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PLANNING COMMISSION

COUNTY OF MAUI

STATE OF HAWAII

REGULAR MEETING

Held at the Planning Department Conference Room, Kalana
Pakui Building, 250 South High Street, Wailuku, Maui,
Hawaii, commencing at 9:00 a.m., September 28, 2010.

REPORTED BY: Rachelle Primeaux CSR No. 370

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A P P E A R A N C E S

CHAIRMAN:

JONATHAN STARR

COMMISSIONERS:

KENT HIRANAGA
WARD MARDFIN
WARREN SHIBUYA
ORLANDO TAGORDA
JACK FREITAS
LORI SABLAS
PENNY WAKIDA

CORPORATION COUNSEL:

JAMES GIROUX

1 MAUI COUNTY PLANNING COMMISSION

2 TRANSCRIPT OF PROCEEDINGS

3 * * *

4 CHAIRMAN STARR: Good morning, everyone. Thank
5 you for joining us today. This is the Maui Planning
6 Commission meeting of September 28th. We have with us our
7 good Commissioners, Commissioner Kent Hiranaga, Commissioner
8 Jack Freitas, Commissioner Orlando Tagorda, Commissioner
9 Ward Mardfin. We have James Giroux, Counsel for the
10 Commission. I'm Jonathan Starr. I'm Chair.

11 We have Deputy Director Ann Cua, who is
12 representing the Planning Director. We have Commissioner
13 Warren Shibuya, Commissioner Lori Sablas, Commissioner Penny
14 Wakida. We have Carolyn Takayama-Corden, our Secretary of
15 the Commission, Mike Miyamoto, Deputy Director of the Public
16 Works representing Director of Public Works, who is
17 an ex officio member of the Commission. Planner Joe Prutch.
18 We have -- I saw Benny D'Enbeau, who works for Corp Counsel.
19 And I'm not sure who else here will be participating, but
20 everyone is welcome to join in.

21 Before we proceed with our agenda items, as is our
22 normal procedure, we're going to accept public testimony on
23 any agenda item. So, members of the public who wish to
24 speak on any item have an opportunity to either speak for a
25 short period of time now before the agenda items are started

1 with or when that item is called, but before decisionmaking.
2 We ask that testimony be kept as short as possible. Three
3 minutes or less is best. And people testify only once on
4 any agenda item.

5 With that, I believe we have some people who are
6 signing up to testify. And Joe, give me the first name.

7 MR. PRUTCH: Lani Stark.

8 CHAIRMAN STARR: Okay. The first testifier will
9 be Lani Stark. Please come up to the podium. Use the
10 microphone, and please introduce yourself. Welcome, and
11 thank you for joining us.

12 MS. STARK: Hi, thank you. My name is Lani Stark.
13 Good morning, everyone. I am here to testify on behalf of
14 Frederick Honig and his project that he has out in Haiku.
15 Basically, what I would like to do is just review his
16 project and to state for myself that I've been to his really
17 beautiful facility. And I really feel that the project that
18 he's doing really leans itself towards enriching the
19 community of Hawaii and the children, so it's a very
20 beautiful project that he has going.

21 And I just wanted to read something. And, of
22 course, this is addressing all the Chairpersons and
23 Commission Members. And this is the request for
24 reconsideration to the motion to rescind for a State Land
25 Use Commission, the special use permit that was applied for

1 by Mr. Honig for the Spirit of Aloha Temple at 800 Haumana
2 Road. The TMK is 2-8-004.

3 We, the undersigned, express our support and
4 request for the consideration and motion to rescind by
5 Mr. Frederick Honig related to the subject State U -- LUC
6 special use permit for the Spirit of Aloha Temple. We
7 sincerely feel that the Religious Land Use Institutionalized
8 Persons Act, also known as RLUIPA, must be given
9 consideration and request to conduct church and religious
10 activities. This federal law was established to protect
11 religious institutions from discrimination and exclusion or
12 imposition of substantial burden on the religious exercise
13 of a person, assembly or institution.

14 Mr. Honig has been an ordained minister for over
15 35 years and would like to conduct religious activities on
16 his property, which is also just a really beautiful
17 botanical gardens. It is our understanding that during the
18 March 23rd, 2010 hearing on Mr. Honig's request, the Maui
19 Planning Commission was not advised of the provisions of the
20 RLUIPA during its deliberations. Enclosing your favorable
21 action on this matter is respectfully requested.

22 And what we have here, and I think you have copies
23 of this, is -- and these are signatures not only from the
24 community, but also from people in his direct neighborhood
25 supporting this action. I would also like to take a minute

1 and read a letter by a fellow by the name of Mark Sheehan.
2 Now, Mark Sheehan was one of the fundamental persons in
3 formulating the foundation called Maui Tomorrow, which is,
4 you know, it's a well-known environmental organization here
5 on Maui.

6 Here it says -- it's addressing Mr. Jonathan
7 Starr.

8 COMMISSION SECRETARY: Three minutes.

9 MS. STARK: And it says, "Dear Mr. Starr. I have
10 known Mr. Honig for over 18 years and have been very
11 impressed with his beautiful botanical gardens that he's
12 created at his oceanfront property in Haiku. I know that
13 he's worked tirelessly to create a beautiful sanctuary that
14 inspires everyone who visits. I saw his property years ago
15 when it was just a complete overgrown jungle and have -- and
16 at that time, 14 acres of botanical gardens. And as well,
17 I'm sure it takes vision, time and dedication and
18 considerable financial resources to be able to create such
19 an incredible and inspiring location.

20 CHAIRMAN STARR: Please wrap up.

21 MS. STARK: Oh, I'm so sorry. Well, thank you so
22 much for your consideration.

23 CHAIRMAN STARR: Thank you very much.

24 MR. HONIG: You're not allowed to finish?

25 CHAIRMAN STARR: You're out of order, Mr. Honig.

1 Thank you very much. Members, any questions? Okay. Thank
2 you very much. Joe. Our next testifier will be, it looks
3 like Puanani Mahoe.

4 MS. MAHOE: Puanani Mahoe.

5 CHAIRMAN STARR: Mahoe. Welcome.

6 MS. MAHOE: Thank you. Anoi ke welina me kealoha
7 pakahi apau. Greetings. I am a kanaka maoli, native
8 Hawaiian kupuna wahine, woman elder as well as teacher and
9 healer of the tradition and wisdom of the culture of this
10 land. As a cultural practitioner of spirituality, my work
11 focuses on the spiritual balance within people and how it
12 affects their surrounding environment. It is important for
13 people to understand and appreciate the importance of
14 balance and respect to mind, body and spirit within their
15 environment.

16 Ua mau ke ae o ka aina I ka pono, the life of the
17 land is perpetuated in righteousness. And this means the
18 "right-use-ness" of the mind, body and spirit and following
19 along the lines of Ms. Lani Stark, the previous speaker. It
20 is also important to have a place to continue with this
21 preservation and perpetuation, cultivation and
22 sustainability of this ancient wisdom of balance. This
23 should be a place where people are given the opportunity to
24 learn and experience, live and practice, and in reality,
25 become living testimonies of the spirit of aloha.

1 Cultivating is foundation through the practice of
2 core values, and such a place does exist. The Spirit of
3 Aloha Oceanfront Botanical Gardens offers guidance in
4 humanity's quest to live in balance with nature, with the
5 environment. The gardens are dedicated to the oneness of
6 world religions, world values, exemplifying these values
7 that are foundation of the spirit of aloha.

8 And aloha is our kuleana here. They also are
9 dedicated to sustainable horticulture and plant-based
10 nutrition, share the science of health through classes and
11 forums on yoga, meditation, stress management and to offer
12 holistic, organic weddings and life skills that support the
13 long-term success of the couple's relationship and also of
14 family core. In truth, the Gardens are dedicated to
15 preserving life, of wildlife, nature as well as human kind.

16 In the garden of true fellowship and aloha, the
17 flowers bloom forever. Kaulana na pua, famous are the
18 flowers, famous are the children of this land. Na pua o
19 Hawaii nei. The flowers of Hawaii, the children of Hawaii,
20 the people and families of Hawaii. The Spirit of Aloha
21 Oceanfront Botanical Gardens are a family of gardens
22 symbolizing and supporting the vision of all humanity and
23 sentient beings to embrace aloha as a basis for our
24 personal, family, cultural, educational, financial and even
25 sovereign way of life.

1 A family has members, each with roles and
2 responsibility. They contribute to the wellbeing of the
3 whole. When a member leaves, there is a puka, hole, and the
4 ohana is missing a piece of the whole. The family is not
5 complete as it is missing one of its members.

6 The same principle applies to the gardens, which
7 is a nonprofit organization dedicated to working on the
8 cutting edge of the five critical areas stated earlier.
9 These specific areas are the mission statement of the Spirit
10 of Aloha Oceanfront Botanical Gardens. They each make up
11 the whole of the botanical gardens; therefore, your support
12 and approval of the Spirit of Aloha Oceanfront Botanical
13 Gardens to continue with the work to preserve, perpetuate,
14 cultivate and sustain in appropriateness the balance of this
15 wonderful culture, tradition and wisdom.

16 May we all remember to be aloha. Please be good
17 and kind to each other. Mahalo ke akua.

18 CHAIRMAN STARR: Mahalo. Please, you're out of
19 order. Please do not applaud testifiers.

20 Members, any questions for the testifier? And I
21 do request that you not applaud testifiers. Thank you.
22 Next will be Chris Meutzel followed by Mike Drescher.
23 Welcome.

24 MR. MEUTZEL: Aloha, good morning. I'm Chris
25 Meutzel. I'm an advocate for renewable energy. I'm here to

1 testify on the part of Frederick Honig's request for the
2 reconsideration of the special use permit for religious
3 purposes. I've known Frederick for over ten years and can
4 attest to his fabulous character.

5 He's an excellent steward of the land. He created
6 a beautiful botanical garden and farm that is a true
7 treasure to behold. And he promotes, and that's where my
8 interest comes in, a plant-based diet, which is a really
9 important solution for climate change. Without promotion of
10 a plant-based diet, our efforts of renewable energy are
11 pretty much for nothing. He keeps the oceanfront land
12 accessible to groups. I think that is very important.
13 We've seen, unfortunately, oceanfront land become privatized
14 and closed off in private estates.

15 This is one place where groups can come and
16 gather. And so, he let us use the land for our spiritual
17 gatherings as well. I can attest very much to his concern
18 for not disturbing the neighbors and to be a good neighbor
19 in the neighborhood. And I appear for you for
20 reconsideration of the special use permit. Thank you.

21 CHAIRMAN STARR: Okay. Thank you, Meutzel. Any
22 questions? Seeing none, Mike Drescher followed by
23 Mr. Charles Mosher. Please introduce yourself, and welcome.

24 MR. DRESCHER: Good morning, and thank you for the
25 welcome. I, too, am here to speak on behalf of Frederick

1 Honig's project in Haiku. A little bit about myself. My
2 name is Mike Drescher. I have a master's degree in
3 ecological design focused on the built environment. I'm
4 also an environmental educator and organic farmer. I have
5 visited Mr. Honig's site several times now, and it is an
6 incredible place. And he's done fabulous work in
7 eradicating invasive species and creating a place where
8 local flora and fauna can really thrive.

9 In addition to that, he's created a space that
10 truly is welcoming of all people of all backgrounds and a
11 space that honors of the spirit of aloha, the name in its
12 true sanctuary in that respect. I'm not going to take too
13 much more of your time. I just wanted to come here and
14 speak from my heart and also speak from my expertise. And I
15 believe this project should move forward in the way it's
16 intended. And it will serve the people, especially the
17 keiki, here for a long time to come. My role as an
18 ecological environmental educator in experiential settings
19 has taught me that this is a way to reach kids like nothing
20 else.

21 And kids that have an experience where they're
22 learning in nature about nature changes them. It makes them
23 better human beings, and I'm all in support of that. And I
24 believe this site is, too. Mahalo.

25 CHAIRMAN STARR: Okay. Thank you, Mr. Drescher.

1 Next testifier is Charles Moser, followed by Patsy Ziegler.

2 MR. MOSER: And I wish to testify later when the
3 item of the Ke Alii comes up.

4 CHAIRMAN STARR: That's fine.

5 MR. MOSER: Thank you.

6 CHAIRMAN STARR: Thank you, Mr. Moser. Pat
7 Ziegler followed by Precious Powell. Ms. Ziegler, do you
8 want to testify now or later.

9 MS. ZIEGLER: Later.

10 CHAIRMAN STARR: That's fine. Precious Powell
11 followed by Gary Wolk. And welcome. Please introduce
12 yourself properly. I tend to mangle people's names, so
13 excuse me.

14 MR. POWELL: Thank you, Mr. Chairman and other
15 Members of the Board. Yes, my name is Precious Powell. And
16 I share the art of Tai Chi Chuan, Chinese culture and
17 Chinese language in our community. I have had the pleasure
18 of being welcomed to Mr. Honig's Spirit of Aloha Oceanfront
19 Botanical Gardens a few times now. And when I went, I truly
20 felt welcomed. I was introduced and walked through the
21 gardens. I saw what a beautiful stewardship Mr. Honig has
22 done in growing fruit trees and creating beautiful spaces
23 for people to commune with nature in the way that this
24 culture has done for so many generations.

25 Also, devoting so much of his energy to creating

1 these beautiful gardens of fruit-bearing trees that he so
2 willingly shares with others the space. Also, that
3 Mr. Honig has communicated to me how he wishes to share it
4 with others, to host courses such as Tai Chi and yoga and to
5 welcome hula events and local cultural events to enjoy this
6 beautiful space that has been created for such events to
7 conveniently take place.

8 And I had the pleasure also this past week of
9 attending the 18th anniversary party or celebration of the
10 botanical gardens in which many people from the community
11 came to sing and dance and enjoy very healthy vegetarian
12 food and just have wonderful time together sharing songs,
13 dance and practices of cultures and religions from all over
14 the world. And so, it truly is a place for people to come
15 and meet and share their hearts and their spirits with one
16 another in peace.

17 And, therefore, I do hope that you will consider
18 granting this special permissions permit so that the grounds
19 can be used for such events in the future. Thank you.

20 CHAIRMAN STARR: Okay. Thank you very much,
21 Mr. Powell. Next testifier will be Gary Wolk. Is Gary Wolk
22 here? I'm not seeing Mr. Wolk. Is there anyone else? We
23 have another sign-in sheet.

24 Maury King. Mr. King, please step up to the mic
25 and introduce yourself properly, and welcome. Thanks for

1 coming today.

2 MR. KING: Hi, my name is name is Maury King, and
3 I, too, have had a chance to visit this property and get to
4 know Frederick a little bit. And I definitely feel his
5 heart and his care for this land. Enough people have spoken
6 about that. I just would like to read this letter into the
7 record from Bervar & Jones, attorneys in Honolulu, that have
8 been involved in this issue.

9 The letter is addressed to Clayton Yoshida. We'll
10 give you a copy afterwards. It's from Andrea Lowe, one of
11 the attorneys.

12 "Dear Mr. Yoshida. We have been instructed by
13 Frederick Honig to write to the County of Maui concerning
14 the above caption," which is the TMK number special use
15 permit. "Mr. Honig informs us that he has applied for a
16 special use permit for the purpose of performing weddings,
17 offering programs about living in harmony with nature, and
18 instructing on the use of plant-based foods at his licensed
19 botanical garden. He asserts that all botanical gardens in
20 the State of Hawaii allow weddings to be performed at their
21 sites and contends that he should not need a special use
22 permit to do so. He states that the botanical garden also
23 has the right to become a bona fide church, Spirit of Aloha
24 Temple, which is protected under the Religious Land Use and
25 Institutionalized Person's Act, RLUIPA.

1 Pursuant to RLUIPA, the government must show a
2 compelling interest, such as public safety, before denying a
3 permit to a religious institution. Mr. Honig requests that
4 the Department grant the special use permit forthwith."

5 Thank you for listening.

6 CHAIRMAN STARR: Mr. King, what's the date of that
7 letter?

8 MR. KING: January 14th of this year.

9 CHAIRMAN STARR: Okay. Thank you very much.
10 You'll be presenting copies of that?

11 MR. HONIG: They're already in there. They're in
12 the folder.

13 CHAIRMAN STARR: Okay. Thank you, Mr. King.

14 Any other members of the public who wish to give
15 testimony on any agenda item in this preliminary testimony
16 session, please make yourself known. Not seeing any,
17 testimony will be closed.

18 As mentioned before, there will be another
19 opportunity as each item comes before us. I pass it to
20 Ms. Ann Cua at this point to proceed with the Director's
21 report.

22 MS. CUA: Thank you, Mr. Chair, Members of the
23 Commission. You have before you the report on the SMA minor
24 permits, SMA exemptions and open assignments. And if you
25 have any questions that you would like answered by the end

1 of the meeting, if you could let us know at this point in
2 time. And we do also encourage you in future meetings, if
3 you know ahead of time, to let the Department know in
4 advance of the meeting so that we can be prepared, better
5 prepared for you at your meeting to get you whatever answers
6 you have or answers you need.

7 CHAIRMAN STARR: Okay. Members, are there any
8 items in our report that you would desire more information
9 from? Commissioner Mardfin.

10 COMMISSIONER MARDFIN: This isn't a big deal, and
11 I apologize for not getting to you earlier, but on the very
12 first sheet, the second one down, it says under "Decision,
13 Void-Null/Void." What happened? How does stuff like that
14 happen? Does the Applicant withdraw it, or is that a
15 departmental determination?

16 MS. CUA: Normally -- I can tell you normally. I
17 can't really tell you specifically. But normally, well, a
18 couple of things can happen. Either an applicant can
19 withdraw an application, although the decision would
20 normally be withdrawn. Void could mean that they either did
21 not need that permit or it became another permit, and so we
22 voided out a permit. It could mean a number of things. I
23 can check specifically what it meant for this permit, why it
24 was void.

25 CHAIRMAN STARR: That sounds like a sufficient

1 answer. Commissioner Wakida.

2 COMMISSIONER WAKIDA: I have two. One is on Page
3 3 of 9, SMX 473. I would like to know where that Luakini
4 Parking Lot is exactly on Luakini. And the second one is on
5 Page 5 of 9. It's just past the halfway. It's 119 are the
6 last three numbers.

7 West Maui Soroptomist on the Keiki Halloween
8 Parade Ending. I'm wondering what the holdup is on that,
9 why that hasn't been granted. We're getting close.

10 MS. CUA: We can get back to you on that.

11 CHAIRMAN STARR: We'll try to get information by
12 the end of the meeting.

13 MS. CUA: I believe we're waiting on something
14 from them, information from them. So, I will find out for
15 sure.

16 COMMISSIONER WAKIDA: Thank you.

17 CHAIRMAN STARR: Members, any others?
18 Commissioner Shibuya.

19 COMMISSIONER SHIBUYA: I have a couple, but I'm
20 bundling several into one. The question I have is I noticed
21 several of them are three-lot subdivisions and it starts off
22 with 201006, and that's Page 5 of 9, Betsill Brothers. The
23 other one is Page 8 of 9, Nacua Subdivision, 20100342. The
24 other one here is on Page 1 of 1, Lewis, Sky, 2010065.

25 CHAIRMAN STARR: I think that's on the minor

1 projects.

2 COMMISSIONER SHIBUYA: Yeah, minor. The question
3 I have is if you're subdividing into three lots, do you have
4 two more water meters, and where are they coming from? The
5 second question I have is the construction of the farm stand
6 in Haiku. I'm -- I want a little bit more information.

7 MS. CUA: Where is that, what page?

8 COMMISSIONER SHIBUYA: I didn't write down the
9 page. I can give you number 20100192. It's Farm
10 Stand/Haiku. Construction of Farm Stand.

11 COMMISSIONER MARDFIN: It's on Page 5 of 9.

12 COMMISSIONER WAKIDA: It's at the bottom of Page 5
13 of 9.

14 COMMISSIONER SHIBUYA: Thank you. And just was
15 curious to find out whether it's a safe highway access for
16 parking as well as accessing that location. Thank you.

17 CHAIRMAN STARR: Just to clarify on the first
18 query, you're asking about information on water meters for
19 all of the three-lot subdivisions, is that part of our
20 process, and is that something that we can even get
21 information on at this point?

22 MS. CUA: I'm not really sure if we would know
23 that at this point in time. We can check what was submitted
24 with the application and let you know.

25 COMMISSIONER SHIBUYA: Thank you.

1 CHAIRMAN STARR: Maybe that one we should get
2 later on.

3 MS. CUA: We'll see what we can -- we can get it,
4 because we have a bunch of stuff, so I would rather it come
5 in all at once.

6 MS. CALLENTINE: I just wanted to clarify,
7 Mr. Chair. This is Livit Callentine, Staff Planner. On the
8 Haiku Farm Stand, I think that is my project. It's in
9 process. What other information is it that you needed to
10 get? I'm sorry, I missed that part.

11 COMMISSIONER SHIBUYA: I just wanted to be sure
12 that there was public access, was safe and the parking was
13 adequate and safe also.

14 MS. CALLENTINE: Okay. Thank you.

15 COMMISSIONER SHIBUYA: Especially if you're going
16 to have it in Haiku. And I don't know whether it's along
17 very fast-moving traffic, Hana Highway, or within the very
18 narrow roads in the back areas.

19 MS. CALLENTINE: Thank you. Okay.

20 MS. CUA: We can get you some information. Just
21 something to keep in mind, with these open assignments, you
22 know, they may have not been analyzed yet by the planners.
23 The questions mostly -- your questions usually are, you
24 know, where is it. You know, that kind of information, we
25 can get that right away. If you're wanting like an analysis

1 at this point, that might be a little bit challenging
2 depending on if the planner has even opened it up yet, what
3 kind of information we have. So, we'll do the best we can.
4 Again, open assignments might be a little tough.

5 CHAIRMAN STARR: The fact that they're on these
6 sheets do not -- SMA open does not connote that any
7 entitlement has been granted, just that they're in process.

8 MS. CUA: Yes.

9 CHAIRMAN STARR: Okay. Commissioner Mardfin.

10 COMMISSIONER MARDFIN: I understand what you're
11 saying, and I agree. On the other hand, it is a chance if
12 we spot something early to let them know. There's one
13 that's on there, and I've previously talked to Clayton
14 Yoshida about, and I had asked about it earlier. He brought
15 me some information, and I let him know of some concerns
16 that could exist. And so, it was actually very good
17 interaction because he learned some stuff that would help
18 him in working the thing through.

19 So, I wouldn't discourage any commissioner from
20 looking at stuff that's in progress. Ask about it if you
21 can find some things, if you know something about it. Like
22 if you have concerns about the traffic, that's a perfect
23 time to let them know in advance, so the planner can pursue
24 the remedies with the folks, with the developer.

25 CHAIRMAN STARR: Thank you. Ms. Cua.

1 MS. CUA: I have a question on one of items that
2 Commissioner Shibuya just asked about it. I believe it was
3 you. And it was on Page 8 of 9, SMA 20100342, the Nacua
4 Subdivision, three lots.

5 COMMISSIONER SHIBUYA: Yes.

6 MS. CUA: What did you want to know about that?

7 COMMISSIONER SHIBUYA: Specifically and generally,
8 if they are subdividing, they generally have one water
9 meter. So, now you need two water meters, right, for each
10 of the lots. So, the question is why are you subdividing
11 when you cannot get two water meters, or did you get two
12 water meters, too? And then he comes out with a "how come"
13 question after that.

14 CHAIRMAN STARR: Okay. Thank you very much.
15 We'll get information on those. We are ready to proceed
16 with our -- Ms. Cua will introduce our first regular agenda
17 item. Ms. Cua.

18 MS. CUA: I'm going to really summarize, because
19 we're looking at just about four pages of information on
20 this matter. It's under Item C, Litigation. A Request by
21 the Office of the Corporation Counsel, County of Maui,
22 requesting consultation with the Maui Planning Commission as
23 to whether the Appellee/Defendant Maui Planning Commission
24 wishes to appeal the September 15th, 2010 Second Circuit
25 Court Decision and Order on Items A, B and C. And this is

1 basically dealing with Pyramid Project Management's
2 application for an SMA permit for the Grand Wailea and the
3 denial of the petitions to intervene that the Planning
4 Commission issued sometime ago.

5 All of the agency appeals related to the denial of
6 the intervention by the Appellants/Plaintiffs and the
7 issuance of approvals for the following applications and the
8 subsequent permits, and the permits have been listed. The
9 deadline for filing an appeal of the Second Circuit Court's
10 decision is 30 days from the entry of the final judgment.

11 The Commission may confer with its attorneys in
12 deciding whether or not to appeal the Second Circuit Court
13 decision. The Commission may decide to appeal the decision
14 of the Second Circuit Court, and an Executive Session may be
15 called in this matter. And depending on what happens in
16 this matter on the Commission's decision to appeal or not,
17 we may go on to unfinished business. With that, I would
18 like to introduce I guess Madelyn D'Enbeau from the County.

19 CHAIRMAN STARR: Before we proceed, the entire
20 item as per our agenda will be added into the record of this
21 meeting. Commissioner Mardfin.

22 COMMISSIONER MARDFIN: Let me understand what the
23 agenda is. We're dealing with Item C, Item C; is that
24 correct?

25 MS. CUA: Correct.

1 COMMISSIONER MARDFIN: Not B?

2 MS. CUA: Correct, at this point, Item C.

3 CHAIRMAN STARR: Item C. I'm going to ask
4 Ms. D'Enbeau, who is a member of the Corporation Counsel
5 team, to give us an explanation and a bit of background on
6 that. I'll also provide an opportunity for Mr. Hall to give
7 a comment. Ms. D'Enbeau, please.

8 MS. D'ENBEAU: Yes, good morning. I'm Madelyn
9 D'Enbeau. I represented the Commission and the members that
10 were named personally, not as individuals, but just their
11 names as Commissioners in this appeal. And briefly what
12 happened is that several of -- three different groups of
13 people were denied intervention in the Grand Wailea
14 expansion. And those people appealed, as they have the
15 right to do, of course, the decision of the Commission
16 denying them intervention.

17 They appealed that to the Second Circuit Court,
18 and they appealed as well the granting of the SMA permit and
19 the other permits that went along with it that were granted
20 after intervention was denied. So, this all has to do with
21 the Grand Wailea expansion project. We went through the
22 Court proceedings, filed our briefs. The judge made his
23 decision. The findings of fact, conclusions of law,
24 decision and order were entered on September 15th, and you
25 should have a copy of that.

1 It's quite a lengthy document, 24 pages, I
2 believe. So, that document you have with you. And
3 basically, what that document is is first the findings of
4 fact that the judge decided these were the facts that he
5 would find were correct and applicable. And then his
6 conclusions of law, meaning what those facts mean in terms
7 of applying the law. And then for your purposes, the
8 decision and order is just brief. It's the last page.

9 And my role here today is not to advise you or
10 discuss with you what you want to do on this ordered remand,
11 which will be discussed later in the agenda. It's just to
12 discuss with you whether or not you want to appeal the --
13 you have the right to appeal the judge's decision to the
14 Intermediate Court of Appeals. And the reason we asked this
15 be put on the agenda forthwith is that it's a little
16 confusing, and I know the Chair had asked me this question.

17 The final judgment is a separate piece of paper
18 that has not yet been entered, but it doesn't change
19 anything. The reason that the Court now requires a final
20 judgment is there was a lot of litigation and dispute over
21 the years about, okay, you have 30 days to appeal. This is
22 just sort of technical legal talk, but 30 days to appeal.
23 But 30 days starting when? So, there was different
24 discussions. Is it when the judge announces his decision?

25 So, the Court finally said, look, we want a piece

1 of paper called Final Judgment. And when that's entered,
2 that's when your 30 days start to run. But it doesn't
3 change any of the information or any of the facts. It just
4 informs the Appellate Courts what decision has been made and
5 that's the final date. So, your decision on whether you
6 want to appeal really doesn't have any -- that final
7 judgment doesn't have any bearing. It just tells our office
8 when we have to file the appeal if you decide to do it.

9 So, any discussion about whether or not you should
10 appeal, I believe, should be in the Executive Session,
11 because that would be legal advice, the questions that you
12 might answer. But if you have any questions about what you
13 read, just generally speaking what all of this means, I
14 could -- if it's something that doesn't involve legal
15 advice, I could perhaps discuss it.

16 CHAIRMAN STARR: Okay. We'll start with
17 Commissioner Mardfin.

18 COMMISSIONER MARDFIN: I just want to make sure I
19 understand what you said. We did get this 24-page document,
20 which is findings of fact, conclusions of law and decision
21 and order. Is that what you refer to as a final?

22 MS. D'ENBEAU: No. The final judgment will be --

23 COMMISSIONER MARDFIN: After appeals?

24 MS. D'ENBEAU: No, I'm sorry.

25 COMMISSIONER MARDFIN: I'm sorry, I shouldn't cut

1 you off.

2 MS. D'ENBEAU: This is the judge's final word on
3 what he decided in his order. Final judgment itself is a
4 document that just tells the Appellate Court this is how
5 everything was disposed of. And in a simpler case, it would
6 just be judgment was for the Plaintiffs or something like
7 that. But in this case, we have a bunch of different
8 Plaintiffs and a bunch of different counsels. So, it would
9 be a little bit longer document. It doesn't change any of
10 the factual information.

11 And there's a court case that says the only
12 purpose of the final judgment is to tell you when the clock
13 starts running.

14 COMMISSIONER MARDFIN: And that hasn't been issued
15 yet?

16 MS. D'ENBEAU: That hasn't been issued. What
17 happens just for the process so you know is Mr. Hall is the
18 prevailing party, the one who won, drafted his form of final
19 judgment. And because it was kind of a complex case, then
20 the other parties looked at it and said, I don't think you
21 should put that here, I think you should have this part over
22 here and so forth. And so, we're in that stage. I
23 understand we're pretty close to having it ready to submit
24 to the Court with everyone's agreement.

25 If there wasn't agreement among the attorneys on

1 how this final judgment should look, then the Court would
2 just decide. The Court would look at Mr. Hall's and decide
3 if that was okay and look at what people's objections were
4 and incorporate that. I don't think that will happen. I
5 think we're close enough we'll probably get a final
6 judgment.

7 But, as I said, all that will do is tell us when
8 the clock starts running.

9 COMMISSIONER MARDFIN: So, the clock hasn't
10 started running yet?

11 MS. D'ENBEAU: The clock has not started running
12 yet.

13 COMMISSIONER MARDFIN: So, today in Item C, we're
14 to decide whether or not we think we should appeal in
15 Executive Session?

16 MS. D'ENBEAU: Right, yes.

17 COMMISSIONER MARDFIN: Are you aware of the
18 additional item we got today from Isaac Hall?

19 MS. D'ENBEAU: I am aware of it, and I have --
20 basically that doesn't relate to my job here today. I'm
21 just asking you to look at this 25-page document and decide,
22 you know, we'll discuss it and decide if you want to appeal.

23 COMMISSIONER MARDFIN: And that's fine, because my
24 reading of this says he's only objecting to Item D, not Item
25 C, so we can proceed with discussing whether to appeal or

1 not?

2 MS. D'ENBEAU: Yes. And your Chair has said he
3 wanted to give Mr. Hall an opportunity to respond to what I
4 have to say, and he may have. But I'm sure he can address
5 that question as well. That's my understanding that he
6 doesn't object to us discussing whether to appeal or not,
7 discussing whether to proceed further.

8 CHAIRMAN STARR: I just want to make a
9 clarification. Any action we take will not be done in
10 Executive Session. But if we want information pertaining to
11 it, then it would be wise to go into Executive Session where
12 I'm sure that our counsel has some wisdom to relate to us,
13 and then we would go out of Executive Session. And then we
14 would act in open session. We do not actually have action
15 in Executive Session.

16 MS. D'ENBEAU: Thank you for that.

17 CHAIRMAN STARR: Anything else, Ms. D'Enbeau?

18 MS. D'ENBEAU: No.

19 CHAIRMAN STARR: Members, any other questions at
20 this time? Okay.

21 Mr. Hall, you want to make some comments? If so,
22 please introduce yourself. The podium is yours.

23 MR. HALL: Good morning, Chairperson Starr and
24 Members of the Maui Planning Commission. My name is Isaac
25 Hall, and I represent the Intervenors. There were three

1 sets of Intervenors, Wailea Beach Villas Intervenors, the
2 Hoolei Intervenors and Dana Naone Hall. During the course
3 of the appeal, the Wailea Beach Villas Intervenors withdrew
4 their appeal, so we're only dealing with two.

5 Judge August ruled that the denial of intervention
6 of right was an error of law, so that the Intervenors had a
7 right to intervene. He ruled the denial of permissive
8 intervention was an abuse of the Commission's discretion.
9 And so, they had a right of permissive intervention, and he
10 voided all the permits that are listed there because it was
11 based on flawed procedures.

12 If you choose to appeal, no contested case can go
13 forward. The whole case goes up on appeal. The only way a
14 contested case can go forward is if you don't appeal. And I
15 don't agree with what -- well, I don't totally disagree with
16 what Madelyn said about the effect of a final judgment. The
17 final judgment has to get entered for an additional purpose,
18 and that is for you even to have jurisdiction. The
19 Commission doesn't reacquire jurisdiction until the final
20 judgment is entered. So, I -- I was going to testify as a
21 public member, but I might as well say it now.

22 I don't think the Commission can go on to Item D
23 until the final judgment is entered. I don't think you can
24 take public testimony on this matter. I don't think you can
25 decide whether to grant the petitions to intervene. I don't

1 think you can appoint a hearing officer. I don't think you
2 can appoint a mediator until that final judgment gets
3 entered. I cited those cases. I think the cases are really
4 clear on that matter. That's all I would like to say.

5 CHAIRMAN STARR: Okay. Thank you very much. Any
6 questions for Mr. Hall? Thank you. Also, I'm going to give
7 an opportunity to Blaine Kobayashi to address the
8 Commission. And Mr. Kobayashi, please introduce yourself,
9 and explain your own involvement.

10 MR. KOBAYASHI: Thank you. Blaine Kobayashi on
11 behalf of Pyramid Project Management. By letter dated
12 September 20, 2010 to the Commission, as to Agenda Item C
13 for today, we have already informed the Commission of our
14 intent to not appeal Judge August's decision. My
15 understanding is we're only talking about Item C right now,
16 so that's our position. If the Commission decides to take
17 up matters concerning Item D, I would like to be heard at
18 that time.

19 CHAIRMAN STARR: Okay. Thank you very much. We
20 are only dealing with Item C at this time. Commissioner
21 Shibuya.

22 COMMISSIONER SHIBUYA: As a personal note, I just
23 would like to extend our congratulations to Attorney Blaine
24 Kobayashi for his appointment to judgeship.

25 MR. KOBAYASHI: Thank you.

1 CHAIRMAN STARR: Okay. Thank you. Members, we --
2 yeah, I want to ask Mr. Giroux to help enlighten us as to
3 our options at this point.

4 MR. GIROUX: Right now, we're only taking up the
5 item of whether or not you want to respond to Benny's
6 request of what do you feel about the issue of appealing
7 this order. And again, you've heard that there hasn't been
8 a final order. So, it's basically just a communication
9 between this Board and their litigation attorney as far as
10 -- because the client's right is always to make that final
11 decision. It's kind of like your case.

12 So, it's -- the attorneys are asking you what's
13 your feeling, and then we can adjust, you know, any
14 information or any -- you know, we can tell you where we're
15 coming from, and then you tell us where you're coming from.
16 Because ultimately, we need to be on the same page. You
17 know, you're our client, and we're asking you what's your
18 feelings and what do you feel would be gained from an
19 appeal. And basically, that's the give and take that should
20 be going on during this portion. And if you want to do that
21 in Executive Session, you can just ask it for and get a vote
22 to go into Executive Session.

23 CHAIRMAN STARR: So, if there is a desire to
24 discuss this with our attorney, then this will be a good
25 time to have a motion to go into Executive Session for the

1 specific reason of consulting with our attorneys on this
2 legal matter. Commissioner Mardfin.

3 COMMISSIONER MARDFIN: I move that we go into
4 Executive Session for the specific purpose of discussing
5 this item with our attorney.

6 COMMISSIONER SHIBUYA: Second.

7 COMMISSIONER MARDFIN: Attorneys, excuse me,
8 plural.

9 CHAIRMAN STARR: So, we have a motion by
10 Commissioner Mardfin. Seconded by Commissioner Shibuya.
11 The motion is to?

12 MS. CUA: To go into Executive Session to discuss
13 this matter with your attorneys.

14 MR. GIROUX: And also, I just want to caution
15 everybody when we go into Executive Session, this will be
16 the only thing we're going to be talking about. Nothing
17 substantive of, you know, anything, any other case or
18 anything outside of whether or not we're -- you know, what
19 information you need to decide whether you want to appeal or
20 not.

21 CHAIRMAN STARR: And I would also like to add if
22 we do go into Executive Session, I would like to request
23 Ms. Cua join us along with Mr. Giroux, Ms. Benny D'Enbeau
24 and Ms. Carolyn Takayama-Corden. Is that it? And that
25 would be the group that would join us. Members, ready to

1 vote?

2 All in favor, please raise your hand.

3 All opposed.

4 MS. CUA: Unanimous approval.

5 CHAIRMAN STARR: Okay. I would ask the
6 forbearance of members of the public to wait outside.

7

8 (Executive Session 9:54 a.m. to 11:02 a.m.)

9

10 **REGULAR MEETING RESUMES**

11

12 CHAIRMAN STARR: Maui Planning Commission meeting
13 September 28th, 2010, back in session. We're proceeding
14 with Item C on our agenda. We've had a rather lengthy
15 Executive Session. We're out of Executive Session back in
16 regular session.

17 Commissioners, does anyone have any action they
18 would like to undertake? Commissioner Mardfin.

19 COMMISSIONER MARDFIN: At this time, I move that
20 we vote not to appeal the decision of the judge.

21 COMMISSIONER FREITAS: Second.

22 CHAIRMAN STARR: So, we have a motion by
23 Commissioner Mardfin. Seconded by Commissioner Freitas.
24 That motion is to?

25 MS. CUA: Not to appeal the Court's decision.

1 CHAIRMAN STARR: Any discussion? All in favor,
2 please raise your hand. All opposed.

3 MS. CUA: Motion passes unanimously.

4 CHAIRMAN STARR: Thank you. We will move on to
5 Item D. Please introduce Item D before we proceed.

6 MS. CUA: Item D is unfinished business. The
7 Commission at this point in time could decide to take up the
8 following matters based on the Second Circuit Court's
9 remanding of the applications. The first is Isaac Hall,
10 Attorney for the clients listed, submitting a Petition to
11 Intervene dated September 8, 2009 on the applications by
12 Wade Fisher of Resort Development Pyramid Project
13 Management, LLC requesting a Step 1 Planned Development
14 Approval, Step 2 Planned Development Approval and a Special
15 Management Area Use Permit for proposed renovations and
16 guest room expansion at the Grand Wailea Resort and Spa.

17 CHAIRMAN STARR: Okay.

18 MS. CUA: And the second item, the request by Dana
19 Hall as well.

20 CHAIRMAN STARR: Okay. And the entire wording for
21 our agenda shall be entered into the record.

22 MS. CUA: Yes.

23 CHAIRMAN STARR: So, we don't need to read that.
24 Before we proceed further, I'll allow Ms. D'Enbeau to speak
25 on this. I'll also give an opportunity to Mr. Hall and

1 Mr. Kobayashi. It has been suggested to us that deferral
2 may be a proper course in this. Ms. D'Enbeau, please
3 introduce yourself.

4 MS. D'ENBEAU: Madelyn D'Enbeau, Deputy
5 Corporation Counsel. Yes, in terms of the next item on your
6 agenda in keeping with the judge's decision and order
7 entered on September 15th where he has remanded the matter
8 to the Maui Planning Commission and states, "Upon remand,
9 the Maui Planning Commission is instructed and ordered to
10 reconsider the Petition to Intervene filed by the Ho'olei
11 Appellants and also by Appellant Plaintiff Dana Naone Hall
12 in light of the findings, conclusions and considerations set
13 out herein."

14 In view of that order, it would be appropriate in
15 my view and in the case for the Commission at this point to
16 follow the judge's instruction and to reconsider the motions
17 to intervene.

18 CHAIRMAN STARR: Okay. Ms. D'Enbeau, in your
19 opinion, is there any reason for us to not move forward?

20 MS. D'ENBEAU: No.

21 CHAIRMAN STARR: Thank you. Mr. Hall.

22 MR. HALL: Good morning, Chairperson Starr,
23 Members of the Maui Planning Commission. As far as Item D
24 goes, this Commission does not have jurisdiction yet to hear
25 this matter. According to the case law established in

1 Hawaii Korean Buddhist Dae Won Sa Temple of Hawaii versus
2 Concerned Citizens of Palolo, State versus Ortiz and
3 McCarthy versus Jaress, jurisdiction of the Maui Planning
4 Commission is not reacquired, does not return to the Maui
5 Planning Commission until the judgment on appeal is filed or
6 entered.

7 And the judgment on appeal has not been entered.
8 So, I didn't object to conferring with your attorney over
9 whether you're going to appeal. That, in my view, is not
10 affected by that. But as far as taking up the petitions to
11 intervene and actually taking action or taking public
12 testimony or deciding on a hearing officer or deciding on a
13 mediator, that's actually acts by which you take
14 jurisdiction over this matter again. And you don't have
15 jurisdiction yet until that final judgment is entered.

16 And I think everybody, all of us agree it hasn't
17 been entered yet. So, I think deferral is the proper course
18 of action to take at this point in time. And I would
19 request that you do that. Thank you.

20 CHAIRMAN STARR: Mr. Hall.

21 MR. HALL: Yes.

22 CHAIRMAN STARR: Is your sole reason because we
23 are premature regarding the issuance of the final order, or
24 there are other issues?

25 MR. HALL: No, no. It's solely based on the fact

1 that the final judgment has not been entered yet.
2 Jurisdiction is still in the Circuit Court. It has not yet
3 passed back to the Planning Commission, so there's no
4 jurisdiction of this matter in the Planning Commission at
5 this time. That's my sole basis.

6 CHAIRMAN STARR: Thank you. Mr. Kobayashi.

7 MR. KOBAYASHI: Thank you, Chair Starr. Blaine
8 Kobayashi on behalf of Pyramid Project Management. While I
9 do not necessarily wholeheartedly agree with Mr. Hall's
10 assertion that the Commission doesn't have jurisdiction to
11 act at this time, my more immediate concern is the
12 statements he made in his letter concerning his desire to
13 submit initial documents in support of his request for
14 intervention, and also, I guess Dana Hall's opportunity to
15 also address this Commission.

16 I think in light of those facts and in light of
17 the fact, as I understand, the Planning Department still
18 hasn't received a full list of potential mediators and
19 hearings officers, I think the more prudent thing to do at
20 this time would be to defer action of this item.

21 CHAIRMAN STARR: Thank you, Mr. Kobayashi.
22 Ms. Cua has a comment, and then Mr. Giroux has a comment as
23 well.

24 MS. CUA: Yes. Expanding on what Mr. Kobayashi
25 has indicated, I did speak with both Mr. Kobayashi and

1 Mr. Hall and informed them that, you know, once we had found
2 out about the Court's ruling and the matter being scheduled
3 on this agenda and the possibility that this Commission
4 could be deciding whether or not to grant intervention at
5 this meeting, we had what we would normally do in any other
6 case where you are considering petitions to intervene. And
7 that is come before you with a list of potential mediators
8 and hearing officers for your consideration for that case.

9 And what we do in advance of even coming here is
10 when we get a completed list, we discuss it with both
11 attorneys, and they come forward with their recommendation
12 to you. What happened in this particular case is we
13 contacted by e-mail, and some by phone as well, eight
14 different attorneys giving them the facts of the case and
15 requesting a response back from them if they would be able
16 to serve as a mediator and/or hearing officer. We received
17 word back from five of the attorneys, two saying they were
18 able to serve, three saying they were not. And we are still
19 waiting for three additional attorneys.

20 So, basically, we only have names of two attorneys
21 that we would be able to give you on a list, and that is not
22 considered a complete list for the Department. We try to
23 have four names to give both parties and you as well. So,
24 as of yesterday afternoon again, we only did have two names,
25 so we do not feel we have a completed list for your

1 consideration today, which would support the deferral of
2 this matter.

3 CHAIRMAN STARR: Mr. Giroux.

4 MR. GIROUX: I would support the deferral just to
5 make matters cleaner. The issue of appeal even though we
6 did vote about it today, you know, it's basically a
7 communication to our attorney to let them know where we're
8 at. But once we get that final order, I don't think that we
9 would have any problem just proceeding and knowing there's
10 not going to be anymore legal wrangling, more appeals
11 because of that decision in and of itself. So, there's no
12 pressing matter that -- we can't get a hearings officer
13 anyway at this point, so we might as well take the more
14 cautious road, and I would support the deferral, too.

15 CHAIRMAN STARR: Commissioner Mardfin.

16 COMMISSIONER MARDFIN: I'm going to make a motion,
17 but I want to preface it. Without addressing the issue of
18 whether or not we have jurisdiction, but with consideration
19 to the fact that this memo from Isaac Hall suggests that
20 they want to have further pleadings, and even more
21 importantly, with the scheduling conflicts that they outline
22 in this letter, as well as the fact that we don't have a
23 full body of people to select from, I move that we defer
24 this item to a future meeting.

25 CHAIRMAN STARR: Is there a second?

1 COMMISSIONER SHIBUYA: Second.

2 CHAIRMAN STARR: And I would take that to mean
3 that it will be to the call of the Chair, and the Chair will
4 endeavor to put it on the first agenda that we can after the
5 paperwork is all in order.

6 COMMISSIONER MARDFIN: That's acceptable to the
7 maker of the motion.

8 CHAIRMAN STARR: So, we have a motion and a
9 second. Ms. Cua, what's the motion?

10 MS. CUA: To defer action on this matter to a
11 future meeting subject to the call of the Chair once the
12 final judgment is received.

13 MR. GIROUX: And Chair, I would just like to make
14 it clear that, you know, for the Department, that the -- the
15 decision and order that we have, it does frame it in the --
16 in the framework of a remand and a reconsideration. So,
17 that's very important, because, you know, the issue of how
18 extensive the hearing is going to be, if it's -- if it's
19 framed as a reconsideration, then we also have to look at
20 our Robert's Rules of Order as far as I think the next item
21 that we have on the agenda is, you know, similar where
22 there's going to have to be a certain amount of notice for
23 the actions that are going to be taken.

24 CHAIRMAN STARR: So, in other words, we may have
25 to set -- our action may have to be to set a time at a date

1 certain to hold that, not to hold it on the spot?

2 MR. GIROUX: Right, because all parties would have
3 to have adequate notice, and also the board should have
4 adequate notice of what that action is.

5 CHAIRMAN STARR: Do members understand what is
6 being said? I would like to make sure that this is very
7 clear in hand by our presentation at that point both from
8 staff and from counsel on what we're -- what we're able to
9 do. So, we have a motion on the floor to defer. All in
10 favor, please raise a hand. All opposed.

11 MS. CUA: Motion passes unanimously.

12 CHAIRMAN STARR: Okay. I thank everyone for your
13 patience and diligence with this. And congratulations,
14 Mr. Kobayashi.

15 Okay. We now ask deputy extraordinary Ann Cua to
16 present our next item.

17 MS. CUA: Next Item E under communications, Number
18 1 is a request by Mr. Frederick Honig, President of
19 Wellbeing International, Inc. Spirit of Aloha Temple
20 requesting of reconsideration/Notice of Motion to Rescind by
21 letter dated May 17th, 2010 of the State Land Use Commission
22 Special Use Permit March 23rd, 2010 denial action by the
23 Maui Planning Commission to operate a nondenominational
24 church on approximately 11 acres of land located in the
25 State Agricultural District at 800 Haumana Road, TMK 2-8-4,

1 Parcel 32. And the staff planner is Joe Prutch.

2 CHAIRMAN STARR: Mr. Prutch, please give us some
3 background.

4 MR. PRUTCH: Good morning. Sure, I will. Good
5 morning, Chair, Commissioners. Some background on this.
6 This special use permit application originally came in 2007
7 for a church, religious activities, commercial weddings and
8 a heliport. That project came before you on March 23rd,
9 2010. And at that meeting, the Commission -- the end
10 result, the Commission voted to deny the special use permit
11 application by a vote of five to three.

12 Commissioners Wakida and Freitas were not here for
13 that meeting but they've been brought up to speed, and they
14 got the reports and everything a couple weeks back. There
15 were various reasons for denial. They're listed in your
16 staff report. I'll kind of summarize essentially. One of
17 them was that a heliport on ag land is not a permitted use.
18 The second one is there were many structures unpermitted, no
19 building permits for those.

20 Third was that it was not in compliance with the
21 goals, objectives and policies of the Paia-Haiku Community
22 Plan. Number 4, it was not in compliance with 205-6,
23 Special Permits of Hawaii Revised Statutes. Number 5, that
24 it was contrary to the objectives of Chapter 205 and 205(a)
25 HRS. Number 6, that it would adversely affect surrounding

1 properties. And Number 7, the County ag district is not
2 intended for these types of commercial purposes.

3 Since that time, the Applicant submitted a
4 petition on May 17th, a petition for reconsideration based
5 on two things. The main reason was because of the Religious
6 Land Use and Institutionalized Person's Act of 2000, a
7 federal law Congress passed. And the second, because the
8 Applicant has since amended his application for a special
9 use permit for church religious activities and removing the
10 commercialized weddings and the heliport. The RLUIPA law,
11 as it's known as, are I guess they have federal laws adopted
12 by Congress in 2000.

13 I included the RLUIPA laws in your staff report,
14 so it's all there. But in summary, I'll just state what the
15 general rule of the RLUIPA laws are. It says that no
16 government shall impose or implement a land use regulation
17 in a manner that imposes a substantial burden on the
18 religious exercise of a person unless the government
19 demonstrates that imposition of the burden on that person,
20 family or institution is in further -- is two things; in
21 furtherance of compelling governmental interests, and is the
22 least restrictive means of furthering that compelling
23 governmental interest.

24 And the rest of the RLUIPA laws are in there in
25 your report. I'm not going to go over all the rules there.

1 Our analysis, our Planning Department analysis is because
2 this information was not provided to the Commission back in
3 March, staff believed that the Applicant should be afforded
4 a reconsideration of the application for church uses. This
5 would involve a rescinding of the previous special use
6 permit back in March, the denial.

7 CHAIRMAN STARR: Rescinding of the denial, not the
8 special use permit.

9 MR. PRUTCH: Rescinding of the denial of the
10 special use permit at a meeting to be determined. If you
11 guys make a motion, we suggested December 14th, time for
12 proper noticing. And then at that time, if -- at the next
13 meeting if we get to the next meeting in December, at that
14 meeting, the motion to rescind will be brought up. A second
15 will be made. If it's made, there would be discussion, and
16 then the Commission would vote to either approve that
17 rescinding, thus removing the denial, or they can agree and
18 say, no, we're not going to rescind that denial. The denial
19 stands.

20 And then determine -- that determines at that
21 point if you guys do rescind the previous denial, then we
22 would have immediately after that a hearing on a revised
23 special use permit for church and religious activities only.
24 And, of course, at that time, I would have a staff report
25 and presentation for you at that moment. So, staff's

1 recommending that the Commission, that at least one
2 Commissioner make this main motion as stated in your staff
3 report simply giving notice that at the December 14th
4 Planning Commission meeting, you will make a motion to
5 rescind the denial of special use permit 2007-9.

6 And then at that meeting, that can be brought up,
7 seconded, and then discussion can occur. And you guys can
8 act on that at that time. So, today we are looking simply
9 for someone to give notice they will make this motion on
10 December 14th. And I'm sure James can discuss anymore legal
11 issues.

12 CHAIRMAN STARR: Since James got the thicker
13 version of Robert's, not the thin one like the rest of us,
14 but I'm going to ask him to explain, explain the proper
15 procedure that we would follow in this.

16 MR. GIROUX: Joe's got it correct. Today you
17 would basically be hearing, you know, what's on the agenda
18 as far as a reason to be relooking or rethinking your prior
19 decision. If at today's hearing, there's enough information
20 for at least one person to want to reconsider or want to
21 rescind the prior decision, they would have to give notice
22 today about a date certain. And what that does, it gives
23 notice to the board that that activity will happen in the
24 future.

25 And also, it will give the Department time to

1 actually send out the proper notices as if this were a new
2 permit. So, the public would also be notified accordingly
3 as far as any activity regarding this permit.

4 CHAIRMAN STARR: Thank you. And I will be
5 allowing the Petitioner to present, but I will be asking him
6 to limit the presentation today. Mr. Prutch.

7 MR. PRUTCH: And also, I'm sorry, one other thing.
8 I wanted to say that obviously I think there was six public
9 testimony this morning in support that you heard. I
10 received two letters this morning in opposition to this
11 rescinding this motion to be made by two neighbors that
12 couldn't be here today, but those copies were given to you.
13 And the Applicant also submitted a packet to you, I believe,
14 that had I believe one or two support letters in the packet
15 as well.

16 So, I just wanted to throw that out there. And
17 the Applicant and the Applicant's representative John Min
18 are both here to either speak or respond to questions.

19 CHAIRMAN STARR: Mr. Min, are you -- will you be
20 representing the Applicant today, or will he be speaking on
21 his own behalf?

22 MR. MIN: I'll be representing him, but there may
23 be items where he would like to discuss directly with the
24 Commission.

25 CHAIRMAN STARR: Before you proceed, do you have a

1 Power Point, is that what I'm seeing?

2 MR. MIN: No.

3 CHAIRMAN STARR: And how long will you wish to
4 take for your presentation?

5 MR. MIN: I can be very brief.

6 CHAIRMAN STARR: Approximately.

7 MR. MIN: Five minutes.

8 CHAIRMAN STARR: That's fine. You can have more
9 than that. And Mr. Honig, how long will you want to take?

10 MR. HONIG: It depends on what he says. Five
11 minutes.

12 CHAIRMAN STARR: So, okay. That is certainly
13 quite fine. So, you have five minutes and five minutes for
14 Mr. Honig. You can have an additional five minutes or
15 either one of you, so 15 minutes total is certainly within
16 the balance. Mr. Min, please introduce yourself, and
17 welcome.

18 MR. MIN: Thank you. Thank you, Mr. Chairman and
19 Members of the Commission. My name is John Min, and I'm
20 here as really a friend of Mr. Honig. I've known him for
21 close to three years. And when his request was heard back
22 in March, after the -- after the hearing that went sideways
23 on him, he called me and asked if I could help him.

24 And so, I'm here really helping him on a voluntary
25 basis pro bono, because I happen to think what he's doing is

1 a good thing. Again, as Joe indicated, the request before
2 you today is a motion for reconsideration and a motion to
3 rescind the action taken on March 23rd. That second motion
4 will be acted on at a future meeting. All we're asking for
5 is reconsideration based upon a federal law, which was not
6 discussed with the Commission back in March when your
7 decision was made. It's a very important law. It does
8 protect churches from discrimination and the imposition of
9 substantial burdens on churches.

10 And this is our primary reason for coming before
11 you and asking for these motions. I would like to make one
12 correction to the staff report. In the Page 2, the
13 petition, the second paragraph points out that the request
14 has been amended to exclude religious and commercial
15 weddings. We will not be doing commercial weddings;
16 however, Mr. Honig has been an ordained minister for 33
17 years, and we would like to be able to conduct weddings
18 under the auspices of the church and religious activities.
19 We've discussed this previously with staff. How we define
20 this, we'll be prepared to do that at the time of a future
21 meeting when we provide more information to you on specific
22 issues that we've been addressing and how we've been scoping
23 this project to eliminate some of the concerns that have
24 been raised. The commercial -- the heliport is definitely
25 out of the picture. We're going to take that out.

1 But again, I just wanted to make that correction
2 that we're not totally excluding the weddings. And Members
3 of the Commission, that's all I have to say at this time. I
4 hope that you'll favorably consider the motions that are
5 being recommended, and that at a future date, we can address
6 the various concerns that were raised back in March. But we
7 have been working to address them, and we'll be prepared at
8 that time to present additional information to you.

9 CHAIRMAN STARR: Okay. Thank you very much,
10 Mr. Min. Mr. Honig, and then we'll take questions. Please
11 introduce yourself. Welcome.

12 MR. HONIG: I am Frederick Honig. And I am a
13 licensed minister in the State of Hawaii. Thank you so
14 much. And I'm grateful for the opportunity to be with you
15 here again today. I've lived for 20 years as a monk in a
16 yoga center. I'm a student of one of the greatest yoga
17 masters in the world today. The reason why yoga is so
18 predominant in the world today is because of my teacher and
19 his teacher, who lived in India, who is Swami Chetananda.
20 They were the greatest and most respected of yoga teachers.
21 My teacher has won many U.N. awards. And if you would take
22 the time to look at our website, you can find more about who
23 we are.

24 We are -- in the ashram we had, we had constructed
25 a shrine dedicated to Old World Religions, Light of Truth

1 Universal Shrine. We had countless gatherings of great
2 world religious leaders, who came together who focused the
3 commonality of their -- of their religions rather than their
4 differences. And when all spiritual masters come together,
5 they will all agree on 12 universal core values upon which
6 our church was founded. We are certified in 2007 as a
7 church.

8 Before that, we were certified as Wellbeing
9 International, which is an educational organization. We
10 founded the church in 2007. We were approved by the IRS for
11 that, and we are a certified church. And I am the minister
12 of that church. We have probably, I would say, a core of
13 about 50 people who regularly participate in activities that
14 we've had. We celebrated our 18th year anniversary just a
15 few -- a couple of days ago with a wonderful celebration
16 with at least 50 or 60 people.

17 We promote the universal core values that have
18 been approved by the United Nations. There are 12 universal
19 core values that are approved by UNESCO, and they have
20 translated into 60 languages. And everywhere they're
21 taught, there's enormous benefit. And a lot of the problems
22 in the world today we believe could be dealt with if people
23 would focus on core values rather than the differences in
24 religious. So, we are a church. And we, you know, want --
25 we did, you know, file in January with the Commission and

1 with Jeff Hunt, we sent e-mails to all the people asking
2 that they do honor the RLUIPA right.

3 I think that letter is in your little packet that
4 I gave to you today. And it was sent to Jeff Hunt and to
5 all the different members of the Planning. Why that didn't
6 come up at the March 23rd meeting, I do not know. Because
7 I've never gone through one of these before, and I might
8 have been unprepared. And I would like, I would be grateful
9 to all of you if you would please clarify for me whether I
10 should have a group of people here for the December 14th
11 wedding -- meeting that we're having here as well as the
12 next one. Because I don't want to waste your time. But I
13 can bring as many people here as necessary to convince you
14 of the sincerity of our organization.

15 And, you know, we are also -- you know, are very
16 strict with our bookkeeping. I am not making any money from
17 this organization. I have not taken a salary from this
18 organization. I am dedicated to seeing this project
19 through. And it is one of the most amazing botanical
20 gardens in the State of Hawaii. And it's just -- we're only
21 18 years. Eighteen years from now, it will be even greater.
22 And we are focusing on our mission, which you have in your
23 packet here, too, of promoting a vegan diet, which helps for
24 sustainability. And we are focusing on, we're going to be
25 putting hydroponic food facilities, and so, we will be an

1 educational center teaching people how to grow food in the
2 most efficient format.

3 We are one of the few properties on Maui that is
4 certified by the National Wildlife Federation. We have made
5 significant improvements in getting rid of mosquitoes and
6 mongooses and other invasive plants so that we are one of
7 the best bird sanctuaries on the island. We have never
8 caused any disturbance to our neighbors. We only allow
9 people to come by appointment only. We limit the number to
10 usually 40, 50 people. We don't have large groups. We
11 never allow people to get drunk on our property. If any
12 champagne or something is served, it's always well within
13 the legal limits, whether they're driving or not driving.

14 We are dedicated to living in harmony with nature.
15 And the gardens are, again, we have one garden for each
16 world religion. And each garden is limited to one of the
17 universal core values. So, when we give tours, we talk
18 about the oneness of religions. We talk about how Abraham,
19 the Garden of the Waterfall that's dedicated to love, is the
20 founder of Judaism, Christianity and Islam. So, we are --
21 all the people who are fighting have the same teacher, and
22 we try to teach what Abraham was teaching about universal
23 love.

24 And the gardens are also dedicated to helping
25 couples in this very difficult age where more than 50

1 percent of Americans get divorced in the long-term success
2 of their marriage. And we offer programs for counseling for
3 how -- for strategic planning for couples and for conflict
4 resolution and for communication skills and intimacy skills.
5 And we offer support to couples to stay together even after
6 they've been married. And in the years that we have been
7 practicing, you know, doing any services, about 75 or 80
8 percent of the people we followed up are still married,
9 which is almost double the wellbeing of other couples on the
10 average.

11 So, I am very grateful to take any questions about
12 the gardens. And I'm very grateful for the opportunity to
13 continue to be able to serve with this property, and it's my
14 hope that this will last well beyond my lifetime. This
15 property will be perpetually kept as a botanical garden, and
16 I believe with like Auntie Pua and other great beings like
17 that, we can have programs there and help the spirit of
18 aloha to thrive on this island. And also --

19 CHAIRMAN STARR: Thank you.

20 MR. HONIG: If I could just mention one little,
21 small thing. We have historic taro walls that are really
22 some of the best preserved taro walls on Maui. We've
23 already completed our archeological inventory. It cost us
24 almost \$10,000. And the archeologist has said that we are
25 doing a remarkable job in helping to preserve the

1 archeological gifts that we have on the land.

2 CHAIRMAN STARR: Okay. Thank you very much,
3 Mr. Honig. Members, any questions either for Mr. Prutch,
4 Mr. Min or Mr. Honig? Commissioner Mardfin.

5 COMMISSIONER MARDFIN: Hi, Mr. Honig. You said
6 you had never gotten any complaints. Have you seen this
7 letter by Mr. Knowlton?

8 MR. HONIG: Well, let me say something about
9 Mr. Knowlton. Mr. Knowlton has complained about every
10 single person, you know, who has ever been around. And even
11 when I got this land 18 years ago, all the neighbors told me
12 to be careful of him. The things that he says are so
13 deceptive. What he said --

14 CHAIRMAN STARR: I really don't want any language
15 demeaning anyone, please.

16 MR. HONIG: He does not live on Haumana Road,
17 Mr. -- I said nobody on Haumana Road. He lives on Holokai
18 Road, and he cannot even see our property from his property.

19 COMMISSIONER MARDFIN: Thank you. You had made a
20 statement. I was just trying to verify something.

21 MR. HONIG: Right. Because I could say, like for
22 instance, in this statement, he says we dumped soil over the
23 hill. It was because of his complaint, I believe, that we
24 had to have the Department of Land and Natural Resources
25 close down the trail.

1 COMMISSIONER MARDFIN: Thank you. You answered my
2 question. Your statement was that nobody had complained.

3 MR. HONIG: Who lived on Haumana Road.

4 CHAIRMAN STARR: Thank you very much.

5 Commissioner Hiranaga.

6 COMMISSIONER HIRANAGA: Actually, this is a
7 question to the Chair. I just wanted to clarify the purpose
8 of this agenda item is not to go over the merits of the
9 special use permit, but to review the request to rescind the
10 previous decision. I just wanted clarification.

11 CHAIRMAN STARR: Yes. And possibly to put it
12 on -- make it an agenda item in the future.

13 COMMISSIONER HIRANAGA: Okay. Thank you.

14 CHAIRMAN STARR: Commissioner Shibuya.

15 COMMISSIONER SHIBUYA: I just wanted to ask is
16 there a way we can validate a religious belief or sect or
17 group; there's nothing?

18 CHAIRMAN STARR: Mr. Giroux will answer this
19 question.

20 MR. GIROUX: Under RLUIPA, that's not really the
21 question. There's no certification. There's no, you know,
22 that's not really one of the questions under RLUIPA. So, if
23 they're asserting it, then you have to do the analysis. One
24 of the, you know, as far as you look at the history of
25 RLUIPA, that's one of the things is that when there's

1 denominationalism or there's fringe activity, they don't
2 want the municipalities to start labelling and picking and
3 choosing.

4 It should be an evenhanded review of the permit,
5 not based on any choice of religion.

6 COMMISSIONER SHIBUYA: In terms of restrictions,
7 if there are some municipal types of codes or ordinances to
8 protect the public or private property or however, if this
9 religion has some practices or has some infringements on it,
10 is that grounds to change it or have conditions to change?

11 MR. GIROUX: I think if we were going to
12 reconsider it, we could probably go further into, you know,
13 the analysis. But I think what he's saying is we didn't do
14 any analysis, so that's where we're kind of at a loss.

15 CHAIRMAN STARR: Okay. Commissioner Mardfin.

16 COMMISSIONER MARDFIN: I'm ready to --

17 CHAIRMAN STARR: We're not quite ready for a
18 motion yet.

19 COMMISSIONER MARDFIN: Sorry.

20 CHAIRMAN STARR: Commissioner Wakida.

21 COMMISSIONER WAKIDA: And Mr. Honig, I'm new on
22 the Commission. And but I have read -- no, that's okay, you
23 can stay where you are. But I have read through all the
24 documents and the past testimony to sort of bring myself up
25 to speed I hope as best I can. But my question I guess is

1 to counsel or to Ann and in regards to RLUIPA.

2 In my understanding of why this was denied at the
3 previous meeting, nothing about religious grounds came up.
4 It was on all sorts of other things, so I appreciate that we
5 hadn't -- the Commission hadn't been apprised of this
6 federal law, but it doesn't seem that it -- if they had or
7 hadn't, it would have impacted the list of decisions that
8 this Commission made at that time. Am I correct?

9 MS. CUA: I think what our attorney is saying,
10 what the Department is saying is we just need to make that
11 analysis. We need to make the analysis in its totality
12 including RLUIPA and see where we come out at the end of the
13 day.

14 MR. GIROUX: Yeah, the -- and I think from our
15 prior case where the judge reviewed our order and said,
16 well, you didn't discuss this and didn't discuss that,
17 that's what we're trying to make sure that these discussions
18 are on the record, and they're really focused on the
19 analysis the judicial system is looking at. So, you know,
20 to have somebody reviewing the case have to guess what our
21 analysis was is what we're trying to eliminate.

22 COMMISSIONER WAKIDA: I understand.

23 CHAIRMAN STARR: Before we entertain any motion, I
24 would like to see if there are any members of the public
25 that wish to give testimony on this. Yes, please. Welcome.

1 Introduce yourself.

2 MR. RAPACZ: Thank you, Mr. Chair. John Rapacz.
3 And I'm not in any way speaking about the merits of the
4 application. It's just a procedural issue in question in
5 the procedure with the rescinding. And I would just ask
6 that Corp Counsel look into and possibly advise you on the
7 impacts of a motion to rescind, and if possible, in any way
8 to place restrictions or limitations or to advise on those
9 in terms of when it can be done.

10 In this staff report, there are no such
11 restrictions, and I'm not saying it's inappropriate in this
12 case. This sounds like a good candidate for it. But in the
13 cases where, for example, an application has been granted,
14 there needs to be some finality so that the Applicant can
15 proceed knowing that there will be no turning back. So, we
16 wouldn't want to, for example, see a SMA permit or some
17 other application granted and then the Applicant moves
18 forward with the project. And then a year later or two
19 years later, someone on the Commission decides that they
20 want to take another look at it. So, in terms of
21 proceeding, moving forward with this procedure, I think it
22 would be beneficial to the Commission, but also to the
23 general public, to other applicants, et cetera, to
24 understand what the limitations would be on using this
25 particular procedure.

1 CHAIRMAN STARR: Mr. Rapacz, I just want to ask
2 you to go a little further in expressing your own -- your
3 own feelings. And I do this knowing that you've served as
4 Deputy Corporation Counsel for quite a few years, and a
5 number of the commissions were under your guidance. So, in
6 your own thinking, would you give us an example of how this
7 limitation might be expressed?

8 MR. RAPACZ: I would hope that you would look at
9 the circumstances in which it's being requested. In this
10 circumstance, if the Commission were to feel that the record
11 was somehow deficient and they needed to correct that
12 deficiency, that might be an appropriate case. That even in
13 a case like that, it raises questions in my mind about
14 notice to those who may have opposed. And if it's clear on
15 the record that there was opposition, it may be appropriate
16 to notify those persons about additional activity or actions
17 on the permit coming up.

18 And I'm not saying that as a hard and fast rule,
19 but just some issue that arises for me. I would be more
20 than concerned about this in cases where an application has
21 been granted, but at that point generally, an applicant will
22 move forward. They will invest time and money in proceeding
23 on a project, and I think that they need to be able to do
24 that comfortably and with certainty that the approval will
25 not be reconsidered or be reversed after a particular time

1 frame.

2 If the Commission were to do that, then the
3 Commission would have to look at probably what the Applicant
4 would have spent up to that point, how they invested based
5 on the approval if the Commission was then going to consider
6 rescinding that approval. In other words, the Applicant --
7 the Applicant's rights to proceed may have vested. They may
8 have acted on those rights and spent substantially in that
9 kind of action. So, I can't give you a hard and fast rule
10 of any kind. It's more a matter of considering the
11 specifics of a particular situation and how the Applicant or
12 other parties might be affected if the Commission were to
13 rescind or consider rescinding.

14 And again, I do think that this type of situation
15 where there's a possible defect or something was neglected
16 to be included, that would seem like the time of situation
17 where it would be appropriate.

18 CHAIRMAN STARR: Thank you, Mr. Rapacz.

19 COMMISSIONER MARDFIN: I agree with you. When you
20 deny something, it's easier to reconsider than if you've
21 granted something. But suppose we had granted something,
22 and then we found some black letter federal law that we
23 hadn't been aware of that was under the Department of
24 Interior, and it was black letter law. They could not do
25 what we had granted them permission to do. Would it be

1 appropriate then to reconsider?

2 MR. RAPACZ: More so, yes. In some cases, it
3 would be. Because ultimately, your granting of the approval
4 would have been void. In other words, it was not properly
5 done. Even though you went through the procedures and made
6 your decision, if there was some law strictly prohibiting
7 it, it couldn't be valid from the beginning.

8 COMMISSIONER MARDFIN: Thank you.

9 CHAIRMAN STARR: Commissioner Shibuya.

10 COMMISSIONER SHIBUYA: What comes to mind is the
11 approval of Montana Beach lime kiln properties and then all
12 of the sudden, the takings of it, and I think that's what
13 you're trying to avoid.

14 MR. RAPACZ: Yes, avoid that. But even more from
15 the -- from the Applicant's end, to be able to proceed
16 without worrying about whether that might happen in the
17 future. In other words, it's to achieve finality and to be
18 able to move forward from that point without worrying about
19 the possibility of this occurring.

20 COMMISSIONER SHIBUYA: And, of course, when
21 agencies review applications for development, they purchase
22 the property, and all of the sudden, they put in a request
23 to build in an area that may be like Mala Wharf or where
24 there's storm drainage, you know, we know about inundations.
25 But the agency doesn't bring this up and allows the permit

1 to proceed. This is what you're talking about, I believe,
2 right? If we are not aware of this, how do we make
3 ourselves immune to this?

4 MR. RAPACZ: Well, I think it's going to be an
5 unusual case where you are not aware of a law that strictly
6 prohibits something. That's going to be unusual. In other
7 cases, depending on what type of use or what type of permit
8 or process, the example you give, let's say there's an SMA
9 permit granted for a particular use of property. The
10 Applicant would then have to go through other processes,
11 building permits, for example.

12 COMMISSIONER SHIBUYA: Yes.

13 MR. RAPACZ: So, ordinarily, there are more checks
14 beyond the initial overall use permit where these issues
15 could be resolved in the building permit process without
16 necessarily stepping back and reconsidering the SMA process.
17 So, it's hard to answer in the abstract. It would really
18 depend on the particular situation and the process.

19 COMMISSIONER SHIBUYA: I appreciate you
20 responding, and I'm throwing these questions out not to
21 stump you, but to clear it in my mind. And I really
22 appreciate you bringing this topic up and helping me keep it
23 clearer in my mind.

24 MR. RAPACZ: Sure. Thank you.

25 COMMISSIONER SHIBUYA: And I hope I can remember

1 it at the appropriate time.

2 CHAIRMAN STARR: Thank you very much, Mr. Rapacz.

3 Any other members of the public wishing to give
4 testimony on this? Seeing none, public testimony is closed.
5 Commissioner Mardfin, if you would like a motion at this
6 point.

7 CHAIRMAN STARR: Please.

8 COMMISSIONER MARDFIN: I would like some
9 discussion of this before we vote on it. But I am hereby
10 giving notice at the December 14th, 2010 meeting of the Maui
11 Planning Commission, I will move to rescind the denial
12 decision of Land Use Commission Special Use Permit Number
13 SUP2 2007/0009.

14 CHAIRMAN STARR: Do we have a second before we --
15 we don't need a second. That notice is sufficient. But
16 Commissioner Mardfin in particular, I believe, has said that
17 he would like some discussion on this, so anyone want to
18 chime in? Commissioner Mardfin, go.

19 COMMISSIONER MARDFIN: Rescinding doesn't
20 necessarily mean approval. It just means that we move to
21 rescind, and then we consider other options at that point.
22 I would like to just let the Applicant know that at whatever
23 meeting we do deal with this again, it would behoove him to
24 do a bunch of things, provide -- there were a lot of
25 questions that were raised last time. There were a couple

1 of us who wanted to defer this rather than to end it.

2 I think a lot of those questions need to be
3 addressed when it comes back before us; in particular, that
4 have to do with TVR's, helicopters, seminars and retreats,
5 burial sites, Maui Island Burial Council. And since it was
6 raised today, that in testimony by the Applicant that there
7 were financials and they were up to date, I think it would
8 behoove them to provide financials like 990's and other
9 sorts of things documenting the financial situation. That's
10 my personal view of what would be desirable.

11 CHAIRMAN STARR: Commissioner Wakida.

12 COMMISSIONER WAKIDA: And I would like to add to
13 that list, which is already pretty extensive, and that is to
14 get up to date on permits or an explanation of why you're
15 not and any outstanding fines or warnings and what the
16 status is on all of those.

17 CHAIRMAN STARR: Commissioner Hiranaga.

18 COMMISSIONER HIRANAGA: Just getting ahead a
19 little bit, when this request to rescind is brought before
20 us and it's denied, if it's denied, the Applicant has the
21 right to appeal to the Circuit Court, is that his option?

22 CHAIRMAN STARR: Mr. Giroux.

23 MR. GIROUX: Yeah, that would be the option.

24 COMMISSIONER HIRANAGA: Just to clarify, I think
25 at this point, I will be voting against the request to

1 rescind because to me, this addresses --

2 CHAIRMAN STARR: Commissioner Hiranaga, I want ask
3 to you hold off on that before we --

4 MR. GIROUX: We don't want to disqualify you from
5 future discussion, Kent.

6 COMMISSIONER HIRANAGA: So, this motion, or is it
7 just a notice that's from --

8 CHAIRMAN STARR: It's just a notification. It
9 allows it to be put on the agenda and the public to be
10 notified.

11 COMMISSIONER HIRANAGA: In recommendation to the
12 main motion, so it's not really a main motion, it's a
13 notice?

14 MR. GIROUX: Yes, just a notice. What will happen
15 is that the noticed hearing date, at that time, if any
16 action is going to be taken, it's going to be done by
17 motion.

18 CHAIRMAN STARR: And does it require a vote today?

19 MR. GIROUX: No, not today.

20 CHAIRMAN STARR: Okay. Thank you. Commissioner
21 Mardfin.

22 COMMISSIONER MARDFIN: I would ask also that the
23 Planning Department, there were issues raised about
24 notification. And because there was a discussion that there
25 be expanded notification to everybody along the road, and I

1 would hope that could be done, not just within a certain
2 geographic area. The plots of land were very large.

3 MS. CUA: Well, if we're looking at a meeting in
4 December, it would -- as we understand, it would be a public
5 hearing that would have to be noticed. But the notice is as
6 legally required by whatever permit they're getting. And
7 so, for a special use permit, I believe it's adjoining --
8 it's not 500 feet. It's not people within 500 feet.

9 MR. PRUTCH: If I can, Ann. I think what we were
10 going to do in this case is we were going to, obviously for
11 the special use permit, adjacent parcels and those across
12 the street, so we will notify those four or five neighbors
13 as the special use permit requires. But we were also going
14 to be on the cautious side and send notice to anybody that
15 provided testimony on the project today or on March 23rd.

16 CHAIRMAN STARR: I want to ask, I would assume,
17 Mr. Min, will you be helping to do the noticing and so on?
18 Why don't you come to the microphone. And if so, could you
19 explain what the parameters will be? And I think the
20 Commission is saying that they would like those parameters
21 to be generous so that no one feels left out.

22 MR. MIN: Yeah, we'll be doing notice as, required
23 as Ann mentioned, the notification for immediate adjacent
24 property owners. We've also discussed notifying persons who
25 testified at the hearing back in March. We'll also be

1 doing, of course, a newspaper notice. And that was what we
2 had intended to do.

3 CHAIRMAN STARR: Could you do everyone on that
4 road? Mr. Min, do you require a recess?

5 MR. MIN: Yes, please.

6 CHAIRMAN STARR: We're going to take our lunch
7 break. We will come back at 5 minutes after one, and
8 Commissioner Hiranaga will have the first opportunity to
9 speak.

10 (Lunch recess 12:05 p.m. to 1:08 p.m.)

11 CHAIRMAN STARR: Okay. Good afternoon, everyone.
12 Hope everyone had a pleasant break. This is September 28th,
13 2010. We're in the Maui Planning Commission meeting
14 preceding after our lunch break. The item before us is Item
15 E(1) on a communication from Mr. Frederick Honig. We have a
16 I'll say a motion for notice, or notice.

17 COMMISSIONER MARDFIN: I have given you
18 notification that I intend to make a motion.

19 CHAIRMAN STARR: A notice of motion we'll call it,
20 not the other way around. And we're in discussion on that
21 notification. We had stopped with Mr. Hiranaga with his
22 hand up in the air and a question having been put to Mr. Min
23 regarding notification and a humble request that people on
24 that road be notified.

25 MR. MIN: Yes. Mr. Chairman, as far as

1 notification, my client would prefer that we follow the
2 legal notification as required and do it in that manner.
3 Secondly, we would suggest as part of this, that the
4 Commission do a site inspection. And as you know, all of
5 your site inspections are put on the agenda, and they are
6 open to the public to attend, and my client is comfortable
7 with doing that.

8 CHAIRMAN STARR: Okay. We will look into the
9 feasibility of doing the site inspection. I'm sure that if
10 it's doable, we would like to. Members. Commissioner
11 Hiranaga, you had the floor anyway, so proceed.

12 COMMISSIONER HIRANAGA: Yeah. I just wanted to
13 comment that before we put the cart before the horse, we
14 start making suggestions regarding this possible
15 reexamination of the SUP, and, in fact, it hasn't been
16 granted yet. So, I think it's premature to start making
17 comments about the application, because it hasn't been
18 granted this rescission.

19 And I just did want to comment that I protest this
20 process. I think it's very unusual. I think it sets a bad
21 precedence. The Commission made a decision. They should
22 live by it, and if the Applicant is unhappy about it, there
23 are other legal remedies besides this process, which I think
24 will open a Pandora's box as public testimony was provided
25 regarding some past experiences. So, that is just my

1 comments.

2 CHAIRMAN STARR: Okay. So noted. And thank you
3 for stating that. Members, any other questions, comments?
4 Commissioner Shibuya.

5 COMMISSIONER SHIBUYA: Along that same line as
6 Commissioner Hiranaga, the Applicant has the opportunity to
7 resubmit, and so, if they do resubmit, then that's not
8 really a rescission or a change that he can come in with a
9 proposed new plan, if you will.

10 CHAIRMAN STARR: Okay. Any other comments or
11 questions? It's my understanding that no action is further
12 required on this. Mr. Prutch.

13 MR. PRUTCH: Yeah, as you get to the end here, I
14 just wanted to make sure that I think Mr. Mardfin had
15 brought this up, and I want to make sure the Applicant, make
16 sure that they heard it, and I might actually put it -- I
17 will probably put it in a letter to the Applicant stating
18 what it is you would like them to address at the December
19 14th hearing. So, I kind of want to reiterate some of that
20 to make sure I got it, or maybe there were some things I
21 left out. And it went by fast.

22 You wanted him to, the Applicant, to respond to
23 questions from the March 23rd meeting, which may have
24 included TVR's, the heliport, seminars, retreats, burial
25 sites and Burial Council, financial documents affiliated

1 with the church. I'm not sure if I got that correct.

2 COMMISSIONER MARDFIN: That wasn't in our minutes,
3 but it got raised today when the Applicant spoke to us.

4 MR. PRUTCH: Like church documentation,
5 verification of church?

6 COMMISSIONER MARDFIN: Well, a nonprofit submits a
7 IRS Form 990. They should be submitting general excise tax
8 data of all the taxes any organization that does.

9 MR. PRUTCH: Building permits and any fines or
10 warnings associated with that.

11 CHAIRMAN STARR: I just would like a little
12 clarification first. I mean all we've done in terms of
13 action is one of the Commissioners said that he intends to
14 make a motion, which would set -- if that motion gets
15 accepted and passes, it would set a process in motion at
16 that point. So, and I agree with Commissioner Hiranaga, we
17 should certainly not get ahead of ourselves.

18 So, you know, at that time, won't be -- we won't
19 be following a process, but we're looking ahead to if and
20 when possibly doing that in the future, and perhaps we are
21 getting ahead of ourselves with the listing -- listing what
22 documentation we want to see. Commissioner Mardfin.

23 COMMISSIONER MARDFIN: The reason I was trying to
24 give the Applicant a heads-up is a motion to rescind does
25 not necessarily pass. And if I thought there were still

1 outstanding building permit issues, I would maybe vote
2 against the motion to rescind.

3 CHAIRMAN STARR: Commissioner Hiranaga.

4 COMMISSIONER HIRANAGA: Just to clarify, maybe
5 Corporation Counsel or Planning Department can respond, but
6 the justification provided by staff for this reconsideration
7 is because they feel that we are violating federal law.
8 It's not a matter of permits or intended uses or
9 notification. It is that they're -- they're concerned that
10 we may be violating federal law, this RLUIPA law. That's
11 the justification for reconsideration, my understanding.

12 CHAIRMAN STARR: Yeah, the focus probably should
13 be narrower. Mr. Giroux.

14 MR. GIROUX: I think as far as process goes,
15 you've got to look at this as baby steps. As far as our
16 rules, we don't have anything in the rules that talks about
17 reconsideration or rescinding or anything. So, what we're
18 trying to do is make sure we at least follow a basic
19 semblance of due process. And that means it's fair for the
20 Board and it's fair for the public, and it's fair for the
21 application. So, the first thing we have to dispose of is
22 whether or not the Board wants to look at a possibility of
23 rescinding.

24 And that's where I think Member Hiranaga is
25 looking at why -- what is our basis for putting on notice to

1 rescind, right? And as far as that goes, the Board has been
2 put on notice that there may possibly have been some
3 analysis that's missing from your decisionmaking process.
4 This would be an opportunity for you to look at the law and
5 look at the facts and put them together, so that on the
6 record, it can be very clear that you did the analysis
7 required by law to do.

8 So, if that helps get past that hurdle, then if
9 you go into the rescission part of your decision, then you
10 can start looking at whether or not you're going to be, you
11 know, rescinding your decision to not grant a permit or to
12 grant a modification of that permit. So, it's the Board's
13 opportunity to make sure that the cart is not before the
14 horse and that all of your ducks are in order, and you can
15 dot your I's, cross your T's. But it does not necessarily
16 mean that you have to overturn your decision.

17 CHAIRMAN STARR: Okay. Let's not get any further
18 ahead of ourselves. Let's leave it at that. Is that
19 acceptable? Okay. Thank you very much. And thank you for
20 offering to open your place up for us if we want. Ms. Cua.
21 We'll move on to the next item.

22 MS. CUA: Item 2 -- Item 2 under Communications is
23 a request by Jeanne McJannet on behalf of Maalaea Bay
24 Rentals and Rentals -- excuse me, Maalaea Bay Realty and
25 Rentals, LLC requesting an amendment to a conditional permit

1 adopted by Ordinance No. 3203 for a ten-year time extension
2 to continue to operate a transient vacation rental office in
3 the A-2 Apartment D, Hono Kai Resort, Apartment A-9, 280
4 Hauoli Street, TMK: 3-3-014, Parcel 2, in Maalaea. And the
5 staff planner is Livit Callentine.

6 MS. CALLENTINE: Aloha, Commissioners. It's been
7 a while since I've seen you. As our Deputy Director just
8 announced, we're going to be looking at reviewing a request
9 for a time extension of an existing conditional permit to
10 use an apartment for transient vacation rental at the Hono
11 Kai Resort. A conditional permit and your recommendation to
12 County Council is required, because the parcel on which the
13 project is located is zoned A-2, and a vacation rental
14 office is not a permitted use according to Maui County Code.

15 Extensions of conditional permits shall be made
16 and approved in the same manner as the original application;
17 i.e., they will be approved by ordinance by County Council.
18 Section 1940.090 of the Code also provides that if the
19 administration determines that there has been no substantial
20 change in factors surrounding the original application, no
21 public hearing need be held. The Hono Kai Resort was
22 constructed in 1972, and it consists of four buildings
23 containing 46 units.

24 One unit, the subject of this request, houses the
25 vacation rental office. Twenty-six units are in the

1 vacation rental pool, and the remaining 19 are for
2 predominantly owner occupied or pending sale or foreclosure.
3 The initial conditional permit was granted by ordinance in
4 2002 for five years. In 2004, Council amended the permit
5 terms due to a change in business ownership, and the term
6 was extended for another five years. The current request is
7 for ten years.

8 Ms. Jeanne McJannet, the Applicant, is in the
9 audience today. Both she and I are available to address
10 your questions after which time I will provide the
11 Department's analysis, and following your discussion, the
12 Department's recommendation. Thank you.

13 CHAIRMAN STARR: Ms. Callentine, is there any
14 presentation on this further?

15 MS. CALLENTINE: No, there is not.

16 CHAIRMAN STARR: Members, so anyone with
17 questions, now would be a good time for Ms. Callentine or
18 for the Applicant who is here. Commissioner Mardfin.

19 COMMISSIONER MARDFIN: This is very manini, but on
20 Page 7 of your analysis.

21 MS. CALLENTINE: Yes.

22 COMMISSIONER MARDFIN: Condition 7.

23 MS. CALLENTINE: Yes.

24 COMMISSIONER MARDFIN: That Maalaea Bay Realty and
25 Rentals LLC shall provide a one-hour separation between

1 units. What does that mean?

2 MS. CALLENTINE: This was a recommendation on the
3 part of the Fire Department back in -- when the project was
4 first reviewed. So, Exhibit 11 of your report, further on
5 in there, there's a letter from the Department of Fire
6 Control dated March 18th, 2002. And at this time, they
7 stated that a one-hour wall was required.

8 COMMISSIONER MARDFIN: What does a one-hour wall
9 mean?

10 MS. CALLENTINE: Well, I'm not an expert on that
11 terminology. My best understanding is that it's -- it has
12 to do -- it's part of the fire code. It has to do with the
13 length of time that it would take for a fire on one side of
14 a wall would burn and penetrate to the adjoining unit.

15 CHAIRMAN STARR: It's a sheetrock and spacing
16 issue.

17 COMMISSIONER MARDFIN: I just didn't understand
18 it.

19 MS. CALLENTINE: So, this condition was met. I'm
20 not sure why it was even put in, because this project was
21 built in 1972, and it was built with concrete rock walls
22 between the units. So, we really don't know why it was
23 added as a condition. But as you probably saw later in our
24 recommendation, we are recommending that that condition be
25 deleted as it no longer seems relevant.

1 CHAIRMAN STARR: Okay, Members. Commissioner
2 Wakida.

3 COMMISSIONER WAKIDA: Yes. On Page 5, one of the
4 conditions.

5 CHAIRMAN STARR: Your mic.

6 COMMISSIONER WAKIDA: Thank you. On Page 5, one
7 of the conditions is that the hours be limited from 4 a.m.
8 to 10 p.m. I find this very bizarre. I'm wondering if they
9 got the numbers transposed.

10 MS. CALLENTINE: I did speak with the Applicant
11 regarding the hours. And the current hours of operation, as
12 far as I know, have always been 9:30 a.m. to 4 p.m. So, I
13 looked back in the record and wasn't able to determine why
14 those numbers were chosen, and the Applicant has no concern
15 with your making a recommendation to change those hours of
16 operation if you so desire as a Commission.

17 COMMISSIONER WAKIDA: Well, I would certainly not
18 be in favor of continuing with that option just because it
19 doesn't make any sense. Do we need to have the hours of
20 operation stated in here? Is that required?

21 MS. CALLENTINE: I'm not sure that that is a
22 set-in-stone condition. I would ask the Deputy Director if
23 she could maybe comment on that. I haven't seen it on all
24 conditional permits. So, I don't know why it was added in
25 this case.

1 MS. CUA: Well, I can't speak to why it would have
2 been added. It is somewhat typical to have hours of
3 operations, especially for like a special use or a
4 conditional use that's either in a residential apartment
5 area where other people live depending on the kind of
6 operation. So, but I cannot tell you why -- where these
7 times came from. But I'm looking at the ordinance, and --

8 MS. CALLENTINE: The first one, Ann?

9 MS. CUA: Yeah, if Livit was not able to find in
10 the record where the hours came from, I wouldn't know how to
11 respond to that. It does seem quite early.

12 COMMISSIONER WAKIDA: Is it a big deal to change
13 that?

14 MS. CALLENTINE: No, you are free to make a
15 recommendation.

16 MS. CUA: You can recommend to the Council.

17 COMMISSIONER WAKIDA: Yeah, I just think it would
18 be cleaner.

19 MS. CALLENTINE: I might suggest making it
20 something typical business hours like maybe 8 a.m. to 5
21 p.m., even though at this time, they don't intend to expand
22 the hours from 9:30 a.m. to 4 p.m., but just in case
23 conditions change and they decide they want to open at 8.

24 What I -- what I was able to discern was that and
25 what I think may have happened with that length of time is

1 the Applicants have about six different signs that they
2 actually change all the time on their door. And one of --
3 and I have pictures of those photographs of those if you
4 would like to see them. They vary only by one line, which
5 refers to we'll be right back in five minutes; please call
6 this number if you arrive, and there's no one here. Another
7 one that gives a different number. Another one that says
8 we're at the pool. You can find us at the pool.

9 So, they have a series of ways of communicating
10 with guests. And those communications conceivably might --
11 because they do say in emergency, contact such and such.
12 So, conceivably those might be used after the hours of 9:30
13 a.m. and 4 p.m. That was my best guess as to where those
14 expanded hours came from, and certainly the Applicant has no
15 problem with reducing the time.

16 CHAIRMAN STARR: We can deal with that when a
17 motion gets made. I think that that's, you know, something
18 reasonable. Commissioner Shibuya.

19 COMMISSIONER SHIBUYA: I just wanted to comment on
20 that in terms of the minimum hours that they should be
21 available, so that the TVR members can leave as well as sign
22 in. And also, the other one on the CMU's, CMU is actually
23 an architectural requirement that you separate living
24 quarters so that when one burns, that it doesn't cause the
25 entire structure to go down in flames. And that's all it is

1 is to minimize the property damage to the adjoining areas.

2 And CMU is like hollow tile block wall. In
3 California, it's actually solid concrete. That's the
4 requirement. Because you have spontaneous combustion.

5 CHAIRMAN STARR: Okay. Thank you. Members, any
6 other questions? Commissioner Wakida.

7 COMMISSIONER WAKIDA: One last one for Ms. Cua.
8 Is ten years reasonable for a normal extension request?
9 It's a big chunk.

10 MS. CUA: The Commission and the Council has
11 varied in their -- in their recommendation and with the
12 Council in their approval for lengths of time for
13 conditional permits. The Department has -- initially, we
14 like to try and give people, if it's brand-new, a year to
15 see how it works out, and then subsequent to that, either
16 three years or five years. And depending on each situation,
17 if there are no complaints from the neighbors, if there's
18 no -- have not been any requests for services filed where
19 people are inquiring about things like noise and if they've
20 met their conditions, then we have looked favorably on
21 additional periods of time. And so, you know, ten years is
22 not unreasonable depending on the individual application.

23 CHAIRMAN STARR: Okay. Thank you. Commissioner
24 Shibuya.

25 COMMISSIONER SHIBUYA: I'm concerned that you have

1 a mixture of TVR's, which are actually temporary lodging or
2 rental type of operation going on, along with those units
3 that have long-term residences. And they do have different
4 needs, each of them has different needs and behavioral
5 patterns. And so, sometimes you do have problems with this.
6 Are the remaining long-term residences, do they have an
7 association that allows for this or they are in agreement
8 with this type of arrangement?

9 MS. CALLENTINE: I would like to defer that to the
10 Applicant.

11 CHAIRMAN STARR: That's not before us,
12 Commissioner Shibuya.

13 COMMISSIONER SHIBUYA: I understand.

14 CHAIRMAN STARR: I mean it's zoned for that. If
15 you want an answer, we can ask the Applicant, but it's not
16 before us.

17 COMMISSIONER SHIBUYA: Sure. Okay.

18 MS. McJANNET: Good afternoon. My name is Jeanne
19 McJannet. Could I have that question again, please, sir?

20 COMMISSIONER SHIBUYA: You have a mixture of
21 long-term residences in that as well as rental units?

22 MS. McJANNET: At the complex Hono Kai?

23 COMMISSIONER SHIBUYA: That's correct.

24 MS. McJANNET: Correct.

25 COMMISSIONER SHIBUYA: Are there any problems

1 between the two types of living styles?

2 MS. McJANNET: None at all. And we have a lease
3 with the AOA Destination Maui for our office in that area.
4 And most of the long-term residents kind of like having us
5 there because they can use our copier and, et cetera,
6 et cetera, our office facilities.

7 COMMISSIONER SHIBUYA: Okay. Thank you.

8 MS. McJANNET: Thank you.

9 CHAIRMAN STARR: Members. Commissioner Tagorda.
10 Stay up, please.

11 MS. McJANNET: I will be happy to.

12 COMMISSIONER TAGORDA: Since you're up
13 there, Ms. McJannet, let me go to Condition Number 3. The
14 hours of operations have been limited to 4 a.m. to 10 p.m.

15 MS. McJANNET: Yes.

16 COMMISSIONER TAGORDA: And you never request about
17 changing that time of operation. Is there any reason why
18 you cannot meet that condition?

19 MS. McJANNET: I didn't even realize it was there,
20 to tell you the honest to goodness truth.

21 CHAIRMAN STARR: What would be good hours?

22 MS. McJANNET: Those hours, we're certainly not
23 going to be in the office at 4 a.m. or 10:00 at night.

24 COMMISSIONER TAGORDA: That was your condition
25 here. You posted it on your door 9:30 to 10.

1 MS. McJANNET: No, no, no. We have always been,
2 even prior to not being a conditional permit, we have been
3 there from 8:30 to 4, yeah.

4 CHAIRMAN STARR: I mean obviously that's an error.
5 So, what would be suitable hours to change it to?

6 MS. McJANNET: I think right now, 8 to 5 would be
7 nice. That gives us a little leeway in case we're behind in
8 work, and we can go in.

9 CHAIRMAN STARR: Thank you.

10 COMMISSIONER TAGORDA: Thanks.

11 CHAIRMAN STARR: Members, anything else?
12 Commissioner Hiranaga.

13 COMMISSIONER HIRANAGA: This is not for the
14 Applicant, but for staff. And the three assigned parking
15 stalls meets the County Code requirement?

16 MS. CALLENTINE: I'm sorry, Commissioner Hiranaga.
17 Could you repeat that, please?

18 COMMISSIONER HIRANAGA: Three assigned parking
19 stalls, that meets the business zoning requirement?

20 MS. CALLENTINE: Yes. That is the requirement of
21 the business zoning, yes.

22 COMMISSIONER HIRANAGA: It meets it?

23 MS. CALLENTINE: Oh, yes, it does. I was there.
24 I noted all three stalls. They're well marked.

25 COMMISSIONER HIRANAGA: How large is the office

1 area?

2 MS. CALLENTINE: I would guess maybe 750 square
3 feet.

4 MS. McJANNET: 650.

5 MS. CALLENTINE: 650, okay.

6 COMMISSIONER HIRANAGA: Okay. Thank you.

7 CHAIRMAN STARR: Okay. Members, is that it? I
8 would like to open this up for public testimony. Any member
9 of the public wishing to comment on this, please make
10 yourself known. Not seeing any great rush, public testimony
11 is closed on this item. Recommendation. You don't need to
12 read it, but --

13 MS. CALLENTINE: Sure. So you don't want any
14 further analysis?

15 CHAIRMAN STARR: Yeah, I think just brief
16 recommendation.

17 MS. CALLENTINE: Great. The Department recommends
18 that the Maui Planning Commission recommend approval of the
19 time extension of the existing conditional permit to the
20 Council subject to nine conditions as delineated in the
21 staff report with an amendment that I think you will be
22 discussing, but we haven't crafted that yet. Please let me
23 know if you do need any clarification of the conditions.

24 In consideration of the foregoing, the Department
25 of Planning recommends that the Maui Planning Commission

1 adopt the Department of Planning's report and recommendation
2 prepared for the September 28th, 2010 meeting as its
3 findings of fact, conclusion of law and decision and order
4 for the conditional permit and to authorize the Director of
5 Planning to transmit said written decision and order on
6 behalf of the Maui Planning Commission.

7 The Department of Planning further recommends that
8 the Maui Planning Commission authorize the Director of
9 Planning to transmit the recommendation and record to the
10 Maui County Council on behalf of the Maui Planning
11 Commission. Thank you.

12 CHAIRMAN STARR: Thank you. Ms. Cua.

13 MS. CUA: Livit, can you please just briefly
14 summarize which conditions we're recommending deletion of?

15 MS. CALLENTINE: Yes.

16 MS. CUA: And, therefore, there used to be 11, now
17 we're recommending nine.

18 MS. CALLENTINE: Yes, there were 11 conditions.
19 We recommend that condition, original Condition Number 7,
20 which was related to the one-hour fire separation between
21 Units A-9 and A-10, we recommend that that be deleted. That
22 would renumber the subsequent conditions.

23 And then Number 10, we also recommend that what is
24 currently numbered Number 10, which is regarding a
25 certificate of compliance with the Transient Vacation Rental

1 office, be issued now, which has now been done. And that is
2 provided in your report as exhibit -- one of the exhibits --
3 is provided as Exhibit Number 4, so that no longer needs to
4 be a condition in our opinion. That would renumber the
5 follow -- the final condition Number 9.

6 MS. CUA: Thank you.

7 CHAIRMAN STARR: Thank you very much. Would any
8 members like to offer a motion or a comment? Commissioner
9 Shibuya.

10 COMMISSIONER SHIBUYA: Not a motion. But I just
11 have a question. Do you have a CMU fire wall already
12 installed in the structure?

13 MS. CALLENTINE: Yes.

14 COMMISSIONER SHIBUYA: So, if you do, then why are
15 you taking it out?

16 MS. CALLENTINE: Why is it necessary? You don't
17 put every, single building permit, building permit
18 requirement in a conditional permit.

19 MS. CUA: If I could comment. Normally, when
20 we're going through permit extensions, if conditions have
21 been complied with and they are no longer needed, we kind of
22 recommend trying to clean it up so that the conditions that
23 are on the books are still those that they're working
24 towards compliance on or still would need to be addressed.

25 But if they've constructed something the

1 Department has indicated they need to construct, there
2 really is no need for that to still be a condition.

3 COMMISSIONER SHIBUYA: Then why are we adding the
4 Title 3, this American Disabilities Act item in there,
5 because it's already complied with?

6 MS. CALLENTINE: That is a good question. And I
7 wondered about that myself. I appreciate your deliberation
8 on that.

9 MS. CUA: Which one is that?

10 COMMISSIONER SHIBUYA: Number 7.

11 MS. CALLENTINE: That's Condition Number 7. Well,
12 the new Condition Number 7, which is the current Condition
13 Number 8.

14 MS. CUA: And that condition has been met?

15 MS. CALLENTINE: Yes. The way that it is met,
16 there are two entrances and -- entrances and exits to the
17 apartment, a front exit -- a front entrance and a rear
18 entrance. And it is the rear entrance that is accessible to
19 handicapped. And I believe, and I will ask the Applicant to
20 confirm or to correct me if I'm incorrect, the front
21 entrance has a counter as you walk in the door. And I think
22 maybe the space between the counters is too narrow, so
23 people can go in the rear.

24 But I'm not really sure why it's in there, because
25 typically, a guest would not walk through the business area,

1 the separation between the entryway, if you will, and the
2 business operation.

3 CHAIRMAN STARR: I don't think we need a further
4 explanation on it.

5 MS. CALLENTINE: Yeah.

6 CHAIRMAN STARR: Let's move this along.

7 Commissioner Freitas.

8 COMMISSIONER FREITAS: I would like to move that
9 we recommend a time extension.

10 CHAIRMAN STARR: As --

11 COMMISSIONER FREITAS: As read by the Director.

12 CHAIRMAN STARR: And how about the hours?

13 COMMISSIONER FREITAS: The amendment on the hours.

14 CHAIRMAN STARR: Amendment on the hours per the
15 Applicant?

16 COMMISSIONER FREITAS: Eight to five, yes.

17 CHAIRMAN STARR: Is there a second?

18 COMMISSIONER WAKIDA: I second.

19 CHAIRMAN STARR: Moved by Commissioner Freitas,
20 seconded by Commissioner Wakida. The motion is?

21 MS. CUA: To recommend approval of the time
22 extension as recommended by the Planning Department with the
23 modification of the hours of operation of 8 a.m. to 5 p.m.

24 CHAIRMAN STARR: Ready to vote. All in favor,
25 please raise your hand. All opposed.

1 MS. CALLENTINE: How many was that?

2 CHAIRMAN STARR: All opposed.

3 MS. CUA: Six aye's, one no.

4 CHAIRMAN STARR: Yes.

5 MS. CUA: Motion passes.

6 CHAIRMAN STARR: Okay. Thank you very much.

7 MS. CALLENTINE: Thank you. Moving right along to
8 Item E(3).

9 MS. CUA: Item E(3) is a request by Ms. Karlynn
10 Fukuda of Munekiyo & Hiraga, Inc. on behalf of Towne
11 Development Hawaii requesting an amendment to Special
12 Management Area Use Permit Condition Number 2 for a
13 three-year time extension on the period to complete
14 construction of the 144-unit Ke Alii Villas condominium
15 project and related improvements on approximately 15.7 acres
16 located at Tax Map Key 3-9-20, Parcel 20 in Kihei. And the
17 staff planner is Gina Flammer.

18 MS. FLAMMER: Good afternoon, Commissioners. At
19 your February 23rd Commission meeting, more information was
20 requested on expansion options for the existing drainage
21 basin. Joe Prutch here just handed you a copy of the
22 drainage alternative reports with the full size and with the
23 color photos. And the consultant also brought copies of her
24 Power Point presentation that also has some color photos.
25 It will be up on the screen in a minute, so you have lots of

1 ways to look at it.

2 I did want to explain why this request is now for
3 three years. When they first came before you, it was for a
4 two-year extension, but six months has passed. So as I was
5 writing the report, I called the Applicant and said is April
6 27th, 2012 going to be enough time to finish the project
7 realistically. So, they took a look, and they came back and
8 they said if we had one more year, we believe that would be
9 a little more accurate for us to go ahead and complete. I
10 also wanted to let you know that we do have some people in
11 the audience for public testimony when that time rolls
12 around.

13 So right now, I'm going to turn it over to the
14 project consultant Karlynn from Munekiyo & Hiraga, who is
15 going to come up, introduce her team and then give a
16 five-minute short presentation.

17 CHAIRMAN STARR: How long will your presentation
18 be?

19 MS. FUKUDA: No more than ten minutes.

20 CHAIRMAN STARR: That's fine.

21 MS. FUKUDA: Good afternoon, Chair and Members of
22 the Maui Planning Commission. My name is Karlynn Fukuda of
23 Munekiyo & Hiraga, Inc. Joining me today are Chris Lau of
24 Towne Development of Hawaii, the Applicant; Darren Unemori
25 of Warren Unemori Engineering, the project's civil engineer;

1 and Blaine Kobayashi of Carlsmith Ball.

2 We are before you today regarding the SMA time
3 extension request for the Ke Alii Ocean Villas. Next slide,
4 please. For the benefit of three Commission Members who
5 were not on the Planning Commission in February of 2010,
6 this slide is a background on the project itself. The
7 original SMA use permit for the Ke Alii Ocean Villas was
8 granted in April of 2005. And I'm sorry, was in September
9 of 2004, and construction was initiated in April 2005.

10 Based on the conditions of the SMA permit,
11 completion of the project was needed within five years, so
12 that would have made it April 2010. However, towards the
13 end of 2009, it became apparent that the project was not
14 going to be able to finish in the five-year time frame that
15 we had. And so, in November of 2009, we requested a time
16 extension for the SMA permit. We were scheduled before the
17 Planning Commission in February of 2010 to review that time
18 extension request, and the Commission had voted at that time
19 to review the request.

20 In February of 2010, we noted that 12 of the 15
21 buildings, so 111 units were completed, and 108 units were
22 occupied at that time. The drainage improvements were
23 completed in December of 2008 and were turned over to the
24 homeowners association in January of 2009. And we would
25 like to note that the drainage improvements did meet County

1 standard. At that time in February 2010, construction on
2 Building C had been initiated. That was one of the three
3 remaining buildings. And I would like to note that based on
4 discussions with the Applicant, Building C is anticipated to
5 be completed by the end of this year.

6 Since that time, construction has been initiated
7 on Buildings D and E, the last two residential buildings for
8 the project. And the main comment from the Commission, as
9 Gina mentioned, in February was to review whether additional
10 drainage retention could be done for the project. Next
11 slide, please. This slide is just to give you some
12 background on the project itself. The project is located
13 mauka of South Kihei Road in the vicinity of Ke Alii Alanui
14 Drive. It is a 144-multiunit, multifamily project and
15 includes amenities such as the recreation center, utilities
16 and parking.

17 And surrounding the project on four sides is urban
18 development. To the north, you have Ke Alii Alanui Drive as
19 well as the Worldmark transient vacation rental. To the
20 south, you have commercial and residential areas. To the
21 west, you have the ABC Store and South Kihei Road beyond.
22 And to the east, you have Liloa Drive extension or the
23 north-south collector road as well as the Moana Estates
24 residential project.

25 The project site is approximately 15.7 acres in

1 size. This is a regional location map to give you an idea
2 of the project site itself. Here is Ke Alii Alanui Drive,
3 Piilani Highway and South Kihei Road. And this is a site
4 plan of the project. As I mentioned earlier, this is the
5 location of Building C that is anticipated to be completed
6 construction in December of this year. This is the location
7 of Buildings D and E, which are currently under
8 construction. And again, are the last two buildings to be
9 constructed for this project.

10 This is the location of the existing drainage
11 basin that, as I noted earlier, was completed in December of
12 2008. And just to give you additional frame of reference,
13 the ABC Store is located here, and I believe there are
14 residential condominiums in these locations here. Next
15 slide, please. At the February 2010 Commission meeting, the
16 Applicant was asked to review options for increasing the
17 amount of retention on site. The three options that were
18 reviewed, or there were three options that were reviewed in
19 the context of the existing conditions at the Ke Alii Ocean
20 Villas. And I believe a copy of the alternative drainage
21 study has been provided to the Commission Members. Next
22 slide.

23 Now, I would like to use this photo of the
24 existing drainage basin on the project site itself to give
25 you a brief overview of those three options that were

1 examined. And then we do, as I said, have Darren Unemori
2 here, who can go into further technical information if the
3 Commission has additional questions. But this is the
4 drainage basin itself. It's existing. It's there now.
5 This is Building A and Building B of the project site. We
6 have Ke Alii Alanui Drive here, and you can see on this
7 side. There's the sidewalk. And essentially, the property
8 line is located here.

9 So, the first option that was looked at was the
10 potential expansion of the basin, so in looking at a
11 horizontal expansion, the basin itself is constrained by
12 existing conditions. Again, you have the property line on
13 this side. You've got existing buildings on the south side
14 of the drainage basin here. Again, you've got the buildings
15 that exist and are occupied on the east side here. And
16 then, as you can see, there's not very much space between Ke
17 Alii Alanui Drive and the basin itself. So, horizontally
18 expanding the basin would be very difficult.

19 Now, to vertically expand the basin, this is not a
20 very good perspective shot to give you the idea of depth.
21 But the distance from the top of the sidewalk here to the
22 bottom of the basin is probably about five feet. So, when
23 we looked at going -- going deeper into the basin, it would
24 have to be a fairly steep cut that would have to be done.
25 Because we need to protect the foundation integrity of these

1 buildings that are adjacent to the drainage basin.

2 So, what you would have is a pretty deep V into
3 the basin to go deeper for more drainage retention here.
4 So, that was the first option. The second option that we
5 looked at was the French drain option that was suggested by
6 one of the Commission Members. And the French drain option
7 would essentially involve removing all of the grass that's
8 here in the basin, excavating further, and replacing this
9 with gravel. So, what you essentially have instead of the
10 green basin here would be something similar to maybe a
11 gravel parking lot. And, you know, visually that presents
12 some challenges as well.

13 The third option that we looked at was the
14 construction of a flood wall along the perimeter of the
15 basin itself to, again, provide for more retention in the
16 basin. And based on the civil engineer's review of that
17 option, it's a potential hazard for the downstream
18 properties, because basically what you would be doing is
19 raising the level of the sides of the basin to capture more
20 water. And the outlets would not basically work, because
21 you're trying to keep all of the water in here. And in the
22 event of a catastrophic rain storm, that water would have
23 nowhere to go but to overflow and overtop and then flood the
24 downstream properties. And that's a liability concern for
25 the project itself. So, those were the three options that

1 were looked at. Next slide, please.

2 These are just additional views of the existing
3 basin itself and the project, so this is looking further to
4 the west of that basin. We're actually facing south right
5 now, so the ABC Store is in this location here. Next slide.
6 So, the basin located here; again, Ke Alii Alanui Drive in a
7 fairly close proximity to that drainage basin. And the last
8 slide, please. This is the view facing north, so now we're
9 on the other side of the basin, and we're looking towards
10 Ke Alii Alanui Drive. And here is Building A on the site
11 there.

12 So, those photos are also located in that
13 alternative drainage study that was provided to you. So,
14 next slide, please. So, I would like to note that the
15 Applicant has discussed the drainage options with members of
16 the board of the homeowners association, and there are
17 members of the board who are present today. So, this
18 concludes our presentation, and we are available to answer
19 any questions you may have.

20 CHAIRMAN STARR: Thank you, Ms. Fukuda. Members,
21 any questions either for the Applicant or for Ms. Flammer?
22 Commissioner Hiranaga.

23 COMMISSIONER HIRANAGA: Just trying to understand
24 the drainage system. So, the entire project's surface
25 runoff is collected and directed towards this drainage

1 basin?

2 MS. FUKUDA: That's correct.

3 COMMISSIONER HIRANAGA: So, there are no outlets
4 to the adjoining streets; everything is collected within the
5 boundaries of the property and directed toward this basin?

6 MS. FUKUDA: I believe that's correct. But I will
7 defer to Darren Unemori from Unemori Engineering.

8 CHAIRMAN STARR: Mr. Unemori, please.

9 MR. UNEMORI: Good afternoon, Mr. Chairman and
10 Members of the Commission. I'm Darren Unemori. I'm the
11 Applicant's civil engineer. Mr. Hiranaga, the condominium
12 complex is configured in such a way where the runoff from
13 the entire site ends up in the detention basin. The
14 detention basin itself does have an outlet into the storm
15 strain system on Ke Alii Alanui that eventually takes it to
16 the ocean. So, it does have an outlet to the public storm
17 drain system and to the ocean.

18 COMMISSIONER HIRANAGA: Retention basin, detention
19 basin. Detention is for siltation to settle? What's the
20 different between retention and detention?

21 MR. UNEMORI: I guess the best way to kind of
22 envision the difference between detention basin and
23 retention basin is by analogy. I like to think of bathtubs.
24 And the detention basin is a bathtub with its drain open.
25 The retention basin is a bathtub with a drain closed. So,

1 the detention basin stores water, but it eventually lets it
2 drain out continuously. The retention basin holds
3 everything in until it overflows.

4 COMMISSIONER HIRANAGA: This is a detention basin.

5 MR. UNEMORI: This is a detention basin.

6 COMMISSIONER HIRANAGA: But the drain is basically
7 an overflow device?

8 MR. UNEMORI: It's a combination. There is a
9 direct connection into the storm drain system that is
10 underground. The grate that you see in the photos, that's
11 actually an overflow. So, there's sort of a belt and
12 suspenders. There is a primary outlet that is underground,
13 and there is an overflow opening up on the surface of the
14 basin. Both of them connect to the same pipe, which
15 connects to the storm drain system in Ke Alii Alanui.

16 COMMISSIONER HIRANAGA: So, a detention basin is
17 not designed to allow for settling of siltation?

18 MR. UNEMORI: Not in -- not on the large scale.
19 For smaller storms when you have an inch or two of rain,
20 there's a separation between the outlet, which is on the
21 south side of this basin, and the inlet to the storm drain
22 system on Ke Alii Alanui, which is on north side of this
23 basin, separating them is a grass yard. So, the grass on
24 the floor of the basin basically helps to settle out any
25 silt and contaminates before it hits the other side.

1 It has that function. But in a very, very large
2 storm comparable to a design storm, the basin will fill, and
3 that will not be as effective.

4 COMMISSIONER HIRANAGA: I have a couple more
5 questions, but I'll yield the floor.

6 CHAIRMAN STARR: Why don't you continue,
7 Commissioner Hiranaga? It's an interesting line of
8 questions.

9 COMMISSIONER HIRANAGA: Maybe a question for
10 Public Works. Could you explain to us when the County
11 requires a detention basin versus a retention basin?

12 MR. MIYAMOTO: The system is pretty much dependent
13 -- by our rules, it's dependent by how the engineer wants to
14 design their system. And we leave it up to the engineer,
15 and we look at whether or not it meets our requirements.
16 But in this case, typically the detention basin -- the
17 retention basin tends to store water, which becomes
18 problematic. As they had mentioned in about one of the
19 options, the building of the walls and holding the water in,
20 that sort of triggers a different requirement. Because now
21 you're looking at something similar to like a dam.

22 So typically, everyone uses a detention basin that
23 slows the water down as it enters in and controls the outlet
24 end of it, so it doesn't release at a rate greater than what
25 was there preexisting.

1 CHAIRMAN STARR: I have a question. It's -- our
2 concern regarding the shoreline is to try to keep the lawn
3 chemicals, the runoff from automotive uses and other
4 noxious, noxious substances that end up on the ground either
5 through application or through other means out of the -- out
6 of the nearshore waters. It seems that by this definition,
7 a detention basin really does nothing to filter those out or
8 very, very little. So, 100 percent of that both pre and
9 post development runoff ends up in the shoreline. Just the
10 speed of which it ends up there when there's a fairly large
11 rain event is somewhat slowed down.

12 Am I correct in that assumption, that this really
13 does nothing to ameliorate nitrates, phosphates and other
14 nonpoint source pollution from getting into the nearshore
15 waters?

16 MR. UNEMORI: Well, it has a limited effect
17 towards doing that. In addition to the grassy floor,
18 there's also a subsurface drain sump that is under the grass
19 floor of the basin that helps to remove sediment and other
20 things. But as you indicated, it's not 100 percent
21 effective as a detention basin. If I could expand on
22 something Mr. Miyamoto said, the current County drainage
23 standards, I guess the Code requirement, is geared towards
24 flood hazard protection, it's not principally designed for
25 water quality protection.

1 So, that is primarily why these detention basins
2 are effective for flood hazard, which is the requirement,
3 versus water quality, which is I guess a secondary
4 consideration in the interest of the Public Works drainage
5 requirements.

6 CHAIRMAN STARR: I'm not asking you to try to
7 figure out how to redesign this now. But I am asking you to
8 help us understand this issue a little better and how in the
9 future we can improve situations on future projects. If you
10 were looking to build another project like this further down
11 the street, and your client said when you design this, I
12 want you to find a way of keeping nutrients and lawn
13 chemicals and, you know, petrochemicals from automobiles out
14 of the storm drain system, how would you go about doing it?

15 MR. UNEMORI: Well, I guess in the -- in the
16 context of that objective, and, you know, having more
17 flexibility in a project like that, there's several
18 techniques you could apply that would help you deal with
19 exactly that situation of water quality situation. You have
20 in addition to a full retention system, there are mechanical
21 filtration devices.

22 CHAIRMAN STARR: Retention?

23 MR. UNEMORI: I'm sorry, correct. Instead of a
24 full retention of all runoff, you can also insert a
25 mechanical filtration type device into the storm drain

1 system. There's also a bio remediation type of approach
2 where you would use bio swales and other vegetated areas to
3 help strain out sediment and actually break down some of the
4 chemicals with enough land available. There are site
5 management techniques that would enable you to deal with the
6 pollution source at the inlet side rather than the outlet
7 side.

8 And so, there are a number of ways you can tackle
9 that problem. But what you really need, of course, is the
10 flexibility at the beginning, not at the end of the project
11 unfortunately.

12 CHAIRMAN STARR: Thank you. Members.
13 Commissioner Tagorda.

14 COMMISSIONER TAGORDA: Since we are in the
15 detention basin, you studied three types of basins that
16 might offer means of retaining all storm runoff on site.
17 All three, you came up with negative consequences. Assuming
18 that the detention basin, I hope you're correct on your
19 computation that it will take all the water runoff, what if
20 your computation is wrong? Have you have ways to -- since
21 all these three studies that you made are not good, they
22 have negative consequences on the project, did you think of
23 relocating or putting a retention basin on site on a
24 different location? Would that be possible?

25 MR. UNEMORI: If I could speak to your -- the

1 earlier part of your statement.

2 COMMISSIONER TAGORDA: Yes.

3 MR. UNEMORI: The negative consequence that we
4 identified in the report are not so much dealing with a
5 retention basin per se. Actually, the negative consequences
6 are the result of trying to create a retention basin in the
7 middle of an occupied building complex from an existing
8 detention basin. So, the conversion creates all these
9 problems.

10 COMMISSIONER TAGORDA: Okay. Now, is it too late
11 now in case let's say -- let's assume -- let's assume that
12 your computation of that runoff water is not going to --
13 that detention basin that was created there now is not going
14 to be enough to retain all that runoff on site. Is it too
15 late now for the development to find another retention basin
16 on site, different location, since all these three study
17 that you have doesn't work?

18 MR. UNEMORI: Okay. Actually, there isn't any
19 sufficient room on site to create another drainage pond to
20 supplement the existing pond. And that is sort of the
21 reason why we had to fall on the existing location and look
22 at ways of expanding that from a detention basin into a
23 retention basin.

24 COMMISSIONER TAGORDA: Because I'm just looking at
25 the size of the detention basin on that site plan. And what

1 if it's too small and it cannot handle all that runoff, so
2 this development, this project is going to create a problem?

3 MR. UNEMORI: Well, I guess one of the things I
4 can point out again, the difference between retention basin
5 and detention basins, because detention basins continuously
6 drain, they drain at a slow rate or controlled rate, but
7 because they continuously drain, they are actually -- they
8 can be fairly small in size relative to the total site. A
9 retention basin, of course, has to hold everything that
10 comes down the hill.

11 A detention basin has the advantage of being able
12 to drain while filling. So, you can kind of think of it as
13 a way to control the rate of flow coming out of the project
14 without actually having to hold all the water permanently on
15 site. Maybe if I can go back to my bathtub analogy.

16 COMMISSIONER TAGORDA: Yeah.

17 MR. UNEMORI: If your rain storm was 100 gallons
18 of water, say we have 25-gallon buckets on floor, and my
19 detention basin was a 50-gallon bathtub, and I left the
20 drain open, detention basin. I would pour buckets of water
21 into the bathtub. I would pour 100 gallons into the
22 bathtub, 20 gallons at a time. And because I can pour
23 faster than I can drain, the bathtub starts to fill
24 partially. But then when I stop, the thing drains out.

25 And while I'm pouring, the drain is continuing to

1 let water out. So, the -- so, to handle 100 gallons of
2 water, I only need a 50-gallon bathtub. But if I wanted to
3 do a retention solution, I would have this bathtub with the
4 drain closed, so now the bathtub would have to be 100
5 gallons, because nothing goes out. So, the advantage of
6 having that outlet or that drain open means I can deal with
7 the storm, the flood hazard from the storm with a smaller
8 bathtub, with a smaller basin.

9 So, that's sort of the magic of detention basins.
10 And that's sort of why they're preferred for flood hazard,
11 because they don't consume as much land.

12 COMMISSIONER TAGORDA: Thank you.

13 CHAIRMAN STARR: Members, any questions?
14 Commissioner Hiranaga.

15 COMMISSIONER HIRANAGA: The underground storage
16 facility, does that need maintenance?

17 MR. UNEMORI: Yes, it does. It's basically a silt
18 and debris trap. So periodically, you have to go in there
19 and take out the cans and the dirt and things that have
20 accumulated in there.

21 COMMISSIONER HIRANAGA: Is it also possible to add
22 some type of filtration device to your outlet so that the
23 water does not leave the detention basin untreated?

24 MR. UNEMORI: Presumably, you could do that. I
25 guess the difficulty of some filtration devices is that they

1 have a limited capacity. So usually, the way that they're
2 designed is you would be able to filter for low flows of
3 water. But when a design storm comes along, they themselves
4 would have a bypass and bypass the filters, because they
5 wouldn't be able to strain the water fast enough without
6 causing the drainage system to back up and flood. So, it's
7 again a -- it's a good solution for low flows, but it's not
8 a good solution for higher flows for a design storm.

9 COMMISSIONER HIRANAGA: And you're designing this
10 for a 50-year/one-hour storm?

11 MR. UNEMORI: That's correct, per the County's
12 drainage ordinance, we have a sump or drainage type
13 situation designed for a 50-year storm.

14 COMMISSIONER HIRANAGA: So, now the facility is
15 basically built out as the detention basin, is it possible
16 to retrofit the outlet with a filtration device to capture
17 those low flows or to treat those low flows?

18 MR. UNEMORI: It's possible. It's possible to a
19 limit, you know, with within the limits of technology.

20 COMMISSIONER HIRANAGA: Okay. Thank you.

21 CHAIRMAN STARR: Commissioner Sablas.

22 COMMISSIONER SABLAS: I've lived in Kihei for 30
23 years. And I know it rarely rains. But when it does rain,
24 it floods. So, my question to you is since the project has
25 been built, have you witnessed any heavy rains, and what

1 were the result of the catchment in the basin?

2 MR. UNEMORI: Commissioner, if I might, one of the
3 association members is here with experience on exactly your
4 question. I wonder if I could let her speak.

5 CHAIRMAN STARR: Please come forward and introduce
6 yourself.

7 MS. ZIEGLER: Hi, I'm Pat Ziegler. I live in
8 Building A. And that was my concern when I purchased in
9 this complex about the water. And in the two years, I moved
10 in December 2008, and when I moved in, I made -- I witnessed
11 two major storms. And both storms caused the basin to fill
12 with water, but the water level never reached here. I'll
13 show you. It's easier. This grate right here --

14 CHAIRMAN STARR: You have to use the microphone.

15 MS. ZIEGLER: When I watched the water fill up, my
16 concern is are we going to flood. Because we have our air
17 conditioner systems there. When the water would fill in the
18 basin, this is probably about, maybe about eight to ten
19 inches high, so that's a drain. There's a storm drain --
20 I'm assuming it's a storm. It's got a grate on it. It's a
21 storm drain there and then a drain here. The water has
22 never filled, never got up to the part of this storm drain
23 to be used. This and this takes care of the water.

24 The water has never filled up this high, so I
25 would say, I'm guessing maybe 12 inches, 12 to 14 inches.

1 And in a matter of two hours, the water is all gone. The
2 water -- even though the drains are here, when you're
3 concerned about the water going into the ocean or the storm
4 drains, it's getting absorbed into the grass here. There's
5 like stones underneath here, and after every storm, the
6 landscapers come in that we have hired, and they clear this
7 out.

8 CHAIRMAN STARR: Okay. Thank you.

9 MS. ZIEGLER: Could I say one more thing? The
10 major storm we had in Kihei in 2007 in December, this was
11 under construction. And it was not flooded out when Kihei
12 Road was.

13 CHAIRMAN STARR: Okay. I want to open it to
14 public testimony if that's okay. Members of the public
15 wishing to testify on this, please come. Welcome.
16 Introduce yourself, sir. Use the mic, and tell us who you
17 are.

18 MR. WOLK: Good afternoon. My name is Gary Wolk.
19 I'm a resident of Ke Alii Alanui Ocean Villa at 14 Leanihi
20 Lane, Unit B-203, so it's the next building over. I came to
21 offer testimony to the Commission. I know there are some
22 new members. At the previous meeting regarding the
23 Applicant's request for extension of the permit, at the
24 time, my main interest was not the environmental impact or
25 the retention basin since I had no clue that that was, in

1 fact, a potential issue.

2 My issue dealt with the residential use of the
3 community and how the Applicant was actually marketing the
4 units in the community. Following the Commission's decision
5 to delay a decision on this application, I made three
6 requests of the Applicant, one was to collaborate with the
7 AOA in terms of filing for a change of zoning on the
8 property. The property is currently zoned HMH2, to have it
9 rezoned to A-1, so that real estate agents, buyers,
10 investors would be very clear that this was, in fact,
11 intended to be a residential community with a six-month
12 minimum lease, et cetera.

13 I also requested the Applicant to modify its P and
14 S agreement, purchase and sales agreement, to include
15 language specifically to inform buyers of the prohibition
16 for use of apartments for any purpose other than long-term
17 residential use. And I asked that the apartment deed also
18 be modified to state this prohibition. Why? Simply because
19 even though the Applicant has claimed in their SMA
20 application that this development would be strictly for
21 residential use, there is no statutory way that anyone can
22 enforce that beyond the condominium property regime, which
23 once, in fact, the ownership, which happens to be
24 approximately 70 percent non-homeowners -- only 30 percent
25 of the occupants actually have homeowners exemption; these

1 are facts you can get off of your Mauipropertytax.com --
2 could simply vote to make this community into a condominium
3 timeshare or condominium residential community, whatever use
4 is fit for HMH6 -- HMH2.

5 I never received a reply from the Applicant. At
6 the end of March, I submitted a letter to the then director.
7 That letter has made it into the Planning Department's
8 report. I ask that I'm not asking that you deny or revoke
9 this permit. I'm simply ask that we be reasonable about how
10 long we're going to extend this permit for and what
11 conditions the Commission can place on the extension. In
12 particular, it's come to my attention that we're now looking
13 at a three-year extension. My reading of the rules of
14 this --

15 COMMISSIONER SECRETARY: Three minutes.

16 MR. WOLK: -- Commission, paragraph 12.202.17(e)
17 is that the Director may grant up to a two-year time
18 extension unless there is a specific condition within the
19 permit that changes that. So, I'm not sure that it's within
20 the purview for the Director to ask for a three-year
21 extension to begin with.

22 Second of all, I ask that you review the fact that
23 the Applicant is in substantial compliance with the
24 representations that were made to the Commission in order to
25 obtain this permit based upon three sections of the permit

1 review, residential use, which I've already discussed,
2 economic impact, and finally, the concern seems to be the
3 greatest amongst all of you, environmental impact. I've
4 already discussed the residential use impact. The prior
5 Commission members are aware of the fact that at the time in
6 January of 2009, the Applicant sold the unit to seven
7 different owners. One of those owners has since dropped
8 out. So, by Hawaii law, it's no longer a timeshare, but for
9 at least six months, it was a timeshare. That is certainly
10 not within the purview of the initial application.

11 The other issue is economic impact. All one has
12 to do is pick up the newspaper to see that we need
13 construction jobs in Hawaii. One might ask why when all of
14 the other units, which you can't see because they've taken
15 down the site map, the other 11 buildings of this complex --

16 CHAIRMAN STARR: I'm going to have to ask you to
17 wrap it up.

18 MR. WOLK: -- were finished in a period of four
19 years. It's now going to take three years to finish two
20 buildings. The final issue was environmental impact. It
21 was stated that there was no other alternative. The only
22 work that has been done on the D and E site is to put in
23 some foundations for elevators, and that work was actually
24 done after the special permit expired. That work began in
25 June. The special permit, the SMA, expired in April.

1 In my letter, I suggested that that area or some
2 part of that area where Buildings D and E are supposed to be
3 built could be used to increase the size of the detention
4 area. That's all my comments. Thank you for your
5 attention.

6 CHAIRMAN STARR: Thank you. Members, any
7 questions?

8 COMMISSIONER TAGORDA: Can I ask?

9 CHAIRMAN STARR: Yeah, go ahead.

10 COMMISSIONER TAGORDA: Mr. Wolk, I find it very
11 interesting the information you shared with us. And you
12 said you live in one of those units there?

13 MR. WOLK: Yes, I do.

14 COMMISSIONER TAGORDA: Which unit do you have
15 there? Is it close to those?

16 MR. WOLK: It's Building E, which is the building
17 on the lower right-hand -- it's the building right behind
18 the ABC Store, best way to put it.

19 COMMISSIONER TAGORDA: This construction in those
20 two circle units or buildings gives you safety hazards or
21 nuisances during construction?

22 MR. WOLK: I work, so I am generally not in the
23 development during the day when construction is ongoing.
24 The street is blocked off. The days, furlough Fridays, I am
25 home, and it is somewhat of a noise nuisance, but basically,

1 if we have to build, we're going to build.

2 CHAIRMAN STARR: I understand your concern. There
3 are 33 more units to be built in those buildings.

4 MR. WOLK: Well, it's actually down to 22.
5 Because Building C is almost substantially completed. It
6 started in December of last year, and the interior work is
7 being done now.

8 COMMISSIONER TAGORDA: And I really want to know
9 from the Applicant if they can give us close, a very close
10 accurate estimate on when they can complete the project in
11 totality.

12 CHAIRMAN STARR: After the testimony is done.

13 COMMISSIONER TAGORDA: Okay, sorry. That's the
14 only question.

15 CHAIRMAN STARR: Commissioner Mardfin.

16 COMMISSIONER MARDFIN: Mr. Wolk.

17 MR. WOLK: Yes.

18 COMMISSIONER MARDFIN: I remember your testimony
19 last time. And you were concerned about the seven people
20 above you. It was a little thin on whether there was a lot
21 of evidence that they were using transient vacation rentals
22 there as opposed to long term.

23 MR. WOLK: The claim is they don't receive
24 compensation, that the people who are going through there --
25 since my testimony, up until July when I guess it got warm

1 in Canada, the turnover was roughly every two weeks
2 different people showing up. I did speak to some of the
3 people who came through, who said they were just friends of
4 the owners and that the only compensation that they provided
5 to the owners was dinner at Mama's Fish House.

6 COMMISSIONER MARDFIN: Well, that's considerable
7 then.

8 MR. WOLK: That's up to the Commission to decide.

9 COMMISSIONER MARDFIN: But this is one apartment
10 above you?

11 MR. WOLK: Yes.

12 COMMISSIONER MARDFIN: Are you familiar with
13 transient vacation rentals in other places?

14 MR. WOLK: There is a request, an RFS that was
15 filed by someone else that's also documented in the letter
16 approximately a year and a half ago regarding another unit.
17 There's also a unit owned by a trust, which is actually
18 someone who is related to the people above me, and it's only
19 anecdotal evidence in speaking with the people who live in
20 that building, in that unit. The same situation exists
21 there.

22 Other than that, at this point in time, I have
23 stopped hunting around to try to find out what else may be
24 occurring in terms -- I know there are anecdotal examples,
25 but I'm not going to give those to you, because they're

1 anecdotal.

2 COMMISSIONER MARDFIN: Thank you very much,
3 Mr. Wolk.

4 CHAIRMAN STARR: Okay. Thank you. Anyone else
5 wishing to testify, please come forward, introduce yourself
6 with the mic up.

7 MR. MOSER: My name is Charles Moser. I'm the
8 president of the owners association at Ke Alii. And I can
9 assure that we are very active in pursuing any short-term
10 use, anything less than six months. We're using our units
11 as apartments, and we've followed up on any allegations,
12 even the one in which people are relatives. And we have
13 doggedly worked on that, but I don't wish to go through some
14 of the additional allegations of an owner who has been going
15 after the he developer since they bought their unit.

16 That's -- I can assure you that we are making sure
17 and we have rules and fines and really go after people if
18 there's any allegation of short-term use. The thing that
19 I'm concerned about is so we've heard about a possible
20 construction, additional work on that basin. I'm speaking
21 for the homeowners there and the association. We now own
22 that property. Towne doesn't own the property. They're
23 continuing the rest of their project, but we're responsible
24 for maintaining the basin and working with what's there, and
25 as Commissioner mentioned, the severe construction,

1 additional construction damage that's being done to the
2 homeowners if work was done there.

3 It's a very constrained site to work with.
4 Bringing construction trucks into an area which is
5 completed. The landscaping is in. The landscaping is being
6 developed, so to open that up for construction now on our
7 property that we're responsible for would cause some real
8 severe problems. One is several months more of construction
9 bringing trucks into that constrained area; two, is that the
10 different alternatives mentioned right now, it can be, I
11 would say it's kind of the level of if we have water in
12 there, someone is not going to die, and we won't have the
13 legal liability of some kid going down in the yard being
14 caught in there if you really dig down into that ground.

15 So, if you dig down further, we think that would
16 be a danger. Number two is if you dig down in there and put
17 gravel in there, that really is not going to look very good.
18 Those people bought that complex with a nice lawn. It
19 doesn't look really good as far as the pit, but it's not too
20 bad. If you put gravel in there, that's not really going to
21 be acceptable for homeowners. And then the third one
22 putting a wall around there, I think you're putting people
23 at danger. Again, we think that would be a liability risk.
24 It would be a danger.

25 COMMISSION SECRETARY: Three minutes.

1 MR. MOSER: You could call it a hazard to
2 children, because they might be -- tend to get in there and
3 get caught in there. So, we don't think the additional work
4 would be a good idea. In addition to the liability risk is
5 just we have to maintain that. We realize we have a
6 responsibility from an environmental standpoint to clean up
7 after storms. We want to make sure the system works well.
8 And so, we do take responsibility for maintaining that, and
9 we are concerned about the environment. Our folks are very
10 interested in environmental protection.

11 So, I think we're doing a good job. We really
12 think this would be disruptive, and the homeowners would
13 skin me alive and I think would be really -- fight Towne as
14 far as doing some additional work in this area. To not
15 complete the construction on D and E, that would ruin us
16 financially. It's taking a large size complex, 144 units
17 and saying, well, you just don't build 22 units, that would
18 be really a problem financially for our owners. But we
19 thank you for your interest, and we are interested in
20 maintaining a good environment, collecting the water and
21 keeping our environment clean.

22 CHAIRMAN STARR: Okay. Thank you very much.
23 Commissioner Mardfin.

24 COMMISSIONER MARDFIN: Why would not allowing more
25 units hurt you guys, because fixed costs are divided among

1 fewer people?

2 MR. MOSER: It wouldn't be allowing more units.
3 It would be saying they figured out the cost of maintaining
4 the grounds, the cost of maintaining a recreation facility
5 and the pool and the landscaping has been spread -- would be
6 spread over 144 units. And that's what we're depending on.

7 COMMISSIONER MARDFIN: Basically, fixed costs with
8 a smaller number of units. I get it.

9 MR. MOSER: And all of the sudden, costs would go
10 up.

11 COMMISSIONER MARDFIN: Are you an owner occupant
12 there?

13 MR. MOSER: I'm an owner there. I do have it
14 leased out for long term. I have a tenant that's been there
15 for over a year.

16 COMMISSIONER MARDFIN: But you live somewhere
17 else?

18 MR. MOSER: That's right.

19 COMMISSIONER MARDFIN: Do you have any estimate of
20 what percent of the owners are owner occupants?

21 MR. MOSER: You know, I don't have an estimate on
22 that. But we do make sure that we have long-term use if the
23 owner is not there. Typically, owners, even if they're not
24 there 100 percent of the time, are there for at least half a
25 year. That's typically what I do is I'm in Washington

1 State. I'm in Maui for half a year.

2 COMMISSIONER MARDFIN: And for the half-year
3 you're not there, you lease it out to somebody for a
4 six-month period?

5 MR. MOSER: That's right. And you can get into
6 the fact that right now I've allowed someone -- I have
7 somebody in there for a full year.

8 COMMISSIONER MARDFIN: And how does the
9 association assure that that's done in all the units?

10 MR. MOSER: Well, we have an on-site manager, and
11 we have people that complain. And as a matter of fact, we
12 have people that have to sign up when they come on site if
13 they're a guest. We have people have to register any
14 tenants and provide a copy of the lease to our manager.

15 COMMISSIONER MARDFIN: So, when they provide the
16 lease, the lease will say six months?

17 MR. MOSER: That's exactly right. We did have a
18 problem with one tenant that had the hospital nurses there.
19 But we followed up on that, because we felt that that was
20 not -- even though the hospital might lease a unit for six
21 months or longer, they were moving people in in shorter
22 periods of time, and we legally told them you can't do that.

23 COMMISSIONER MARDFIN: Thank you very much.

24 CHAIRMAN STARR: Commissioner Shibuya.

25 COMMISSIONER SHIBUYA: This is for Mr. Moser

1 again. Mr. Wolk mentioned something to the effect that
2 there would be some kind of a residential use restriction or
3 time limit restriction in the agreements. Is it written in
4 there, and is that how the association maintains it?

5 MR. MOSER: Well, what we have is we have our
6 house rules that if somebody is renting for any less than
7 six months, we have fines and penalties.

8 COMMISSIONER SHIBUYA: I'm concerned, as you are,
9 too, as well as other residents are for the quality of life
10 of those that have invested in that area and purchased a
11 unit. And so, I'm very sensitive to that. And I would like
12 to maintain that for all of the residents.

13 MR. MOSER: We definitely feel that's the case,
14 too. And we don't -- we feel that the short-term rental is
15 disruptive. It's not good for family environment, so that's
16 why we don't allow that.

17 COMMISSIONER SHIBUYA: Well, if it's a separate
18 area that's constructed for transient vacation rentals or
19 hotel use, I have no problem with that. But if you comeingle
20 and mix these types of residences or styles, living styles,
21 then, yes, there's going to be some pilikia.

22 MR. MOSER: Were you indicating that we were
23 mixing the styles?

24 COMMISSIONER SHIBUYA: I was hoping that you would
25 not be mixing styles.

1 MR. MOSER: We don't want short-term rentals. And
2 that's why we have the fines and penalties and follow up
3 legally to take action, so that that will not happen.

4 CHAIRMAN STARR: Thank you very much. We have one
5 more question. Last question.

6 COMMISSIONER MARDFIN: What, if anything, would
7 prevent you from changing the rules to allow short-term
8 rentals? Sounds like the answer is nothing would stop you.

9 MR. MOSER: Well, it's in our bylaws.

10 COMMISSIONER MARDFIN: What stops you from
11 changing the bylaws?

12 MR. MOSER: Changing the bylaws would take about a
13 67 percent vote.

14 MR. LAU: May I respond to that issue?

15 CHAIRMAN STARR: Do we really need this?
16 Please introduce yourself.

17 MR. LAU: Christopher Lau. I'm Vice Chairman of
18 the Applicant. It's in our deeds, there's a provision
19 saying that there should be no short-term rentals.

20 COMMISSIONER MARDFIN: In your deeds?

21 MR. LAU: Yes.

22 COMMISSIONER MARDFIN: Thank you.

23 CHAIRMAN STARR: Commissioner Hiranaga.

24 COMMISSIONER HIRANAGA: Maybe Mr. Lau could
25 possibly answer my question.

1 CHAIRMAN STARR: We're taking testimony right now.
2 That's out of order.

3 COMMISSIONER HIRANAGA: I will ask the previous
4 public individual to return.

5 CHAIRMAN STARR: Come on back. But please let's
6 finish this up, guys and gals.

7 COMMISSIONER HIRANAGA: You stated that the
8 detention basin has been deeded over to the homeowners
9 association. The units to be built and units to be sold,
10 does Towne own those? So, are they part of the homeowners
11 association?

12 MR. MOSER: Yes.

13 COMMISSIONER HIRANAGA: And they have voting
14 rights like all unit owners?

15 MR. MOSER: Yeah.

16 COMMISSIONER HIRANAGA: I just wanted
17 clarification regarding that. And also, what about the
18 option of providing a filtration system on the outlet system
19 where you have a storm larger than what you've experienced
20 in the past two years where, in fact, water starts to be
21 released through that outlet channel untreated into the
22 County's storm water system that flows directly across the
23 street to Kamaole I -- I'm not sure what's across -- Kamaole
24 I.

25 Would you be agreeable to installing a filtration

1 system that would take out some of the particulates? And,
2 of course, this filtration system will only be used when
3 there is a large storm that is causing the outlet to be
4 utilized, and then periodically, you would have to change
5 the filter. But that would help reduce the untreated water
6 running directly into the Pacific ocean at Kamaole Beach I,
7 which is directly downslope from this project.

8 MR. MOSER: It's an interesting issue from the
9 standpoint of what you're talking about as trying to have
10 first flush protection.

11 COMMISSIONER HIRANAGA: Exactly.

12 MR. MOSER: As a matter of fact, and I'm from
13 another community where we have ten storm drains that we
14 maintain, so maintaining it can be fairly costly. And that
15 particular storm drain would work with any storm even if you
16 had small storm, it would be -- you would have to first
17 flush that would probably be working in the filter system.
18 I guess I would have to know what the costs are and present
19 that to the association.

20 I don't know -- I know in previous situations,
21 it's fairly costly to maintain the filter material, and it
22 would be useful to know what the cost of that is. So, I
23 guess I can't comment on it other than that here is an
24 additional requirement being placed after we've built the
25 overall system. We do know that some of that does get out,

1 is deposited in our current storm system that we have to
2 clean out after a storm.

3 So, we do have some of that, and how much the
4 additional filter material would be is a question to me.

5 COMMISSIONER HIRANAGA: Thank you.

6 CHAIRMAN STARR: Okay. Any other members of the
7 public wishing to offer testimony? Last call. Not seeing
8 any public testimony, it's closed. Commissioner Hiranaga,
9 if you want to ask the gentleman from Towne, I believe a
10 question, you're welcome to at this point.

11 COMMISSIONER HIRANAGA: This is more possible
12 condition, so I'm not sure if it's appropriate at this time.

13 CHAIRMAN STARR: Okay. Whatever. As you wish.
14 Commissioner Wakida.

15 COMMISSIONER WAKIDA: I'm sorry, Mr. Lau, what is
16 your position?

17 MR. LAU: I'm Vice Chairman of Towne Development
18 of Hawaii, who is the managing member of Ke Alii Ocean
19 Villas, LLC.

20 COMMISSIONER WAKIDA: I'm sort of new on all this.
21 I'm trying to play catchup. In the picture where the woman
22 who was up earlier pointed out two drains in the field; is
23 that correct?

24 MR. LAU: Correct.

25 COMMISSIONER WAKIDA: And those drain into the

1 County sewer system?

2 MR. LAU: No, not the sewer system. Into the
3 County drainage system. Sewer handles wastewater.

4 COMMISSIONER WAKIDA: Drainage system, yes, I mean
5 drainage system. So, what's the difference between where
6 that water goes and the one from the grate up on the hill?

7 MR. LAU: May I defer to our engineer?

8 CHAIRMAN STARR: Yes.

9 MR. UNEMORI: There's actually no difference.
10 Both inlets eventually connect to the same pipe as it leaves
11 the basin. I guess going back to our bathtub analogy, the
12 inlets on the bottom of the basin, that circular inlet,
13 that's like your bathtub drain. It's the main way out.
14 That one in the patch of concrete is actually an overflow in
15 case the one on the floor gets blocked.

16 COMMISSIONER WAKIDA: But I'm more concerned with
17 the issue of water quality, because I was -- I misunderstood
18 this detention basin. I thought the whole bottom of it was
19 basically grass and soil, and it just percolated through. I
20 didn't realize that it actually ran right into a County
21 drainage system and then into the ocean.

22 MR. UNEMORI: Well, the bottom is basically just
23 earth and grass. So, there is -- for smaller flows of
24 water, there is that ability for the basin to absorb water
25 that passes over it. And there's an additional sump under

1 the floor of the basin that helps -- that's permeable that
2 helps percolate water into the ground. It's just when you
3 have a very large storm event, the water is coming so fast,
4 it exceeds the ability of the soil to absorb it.

5 So, we have to create additional means to deal
6 with those high flow situations. In a low flow situation,
7 it actually does absorb quite a bit of water.

8 CHAIRMAN STARR: Commissioner Hiranaga.

9 COMMISSIONER HIRANAGA: Yeah, just a
10 clarification. The underground storage facility you have,
11 that also has an outlet into the County drainage system?

12 MR. UNEMORI: So, if you imagine it's a 72-inch,
13 six-foot diameter pipe that's laid on its side and buried in
14 the ground with holes all around, perforated, and that pipe
15 has a connection into the storm drain system. The one with
16 the overflow, that also connects to the same pipe from the
17 top. So, it goes -- from the collection system in the
18 condominium complex, it exits out of the -- you can sort of
19 barely see the culvert opening on the far side of the basin.

20 The water exits from the far end of the bay on the
21 south side, travels across the grassy lawn, drains into the
22 hole that's in the middle of the picture there in the
23 manhole into the sump. The sump itself has baffles in it,
24 and so, between the outlet at the south end of the basin and
25 the point at which it finally enters the sump drain system,

1 it has the grass and the baffles and distance allowing
2 things to settle out.

3 So, it's not a -- it's not a direct pipe
4 connection into the storm system. There's a gap in between
5 in which you can lose the sediment that's in the -- in the
6 runoff coming directly out of the condo complex.

7 COMMISSIONER HIRANAGA: But you said the outlet on
8 the bank also feeds into the perforated pipe?

9 MR. UNEMORI: That one actually feeds into the
10 outlet from the perforated pipe.

11 COMMISSIONER HIRANAGA: Oh, okay. It doesn't it
12 go into the perforated pipe.

13 MR. UNEMORI: No. It's main function is emergency
14 overflow. So, if there's a blockage in the pipe anywhere
15 upstream of that, the water will overflow into that into the
16 storm strain, so it's more an emergency measure.

17 COMMISSIONER HIRANAGA: And that would only occur
18 if it exceeds 50-year/one-hour storm?

19 MR. UNEMORI: Exceeds the storm, or there's a
20 blockage in the subsurface sump portion.

21 COMMISSIONER HIRANAGA: But it is designed so that
22 it would only be utilized in a 50-year/one-hour storm
23 considering the perforated pipe is operating properly?

24 MR. UNEMORI: Pretty much. When the capacity of
25 the basin is exceeded, it starts overflowing into the --

1 COMMISSIONER HIRANAGA: There is access to the
2 perforated pipe for maintenance?

3 MR. UNEMORI: Yeah, the opening that is the inlet
4 is also a manhole. That can be lifted off and accessed, and
5 there's a ladder that goes down to the sump for maintenance.

6 CHAIRMAN STARR: Okay. Any other questions?
7 Commissioner Tagorda.

8 COMMISSIONER TAGORDA: Yeah, my concern here is
9 the prolonged construction on the vicinity. Since you have
10 only 33 units more or less to finish up, why do you need
11 almost three years to complete the project?

12 MS. FUKUDA: Thank you, Commissioner Tagorda.
13 When the Applicant was asked by the Planning Department if
14 they would like the three-year time extension instead of the
15 two, you know, whenever there's been construction projects
16 that I've been involved in, there are always things that
17 come up. Now, the Applicant is -- Towne is very much in
18 favor of completing the project as soon as they can. We're
19 not asking for three years so we can draw out this process
20 for three years. I wanted to make that very clear.

21 It's just, you know, contingency, if something
22 happens. You know, let's say there's a shipper strike, for
23 example, and they can't get the building material in, and
24 for some reason, they can't -- for two months get stuck.
25 It's contingency more than anything else, but we are, of

1 course, very interested in just completing the project, and
2 that's why we're asking for the time extension request.

3 COMMISSIONER TAGORDA: Okay. So, let's say
4 everything is looking good, materials and weather and all
5 that, would that 33 units more to complete, can you give me
6 a time, accurate estimate?

7 MS. FUKUDA: In speaking with the Applicant, you
8 know, in a best case scenario where everything, as you said,
9 is going along as they had hoped, they're looking at a
10 minimum of 18 months for completion, so that's a minimum.

11 COMMISSIONER TAGORDA: And construction is ongoing
12 now, but at a slow pace?

13 MS. FUKUDA: Yes, yes.

14 COMMISSIONER TAGORDA: Okay. Thanks.

15 CHAIRMAN STARR: Okay. Do we have a motion?
16 Commissioner Freitas.

17 COMMISSIONER FREITAS: Yes, I would like to make a
18 motion to --

19 MR. YOSHIDA: I don't think the staff has
20 presented their recommendation.

21 COMMISSIONER FREITAS: I'm sorry. Go ahead.

22 CHAIRMAN STARR: Please go ahead.

23 MS. FLAMMER: The analysis is found on Page 7 of
24 your report. For the recommendation pursuant to the
25 foregoing, the Maui Planning Department recommends approval

1 of the time extension to Condition Number 2 to allow a time
2 extension until April 27th, 2013 to complete the project.

3 In consideration of the foregoing, the Planning
4 Department recommends that the Maui Planning Commission
5 adopt the Planning Department's report and recommendation
6 prepared for the September 28th, 2010 meeting as its
7 findings of fact, conclusions of law, decision and order and
8 authorize the Director of Planning to transmit said decision
9 and order on behalf of the Maui Planning Commission.

10 CHAIRMAN STARR: Okay. Commissioner Freitas.

11 COMMISSIONER FREITAS: A motion to accept the
12 Special Management Area Permit, to extend the Special
13 Management Area Permit.

14 CHAIRMAN STARR: As recommended.

15 COMMISSIONER FREITAS: As recommended.

16 CHAIRMAN STARR: A second.

17 COMMISSIONER SHIBUYA: Second.

18 CHAIRMAN STARR: So moved by Commissioner Freitas.
19 Seconded by Commissioner Shibuya. The motion is to?

20 MR. YOSHIDA: To approve the three-year time
21 extension on the period to complete construction.

22 CHAIRMAN STARR: So, it's for three years.

23 MR. YOSHIDA: Right, until April 27th, 2013.

24 CHAIRMAN STARR: Three years. If we're going to
25 have discussion, we need a recess. Should we -- let's take

1 a ten-minute recess. We shall return.

2 (Recess taken.)

3 CHAIRMAN STARR: Okay. Hear ye, hear ye, one and
4 all. Maui Planning Commission September 28, 2010. We're
5 back in order. When we were interrupted for our recess,
6 Commissioner Wakida was just about to ask a pertinent and
7 important question.

8 COMMISSIONER WAKIDA: Well, it's not so much a
9 question as a statement. I'm going to be voting against the
10 motion. I am very sensitive to the existing tenants that
11 are living on this project who have had to put up with a
12 construction site for already five years, and to the
13 neighbors. There's residential areas on three sides of this
14 construction, this project that have to put up with this
15 construction.

16 And I don't think -- I mean all development has
17 risks, and that's the developer's concern, not something
18 that we can -- that we can control. So, I think the
19 three-year extension is excessive, and I'll vote against it.

20 CHAIRMAN STARR: Okay. Members, any other
21 questions, comments, amendments, anything else of that
22 nature? Commissioner Hiranaga.

23 COMMISSIONER HIRANAGA: I'm wondering to myself if
24 an amendment to the term of the extension might appease
25 certain Commissioners who might be inclined to vote against

1 the motion, say like a two-year extension instead of a
2 three-year extension.

3 CHAIRMAN STARR: That's certainly in order to make
4 that amendment. Will you make such an amendment?

5 COMMISSIONER HIRANAGA: I'll put it on the floor.

6 CHAIRMAN STARR: Is there a second to --

7 COMMISSIONER MARDFIN: I'll second it.

8 CHAIRMAN STARR: So, we have a motion by
9 Commissioner Hiranaga. Seconded by Commissioner Mardfin.
10 The amendment is to?

11 MR. YOSHIDA: Grant a two-year time extension on
12 the time to complete construction.

13 CHAIRMAN STARR: I want to speak in favor of the
14 amendment. I do think endless construction is not a fun
15 thing to experience as a neighbor. Commissioner Tagorda.

16 COMMISSIONER TAGORDA: Just point of inquiry,
17 Mr. Chair. If the majority of the members of this body go
18 along with Commissioner Wakida, what will happen to the
19 permit request?

20 CHAIRMAN STARR: Mr. Yoshida.

21 MR. YOSHIDA: I guess the Applicant will have
22 until April 27, 2012 to complete construction, or they come
23 in for another time extension.

24 CHAIRMAN STARR: You mean if we do not give a time
25 extension at all?

1 MR. YOSHIDA: Oh, if we do not give a time
2 extension at all, then they wouldn't have a valid SMA
3 permit. And if they wanted to do construction on the three
4 buildings, then they would have to come in for a new SMA
5 permit.

6 COMMISSIONER TAGORDA: Thank you.

7 CHAIRMAN STARR: Commissioner Freitas.

8 COMMISSIONER FREITAS: Yeah, as the maker of the
9 motion, the project is almost done. To deny the time
10 extension, I think it would be -- it would be a mistake.

11 CHAIRMAN STARR: Commissioner Mardfin.

12 COMMISSIONER MARDFIN: I agree that the time
13 extension is -- since it's almost done, they should be able
14 to do it in the two years. When they applied for it, they
15 asked for two years. I agree it's taken us time to deal
16 with it. I presume they haven't stopped their construction
17 activity to accommodate that, so if two years was good
18 enough six months ago, two years should be good enough now.

19 CHAIRMAN STARR: Are we ready to vote on the
20 amendment? Commissioner Hiranaga.

21 COMMISSIONER HIRANAGA: Maybe the Applicant would
22 like to comment.

23 CHAIRMAN STARR: If you would like to hear from
24 them. Ms. Fukuda.

25 MS. FUKUDA: Speaking with the Applicant, if it is

1 the wish of the Commission to provide a two-year time
2 extension, we are agreeable to that.

3 CHAIRMAN STARR: Are we ready to vote on that
4 amendment? All in favorite of the amendment reducing to
5 time to two years, please raise their hand. All opposed.

6 MR. YOSHIDA: We have six votes in favor and one
7 against. The motion passes.

8 CHAIRMAN STARR: The amendment passes.

9 MR. YOSHIDA: The amendment passes.

10 CHAIRMAN STARR: We're back to the main motion.
11 Any further amendments or further comments? Commissioner
12 Hiranaga.

13 COMMISSIONER HIRANAGA: Yeah, I don't believe in
14 chasing water that has gone under the bridge. And I think
15 the Applicant made an adequate explanation regarding the
16 challenges to redesign the existing drainage system. I
17 would like them to explore other opportunities. The civil
18 engineer consultant mentioned possibly, you know, alteration
19 to landscape design, swales or whatever that could be
20 passively introduced into the site above the basin to help
21 increase the percolation of water into the ground so that
22 reduces the actual runoff that reaches the detention basin.

23 So, I'm hoping the developer and the homeowners
24 association will take that into strong consideration.

25 CHAIRMAN STARR: Thank you, Commissioner Hiranaga.

1 And I would just like to say that, you know, I -- this is
2 mostly built. And I'm not sure if it's really fair to tear
3 it out and figure out another way to build it. However, I
4 do think that it's important for us to learn from our
5 lessons and learn from everything we hear and everything
6 that we've seen before us. And we have heard today that
7 almost all of the phosphates and nitrates and other lawn and
8 planting chemicals, the automotive byproducts from the
9 parking and the driveway, it is all flowing almost
10 completely unimpeded into the nearshore waters.

11 So, when new projects come before us, I hope that
12 we can remember that and be proactive, and I also hope that
13 -- we have some of the best engineering minds sitting before
14 us and also, you know, some of the consultants who do this
15 work. I see Mr. Hirano. I see other people here. I hope
16 they keep it in mind and really try to do the best, because
17 I know we all want to have some amount of activity out in
18 our nearshore waters and reefs in the future. And that's
19 the only way we can have that.

20 And also, Mr. Miyamoto, we're looking to improve
21 not only our own SMA rules, but also Title 16 and so on.
22 This is an area where we can all do better. Excuse my rant.
23 Let's vote. All in favor of the main motion, please raise
24 their hand.

25 COMMISSIONER WAKIDA: What is the main motion now?

1 CHAIRMAN STARR: The main motion is, Clayton, and
2 I ask you to repeat it.

3 MR. YOSHIDA: The motion is to grant the two-year
4 time extension period to complete construction.

5 CHAIRMAN STARR: Okay. Thank you. All in favor,
6 please raise their hand. All opposed. Thank you very much.
7 Do your best to try to build it well.

8 MS. FUKUDA: Thank you very much.

9 CHAIRMAN STARR: Okay. Our next item will be
10 introduced. Do we need any setup time, Ms. Thackerson? No.
11 Mr. Yoshida, why don't you introduce the next item.

12 MR. YOSHIDA: Mr. Chairman, Members of the
13 Commission, Item 4, request from Mich Hirano of Munekiyo &
14 Hiraga, Inc. on behalf of Mr. Rick Armour of Kalama Hills,
15 LLC for an amendment to the Special Management Area Use
16 Permit Condition Number 1 for a three-year time extension on
17 the period to initiate construction of the Kalama Hills
18 Subdivision, a proposed 12-lot single-family subdivision
19 with approximately 3.24 acre lot at 55 Auhana Road, TMK
20 3-9-017, Parcel 23, Kihei, Island of Maui. The staff
21 planner is Candace Thackerson.

22 CHAIRMAN STARR: Ms. Thackerson, please proceed.

23 MS. THACKERSON: Good afternoon, Chair Starr,
24 Members of the Commission. Thank you for your patience with
25 us this very long day today. I'll try to make this somewhat

1 quick. As stated, this is going to be a three-year time
2 extension request for the SMA permit to initiate
3 construction, so this will be until June 30th, 2013. At
4 your regular April 13th, 2010 meeting, you requested further
5 review and additional information for this permit, and you
6 would like to see a means of securing a long-term water
7 supply to initiate construction as well as a revised
8 drainage plan showing the capture of pre and post
9 development runoff in its entirety for the 50-year/one-hour
10 storm.

11 The Applicant submitted a request back to the
12 Department of Water Supply previously, and Exhibit 1-B is
13 the response from the Director of Water Supply dated
14 February 28th, 2008 indicating that since July 21st, 2003,
15 the Department of Water Supply has neither accepted, nor
16 processed applications for future allocations of water
17 service or water meters from central Maui water system.

18 This Applicant filed an appeal on March 31st,
19 2008, and his appeal is currently pending. The Applicant
20 has been monitoring the Department of Water Supply's efforts
21 to obtain additional sources and the Draft Water Use and
22 Development Plan under review by the County of Maui as well
23 as the South Maui R-1 Recycled Water Verification Study.
24 Regardless of these efforts, the Applicant has been
25 unsuccessful to date in obtaining a long-term water source;

1 therefore, one of the reasons for this time extension
2 request.

3 Exhibit 3-C is a copy of the preliminary drainage
4 plan along with a letter from Otomo Engineering stating that
5 the drainage plan is able to mitigate the post development
6 runoff in accordance with the drainage calculations
7 contained in the preliminary engineering report. The
8 Applicant has agreed to commit to a drainage plan that will
9 have the capacity to mitigate 100 percent of the on-site
10 total post development runoff at the time of future building
11 permits in response to your concerns as requested at your
12 regular meeting on April 13th, 2010. Would you like to open
13 up to public testimony at this time?

14 CHAIRMAN STARR: Not yet. We would like to allow
15 Commissioners to ask questions either of Ms. Thackerson or
16 of the Applicant or his planning or engineering consultants
17 who are here. Members. Commissioner Hiranaga.

18 COMMISSIONER HIRANAGA: This proposed subdivision,
19 is its lots only?

20 MS. THACKERSON: Lots only? It's a 12-lot
21 single-family subdivision. Is it lots only, are there homes
22 prebuilt on it, are you asking?

23 COMMISSIONER HIRANAGA: Right.

24 CHAIRMAN STARR: Mr. Hirano, please introduce
25 yourself.

1 MR. HIRANO: Thank you, Chair. My name is Mich
2 Hirano with Munekiyo & Hiraga. Commissioner Hiranaga, the
3 application was for house/lot package. The owner developer
4 of Kalama Hills, LLC will develop a few homes, custom, and
5 there will be custom contract. They will sell the lot/home
6 package, and they will build those upon sale.

7 COMMISSIONER HIRANAGA: So, all the lots will have
8 sold as a house and lot package, or some will?

9 MR. HIRANO: Some will. I think the option -- the
10 owners will have an option to take the house plan or to
11 build their own house.

12 COMMISSIONER HIRANAGA: So, how do you determine
13 the post development runoff if you're unsure how large the
14 homes will be?

15 MR. HIRANO: Stacy Otomo.

16 MR. OTOMO: Good afternoon, Chair Starr, Members
17 of the Commission. My name is Stacy Otomo. To answer
18 Commissioner Hiranaga's question, when we do runoff
19 calculations, it's a matter of the type of development, the
20 slope, the ground cover and the characteristic of the ground
21 itself.

22 For something like this, we classify everything as
23 residential, which has a higher runoff coefficient than just
24 bare ground. Okay. And the roadway, we take that as a
25 separate entity, because obviously, it's almost 100 percent

1 impervious. So, we assign roadway as one high class of
2 runoff versus the lots itself, which would be classified as
3 residential.

4 COMMISSIONER HIRANAGA: So, the calculation is not
5 as sophisticated, you're just using kind of a benchmark, you
6 know, between a 1,200-square-foot house and
7 3,000-square-foot house.

8 MR. OTOMO: Well, what we're doing, Commissioner
9 Hiranaga, is basically on the lot portion, we're assigning
10 the entire lot as if it was a residential development, and
11 not just taking into account maybe 10 percent would be a
12 roof, maybe another 10 percent would be a driveway and 80
13 percent would be in landscape. In that number, I think, in
14 fact, our runoff coefficients may be lower if we did it that
15 way.

16 COMMISSIONER HIRANAGA: So, you just have a factor
17 that you use?

18 MR. OTOMO: That's correct.

19 COMMISSIONER HIRANAGA: Thank you.

20 CHAIRMAN STARR: Commissioner Shibuya.

21 COMMISSIONER SHIBUYA: Just following up on
22 Commissioner Hiranaga's question relating to drainage. Is
23 the sewer system going to be septic, or the city type of
24 sewer system?

25 MR. OTOMO: This particular area, Commissioner

1 Shibuya, there is a sewer system, so the project would
2 connect to the County sewer.

3 COMMISSIONER SHIBUYA: Then it fits in with what
4 you were explaining in terms of the drainage for the lot?

5 MR. OTOMO: Yeah. The drainage is not going into
6 the sewage system. Sewer is strictly wastewater.

7 COMMISSIONER SHIBUYA: I understand. I just
8 wanted to make the distinction, because you just have so
9 much draining capacity for a given lot. And you can't have
10 a leech field and that accommodating for that drainage, too.
11 I did want to ask the developer, since I've got the floor,
12 whether there would be some considerations for renewable
13 energy type of systems such as photovoltaic as well as for
14 wind power?

15 MR. ARMOUR: Yes, hi. My name is Rick Armour.
16 I'm the owner/developer of the project. And yes, we are
17 currently in the planning stage of all renewable energy
18 stages to offer to the houses, which would include solar, of
19 course, which would be number one. Wind is under
20 consideration. Probably not the best area for wind, solar
21 being the primary, and water conservation. Our landscape
22 plan is a water conservation plan. Plants are encouraged to
23 be water conservation.

24 COMMISSIONER SHIBUYA: Right, and thank you very
25 much. Because I'm encouraging folks to do both, heating

1 their water with solar as well as generating electricity
2 with solar.

3 MR. ARMOUR: Excellent area for both of those two.

4 CHAIRMAN STARR: Commissioner Mardfin.

5 COMMISSIONER MARDFIN: I think it's the same
6 person probably I want to be speaking to, maybe Mich. What
7 gives you any assurance that water will be available by June
8 2013 as opposed to June 2020 or June 2030?

9 MR. ARMOUR: Well, I don't think that we have 100
10 percent assurance that we will have water there. But we are
11 pursuing every option that we have to have water there. And
12 I think that it's a very reasonable assumption and that we
13 will have water in the future, that there will be additional
14 water.

15 COMMISSIONER MARDFIN: By 2013?

16 MR. ARMOUR: Our belief is, yes, we will have
17 water there. So, we're pursuing that the best interest we
18 have.

19 CHAIRMAN STARR: Okay. How about we open it for
20 public testimony. Members of the public wishing to testify
21 on this, please make yourself known. Not seeing any, public
22 testimony is closed.

23 Members, additional questions? And if not, we'll
24 go to our recommendation. Commissioner Mardfin.

25 COMMISSIONER MARDFIN: This isn't a question.

1 This is kind of a comment. And I don't mean -- this may
2 sound harsher than I mean it to sound. On Page 6, Item 6
3 under the analysis, the second sentence says, "The Applicant
4 has agreed to commit to a drainage plan design that will
5 have the capacity to mitigate 100 percent of the onsite
6 total post development runoff in response" -- is the part
7 I'm concerned about -- "in response to the Maui Planning
8 Commission's concerns as requested at the Commission's
9 regular meeting."

10 My only comment is I would have preferred it to
11 say "In response to some Commissioners' concerns," because I
12 don't believe we voted on it. And so, I do this all the
13 time. I make comments, but I don't think that you should be
14 bound by my comments. If it's a commissioner or two
15 commissioners or three commissioners or even seven
16 commissioners, it's the commissioners' comments. It doesn't
17 become the purview of the Maui Planning Commission unless we
18 have a vote on it. Is my understanding correct?

19 CHAIRMAN STARR: Thank you, Commissioner Mardfin.
20 You know, I, for one, want to express appreciation for
21 responsiveness to concerns expressed by Members of the
22 Commission. I don't really want to argue over how many of
23 them, but I think you are being responsive to something that
24 many Commissioners feel strongly about, so thank you for
25 that.

1 Okay. Are we ready for recommendation?

2 MS. THACKERSON: Thank you, Commissioner Mardfin.
3 I can definitely add that to future staff reports that some
4 of the commissioners' concerns. As far as recommendation
5 goes, the Maui Planning Department recommends approval of
6 the time extension to Condition Number 1 of the Special
7 Management Area Use Permit subject to the following revision
8 to said Condition 1: That construction of the proposed
9 project shall be initiated by June 30th, 2013.

10 Failure to comply with this three-year time period
11 will automatically terminate the Special Management Area Use
12 Permit unless the time extension is requested no later than
13 90 days prior to the expiration of said three-year time
14 period. In consideration of the foregoing, the Planning
15 Department recommends the Maui Planning Commission adopt the
16 Planning Department's report and recommendation prepared for
17 the September 28th, 2010 meeting as its finding of fact,
18 conclusion of law and decision and order, and to authorize
19 the Director of Planning to transmit said written decision
20 and order on behalf of the Maui Planning Commission.

21 CHAIRMAN STARR: Okay. Commissioner Shibuya.

22 COMMISSIONER SHIBUYA: I would just like to make a
23 motion.

24 CHAIRMAN STARR: Please.

25 COMMISSIONER SHIBUYA: Okay. Move to accept this

1 as recommended by the Maui Planning Department with the
2 conditions of the Special Management Area Use Permit subject
3 to the revisions as said.

4 CHAIRMAN STARR: Is there a second to the motion?

5 COMMISSIONER FREITAS: Second.

6 CHAIRMAN STARR: We have a motion by Commissioner
7 Shibuya, seconded by Commissioner Freitas. That motion is?

8 MR. YOSHIDA: To recommend approval of the
9 three-year time extension to initiate construction as
10 recommended by staff.

11 CHAIRMAN STARR: Discussion, possible amendments.
12 Commissioner Wakida.

13 COMMISSIONER WAKIDA: This was a question for
14 staff. Or maybe, sorry, probably for you. You're staff, of
15 course. So, they cannot begin construction until they get,
16 secure a long-term source of water; is that correct?

17 MS. THACKERSON: Yes, that is the Show Me The
18 Water Bill. So, prior to ever receiving any building
19 permits, they do have to show a secure source of long-term
20 water supply.

21 COMMISSIONER WAKIDA: Okay.

22 CHAIRMAN STARR: What's the trigger for that?

23 MS. THACKERSON: Subdivision.

24 CHAIRMAN STARR: Any subdivision, or is it over a
25 certain, like a family subdivision? Over three; three or

1 more, or over three?

2 MR. OTOMO: Any subdivision.

3 CHAIRMAN STARR: Okay. So, Ms. Thackerson, it's
4 any subdivision?

5 MS. THACKERSON: Yes, any subdivision.

6 COMMISSIONER WAKIDA: So, I just want to be clear
7 on this property, so it is not being grubbed or anything,
8 it's just lying fallow?

9 MS. THACKERSON: Yes.

10 COMMISSIONER WAKIDA: Correct?

11 MS. THACKERSON: Yes.

12 COMMISSIONER WAKIDA: Okay.

13 CHAIRMAN STARR: Thank you. Are we ready to vote
14 on a motion? All in favor, please raise their hand. All
15 opposed.

16 MR. YOSHIDA: It's unanimous. Motion carried.

17 MS. THACKERSON: Thank you.

18 CHAIRMAN STARR: Thank you very much. Good luck.

19 MR. HIRANO: Thank you, Commissioners.

20 CHAIRMAN STARR: Moving right along. Mr. Yoshida,
21 the next item, Item F.

22 MR. YOSHIDA: We're on to the acceptance of
23 various minutes. Your action minutes of September 14th
24 meeting, the minutes of the site inspection of September
25 14th, 2010, and the regular minutes of the July 27th, 2010.

1 CHAIRMAN STARR: Before we proceed, I had a
2 question by one of the members about the minutes and what
3 actually constitutes the minutes. The actual minutes of
4 record which are required by our rules to be brought to us I
5 believe within 30 days after the date of a meeting are the
6 action minutes. And the Department, Carolyn, is very good
7 at getting these action minutes, which are the official
8 minutes of the Commission, to us, much sooner than the
9 required 30 days.

10 And they at a bare minimum to meet the
11 requirements, have the members present, and all motions and
12 all action taken and the vote. And then for most everything
13 else, we do get verbatim minutes, which we accept, though
14 the actual record to meet with our rules are the action
15 minutes. Anyway, do we have any corrections or a motion?

16 COMMISSIONER MARDFIN: Mr. Chairman, in that
17 regard -- I raised this issue a couple of meetings ago -- we
18 only put in the action minutes the motions that were
19 approved, we don't put in the motions that we voted down.
20 And the more I think about it, the more I think both ought
21 to be in there. We don't make all that many motions anyway.

22 CHAIRMAN STARR: You could. The action minutes --

23 COMMISSIONER MARDFIN: Is there a argument there's
24 no action if we vote no?

25 CHAIRMAN STARR: Yeah, a motion that fails is not

1 an action. But they were really put in place to be in
2 compliance and to make -- create clarity when a motion is
3 passed. Because then, you know, it becomes a -- it becomes
4 a legal binding action. I had made sure that this was in
5 place when I first became Chair, because I felt that we
6 weren't always clear on what motions were being passed and
7 what the vote is.

8 And you know, I thank the Department for being
9 diligent on that. Perhaps Mr. Giroux can speak to what
10 constitutes the record and then Clayton, Mr. Yoshida.

11 MR. GIROUX: Yeah, I think at a minimum, they just
12 need the minimum of what happened at the meeting, yeah. You
13 know, there's no hard and fast rule. You know, and it all
14 depends on what the Commission agrees on also. You know, I
15 mean I think there's also a clause that says, you know, that
16 the Board can add what they see sit as far as the
17 information. But being that you've got action minutes and
18 you've got verbatim minutes, you know, there's really no
19 reason to keep beating that drum. You've got more than what
20 the law requires already.

21 CHAIRMAN STARR: Yeah. And what I wouldn't want
22 is if -- if there was no second, then it never actually
23 becomes property of the body. And if there's a desire to
24 see motions that fail, maybe we could discuss that when that
25 becomes an agenda item. If that's meaningful to you, we can

1 look at it another time. Okay.

2 COMMISSIONER SHIBUYA: I move to accept the
3 minutes of the three meetings, I mean three items here;
4 minutes for the September 14th, meeting minutes of the site
5 inspection of September 14, and the regular minutes of July
6 27 meeting.

7 CHAIRMAN STARR: Is there a second?

8 COMMISSIONER WAKIDA: I second.

9 CHAIRMAN STARR: Moved by Commissioner Shibuya.
10 Seconded by Commissioner Wakida. And I want to ask
11 Mr. Yoshida to comment.

12 MR. YOSHIDA: Very briefly, Mr. Chair. The action
13 minutes are to meet the Chapter 92 HRS requirement.
14 However, sometimes the minutes -- your minutes are passed on
15 to other deliberative bodies such as the Council or the
16 State Land Use Commission or the Circuit Court. And they
17 want to see the full discussion as to, you know, what
18 happened and what did the Commission consider and what was
19 the public testimony and so forth and so on.

20 So, you know, that's why we need the verbatim
21 minutes and, you know, we try to the talk to the Council or
22 the Zucker Report. It kind of addresses the action minutes,
23 but these other entities want verbatim minutes.

24 CHAIRMAN STARR: And I have a question. You know,
25 I feel that Carolyn does a really good job of giving us

1 close to verbatim minutes, you know, as best she can because
2 she records the meetings on audio tape, and then I believe
3 when she has a chance, she transcribes them. Am I right
4 with that? She's nodding her head.

5 But then some meetings we will come in and we'll
6 see a professional, who is really equipped to do it with
7 perfection. Why -- you know, like why today do we have a
8 professional court reporter here?

9 MR. YOSHIDA: Again, on your agenda, there were
10 several items that involved litigation or results of
11 litigation or may result in possible future litigation. So,
12 we want to make sure that the record is clear and the
13 turnaround is quick in order for us to turn it over to that
14 entity.

15 CHAIRMAN STARR: And I just want to put in a plug
16 for our current division people who really spend a lot of
17 thought and a lot of time trying to figure out what we're
18 going to need and what, you know, what will make these
19 meetings and our process work. And, you know, Clayton and
20 Ann Cua and, you know, other people who are involved, the
21 current division people, Carolyn, you know, they spend a lot
22 of time trying to think it through and work it out.

23 And, you know, when things go smoothly, it's not
24 luck. It's because they're good at their jobs. Sorry about
25 that, guys. It's been a long day. We have a motion on the

1 floor for the minutes. Ready to vote all in favor, please
2 raise your hand. All opposed.

3 Okay. Thank you. Item G, Mr. Yoshida.

4 MR. YOSHIDA: Yeah, I'll turn it over to our
5 Deputy Director. I have a report on the open SMX's and
6 SM5's that the Commission had questions about from earlier
7 this morning, so we can make that transition.

8 CHAIRMAN STARR: How about this transfer though?

9 MR. YOSHIDA: This is just for the notification of
10 the Commission pursuant to your SMA rules. The transfer of
11 the SMA permit for Pacific Plaza from Lipoa Street Partners,
12 LLC, a California Limited Liability Company to the Central
13 Pacific Bank approval, and it was dated September 8, 2010,
14 for this Pacific Plaza project in Kihei.

15 CHAIRMAN STARR: There's no action required?

16 MR. YOSHIDA: No, I believe it's just to notify
17 the Commission at your next meeting.

18 CHAIRMAN STARR: Moving along. Ms. Cua.

19 MS. CUA: Okay. Item 2 on Page 6 of your agenda
20 is the 2011 meeting schedule, and we would ask you to take a
21 look at it if you haven't done so already. And we would
22 like you to adopt the 2011 meeting schedule.

23 CHAIRMAN STARR: Okay. Does everyone have the
24 Halloween --

25 MS. CUA: We wanted to make sure you found it

1 easy.

2 CHAIRMAN STARR: Commissioner Mardfin.

3 COMMISSIONER MARDFIN: I move for the adoption of
4 the 2011 meeting schedule as distributed.

5 CHAIRMAN STARR: Is there a second?

6 COMMISSIONER SHIBUYA: Second.

7 CHAIRMAN STARR: Moved by Commissioner Mardfin.

8 Seconded by Commissioner Shibuya. The motion is?

9 MS. CUA: To accept the 2011 meeting schedule for
10 Planning Commission.

11 CHAIRMAN STARR: Commissioner Wakida.

12 COMMISSIONER WAKIDA: I assume, because you guys
13 are so efficient, you've looked at those November and
14 October, like what is it, Veteran's Day and something else,
15 you know, those?

16 MS. CUA: We looked at -- yeah, Carolyn has been
17 doing this for a long time. So, she checks everything and
18 double checks and before this goes out.

19 COMMISSIONER WAKIDA: Excellent.

20 MS. CUA: Thank you though.

21 CHAIRMAN STARR: Okay. All in favor of the dates
22 as stated, raise your hand. All opposed.

23 MS. CUA: Motion passes unanimously. The next
24 item is your Planning Commission projects or issues. I
25 guess is this where we want to call Clayton up?

1 CHAIRMAN STARR: Yeah, sure. Mr. Yoshida.

2 MR. YOSHIDA: I was more prepared to -- this is
3 for the upcoming meeting?

4 MS. CUA: This is just --

5 MR. YOSHIDA: I also have my SMA report.

6 CHAIRMAN STARR: Three items. Why don't you do
7 the SMA report, and then --

8 MR. YOSHIDA: Based on what I gathered from this
9 morning's meeting on the SM5 20100243, I believe that was
10 mistakenly issued by Zoning Division for after-the-fact
11 storage shed for Justin Gordon. They have requested more
12 information from Mr. Gordon, so they have not completed his
13 review -- their review of his SMA assessment.

14 With regards to the Luakini Parking Lot, I did get
15 together with our small town planner Erin Wade. And she did
16 PDF me location maps, so I'll pass my Blackberry around, and
17 it shows the location on the parking lot property.

18 CHAIRMAN STARR: That works.

19 COMMISSIONER WAKIDA: That works for me.

20 MR. YOSHIDA: I don't know Lahaina Town. It's on
21 the makai side of Luakini.

22 With respect to the Halloween Keiki Parade, again,
23 I was informed by Erin Wade, our small town planner, that
24 the SMA minor permit and the Historic District approvals
25 were issued on September 23rd, so it didn't make this list,

1 but it will make the next list. And basically, it was
2 trying to work out issues with the police department and the
3 insurance company. And that's why it took as long as it
4 did.

5 With respect to the three-lot subdivision, RRD,
6 LLC in Waihee, the latest communication that we have is
7 transmittal from Livit Callentine to Public Works and our
8 Zoning Division for comments. That's due on October 1st.
9 With respect to the Moretti Farm Stand at 110 Ulua Place in
10 Haiku, there is a letter dated December 23rd attached as
11 Exhibit B from I guess myself to Mr. Moretti requesting more
12 information, so we are still processing that SMA assessment.

13 And I guess we needed to get more information on
14 that Nacua three-lot subdivision located at 373 Kenolio Road
15 in Kihei.

16 CHAIRMAN STARR: Is anyone -- Commissioner
17 Shibuya.

18 COMMISSIONER SHIBUYA: We've got the Betsill
19 Brothers one. Let's see, I think that's -- no, they've got
20 the Betsill Brothers. I'm missing one.

21 COMMISSIONER FREITAS: That was the three-lot
22 subdivision, yeah.

23 COMMISSIONER SHIBUYA: Yeah, all three are
24 three-lot subdivisions.

25 CHAIRMAN STARR: The ones regarding water?

1 COMMISSIONER SHIBUYA: Yeah, Nacua.

2 MS. CUA: I have 65, SM2 201065.

3 COMMISSIONER SHIBUYA: Yeah, Lewis, Sky.

4 MS. CUA: Sky Lewis.

5 COMMISSIONER SHIBUYA: Next time. It's just a
6 followup.

7 CHAIRMAN STARR: Commissioner Wakida.

8 COMMISSIONER WAKIDA: You know, your little
9 Blackberry went off when I was trying to look at it, but my
10 concern is, isn't that parking lot in the Historic District?

11 MR. YOSHIDA: Yes, I believe so.

12 COMMISSIONER WAKIDA: So, this was permission to
13 have a parking lot?

14 MR. YOSHIDA: To demolish a building and put up a
15 parking lot.

16 COMMISSIONER WAKIDA: So, don't you have to jump
17 through all sorts of hoops when you're doing stuff in a
18 Historic District?

19 MS. CUA: You need to -- in the Historic District,
20 you would see a Historic District approval. You would need
21 Chapter 343 approval.

22 COMMISSIONER WAKIDA: Right.

23 MS. CUA: And if you're in, and they are in the
24 SMA, you would see SMA approval. So, this is just showing
25 you the SMA. We're not reporting to you the Historic

1 District permit.

2 COMMISSIONER WAKIDA: So, they're doing all of
3 that or did that?

4 MS. CUA: That would be part of their whole
5 process.

6 COMMISSIONER WAKIDA: Okay. Thank you.

7 CHAIRMAN STARR: Orlando?

8 COMMISSIONER TAGORDA: No.

9 CHAIRMAN STARR: Okay. So, we have all of that,
10 everything that was requested other than the one three-lot
11 subdivision request for water. Would someone like to put a
12 motion to accept this either with -- do you want to hold it
13 off for the Sky Lewis, or can we just hear about that later?

14 COMMISSIONER SHIBUYA: I was asking the question
15 for later.

16 CHAIRMAN STARR: Someone want to put a motion to
17 accept this, and then it's water -- all water under the
18 bridge? Someone.

19 COMMISSIONER SHIBUYA: So move to accept.

20 CHAIRMAN STARR: Is there a second?

21 COMMISSIONER MARDFIN: Second.

22 CHAIRMAN STARR: Moved by Commissioner Shibuya.
23 Seconded by Commissioner Mardfin.

24 MS. CUA: To accept the Planning Department's
25 approved SMA minor exempt and open assignments project

1 report.

2 CHAIRMAN STARR: Okay. All in favor, please raise
3 their hand. All opposed. Thank you.

4 And I thank you for your patience, but this is the
5 right way to handle this. Because we actually are an
6 official part of the process in reviewing these, and when we
7 see them and accept them, that means that the -- they can
8 continue the process. Anyway, moving along. Mr. Yoshida.

9 MR. YOSHIDA: I circulated the agenda items for
10 October 12th. We have two public hearings, the Wailuku II
11 Elementary School Phase II project district approval, which
12 the Commission conducted a site inspection on September
13 14th, a State Land Use Commission Special Use Permit for the
14 Pili Aloha Bed & Breakfast in Kaupakalua.

15 We have the Maui Memorial Park Expansion County
16 Special Use Permit and Accessory Use Permit, which the
17 Commission conducted a site inspection on September 14th.
18 And the five-year time extension on the Kalama Heights Phase
19 II SMA permit.

20 Plus our building permit workshop, which Ann and
21 Gina have been working very diligently on. We had to kind
22 of reschedule things because of the Grand Wailea court
23 decision and order, but we have various agencies, County
24 agencies and State agencies that can participate in that.

25 CHAIRMAN STARR: A couple of things. First of

1 all, oh, yeah, okay. Kalama Heights, that's the Betsill
2 one. I want to apologize. We had to switch the workshop on
3 building permit process, and the current staff have worked
4 really hard on that, and it's going to be a great
5 presentation next meeting. It was felt important to deal
6 with the legal matters today. Commissioner Mardfin.

7 COMMISSIONER MARDFIN: The first was the Wailuku
8 Elementary School. At the site visit, we had asked for the
9 EA. And we got it today, but it's on the disk. And any
10 chance I could get a hard copy sometime, or is that not
11 likely to happen?

12 MR. YOSHIDA: We can try to talk to the Department
13 of Education and to the planning consultant. It does
14 cost -- well, I guess monies to reproduce those color --

15 COMMISSIONER MARDFIN: I don't need colors. Black
16 and white is fine, if that's the issue.

17 MR. YOSHIDA: Yeah, we can consult the -- if we
18 know how many.

19 CHAIRMAN STARR: Oh, we have one member who is
20 requesting it. If you could do it. If not, I'll print it
21 out for him. But if you could do it, that would be good.

22 COMMISSIONER MARDFIN: I would like to
23 underline -- and I'll tell you, let's make life easy. If
24 you just took the content in the beginning on the report
25 analysis or however it's stated, because that usually only

1 about a quarter of it or maybe only sometimes ten percent of
2 it, the background documents I can look up, but I like to
3 underline things. And if I have the --

4 MR. YOSHIDA: You want the executive summary?

5 COMMISSIONER MARDFIN: I was hoping for a little
6 more than that.

7 CHAIRMAN STARR: Let's work it out out of session.
8 Ward, talk to Clayton. Work it out. Anyone else have an
9 issue, let's take it off line. What else? Anything else?
10 How about an additional plug for the workshop?

11 MS. CUA: We have a full slate of people coming.
12 They were gracious when we changed the date and time
13 actually on them. And so, it's going to be aggressive.
14 Just letting you know that. I feel a little nervous that we
15 have quite a number of people. The Chair is not so nervous.
16 He's happy that we have lots of people. I'm -- I just want
17 to make sure everybody is able to say what they need to say,
18 and we might need to be careful on the questions just
19 because I would like everybody to be able to get on, get you
20 the information, and, you know, finish it up that day.

21 CHAIRMAN STARR: Yeah, if there's an area where
22 we're going to have a lot of questions and want to dig
23 deeper, we probably want to do that on another day, but it
24 should be a really great educational opportunity. There's
25 not anyplace we can specifically do action or change all the

1 rules right then and there, but we'll learn a lot.

2 MS. CUA: Yeah, and I think that's the point the
3 that I do want to make. This is being provided as
4 additional training for you. You know, the agencies have
5 agreed to come and -- but, you know, we need to all
6 understand that what they're speaking to you on is not
7 something that the Planning Department nor the Commission
8 can change. It is their process. If it's -- and the --
9 we're prepared to also have the Planning Department talk a
10 little bit about the streamlining efforts that we have done
11 that some of you have reviewed, some of you may have not, if
12 you're new.

13 But we want to update you on just what we've done
14 as a department that we have control over along with you to
15 streamline the process. The other part is more just
16 information as to what each department does when it -- when
17 it comes to their review of the building permit application,
18 so we would just hope that you would respect their being
19 here and, you know, not get down on process for them. It is
20 what it is for them. We just want you to be informed as
21 part of your training as Commissioners.

22 COMMISSIONER SHIBUYA: This would be in the
23 afternoon, right?

24 MS. CUA: Correct.

25 COMMISSIONER SHIBUYA: We've got to make sure

1 Kenny is here, because I really like this kind of stuff
2 going on Akaku.

3 CHAIRMAN STARR: Talk to Maui Tomorrow. Kenny
4 works for Maui Tomorrow, and he submits their tapes to
5 Akaku. Commissioner Wakida.

6 COMMISSIONER WAKIDA: The last meeting, didn't you
7 say you encouraged members of the public to come to this,
8 was that correct?

9 CHAIRMAN STARR: Yeah.

10 COMMISSIONER WAKIDA: And would this be something
11 that would be redundant for people that are architects and
12 that sort of thing? I'm just thinking of people I know
13 personally, but I don't want to insult them by --

14 CHAIRMAN STARR: No one has ever done this before.
15 This is new ground, and it's probably the first time it's
16 being presented as an organic whole.

17 COMMISSIONER WAKIDA: True, but people already
18 working in the field, they should already know this stuff,
19 right?

20 MS. CUA: I would think they would be very
21 familiar with what's required to submit a building permit,
22 what Department of Health is looking for, you know, what the
23 building plans examiners are looking for. They should know
24 the codes, but any kind of a training exercise is always
25 open to the public. I think people can never get too much

1 of it, so you could extend it. I don't think it would
2 necessarily offend them, but they really should know if
3 they're an architect.

4 CHAIRMAN STARR: I think though that there are
5 several different disciplines that would do the different
6 sections of it. So, an architect wouldn't know what a
7 permit planner would do, and a permit planner wouldn't know
8 what a civil engineer would do. So, in a sense, I don't
9 think there are very many out there that actually, you know,
10 do the whole thing. Did I see -- Commissioner Freitas.

11 COMMISSIONER FREITAS: Yes. So, if somebody comes
12 from the public, can they participate in it or ask
13 questions?

14 CHAIRMAN STARR: They'll have their three minutes
15 like any other time. You know, and if there's a bunch of
16 people, I'll probably keep it to three minutes sharp, you
17 know.

18 COMMISSIONER FREITAS: Okay. Understood.

19 MS. CUA: I mean once we start the actual
20 training, I'm not sure how you're going to incorporate
21 public testimony. We don't normally -- you know, we
22 normally have questions and answers of the people speaking,
23 I think, yeah.

24 CHAIRMAN STARR: Yeah, the public won't be able to
25 ask questions, but they will get their three minutes if they

1 want to do that.

2 MS. CUA: It's tight. We have agencies speaking
3 for like ten minutes, and that's it. It's that tight. It's
4 very, very, close on the agenda.

5 COMMISSIONER WAKIDA: When we had our last
6 training on the shoreline and so on, I don't recall that
7 there were people from the public. It was just pure
8 presentation.

9 MS. CUA: Right. I think --

10 COMMISSIONER FREITAS: This is different.

11 CHAIRMAN STARR: We did allow of public testimony.
12 It's just we didn't have many people testifying. I think we
13 had a couple. They might have testified at the beginning of
14 the day.

15 MS. CUA: Yeah, I think as part of the regular
16 testimony in the beginning of the day that they could have
17 testified on any item that was allowed. But I don't think
18 it was specifically called for during the workshop. It
19 would just come under general comments in the beginning of
20 the meeting.

21 CHAIRMAN STARR: Okay. Let's --

22 MS. FLAMMER: If I could just add something. If
23 any of you have specific questions about the building permit
24 process in any of the departments, you could e-mail me ahead
25 of time. And at least that way, I can get a heads-up to the

1 person giving the presentation to include it in there. So,
2 it's Gina, G I N A, dot, Flammer -- it's on your agenda --
3 @mauicounty.gov.

4 CHAIRMAN STARR: Thank you everyone for
5 perseverance. Commissioner Wakida.

6 COMMISSIONER WAKIDA: I'm sorry, a quick question.
7 A couple of meetings ago, we got this on Lahaina's
8 architectural integrity, and it was an ordinance about
9 changing the ordinance on historic building codes. And it
10 says here this is for the Planning Commission's review.
11 Now, is this going to be a formal review, or was this just a
12 courtesy thing?

13 MS. CUA: Can I see it? I'm familiar that that's
14 ongoing.

15 COMMISSIONER TAGORDA: Mr. Chair, I would like to
16 be excused next meeting date. I will be off island.

17 CHAIRMAN STARR: Okay.

18 COMMISSIONER FREITAS: No.

19 CHAIRMAN STARR: Jack says you can't. You've got
20 to watch it on TV.

21 COMMISSIONER TAGORDA: Akaku is coming?

22 CHAIRMAN STARR: We'll get it from Kenny, and you
23 can watch it on TV.

24 COMMISSIONER SHIBUYA: And you will have an exam
25 the following week.

1 CHAIRMAN STARR: I assume this hasn't hit our
2 agenda yet.

3 MS. CUA: Yes, that's correct. Counsel adopted by
4 resolution a draft bill on August 24th, 2010, so it would be
5 something that would have to come to this Commission,
6 correct.

7 COMMISSIONER WAKIDA: Okay. Yeah, because I have
8 some concerns, and I didn't know what the proper avenue.

9 CHAIRMAN STARR: Yeah, Mr. Yoshida. Do you know
10 if that one is coming up?

11 MS. CUA: Or would it only go to the CRC?

12 MR. YOSHIDA: Yes, Mr. Chairman, I believe the
13 Maui Planning Commission will be having a public hearing on
14 that Council resolution at your October 26th meeting. It
15 will go to the Cultural Resources Commission next week
16 Thursday for their comments.

17 CHAIRMAN STARR: So, coming up. Okay. Thank you,
18 everyone. Meeting is adjourned.

19 (The meeting adjourned at 3:45 p.m.)
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C E R T I F I C A T I O N

I, RACHELLE PRIMEAUX, Notary Public for the State of Hawaii, certify:

That the proceedings contained herein were taken by me in machine shorthand and were thereafter reduced to print under my supervision by means of computer-aided transcription; that the foregoing represents, to the best of my ability, a true and accurate transcript of the proceedings had in the foregoing matter.

I further certify that I am neither attorney for any of the parties hereto nor in any way concerned with the cause.

Dated this _____ day of _____, 2010.

NOTARY PUBLIC, State of Hawaii

My commission expires 6/14/2012