

PURSUANT TO CHAPTER 92, HAWAII REVISED STATUTES AS AMENDED, NOTICE IS HEREBY GIVEN OF A REGULAR MEETING OF THE MAUI PLANNING COMMISSION

## AGENDA

DATE: SEPTEMBER 28, 2010 (Tuesday)  
TIME: 9:00 A.M.  
PLACE: Planning Department Conference Room, First Floor, Kalana Pakui Building, 250 South High Street, Wailuku, Maui, Hawaii 96793

Members: Jonathan Starr (Chair), Ward Mardfin (Vice-Chair), Donna Domingo, Jack Freitas, Kent Hiranaga, Lori Sablas, Warren Shibuya, Orlando Tagorda, Penny Wakida

Public testimony will be taken at the start of the meeting on any agenda item, except for contested cases under Chapter 91, HRS, in order to accommodate those individuals who cannot be present at the meeting when the agenda item(s) is (are) considered by the Maui Planning Commission. Public testimony will also be taken when the agenda item is taken up by the Maui Planning Commission. Maximum time limits on individual testimony may be established by the Planning Commission. A person testifying at this time will not be allowed to testify again when the agenda item comes up before the Commission, unless new or additional information will be offered.

Testifiers: Please be advised that applications for Community Plan Amendment, State District Boundary Reclassification, Change in Zoning, and Conditional Permit require the approval of the Maui County Council. In order to be notified of future agendas of the Maui County Council please notify the Office of Council Services at (808) 270-7838 or by mail to the Maui County Council, 200 S. High Street, Wailuku, Maui, Hawaii 96793.

A. CALL TO ORDER

B. DIRECTOR'S REPORT

1. EA/EIS Report
2. SMA Minor Permit Report
3. SMA Exemptions Report

C. LITIGATION

1. OFFICE OF THE CORPORATION COUNSEL, COUNTY OF MAUI requesting consultation with the Maui Planning Commission as to whether the Appellee/ Defendant MAUI PLANNING COMMISSION wishes to appeal the September 15, 2010 Second Circuit Court Decision and Order on:
  - a. Civil No. 09-1-0899(1) (Agency Appeal), THE PROTECT WAILEA BEACH COMMITTEE, SCHULYER W. LININGER, JR., MITCHELL VAN KLEY, JAMES L. PAYNE, and LEE MINSHULL ( Appellants/ Plaintiffs) vs. MAUI PLANNING COMMISSION; WAYNE HEDANI, in his capacity as

Chairperson of the MAUI PLANNING COMMISSION; DONNA DOMINGO; BRUCE U'U; JONATHAN STARR; KENT HIRANAGA; MAUI PLANNING DEPARTMENT, and PYRAMID PROJECT MANAGEMENT, LLC, a Massachusetts Limited Liability Company vs. MAUI PLANNING COMMISSION; WAYNE HEDANI, in his Capacity as Chairperson of the MAUI PLANNING COMMISSION; DONNA DOMINGO; BRUCE UU; JONATHAN STARR; KENT HIRANAGA; MAUI PLANNING DEPARTMENT; JEFFREY S. HUNT and PYRAMID PROJECT MANAGEMENT, LLC, a Massachusetts limited liability company (Appellees/Defendants)

- b. Civil No. 09-1-0900 (3) (Agency Appeal), ROBERT LEE, GILA WILLNER, RANDY BOWEN, JOHN SALINAS, JAMES L. PAYNE, JOSE FIGUEROA, and MURRAY JAFINE (Appellants/Plaintiffs) vs. MAUI PLANNING COMMISSION; WAYNE HEDANI, in his Capacity as Chairperson of the MAUI PLANNING COMMISSION; DONNA DOMINGO; BRUCE UU; JONATHAN STARR; KENT HIRANAGA; MAUI PLANNING DEPARTMENT; JEFFREY S. HUNT and PYRAMID PROJECT MANAGEMENT, LLC, a Massachusetts limited liability company (Appellees/Defendants)
- c. Civil No. 09-1-0901(1) (Agency Appeal), DANA NAONE HALL (Appellant/Plaintiff) vs. MAUI PLANNING COMMISSION; WAYNE HEDANI, in his Capacity as Chairperson of the MAUI PLANNING COMMISSION; DONNA DOMINGO; BRUCE UU; JONATHAN STARR; KENT HIRANAGA; MAUI PLANNING DEPARTMENT; JEFFREY S. HUNT and PYRAMID PROJECT MANAGEMENT, LLC, a Massachusetts limited liability company (Appellees/Defendants)

All of the Agency Appeals related to the denial of intervention by the Appellants/Plaintiffs and the issuance of approvals for the following applications and subsequent permits:

MR. WADE FISCHER, Vice-President of Resort Development, PYRAMID PROJECT MANAGEMENT LLC requesting a Step 1 Planned Development Approval, a Step 2 Planned Development Approval, and a Special Management Area Use Permit for the proposed Renovations and Guestroom Expansion at the Grand Wailea Resort and Spa at 3850 Wailea Alanui Drive, TMK: 2-1-008: 109, Wailea, Island of Maui. Improvements include renovations to hotel public areas, cultural garden, and landscape improvements, expansion of pool activity areas, and 310 additional guest rooms housed in eight (8) extended and detached buildings throughout the hotel property. (PD1 2009/0002) (PD2 2009/0001) (SM1 2009/0006) (A. Cua)

The Second Circuit Court decision:

- a. Reversed and vacated the Decision and Order denying the Petition to Intervene with respect to Appellants/Plaintiffs ROBERT LEE, GINA

WILLNER, RANDY BOWEN, JOHN SALINAS, JAMES L. PAYNE, JOSE FIGUEROA, and MURRAY JAFINE

- b. Reversed and vacated the Decision and Order denying the Petition to Intervene with respect to Appellant/ Plaintiff DANA NAONE HALL.
- c. Reverse, vacated, and voided because they were based upon flawed procedures the following permits, approvals, and determinations:
  - 1) The Special Management Area Use Permit granted by the MPC for the expansion project on October 27, 2009;
  - 2) The Step 1 and Step 2 Planned Development Approvals granted by the MPC for the expansion project on October 27, 2009;
  - 3) The Chapter 343 Exemption Determination approved by the MPC for the expansion project on October 27, 2009;
  - 4) The Shoreline Approval issued by the Planning Department for the expansion project on October 27, 2009; and
  - 5) Any further permits or approvals issued after the issuance of the SMA permit on October 27, 2009.
- d. Remanded this matter to the Maui Planning Commission.
- e. Instructed and ordered the Maui Planning Commission to reconsider the Petition to Intervene filed by Hoolei Appellants/ Plaintiffs with respect to Appellants/ Plaintiffs ROBERT LEE, GILA WILLNER, RANDY BOWEN, JOHN SALINAS, JAMES L. PAYNE, JOSE FIGUEROA, and MURRAY JAFINE and to reconsider the Petition to Intervene filed by Appellant/ Plaintiff DANA NAONE HALL in light of the Court's Order.

The deadline for filing an appeal of the Second Circuit Court's decision is thirty days from the entry of the final judgement.

The Commission may confer with its attorneys in deciding whether or not to appeal the Second Circuit Court decision. The Commission may decide to appeal the decision of the Second Circuit Court.

**\*An Executive Session may be called on this item in order for the Commission to consult with their attorney on questions and issues pertaining to the Commission's powers, duties, privileges, immunities, and liabilities.**

D. UNFINISHED BUSINESS (Depending on what the Commission decides on the above Litigation matter regarding an appeal, the Commission may decide to take up the following based on the Second Circuit Court's remand:)

- 1. MR. ISAAC HALL, attorney for SHAWN HORWITZ, TERRI ZAGER, CRAIG ZAGER, TIM CONNER, KENNETH HAWKINS, ROBERT LEE, GILA WILLNER, RANDY BOWEN, JOHN SALINAS, JAMES L. PAYNE, JOSE FIGUEROA, JEFFREY MANDELBAUM, NINA S. YOSHPE, ANDRE MAGNINOT, R. TYLER WHANN, DEBORAH CROSS, and MURRAY JAFINE with respect to ROBERT LEE, GILA WILLNER, RANDY BOWEN, JOHN SALINAS, JAMES L. PAYNE, JOSE FIGUEROA, and MURRAY JAFINE submitting a Petition to Intervene dated

September 8, 2009 on the applications by MR. WADE FISCHER, Vice-President of Resort Development, PYRAMID PROJECT MANAGEMENT LLC requesting a Step 1 Planned Development Approval, a Step 2 Planned Development Approval, and a Special Management Area Use Permit for the proposed Renovations and Guestroom Expansion at the Grand Wailea Resort and Spa at 3850 Wailea Alanui Drive, TMK: 2-1-008: 109, Wailea, Island of Maui. Improvements include renovations to hotel public areas, cultural garden, and landscape improvements, expansion of pool activity areas, and 310 additional guest rooms housed in eight (8) extended and detached buildings throughout the hotel property. (PD1 2009/0002) (PD2 2009/0001) (SM1 2009/0006) (A. Cua) (Public hearing on SMA Use Permit was conducted on September 22, 2009.)

The Commission may take action on this request. If the intervention request is granted, the Commission may also choose to appoint a Hearings Officer and a Mediator.

2. MS. DANA NAONE HALL, Intervenor Pro Se submitting a Petition to Intervene on the applications by MR. WADE FISCHER, Vice-President of Resort Development, PYRAMID PROJECT MANAGEMENT LLC requesting a Step 1 Planned Development Approval, a Step 2 Planned Development Approval, and a Special Management Area Use Permit for the proposed Renovations and Guestroom Expansion at the Grand Wailea Resort and Spa at 3850 Wailea Alanui Drive, TMK: 2-1-008: 109, Wailea, Island of Maui. Improvements include renovations to hotel public areas, cultural garden, and landscape improvements, expansion of pool activity areas, and 310 additional guest rooms housed in eight (8) extended and detached buildings throughout the hotel property. (PD1 2009/0002) (PD2 2009/0001) (SM1 2009/0006) (A. Cua) (Public hearing on SMA Use Permit was conducted on September 22, 2009.)

The Commission may take action on this request. If the intervention request is granted, the Commission may also appoint a Hearings Officer and a Mediator.

#### E. COMMUNICATIONS

1. MR. FREDRICK HONIG, President of WELL BEING INTERNATIONAL, INC. SPIRIT OF ALOHA TEMPLE requesting reconsideration / Notice of Motion to Rescind by letter dated May 17, 2010 of the State Land Use Commission Special Use Permit March 23, 2010 denial action by the Maui Planning Commission to operate a non-denominational church on approximately 11 acres of land located in the State Agricultural District at 800 Haumana Road, TMK: 2-8-004: 032, Haiku, Island of Maui. (SUP2 2007/0009) (J. Prutch)

**\* An Executive Session may be called on this item in order for the Commission to consult with their attorney on questions and issues pertaining to the Commission's powers, duties, privileges, immunities, and liabilities.**

The Commission may take action on this request.

2. MS. JEANNE MCJANNET on behalf of MAALAEA BAY REALTY & RENTALS, LLC requesting an amendment to a Conditional Permit adopted by Ordinance No. 3203 for a 10-year time extension to continue to operate a transient vacation rental office in the A-2 Apartment District, Hono Kai Resort, Apartment A-9, 280 Hauoli Street, TMK: 3-8-014: 002, Maalaea, Island of Maui. (CP 2001/0010) (L. Callentine)

The Commission may take action on this request to make a recommendation to the Maui County Council.

3. MS. KARLYNN FUKUDA of MUNEKIYO & HIRAGA, INC. on behalf of TOWNE DEVELOPMENT OF HAWAII requesting an amendment to Special Management Area Use Permit Condition No. 2 for a 3-year time extension on the period to complete construction of the 144-unit Ke Alii Villas Condominium Project and related improvements on approximately 15.7 acres located at TMK: 3-9-020: 020, Kihei, Island of Maui. (SM1 2002/0023) (G. Flammer)

The Commission may take action on the request.

4. MR. MICH HIRANO of MUNEKIYO & HIRAGA, INC. on behalf of MR. RICK ARMOUR of KALAMA HILLS, LLC requesting an amendment to Special Management Area Use Permit Condition No. 1 for a 3-year time extension on period to initiate construction of the construction of the Kalama Hills Subdivision, a proposed 12-lot, single-family residential subdivision of an approximately 3.24 acre lot at 55 Auhana Road, TMK: 3-9-017: 023, Kihei, Island of Maui. (SM1 2005/0042) (C. Thackerson)

The Commission may take action on this request.

- F. ACCEPTANCE OF THE ACTION MINUTES OF THE SEPTEMBER 14, 2010 MEETING, MINUTES OF THE SITE INSPECTION OF SEPTEMBER 14, 2010 AND REGULAR MINUTES OF THE JULY 27, 2010 MEETING.

G. DIRECTOR'S REPORT

1. Notification of Transfer of Special Management Area Use Permit:

Transfer from LIPOA STREET PARTNERS, LLC, a California limited liability company to the CENTRAL PACIFIC BANK by letter dated September 8, 2010 of the Special Management Area Use Permit for the Pacific Plaza and related improvements at TMK: 3-9-002: 215, Kihei, Island of Maui. (SM1 2006/0041) (A. Benesovska)

The notification is pursuant to the Special Management Area Rules of the Maui Planning Commission.

2. 2011 Meeting Schedule

The Commission may act to adopt the 2011 meeting schedule.

3. Planning Commission Projects/Issues

4. Discussion of Future Maui Planning Commission Agendas

a. October 12, 2010 meeting agenda items

H. NEXT MEETING DATE: October 12, 2010

I. ADJOURNMENT

AGENDA ITEMS ARE SUBJECT TO CANCELLATION

ORAL OR WRITTEN TESTIMONY WILL BE RECEIVED ON EACH ANY AGENDA ITEM SUBJECT TO THE PROVISIONS OF CHAPTER 92, HAWAII REVISED STATUTES AND THE MAUI PLANNING COMMISSION RULES OF PRACTICE AND PROCEDURE. WRITTEN TESTIMONY SHOULD BE RECEIVED AT LEAST TWO BUSINESS DAYS BEFORE THE MEETING TO INSURE DISTRIBUTION TO THE BOARD. FIFTEEN (15) COPIES OF WRITTEN TESTIMONY ARE NEEDED IF TESTIMONY IS PRESENTED IMMEDIATELY PRIOR TO OR AT THE MEETING.

DOCUMENTS ARE ON FILE WITH THE PLANNING DEPARTMENT.

THE ADDRESS OF THE COMMISSION IS C/O THE MAUI PLANNING DEPARTMENT, 250 S. HIGH STREET, WAILUKU, MAUI, HAWAII 96793.

UNLESS OTHERWISE SPECIFIED BY ANOTHER SPECIFIC PLANNING COMMISSION RULE, ANY PETITION TO INTERVENE AS A FORMAL PARTY IN THE PROCEEDINGS BEFORE THE MAUI PLANNING COMMISSION MUST BE FILED WITH THE COMMISSION AND SERVED UPON THE APPLICANT NO LESS THAN TEN (10) DAYS BEFORE THE FIRST PUBLIC HEARING DATE. (Note: The calculation of time for deadlines ten days or less excludes weekends and State recognized holidays.) THE ADDRESS OF THE COMMISSION IS C/O THE MAUI PLANNING DEPARTMENT, 250 S. HIGH STREET, WAILUKU, MAUI, HAWAII 96793.

THOSE PERSONS REQUESTING SPECIAL ACCOMMODATIONS DUE TO DISABILITIES, PLEASE CALL THE MAUI PLANNING DEPARTMENT AT 270-7735 (Maui) OR 1-800-272-0117 (Molokai) OR 1- 800-272-0125 (Lanai) OR NOTIFY THE MAUI PLANNING DEPARTMENT IN WRITING AT 250 S HIGH STREET, WAILUKU, MAUI, HAWAII 96793 OR FAX NUMBER 270-7634; AT LEAST TWO (2) BUSINESS DAYS BEFORE THE SCHEDULED MEETING.

ANY FAXES SHOULD BE RECEIVED BY THE DEPARTMENT OF PLANNING BY 5:00 P.M. ON THE SECOND WORKING DAY BEFORE THE MEETING TO INSURE THAT IT IS CIRCULATED TO THE BOARD.

**PLEASE NOTE:** If any member of the Commission is unable to attend the scheduled meeting, please contact the Planning Department at least one day prior to the meeting date. Thank you for your cooperation. (S:\all\carolyn\092810.age)