissible structures that usually the commission doesn't see. Some of them are minor structures and activities under a \$125,000 that do not affect, that are determined not to affect the coastline beach processes, public access or public views. New structures some of them that are permitted, that are minor in nature must be above the flood plain, the county is held harmless and they do not harden the shoreline.

So the commission's role in approving shoreline setback variances, the variance may be granted for structures necessary or ancillary to these coastal areas here. Projects that involve drainage improvements and maintenance, publicly owned boating and water sports facilities, public facility repairs, improvements for utilities, private facilities and/or improvements that are clearly in the public interest, protection of a legally habitable structure or public infrastructure and private facilities or improvements which do not affect the beach processes or fix the shoreline line and that would result in hardship if not approved. So the burden is on a private owner, has the burden to show hardship if it is not approved by the commission.

And then finally on the variances here, there are some mandatory conditions, safe lateral access along the coastline, minimizing adverse impacts to beach processes, minimizing risks to structures, complying with flood hazard rules and minimizing adverse impacts to public views to and along the shoreline.

And finally very quickly there are shoreline rules to provide for the determination of the shoreline setback area and there are two methods. These were adopted in 2003 and what they do is they provide a minimum setback of structures creating an annual erosion hazard rate method and an average lot depth method.

Just very quickly we have created a Maui Shoreline Atlas online. There are three areas where the Shoreline Atlas exists for the Kihei coast, West Maui Coast and the Northshore. They're detailed maps, you can see, taking aerial photos some back to 1900 mostly back from 1949 looking at how the shoreline has changed over time. We create an erosion rate-based setback. There are 32 maps for rates around the coastline. There are many, many transects per map, you can see here by the red lines almost on a parcel level and each of these maps is for a beach regional cell.

So the annual erosion rate calculation, I'll just go through, they were developed by University of Hawaii in consortium with others. What it does is it sets a – the method sets a buffer of 25 feet and then adds a setback to that 25 of 50 years of time times the erosion rate. So if we have an erosion rate one foot per year, over 50 years we will lose 50 feet of our coastline or our shoreline. So our setback for any is behind 50 times one or 50 plus 25 feet. So we have a setback of 75 feet. If the erosion rate on a large lot is two feet per year we would have two times 50 plus 25 for 125 feet. So this is an erosion-based setback which is I think is unique to Maui County very progressive. But not always are those aerial photos back in time have they truly captured the true shoreline progression because there are acute and episodic events that may not really be captured by some

of these erosion studies. This is just a ...(inaudible)... time frame, back in 2003 showing Baldwin Beach here and then all of it coming back before and after sand has returned to Baldwin Beach. I think all of you have experienced some of our coastlines where sand comes and goes very quickly. So the point being is not only can we depend on an erosion-based setback which might not be completely accurate so we have an average lot depth setback and the calculation, the bottom line rather than going through it just to save time, the average lot depth can range from 25 feet for a 100-foot lot or shorter in depth lot to a 150 feet setback for some of the larger lots such as some of these hotel lots out in Kaanapali. So again, this just shows you take an average lot depth. It's fairly simple arithmetic. It is in the shoreline rules and it can range again from 25 feet up to a 150 feet gradationally in between. And the shoreline rules require that shoreline setback lines be the most conservative of the two calculations.

So that's it as far as the SMA Rules and Shoreline Rules and setbacks. Before I take any questions, just very quickly, we have had accomplishments in the Coastal Zone Management Program. We've implemented federal performance standard metrics every year. We've created a website with maps. All of the shoreline permitting information is up there. There are various publications for the public. We've created a multi-agency team lead by the Sea Grant Extension Program to assist oceanfront properties, respond to erosional crisis, we funded various beach restoration projects to shoreline restoration project where hardening has been removed and there have been some federal funds to protect beaches and provide beach nourishment and project for the coastline.

And just to conclude, the Maui Island Shoreline Inventory in 2003 just to give you a state of the island of our shoreline we have approximately 120 lineal miles, 56 of them have sandy shoreline. 40% of that sandy shoreline is impaired by one of these three conditions. 16 miles of that 56 miles is armored by either revetments or seawalls that's 28%. The length of the beaches lost since 1949 we've lost five miles of beaches and three miles of our coastline roads are threatened by erosion. So together 24 miles of our 56 miles are impaired shoreline or 40% of our sandy shoreline. So it's part of this program, the SMA, the Coastal Zone Management Program the objective is to protect our shoreline to keep these numbers from going up and make these numbers go down.

So just very quickly concluding remarks Maui shorelines provides tourism, jobs, recreation, fishing and food, cultural practices in our quality of life. If the shoreline is threatened with coastal erosion that is accelerating and our coastal shoreline erosion processes are a system that needs to be studied and fully understood to make sound scientifically based planning decisions. Paul Fasi talked about our work is subjective, hopefully we do some scientifically based objective understanding of what these projects are before us so that we can make the proper decisions over time and then just to repeat through the Coastal Zone Management Act and through the SMA guidelines our SMA Rules for the Maui Planning Commission we seek to minimize where reasonable adverse impacts to the environment. So I'll end there.

Mr. Starr: Yeah before we go to questions I know I have a whole bunch of questions on it but we are really time constraint today because we have some big agenda items after lunch. So I'm going to ask the director that we bring this back and an opportunity to get more in depth in a meeting in a reasonable, in reasonably near future and understand better about the minors and the exemptions and all of that stuff, but if there's any pressing questions you know, we can take them

today but we can definitely look to go more in depth soon. Commissioner Mardfin.

Mr. Mardfin: I'll try to keep it really short but I do have kind of two related. I forget what the – the erosion rates were determined in what year?

Mr. Buika: The erosion rates have been determined over time.

Mr. Mardfin: But when were the last time they were kind of set?

Mr. Buika: 1997, and we have a current contract for 2010 to reevaluate our erosion rates. So we have a contract to University of Hawaii, Professor Chip Fletcher who is reevaluating the erosion rate. So that is beginning and will be completed this year.

Mr. Mardfin: I'm really glad to hear that. Will they also take into account potential sea level rise due to global climate change?

Mr. Starr: It's our next module I think.

Mr. Mardfin: Oh, okay, I'll wait till then.

Mr. Buika: Okay, thank you.

Mr. Starr: Commissioner Shibuya.

Mr. Shibuya: This is more in terms of the legal type of thing. There is as we have this erosion land is not a finite thing. The land area for Maui is diminishing and that's why you're saying. So there is a possibility of taking, in other words, taking of personal property not by this commission but the application of rules by this commission. I just want your comment.

Mr. Buika: Yes, there are many things like Commissioner Starr has touched on. There are many, many topics. There are many strategies for Maui to embrace and understand in terms of shoreline processes, protecting our shoreline, you know potentially some of our coastlines are so armored there's maybe probably no hope for them of beaches coming back, you know, what is the shoreline all about but our beaches and how do we strategically protect the pristine beaches that we do have and prevent them from disappearing in the future? So we need to understand them scientifically, and we need to understand the coastal processes and we need to engage all of you and engage the experts from U of H with the Sea Grant Program, through Department of Land and Natural Resources. So that's another large part of the Coastal Zone Management Program that besides just doing the permits per parcel, per project we need to look at the environmental effects of shoreline processes and the loss of our coastline for sure and it's eminent with sea level rise and I think Tara Miller our newly hired Sea Grant Extension Agent will talk a little bit about some of these sea level issues right now with the Chair's permission.

Mr. Starr: Yeah, thank you very much for that presentation. I just want to make sure members are aware of this that we get at every meeting. This is actually an important document because this is the notice to us and to the public when an SMA Minor or an SMA Exemption has been issued by

the department. When we get this that's our notice and with the following meeting is when the clock starts ticking and when we get this from that point on, the public has 10 days to contest it or whatever and after that that option is closed. Commissioner Hiranaga.

Mr. Hiranaga: Sorry Jim, I have a question for you. You talk about shoreline hardening. The county owns property on the shoreline, the former lime kiln site, Kalama Park are there plans for the county to remove those hardening improvements?

Mr. Buika: I do not know about the lime kiln if there's an active project to remove that. Kalama Park I do not believe so that's the shoreline revetment.

Mr. Hiranaga: Right, the hardening.

Mr. Buika: I am unaware of.

Mr. Hiranaga: It seems curious that when the county is enforcing against private property owners, hardening of shorelines when in fact they own property in the shoreline that has hardened improvements that they are not going forward to remove those. Set an example for the rest of the county.

Mr. Starr: We'll ask the department to take a look at that and come back to us.

Mr. Buika: Kalama Park and the lime kiln.

Mr. Hunt: The lime kiln is Montana Beach.

Mr. Hiranaga: Yes.

Mr. Hunt: Yes, Montana Beach the county is actively trying to remove those homes from that site.

Mr. Hiranaga: No, the boulders.

Mr. Hunt: Pardon me?

Mr. Hiranaga: The hardening of the shoreline. There's a rock revetment. I'm not talking about the homes.

Mr. Hunt: We can report back on that.

Mr. Starr: Yeah, they'll come back to that and thank you very much. Ms. Miller please.

Ms. Tara Miller Owens: Thank you. Your questions about sea level rise were I guess a perfect lead into my presentation. I am not a county planner. My name is Tara Owens actually I'm in the middle of changing my name just to confuse everybody. So you probably know me as Tara Miller, and I'm a coastal hazard specialist with the UH Sea Grant Program and I'm stationed here on Maui to support Maui County and I work out of the Planning Department Current Division. So I should thank

the Planning Department for allowing me to be here today and you commissioners as well to participate in this orientation. Hopefully it will be valuable information and I as asked to give a presentation on sea level rise which I will but I was also just recently briefed on the tsunami mapping effort that's ongoing in Hawaii and just starting up again in Maui. So because we have the potential to experience all different types of inundation on this island I thought that including some information about that project might be useful as well.

I'm going to just give you a little bit of background on the Sea Grant Program so that you know what it is I do and why I'm here and how the partnership with the county work. Then I'll talk a little bit about some climate change trends and then specifically talk about how that impacts sea level rise and what are some of the implications of that and maybe some of those solutions and then I'll change gears a little bit and talk about the, briefly talk about the tsunami mapping program.

Okay, so the Sea Grant Program is administered and funded through the National Oceanic and Atmospheric Administration, NOAA, and it works as a nationwide network of 32 college programs. So you see the little map with the yellow dots those are all the college programs around the nation. Ours is based out of the University of Hawaii, SOEAST program which is the School of Ocean and Earth Science and Technology.

We have a affiliate faculty and researchers and then we have people like myself that we call extension agents that serve the communities in Hawaii and on a variety of topics, mine happens to be coastal hazards. The National Program of Sea Grant has four focus areas, sustainable safe seafood supply, sustainable coastal development, healthy coastal ecosystems and hazard resilience in communities. You can kind of tell that these reflect the influence of climate change and adaptation initiatives in the federal government and the idea is that Sea Grant can come in to help integrate the national and local initiatives in these focus areas.

Then there's the UH program itself which has its own themes but they're very closely related to the themes I just mentioned and my role here with Maui County is most closely related to the Island Climate Adaptation and Policy Theme which structurally doesn't make any difference to you guys but I mention it just because you yourselves or the Planning staff might be hearing more about the ICAP Program and the idea is that the ICAP Program will provide policy and scientific support to your decision makers like yourselves here on Maui and it's a partnership with the UH School of Law, Department of Urban and Regional Planning, Hawaiian Studies as well as SOEAST.

Okay, so I mentioned that I'm a Coastal Hazard Specialist. There are four others like me throughout the islands and some of you have probably ...(inaudible)... on Oahu, they are partnered up with the State Department of Land and Natural Resources whereas the rest of us are partnered with the county agencies. And I should probably tell you that this Coastal Hazards Program is the envy of the nation among all Sea Grant because of the technical abilities and the community involvement of the people. And the position here on Maui was established 13 years ago. It was the first one and all the other counties have tried to emulate it. But our role is to bring science to planning on all these topics and more that I listed here, hazard mitigation, coastal processes, erosion control, beach and dune management, beach nourishment, shoreline change, erosion based setbacks, EAs and EIS permit reviews, coastal construction and to do public outreach. And we hope to help expedite permits through consultation with the planners, providing technical

guidance and also doing site visits and educational activities. It can work out really well for the planners especially in contentious cases where we can represent an unbiased source of information for them that they can turn to, but besides permitting we also do a lot of other things like interfacing with State and Federal agencies. Private organizations and private citizens. And this aspect I think is also crucial because planners ...(inaudible)... by permit. They don't have time to always do extensive research or to write grants or get out and work with the public on their particular projects and permit applications which are things that we can take the time and what our role allows us to do.

You know, in the past the Sea Grant Extension agent that you knew before me Zoe Norcross-Nuu and the shoreline planner, Thorne Abbott, they've written grants for example one was a coastal zone management through the Federal Coastal Zone Management Program brought in about \$80 plus thousand dollars to the County to start looking at sea level rise and intersect that with things like heritage corridors that have been identified and right now for example, I'm working on a proposal with the County Civil Defense to try and secure funds through the Federal Tsunami Ready Program to do an education campaign for tsunami readiness and we're going to target hopefully the hotel industry that's the idea. So those are the kinds of things that we can do beyond just working in planning.

And just some other examples of outputs from the program. Here's a few selected publications. This one right here, Hawaii's Changing Climate is sort of fresh off the presses so I brought some copies if you want to take them home with you. It was authored by Chip Fletcher and it's just a quick briefing on what's going on here with climate change in Hawaii. Another popular one that's quite a few years old actually now is the Real Estate Guide for Hawaii and it's just sort of a really easy to understand question and answer format guide for the public on just hazardous things to think about when you're purchasing coastal real estate. There's also the Hazard Mitigation Guidebook, the Homeowner's Handbook gives you coastal construction tips and the Beach Management Plan for Maui which is also relatively recent and just gives some ideas for further exploring initiatives like beach nourishment which is something that's fairly under utilized here in Maui.

Okay, so moving away from the Sea Grant explanation and talking about some climate trends and I thought I'd start off with this cartoon, I think it's especially relevant after this cold and prolific winter that our nation experienced. So basically it's just a reminder that weather isn't the same thing as climate. So this guy is walking down the street in his town and it's covered in ice and snow and the sign says, "tonight's lecture, the dangers of global warming postponed." So just remember weather is the current state of the atmosphere, what's happening today is it raining, is it sunny, is it windy? And then climate is the average of weather conditions over some longer period of time.

And in Hawaii, here are some of the trends we're seeing. We know air temperature is rising, we know sea level is rising. I'm going to talk about those two things a little bit more. Rainfall and stream flow are declining though you wouldn't think it after experiencing the last couple of days here in Wailuku with all the rain makes me seem like I'm lying. Rain intensity is increasing, sea surface temperatures are rising and the ocean's becoming more acidic so this can create changes to the ecosystem balance and diversity of plant and animal species and in order to stay in their climate zones ecosystems have to migrate so if rain patterns are changing the ecosystem has to change too. One example that could be impacted is taro farming which is done in a wetland environment

between lower stream flow and encroaching salt water from sea level rise we're not sure what the impacts might be.

Things that are happening, that do happen already like flash floods and mudslides will probably become more frequent and we might see declining of our coral reefs. So just some facts. We know that temperature is rising. The graph shows the long term trends so that the pink line is the year to year trend and the red line is the five-year running average. You can actually see that in 2008, we had a relatively cool year. So this kind of relates back to the weather climate thing and scientists attribute that to warming in the tropical Pacific Ocean but in 2009 we were back up to near record global temperatures. And then in Hawaii seeing the same trend especially in the past 30 years there's been an acceleration of temperature rise and there's stronger warming at higher elevations. And ultimately this trend may impact water resources, spread of disease, decline of forests.

We also are monitoring tide. So there are thousands of tide stations all over the world, that's all the red dots. And we know that global sea level is rising. In the 20<sup>th</sup> Century we were seeing rising tides at a rate of about six inches per century and that's increased since 1990 to about 12 to 14 inches per century and at the Kahului tide gauge we're seeing an increase of 2.32 millimeters per year which about nine inches per century and of course we accept acceleration.

Global warming, temperature increases in the global environment raises sea level through two processes thermal expansion and addition of water to the system from melting glaciers and ice sheets. We've been seeing an acceleration of thermal expansion so you can see the numbers here since, you know, over the last couple of decades the numbers have been showing an increase and then most of you have probably heard the study with ...(inaudible)... Greenland. We're seeing a lot of warming and we're seeing the declination of the ice sheets there.

So we know some about what's happening but the million-dollar question is, how much sea level rise should we expect to see and on what kinds of time frame? It's pretty much now agreed by most scientists that one meter of sea level rise by 2100 is almost certain. And in the recent past there's been a lot of debate over whether it could be a lot higher than that, two, three, four, five meters. But as the discussions continue, the range of predictions are getting narrower and the latest research actually indicates that it's really too early to probably have confidence in a rise of up to two meters.

So meter seems like a reasonable planning target and there are basically two approaches to looking at this and the scientists are looking at it in two ways. There are physical climate models and there are semi-empirical models. Empirical meaning that you're looking at relationships between actual data and so modeling and making a bunch of assumptions about what's going on in the environment and so we can use both of these approaches to come up with our planning targets and the physical climate models they're good because they account for a lot of the complex ocean and atmosphere interaction but they're bad because there are a lot of variables that we can't account for. We don't know how much ice melting we're going to continue to see and how that's actually going to impact the rate of sea level rise.

Semi empirical models are great because we can look at the actual relationship between temperature and sea level rise but then we're assuming that that relationship is going to hold and

it probably won't.

We can look at geologic history. We know sea levels were once a lot higher than they were today. This is the Waimanalo lime stone coral reef formation. You can actually see a fossilized coral head there and it's dated to about 125,000 years ago. So we know at some point at this location the sea level was probably 4 to 6 meters higher than today.

And then we can look at the more recent history. We think that you know from about 1800 to 1900 that we had a sea level rise rate of about three inches per century and that's steadily rising and we're like I said, now looking at at least a meter or about 3.3 feet in the next century.

And this is sort of to the same point. This is a combination of studies, some of these are the model-based studies and some of these are the semi empirical approach but you can see the range goes from about 25 centimeters up to about 200 centimeters or two meters and so it seems reasonable that a planning target of one meter would be something to look to.

We can start planning for the future, in California, all state agencies now actually have a mandate to plan for 1.4 meters of sea level rise. So that's the planning target they've chosen and they've taken steps to create very high resolution LiDAR based inundation maps so that they can begin to look at what's in the hazard zone. So how many people, what types of populations, what types of vulnerable populations, schools, other critical facilities, roads, wastewater treatment plants.

And we're beginning to start down that path for Maui. This is a really, really coarse version of a similar map for Maui. This is not even based on high resolution elevation data. It's coarse elevation data and it's only looking at a few places around the island, but you can see for one meter of sea level rise certain places the island what we might expect to see. Chip Fletcher's group have actually I think working on finalizing the contract with Maui County to process the high resolution LiDAR data that the county has and create similar maps like California has for Maui and this is an example that they did on Oahu for a 1.4 meter sea level rise. So we should in the next year or so start having products similar to this for Maui which is a good thing.

This is a movie that I was going to show, but I don't think it's going to work today. So we'll skip it. It was just another example, you know, what we might be able to do for Maui and this is Chip's blue line for Downtown Honolulu and you can see clearly what the Downtown area of Honolulu will susceptible to.

Okay, so what should we be accepting – excepting to see and what should we be planning for? What question should we be asking? Well, as sea level rises coastal erosion is going to increase. The water table is going to rise and we might be awkward for contamination with sea water. Dry land is going to become wet. So we might have new wetlands forming. Storm drains will back up. There are already examples of that around the island. So like said, with sea level rise, existing conditions will start happening more frequently and will become a little bit more severe. Drainage infrastructure might stop working in really low areas. We'll have increased vulnerability to tsunamis and we may experience some infrastructure failure. And I just have a few examples of some of these things so shoreline retreat, this is an example on Paia Bay, you can see where the 1912 shoreline line. So we've been experiencing sea level rise and we've been experiences coastal



erosion that's nothing new. The question is what – how are we going to deal with it? This is a classic example that Chip always show on lots of his presentations. You can stabilize the shoreline by hardening it with revetments and seawalls and by doing so you preserve the land but you'll lose the beach or you cannot stabilize the shoreline and you can lose the land, preserve the beach. There are arguments for both sides but what we need to talk about now is just taking a step back and decide when we're going to make, take these approaches. When do we want to allow seawalls? Do we want to prioritize areas where we're not going allow seawalls and others where we may? So these are decisions that are already in front of us but that are going to become even more crucial.

Jim showed you the example of the emergency permit that was just issued for the Kahana Sunset Condominiums. So this is the same example. I have a 1949 photo of the actual beach. You can see how nice and wide it was and then you can see the 2009 photo below, the arrow points to the condominium where Jim was showing his pictures and we've seen failure of the structure there due to coastal erosion and probably because of scour underneath the wall and possibly because of liquefaction of sand led to failure of the lanai.

Here's a coastal road in Kihei after a heavy rainfall. So you have high tides, a lot of rain, these are the types of things we might start experiencing. And then also infrastructure failures and I don't want to bring this up, I don't mean to bring it up as a sore point, but I do bring it up to point out that there are positive and mutually beneficial solutions to this problem. I think conceptually in a perfect world we probably all agree that we should pick wastewater treatment facility up and move it and I'm not here to argue whether that's possible or not possible or should be done or not. The other option is fortification through seawalls and revetments. But what we can explore in addition to that is beach renourishment perhaps even a program of continuous beach renourishment to provide additional protection but also put valuable sand back into the source and I'm happy to say that the Department of Environmental Management is exploring that option. They actually did a study through a consultant to look at possible renourishment options I think in addition to a possible seawall. And then just bring everybody to the table and exploring these solutions is something we can do.

About a month ago I was meeting with a colleague on Oahu from U.S. Army Corp of Engineers and he said, well we're getting ready to start a Regional Sediment Management Study over on Maui so can I come over and talk to you guys about what we're thinking and so we had a meeting last week and I invited, of course, Current Planning, Long Range Planning, Parks and Recreation, Environmental Management and two really positive discoveries came out of that meeting. One was that we found that the DM is exploring, the Department of Environmental Management is exploring this option of beach renourishment and that they're actually using the same consultant that the Army Corp might use in their Regional Sediment Management Study so we can look for efficiencies there.

And also, we were also able to possibly influence the scope of that Regional Sediment Management Study. So the Army Corp wasn't planning on looking at the North Shore or any of the areas around – outside of the Kahului Harbor area. So we were able to suggest that they might expand their study and they might help us identify sand resources that we can use for these types of projects and they also might even be able to come – provide some engineering suggestions for

how we might engineer a seawall or breakwater system in conjunction with renourishment project.

So the point is, we need to keep the conversations open and explore innovative strategies and we'll all be better off for it. There's a federal initiative between the NOAA and the USGS to help communities by providing a framework for sea level rise planning and so these are the ideas they've put forth to find the problem, get stakeholders involved, decide on what things should be priority, gather the data, information and the tools. So we've talked about the mapping efforts, that's really important then identify and explore different strategies and then institutionalize any program that you come up with. So that's all sort of you know, ...(inaudible)...

What should we be doing here on Maui? Well, like I said, it's probably a good idea to start planning for at least a one meter sea level rise. We should acquire good data and maps and we're working on that. Do a risk based land use planning and think really the most important thing here is to set a good example for ourselves. So when for example we want to replace a sewer line on the island, lets really look at alternative options to getting those sewer lines outside of the hazard zone, the tsunami inundation and sea level rise hazard zone. You could even take the opportunity to make PR campaigns out of things that the county itself might be doing. We intentionally are going to move this sewer line outside of the sea level rise and inundation zone because we want to set a good example for development on the rest of the island. So we've gotta do those types of things and we've gotta start prioritizing areas that we do for sure want to preserve and need to preserve so we can make sure that we manage what happens to them now.

Mr. Chair, should I, I've been alerted that we're running out of time so would you like me to skip the tsunami part of the presentation and wrap up now?

Mr. Starr: I don't want you to skip it but what I would like to suggest is you give it to us another day.

Ms. Owens: Okay sure.

Mr. Starr: Because I'm sure we would all love to have you back but we really need to finish up all the modules today. Is that okay with the members?

Ms. Owens: Okay, well then I'm just going to skip right to the end so you can my – will you go to the last slide please? So you have my contact information. I have UH email account and a Maui County email account. Please feel free to follow up with me for any questions you might have about the program or sea level rise or tsunami mapping or any other initiatives that are happening or any other issue that is happening on the island. Thank you.

Mr. Starr: Members, any questions that can't wait till Ms. Owens comes back to us? Okay, we'll see you back soon. Thank you.

Ms. Cua: Good morning Mr. Chair, Members of the Commission. We have maybe around 20 minutes and so I'm going to try and – I'll be as brief as I can. However, this section on Environmental Assessments and Environmental Impact Statements is very important because you do see quite a number of them. In fact I know I passed a draft EA out to you just this morning. So

I do want to take some time. It is quite a complicated process and we want you to have a good understanding of how the process works because you are very involved in this process.

So Chapter 343, Hawaii Revised Statutes with regard to Environmental Impact Statements and Environmental Assessments was adopted back in 1974 and what it does is it encourages the conservation of natural resources and enhancement of the quality of life and throughout my presentation I am going to be using the terms or the acronyms EA and EISs to refer to these documents. Many developments require the preparation of an EA or EIS and before these development projects are approved consideration must be given to environmental, social and economic consequences. The Chapter 343 process assures the public the right to participate and the agency that charged with administering Chapter 343 is the Office of Environmental Quality Control and publications of EAs and EIS documents are found in what's called the Environmental Notice.

So how does Chapter 343 apply to projects? Well, the most important thing is that not all – I'm sorry, not all applications require the preparation of an environmental assessment or an environmental impact statement. The law has established nine triggers which require compliance with Chapter 343 and I'm going to go over those with you in another slide. These triggers apply to two types of actions those proposed by an agency or those proposed by a private applicant. There's also 10 exemption classes. The exemptions are actions with minimal or no significant impact on the environment and the County of Maui back in January of 2007, developed or expanded I should say their comprehensive list of exemptions for all departments. So as I mentioned earlier there are nine triggers which require the preparation of an EA or EIS. First is the use of the state or county lands or funds. Use within a shoreline area. Use within historic sites as designated in the National or Hawaii Register. Amendment of a County General Plan. Proposed wastewater facilities. Waste to energy facilities. Landfill. Oil refinery. Power generating facilities. Use of conservation district lands. Reclassification of conservation district lands. Helicopter facilities and Waikiki area of Oahu which we wouldn't deal with here. But being aware of these nine triggers is very important because there are applications that come before this commission that do not trigger compliance with Chapter 343 and the commission sometimes asks why don't we have an EA before us or an EIS before us? A case in point I want to mention is sometimes you may have just simply a change in zoning application that may be does not propose an action that is triggered here maybe just because of the size of the project one would think why don't I have an EA, why haven't we reviewed an EA? That's why it's very, very important for you to be aware of this so that we don't spend a lot of time having to educate you. We will already have to do that with the public and so that's why this opportunity is really good to see that as Jeff mentioned at the start of the meeting we follow the law and sometimes we may think something needs to be done or need not be done, but if the law says that's what we have to do, then that's what we have to do.

Now what I'd like to do is take you through a flowchart of kind of what happens so you can see the whole process of an EA or EIS and see where you come into play. So the Chapter 343 process begins with pre-consultation activities. Prior to preparing a draft EA it is important to consult with government agencies and the community regarding a proposed activity. In the pre-consultation activity the scope of development is detailed and potential impacts are identified. If in pre-consultation no significant impacts are anticipated a draft EA is prepared. An EA document as most of you know is an informational document that evaluates whether an action may have a significant

environmental effect.

The draft EA which includes anticipated impacts is filed with OEQC. OEQC publishes the notice of the draft EA and a 30-day public comment period begins. As planning commissioners, you will review many draft EA documents. This is usually the first time that you will review that particular project. Staff planners normally would distribute the EA documents to the commission well in advance of the meeting where the matter will be discussed and that's to allow you adequate time to prepare. For example, the application that the draft EA document that you have on your desk today is going to be reviewed at the May 11<sup>th</sup> meeting. So we really try and make sure that the applicants are able to get those documents to us ahead of time so that we can distribute it to you in advance of the meeting because we realize that many of them are quite lengthy and so we want you to be able to have enough time to review it so that you can come prepared to the meeting to offer your comments.

All comments received during the comment period are responded to and both the comment letters and applicant or agency responses are included in the final environmental assessment document. The planning commission reviews the final EA document and this is typically the second time that you will review the project. If the final EA anticipates no significant impact a FONSI or a Finding of No Significant Impact is made. The FONSI determination is filed with OEQC and a 30-day challenge period begins. Once the 30-day challenge period ends, permit processing can continue. So a lot of times with these EAs or EISs that you receive we have accompanying applications that go along with them. For example, an SMA permit, a community plan amendment, those specific applications cannot be acted on until the Chapter 343 process has been completed. So once we know that there is no challenge to that environmental assessment or environmental impact statement then we can place the item on your agenda for you to take action on a particular project. So when we give you that application, that corresponding application, that's actually going to be the third time that you're aware of the project. So those projects that have environmental assessments or EISs you're going to be very well versed on the issues and the project.

Now if through the pre-consultation process significant impacts are anticipated, an environmental impact statement is prepared. An EIS is an informational document also that discloses the environmental effects of a proposed action, proposes measures to minimize adverse effects and discusses alternatives to the proposed action and their environmental effects. An EIS prep notice is issued and a 30-day public period begins. A draft EIS is then prepared and filed with OEQC and OEQC publishes the notice of the draft EIS. Once filed, a 45-day comment begins. All comments received during the comment period are responded to in both the comments and applicant/agency responses are included in the final EIS document. The final EIS document is filed with OEQC and if acceptable, a 60-day challenge period begins. Once the 60-day challenge period is complete and no appeal has been filed permit processing can continue. Now if the final EIS document is not acceptable there is a 60-day window whereby an appeal may be filed.

So we discussed a little bit about EAs and EISs and I think you can see that they are very similar in nature. They look at a lot of the same things. However, an EIS is much more – is a much more detailed disclosure document. So including a much more detailed analysis of the alternatives and mitigative measures and a lot of times many technical reports accompany an EIS. Both documents must address impacts of the surrounding environment caused by the proposed development. Both

documents must also consider mitigative measures which are actions used to prevent, lessen or counteract potential impacts. Both EAs and EISs must identify alternatives for the proposed action. And in the photos to the right we see examples of what impacts development may have on wildlife and the environment. The top photo shows potential or impacts to potential sea life with manmade debris and the bottom photo shows the impacts of sedimentation on coastal waters with inadequate land management measures.

An environmental assessment must consider every phase of the proposed action. It must also consider all types of impacts and there are four basic type of impacts that need to be analyzed as part of preparing the EA or EIS document. And first is the primary or secondary impacts, regional, site specific impacts, cumulative impacts, short and long term impacts and I'm going to go over all of these a little bit later.

In order to determine whether a proposed action will have an impact on the environment, potential impacts are evaluated in relation to significance criteria and it is important to note that there may be some unresolved issues in evaluating the potential impact such as something like traffic on the Pali.

So the first impact that we're going to discuss is primary and secondary impacts. Primary impacts are effects caused by the proposed action and occur at the same time and place. This slide illustrate that construction of a proposed subdivision in forested lands may have a primary impact on wildlife in the area. Secondary impacts on the other hand are effects caused by the proposed action and are later in time or farther removed in distance but are still reasonably foreseeable. This parking lot shows a secondary impact associated with the construction of the parking lot. A parking lot may increase the potential for petroleum in storm water runoff which could ultimately affect shoreline and marine resources.

Other impacts caused by development include regional and site specific impacts. Regional impacts are effects caused by the proposed action on a larger scale regional basis. An example of a regional impact is a new proposed project district in a community plan region. This action would require a review of regional impacts in that area. And this slide is showing you a number of proposed projects that say in the West Maui Community Plan region. Now when we look at a new project within this region it's really important to take into consideration all the other projects that are there and are proposed to be there. Site specific impacts are effects caused by the proposed action in a localized smaller area. An example of a site specific impact is a limited building addition to an existing structure and this will likely require review of site specific impacts only.

Primary, secondary, cumulative, regional and site specific impacts can have both short term and long term effects. Short term impacts occur immediately and long term impacts occur over a given period of time. This slide shows an example of a new golf course. A primary impact of the golf course would be the impact on water usage and the short term impact is the water usage during construction. The long term impact is water usage for continued maintenance of that specific golf course.

Cumulative impact is the impact of the environment resulting from incremental impact of the action when added to other past, present and reasonable foreseeable future actions regardless of what

agency or person undertakes such other actions. An example of direct cumulative impact is traffic.

Now we mentioned the significance criteria and the use of the significance criteria in reviewing environmental assessments and environmental impact statements. Now this criteria we have to address basically one at a time and some of them include if the action involves a irrevocable to commitment to loss or destruction of any natural or cultural resource, if the action curtails the range of beneficial uses of the environment, if it conflicts with our state's long term environmental policies or goals, if it substantially affects the economic or social welfare of the community or the state, if affects public health, if it involves a substantial secondary impact such as population changes, effects on public facilities, if it substantially degrades our environmental quality. I won't continue with this list. I mean, if you're a little bit familiar with them, but this is important in terms of when we get into measuring the significance criteria and what we look at in the significance criteria we notice that most of the criteria is qualified as a significant if the action involves the following key words, destruction, conflicts, substantial, considerable, detrimental. So the question then becomes how do you measure this criteria, how do you measure these terms? In some cases an impact can be quantified numerically such as when you measure air quality in parts per million or when we look at traffic and you deal with level of service all the time. That's the way you measure traffic and then noise, when you're looking at noise sometimes you have a noise report and it measures it by decibels. So there are many – there's also other areas that are not so easily quantified and may have to be reviewed on a case by case basis. Example, view corridors to our ocean or mountain vistas. In this situation and considering the immediate surroundings of a proposed action it may be desirable to resite a building or to reduce the height of a multistory structure so as to create or preserve a view corridor.

Now mitigative measures are measures planned to prevent, lessen or counteract potential impacts. There may be one mitigative measure, a series of measures such as best management practices for erosion control, turning lanes for level of service or preservation plans that could be used or applied in order to counteract the potential impacts. Often mitigative measures are identified by agency comments that you received as part of your reports such as maybe Public Works might recommend installation of a traffic light or Department of Transportation or they might recommend turning lanes. Historic Preservation Division may recommend monitoring of a site or doing a preservation plan. These are all different types of mitigative measures that could be imposed as part of a project.

Now as I mentioned earlier, EAs and EISs must contain an analysis of alternatives and this is very important and each alternative should provide a summary of potential impacts and any mitigative measures proposed to lessen those impacts. An alternative analysis should include input from the community. Oftentimes the community members may be aware of concerns and impacts that make a particular alternative more or less desirable. An alternative analysis can also identify beneficial uses of the property not originally considered, for example, redesigning a site plan to preserve or lessen impacts on scenic vistas. The preferred alternative should be the alternative with the least detrimental effect on the environment but this is not always the case as you well know. So when identifying or discussing alternative methods for a proposed action one should consider the site or location so maybe for a particular project maybe reciting of a building would help or maybe we need to look at another location, less density or intensity. For example, maybe they're proposing a multi-family project and maybe for this particular – or maybe a fast food restaurant and maybe for this

particular project if they looked at what else the zoning would allow them to do, maybe a single family project is the answer to be able to develop this property. Also redesigning, maybe the current design is not conducive for that site so maybe lowering the building or just decreasing the mass would help. And finally, an alternative is to have no project at all and this is usually not a very popular alternative but one that is something that is also could be considered.

So that basically concludes my presentation and I think maybe at this point you want to ask me a couple questions we could do that or we could do questions at another time. I know you have public hearings at 1:00 p.m. and you also need a lunch break so I'll that to your discretion.

Mr. Starr: Is there any, we will have more opportunity to ask questions, anything really pressing? Looks like we'll be coming back and thank you for a really good presentation Ms. Cua.

Ms. Cua: You're welcome. Just to give you a little bit of more information, we have about four more presentations to do and we have given you the presentations that are the longer presentations. So I think, I don't know where you'll be able to fit the last four presentations, they should not take longer than an hour combined. So just to kind of keep that in mind when you return and you decide where you want to put those.

Mr. Starr: I was hoping we could just kind of keep moving forward and we could finish them in the next half an hour, is that possible? Because I know I believe we have a contentious issue after lunch. I would hate to come back and then have – if we get a room full of people have them have to sit through that.

Ms. Cua: That's the commission's decision. Your public hearings are supposed to start at 1:00. You could open the meeting close it, take some other business. I don't know when you want to take a lunch break. I would, if you wouldn't mind, if you could be able to advise us when you'd like to take this. I would like to be able to let the staff know who is going to be presenting, what time they would need to be here.

Mr. Starr: Can we finish it in about half an hour and then bring back questions at another time?

Ms. Cua: We could sure try.

Mr. Starr: Commissioner Hiranaga.

Mr. Hiranaga: I'd like to suggest we just take a 45-minute lunch maybe.

Mr. Starr: I, for one, would be willing to do that but I'd love it if we could finish this up and then take a 45-minute lunch and then come back to the other – the public hearings.

Mr. Hiranaga: Take a lunch now and come back at 12:45 and start up again.

Ms. Cua: I think maybe Corp. Counsel can help with advising in terms of the notice of the public hearing starting at 1:00. I don't know how we could –

Mr. Starr: Yeah, I would assume that if we come back if it's after 1:00, we don't come back till 1:15 or 1:30 that is okay. Mr. Giroux.

Mr. Giroux: Yeah, I believe if you start a little later that will be fine, just don't start any earlier.

Mr. Starr: Members is it okay if we try to finish this up and then take a short lunch? Commissioner Hiranaga.

Mr. Hiranaga: They're asking for an hour, you're saying cut it to a half hour but you want to complete this before lunch? Why can't we just have lunch and then resume afterwards?

Mr. Starr: Commissioner Mardfin.

Mr. Mardfin: I think Commissioner Hiranaga's suggestion is an okay one. But I don't see the lunch here right now. Oh, I was going to suggest why don't we go for 15 minutes, take a 45-minute lunch, do our public hearing business and shoehorn this in later in the day is that possible? Out of order.

Mr. Starr: We might.

Mr. Mardfin: Just a suggestion.

Mr. Starr: Is there a necessity to finish the rest of this up today?

Ms. Cua: Well, I think on the legal issue, your attorney could do that at any time with you. We have Joe Prutch here ready to go to do the processing of Council applications. Sexual harassment we have Allan Delima right upstairs and the flood districts they're right upstairs. We would definitely like to finish those three and we could always do legal issues on another meeting.

Mr. Giroux: Just on the legal side, the only thing I legally have to go through with you guys is the open meetings law. We have a consent decree that we have to follow and you have the ethics portion. So my portion would take about, if I just stick to that bare minimum probably 20 minutes but I also did prepare a contested case power point for you and I also did prepare a case law review for you, that would probably another 20 minutes, so 45 minutes probably on my part.

Mr. Starr: But there's a 20-minute portion we have to do today.

Mr. Giroux: Yes.

Mr. Starr: Ann, would it be okay with the Current people if we did the part that we legally have to do right now then break for lunch, come back to our public hearing and whether we get to it today or we get to it another time – the rest of it another time at a very soon meeting we can look at. But we do have to have our public hearing and there is a portion that we need to do by law so Mr. Giroux. Yeah, go do the part that we need by consent decree to finish before we break for lunch.

Mr. Giroux: Good afternoon, I am James Giroux. I'm your Deputy Corporation Counsel assigned to the planning commission. I'm just going to go over the two things that I said earlier. The open



meetings law and also the ethics portion.

The open meetings law is what is the Sunshine Law? The Sunshine Law is Hawaii's open meetings law it governs the manner in which all state and county boards must conduct their business. What is the general policy and intent of the Sunshine Law? It's to open up government process to public scrutiny, conduct business as openly as possible. Sunshine Law is to be liberally construed in favor of open meetings. Exceptions to the Sunshine Law are to be strictly construed against closed meetings. Absent a specific statutory exception board business cannot be discussed secret.

An important question, what is a meeting? Meeting means the convening of a board for which a quorum is required in order to make a decision or to deliberate toward a decision upon a matter over which the board has supervision.

Did I skip something or did I not go forward? Oh, I skipped a page. Open meeting, okay, what is required? What is required in an open meeting? Every meeting of the board is open to the public and all persons are permitted to attend. All interested persons shall have an opportunity to submit data, views or arguments in writing on any agenda item. All interested persons shall have the opportunity to present oral testimony on any agenda item. The board may make reasonable time limits of oral testimony and this board usually sets it ahead of time about three minutes.

Another mandatory part of this is that you have to have notice. Written public notice has to be posted at least six calendar days before the meeting. It must list all items to be considered at a meeting. It must have the time – the date, time and place of the meeting. No additions can be made once the agenda is filed unless two-thirds of the vote of all members to which the board is entitled. No item shall be added if it is of reasonable major importance and action thereon will affect a significant number of persons. This is very important. If there's something that you want to add to the agenda, you have to get two-thirds vote of everybody on the board. Even if you get that vote, if that matter is going to affect a large portion of the population you're not going to be able to discuss it, you can put it on your next agenda.

Another mandatory thing is your minutes. At a minimum, your minutes have to have your date, time and place of the meeting, members of the board are recorded as present or absent, substance of all matters proposed, discussed or decided and a record of any votes taken. Also, any other information requested to be noted by the members. This is a public record and it is to be made available within 30 days of the meeting. You usually have a chance to approve or adopt your minutes but if that isn't done within 30 days the public does have a right to start reviewing those documents.

What is a meeting? Again, a meeting means the convening of a board for a which a quorum is required in order to make a decision or to deliberate toward a decision upon a matter over which the board has supervision. More than two members of a board cannot gather to discuss board business. And then there's exceptions, this is important because a lot of times people don't understand what it means when they're violating the Sunshine Law. To put it simply if you have two people in the room from this board, it's okay. You have three people in a room from this board and you start discussing board business, you're violating the Sunshine Law. So that's a very simple

methodology to keep you out of trouble. If you have three people in the room and you're not talking about board business it's not a violation. So we need to know what is board business.

Board business matters over which the board has supervision, control, jurisdiction or advisory power and that are before or are reasonably expected to come before the board. So here we are on Maui and everything on Maui comes before the board. So what you can do is you can, first of all, is it on your agenda? You get the agenda, it comes you know, six days prior to the meeting, if something's on the agenda, just avoid any conversation about that matter until you get to the meetings. There's other things, we saw Long Range come through and they talked about Pali to Puamana and you know, there's these big projects out there so just be conscious that sooner or later that project may come before you for approval. So when I talked to OIP they always say, well is it reasonably going to be on the agenda? And that really takes a lot of analysis because yeah, there's a lot of stuff that could come in front of us but the reasonableness is dependent on the reasonableness of our minds. So we're going to have to be cautious of that and just be aware that if you're talking about – if somebody wants to talk about planning on Maui just be aware what you're talking about and if that's going to come before you and also if that person's trying to influence you. That's another red flag. So there are exceptions to the Sunshine Law.

The biggest one that we've had to deal with I believe is the investigative exception. This has to be followed very strictly because it again, it is an exception to the Sunshine Law. It's a two or more but less than quorum of this body and what you do is you have to have the scope of the investigation and the scope of authority defined at a meeting of the board. That means it's gotta be on the agenda that you're going to form an investigative committee. At that meeting the scope is going to be defined and the people who are going to be on that board are defined. All findings and recommendations presented to the board at a meeting of the board. So all the findings that are made by that committee are made to the board at an agendaed meeting. Deliberation and decision making on matter investigated if any occurs only at a duly noticed meeting of the board held subsequent to the meeting at which the findings and recommendations of the investigation are presented to the board. And what that means is that you're going to have to do after the information is presented to you, you're going to have to have one more meeting. So a lot of people think that this exception expedites board business, in reality it draws it out for two or three more meetings. So it's not something you want to do all the time.

Another exception is the executive meeting. This is meeting is closed to the public and a vote is taken at a open meeting of two-thirds of the members present in order to go into executive session. So the biggest reason we would use this is for your attorney and that's to consult with the board's attorney on questions and issues pertaining to the board's powers, duties, privileges, immunities and liability. So if somebody says you're having an illegal meeting, you should stop talking right now and your attorney says, I'd like to have a vote to go into executive session, I'm really, really asking to go into executive session so we can talk about it. Okay. So that's just a clue of how I work.

Contested cases that's another exception. A board exercising its adjudicatory functions governed by HRS Chapter 91, 91-8 and 91-9. So if you're in the middle of a contested case you do not always have to have public – every time you meet while you're in the middle of an adjudicatory function you do not have to have the public testify again, again and again. You need to be able to

finish up your business once you're in the middle of that process.

So what happens if you violate the Sunshine Law? There's the issue of voidability. Any final action taken in violation of Section 92-3 and 92-7 may be voidable upon proof of violation. A suit to void any final action shall be commenced within 90 days of the action and what that means is that if something happens that an action is taken and somebody says I believe that was done while you were violating the Sunshine Law that person actually has to file suit and the judge then has to listen to the facts before that action is stricken and if it's stricken you probably have to come back and do a do over.

So what do we do about enforcement? The Attorney General and the Prosecuting Attorney shall enforce this part. The Circuit Courts of the state shall have jurisdiction to enforce the provisions of this part by injunction or other apparent remedy. Any person may commence a suit in the Circuit Court of the circuit in which a prohibited act occurs for the purpose of requiring compliance with or preventing violations of this part or to determine the applicability of this part to discussions or decisions of the public body. The court may order payment of reasonable attorney fees and costs to the prevailing party in suit brought under this section. The proceedings for review shall not stay the enforcement of an agency decision, but the reviewing court may order a stay if the following criteria have been met.

So if somebody files a suit and you've taken action you can assume that that action is going to stand and that the agencies will be acting in accordance to the action that you took. However, the court will be approached and they have to make this decision is there a likelihood that the party bringing the action will prevail on the merits, irreplaceable damage will result if a stay is not ordered, no irreplaceable damage will result from the stay order and the public interest will be served by the stay order. So the judge has to make that decision before your order is stayed.

If there is a violation there are penalties. Any person who willfully violates any provision of this part shall be guilty of a misdemeanor and upon conviction may be summarily removed from the board unless otherwise provided by law. A conviction of a misdemeanor in Hawaii is punishable up to a year in jail and a \$10,000 fine.

Saying that, I have to say that the word willfully means that you purposely do it. So if your attorney says we should stop right now, I think we're in violation of the Sunshine Law really seriously think about proceeding with your meeting because after that if you are found to be in violation of the Sunshine Law it will be seen willful, against your attorney's best judgement. Any questions on that?

Mr. Starr: Commissioner Hiranaga.

Mr. Hiranaga: Just a quick clarification on the investigative exception. It's okay for one member who is unfamiliar with a project site to go out there on their own to familiarize themselves with the site but it's not okay for two members to go out. One member says hey I live in Kihei I know where it is, why don't meet on a Saturday and I'll show you the property. Can you just clarify that?

Mr. Giroux: Yeah, what that raises it's not really a Sunshine Law issue, it's more of a contested case issue that's another portion that I'm going to talk about. But if what you're doing, if you're

reviewing a project that is a contested case –

Mr. Hiranaga: Not necessary a contested case, any application.

Mr. Giroux: Well, you gotta be careful because any decision that you make on a permit that is deemed to be a contested case and the SMA is one of those permits that all of our decisions have to be based on what's on the record. So if you went out and did your own investigation, what you're doing is you're tainting the record because not all the members are privy to that information. So have to be very careful about that. Again, you're on Maui. You go to the beach, you went swimming, you come to the meeting, just so happens you're dealing with a property getting an SMA major right on that beach, you all have a collective mind here, your experiences. Nothing's going to stop you from you know, saying hey wait a second I was at that beach and I didn't see that rock and blah, blah, blah, blah, blah, but it also has to be confirmed in the record. You know there has to be something that confirms that information in the record. So you have to be very careful about doing your own site visit. But again, there's nothing that – if you grew up on Maui, 90% of the places that are being talked about during permitting you have some idea of what the terrain looks like. Any other questions? No?

We're going to go onto ethics. Oh, yeah, your notes are out of order, so you're going to skip contested cases and go to ethics in your pamphlet. So for ethics we have some prohibitions. One of them is accepting gifts, the other one is business transactions or activities or you have a financial interest which may tend to impair independence of judgement in the performance of official duty. And the other one is your failure to disclose financial interest.

As far as accepting gifts, you have to be careful as far as when somebody gives you something you have to ask in your mind is the purpose to influence my decision making as part of me being on the board? We live in Hawaii, we have you know what we call gifts of aloha, you know, somebody brings donuts or something and we don't take that as being, trying to influence your decision making. I don't think anybody would accuse you of selling out over a donut. But if you get a Ferrari or a Lamborghini or something like that ask the question is this person trying to influence my decision making process?

And the other thing is your business transactions. Just look at them, see if you're benefitting directly or indirectly from something that is directly in front of you at that time. And you all have filed your financial disclosures so you're clear with that. You have a question?

Mr. Freitas: Yes, pertaining to business, we have a case coming up today that I'm in the same type of business with him. I should I recuse myself am I right?

Mr. Giroux: What you want to do and I'll get more in-depth into it later but what you want to do is if there's an issue that somebody may raise that they may feel that it's not fair or in that type it's not necessarily a conflict of financial interest per se but there is a sense that a person may think they may not get a fair hearing. Then that's something that should be disclosed and discussed and just brought to the attention of the board so that they can then at least begin to deal with it in accordance with their rules.

Any violation of the rules of ethics comes with fines and you could be removed from office.

Here's the rule I was going to get to Jack, it's, whenever a conflict of interest or other ethical question is raised by anyone regarding any member of the commission the affected member shall promptly make a full disclosure of the circumstances to the commission. If the commission member has a financial interest in any matter that may be affected by an action of the commission that member shall be disqualified in voting in all actions relating to such matter.

So the issue is disclosure. You just want to bring it to the table as quickly as possible. When in doubt get an advisory opinion from the Board of Ethics and this is why, if any officer obtains an advisory opinion from the board and acts accordingly or acts in accordance with the opinions of the board, the officer shall not be held liable for violating any of the provisions of this article. So if there's something that's really borderline. Something that's you're just – you know, it's bugging you but you just know that you just need to clear it, so you go through the board, you ask for an official statement from the Board of Ethics and they'll give you an opinion. And once that opinion is out, you can rest on that.

A lot of times what I'll do as your board attorney as I will field calls from you. If you get the agenda, something comes up and it looks like it gives you that little gut feeling, call me, we'll kick it around, I'll give you my best opinion at that time as far as what I think the best you know tact to take is on that and if I can't give you something definitive, I'll just ask you to write to the board if you have time to get a opinion, a advisory opinion so that you will protect you as far as any type of violation.

The thing to think about is that if there is a violation and you're the fifth member, you know, a lot of times – we have nine members it takes five affirmative to take action. If you're the fifth person who's taking action and there's something tainted about your vote what will happen is that whole action ends up getting kind of booted. So it's something to think about. If you're on the fence and you're thinking maybe it's just better for me to disclose it, sit out, let the other members take action and as long as there's five votes then the business is taken care of. Any other questions?

Mr. Starr: Commissioner Mardfin.

Mr. Mardfin: Yeah, I own some stock in Alexander and Baldwin, not huge amounts but you know, more than 10 shares. We have a lot of A&B or HC&S business that comes before us. I once – one of the early ones I looked at and I determined that if we approved it my share of the potential profits from that is somewhere under a dollar, so is there a significance concern about financial interest? I mean, I'm not going to sell my vote for a dollar.

Mr. Giroux: Yeah, I mean I can't tell you definitively right now, what it would seem like is that I would probably guess that the board would lean towards it being insignificant as far as you know, if you're not you know owning a majority share or something that looks substantial in the business or you're a CEO or board member even, you know, something like that where you're just – it's just so inconsequential and again, if you feel nervous about it, just disclose it and I think the members of your board will give you an indication of whether or not they're comfortable with you participating or not.

Mr. Mardfin: Thank you.

Mr. Starr: Thank you Mr. Giroux. Members I would welcome motion to defer the rest of this to the earliest possible opportunity.

Mr. Freitas: So move.

Mr. Shibuya: Second.

Mr. Starr: Okay, so we have a motion by Commissioner Freitas, seconded by Commissioner Shibuya, the motion is director?

Mr. Hunt: Defer the rest of the orientation to the next available time. Now is that at the end of today if you get done with your business or?

Mr. Starr: We'll work it out, if we can get to it today, okay, if not, we'll work with Mr. Yoshida and the Director and Ms. Cua.

Mr. Hunt: So just to be clear we need to give direction to our staff is what I'm saying. We should direct our staff that there's a potential to continue with the orientation should the rest of the business on the agenda get done today.

Mr. Starr: Yeah, if convenient with staff and if not, we'll move it forward.

Ms. Cua: Okay, I'll go ahead and alert the staff and if we too on our side may not have people that can stay, we'll just work with you on that, but we'll be prepared at least to go today if we have time.

Mr. Starr: We have a lot of business today though and there's a good chance we won't get to it. Ready to vote? All in favor please raise your hand. All opposed. Director.

**It was moved by Mr. Freitas, seconded by Mr. Shibuya, then**

**VOTED: To Defer the Remainder of the Orientation to the Next Available Time.  
(Assenting - J. Freitas, W. Shibuya, K. Hiranaga, O. Tagorda, W. Mardfin,  
D. Domingo, L. Sablas)**

Mr. Hunt: For the new members, any time you do not vote that's recorded as an affirmative vote so we'll record that as unanimous.

Mr. Starr: Okay, thank you. We're going to take a break for lunch. We'll be back here at 1:15 p.m. and our apologies to people who are already here for the next item.

A recess was called at 12:30 p.m., and the meeting was reconvened at 1:17 p.m.

Mr. Starr: I'd like to welcome everyone to public hearing portion of our Maui Planning Commission

meeting of April 13, 2010. I'll turn it over to our director to introduce the first item. We will have public testimony on each item before decision making and we've had several people already sign up and everyone who wishes will have an opportunity to testify on every item that's of interest to them. Director Jeff Hunt.

Mr. Hunt: The commission's first item is agenda item E-1, Hale Hui Kai AOA requesting a Community Plan Amendment from single family to hotel to conform to the existing hotel use at 2994 South Kihei Road, TMK 3-9-004: 025 in Kihei. The file number is CPA 2008/0006 and Jeffrey Dack is the planner assigned to this project.

**E. PUBLIC HEARINGS** (Action to be taken after each public hearing.) (To begin at 1:00 p.m. or soon thereafter.)

**1. HALE HUI KAI AOA requesting a Community Plan Amendment from Single Family to Hotel to conform to the existing hotel use at 2994 South Kihei Road, TMK: 3-9-004: 025, Kihei, Island of Maui. (CPA 2008/0006) (J. Dack)**

Mr. Jeffrey Dack: Good afternoon. This matter arises from an application for a community plan amendment which was filed in October of 2008 and accompanying preliminary draft environment assessment was received at the same time. This is one of those projects as was mentioned this morning that has already come before the commission through the environmental review process two times for a draft and a final and it's now coming back to you after you've issued a FONSI on it, it's coming back to you for consideration of the actual entitlement community plan amendment.

The existing building on that site was constructed over 30 years ago in 1971 in accordance with property's hotel designation as set forth in the 1970 Kihei Civic Development Plan as well as hotel zoning in place. Many years after the completion of the construction, the adoption and subsequent update of the Kihei-Makena Community Plan in 1985 and 1998 resulted in the property being redesignated for single family use.

The present inconsistency between the land use designations has resulted in the existing buildings on the property being considered a nonconforming use by the county. The nonconformity issue presents a number of concerns to the AOA, to the condo association. Concerns in regards to their ability to repair and maintain the building that they anticipate will be need to be undertaken on the property in future years.

So the Hale Hui Kai AOA Association of Apartment Owners is proposing to resolve the issue through processing of the community plan amendment which would seek to amend the Kihei Community Plan from single family to hotel. There are no construction improvements to the existing condominium building that are – resort that are proposed at this time.

The State Land Use Designation is Urban, the Community Plan Designation as I indicated is single family currently and the zoning is HM Hotel as it has been since the time of the original construction in 1971. It is located in the special management area. To the north of the site the existing use is a hotel and a restaurant which also has a community plan – single family community plan designation and HM Hotel zoning the same as the subject site. However, I'll mention that I think

it was December of 2008, the planning commission reviewed a request by that property owner to amend their community plan designation from single family hotel – single family to hotel and you did positively consider that and recommended that onto the County Council. If I am correct, I think that is still pending action before the Council. So you have reviewed a project immediately adjoining with a very similar request to the one before you today. However, south of the site the existing uses are single family residential and that's that community plan designation there is single family and the zoning there is R-3.

The developed site has normal urban uses. There is a full-time live-in site manager and full-time light maintenance employee at Hale Hui Kai as well as the resort office. Mark Roy of Munekiyo and Hiraga will make a brief presentation and I will return for the department's analysis. Thank you.

Mr. Starr: Mr. Dack, about how long will the presentation be?

Mr. Dack: How long, five minutes, ten minutes? Less than five minutes.

Mr. Starr: Go ahead Mr. Roy.

Mr. Mark Roy: Good afternoon Chair and Members of the Maui Planning Commission, my name is Mark Roy with Munekiyo and Hiraga. I'm here today representing the applicant the Hale Hui Kai Association of Apartment Owners.

The Hale Hui Kai is as Jeffrey noted is an existing 42-unit resort condominium complex situated on one acre parcel of land on the makai side of South Kihei Road in Kihei. I've got a slide here just to put it in context. This is the bird's eye view of the property outlined in white and you have Keawakapu Beach along obviously the makai side.

Also, I have a site plan showing the existing condition of the Hale Hui Kai Resort. Keawakapu Beach is along this side for orientation. South Kihei Road is along this side and you can see the existing developed condition, consisting of a number of condominium buildings within the resort. Here from a ground level perspective we have a shot through the existing parking lot looking makai at the existing resort condominium complex. And then looking mauka here looking up at the resort.

As Jeffrey noted units at the resort have been operated as short-term vacation rentals and the short-term vacation rental operation has been ongoing since the property was first developed back in the early 1970's. There is an office located on the ground floor of the property which caters to visitors staying at the resort and also as Jeffrey mentioned there are two employees full-time, site manager and a light maintenance employee. I think it's worth noting also that the site manager lives in one of the 41 units on the property and is actually the only resident living at the resort on a full-time basis.

The Hale Hui Kai constructed about 40 years ago in 1971 in accordance with the property's hotel designation and as Jeffrey noted, it was developed at the time when the property was designated hotel you can see here the brown delineates hotel. You can see the Kamaole area further north was also designated at the time for hotel use and just to the north here we have the Mana Kai property and directly next door you can just see is the Sarrento's property which is going through



a similar request at this point.

Here we have the county zoning map which was pretty reflective of the Civic Development Plan at the time.

This is a summary of the land use designations both in 1971 at the time of development you can see we have consistency between the underlying land use designations at the time that the property was developed and here we have the current designations which shows the single family community plan designation which is currently the case we have an inconsistency between the underlying zoning and the community plan.

As Jeffrey noted, many years after the resort was constructed the community plan was adopted and also updated and this was the Kihei-Makena Community Plan and it resulted in as you can see here the property being redesignated from hotel to single family. This mapping error seems to have occurred it seems from a result of assigning future single family use designations to the high end beach lots that are adjacent to Keawakapu Beach if you look along the beach many of which I think were undeveloped at the time.

The designation to single family as Jeffrey noted, I'll try not to repeat information too much did not reflect the intended hotel use for the Hale Hui Kai Property nor did it acknowledge the presence of the existing resort. It seems to also have been assigned without the prior knowledge, consent or notification of the land owners.

So the community plan request at this point is proposing to go from single family to change it back to hotel, the original designation that was in place at the time of construction. And as Jeffrey noted there is a similar request pending before County Council for the Sarrento's restaurant property immediately to the north of this particular parcel.

I'd like to emphasize at this point that there are no plans to further develop or intensify the current use of the property as a resort condominium. As such, there are no public infrastructure or environmental impacts associated with this particular land use action.

This slide just gives an overview as to the environmental review process that was recently completed. As Jeffrey noted we went through the preparation of a draft environmental assessment which was published, went through our 30-day comment period during which the commission provided comments. We were back in front of the commission in February of this year where the commission accepted the document and issued a Finding of No Significant Impact for the request at hand. The EA process has just recently been completed on April 8<sup>th</sup>.

Just to summarize, the proposed community plan amendment request would ultimately do the things summarized on this slide. It would assign an appropriate community plan designation to the property. One which would reflect the land use that has been present on the parcel for about 40 years. It would also restore consistency to the land use designations for the property and would allow permits to be obtained from the county for repair and maintenance work that will become necessary condominium ages further. It's currently about 40 years old.

Also, I think it's worth noting that in a more extreme example its underlying inconsistency issue. This proposed amendment would also allow the owners to rebuild the current condominium if the property was seriously damaged by a catastrophic incident such as tsunami, fire or hurricane. The rebuilding of the current condominium is something that the owners would be unable to do under the current inconsistent situation from a land use standpoint.

In closing, we'd like to note that the applicant does concur with the department's analysis presented in the staff report and respectfully request the commission's recommended approval of the proposed community plan amendment so that land use consistency can be restored to the resort and as noted by staff in earlier comments the next step in the process will be review and determination on the community plan amendment application by the Maui County Council. Thank you very much.

Mr. Starr: Thank you. Mr. Roy, do you have any resource people here with you?

Mr. Roy: Just to make introductions we have the site manager with us today, Mr. Ben Little and we also have Debbie Wright who is an attorney for the AOA.

Mr. Starr: Okay, do they want to make a quick comment or they're happy with your comments?

Mr. Roy: I think at this time we'll finish the presentation.

Mr. Starr: Members, questions for Mr. Roy, Mr. Dack or their resource people? Commissioner Hiranaga.

Mr. Hiranaga: Just curious. How much has the applicant spent for this application in order to correct this clerical error?

Mr. Roy: Commissioner Hiranaga, if it's okay, I'd like to refer to Ben Little, the site manager. I think there was a recent AOA meeting where that was discussed on the meeting and so I think he'll be able to give you kind of a brief update as to how much the current cost of.

Mr. Starr: Okay, Mr. Little. Please introduce yourself for the record and welcome.

Mr. Ben Little: I'm Ben Little, Resident Manager of the Hale Hui Kai. Did I understand the question how much have we spent on this application?

Mr. Hiranaga: Yes.

Mr. Little: A little over \$100,000 at this point, about \$115,000.

Mr. Hiranaga: Thank you.

Mr. Starr: Okay members any other questions? Commissioner Mardfin.

Mr. Mardfin: Mark you mentioned that is something catastrophic should happen to the building

you'd be able to rebuild. If you did a full build out how many units would you be able to build if it was zoned hotel – community planned hotel?

Mr. Roy: Commissioner Mardfin, just to clarify the question you're talking under a complete redevelopment of the property?

Mr. Mardfin: Right.

Mr. Roy: If at some point in the future there was a decision to go beyond the current scope of the resort which is 41 units? I can't directly respond to the number of units that would be possible. We haven't done that analysis given that there is, there are no improvements currently considered for the resort. I think in the context of that question I would note a couple of things that would ultimately act as site constraints, development constraints for redeveloping a bigger hotel or bigger resort than what is there today. It's a one-acre piece of land which is fairly small. There would be parking requirements associated with an enlarged unit count which would obviously further limit the development envelope. We're also right next to the shoreline on Keawakapu Beach. So in itself there would be a shoreline setback requirement for which no structures could be placed within a certain distance of the shoreline.

I think also for the Kihei-Makena Community Plan district if I'm not wrong there is a design, there are design standards by which redevelopment of shoreline properties have certain height restriction which I think is 35 feet in the current community plan. I think the further you go away from the ocean you can kind of stagger up from that point, but this property is right on the Keawakapu Beach so I think the 35-foot height restriction would be reasonable.

Mr. Starr: Commissioner Mardfin continue.

Mr. Mardfin: Jeffrey, do you have an answer to that with a full build out with hotel zoning how many units they'd be able to put up?

Mr. Dack: I don't think there is actually a limitation by units. Under zoning there is a limitation on floor area ratio. In the HM District they're allowed to build 100% floor area ratio which means for one-acre lot is basically 43,000 square feet of floor area. If you give each unit maybe a 1,000 square foot or so gets you to right about the same number of units they have now, this would get you to 43 units whereas they have 41 right now. I have done some analysis in the past and I'm trying to retrace at the moment can't bring up exact specifics though but my analysis to this while I was preparing this report a few months ago or looking into it basically lead me to conclude that they built to about the maximum that they were able to build to under the zoning at that time and so what you see now is probably about what you would get. In theory they might be able to go a little bit higher in some places and lower in others but it would be a – a redevelopment would be probably fairly similar to the kind of intensity that you see at this time.

Mr. Mardfin: So it's unlikely they could get to 50 or 60 or 70 units?

Mr. Dack: If they wanted to make them really much smaller they probably, they might be able to do that, but again the floor area would max them out at a 100% of floor area ratio.

Mr. Starr: Okay, other questions? Commissioner Shibuya.

Mr. Shibuya: I just have a question in terms of the – I notice government beach reserve, that's along the shoreline can you tell me what's – how this is bordering and impacting this property?

Mr. Dack: It immediately fronts on state-owned government beach reserve land. It doesn't – the property was developed of course, 39 years ago, there's no improvements planned. So there really isn't an impact on the beach as a result of this community plan amendment action before you. You might recall though that as a result of the research during this process it was discovered as we reviewed during the environmental review process was discovered that there had been a previous historical encroachment onto the beach reserve and that has since been eliminated to the complete satisfaction of DLNR. So there shouldn't be an impact and in fact, kind of it's paradoxical a little bit that actually by making this application we eliminated an inconsistency and reduced a previous impact to the process and we don't anticipate increases of impact on the beach reserve as result of this.

Mr. Shibuya: There's references made to resort. Is this an apartment complex or is it resort? What is it?

Mr. Dack: You just heard them mention that it is – there's only one long-term occupant, there's only one permanent occupant. They operate it as short-term rentals. It almost, sounds like almost exclusively. It does have hotel zoning in which you can do that. They have been operating it for that way for many years and so with the hotel zoning they're operating in compliance with the zoning ordinance.

Mr. Shibuya: Are these individual owners for these condo units or what do you call these units?

Mr. Dack: I believe that they are individual owners. I believe it would be appropriate to call them condominiums. It is an association of apartment owners. So it's a common interest ownership. I don't know if there's – for example, one owner that may own a block of units, I don't know that kind of distribution but it is not owned by one single entity. It is managed by a property manager, but the individual units are individually owned.

Mr. Shibuya: And they do have what is called CC&Rs?

Mr. Dack: They do have CC&Rs.

Mr. Shibuya: Covenants, conditions and restrictions.

Mr. Dack: Correct.

Mr. Starr: Okay, members? Okay, looks like we're ready for public testimony on that.

Mr. Dack: Just wanted to –

Mr. Starr: Yeah go ahead Mr. Dack.

Mr. Dack: Just very briefly on the analysis. The property is served by normal public services. We don't anticipate the project would have any significant impacts. As of March 12<sup>th</sup> when this report was prepared relative to public testimony we had received one letter from the public indicating opposition, one indicating that there had been no opposition, both of those came in as part of the environmental review process and the commission's options for action they would be deferral recommendation, to recommend, recommend with approval of conditions, partial approval or denial. After testimony I would get back up and make the recommendation.

Mr. Starr: Yeah, we'll bring you back for recommendation.

**a) Public Hearing**

Mr. Starr: I'd like to call our first testifier is Jane Lovell, welcome and please state your name for the record.

Ms. Jane Lovell: Thank you. Good afternoon Chair and Commissioners and Staff. My name is Jane Lovell. You're used to seeing me in my official capacity as a Deputy Corporation Counsel but today I am wearing a private citizen hat. I'm on my lunch hour and I'm here to testify entirely as a private citizen. I owned an apartment in the Hale Hui Kai from 1998 until mid-2006 and as is so often the case when you own a condo I got roped into serving on the board of directors because it was my turn. So in around 2004, 2005, 2006 that time period I was on the board of directors and I was the board secretary.

This issue of inconsistency between our zoning and community plan came to light when the restaurant next door started having some permitting issues and I think I was the only person on the board who understood a huge a problem it can be if your zoning is hotel and your community plan is single family and I couldn't understand how it could possibly single family because this building was built almost 40 years ago, it had never been single family. Apparently it had just been a vacant lot before this building was built. So I did some research and I went back to the 1985 community plan update and I think the reason that this mapping error occurred is that the description of where the single family zoning starts on Keawakapu Beach was not described by TMK or even by, you know, mailing address or street address, the description was South Kihei Road in the vicinity of Kilohana Road. And so whoever made the map kind of guessed where that would be and they were two lots off.

So then we had to decide what to do about it and we came and met with the Planning Department several times and were told well we could wait for the county to do its own update, but Mike Foley, the director at the time, told us that that might take you know, 10 years or 12 years and as a county employee I knew that to be all too true and so I was really worried that we would need a new roof or that the restaurant that's next door and upwind would catch fire and catch our building on fire, the building is wood, it does need repair from time to time. In fact, as an older building it really is in line for some major repair. Our manager Ben Little has been a real genius at keeping the building held together with kind of minor repairs, but that was my huge concern. And so I went first to the board and then to the membership and as you can imagine the members were not happy about the idea of taking in several thousand dollars each to try to correct an error which they saw as the county's fault. And nonetheless, in the end we thought that we really needed to do this. I

convinced everyone that it was not really very productive to just assign blame that we should just take responsibility for it no matter whose fault it was and just get this thing fixed. So that's kind of the history of it.

I can tell you that the ownership is almost all individual owners. There's one family that owns three units. They are the elder member of that family is one of the original owners. There are a few, a handful of original owners left, delightful, you know, charming people. Most people do have their units in a rental pool, some owners do not. I personally lived there full time for several years. It's really a lovely community of civic minded people and I urge you to vote for this community plan amendment.

Mr. Starr: Okay, thank you Ms. Lovell. Any questions? Commissioner Mardfin.

Mr. Mardfin: Ms. Lovell, I normally wouldn't ask this of a testifier but because of your experience I think I'll do that. It's been suggested by at least one person in our record that maybe it's appropriate to have it be apartment zoned as opposed to hotel zoned. If it were apartment zoned would that preclude it being used for the same purposes that is for transient vacation rental?

Ms. Lovell: Commissioner, I'm not sure that I can answer that at this time but I do think that it would make more sense to have the zoning and the community plan you know, match because almost all of the owners, not all of them but almost all of them have had their units in vacation rentals since day one, since 1971. And because of the restrictions and the changing laws and so forth on transient vacation rentals I wouldn't want these owners to end up with something that would might put them out of compliance with law when their whole intent in spending all this money and putting in all this effort is to be in full compliance with all the laws.

Mr. Mardfin: That's my concern too and according to the Kihei Community Plan however, hotel applies to transient – this is the definition on page 54, this applies to transient accommodations which do not contain kitchens within individual units and these all contain kitchens. So you'll be out of compliance with the definition in the community plan whereas, multi-family includes apartments and condominium buildings having more than two dwellings and there's no limitation on kitchens. It seems to me you'd be more in compliance if it were multi-family as opposed to hotel.

Ms. Lovell: Well, that may be but I'm worried about the inconsistency between multi-family and hotel zoning. Then all of a sudden we'd need a change in zoning. I mean, we're in kind of a catch-22 here.

Mr. Mardfin: Yeah, I know you are.

Ms. Lovell: And really the – I really do see this as a mapping error and here's this poor beleaguered AOA who's just trying to put it right. You know, so whatever the appropriate thing is I'll leave it to the more expert people than I to work out that wrinkle. There are kitchens in there. I certainly had a kitchen, a very nice kitchen. Okay, thank you.

Mr. Starr: Thank you very much. Any other members that would like to testify on this item please come forward. Okay, not seeing any, the public testimony on this item is now closed.

**b) Action**

Mr. Starr: I'd like to go to Mr. Dack and I would ask him just to briefly address Commissioner Mardfin's question before giving out the recommendation.

Mr. Dack: I unfortunately haven't had time to really very thoroughly analyze that question. It's a reasonable question. I believe that the better choice would be to or actually probably the more important type of consistency to be looking to achieve at this point would be consistency between the land use designation and the actual zoning. And then further believe that the – the zoning is regulatory and prescribes standards of development and types of uses which are allowed and has greater levels of specificity always in that regards than the community plan does. Community plan definition I believe that it would be probably – it would be best on balance to achieve consistency between the designations and then defer to what is allowed under the zoning designation has been allowed under the hotel ...(inaudible)... designation for 40 years of this development to allow for the hotels to occur even though yes, it sounds like what is occurring on the site is not going – would be possibly better fitting with the department community plan designation, but what is occurring on the site would also I think work with – has worked historically and with the hotel district. Also, there could be some legal nonconforming situations that if we were to change it to, if the way the direction were to change the actual zoning to apartment which would still probably allow what's occurring at the moment, that's not a full analysis I'm sorry, but that's my quick take on it. And if Corp. Counsel has anything further to offer on it that could be welcomed insight.

But I move on to, the original recommendation as you see at the end of your staff report is that this has been reviewed and of course, you have accepted an environmental assessment on it. But this particular question hadn't come up before and but in light of all that you have considered in the environmental review processes and the information in the staff report we concur, we maintain our recommendation as written in the recommendation report which is, in consideration of the foregoing the department recommends that the planning commission recommend approval of the community plan amendment as requested by the applicant adopt the department's recommendation report for today's meeting as the report to the Council and authorize the director to transmit the report recommendation to the Council. Thank you.

Mr. Starr: Thank you Mr. Dack. Members any questions? Commissioner Shibuya.

Mr. Shibuya: I'm still stuck on the definition. Is it a hotel resort, condo, apartment, multi-family residential? It makes a difference in my mind in terms of what kind of zoning change impact we're going to have. Also to the property owners, in terms of if we do change the zoning assessment impact to individual owners. If it is a hotel what is the impact? If it is a multi-family residential, what is the impact? Is it something that you surveyed all of the owners and it is acceptable? Then stepping back a little further, application of consistency in adjoining properties. Are we applying the consistent type of zoning to those properties next to it and surrounding this area? Thank you.

Mr. Starr: Mr. Dack, you want to tackle that? You want to let the applicant tackle some of it? Your choice.

Mr. Dack: That was a lot. So if you can maybe go – hit one or two at time or three we can try to

work on it.

Mr. Shibuya: Okay, lets try with the definition first. Is it a hotel resort, condo, apartment, multi-family residential?

Mr. Dack: I'm going to have to – actually if the applicant wishes to try to work on that one I'll look up that one and see what I find in the EIS – the EA.

Mr. Starr: Mr. Roy, why don't you join him at the mike?

Mr. Roy: Thank you. Mark Roy of Munekiyo and Hiraga. I'll do my best to address Commissioner Shibuya's first question regarding what is it, what are the units at the resort. It is a resort. It's operated as a resort condominium and as we noted before there are 41 units in total. One of those units is occupied by a site manager on a full-time basis. That's the only full-time resident at the resort. The majority of the units of the 40 are put into what Ms. Lovell described as a rental pool and the resort office and the property manager downstairs basically it's my understanding that they operate the resort and you know, obtain guest reservations and utilize those units as essentially resort units. So I think to the question of how does the property function it's functions as a resort. Hopefully that addresses your questions.

Mr. Shibuya: That's one of them.

Mr. Starr: Okay, next question.

Mr. Shibuya: The next question is the zoning change impact have the owners considered the zoning change impact?

Mr. Starr: Yeah, Mr. Roy. Let's get them answered but gotta do it quickly.

Mr. Roy: So to the second question I just want to reiterate the question so I'm understanding Commissioner Shibuya you were asking about the impacts related to a change in zoning?

Mr. Shibuya: Yes.

Mr. Roy: A change in zoning is not currently being pursued by the applicant at this point in time. The request that is before the commission is a community plan amendment application and the zoning for the property is currently HM Hotel and is reflective of the current use and associated impacts of that particular use present on the property. So consistency is already there from a state land use commission standpoint where the property's already designated for a urban use and from a county zoning standpoint it's designated for HM Hotel use which was the same zoning designation that was in effect at the time the resort was originally constructed back in 1971. So the way to obtain consistency in this regard for this particular property is the appropriate mechanism is to file a community plan amendment application and that's the application that's currently before the commission which would if approved, restore consistency to all three designations by amending the Kihei-Makena Community Plan to hotel.



Mr. Shibuya: And it would be applicable to all adjoining properties?

Mr. Roy: The community plan amendment action itself would just designate the one-acre parcel of land Hale Hui Kai Resort as hotel and it would be – it's consistent with the request that is currently being processed. They're a couple of steps ahead of the applicant in this room today and that they – the Sarento's property, the Sarento's Restaurant property as a lot of people know it by has gone through a similar – exactly the same application, excuse me, has gone through an environmental assessment process that's come before the commission. They're a couple of steps ahead in that their application is before the County Council currently pending action.

Mr. Shibuya: I just wanted to have it consistent. Thank you.

Mr. Starr: Thank you very much. Commissioner Mardfin.

Mr. Mardfin: Jeffrey, earlier I asked you what the full build out would be if it were hotel zoned. Hotel zoned, community planned hotel. And the answer was essentially they could probably do something like 42,000 square feet of buildable space. Units would depend on how – number of units would depend on the average size of the unit. Suppose it were apartment zoned, multi-family community plan, would the build out be any different? Would it be fewer units or more units?

Mr. Dack: I don't have the apartment district zoning in front of me. We have the secretaries going to get Title 19. We can try to answer this question so I don't happen to have that in front of me.

Mr. Starr: Director.

Mr. Hunt: The floor area ratio in the A-1 Apartment District shall not exceed 50% and the A-2 Apartment District shall not exceed 90%. So assuming it was A-2 it would be very similar.

Mr. Mardfin: Thank you Director. My second question. Suppose it were zoned apartment, A-2 and multi-family – and community planned multi-family, would they be able to continue with the TVR status? In other words, to be able to continue to rent it out as a transient vacation rental?

Mr. Dack: I don't believe they would. Apartments, there's many properties in apartment zoning districts that have short-term rentals but those were operating short-term rentals prior to some date I think around 1989 thereabouts. And subsequent to that, you're not able to establish short term rentals within an apartment. So since the zoning is hotel and you would be changing the use to apartment I would suspect that they wouldn't have that opportunity. They would have to meet the currently allowed uses within the apartment district which I'm pretty sure does not allow short-term rental.

Mr. Hunt: There's a chance they'd be grandfathered in. The ordinance that prohibited short-term rentals in the apartment district had a grandfather clause. But it's vague and there's a chance it wouldn't be and certainly if the building was ever torn down or destroyed and had to be replaced then they would not – they would definitely not be permitted to short term. So for the long term assurance to continue on with the short term rental the hotel zoning is the most appropriate.

Mr. Mardfin: Thank you very much.

Mr. Starr: Okay, members we're ready for a motion. Anyone would like to make any kind of motion now would be a good time.

Mr. Tagorda: Mr. Chair, can I have a question?

Mr. Starr: Yes, Commissioner Tagorda.

Mr. Tagorda: I was just reading this reason request and nonconformity issues like it won't be changed into hotel. You said we would have a problem with getting permits from the County of Maui for repairs and maintenance. Can you elaborate more?

Mr. Roy: Sure I can elaborate on Commissioner Tagorda's question. This particular parcel, one-acre parcel right next to Keawakapu Beach is located within the County's Special Management Area and the Special Management Area is an additional regulatory zone around the coast of Maui County and the islands that deals with development actions and in order to do some level of improvement within a parcel of land that is within the SMA area you have to obtain an SMA approval or an exemption from the Department of Planning. As a matter of processing an SMA application, the applicant would be unable to obtain an SMA permit due to the underlying inconsistency that is currently on the community plan. So a good example I think is the property is about 40 years old and lets just use this as an example, say they wanted to replace the windows which would be deemed an exterior improvement, it would trigger the need for an SMA approval before they could obtain any necessary building permits that would be required before a contractor would come down and replace the windows. The SMA approval in itself would require that these three land use designations be consistent before the Planning Department would issue the approval.

Mr. Tagorda: So all this here is after construction in 1970 there were no repairs and maintenance done on all of those buildings?

Mr. Roy: There are – I couldn't comment on what has happened over the last 30 or so years but there are provisions in the SMA Rules for the Maui Planning Commission by which when the Department of Planning receives an SMA Assessment application for repair and maintenance action the repair and maintenance action would qualify as a SMA Exempt action and would not be subject to the need to get a what is referred to as an SMA Minor or an SMA Use Permit. So there are provisions in the rules for certain repair and maintenance actions.

Mr. Starr: Thank you. Commissioner Freitas.

Mr. Freitas: I move that we approve the plan amendment from single family to hotel.

Mr. Starr: As recommended.

Mr. Freitas: As recommended.

Mr. Starr: Is there a second?

Ms. Domingo: Second.

Mr. Starr: Okay, we have a motion by Commissioner Freitas, seconded by Commissioner Domingo, director please read the motion.

Mr. Hunt: The motion is to approve the – pardon me, to recommend approval as recommended by the staff.

Mr. Starr: Commissioner Hiranaga.

Mr. Hiranaga: This is a question for staff. Two questions, 1998 is when the Kihei-Makena Community Plan was adopted?

Mr. Hunt: I believe so.

Mr. Hiranaga: Second question. Is it the practice of the county to redesignate existing structures to create nonconformity?

Mr. Starr: Director.

Mr. Hunt: I'm not sure you'd say that's the practice of the county. In this case I believe the evidence in the record shows that there was perhaps an error in the mapping.

Mr. Hiranaga: Just one final comment. I hope the department and the county as they go through their urban growth boundary maps and their rural growth boundary maps be very, very careful as they start redesignating properties so that this type of a situation does not arise in the future. This is something that should never have happened. These people have spent over a hundred thousand dollars correcting a mapping error which they had nothing to do with and I think it's very important that when we start redesignating properties with these urban growth boundary maps and rural growth boundary maps and with the community plans that we notify property owners that these changes are occurring and not just surprise them like these people were. Thank you.

Mr. Starr: Thank you. Commissioner Mardfin.

Mr. Mardfin: I have a question for Jeffrey. The existing units are how many square feet?

Mr. Dack: I'm helped by the Ms. Lovell, 890 is what I think I heard, 898 square feet.

Mr. Mardfin: Thank you.

Mr. Starr: Okay, members any questions, amendments, looks like not. Are we ready to vote? Commissioner Mardfin.

Mr. Mardfin: I'd like to like to make a comment on this thing before we vote if I may. I was really

bothered by this thing. I do agree that there was a mapping error made originally but I think what they should have done in – when they made the community plan is made it, convert it from hotel to multi-family because of the existence of kitchens and they would have been grandfathered in. The question is what do we do at this point? And I was prepared to make an amendment to change it to multi-family community plan and recommend apartment zoning. But I've been persuaded not to do that by three different lines of attack. One is that it's going to be – what bothers me is when people come in and they say we have further development plans at this time to get their EA through and then 14 days after we approve it then they suddenly discover they have development plans. And so I'm just sort of naturally suspicious of things. But Ms. Lovell's testimony that this came about because they really did just discover the inconsistency and they want to straighten it out convinces me that there probably are no hidden development plans involved. So that does one thing to help my motivation issue.

The second major thing that's going to allow me to vote for this is the director's comment that if something catastrophic were to happen and we went with a multi-family apartment zoning community plan that they would not be able to do the transient vacation rentals is highly persuasive because I think they should be able to keep doing what they've been doing. My concern was it would be very much intensified down the road and I don't see that possibility and the way I would have changed it doesn't make sense because they then wouldn't be able to continue with what they wanted to do particularly if there were some catastrophic failure. Because of these issues that have come up during the testimony I'm willing to vote in favor of the motion.

Mr. Starr: Okay, thank you. Commissioner Shibuya.

Mr. Shibuya: I just have to have some reassurance here that if you are going to have some construction that pre and post type of runoff would be contained on property and that there is access available for the residents as well as for the public to access the beach and I believe you do have the easement but you don't have the improvements. So if these can be added in. Also, the parking for the public. Another one would be it's not as stringent but would be a recommendation that some renewable energy type of system be added to the improvements if you have that opportunity. Thank you.

Mr. Starr: Commissioner Shibuya, is that an amendment you're making?

Mr. Shibuya: No, I'm just making a comment at this point.

Mr. Starr: Commissioner Freitas.

Mr. Freitas: I call for the question.

Mr. Hiranaga: Clarification, point of order. So comments by Mr. Shibuya are suggestions on a voluntary basis?

Mr. Starr: They're just comments.

Mr. Shibuya: Comments.

Mr. Starr: Commissioner Mardfin then we're going to vote.

Mr. Mardfin: Do we need to in our motion deal with this issue of nonconformity between the definition in the community plan of if it's hotel then they can't have kitchens?

Mr. Starr: Director.

Mr. Hunt: The definition of hotel in 19.04 includes dwelling units which then you go to the definition of a dwelling unit, includes a kitchen. The Planning Department for many years has been allowing hotels with kitchens in community plans that have that definition same as this one. I think most of our community plans contain that same hotel definition. So the precedent has been that the zoning definition rules and that hotel units with kitchens are allowed in these community plans.

Mr. Starr: We're going to vote. Please read back the motion and then we'll vote.

Mr. Hunt: The motion is to recommend approval to the County Council as recommended by the department.

Mr. Starr: All in favor please raise your hand. All opposed.

**It was moved by Mr. Freitas, seconded by Ms. Domingo, then**

**VOTED: To Recommend Approval of the Community Plan Amendment to the County Council as Recommended by the Department.  
(Assenting - J. Freitas, D. Domingo, K. Hiranaga, O. Tagorda,  
W. Mardfin, W. Shibuya, L. Sablas, J. Starr)**

Mr. Hunt: We'll mark that as eight in favor and zero against.

Mr. Starr: Okay, thank you very much.

Mr. Roy: Thank you.

Mr. Starr: Okay, you need time to set up for the next item. Okay, looks like they're ready to go. Director please introduce the next item on our agenda.

Mr. Hunt: The next item on your agenda is E-2, Mr. Charles Jencks on behalf of Honuauia Partners requesting a Special Management Area Use Permit to modify the Wailea Ike Drive/Wailea Alanui Drive intersection to accommodate a double right-turn movement from Wailea Alanui Drive to Wailea Ike Drive and double left-turn movement from Wailea Ike Drive to Wailea Alanui Drive and related improvements at TMK 2-1-008: 131, 118 (por.) And 134 (por.) In Wailea. The file number is SM1 2009/0012. Gina Flammer is the planner assigned to this project.

2. **MR. CHARLES JENCKS on behalf of HONUULA PARTNERS, LLC requesting a Special Management Area Use Permit to modify the Wailea Ike Drive/Wailea Alanui Drive intersection to accommodate a double right-turn movement from Wailea Alanui Drive to Wailea Ike Drive and double left-turn movement from Wailea Ike Drive to Wailea Alanui Drive and related improvements at TMK: 2-1-008,131, 118 (por.), and 134 (por) Wailea, Island of Maui. (SM1 2009/0012) (G. Flammer)**

Ms. Gina Flammer: Good afternoon Chair Starr and Commissioners. As our director just read we're going to be reviewing the SMA Use application for modifications to the Wailea Ike and Wailea Alanui intersection. I'd like to go over how this review will happen today. I'm first going to introduce the project then we'll have the applicant and their consultant do a power point presentation, the department, I, then will come back up and given an analysis of the project and address concerns expressed in the public testimony submitted earlier. As part of that department analysis I'm going to have our Deputy Director Mike Miyamoto, traffic engineer, address some of the safety concerns of the proposed project. Then we can open it up for public hearing and then afterwards I'll give the department's recommendation. I do have some extra photos so as we are discussing things I can put them up or you can let me know to put them up.

So this intersection project is one of the conditions of zoning for the Kihei-Makena Project District 9 which is the Honuula master plan community formerly known as Wailea 670. The condition calls for additional turn lanes at the Wailea Ike and Wailea Alanui intersection to add traffic capacity to and from Wailea and Makena. This is the intersection in front of the Shops of Wailea. There's currently one lane turning left from Wailea Ike onto Wailea Alanui and the project would add another turn lane making two left-turn lanes then going towards Makena. The second part is to add another right-turn lane coming out of south Wailea onto Wailea Ike and you're going to see maps and photographs in just a minute.

The project is located within the Special Management Area which necessitates this review. The application was received by our department on August 28, 2009. An EA was triggered due to the use of county lands, public roadway and the Department of Public Works was the accepting authority. A copy of the final EA which includes the traffic impact analysis report was handed out to you previously on CD. There's also an archaeological monitoring plan on there. Now I'm going to turn it over to the project manager, Colleen Suyama from Munekiyo and Hiraga, who's going to introduce her project team and go over the proposed modifications.

Mr. Starr: If they're going to make a power point, how long will it be?

Ms. Flammer: It's eight slides, seven slides.

Mr. Starr: Yeah, how long will it take?

Ms. Flammer: Maybe about five minutes she says.

Mr. Starr: That's fine.

Ms. Colleen Suyama: Thank you. For your information our project team for Honuaula Partners LLC is Mr. Charles Jencks, our traffic engineer is Austin, Tsutsumi and Associates, Inc., represented by Keith Niiya, and R.T. Tanaka Engineers, Inc., represented by Kirk Tanaka is the engineering consultant and I represent Munekiyo and Hiraga, Inc., which did the Environmental Assessment as well as the SMA permit application.

As the project overview as stated by the staff planner this is the result of a change in zoning condition for Kihei-Makena Project District 9 in which the County Council and the Mayor in April of 2008 included 30 change in zoning conditions, a portion of it which was regarding roadway improvements. Condition 2e states, "modify the Wailea Alanui/Wailea Ike Drive intersection to add a signalized double right-turn movement from northbound to eastbound turning traffic and provide two left-turn lanes for south bound traffic from Wailea Ike Drive prior to occupancy of the first unit in Kihei-Makena Project District 9. That is the condition that's mandated for Honuaula.

In terms of the location, this is Piilani Highway located here, Wailea Ike Drive as a T-intersection with Wailea Alanui Drive directly across of the Shops of Wailea and this is approximately the project location at the intersection.

This is of east view showing the Wailea Ike intersection. This is the westbound traffic coming down from Wailea Ike Drive as it meets into Wailea Alanui and this is the eastbound traffic going up Wailea Drive. In between here is a significant drainage culvert that was constructed for the resort. This is the view of that drainage culvert.

This is a more close up view of the intersection currently. This is Wailea Ike Drive coming down, this is Wailea Alanui Drive and as you can see the Shops of Wailea is directly across from the intersection and there were some concerns that people had expressed regarding the entry, the south entry into the Shops of Wailea. That south entry is located approximately here where those palm trees are located.

This is the north side view of the Wailea Alanui Drive as you make that right turn northbound towards Kihei and this is the golf course, the existing old Wailea Blue golf course.

This is south view of the intersection. This is Wailea Alanui. These are some existing monkeypod trees that are located on the mauka side of Wailea Alanui. This particular monkeypod tree is one of them may be impacted by the improvements. We're not going to be sure until we actually prepared the construction drawings but this is the one that the department had voiced some concerns over.

This is looking down Wailea Ike Drive to the bus stop. This is where the existing bus stop is located right after the guardrail and in some of the comments from the agency, the County Department of Transportation had voiced some concerns that there may be some conflict in traffic at the intersection. We since met with Donn Medeiros of the County Department of Transportation explained that the current free flowing right turn lanes when these improvements are completed will be a stop on red. In other words, you would end the free flowing traffic right turn lanes onto Wailea Ike Drive which will give his buses making left turns the opportunity not to conflict with those right turns as they get to the bus stop and that satisfied his concerns that were originally voiced in his

comments to us.

As explained this was subject to Chapter 343 review. The initial plans for the construction was submitted to the Department of Public Works as the initial reviewing agency that needed to grant an approval before we could start it was deemed that the Department of Public Works was the proper accepting authority. On October 23, 2009, the draft Environmental Assessment was published in the OEQC Environmental Bulletin and on January 23, 2010 the final Environmental Assessment was published in OEQC's Environmental Bulletin as a Finding of No Significant Impacts. The environmental process ended on February 22, 2010.

In terms of the intersection improvements, this is Wailea Alanui Drive, this is the divided Wailea Ike Drive. One of the first improvements is on the south side is to do a six-foot wide concrete sidewalk located here, put in new concrete curb and gutter. Also put in a new 12-foot long curb ramp which would slope down into the crosswalk area to provide that handicap accessibility. Also, as part of the two-way, right turn widening you would have new arrows and the new lane which is located here. The is the two double right turn lanes. On the north side you would have, right now it's a one, left turn lane and right turn lane is to increase this to two, left turn lanes, to put in a new curb island here, located here and to put in a new crosswalk as well as new lane stops located here.

This improvements will require land acquisition. On the north side we're talking about little over 400 square feet of land acquisition and on the south side we're talking about 1,200 square feet of land acquisition and the land is currently owned by the old Wailea Blue golf course. And if you look at this, this is the intersection, approximately here is where the driveway entry is located.

We know that drainage has been an issue with the commission recently so we did a summary of the drainage. The design capacity of that drainage channel is 968 cubic feet per second. In a 100-year storm event it is estimated that about 900 cubic feet per second of runoff goes through that channel. So there's an excess capacity of 68 cubic feet per second. Once the development is completed, about 0.5 cubic feet per second is going to be generated by the post development which is the additional asphalt that's going to be increased. And we wanted to give you a reference of what does 0.5 cubic feet represent. It represents about less than four gallons of water being thrown into that drainage channel every second. So that was to give you a perspective of how much water we're talking about. The post development excess capacity with this improvement will be 67.5 cubic feet per second. Thank you, and if you have any questions.

Mr. Starr: Members, questions? Before you do, what resource people do you have here with you?

Ms. Suyama: Right now we have the applicant, we have our traffic engineer and our engineering consultant.

Mr. Starr: And before we go to questions does the applicant wish to say anything or is he – okay, members questions? Commissioner Mardfin.

Mr. Mardfin: One of the things that puzzles me is we've got a whole ...(inaudible)... of people objecting to this thing and yet there were no comments on the environmental assessment. Do you have any idea why they wouldn't have made comments within the allotted time period on the



environmental assessment given that they have such serious concerns?

Ms. Suyama: This is purely speculation but normally what happens is that people are not really cognizant of all of the process in terms of land use processes and until they get an individual letter of notice and then they find out this project is proceeding that's when they make known either their opposition or their support of the project and I think this is the same situation is that we had tried to do a community meeting before we even started at that meeting unfortunately no one showed up to the community meeting so we proceeded and we went through the whole environmental process, but through the SMA process we're required to do individual letter notice and because the way the departments – the commission's rules read, when you do notice requirements for the SMA it includes the entire boundary of the parcels in question and in this case the boundary of the Wailea Ike and Wailea Alanui is significant and we had to do over a thousand notification letters to people because of that. It's not like it's just the golf course area and it's the Shops of Wailea. It entailed a lot of condominiums within the Wailea Resort being notified and I would speculate that that's the first time that a lot of these owners knew about this project and their first reaction is I need to send in some kind of letter of testimony to make my views known. And what I can surmise from some of the comments that came in is that their basic objection was the way this condition was placed upon Honuaua. In other words, they did not support the placement of this condition and the Wailea Community Association was not consulted before the Council in the approval of the Honuaua project put this condition on. Because my understanding is that the Wailea Community Association's position has always been that in order to solve traffic problems within Wailea you need to build the continuation of Piilani Highway to Makena and that's where their focus has always been is the building of that future extension to Makena to eliminate some of that current traffic that's going through the resort.

Mr. Mardfin: Thank you.

Mr. Starr: Commissioner Shibuya.

Mr. Shibuya: I am probably going to dig into some ancient material here. In the Kihei-Makena Community Plan they have a description of Project 9, it's Wailea 670, 670 acres and I quote reading this, "this project district is located mauka and makai of the proposed Piilani Highway extension mauka of the Wailea Resort, south of Maui Meadows and north of Seibu Mauka." It's very interesting that we are not looking at extending the Piilani Highway but instead to extend this highway so that you can service the proposed Project District 9 as proposed in the community plan. Instead you're going to go through somebody's yard, the Wailea community's yard and widening it and increasing the capacity of traffic there. Can you give me some rationale for this?

Ms. Suyama: At the time when this went before the Council, the Council had through the traffic engineer at that time a list, a laundry list of improvements that needed to be done to mitigate traffic impacts. One of those mitigation measures was improvements to the intersection. They also recognized that the extension of the bypass road was also important and that's why Honuaua as another condition of zoning is required to not only extend the highway to Kaukahi Street into two lanes. They also were required to put improvements of widening the existing Piilani Highway from Kilohana Drive to Wailea Ike Drive as four lanes. In other words you're supposed to be responsible for the construction of two additional lanes so that that portion of Piilani Highway from Mokulele

Highway to Wailea Ike Drive it eventually be four lanes traffic. That is other conditions that Honuaula is mandated to do. So you know, it's a whole – they looked at it in terms of regional improvements and they put all of it including this one intersection improvement and they felt that this intersection improvement in terms of the Council was needed in order to mitigate whatever impacts in the interim that might happen.

Mr. Shibuya: If I can continue with my comments. It's interesting that they would override the Wailea community's need for a sense of place and a sense of character and they've established that and all of a sudden now you're increasing the capacity of traffic and they don't want it and in this packet here I have a whole bunch of letters objecting to this improvement and that's very troublesome for me especially when I was also on the GPAC and had a hand in coming up with the General Plan and we had some values extended into those general plans and one was maintaining the community sense of place and they have defined it and now we're upsetting the cart with all of this kind of improvements.

Mr. Starr: Members? Commissioner Hiranaga go ahead.

Mr. Hiranaga: Colleen, is Piilani Highway a state highway or county roadway?

Ms. Suyama: It's a state roadway.

Mr. Hiranaga: Okay, thank you. Second question. Of the number of letters of opposition that you received what percentage was that compared to the number of notices you sent out in that 500 foot radius.

Ms. Suyama: Well we sent out over a thousand and we received my understanding is maybe there was about 50 letters that were sent. Well, according to staff it's 30. So that's a really less significant –

Mr. Hiranaga: 3%, 4%. Okay, thank you.

Mr. Starr: I have a question for Mr. Miyamoto. How is it that the Department of Public Works that are responsible for the roadway became the accepting agency for this and did you feel any concern that no one came to the public meeting and that the Wailea Community Association wasn't given notice or any of that?

Mr. Mike Miyamoto: Because the project is in with the county's right of way and which we're jurisdiction over the roadway, we were deemed the one that would be the appropriate accepting agency for the environmental assessment. As far as public's response this project was brought up as part of the Wailea 670 project, that project had been discussed many times in chamber and many times I think they had two or three public hearings in the community area. So the response to the environmental assessment may have been, you know, in our opinion was possibly because they've seen this enough because it's been in Council Chambers, I can remember attending meetings late into the night regarding this project. So the project had been well attended as we had testimony that lasted several – many hours. I shouldn't say several, it's been many hours and so the word was out there that these conditions were attached to this project, the Honuaula project.

Mr. Starr: Doesn't the environmental review process call for public hearings and the public to be involved? Isn't that the whole reason for doing it?

Mr. Miyamoto: We cannot make the public get involved, all we can do is put the announcements out there, make the meetings available for them, put the documents in public access places that's as much as we can do. We cannot go out and force people to attend our meetings.

Mr. Starr: Members? Commissioner Mardfin.

Mr. Mardfin: Colleen, do you folks have your traffic person here?

Ms. Suyama: Yes we do.

Mr. Mardfin: Could I ask that person a question and maybe you too? I've read this reasonably carefully but not perfectly completely I think and a lot of the concerns are about traffic and they're saying we don't need this, traffic's fine it is. But in the traffic report that's in the environmental assessment you have basically – I'm going to paraphrase and I'm not reading it so I could get it wrong but basically you have it at LOS Level D most of the time which is a 35 to 55 second delay. And the community seems fine with that. But with the addition of the project being built, you basically had figured out that it would be Level F which is more than 80 second delay. So kind of more than a doubling of the average delay. And that you – the traffic impact analysis seem to indicate that you needed this not now but for the future development of the project to avoid an unacceptable level of service and that putting this in with the new development would keep you at about Level D. Did I get it kind of right or please correct me if I didn't.

Mr. Keith Niiya: Good afternoon Planning Commission. My name is Keith Niiya, I'm the Chief Traffic Engineer for Austin, Tsutsumi and Associates for the record. Yes, we did complete a traffic study for specifically this project but please keep in mind the traffic generated at this intersection is not only Honuaula's. We looked at it, whatever the remaining build out of Wailea Resort and also Makena. We added all three projects together to this intersection. Now based upon our numbers and calculations. Roughly about 75% of the additional traffic at this intersection is due to Wailea and Makena and only somewhere less than 15, 16% is due to Honuaula. The rest of the additional traffic is what we call natural growth. People get additional cars, their kids grow up and having – you know, be able to drive. So that's the remainder of the increase in traffic. So again, Honuaula as part of their condition 2e states that they need to do this improvement before any houses are built and that's why we're here before you today. So even though it's not necessary right now and you can go out there conditions are very good and traffic moves well. The condition inside the zoning requires them to do it now and that's why we're coming before you.

Mr. Mardfin: And if you didn't do it, if this project, this particular project weren't done, then the traffic will, even without your project would get unacceptably bad or at least dramatically bad.

Mr. Niiya: Eventually as everything develops like you know, you have the Grand Wailea that's expanding. You have, you know, the Shops at Wailea being expanded. You know all those other projects as well as Makena is going to increase the traffic at this intersection, yes. Unless you know, something's being done it will eventually approach level of service F.

Mr. Mardfin: Thank you.

Mr. Starr: Commissioner Hiranaga.

Mr. Hiranaga: Yeah, since you're up there. Did you take into consideration that people from Central Maui and Upcountry also go to the beaches in Wailea/Makena?

Mr. Niiya: Yes we did.

Mr. Hiranaga: It's not only Wailea/Makena people who have lived there for the past 30 years.

Mr. Niiya: Yes, we did take that into consideration.

Mr. Hiranaga: And that there's population growth considerations for Central Maui and Upcountry?

Mr. Niiya: Yes, that's the background growth that we do.

Mr. Hiranaga: Thank you.

Mr. Starr: Commissioner Tagorda.

Mr. Tagorda: Good afternoon. In case you get this modification approval and all the permit when do you expect the project to be initiated?

Mr. Niiya: I would leave it to the applicant to answer that question?

Mr. Tagorda: Yeah, I know some kind of estimate.

Mr. Niiya: Okay.

Mr. Starr: Mr. Jencks please identify yourself, welcome.

Mr. Charles Jencks: Mr. Chair, Members of the Commission, my name is Charlie Jencks, I'm the owner's representative for Honuaula Partners, question with regards to timing. We have a couple of things we're working on at the same time. One is of course, the widening of Piilani Highway that has to be done before we can construct any homes within Honuaula. This project has to be done before we can construct homes or occupy homes in the project. I would expect that this would have to be underway within two years to meet those time frames because we're now working on plans and entitlement for Piilani as well. So I would say within a couple years it be underway.

Mr. Tagorda: That's very good because I cannot remember in my packet that I have some kind of – there's also a project that asking for extension for two years and once you go hand in hand with this project at Wailea it's going to create a lot of traffic in that intersection because you folks just going to be using the Alanui Road in Wailea especially going to that multi-family dwelling that they're asking for extension for two years. And if that project goes hand in hand with your project it's going to be chaotic in Kihei. And I just don't know why some of this, I know you folks did your

notifications and all sorts but I can't believe there's no concern voiced by people at Wailea Shops, the hotels, the surrounding hotels because of this modification and yeah – but no, what I want to say is the Piilani Highway is where your project is.

Mr. Jencks: Above Piilani Highway.

Mr. Tagorda: Yes. Just above Piilani Highway, just below Maui Meadows and I don't know why you gotta for modification of that intersection there and don't do that Piilani.

Mr. Jencks: That's a very good question.

Mr. Starr: Commissioner Hiranaga.

Mr. Hiranaga: I'd like to ask the question maybe you may have the answer. What is the status of the extension of Piilani Highway? I know it is a Department of Transportation, State Highways jurisdiction but do they have a long range plan of extending Piilani Highway beyond its current length or is that just totally in the hundred ...(inaudible)... in the hundred-year plan.

Mr. Jencks: The direct answer is no, they do not. We talked to State DOT as a part of our project development process and talked with them about extending the highway to facilitate not only access into and out of Honuauia but also as a way to improve ingress and egress out of the area both Wailea and Makena in the event of an emergency. They're not interested in making any of the improvements. They're not interested in extending the highway. Their focus is right now is on the Kihei-Upcountry highway from Ka Ono Ulu to Haliimaile. So this extension to Kula and through Kula to Upcountry was not ...(inaudible)... seen by the Kula community. They're not interested and that they hold part of the right of way and they are going to allow us to make the improvements to extend the road to provide the additional access but also to provide some emergency ingress and egress out of the area.

Mr. Hiranaga: Thank you.

Mr. Starr: Okay, in the EA document and the application there's no discussion about multi-modal transportation, about pedestrian or bicycle access and it's right now a very dangerous situation for anyone trying to come down the north side of Wailea Ike Drive. I've tried that on a bicycle. I almost died. Even for pedestrian there's a guardrail that pushes you out into the roadway when we had a recent project that's being developed up above that we were told that the sidewalks could not be put on because the golf course would not talk about giving a right of way for a sidewalk, yet this project surprisingly doesn't have either a sidewalk or bikeway on that side of Wailea of Wailea Ike nor are there crosswalks further up to allow people to cross over to get to the bus and it just seems rather unusual that that was not brought up by Public Works as a reviewing agency of the EA. So the community, we got 30, 40 letters and they all seem to say that what they want is the ability to walk and bicycle safely. How come you're not addressing that in this project?

Mr. Jencks: Well the improvements Mr. Chair, the conditions is very specific. The land that's, it's on both sides of the improvement is owned by somebody else. It's not owned by the project so you know, we've got to go and talk to a separate landowner and get their permission to do these

improvements and frankly they could have said no but they've been very generous and worked with us on a subdivision and the ability to dedicate – ...(inaudible)... the land to the county. Based upon the design and we have the civil engineer here today to discuss that with you if you'd like in detail. We feel that the intersection design itself with the crosswalks and the signalization will be safer than it is right now simply because the right turn movements will be signalized coming north on Wailea Alanui and turning east on Wailea Ike Drive they'll be signalized right turn lanes so it will make the bus stop safer. It will make the pedestrians environment safer as well. The construction plans and the signalization plan will insure that there's full control for all pedestrians at that intersection. I cannot speak to the issue of bike trails because frankly Wailea Alanui you might want to ask Mr. Miyamoto, Wailea Alanui is a county road as is Wailea Ike Drive I'm not sure of the right of way width to accommodate on-road bike ways, it may not be available simply on Wailea Ike Drive for that purpose.

Mr. Starr: Mr. Miyamoto, is there a way to accommodate either a bike path and if not a bike path at least a sidewalk on this thing so people can walk without getting killed?

Mr. Miyamoto: Yeah, going back to the history of Wailea Alanui and Wailea Ike Mr. Jencks can probably attest to this that it was developed privately by the resort area and it was eventually turned over to the county in its existing condition, was accepted by the Council in its existing condition several years ago, probably prior to my becoming the deputy and as such, there is very limited right of way. We're limited to what the Council accepted at that time. So right now, there is no current plans that I know of for a bikeway in that area. As far as transit as Mr. Jencks had mentioned we have worked with the Director of the County's Department of Transportation, Don Medeiros to try and make that bus stop safer by putting in double right turns with traffic control, the pedestrian would be signal controlled. Currently it is not signal controlled it is free flowing right that the pedestrians are crossing without a traffic signal. So we thought for that reason it was a safer issue, but getting back to bicycles it wasn't in the plan when the Council accepted this roadway.

Mr. Starr: I mean, aren't you forcing the right of way to be increased?

Mr. Miyamoto: When you say right of way increase relative to?

Mr. Starr: This project will force land to be taken or will – purchased from the golf course. So the right of way is being increased.

Mr. Miyamoto: At the intersection yes, the right of way, the amount of right of way for the intersection is being increased but prior to that you know when this roadway was developed by the resort they lined it with a lot of trees. Any desire to widen the roadway would be a tradeoff. You would be trading all those trees along that corridor for bikeways. So I guess that's a decision that can be discussed at a public hearing where we look at bicycle master plans.

Mr. Starr: Okay, Mr. Jencks you have any comments?

Mr. Jencks: I would just respond, the issue of bikeway has come up with regard to the widening of the highway and the widening to the four lane configuration will include bikeways not only from Kilohana to Wailea Ike Drive but also the extended Piilani Highway to Kaukahi intersection will

include bikeways as well.

Mr. Starr: But how about down Ike/

Mr. Jencks: No, just the section that we're considering.

Mr. Starr: Commissioner Mardfin.

Mr. Mardfin: When I arrived here this morning I found, this is not for you I don't think Mr. Jencks, when I arrived here this morning I found on my desk, Why Wailea Ike/ Wailea Alanui Intersection is on the planning commission's agenda and this is a five-page letter, four-page letter from David Mogilefsky. Now this may be a red herring for this whole issue because we're dealing in this item particularly with this one item for which an EA was done and accepted by Public Works, but this is suggesting that the entire development project needs to have a new EIS done because it's a significant departure in over time from what was originally proposed and they cite like the super ferry and the Turtle Bay Hilton on Oahu and a Supreme Court case saying basically that a new EIS has to be done. Now that would be for the project, the big project not this one thing and so I'd like either the director or our able Corp. Counsel, you know, am I reading the letter right or is the letter writer correct is something going to be done so that the entire project has an EIS, etc., etc.

Mr. Starr: Mr. Director.

Mr. Hunt: We need to keep on track. This is a project to improve this intersection. The condition of approval that's requiring this was a condition out of the 670. Some people have suggested that the environmental documents for that project do not meet the law and they have an opportunity to pursue that. The Turtle Bay ruling was specific to one project, it did not lay down any kind of, from my opinion, and I'm not a lawyer so you can talk to your own, but in my opinion, it did not lay down a ruling that gave exact guidance to other developments such as anything over five years or whatever, it was specific to that project. The outcome of that could be somebody could contest the EA for that project, but that's not before you and that's a completely separate issue.

Mr. Starr: Members shall we go to hear some public testimony and then if there's any more questions.

Ms. Flammer: We have the department's analysis first.

Mr. Starr: Lets hear public testimony and then we can have the analysis and then after the recommendation. We'll start, we do have a couple of sign ups, we'll start with those. Mr. Bud Pikrone. Welcome, please identify yourself and thank you for being so patient today.

Mr. Bud Pikrone: Good afternoon Chair, Members, I don't know where to start. A lot of questions have come up here. My name is Bud Pikrone. I'm the General Manager of the Wailea Community Association and Wailea Resort Association. I'm here today representing the 2,100 members of our community association and the resort association. I was unable to make the public hearing to represent, however, I did send a letter at that time on March 24, 2009, and in that I stated that we believe that the so-called improvement was contrary to the desires and efforts of the Wailea

community and I believe it's also contrary to what the county wants. As the county states it wants to provide, "new roads and roadway improvements to retain and enhance the existing character and scenic resources of the communities through which they pass." I don't believe that this in any way enhances the character of the resort.

There was no consideration of the community association or the community as the councilmember who is responsible for this never consulted us and as a matter of fact was aware through many of our times at these meetings that were held, the public meetings of our desire to have the highway extended. I was asked by the councilmember on three different occasions to supply the information, the agreements, the discussions that we've had with Makena and with the 670 property on the extension that we wanted. So we were never – had any of our safety concerns or anything on this particular intersection prior to this mandate being discussed.

So we don't believe that this plan really even serves a future traffic or concerns of the residents, visitors, employees in the Makena area during an emergency. For instance the recent tsunami warnings that closed a lot of the lower roads. What happens? We have for years been trying to get the county and everybody to assist in getting the extension of the highway. As a matter of fact, in 2003, we had the South Maui Coalition of Community Associations which included Makena, Wailea, Maui Meadows, Kihei and also Maalaea and we drafted a proposal to the state and we were actually assisted by Charlie Jencks and 670 in this process. But we proposed to the State DOT to address the transportation needs of South Maui and I do have copies here if you would like those. The DOT at that time was willing to place the plan on the STIP, the 15-year STIP but we needed the county to support it. We had everybody but the former Planning Director approve it so it got killed and never was placed on that long range plan. So now six years, a little plus six years plus, we're stuck with this as a solution to a long term problem, future problem.

I won't go into, I was going to discuss some of the issues that you've read in the letters about the safety issues. We do agree that there is a safety problem with crossing that intersection if we're supposed to make this pedestrian friendly. We do have some issues with the bus stop there, I don't care if there's a stop, once that bus is stopped there and the cars start coming around that corner he has to go quickly over to the side. In closing, I'd just like to say I believe it's contrary to what we've expressed to this commission on previous occasions. We've had talked to you about intentions to develop increased pedestrian access along the north side of Ike and we will be working with and are working with the golf course for that and that would improve pedestrian usage for the Gateway Shops, MF-10, town center, Blue Course Clubhouse and the Shops at Wailea and as I said, we believe that this double cross lanes here, turn lanes create a problem. So to us this is a prime example of poor planning being forced on a community due to a politician again, not solving a problem but creating another because it seems like the right thing to do to a developer. So we'd like to have this, we wished that this, the efforts here would have been put towards solving the future traffic woes in South Maui by extending the highway to Makena.

Mr. Starr: Questions for Mr. Pikrone. Commissioner Hiranaga first.

Mr. Hiranaga: Just to clarify your position. So you're opposing the improvements?

Mr. Pikrone: Yes.



Mr. Hiranaga: Okay, and you understand there are no plans to extend Piilani Highway in our lifetime or the next two generations?

Mr. Pikrone: We are still trying to push, as a matter of fact, talked to the Planning Department we'd like to introduce it back to the DOT again and get the community to support that one more time. It's needs to be done for the future whether I'm ever going to see it or not, it still needs to be done.

Mr. Hiranaga: And I'm sure you know that this intersection is the bottleneck from South Kihei Road and Piilani Highway to get to the Wailea and Makena Beaches since they took out the old South Kihei Road and built this Wailea Alanui in the early '70's.

Mr. Pikrone: Yeah, I mean I travel it all the time every day. And it's – I don't see it as a bottleneck. I'm never in a hurry I guess maybe, but again, we loss six years on a 15-year plan because of poor planning. I don't want to see that happen again.

Mr. Hiranaga: Just a final comment.

Mr. Starr: Yeah, go ahead.

Mr. Hiranaga: About 20, 25 years ago, State DOT proposed a Paia Bypass, Paia Town opposed it said it would kill the town, we don't want the Paia Bypass and what are they crying for now the Paia Bypass. It's not coming.

Mr. Starr: Commissioner Mardfin next.

Mr. Mardfin: If, if we were to turn down this approval of this nothing will happen to the Piilani extension. It conceivably would stop the particular project that this was a condition to but the traffic man said that that would only be 16% of the traffic. Down the road you're going to have very, very low service LOS F if the projections are correct and the people of your community are willing to accept that?

Mr. Pikrone: You mean very low levels of service where?

Mr. Mardfin: LOS F is what's being projected for the future.

Mr. Pikrone: For instance again, it's – we don't want to stop the project. I mean I feel that this was unfairly put upon them. What should have been done at that time back again, since 2003 we've been trying to get the highway extended. That should have been really mandated between Makena and 670 and even Wailea to participate in making sure that gets done. That's what we're going to continue. Whether this gets approved or not, we're going to continue to fight for that for the future.

Mr. Mardfin: I understand that but that's not what's before us today. What's before us today is this particular project and the traffic projections are that your level of service will go to level F, 80-second delays in the future if this isn't done. Now maybe something else could be done at this intersection I don't know, but this project is projected to take care of the problem that's going to be caused by increased traffic whether or not the building project goes on.

Mr. Pikrone: Right. Well I still – it's all projected and I think mainly on Makena. There was a question about construction in Wailea. The one project is north of this intersection so it will never, the traffic for that would never get to this intersection, okay, not from Piilani Highway. Most of the development in Wailea that's left is north of that intersection. So it's not necessarily going to affect that intersection from our standpoint. Now it's basically going to affect anybody going to Makena. That to me is the reason for this and it is misguided to me. I mean, we're not getting to the prime problem here and yes, I don't know how it's going to affect us in the future except when Makena starts to build that's when the problem is going to be. I don't see this affecting Wailea until that ever happens.

Mr. Mardfin: Thank you.

Mr. Starr: Mr. Pikrone, you know, without talking about Piilani Highway which is not under discussion and assuming that there's a willingness by the parties to improve this intersection if you were to visualize what improvements there the community would like to see whether it's to do traffic calming or you know, or make it more pedestrian/bicycle friendly or put a you know, traffic circle or whatever, I mean, what do you think the Wailea community would like to see happen at this intersection if they had a choice you know, without reference to Piilani Highway which is not under discussion?

Mr. Pikrone: One of our main concerns through the area is always traffic accidents, speeding, a lot of problems, so traffic calming is a concern. As a matter of fact one of the photographs there showed what looks like brand new hedge plants that's because lets see I'd say in the last eight years we've had three vehicles that have ended up down in the culvert going right through the hedge because they come around that corner and make that right turn up on Ike and end up in the culvert. Yesterday we had a vehicle strike a tree on Alanui and bend itself in half. Fortunately, the person survived. That happens on a regular occurrence. We've been trying to work with the county to get traffic calming measures. This will be a prime example because I still see it – I have witnessed accidents, coming – making a turn up Ike going so fast that they bounce off the curb and take out a light pole on the other side of the road. So I'd like to see traffic calming be a part of this whether it's raised crosswalks through the area. There should be – makes sure there's just an area that's safe for pedestrians to in between the areas not just in the center of the road but because you're going to have the double left-turn lanes and then you're going to have the straight lane maybe an island there rather than just stripe. We need to make sure that it is pedestrian friendly and that's our intention is that we want to continue to try and open that up for pedestrians in that area.

Mr. Starr: Okay, Mr. Freitas, Commissioner Freitas.

Mr. Freitas: You stated that you speak for 2,100 residents or people in that area, how do you come to this conclusion, do they give you a vote? I'm sure not all 2,100 people are opposed to this.

Mr. Pikrone: Yeah, they actually – they elect a board of director who hires me and they are members, they are – on their deed that they are members of this association. And I'll end up having these people call me and say what are you going to do about it? They may not write. The hotels in our meeting with the hotels they tell me, are you going to testify? Are you going to say

something? I said to them, are you going to say something, he said that's your job.

Mr. Freitas: You have the support of all 2,100.

Mr. Pikrone: Well, I have the support I'd say of a majority of those.

Mr. Starr: Thank you very much Mr. Pikrone. Thank you for your time.

Mr. Pikrone: Thank you.

Mr. Starr: Next testifier is Mr. Richard Michaels. Please come, welcome, identify yourself for the record.

Mr. Richard Michaels: Good afternoon Mr. Chair, Commissioners, my name is Richard Michaels and I'd like to start by answering the question one of the commissioners had is as to why there are – there was nobody at the EA hearings and yet now there's 30 or 50 letters of opposition. I didn't know about the EA hearing. I mean it may have been published in the paper whatever, but I'm reasonably well-informed person, a lot of you know that I come and testify here and at the Council on a lot of different issues. I didn't know about it and as far as there only being 20 or 30 or 50 letters I actually think that's quite a few out a thousand mailings. If you said there were two or three I would say there wasn't much opposition but we all know that there's probably a hundred people who never write a letter or come to testify for each person like myself who does. So I would say that represents a pretty significant opposition.

I'm actually here today as a resident of Makena as an expert on this intersection. With all due respect to the traffic engineer I have driven through this intersection at 23 years four or five thousand times every single day I go through the intersection including today. This as far as I'm concerned is fixing a problem that isn't broken. Now if I can – can I hold my time for a second to just run the photos for the commissioners?

Mr. Starr: It will be part of your time.

Mr. Michaels: All right, just quickly look at them. Can we see the photos again of the intersection? The current intersection. There, I count three cars, next, next, next, I don't see any cars, next, I don't see any cars. There's one or two or three maybe – looks like maybe one on the left, next, I don't see any cars. Okay, there is no problem at this intersection. I go every single day. I come from Makena, I make a right turn in the right turn lane. If you put a traffic light on that lane making the right turn, then you'll have a problem. If the bus coming from the other side is a problem then all you need to do is put a yield sign on the right turn and make us who are making the right turn wait for the bus. As you could see there is almost no traffic, coming down like I don't think I've been backed up to that light more than maybe four cars max any time and I've driven it day, night, all times of the day. So I would like to suggest that you postpone any action on this.

Oh, another thing that was said here was that the traffic engineer said one of things they'd take into account is that kids grow up and they go into cars and so forth. The traffic coming from the Makena side driving north and making the right turn is largely from the hotels and the condos. So the

number of the cars and the number of people is more or less consistent. You know, it's a little more at Christmas time, a little more when the residents – when the visitors are heavy, but we've seen it year in and year out. As far as kids growing up, there aren't a lot of families with kids that are south of that intersection. Makena is mostly older people, retired people or nonresidents who are renting a condo or a house. So my suggestion is no red light. I wouldn't change the intersection anyway, I don't know how long it's going to take before this is going to become an issue but as far as Makena Resort development is concerned we all know that's going up for auction in a couple of weeks, we don't know who's going to own it or what their plans are so to try and make plans now for an intersection for Makena Resort when we don't know what's happening it's just again, back to my original statement this is a fix for something that isn't a problem.

Mr. Starr: Okay, thank you. Any questions for the testifier? Thank you very much Mr. Michaels. Ms. deNaie did you sign for this I'm a little – any other members of the public? Please sir come up, identify yourself and welcome.

Mr. David Mogilefsky: Thank you. I'm David Mogilefsky, I wrote this document that Mr. Mardfin referred to. I live about a mile from this intersection and I also have used it hundreds of times if not thousands and I've been a taxi driver for the last years going to and from the Wailea hotels quite a bit from all directions including home.

Anyway I was surprised to find this on the agenda but then I quickly discovered that it was tied into the approval of this Wailea 670 Honuaula project and it's my feeling that that project was approved by the Council unlawfully and I have written this document out to explain to you why it was approved unlawfully. If you were to approve the request before you now you would be further compounding an unlawful action that has already been taken and it would probably take a long time to undo that. Thank you.

Mr. Starr: Thank you. Question for you sir.

Mr. Mardfin: Mr. Mogilefsky, I think your letter was very cogent and interesting but I don't think it applies in this particular case because they have done a recent EA for this particular project so while I think your letter has a lot of merit for the overall overarching thing, for this particular project I don't think it's terribly relevant because they have done a recent EA that got accepted by the Public Works.

Mr. Mogilefsky: Well, without getting too deeply into legalities of it which really is the type of thing you're asking if the project was approved illegally, no EA in the world is going to cure it. This intersection ... (inaudible) told has been brought to you as part of the Wailea 670/Honuaula project. If that project zoning was approved illegally there's nothing further that could be done. Now you could consult with your own attorney or with the County Council I'm giving you my off the top of my head comments about that, but basically as you saw in the super ferry case you can't start the project first and do the environmental impact work later. The Supreme Court just will not buy that.

Mr. Mardfin: Thank you.

Mr. Starr: Okay, thank you very much for you comments. Other members of the public wishing to

testify, anyone? Mr. Luna, welcome, good to see you Martin. Please identify yourself.

Mr. Martin Luna: Good afternoon Mr. Chairman, Members of the Commission, I'm Martin Luna we represent the developer of the project. Two points we want to make. First, Mr. Mogilefsky's comment that the overall project was approved illegally, I'll just say that the County Council acted, they had Corp. Counsel there, there were 29 meetings of the planning commission, I mean the Planning Committee of that the Council. It wasn't just two meetings or three meeting but like 29 meetings to discuss this project. So I'm not sure where he comes with that opinion.

The second point is this is a condition that was imposed by the Council. It's not something that we proposed. I'd like to ask the commission to look at it as a condition that we have to perform. It's not an option for us. It's a condition of the project. And so, we would hate to be in a position where we're caught between the commission and the Council. So we're asking the commission to look at what the Council did and that we're proceeding with the condition and as the Chair said, we're not necessarily accepting it but it's conditioned that we have to accept and we ask that you not put us in that position where we're stuck between two governmental bodies.

Mr. Starr: I have a question for you Mr. Luna. If there were a desire or willingness on your part and a desire on the Wailea community to try to work out a way to redo this intersection in a way that the community feels would really serve the local interests there. What would be the process and would there be a willingness to modify this so that in the end the community is getting something that they feel would help and yet you know, you would not be – you'd be able to be fulfilling at least the ...(inaudible)... concept behind what the Council was trying to do.

Mr. Luna: I think Colleen put the condition on the screen. It's very specific. We have to perform what that condition states. If the community wants to modify that we ask that the community maybe meet with the Council and see what they would do.

Mr. Starr: So if the community wanted there would be a willingness on your part to modify that condition in such a way that it's a project that everyone's happy with?

Mr. Luna: In order for that condition to be changed, it has to go through the Council.

Mr. Starr: Commissioner Tagorda.

Mr. Tagorda: I move to approve –

Mr. Starr: No, no, please wait. We're still having public testimony. Hold that thought.

Mr. Mardfin: Martin –

Mr. Starr: Please Mr. Luna come back.

Mr. Mardfin: Mr. Luna, I'm reading on page 2 of the conditions of zoning and it says, modify the Wailea Alanui/Wailea Ike Drive intersection to add a signalized double-right turn movement from northbound to eastbound turning traffic can provide two-left turn lanes for southbound traffic from

Wailea Ike Drive prior to occupancy of the first unit. It doesn't say – that just says what you must do. It doesn't say you can't design it so it take care of Commissioner Starr's concerns or the community concerns about crosswalks and signalization – well, it does say – you have, add signalized double right turn movement but there are other things that could be done. This doesn't specify a particular way of doing it. It says, it limits some things you must do but there are other things that you could do to make it conform more with what the community wants and I don't understand why that couldn't be done in the design.

Mr. Luna: Well, the two things I heard what the community wants is the extension of the Piilani Highway which is –

Mr. Mardfin: That's not relevant today.

Mr. Luna: Which is not why we're here.

Mr. Mardfin: That's not relevant to this.

Mr. Luna: Okay. And the second thing is what Commissioner Starr talked about was bikeways and I think Mr. Miyamoto explained that there aren't – isn't room for that.

Mr. Mardfin: But there are other things you might work with them on. They talked about raised crosswalks and things like that.

Mr. Luna: I'm not sure if they had spoken to Mr. Jencks about it. So if they've spoken to Mr. Jencks about what other improvements that they may want but necessarily deny having what's specifically stated in the condition then Mr. Jencks would be willing to go ahead and discuss it further with them.

Mr. Mardfin: They might not have talked with them in the past. Did they have a willingness to go forward and make modifications to the design consistent with what's being required by Council and yet is in more supportive of what the community wants.

Mr. Luna: As I said Mr. Mardfin, I'm not sure what the community wants except what I heard today.

Mr. Starr: Thank you. Any other members of the public wishing to testify on this? Okay, not seeing any we're going to take a 10-minute recess and then come back with analysis.

A recess was called at 3:14 p.m., and the meeting was reconvened at 3:26 p.m.

Mr. Starr: ...meeting is April 13, 2010 is back in order. Director's missing in action but we're in good hands. Planner Flammer will give us the analysis.

Ms. Flammer: As you can see in the report the zoning for the intersection is urban state land use district, the county zoning is open space and golf course and roadways are permitted in all zoning districts. A summary of all the agency reviews is provided on page 10 of the report. I'll point out one or two things. The first was the County Department of Transportation which Colleen Suyama

went over. I did measure it. It's about 323 feet from the intersection to the bus stop. Also you could see the Police Department did ask for a traffic mitigation plan and that is a condition in the recommended condition that they ...(inaudible)... review and approve that traffic mitigation plan for construction. SHPD, the State Historic Preservation Division say that there'll be no impact to archaeological resources. The area is already developed as either a public roadway, right of way or a golf course though they did recommend that there be a onsite monitor during any ground altering activities.

To date there have been 31 letters of testimony received, four are in your report, an additional seven were handed out to you earlier today. I'm going to summarize some of the major concerns but I'll brief I know that time is an issue. We can talk about it more if people request it. One of the most common concerns was the fact that the intersection modifications are tied to the Wailea 670 project. I'm going to first just run through the concerns and then I'll address them right afterwards. There are also concerns that the project's not needed and there was strong support for an extension of Piilani Highway to Makena. There were also concerns addressing the safety such as making pedestrian crossing more dangerous, the drivers especially tourists unfamiliar with the area will use the inside left turn lane from Wailea Ike onto Alanui and then attempt to turn right to the Shops of Wailea and there were a few concerns about the other direction coming from Wailea Alanui onto Wailea Ike then coming up left to go in where the tennis villas, Joe's Restaurant, Wailea Town Center is.

In terms of addressing some of these concerns for the first one, the department acknowledges that the proposed modifications are a condition of the Kihei-Makena Project District 9 formerly known as Wailea 670 and we recognize that this likely contributed to the amount of testimony on the project. However, I will point out that as the planner for this project it's my responsibility to analyze the project on its merits. There would need to be a nexus in order to apply conditions or deny. I think everybody understand that.

The support for the Piilani bypass to Makena is overwhelming you can hear that. Now community support would be critical for this to happen but it needs to be directed in the right place. So as Commissioner Hiranaga pointed out it is a state, Piilani Highway is a state roadway therefore funding typically comes through the state transportation improvement program. They have hired a consultant. They're going to be doing hearings this year on Maui. It's really important for people that support it to come out to those hearings and let them know. Also, important for the Maui Island Plan for people to support in that. People can look in the newspaper, they can go onto the DOT website put their name on a notification list for the STIP.

There were also concerns that the improvements are not warranted. I did include in the main section of the report the main body of the traffic impact analysis report which you did discuss earlier and how that is based on the full build out of the project. Not only Honuaula it's also based on Wailea Resort build out as well as the Makena Resort build out and it's in the TIAR the different projects. You guys can take a look at that.

I'd now like to have our Deputy Director of Public Works – oh, I did want to point out another thing, I did do three site visits to the area and I will tell you there was a big difference between the middle of the day and 4:30 when I went last Friday. When you cross the road from where the bus stop is

and you want to go to the Shops of Wailea you have to cross first over Wailea Ike, a portion of it which does not have a crosswalk. I felt very uncomfortable stepping out in the road with cars whizzing by. So I knew there would be a stop light there with this proposal and I thought all right that would probably improve safety, again, I'm not a traffic engineer though. So I'd now like to have our Deputy Director of Public Works, Mike Miyamoto who is a traffic engineer, I asked him to address some of the safety concerns.

Mr. Mike Miyamoto: Thank you Mr. Chair. The first item is regarding the double right turn unsafe for pedestrians as the applicant had mentioned that that will be totally signalized and that pedestrians will have to push a button to activate the pedestrian walk signal and the traffic will have to stop, the red bulb to stop the traffic. This in conjunction also helps out the bus system. When the bus needs to get to the bus stop when the left turns from Wailea Alanui are activated obviously the double right turn lane would have to stop and that would allow the bus free reign to get to the curb lane to the bus. The concern also is that the double right turn lanes would also potentially have a condition where as the vehicles head up mauka they would possibly impact the bus they would not have an opportunity. There is sufficient distance as Gina had mentioned. There is I think somewhere around 400 feet between the intersection and that bus stop so there is time for vehicles to make the adjustment and observe that the bus is stopped and that they need to slow down or stop or go around the bus.

The other concern was about the confusion of the double left turn people being in the wrong lane to see the Shops at Wailea. If you've come down the intersection as this clearly shows I don't know how you could miss the Shops at Wailea being so close and knowing this roadway, you know, you're naturally going to be in the right lane because you know the shops are going to be on the right side because it's right in front of you across the roadway. Additional signing would be sufficient. We can certainly as part of the design look at additional signage that could help advise our visitors where the Shops of Wailea are and what lane to be in, that can be easily accommodated. As far as the lack of a crosswalk, since I originally designed this intersection back in 1997, maybe the pavement markings are gone but I remembered as part of my design there was a crosswalk in that area because we did put in a ADA curb ramp in that area.

Mr. Starr: Can you tell us where that was? Can you show us on there where the crosswalk was.

Ms. Flammer: You can see down where the white van is.

Mr. Miyamoto: Yeah.

Ms. Flammer: There is a crosswalk there's just not a signal to let you know when it's safe to go currently.

Mr. Miyamoto: Are you looking at this one or the one the right turn coming mauka on Wailea Ike.

Ms. Flammer: That's the one I was discussing was taking the left onto Wailea Alanui right there.

Mr. Miyamoto: Yeah. There's no signal but there is a crosswalk and as part of the design we did put in ADA curb ramps everywhere, in the medians at the sidewalks. I even put one on the



opposite side that doesn't have a sidewalk in preparation for the future that should there be a sidewalk placed the ADA curb ramps are already there.

Ms. Flammer: You want to talk about raised –

Mr. Miyamoto: The suggestion was made about a raised, possibly a raised crosswalk on the double right turns, that's something we – you know, just in first brush we looked at it, you know, you're talking about a double, a four-lane roadway, divided roadway, the classification of the roadway is much higher. It's more like a urban roadway – not urban but an arterial roadway that transports a lot of traffic. The double right turn will be at times when they green bulb will be a free moving lanes and so you're talking about two lanes of traffic moving freely making a turn and then also going over a raised crosswalk that is a situation we'd have to evaluate whether it's safe to even do that because that cause more problems. If you look at like a day like today a rainy day you can imagine going over a hump and making a right turn at the same time.

Mr. Starr: Members any questions? Go ahead Commissioner Shibuya.

Mr. Shibuya: Thank you Gina. Can you tell me who owns the property at the end where Piilani Highway stops. There's a property there.

Ms. Flammer: Maybe you could describe it a little further.

Mr. Shibuya: As you come up Piilani Highway going south before you turn down Wailea Ike going straight ahead who owns that property.

Ms. Flammer: I don't know, maybe the –

Mr. Starr: Mr. Jencks.

Mr. Jencks: Thank you Mr. Chair, if I may, traveling right down Piilani Highway directly in front of you, the land is owned by the State Department of Transportation about maybe 2,000 feet into the 670 property, it's owned by State DOT. On the left is 670 Honuaula and we're also on the makai side of that right of way as you go farther down.

Mr. Shibuya: And so that – it's an easement is that correct?

Mr. Jencks: No actually it's owned by State DOT. It stops about 2,000 feet into the property and then it picks up, it's owned by Ulupalakua Ranch all the way through up to the mauka boundary of 670. So there's two ownships, State Department of Transportation and Ulupalakua Ranch for the balance.

Mr. Shibuya: And the objection to extending it is not with the state, it's probably with the next owner is it not?

Mr. Jencks: It's actually – historically the objection has been from the Kula residents extending the highway up to Kula.

Mr. Shibuya: Okay, thank you.

Mr. Starr: Members, ready for a recommendation or any other questions? Recommendation, go ahead Ms. Flammer.

**b) Action**

Ms. Flammer: Just like to point out one of the conditions that wasn't from agency response and Colleen did mention it and that's the last condition no. 22 the trees. She did show you which tree could be in jeopardy and I did write the condition to take care of that. So if there aren't any other questions about the conditions I'll move right to the recommendation.

Mr. Starr: I have a question which is that I think I'd like to hear from Mr. Tanaka first but right now whatever gets washed into that intersection whether it's grease or oil from cars or you know, stuff from the landscape, I believe it goes unfiltered right into the culvert and then into the ocean. This project will increase the amount of runoff not by an enormous amount but it is increasing it which I don't understand why it's being allowed to increase the amount of runoff and I, for one, usually like to see all runoff being filtered whenever projects are being redone. Could you describe what happens now and is there a way to filter it and also to reduce or eliminate the increase in runoff.

Mr. Kirk Tanaka: Good afternoon Mr. Chair and Members of the Maui Planning Commission. My name is Kirk Tanaka of Tanaka Engineers. We're the civil consultants for the project. To answer Chairperson Starr's question there is a slight increase in runoff due to the fact that we're creating more impervious area for the two lanes. Basically what we're doing is we're – we have no option of widening the intersection inward because of the existing drainage structure so what we're doing is we're widening it outward and when I say outward I mean north and south. And so what happens is because we have to add the sliver to make the right turn lane coming off of Alanui into Ike and also widen on the south side to make the double left turn from Ike down to Alanui there is about a half cfs increase in flow because of additional impervious area. What happens is, the analysis is that the additional runoff will be directed similar to the way that the existing runoff is running off basically what it does is goes into catch basins along the curb line of Alanui and is transmitted into the drainage basin. So what you see here is a photo looking into the drainage basin kind of in a – this is the drainage basin, we're kind of looking in a – this is the West Maui Mountains so we're looking in a – and so what happens is the runoff I don't know if you're familiar with the Wailea Blue Golf Course but the underpass is here so the runoff from mauka lands runs like this goes underneath and goes about in this direction across Wailea Alanui. Along Wailea Alanui are catch basins that is meant to pick up the runoff coming off of the shoulders and the pavement. So what we're doing is we're just perpetuating that drainage pattern with a half cfs increase in flow. And because the existing infrastructure can handle the half cfs increase in flow that's what we're proposing.

Mr. Starr: Okay, thank you.

Mr. Starr: Please recommendations now.

Ms. Flammer: Planning Department recommends that the Maui Planning Commission adopt the

Planning Department's Report and Recommendation prepared for the April 13, 2010 meeting as its findings of fact, conclusions of law and decision and order and to authorize the Director of Planning to transmit said written decision and order on behalf of the planning commission.

Mr. Starr: Okay, members any more questions, comments or now a motion would be in order.

Mr. Tagorda: So move Mr. Chair. So move Mr. Chair that we approve the modification of intersection of Wailea Ike and Wailea Alanui.

Mr. Freitas: Second.

Mr. Tagorda: And all the recommendations by the Planning Department.

Mr. Starr: So Mr. Director, the motion is.

Mr. Hunt: To approve the modification of the intersection as recommended by the Planning Department.

Mr. Starr: Made by Mr. Tagorda, seconded by Commissioner Freitas. Any comments or amendments or anything else? Commissioner Shibuya.

Mr. Shibuya: Are you planning to Mr. Tagorda come up with some kind of statement to support the motion or do you want me to say something?

Mr. Tagorda: Go ahead and say something.

Mr. Shibuya: Because it's not going to be positive.

Mr. Tagorda: That's all right, I listen to you.

Mr. Starr: Go ahead Mr. Shibuya.

Mr. Shibuya: I feel that though that this project will be supporting the movement of traffic. It is a expansion of a roadway into an artery and it's higher traffic going through a community that we need to be more respectful for their ideals and their goals and I think also that we need to start working with the owners of that property if we were to extend Piilani Highway just to the project of Wailea 670 then it would be more acceptable for me. you're creating a diverted type of a highway, increasing and putting some traffic problems on another community, an adjoining community and this is not the way we work in Hawaii.

Mr. Starr: Commissioner Hiranaga.

Mr. Hiranaga: Like I brought up the case regarding the Paia Bypass which proposed I believe by State DOT 25 years ago and was opposed by the merchants of the Paia Town saying it would kill their town and now they're screaming for this Paia Bypass where is it? The population, the traffic increase will not be generated by projects primarily in Wailea it is the population growth of the

County of Maui. Wailea, Makena has one of the nicest beaches on this island and even though, some people do not live in Wailea/Makena we still go to those beaches and we don't want to be caught in a bottleneck 10 years from now wondering why we are backed up to Piilani Highway trying to get to Wailea Beach. A lot of these people don't realize that Wailea Alanui was built in the '70's. It was a different road then and maybe it was better then to have that dirt road to go to Makena, go through the kiawe trees. I mean, you know, times change and you need to plan for the future. People are still going to want to live on Maui and they're going to want to go to those beaches and you're looking at the Grand Wailea expansion where are all those rooms, those people are going to be driving cars. I mean, this is the bottleneck right now. Sure we have support for Piilani Highway from upcountry maybe it will get built someday, and right now it's not going to happen.

Mr. Starr: Commissioner Freitas.

Mr. Freitas: Real quick statement. I believe it's a safety issue. I believe this intersection is being improved and it will be a safer intersection. That's my belief.

Mr. Starr: Commissioner Mardfin.

Mr. Mardfin: As Commissioner Shibuya knows I usually support what communities want whenever possible but I'm looking at this particular thing on our agenda is a particular intersection. We've had lots of testimony that the traffic there is perfectly fine and I have no reason to doubt that it isn't perfectly fine now, but we have traffic engineers that have told us the traffic problems are going to increase over time. It seems to me this is wise thing to do to take care of this problem now. You can argue about the overall project, you can talk about Piilani extension that's fine but that's not what's on our plate right now. So despite the fact that the community has expressed feelings against this particular change I hate the word improvement I prefer to say change. Improvement has a value judgement to it. But despite this change being not supported by the community I think it's in the long run interest of the community to make this change and so I'll be voting in favor of it.

Mr. Starr: I have a brief comment. I will not be supporting the motion I'd rather personally see it deferred and possibly some other solution found. I served on a number of committees at the Wailea Community Association. I used to be president of Palms of Wailea and you know, it's really is a great organization and its comments are indicative of the community and I feel that that's why we have a public hearing. That's the purpose of this body is so that the concerns and the desires of the local community be brought into the process and that it not just be handled by, you know, professionals who may not have that link with the people who live with it. It sounds like the community has made a strong statement that they're trying to look toward a higher planning ideals which is less cars running through the center and kind of a softer kinder type of access and now I don't blame the developer, in fact and I appreciate the developer because they're only doing what they're mandated to do and they're trying to do it as best they can. But I do fault the process for the EA which I don't think first of I felt that having the Department of Public Works be the accepting agency of the EA over a road which it controlled and originally built is a breach of trust and I'd much rather see some other solution, but once again, I do not fault the developer in any way.

Lets vote on it. All in the favor of the motion and the motion reads Director.

Mr. Hunt: To approve modification of the intersection as recommended by the department.

Mr. Starr: Okay, all in favor please raise your hand. Okay. All opposed. Director.

**It was moved by Mr. Tagorda, seconded by Mr. Freitas, then**

**VOTED: To Approve the Special Management Area Use Permit as Recommended.**  
**(Assenting - O. Tagorda, J. Freitas, K. Hiranaga, W. Mardfin, D. Domingo, L. Sablas)**  
**(Dissenting - W. Shibuya, J. Starr)**

Mr. Hunt: We'll record that as six in favor and two against.

Mr. Starr: Okay, build a good project. Thank you. Commissioner Mardfin.

Mr. Mardfin: And in addition to build a good project I still encourage you to work more with the community to see if you can make some minor modifications that will be satisfactory to both.

Mr. Starr: Okay, do we need set up time for the next or are we ready to go? Okay, director take it away.

Mr. Hunt: Your item is a Communication item, F-1, Selection of hearings officer/hearings body and mediator on the following SMA Appeal: Mr. Daniel Grantham for the Waipio Bay Benevolent Association appealing by filing dated September 22, 2009 the Planning Director's decision to grant a Special Management Area Exemption to Jeffree Trudeau for a 3-lot subdivision at TMK: 2-9-007: 052 in Haiku. The file number is (SM5 2009/0242),(SMX 2009/0274) and (APPL 2009/0003) Trish Kapuaala is the planner assigned to this.

## **F. COMMUNICATIONS**

### **1. Selection of Hearings Officer/Hearings Body and Mediator on the following SMA Appeal:**

**MR. DANIEL GRANTHAM for the WAIPIO BAY BENEVOLENT ASSOCIATION, LLC appealing by filing dated September 22, 2009 the Planning Director's decision to grant a Special Management Area Exemption to JEFFREE TRUDEAU for a 3-lot subdivision at TMK: 2-9-007: 052, Haiku, Island of Maui. (SM5 2009/0242) (SMX 2009/0274) (APPL 2009/0003) (T. Kapuaala) (Commission was notified of the appeal at its October 13, 2009 meeting.)**

Ms. Trisha Kapuaala: Good afternoon Commissioners, my name is Trisha Kapuaala of the Zoning Administration and Enforcement Division. I'd like to put a correction into the records. The file number is actually APPL 2009/0005. I prepared a brief power point presentation especially for the new members as to what your role is here today in deciding a mediator and a contested case

hearings officer.

Mr. Starr: About how long is the power point.

Ms. Kapuaala: It can be quick.

Mr. Starr: Well, it doesn't have to be quick, I'm just asking.

Ms. Kapuaala: I would say 10 minutes.

Mr. Starr: That's fine.

Ms. Kapuaala: Thank you. First of all, I wanted to identify the parties which Waipio Bay Benevolent Association which is the appellant. We have the Department of Planning which is the appellee and for your information the applicant again, is Jeffree Trudeau who is an architect and representative of the owner and the owner's name is Mr. David Bowee, Bowes, thank you so much.

This is the decision, the SM5 or SMA Exemption that the Planning Director granted on August 8, 2009, again it's SM5 2009/0242. On September 22, 2009 the commission was notified of the exemption. On September 22, 2009 on the same day a notice of appeal was filed with the department and October 13, 2009, the commission was notified of the appeal. I'm sorry, notified that the appeal was made.

So today the commission may choose to select a mediator, may choose to select a hearing officer or hearings body, may determine itself to be the hearings officer and should you determine yourself to be the hearings officer determine the briefing and hearing schedule. So this is from your rules 12-201-68 which is the Rules of Practice and Procedure for the Maui Planning Commission. It says that all parties to a contested case proceeding shall participate in good faith in one mediation conference, the length of the mediation conference shall be determined by the mediator. The cost of the mediation conference shall be borne by the department. Additional mediation conferences may be convened on a voluntary basis the cost of which shall be shared by the parties of the contested case. The mediation conference shall be held within 30 days of the granting of the intervention by a commission and the parties may mutually agree to extend this time.

The mediator shall be selected jointly by the parties or appointed by the commission if the parties fail to agree. The mediator shall not be the person appointed as the hearings officer for the contested case proceeding.

The mediator shall facilitate voluntary resolution of issues amongst the parties or assist the parties in simplifying, clarifying or reducing issues of the contested case proceeding, no agreement shall be reached which results in an improper delegation of powers of the commission or prevent the commission from making the final decision regarding the permit application. So basically a mediator shall be appointed. Everything that happens within that mediation conference is considered confidential and shall not be disclosed unless they reach settlement. Any settlement does not – settlement cannot be reached unless you agree to it. So this does not – the mediator does not usurp your power.

Upon motion by a party the commission may waive the mandatory mediation for good cause shown by the movant.

In addition to the foregoing, the parties may at any time before or during the contested case hold informal conferences or engage in arbitration for the purpose of submission and consideration of facts, arguments or offers of settlement as the nature of the proceedings. Basically before, during or after, any time a party can settle and again, the settlement has to come to you for final action.

The mediator and the parties shall not disclose to the hearing officer or the commission the substance of discussions or action taken at the mediation conference except that the mediator and the parties shall disclose any agreement or resolution reached by the parties, rejected offers or settlement or proposals shall not be admissible in evidence against any counselor person so anything discussed in mediation conferences cannot be used against the parties during the actual trial or contested case.

So again, after you choose to select a mediator you may choose to select a hearings officer or hearings body. According to the definitions of your rules a hearings officer may be any person or persons including the entire commission designating and authorized by the commission to conduct a contested case, to take testimony and to submit proposed findings of fact and conclusions of law with recommendations to the commission on matters that are within the jurisdiction of the commission.

In all contested case proceedings a hearings officer shall be appointed. If more than one person is appointed a presiding officer shall be selected. So if you should choose yourself to be the hearings body then the presiding officer shall be the chair. The hearing officer or presiding officer as the case may be shall have the power to administer oaths, receive and rule on questions of evidence, set the date for and hold prehearing conferences to formulate or simplify the issues, rule upon all objections or motions which do not involve a final determination of the proceedings, receive offers of proof, fix the length, form and time for the filing of briefs, dispose of any other matter that normally and properly arises in the course of the hearing and take lawful action deemed necessary for the orderly and just conduct of the hearing, and for your information this is all conducted in context of Subchapters 3, 4 and 5 of Rules of Practice and Procedures.

So if you do determine yourself to be the hearings body then today we would like you to determine the briefing and hearing schedule. So here's our recommendation. Staff recommends that the commission be the hearings body and here's the appeal criteria in which you must decide on the contested case hearing date, that the subject decision and order was based on a erroneous finding of material fact or erroneously applied to the law, that the subject decision or order was arbitrary or capricious with application or that the subject decision or order was a clearly unwarranted abuse of discretion. So if the applicant or the appellant who has the burden of proof can prove that one of these three criteria exists then you may grant his appeal, his or her appeal.

So it is staff's recommendation that a contested case be held on one regularly scheduled meeting day where the commission shall administer oaths, receive and rule on objections of evidence, rule upon all objections or motions which do not involve a final determination of the proceedings and take lawful action deemed necessary for the orderly and just conduct of the hearing. Again, this

is pursuant to your rules. Mr. James Giroux of course will help you as your Corp. Counsel and should mediation be deemed appropriate that the commission set the contested case hearing date today whereby the parties shall report back to the commission should they reach settlement and that all prehearing documents be submitted to the document two weeks prior to the contested case so that it can be distributed to you with the regular agenda. Are there any questions?

Mr. Starr: Commissioner Mardfin.

Mr. Mardfin: I'm somewhat troubled by the way this is being set up. To me a mediation is much better than any other method of dealing with things and yet if we set a contested case hearing today aren't we almost prejudging that a mediation is going to be unsuccessful. Wouldn't we be better of having a mediator, allow that process to continue and if a mediated settlement could be made fine, then the thing disappears. If a mediation is unsuccessful then come back to us for a contested case date.

Ms. Kapuaala: If that's what the commission wishes we could certainly do that. In the interest of swift justice and timely processing we would recommend it in the way that we did, but if you feel that you would rather have mediation and have them come back to you that's fine too.

Mr. Starr: Could you give us a little bit of the background so we understand how it came to be a contested case and you know what the basis for becoming a contested case was.

Ms. Kapuaala: I would have to defer to the appellant for that. Today we're here just processing the contested case. If you want to find more information as far as the bare bones of the appeal itself then I'd have to ask the applicant.

Mr. Starr: I don't want a detail of the case but just –

Ms. Kapuaala: It's a three-lot subdivision that the director found was qualified as an exempted, he exempted it and a nearby property owner appealed saying it should not be an exemption that a public hearing should be required, in other words, a SMA major.

Mr. Starr: So their action was just to file an appeal.

Ms. Kapuaala: Yes.

Mr. Starr: And that automatically becomes a contested case.

Ms. Kapuaala: Yes.

Mr. Starr: And I see standing behind you, the white hat and the black hat. Do you want to speak Ms. D'Enbeau? One of you go first and I don't think we want to get into the facts or any information.

Ms. Madelyn D'Enbeau: No, and I'm representing the department, more particularly the director. It was the director's decision to exempt this three-lot subdivision that created the appeal situation and I was going to I guess call it a motion to waive mediation. I know that seems unusual because



you think mediation is a good way to resolve things, but really in the terms of intervention where you have a neighbor coming in and you have another property owner as the –one of the parties that might make sense, but here it's really just between the appellant and the director. So it's not as though we have a kind of mediating kind of situation where we could come up with a compromise. It's either going to be an SMX or it's not. And I believe from speaking with the appellants before the hearing today that their desire is to present more information that they think wasn't presented to the director. They understand the basis for the director's decision but they think there wasn't enough information presented and so that's the opportunity that they would like to have for that to make that presentation as part of the appeal, as part of the contested case. And as far as having this body itself be the hearing officer I think that would be an appropriate way to proceed.

Mr. Starr: And I guess Mr. Grantham, I guess you're speaking and I guess the point that Ms. D'Enbeau brought up was that they would consider waiving mediation. I don't know if that's something that would interest your side.

Mr. Daniel Grantham: Thank you Mr. Chair. We – there's really not something to mediate here. Our position is that the director didn't make a bad decision, he made a decision based on missing and inaccurate information and we would like the opportunity to have that information considered because I think goes right to the heart of the SMA process. This is a very sensitive area and a number of different reasons, water, cultural sites, drainage into the ocean, but more specifically the application misrepresented the facts in a rather blatant way.

Mr. Starr: Yeah, I want to ask you not to get into you know, specifics.

Mr. Grantham: As far as I can see there's nothing really to mediate, it's just a question of settling the facts.

Mr. Starr: I'd like to ask Ms. Kapuaala to come and lets start with the mediation issue, you still feel that that is a good option now?

Ms. Kapuaala: I would agree with Corp. Counsel as well as the appellant it's either exempted or it's not. You really can't mediate that like we'll grant exemption provided that you or we shall deny the exemption on these conditions. It's either they qualified under the SMA Rules or they did not. It's not necessarily a mediation.

Mr. Starr: Commissioner Mardfin.

Mr. Mardfin: I could be wrong, but I see room for mediation. I mean if in fact the director didn't have sufficient information at the time, had incomplete information at the time and in a mediation the additional information was brought forward, I can, unless there's some legal bar to it I can envision the director saying I didn't have that information so therefore, I will reverse my decision about the SMA exempt status. Now, maybe there's something precluding him from being able to do that, but I see at least potential room for mediation being successful.

Ms. Kapuaala: With Corp. Counsel's permission maybe we can ask Mr. Hunt to comment on that he actually just participated in a mediation conference the other day and from your experience with

this same type of appeal do you think that mediation would be wise?

Mr. Hunt: I agree with the conclusion that it's tough to mediate an exemption. It's either a black and white decision. It's conceivable that information could come forward which would change the director's decision, but I'm not sure that that's necessarily a mediation issue. That could be brought forward doing the hearing. So one of the concerns that we have is cutting costs. You know, I think we're all aware of the county is just under tremendous financial constraints and I know it's not that much here but every little piece adds up and so every little piece that we feel is not really necessary and we can save some money it also extends the process, the time and just in fairness to everybody perhaps the appellant will win out but lets get to that decision as quick as we can. And so given the particulars of this case, since there's not a lot of conditions, you can't condition an exemption, as we explained to you earlier today, we would support no mediation. Generally speaking we're anxious and willing to go into mediation, this seems like a good thing to do, it's a neighborly, the right thing to do, but given the particulars in this case we're not encouraging it.

Mr. Starr: Mr. Grantham your opportunity now.

Mr. Grantham: I just wanted to add this is not one property owner against another property owner. I'm representing the Waipio Bay Benevolent Association. There's actually some long-time family members here who own a couple lots adjacent. They've come, they are very concerned about this. I have letters from other members of the neighborhood who have serious concerns about the way this was done and you know I agree I don't want to cost any more money or time than this actually has to and I'm convinced that once you see the facts, once the director sees the facts, he's going to go oh.

Mr. Starr: I'm asking you not to talk about it, we're just discussing right now the mediation. Do you wish to forego mediation or to ?

Mr. Grantham: I'm happy to do that. I think that it would be tricky for me to mediate for a group anyway.

Mr. Starr: Okay, I want to ask Mr. Giroux as our counsel I would assume we don't need to take public testimony before taking action on mediation and hearings officer on this am I correct?

Mr. Giroux: No, it's unnecessary. It's a procedural matter in a contested case.

Mr. Starr: Okay, so unless commissioners have any other questions we might want to have a motion as to whether we should have mediation or forego mediation I believe that's our first step. Commissioner Mardfin.

Mr. Mardfin: Given what both the director said and what the appellant has said and particularly given that there's more than one person involved in appealing this, I move that we bypass mediation.

Mr. Starr: Is there a second?

Mr. Tagorda: Second.

Mr. Starr: Okay so we have a motion by Commissioner Mardfin, seconded by Commissioner Tagorda that motion is?

Mr. Hunt: To bypass mediation.

Mr. Starr: Okay, we ready to vote on that? All in favor of the motion, please raise your hand. All opposed.

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

**VOTED: To Bypass the Mediation Process.  
(Assenting - W. Mardfin, O. Tagorda, K. Hiranaga, J. Freitas,  
D. Domingo, W. Shibuya, L. Sablas, J. Starr)**

Mr. Hunt: We'll mark that unanimous.

Mr. Starr: Okay, thank you. So there will not be mediation on it. I believe the next decision would be to decide whether this body shall serve as the hearing officer or whether a hearings officer who is either part or not part of this body be appointed separately. Anything else on, does anyone either Ms. D'Enbeau, Mr. Grantham or Ms. Kapuaala have any comments?

Ms. Kapuaala: Again, staff would recommend that the hearings officer be the commission, that the presiding officer would be Mr. Starr. We do have a hearings officer list should you determine that you want to remand this to a outside hearings officer. Again, staff believes that is issue simple enough where the commission can handle it in one day.

Mr. Starr: Ms. D'Enbeau.

Ms. D'Enbeau: On behalf of the director that would be a fine resolution to have the commission hear the matter.

Mr. Starr: Mr. Grantham please.

Mr. Grantham: That would be fine with us to have the commission hear it.

Mr. Starr: Okay, members any questions or a motion?

Mr. Freitas: I move.

Mr. Tagorda: I second.

Mr. Starr: That we have a motion by Commissioner Freitas, seconded by Commissioner Tagorda and the motion I believe is to have this body serve as the hearings officer. Is that it?

Mr. Hunt: That's correct.

Mr. Starr: So we ready to vote on that? All in favor, please raise your hand. All opposed.

**It was moved by Mr. Freitas, seconded by Mr. Tagorda, then**

**VOTED: That the Maui Planning Commission Serve as the Hearings Body.  
(Assenting - J. Freitas, O. Tagorda, K. Hiranaga, W. Mardfin,  
D. Domingo, W. Shibuya, L. Sablas, J. Starr)**

Mr. Starr: Okay, so this body – was that unanimous director?

Mr. Hunt: We'll mark that as unanimous. Yeah, we need to verbally announce the record so that the person typing up the minutes – verbally announce the vote so the person typing up the minutes knows what happened.

Mr. Starr: Yeah, clarity is definitely good in this business. Okay, so as far as selecting a date I guess that's our next. I don't know is Mr. Yoshida here or have you checked with him as far as – oh, there he is. Mr. Yoshida, when do you want to do this?

Mr. Yoshida: Mr. Chairman, Members of the Commission, Clayton Yoshida, Planning Department. As you know on April 27<sup>th</sup> you have the contested case hearing on the DIRE Coalition Save Kahului Harbor Appeal on the injection well exemption, SMA Exemption at Kahului Harbor. Kahului Wastewater Treatment Plan. On May 4<sup>th</sup> you're going to Hana, we will do the site inspection, see the Gary Stice property and hear public comments from the Hana community. On May 11<sup>th</sup> you have a regular meeting, you have three public hearing items, two environmental assessments, a zero lot line determination and an SMA time extension waiver. On May 25<sup>th</sup> is your regular meeting date we have a public hearing on the LDS Church at Maui Lani, Phase 2 Project District application and in the afternoon you're going to conduct the contested case on the Gary Stice appeal. So we're into June, June 8<sup>th</sup> would be a regular meeting.

Mr. Starr: So June 8<sup>th</sup> would realistically be the next regular meeting when we could conveniently handle this and Ms. Kapuaala is this a full day adventure or can we safely think that it would be likely a half day. I'm mean can you get kind of – I know it's hard to say, but –

Ms. Kapuaala: I would have to defer to Ms. D'Enbeau. She reviewed the case. Would you know if you think the discovery process or questioning and cross examining would take half a day or maybe a full day?

Mr. Starr: We won't hold you to it and I know whatever we think will be wrong but give it a shot.

Ms. D'Enbeau: I would ...(inaudible)...

Mr. Starr: Come to the mike please. Come to the mike and maybe we get some opinion from both of you we might –

Ms. D'Enbeau: As far as the director's case is concerned it will really depend on how long the appellant's case is and I'm not sure – they seem to have quite a bit of information they want to present but I leave it to them to determine how long that might take.

Mr. Starr: Mr. Grantham could you just give us a feel, I mean, would you guess it will take us a half day, a full day, I don't know.

Mr. Grantham: I would say a half an hour.

Mr. Starr: I would think that if we scheduled it possibly for 1:00 p.m. and then we could schedule a couple of other agenda items for the morning. Maybe that would – Commissioner Mardfin.

Mr. Mardfin: I move we set the hearing date for the contested case for this item on June 8<sup>th</sup> at 1:00 p.m.

Mr. Shibuya: Second.

Mr. Starr: So we have a motion by Commissioner Mardfin, seconded by Commissioner Shibuya that motion is.

Mr. Hunt: That the hearing, contested case hearing be held on June 8<sup>th</sup> at 1:00 p.m.

Mr. Starr: Okay, all in favor please raise your hand. All opposed.

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

**VOTED: That the Contested Case to Be Held on June 8, 2010 at 1:00 p.m.  
(Assenting - W. Mardfin, W. Shibuya, K. Hiranaga, J. Freitas, O. Tagorda,  
D. Domingo, L. Sablas, J. Starr)**

Mr. Hunt: We'll mark that unanimous in favor.

Mr. Starr: Okay, thank you we'll see you there.

Ms. Kapuaala: Excuse me Commissioners thank you very much. Could we have the deadline for all prehearing briefs be two weeks prior which would be May 25<sup>th</sup>, two Tuesdays before which is May 25<sup>th</sup>, and also could Corp. Counsel and the appellant share how many exhibits and witnesses they may want to bring up to the stand and we could probably do our prehearing conference right now as far as what briefs are due and when they're due.

Mr. Starr: Lets hear from both sides. Ms. D'Enbeau.

Ms. D'Enbeau: Again, I would defer to the appellant naming how many witnesses they plan to call.

Mr. Starr: And the date for the presentation of –

Ms. D'Enbeau: Yeah, two weeks prior we'll put in our prehearing briefs would be fine.

Mr. Starr: Mr. Grantham. Two items.

Mr. Grantham: I'm sorry what was the question?

Mr. Starr: Trish please.

Ms. Kapuaala: In a contested case hearing every document or witness or anything that's brought up on the day of the contested case must be exchanged between parties prior to the contested case so there's no new information that the other party's not ready for. So what you would have to do two weeks prior is submit every document as exhibits that you plan to bring up during the contested case and if you plan to bring any witnesses then you would want to list them so that Corp. Counsel has a chance or the other party has a chance to prepare a line of questioning. So in a contested case when you're pro se like this you'll be asking the other party questions and then you can cross examine. So that's what we want you to submit two weeks prior is any exhibits, witness lists.

Mr. Grantham: Most of the materials has already been submitted with our appeal. We're probably be bringing in more letters and there may be neighbors who also want to testify, but that two weeks is fine.

Mr. Starr: Okay, so two weeks.

Mr. Grantham: Yeah.

Mr. Starr: So we have a motion to accept that that two-week deadline for the submission of lists and materials and whatnot.

Mr. Grantham: That's by May 25<sup>th</sup>, right?

Ms. Kapuaala: Yes. Does that sound okay James?

Mr. Giroux: Yeah, we may want position statements too, just to clarify for the board at least they'll have something to read before the hearing starts, just the position of –

Mr. Grantham: We submitted, I think it was 15 copies of our appeal at the time of the appeal and I had assumed that you all would have had a chance to see those.

Mr. Starr: I'll ask our counsel to just submit a list of what – of those type of items that should be submitted by that date to both parties. Can we have a motion to set that date? Someone please.

Mr. Freitas: So move for that date.

Mr. Starr: We have a second?

Mr. Tagorda: I second May 25<sup>th</sup>.

Mr. Starr: Okay, moved by Commissioner Freitas, seconded by Commissioner Tagorda to set the date May 25<sup>th</sup> for discovery. All in favor please raise your hand. All opposed.

**It was moved by Mr. Freitas, seconded by Mr. Tagorda, then**

**VOTED: That the Date for Submittal for Discovery is May 25, 2010.  
(Assenting - J. Freitas, O. Tagorda, K. Hiranaga, W. Mardfin,  
D. Domingo, W. Shibuya, L. Sablas, J. Starr)**

Mr. Hunt: We'll mark that as unanimous in favor.

Mr. Kapuaala: Thank you very much.

Mr. Starr: Thank you very much.

Mr. Hunt: Next item on your agenda is Item G, Approval of the Action Minutes of the March 23, 2010, March 17, 2010 and March 30, 2010 meetings and the Regular Minutes of February 9, 2010 Meeting.

**G. APPROVAL OF THE ACTION MINUTES OF THE MARCH 23, 2010, MARCH 17, 2010 AND MARCH 30, 2010 MEETINGS AND THE REGULAR MINUTES OF FEBRUARY 9, 2010 MEETING.**

Mr. Hunt: For the new commissioners the law requires us to have minutes available within 30 days of a planning commission meeting so in order to accomplish that we produce action minutes which are very concise, they describe the action, the final vote, etc., and then we come back with verbatim minutes usually a couple months afterwards. We're trying to get that a little quicker but that's the difference between the action minutes and the regular minutes.

Mr. Starr: Commissioner Mardfin.

Mr. Mardfin: I move acceptance of the minutes so described.

Ms. Domingo: Second.

Mr. Starr: Motion by Commissioner Mardfin, seconded by Commissioner Domingo, the motion is.

Mr. Hunt: The motion is to approve the action minutes as I listed and the regular minutes as I listed.

Mr. Starr: Okay, Commissioner Hiranaga.

Mr. Hiranaga: Yeah, the motion was to accept and the director said to approve. I know we had this issue on another board. You know, approving meaning that we have read the minutes and we

agree with the accuracy so that if it was used in some type of a formal dispute years from now they can, well you said this, you approved it versus accepting the minutes meaning yeah, we got them.

Mr. Starr: Yeah, I believe the motion was to accept. At that point we were filing them, and holding for them for 15 days that was the Water Board.

Mr. Hiranaga: I would be more comfortable with accept versus approve.

Mr. Starr: Director.

Mr. Hunt: We'll note that the motion is to accept the action and regular minutes on the dates that I noted.

Mr. Starr: Okay, good call. All in favor please raise your hand. All opposed.

**It was moved by Mr. Mardfin, seconded by Ms. Domingo, then**

**VOTED: To Accept the Action Minutes of the March 23, 2010, March 17, 2010 and March 30, 2010 Meetings and the Regular Minutes of the February 9, 2010 Meeting.  
(Assenting - W. Mardfin, D. Domingo, K. Hiranaga, J. Freitas,  
O. Tagorda, W. Shibuya, L. Sablas, J. Starr)**

Mr. Hunt: We'll mark that as unanimous in favor.

Mr. Starr: The next item is Item H-1, the Director's Report on your agenda.

#### **H. DIRECTOR'S REPORT**

- 1. Scheduling of the Maui Planning Commission review and comment date on the following :**

**MR. CHARLES JENCKS on behalf of HONUULA PARTNERS, LLC requesting comments on the draft Environmental Impact Statement (EIS) prepared in support of the Honuula (formerly known as Wailea 670) Phase II Project District Approval at TMK: 2-1-008: 056 and 071, Wailea, Island of Maui. (EIS 2009/0002) (A. Cua)**

**The accepting authority of the EIS is the Maui Planning Commission. The Chapter 343 HRS trigger is the construction of a wastewater treatment plant.**

Mr. Hunt: This item involves the scheduling of the Maui Planning Commission review and comment date on the following: Mr. Charles Jencks on behalf of Honuula Partners requesting comments on the draft Environmental Impact Statement prepared in support of the Honuula formerly known as Wailea 670 Phase 2 Project District Approval at TMK: 2-1-008: 056 and 071 in Wailea. The file



number is EIS 2009/0002 and Ann Cua is the planner assigned to this.

Ms. Ann Cua: Hi Mr. Chair, Members of the Commission. We're placing this on the agenda again only for scheduling purposes. You have not even received a copy of the document yet. For your information the department just did a letter to transmit the draft EIS to OEQC and I believe that's going to be filed today and so we are looking into the future as to when we could possibly get the draft EIS to you and if you remember from your training that I did this morning that's going to be the first of three times that you'll see that application, you'll see the draft EIS, you'll see the final EIS and the corresponding application that has been filed with that is a Project District Phase 2 application for Honuaula, that would come in the third time that you review it. So I guess we're into June 8<sup>th</sup> right now where you've set some time for another matter and I would have to defer to Clayton on – well, I think the question is do you want a special meeting on this because – okay I see nods.

Mr. Starr: Before we do that you know, it seems like the relevant question is when will we receive it? I know it's going to be a very complex document. If I knew we would have it for a month, you know I would say –

Ms. Cua: Well we know for a fact that we're not going to get to it before June because you just scheduled one for June because you just scheduled one for June.

Mr. Starr: I mean, when will we have the document?

Ms. Cua: Well, we normally try and give it to you – well, in this case two meetings before whenever it's scheduled. Like I said, it's just getting sent to OEQC today, the applicant as I understand it is beginning to make all the necessary copies to do transmittal to agencies, commission so the document won't be to you for at least within two weeks to a month, probably two weeks we could get it to you but it's all going to go based on when you schedule it and you're not going to schedule it before June 8<sup>th</sup> from what I seen today.

Mr. Starr: If we scheduled it for June 8<sup>th</sup> would we have it by the first meeting of May?

Ms. Cua: Yes, you would.

Mr. Starr: Okay, Mr. Yoshida what would you suggest? That morning perhaps or another meeting?

Mr. Yoshida: Yes, where we left was your scheduling the Waipio Bay Benevolent Society appeal for the afternoon of June 8<sup>th</sup> and some other matters in the morning. So our next meeting is, regular meeting is June 22<sup>nd</sup> unless you want to have a special meeting.

Mr. Starr: Could we have it on the morning of June 8<sup>th</sup>, make this the other matters or do you think there are other things you want to get through?

Mr. Yoshida: I just don't know what – because it is subject to the Sunshine Law and public comment I don't know how much public comment there will be on the draft EIS.

Mr. Starr: So you think maybe the second meeting in June might be better?

Mr. Yoshida: To give it sufficient time. I just can't anticipate what public – people from the public who want to testify about this is going to turn out.

Mr. Starr: Members? Commissioner Mardfin.

Mr. Mardfin: I move we tentatively select June 22<sup>nd</sup> for the review of the EIS.

Mr. Starr: Is there a second?

Mr. Shibuya: Second.

Mr. Tagorda: I second.

Mr. Starr: You're third, sorry. A day late and a dollar short Mr. Tagorda. Moved by Commissioner Mardfin, seconded by Commissioner Shibuya. The motion is, Director?

Mr. Hunt: To tentatively schedule the Honuauia DEIS for commission review on June 22<sup>nd</sup>.

Mr. Starr: Commissioner Hiranaga.

Mr. Hiranaga: Yeah, I'd like to suggest that be the first agenda item because I'm assuming the applicant will be having his consultants available so we want to make sure we provide ample time to complete the task.

Mr. Yoshida: Yeah, we might make it the only agenda item except for SMA time extensions, waivers on SMA time extensions.

Mr. Starr: Okay ready to vote? All in favor please raise your hand. All opposed.

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

**VOTED: To Tentatively Schedule the Review and Comment of the Draft EIS for the June 22, 2010 Meeting.  
(Assenting - W. Mardfin, W. Shibuya, K. Hiranaga, J. Freitas, O. Tagorda, D. Domingo, L. Sablas, J. Starr)**

Mr. Hunt: We'll mark that as unanimous in favor.

Ms. Cua: Thank you Commissioners. So we'll make sure we get you that EIS well in advance of that meeting, at least a month. Thank you.

Mr. Starr: Okay, Director.

Mr. Hunt: Next item is H-2 on your agenda, Item a, the Planning Director notifying the Planning

Commission pursuant to Section 12-202 of the Planning Commission Rules of the intent to issue time extensions on the following requests.

2. **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. **MR. CLYDE MURASHIGE, Vice-President of WAILEA MF-7 LLC requesting a two-year time extension on the Special Management Area Use Permit condition to initiate construction of the Wailea MF-7 Multi-Family Residential Project at Kai Malu Drive, TMK: 2-1-008: 116, Wailea, Island of Maui. (SM1 2006/0038) (P. Fasi)**

Mr. Hunt: The first one is Mr. Clyde Murashige, Vice-President of Wailea MF-7 LLC requesting a two-year time extension on the SMA Use Permit to initiate construction of the Wailea MF-7 multi-family residential project at Kai Malu Drive, TMK 2-1-008: 116 in Wailea. The file number is SM1 2006/0038. Paul Fasi is the planner I believe. I believe we have Clayton covering if you have any questions. For the next commissioners this is a time extension where the commission has to ability to either review that time extension or just grant the Planning Department the okay to grant the time extension.

Mr. Starr: Mr. Yoshida, any comments?

Mr. Clayton Yoshida: No, I believe you have the letter, request letter from Wailea MF-7 LLC requesting a two-year time extension. The commission granted the SMA permit on April 10, 2007 and there was an initial three-years to initiate construction.

Mr. Starr: Is this the first extension?

Mr. Yoshida: Yes.

Mr. Starr: Commissioner Mardfin.

Mr. Mardfin: I move we –

Mr. Starr: I was going to see if public – offer public testimony if anyone wants it or from the applicant, not seeing any it's closed. Commissioner Hiranaga.

Mr. Hiranaga: Could the applicant just brief us on the drainage retention capacity proposed for this project?

Mr. Starr: Mr. Murashige please come up to the mike, introduce yourself and welcome, good to see you.

Mr. Murashige: Thank you. Mr. Chairman, Members of the Commission, Clyde Murashige. As

required in the SMA we are providing couple retention basins on the project which will basically capture both pre and post development flows.

Mr. Hiranaga: Thank you.

Mr. Starr: Commissioner Mardfin.

Mr. Mardfin: Mr. Murashige, usually ask about reasons for these things, you have them listed here. Basically you have all your permitting done by December 7, 2007?

Mr. Murashige: We have actually submitted for all of our building permits and we have most of the approvals.

Mr. Mardfin: Oh you submitted but you haven't received.

Mr. Murashige: Right, we're waiting on three more agencies to approve and timing is an issue because one of the agencies is SHPD and as we all know that they're short staffed and we're not sure when they're going to get to our approval.

Mr. Mardfin: Okay. See, that to me is a more persuasive thing than the economic recession temporarily reduce sales demand. You know, because back then we didn't have a recession so it could have been done, but if you've been held up by permissions from the county and responses then I can live with that. Thank you.

Mr. Starr: Thank you. Members? Commissioner Mardfin.

Mr. Mardfin: I move that we waive our review – I move that we accept receipt of the request and waive our review.

Mr. Starr: Is there a second?

Mr. Tagorda: I second.

Mr. Starr: Okay, moved by Commissioner Mardfin, seconded by Commissioner Tagorda. The motion reads.

Mr. Hunt: To accept receipt of the request and to waive the review.

Mr. Starr: Okay, any comments? None. Okay, all in favor please raise your hand. All opposed.

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

**VOTED: To Acknowledge Receipt of the Request and to Waive Review.  
(Assenting - W. Mardfin, O. Tagorda, K. Hiranaga, J. Freitas,  
D. Domingo, W. Shibuya, L. Sablas, J. Starr)**

Mr. Hunt: We'll note that as unanimous in favor.

Mr. Starr: Thank you.

Mr. Hunt: Next time extension involves Mr. Kurt Deweese of Sunstone Keokea requesting a two-year time extension on the SMA Permit to initiate construction to initiate construction of the Liloa Village Subdivision and related improvements, a 65-lot subdivision at TMK: 3-9-002: 116, 150 and 151 in Kihei. The file number is SM1 2004/0010 and Candice Thackerson is the planner assigned to this.

- b. MR. CURT DEWEESE of SUNSTONE KEOKEA, LLC requesting a two-year time extension on the Special Management Area Use Permit condition to initiate construction of the Liloa Village Subdivision and related improvements. a 65-lot subdivision at TMK: 3-9-002: 116, 150, and 151, Kihei, Island of Maui. (SM1 2004/0010) (C. Thackerson)**

Ms. Candice Thackerson: Hello. So we have the time extension before you. This is their third request for this time extension. It's basically based on the fact that there's not a permanent water supply yet. So the applicant is here if you have any questions and they do they have their drainage report with them as well.

Mr. Starr: Okay, Members? Commissioner Mardfin.

Mr. Mardfin: I'd like the applicant to explain why – what makes him think that you'll have the water meters within two years?

Ms. Colleen Suyama: Colleen Suyama representing Mr. Deweese. In our application the change that happened since the time that this project was approved is that the Show Me the Water Bill went into effect and in order for Mr. Deweese to get a building permit to start the construction or even the subdivision approval he needs to now find an alternative water source that will be acceptable to the Water Department. He's in the efforts of doing that and hopefully within the next two years that will give him the time needed to discuss this matter with either an alternative provider or to discuss it with the Water Department as to what other alternatives that may be available to him.

Mr. Mardfin: Colleen we've been in the planning game for a while, do you think it's likely that they're going to find anything within two years.

Ms. Suyama: There are efforts by the County of Maui because there's a number of developers that are in the same situation of trying to find alternatives to water source and there are people working with the County of Maui, Department of Environmental Management in trying to get more of the R-1 water produced and to other providers to taking it off of irrigation, you know, potable water for irrigation. One of the biggest users of potable water for irrigation in Kihei is Monsanto. They're actually using potable water to do some of their irrigation. So there are people that are discussing it with the county in how you can get some joint efforts together to extend the R-1 water line to the Monsanto fields to basically get that allocation available for potable resources. So hopefully within the next two years that type of efforts that not only by this developer but by other developers will

come to some kind of conclusion that you know, at least there is an alternative that's available.

Mr. Mardfin: Want to put a probability of success on this thing?

Ms. Suyama: I don't want to put a probability but once private developers get involved in trying to do something it usually runs faster than just government trying to solve the problem. It's like when we – the county worked with Wailea Resort and Makena Resort to do the Central Maui water system, doing the upgrades to the Kihei treatment plant, I think that kind of resources are necessary and now it makes economic sense for people to get involved in this kind of efforts.

Mr. Mardfin: Thank you.

Mr. Starr: Commissioner Hiranaga.

Mr. Hiranaga: Can the applicant briefly explain their drainage retention capacity?

Ms. Suyama: We have our engineer, he could explain that to you. It's Mr. David Bills.

Mr. Starr: Please come forward.

Mr. David Bills: Hello Commission, my name is David Bills. I'm President of Bills Engineering on Oahu. My involvement as the civil engineer has been to provide over-the-shoulder consultations. We're the main project engineer that specifically related to drainage-type issues. The drainage report that's contained in this special management application is committing to retaining all – 100% of the increased runoff that is created from the site as a result of development.

Mr. Starr: Go ahead Commissioner Hiranaga.

Mr. Hiranaga: Is there any additional capacity to retain predevelopment surface runoff?

Mr. Bills: We have not looked at that in any case right now. When the original drainage report was done it followed criteria ...(inaudible)... to make sure you catch the increased runoff from your property. I will tell you that from the general perspective it's very much site specific related to what ability you can take additional water. I do know that that site is very tight and the retention basin has been pretty much ...(inaudible)... set aside as part of the project to begin with.

Mr. Hiranaga: Just a comment. I know that access to South Kihei Road is indicated to be Welakahao Road and that area is prone to flooding so I believe if the applicant could retain a 100% of the predevelopment runoff that would help alleviate some of the flooding that occurs on South Kihei Road. So I would be in favor of bringing this particular project back for review.

Mr. Starr: Okay, Members?

Mr. Mardfin: Is that a motion?

Mr. Hiranaga: No.

Mr. Starr: We're not quite ready for a motion yet. I'd like to see if there are any members of the public would like to testify on this? Seeing none, public testimony on this item is closed. The floor is now open for further questions, comments or motions.

Mr. Hiranaga: I don't want to cut anybody off.

Mr. Starr: No.

Mr. Hiranaga: I make a motion to not waive the review of the commission and request that it be brought back to us for the extension request.

Mr. Shibuya: Second.

Mr. Starr: Okay, Comments? Commissioner Mardfin.

Mr. Mardfin: Is part of your motion to acknowledge receipt of the request?

Mr. Hiranaga: It could be.

Mr. Mardfin: You're acknowledging receipt and then requesting that – but not waiving review.

Mr. Hiranaga: Right.

Mr. Starr: Okay, so there is a motion on the floor and that motion which was made by Commissioner Hiranaga seconded by Commissioner Shibuya is.

Mr. Hunt: Is to acknowledge receipt but not waive review.

Mr. Starr: Any other comment?

Ms. Suyama: I hate to interrupt but can we maybe respond that since our engineer –

Mr. Starr: No, you're out of order.

Mr. Starr: Commissioner Mardfin.

Mr. Mardfin: May I ask Colleen what she was about to say.

Mr. Starr: Yes, now you're in order.

Ms. Suyama: Because the engineering consultant said that he really didn't look at whether there was any opportunities to deal with the predevelopment runoff before the commission makes a decision will you at least give us the opportunity for our engineering consultant to look at the matter again and then report back to the commission like maybe deferring action on this item until that time. That we can at least report back and it may solve Mr. Hiranaga's concern about drainage.

Mr. Starr: Members? Commissioner Hiranaga.

Mr. Hiranaga: It sounds like apples to apples to me.

Mr. Starr: My own comment is that I'm in favor of the motion, I think it's a third extension and there is concern, this is possibly one we should look at. Anyway, we ready to vote on the motion? All in favor please raise your hand. All opposed. Director.

**It was moved by Mr. Hiranaga, seconded by Mr. Shibuya, then**

**VOTED: To Acknowledge Receipt of the Request and for the Commission to Review the Time Extension Request.  
(Assenting - K. Hiranaga, W. Shibuya, J. Freitas, O. Tagorda, W. Mardfin, D. Domingo, L. Sablas, J. Starr)**

Mr. Hunt: We'll mark that unanimous in favor.

Mr. Starr: Okay, thank you. Oh before we go to the next one. I believe that we actually have some staff on hold for us to see if we can finish the initiation ritual, but I really don't see us getting into it and I think we should let them go, is that okay? Okay. Director please continue.

Mr. Hunt: Your next time extension involves Mr. Rick Armour of Kalama Hills LLC requesting a two-year time extension to initiate construction on the SMA permit for the Kalama Hill Subdivision, a 12-lot single family residential subdivision and related improvements at 55 Auhana Street, TMK: 3-9-017: 023 in Kihei. The file number is SM1 2005/0042 and Candace Thackerson is the planner assigned to this project.

- c. MR. RICK ARMOUR of KALAMA HILLS LLC requesting a 2-year time extension on the period to initiate construction on the Special Management Area Use Permit condition for the Kalama Hills Subdivision, a 12-lot single family residential subdivision and related improvements at 55 Auhana Street, TMK: 3-9-017: 023, Kihei, Island of Maui. (SM1 2005/0042) (C. Thackerson)**

Ms. Candace Thackerson: Hello, it's the same condition. Kalama Hills 12-lot subdivision and this is their third time extension request due to water supply. It's in the same area except the only difference here is they have submitted a letter to the Director of Water Supply who wrote back that they have neither accepted nor processed any applications for future allocations of water and the applicant has appealed that letter in February 2008 and the appeal is currently pending. So they're looking into that but the applicant is here.

Mr. Starr: How many extensions have they had?

Ms. Thackerson: Third one. This is the third one.



Mr. Starr: This is the third again. Members, what's your pleasure? Want to hear from the applicant or ask questions? Commissioner Hiranaga.

Mr. Hiranaga: Yeah, if the applicant could give us a brief explanation of their drainage retention capacity. The surface runoff retention capacity.

Mr. Mich Hirano: Good afternoon Commissioners, Chair Starr. My name is Mich Hirano with Munekiyo and Hiranaga and we're representing the applicant Kalama Hills. With respect to the drainage conditions I'd like to just provide a little background on this application. This application came before the planning commission in September of 2006 and the SMA approved in May of 2007. At the September 6<sup>th</sup> meeting the commission had five areas that they wanted the applicant to further address and one of those was the drainage. So when the motion was made and it was reviewed in May, the commission wanted the applicant to work with their contracted civil engineer to insure the design of the subdivision drainage system allowed for infiltration capacity that is 10 to 20% greater than the estimated net increase of a 50-year, one-hour storm for the proposed subdivision and the applicant met with their civil engineer and had confirmed that they would design the drainage system to handle a 20% increase in retention capacity and that condition became as well a condition of the SMA permit and the applicant has addressed that and is willing to commit to those drainage improvements.

Mr. Starr: Members? Commissioner Hiranaga.

Mr. Hiranaga: Is this a Department of Housing and Human Concerns project?

Mr. Hirano: No, it's a 12-lot subdivision and it's done by Kalama Hills LLC which is a private entity. There is a housing agreement that has been entered into.

Mr. Hiranaga: Would have been nice to have a location map. I know it's somewhere in Kihei.

Mr. Hirano: It's on Auhana Road, 55 Auhana Road right mauka of Island Surf Condominium. It's a 3.2 acre parcel that is kind of an infill area.

Mr. Hiranaga: We have an issue regarding the burial?

Mr. Hirano: There were some resolution of the burials that were on the site as well as the coqui frogs. That was the application.

Mr. Hiranaga: I think I'm going to ask for the same request that we review the drainage plan.

Mr. Starr: Hold on one second. Members of the public if anyone wants to testify on this now is the time. Not seeing any, Commissioner Hiranaga, I'm sorry to interrupt you.

Mr. Hiranaga: Actually I was just making a comment, I wasn't make a motion but if you're ready for a motion I can make a motion.

Mr. Starr: Let me give Commissioner Mardfin a chance to comment or question.

Mr. Mardfin: The question I asked Colleen was the probability of you actually getting water within the next two years. Now this looks much slimmer.

Mr. Hirano: Yes, slimmer?

Mr. Mardfin: Slimmer chance of getting water in the next two years like zero to nil.

Mr. Hirano: Well, the application when it was reviewed what was coming on line were as it was commented by the Department of Water Supply was the Maui Lani wells that would be on line. Maui Lani wells are projected to be on line and contributing to the central water system some time either in April or May of this year so they're pretty soon to provide additional water. The applicant has as well appealed the Director of Water Supply's decision on not granting a reservation for a meter and that appeal will be heard sometime in January of next year. So the applicant is making every effort to try and secure water supply. When the Maui Lani wells come on stream the applicant will reapply for a water meter at that time, but the applicant is in a catch-22 position. He's not able to submit subdivision plans nor building permit plans to even provide even a lateral to get the design and engineering so that he could have a lateral connection and apply for a meter. So he's caught in that situation where he can't advance his plans in order to get a water meter because there's no source of water. But in the meantime, water meters have been issued to projects. So the applicant has appealed that to say that you know there is water available otherwise there should be no meters advanced. So that hasn't been heard yet. That is the applicant's position.

Mr. Starr: Thank you. Commissioner Hiranaga.

Mr. Hiranaga: Yeah, my understanding is it is the mission of the Department of Water Supply to provide water to implement the community plans. So to speculate on the success of whether the Department of Water Supply will be able to fulfill this obligation really should not be placed upon the applicant. That is the reason we have a Department of Water Supply. If we all wanted to find our own sources of water we could get rid of the Department of Water Supply.

Mr. Hirano: I would like as well add that in this particular case there is an eight-inch water meter running right past the property. There is a two-inch meter on the property as well. So it does have water connection and the water service and to look for an independent supply for water when you have an eight-inch main running in front of your property seems to be an onerous kind of requirement.

Mr. Starr: Anyway members lets stay on the item before us which whether to look at the time extension or to leave it to the director. Commissioner Hiranaga.

Mr. Hiranaga: Yeah, so I'll make a motion to acknowledge receipt of the request but to not waive the review of the time extension.

Mr. Starr: Do we have a second?

Mr. Shibuya: Second.

Mr. Starr: We have a motion by Commissioner Hiranaga, seconded by Commissioner Shibuya. That motion is.

Mr. Hunt: Acknowledge receipt but not waive review.

Mr. Starr: Okay, we're going to vote on that. All in favor please raise your hand. All opposed. Director.

**It was moved by Mr. Hiranaga, seconded by Mr. Shibuya, then**

**VOTED: To Acknowledge Receipt of the Request and for the Commission to Review the Time Extension Request.  
(Assenting - K. Hiranaga, W. Shibuya, J. Freitas, O. Tagorda, W. Mardfin,  
D. Domingo, L. Sablas, J. Starr)**

Mr. Hunt: We'll mark that unanimous in favor.

Mr. Starr: Okay.

Mr. Hunt: Your last time extension involves Mr. Mike Kitagawa requesting a two-year time extension to initiate construction for the proposed automotive and metal recycling facility and related improvements at 30 Hobron Avenue, TMK: 3-7-011: 001 in Kahului. The file number is SM1 2006/0033. Paul Fasi is the planner assigned to this but I believe Mr. Yoshida is covering for him.

- d. MR. MIKE KITAGAWA requesting a 2-year time extension on the period to initiate construction for the proposed automotive and metal recycling facility and related improvements at 30 Hobron Avenue, TMK: 3-7-011: 001, Kahului, Island of Maui. (SM1 2006/0033) (P. Fasi)**

Mr. Starr: Okay before we begin, Commissioner Freitas.

Mr. Freitas: Mr. Chair, I'm in the same type of business that Mr. Kitagawa is in and I'd like to recuse myself.

Mr. Starr: Okay, thank you for disclosing and we understand your concerns.

Mr. Clayton Yoshida: Mr. Chairman, Members of the Commission the SMA permit was issued back in May of 2007. The applicant in their March 1<sup>st</sup> letter cites securing financing as the reason for the time extension. This is the first time extension request for Mr. Kitagawa.

Mr. Starr: Okay, members any questions or anything like that? Commissioner Hiranaga.

Mr. Hiranaga: I can't believe three years has passed. I came on the commission in March of '07. Could the applicant give us a brief review of their drainage plan regarding post development and predevelopment retention.

Mr. Mike Kitagawa: Hi, Mike Kitagawa, Kitagawa's Towing. I'm the person wishing the extension. Regarding the drainage as per our major SMA that was passed by the commission, planning commission in 2007, we provided a drawing and plans to include an oil sump to catch any kind of oils that would be flowing from the property and being a prudent operator I didn't plan on you know, dropping all the oil all over the place but we had this oil sump designed with a oil filter separator that would have surpassed the volume of any runoff and any work done by processing of vehicles would have been done on concrete surface under a shed that would have prevented any oil from spreading all over the environment. But in the event of any oil which occurs every day during processing I have and I use oil sponge absorbent derived from the cotton seed from Phase III in Arizona and I just successfully use the product successfully to remediate all oil pollution at my Alamaha site on concrete and I got a clean bill of health from the Environmental Report, John ... (inaudible) ..., there was a requirement by CD Development, the landlord and we got a clean bill of health to get approval to get my \$40,000 back, but just to say we have good ... (inaudible) ... practices that we try not to pollute anything, but in the event there is an oil spill we have the means that surpasses the capacity of the question spills.

Mr. Hiranaga: Actually Mr. Kitagawa my recollection is there was really no question about your proposed system for collection of toxic chemicals or waste byproducts coming out of the vehicles. My question was more specifically is, the County Code requires that when you develop property in the special management area that you must retain a 100% of your post development storm runoff on site. We have – some commissioners have been moving towards retention of both predevelopment and post development surface storm runoff in order to reduce the amount of rainwater that enters the ocean and the rainwater does carry contaminants with it as it travels to the ocean. So my question is and I can't recall what your drainage capacity, drainage retention capacity is. Does it just meet the bare minimums of the County Code or does it exceed the requirements of the County Code.

Mr. Kitagawa: I believe it exceeded. I can have Mr. Frampton say a few words on that.

Mr. Starr: Mr. Frampton, please introduce yourself and welcome.

Mr. Bill Frampton: Thank you Chair. My name's Bill Frampton consultant with Mike Kitagawa and in regards to your question about the drainage capacity does exceed requirements. In fact, it was one of the first projects back in 2007, I believe shortly after you had come on board where not only did we exceed the drainage, we introduced the inserting the drainage inserts into the filtration so that we're catching not only contaminants from the operations but other potential petrochemicals and whatnot, but like you said before. So we do exceed the capacity.

Mr. Hiranaga: Do you retain 100% of the pre development storm runoff.

Mr. Frampton: We retain certainly post. I believe it was close to a 100 because we had ample area on his lot size. The lot size compared to what he had was very minor. He has a large basin to retain it. I'm not sure if it's 100% Mr. Hiranaga, but at that time we exceeded what's the bare bone requirement. We went beyond what's required.

Mr. Hiranaga: Would the applicant be willing to commit to retaining 100% of the predevelopment

storm runoff as an additional condition to the extension.

Mr. Frampton: Sure, I believe he's very close to that and I don't see that as being a problem.

Mr. Hiranaga: Thank you.

Mr. Frampton: If that's something, I'm not sure how that structurally be handled.

Mr. Starr: We'll get to that. Commissioner Mardfin.

Mr. Mardfin: Mr. Kitagawa, this got approved about three years ago and you've been working with your lending institution to secure financing and three years ago the economy was fine. I mean understand why in the last year things could be difficult getting financing because of the national economy, but I mean, what was the problem three years ago with getting the financing?

Mr. Kitagawa: It wasn't a problem with the financing, three years ago business was booming and I had three tenants, Matson Navigation, Hawthorne Caterpillar and Valley Isle Motors as tenants for my property and at that time Sir, I didn't see a real need to start with the production and improving my property. Then in 2008 all the wheels started to fall off and Caterpillar, Hawthorne Caterpillar moved out, Matson Navigation pulled out because of the economy and finally Valley Isle Ford moved out. Then I went for financing and it was just a bear, it took me at least nine months before I finally got some monies from my bank but the amount financing I could secure was about 30% of my total plan. So we had to downsize a lot, now we just have to find a way to try and facilitate the property and do a smaller project.

Mr. Mardfin: If you were to get a two-year time extension do you think you'd be able to get sufficient financing to do what you want to do?

Mr. Kitagawa: I'm sure. Just in the last two months, the market for commodity has really improved and we're seeing an upward turn and I've been very successful – fortunate and successful in acquiring a partnership with a friend of mine. We have several joint ventures in doing scrap metal business off island namely Lanai as a principal that we're involved in right now, but the scrap metal industry is coming about and I think it's the first industry that's got to come about before our infrastructure can be you know, improved upon. Yes, I have a lot of confidence in the market turning around and my being able to accomplish my ...(inaudible)...

Mr. Mardfin: It sounds like – but did I hear you say you're going to be downsizing the project so it's going to be smaller than – smaller impacts than what you presented three years ago?

Mr. Kitagawa: Initially yes.

Mr. Mardfin: That strikes me as a good reason to kind of see it for review, but just to see what's going to go on. But thank you very much.

Mr. Starr: Any members of the public wishing to offer testimony on this? Not seeing any that's closed. I was informed by Corp. Counsel and the Director that if there is a desire for this body to

review our review but that there was a desire to see a condition put on it that is agreeable with the applicant then a mechanism would be to – for the director to understand that since he will be reviewing it and that if a private letter agreement between the director and the applicant is drawn up and Corp. Counsel takes a look at it then that will be bearing and that will accomplish what Commissioner Hiranaga was voicing.

Mr. Hiranaga: Yeah, I think we did the same thing for Maui Beach renovations. The director wrote to them and added this condition so that's acceptable.

Mr. Starr: So someone got a motion?

Mr. Hiranaga: I'll make a motion to grant the extension, I'm sorry, acknowledge receipt and waive the review subject to the addition or the commitment from the director that he'll place this additional condition of 100% pre development.

Ms. Domingo: Second.

Mr. Starr: Okay, we have a motion by Commissioner Hiranaga, seconded by Commissioner Domingo and before the motion is read back I turn it over to – I think it may need a tiny bit of wordsmithing.

Mr. Giroux: I'll just wordsmith a little. I'd like to see the motion just reflect that it's a commitment by the developer. You're waiving review upon the commitment by the developer to commit to meeting your standard and that that condition will be included into a letter by the director.

Mr. Hiranaga: So move.

Mr. Starr: Okay, so the motion by Commissioner Hiranaga, seconded by Commissioner Domingo shall read Director. You got this, you're better than me.

Mr. Hunt: Acknowledge receipt, waive review submit to a commitment by the developer to meet a 100% of pre and post development runoff via a letter from the director.

Mr. Starr: Commissioner Mardfin.

Mr. Mardfin: I can vote for this but I would also ask the director to – since they're really suggesting it's a smaller project but I'll presume you'll just look at the entire project. If it's smaller, it's smaller.

Mr. Hunt: I'm not sure I understand.

Mr. Mardfin: Well, it sounds like the project's changing. Oh, they're shaking their head no, the project isn't changing. Could I have –

Mr. Starr: Do we need –

Mr. Mardfin: We don't need it, if the project's not changing fine. Thank you.

Mr. Starr: Commissioner Hiranaga.

Mr. Hiranaga: Do we need the applicant to acknowledge that condition for the record?

Mr. Starr: Did you hear the condition and is that okay Mr. Frampton?

Mr. Frampton: Yes, Bill Frampton. We understand the idea and we're volunteering to do this and agree with the department and we'll work it out.

Mr. Starr: Okay, thank you. We ready to vote? All in favor please raise your hand. All opposed.

**It was moved by Mr. Hiranaga, seconded by Ms. Domingo, then**

**VOTED: To Acknowledge Receipt and Waive the Review Subject to a Commitment by the Developer to Meet the Commission's Standard of 100% Pre and Post Development Runoff to be Included in a Letter from the Director.**

**(Assenting - K. Hiranaga, D. Domingo, O. Tagorda, W. Mardfin,  
W. Shibuya, L. Sablas, J. Starr)**

**(Recusal - J. Freitas)**

Mr. Hunt: We'll note that unanimous in favor.

Mr. Hiranaga: One recusal.

Mr. Starr: Okay, with one recusal.

Mr. Hunt: Thank you. One recusing.

Mr. Starr: Thank you.

Mr. Mardfin: Mr. Chair, is there any way we can, the people have left but is there any way we can go back to b and c and do a similar thing or could that be brought to us next week?

Mr. Starr: I think that's water under the bridge.

Mr. Mardfin: Can I introduce a motion to reconsider – well, the people aren't here to agree to it.

Mr. Starr: Let it go Ward, get in trouble like that.

Mr. Mardfin: Okay.

Mr. Starr: Okay, Planning Commission Projects/Issues. Anyone got anything?

### **3. Planning Commission Projects/Issues**

Mr. Hunt: For the new commissioners this is your opportunity to raise an issue, a project, a question and generally speaking we need to research it and then come back at the following meeting.

Mr. Starr: Thank you. I'm sure we'll have some next time.

**4. Discussion of Future Maui Planning Commission Agendas**

**a. April 27, 2010 meeting agenda items**

Mr. Starr: Future Agendas, we have a copy of the next agenda and then there's the special Hana meeting. Commissioner Freitas, do you know about the Hana site inspection.

Mr. Freitas: Yes I know.

Mr. Starr: You good to go?

Mr. Freitas: Yep.

Mr. Starr: Commissioner Hiranaga.

Mr. Hiranaga: Are you addressing Item 4b, the inspection?

Mr. Starr: We haven't really gotten there yet.

Mr. Hiranaga: Okay, I will hold my comments.

Mr. Starr: So April 27<sup>th</sup>, everyone good with that? Okay May 4<sup>th</sup>, Commissioner Hiranaga did you have a comment?

**b. Tentative schedule for May 4, 2010 Hana Site Inspections and Meeting**

Mr. Hiranaga: Yes, I know that having a quorum is important, but I will notify the commission that I will be unable to attend that particular site visit.

Ms. Domingo: What's that?

Mr. Hiranaga: I will be unable to attend the Hana site visit.

Mr. Starr: Okay. Commissioner Mardfin.

Mr. Mardfin: I'd like to thank Mr. Yoshida. I received the full agenda today. I'm very, very glad that he included the site inspection of the cinder quarry. I've gotten a lot of feedback from people in Hana that's very important. All the other items are on there exactly as we discussed and I wanted to thank you very much. I have also just passed out a revised rules of the road and things to look for as you drive in just to keep life interesting for the passengers.



Mr. Starr: Okay, thank you Commissioner Mardfin for this excellent idea.

**5. EA/EIS Report**

Mr. Starr: EA/EIS Report. This is our chance to get information about or to solicit any comment on stuff. Does anyone got anything? No. Okay.

**6. SMA Minor Permit Report**

**7. SMA Exemptions Report**

Mr. Starr: Moving right along, that includes the SMA Minor and Exemptions Report. Okay, we're accepting all of these.

**I. NEXT REGULAR MEETING DATE: APRIL 27, 2010**

Mr. Starr: Next regular meeting date is April 27, 2010.

Mr. Hunt: Is anyone not going to be here for that meeting? April 27<sup>th</sup>.

Ms. Domingo: Yes, I won't be here.

**J. ADJOURNMENT**

The meeting was adjourned at 5:05 p.m.

Submitted by,

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

**RECORD OF ATTENDANCE**

**Present**

Jonathan Starr, Chairperson  
Jack Freitas  
Donna Domingo  
Kent Hiranaga  
Ward Mardfin  
Lori Sablas  
Warren Shibuya  
Orlando Tagorda

**Others**

Jeff Hunt, Planning Department  
James Giroux, Department of the Corporation Counsel  
Mike Miyamoto, Department of Public Works (in attendance @ 1:15 p.m.)